

THE MEDIEVAL ENGLISH BOROUGH

STUDIES ON ITS ORIGINS AND
CONSTITUTIONAL HISTORY

BY

JAMES TAIT, D.LITT., LITT.D., F.B.A.

Honorary Professor of the University

MANCHESTER UNIVERSITY PRESS

© 1936 MANCHESTER UNIVERSITY PRESS
Published by the University of Manchester at
THE UNIVERSITY PRESS
316-324 Oxford Road, Manchester 13

PREFACE

As its sub-title indicates, this book makes no claim to be the long overdue history of the English borough in the Middle Ages. Just over a hundred years ago Mr. Serjeant Merewether and Mr. Stephens had *The History of the Boroughs and Municipal Corporations of the United Kingdom*, in three volumes, ready to celebrate the sweeping away of the medieval system by the Municipal Corporation Act of 1835. It was hardly to be expected, however, that this feat of bookmaking, good as it was for its time, would prove definitive. It may seem more surprising that the centenary of that great change finds the gap still unfilled. For half a century Merewether and Stephens' work, sharing, as it did, the current exaggeration of early "democracy" in England, stood in the way. Such revision as was attempted followed a false trail and it was not until, in the last decade or so of the century, the researches of Gross, Maitland, Mary Bateson and others threw a flood of new light upon early urban development in this country, that a fair prospect of a more adequate history of the English borough came in sight. Unfortunately, these hopes were indefinitely deferred by the early death of nearly all the leaders in these investigations. Quite recently an American scholar, Dr. Carl Stephenson, has boldly attempted the most difficult part of the task, but his conclusions, in important respects, are highly controversial.

When in 1921 an invitation to complete Ballard's unfinished *British Borough Charters* induced me to lay aside other plans of work and confine myself to municipal history, I had no intention of entering into thorny questions of origins. A remark of Gross in the introduction to his *Bibliography of British Municipal History* (1897) that "certain cardinal features of the medieval borough, such as the *firma burgi*, the judiciary and the governing body, still need illumination" suggested the studies, printed, chiefly in the *English Historical Review*, between 1925 and 1930, which, with some revision,

form chapters VII-XI of the present volume. Another, on the borough courts and assemblies, had been planned when my attention was diverted to the pre-Conquest period by the appearance in the *English Historical Review* in July, 1930, of a revolutionary article by Dr. Stephenson in which he sought to prove that, with inconsiderable exceptions, the Anglo-Saxon boroughs were still no more than administrative and military centres in 1066. A thorough re-study of all the evidence for that very difficult period took so long that, save for a chapter on its origins, the subject of borough jurisdiction has had regretfully to be left to younger investigators. Another and more deliberate omission is the history of formal incorporation on which, I am glad to say, my friend Dr. Martin Weinbaum has a book in the press.

The chapters dealing with the Anglo-Saxon borough were nearly complete when Dr. Stephenson's enlarged treatment of the subject in his book *Borough and Town* appeared, in 1933. His modifications of his views as originally stated are, however, practically confined to a large extension of his list of exceptions, his conception of the "ordinary" borough remaining unaltered, so that it was not necessary to recast completely what I had written. When required, references are given to a summary (chapter VI) of the exceptions Dr. Stephenson now allows.

In his article of 1930, the late Professor Pirenne's conception of town life in the Netherlands as the result of mercantile settlement under the shelter of fortified administrative centres was applied to England with such rigour as virtually to make the Norman Conquest the starting-point of its urban development. And though in his book Dr. Stephenson admits earlier mercantile settlements in the populous boroughs of the Danelaw and makes some wider but vaguer concessions, he still retains in his title and general exposition the sharp antithesis between borough and town. For this he claims, as forerunners, Maitland and Miss Bateson, but, apart from his "garrison theory," Maitland was much more cautious and Miss Bateson's estimate of French influence upon the post-Conquest borough is pressed too far. She did not, for instance, regard it as inconsistent with the view that the Anglo-Saxon borough had a distinctively urban court, a view which Dr. Stephenson strongly combats.

Even in the country of its first statement the antithesis tends to be less sharply drawn. M. Paul Rolland's study of

"the origins of the town of Tournai" (1931) shows that in suitable spots a trading population could develop gradually from an agricultural one.¹ At Tournai there was no large mercantile settlement from without (See *English Historical Review*, 1933, p. 688).

At first sight Dr. Stephenson's concession that even if there had been no Norman Conquest "London's charter might well have contained the same major articles, if it had been granted by a son of Harold, rather than by a son of William" might seem to yield more ground than has been indicated. But it is qualified by a statement that by 1066 Anglo-Saxon England was only just coming under the influence of the commercial revival on the Continent. It is difficult to reconcile this with the fact that London's foreign trade *c.* 1000 was as wide, if not as great, as it was under Henry I.

This limited recognition of an urban continuity across the Conquest does not extend to the agricultural aspect of the borough. A stronger contrast could hardly be imagined than that between the manorial system which Dr. Stephenson conceives to have prevailed in the cultivation of the fields of the Anglo-Saxon borough and that which is found in working after the Conquest, and no explanation of this unrecorded transformation is offered.

Dr. Stephenson deserves every credit for his pioneer effort of reconstruction, he has done good service in diverting attention from vain attempts to find precise definitions in a non-defining age to the safe ground of social and commercial development, while his treatment of the problem of early borough jurisdiction, though not wholly acceptable, rightly emphasizes the very general origin of burghal courts as units in the hundred system of the country at large. But his book contains too much that is disputable to constitute the first part of a definitive history of the English borough.

Dr. Stephenson's own criticisms of some of the views advanced in my reprinted articles, *e.g.* as to the influence of the Continental commune upon the communal movement in England at the end of the twelfth century, are discussed in appendices to the respective articles. This has involved some repetition, but the articles were already sufficiently controversial and the opportunity has been gained of adding a little fresh matter. The document of 1205 preserved by

¹ With its bishop's see Tournai may have been more favourable to such growth than the ordinary feudal *burg*.

Gervase of Canterbury (below, p. 253) has apparently never been considered in its bearing on the communal movement nor has its early reference to the new office of mayor been previously noted. The appendix on the barons of London and of the Cinque Ports will, it is hoped, do something to remove that uncertainty as to the precise origin and meaning of the title which is found in the older books.

With some hesitation, I have appended my British Academy lecture of 1921 on the study of early municipal history in England. It much needed revision and may serve as a general introduction to the post-Conquest studies and a supplement to their casual treatment of the seignorial borough.

I have to thank the editor and publishers of the *English Historical Review*, the Council of the British Academy, and the Tout Memorial Committee for kind permissions to reprint articles. My indebtedness to younger scholars who have kept me in touch with recent research in borough archives, closed to me by impaired eyesight and advancing years, will be found frequently acknowledged in footnotes.

JAMES TAIT.

THE UNIVERSITY,
MANCHESTER, *March 7th, 1936.*

CONTENTS

	PAGE
PREFACE	v
ADDENDA	xi
BIBLIOGRAPHY	xiii
THE ANGLO-SAXON PERIOD	
CHAP.	
I. THE ORIGINS OF THE BOROUGH	1-29
1. Introductory	1
2. Before the Danish Invasions	5
3. The New <i>Burhs</i> fortified in the Danish Wars	15
4. After Fortification	25
II. BOROUGH AND COURT	30-67
1. The pre-Domesday Evidence	30
2. The Domesday Evidence	43
Note on the "small Borough" of Seasalter in Kent	67
III. THE BOROUGH FIELDS AND PASTURES	68-77
IV. THE BURGESSES AND THEIR TENURE	78-112
1. Social Status of the Anglo-Saxon Burgesses	79
2. "The Customs of Burgesses"	86
3. Tenure by Custom and Burgage Tenure	96
4. Burgage Tenure in Northern France in the eleventh century	108
V. THE BOROUGH COMMUNITY BEFORE 1066	113-129
1. The Burgesses as Agricultural Community	114
2. The Burgesses as Trading Community	117
3. The Burgesses as Revenue-rendering and Administrative Community	123
VI. SUMMARY AND GENERAL CONCLUSION TO 1066	130-138

CHAP.	PAGE
THE POST-CONQUEST PERIOD	
VII. THE FIRMA BURG AND THE COMMUNE, 1066-1191 . . .	139-193
1. The Firma Burgi in 1066	140
2. The Firma Burgi in 1086	148
3. The Firma Burgi and the Commune, 1086-1154 . . .	154
4. Revocable grants of Firma Burgi. Attempted Communes, 1154-91	162
5. The First Fee Farms and the Commune of London, 1189-91	177
App. I. Table of Borough Farms, etc.	183
App. II. The Firma Burgi and the Election of Reeves	185
VIII. LIBER BURGUS	194-220
Additional Note on Dr. Stephenson's View	217
IX. THE BOROUGH COMMUNITY FROM THE TWELFTH CENTURY	221-262
1. The Borough Community and the Gild Merchant before the Age of Mayors and Fee Farms	222
2. The Beginning of Municipal Incorporation	234
App. I. Merchant Gild, Fee Farm, Commune	248
App. II. The Barons of London and of the Cinque Ports	256
X. THE ORIGIN OF TOWN COUNCILS	263-301
App. Dr. Stephenson on the Origin of Town Councils	296
XI. THE COMMON COUNCIL OF THE BOROUGH	302-338
App. I. Some Single Common Councils of Early Date	330
App. II. List of Old Councils and Common Councils before 1550	337
App. III. A Criticism Considered	338
XII. THE STUDY OF EARLY MUNICIPAL HISTORY IN ENGLAND	339-358
INDEX	359

ADDENDA AND CORRIGENDA

Page 83, l. 20	"Opus in curia" might, however, include lifting and stacking hay (Vinogradoff, <i>Villainage</i> , p. 444).
„ 89, l. 16	Eight virgates. Cf. <i>ibid.</i> p. 381.
„ 97, l. 8	For fripeni read fripene.
„ 98	For the charter, probably of Abbot Robert de Sutton (1262-73), to the men of Peterborough "which offers release from seignorial exploitation (including merchet), but in the most restricted terms" see <i>V.C.H.</i> , <i>Northants</i> , ii. 425. A similar charter was granted to Oundle.
„ 118	For the importance of the English textiles industry in the tenth century and their export to France see <i>E.H.R.</i> xlii. (1927), 141.
„ 131, l. 13	For weigh read way.
„ 145, l. 17	Earl William's houses were perhaps private, not comital.
„ 149, n. 2	Although <i>D.B.</i> in the passage quoted says quite clearly that William gave to Robert de Stafford half of his own share of the revenues of the borough, Robert is reported under his own fief (f. 248b, 2) to be claiming 70s., which was half of the combined shares of king and earl, then both in William's hands.
„ 184	Though Dover rendered £54 in 1086, its true value was estimated to be £40.
„ 230, l. 6	The burgesses of Gloucester having had a bare grant of fee farm in 1194 (<i>B.B.C.</i> i. 224), it seems clear that the importance of such a full grant of liberties as John's is underestimated here and on p. 250. In his reign these grants perhaps carried with them, unexpressed, allowance of sworn association (see pp. 251-2).

- Page 235 (*cf.* 226) According to two charters in the cartulary of St. Frideswide's (i. 26, 33) the dispute between the canons and the citizens went back to the reign of Stephen, who confirmed a grant by the latter to the canons of their rent of 6s. 8*d.* from Medley "ad restaurandum luminare predicte ecclesie quod amiserant pro stallis que per eos perdiderant."
- „ 292, n. 1 I owe this fact to Miss Catherine Jamison.
- „ 304, l. 10 The Winchester court was called *burghmote* not *burwaremote*.
- „ 353 The "inferior limit of burgality" can hardly have been lower than at Peterborough (see the *addendum* to p. 98 above) before the thirteenth-century charter, itself grudging enough.
- „ 364 *S.v.* Gilds. *For* trade and craft *read* craft.
- „ „ *S.v.* Gloucester. Add reference to p. 102.

BIBLIOGRAPHY

The following abbreviations have been used in the footnotes to the text and in the bibliography:—

<i>A.S.C.</i>	= Anglo-Saxon Chronicle.
<i>A.S.I.</i>	= Chadwick, Anglo-Saxon Institutions.
<i>B.B.C.</i>	= British Borough Charters.
<i>B.C.</i>	= Bateson, Borough Customs.
<i>B.M.</i>	= British Museum.
<i>C.C.R.</i>	= Calendar of Close Rolls.
<i>C.Ch.R.</i>	= Calendar of Charter Rolls.
<i>C.P.R.</i>	= Calendar of Patent Rolls.
<i>C.S.</i>	= Birch, Cartularium Saxonicum.
<i>D.B.</i>	= Domesday Book.
<i>D.B. and B.</i>	= Maitland, Domesday Book and Beyond.
<i>E.E.T.S.</i>	= Early English Text Society.
<i>E.H.R.</i>	= English Historical Review.
<i>P.R.</i>	= Pipe Rolls.
<i>P.R.O.</i>	= Public Record Office.
<i>R.L.C.</i>	= Rotuli Litterarum Clausarum.
<i>R.S.</i>	= Rolls Series.
<i>V.C.H.</i>	= Victoria History of Counties.

Anglo-Norman Custumal. See Exeter.
 Anglo-Saxon Chronicle (*A.S.C.*). Ed. C. Plummer. 2 vols., 1892-99.
 Antiquity. Ed. O. G. S. Crawford and R. Austin. Vol. viii., 1934.
 Archaeologia Aeliana. Fourth ser., vol. i. Newcastle-upon-Tyne, 1925.
 Asser, bp. Life of King Alfred. Ed. W. H. Stevenson, 1904.

Ballard, A. The Domesday Boroughs, 1904.
 The Burgesses of Domesday. *E.H.R.*, 1906.
 The Walls of Malmesbury. *E.H.R.*, 1906.
 Castle-guard and Barons' houses. *E.H.R.*, 1910.
 The English Borough in the Twelfth Century, 1914.
 British Borough Charters. Vol. i. 1042-1216; vol. ii. (with J. Tait) 1216-1307, 1913-23.
 An Eleventh Century Inquisition of St. Augustine's, Canterbury. Brit. Acad., 1920.
 The Theory of the Scottish Borough. *Scott. Hist. Rev.*, 1916.

- Bateson, M. Records of Leicester. 3 vols., 1899-1905.
 Borough Customs (*B.C.*). Selden Soc. 2 vols., 1904-6.
 Review of Ballard's Domesday Boroughs. *E.H.R.*, 1905.
 The Burgesses of Domesday and the Malmesbury Walls. *E.H.R.*, 1906.
- Bede. *Historia Ecclesiastica*. Ed. C. Plummer. 2 vols., 1896.
- Benham, W. G. See Colchester.
- Bilson, J. Wyke-upon-Hull in 1293, 1928.
- Birch, W. de G. See *Cartularium Saxonicum (C.S.)*. Catalogue of Seals in the department of MSS. in the British Museum. 6 vols., 1887-1900.
- Bird, R. Civic Factions in London and their relation to political parties. [Unprinted London University thesis.]
- Black Book of the Admiralty. *Monumenta Juridica*, vol. ii. Ed. Travers Twiss. *R.S.*, 1873.
- Black Book of St. Augustine's. See St. Augustine's.
- Black Book of Warwick. Ed. T. Kemp, 1898.
- Black Book of Winchester. Ed. W. H. B. Bird, 1925.
- Blakeley, G. S. The City of Gloucester, 1924.
- Book of Fees, The, commonly called Testa de Nevill, reformed from the earliest MSS. P.R.O. 3 vols., 1920-31.
- Bridges, J. and Whalley, P. History and Antiquities of Northamptonshire, 1791.
- Bristol. See Red Book.
- British Borough Charters (*B.B.C.*). See Ballard.
- Brownbill, J., and Nuttall, J. R. Calendar of Charters and Records belonging to the Corporation of Lancaster, 1929.
- Bugge, A. Die nordeuropäischen Verkehrswege im frühen Mittelalter. Vierteljahrsschrift für Social- und Wirtschaftsgeschichte. Vol. iv., 1906.
- Cam, H. Francia and England, 1912.
 Manerium cum Hundredo. *E.H.R.*, 1932.
 The Origin of the Borough of Cambridge. *Proc. Camb. Antiq. Soc.* Vol. xxxv., 1935.
- Calendar of
 Charter Rolls. (*C.Ch.R.*). P.R.O.
 Close Rolls. (*C.C.R.*). P.R.O.
 Rolls of the County Court of Chester, etc. Ed. R. Stewart-Brown. Chetham Soc., 1925.
 Letter-Books of the City of London (A-L). Ed. R. R. Sharpe, 1899-1912.
 Miscellaneous Inquisitions. 2 vols. P.R.O.
 Patent Rolls (*C.P.R.*). P.R.O.
 Plea and Memoranda Rolls of the City of London. Ed. A. H. Thomas. Vol. i., 1323-64; vol. ii., 1364-81, 1926-29.
 See also Brownbill, J.
- Cambridge Historical Journal. Vol. iv., 1933.
- Canterbury, Gervase of. Works. Ed. W. Stubbs. *R.S.* 2 vols., 1879-80.
 See also Ballard, Cotton, Domesday Monachorum and St. Augustine's.

- Cartularium Saxonicum (C.S.)*. Ed. W. de G. Birch. 3 vols., 1885-93.
- Cartulary of
 The Abbey of St. Werburgh, Chester. Ed. J. Tait. Chetham Soc. 2 vols., 1920-23.
- Eynsham Abbey. Ed. H. E. Salter. Oxf. Hist. Soc. 2 vols., 1907-8.
- The Priory of St. Frideswide, Oxford. Ed. S. R. Wigram. 2 vols., 1895-96.
- Oseney Abbey, Oxford. Ed. H. E. Salter. Oxf. Hist. Soc. 4 vols., 1928-34.
- The Priory of Worcester. Ed. R. R. Darlington. [In preparation.]
- Chadwick, H. M. Studies on Anglo-Saxon Institutions, 1905.
- Chester Archaeological Society, Journal of, 1857, etc.
- Chronicon
 Monasterii de Bello. Anglia Christiana Soc., 1846.
 Abbatiae Ramesiensis. Ed. W. D. Macray. *R.S.*, 1886.
- Clemesha, H. W. History of Preston in Amounderness, 1912.
- Close Rolls (*C.R.*). For reign of Hen. III. from 1227. P.R.O.
- Colby, C. W. The Growth of Oligarchy in English Towns. *E.H.R.*, 1890.
- Colchester, Court Rolls of. Ed. W. G. Benham and I. H. Jeayes. Vol. i. (1310-53), 1921.
- Oath Book of. Ed. W. G. Benham, 1907.
- Red Paper Book of. Ed. W. G. Benham, 1902.
- Cooper, C. H. Annals of Cambridge. Vols. i.-ii., 1842-43.
- Coopland, G. W. The Abbey of St. Bertin, 900-1350. Oxf. Stud., ed. Vinogradoff, iv., 1914.
- Corbett, W. J. In Cambridge Medieval History. Vol. iii.
- Cotton, C. The Saxon Cathedral of Canterbury, 1929.
- Court Rolls. See Colchester.
- Coventry, Leet Book of. Ed. M. Dormer Harris. 4 vols., 1907-13.
- Curia Regis Rolls. P.R.O., 1923, etc.
- Customs of Battle Abbey. Ed. S. R. Scargill-Bird. Camden Soc., 1887.
- Davis, H. W. C. England under the Normans and Angevins, 1905.
 Regesta Regum Anglo-Normannorum (1066-1100), 1913.
- Dilks, T. B. The Burgesses of Bridgwater in the 13th cent. *Proc. Somerset Arch. Soc.* Vol. lxiii., 1917.
 Bridgwater Borough Archives (1200-1377). Somerset Record Soc. Vol. 48, 1933.
- Domesday Book (*D.B.*). With Additamenta. 4 vols., 1783-1816.
- Domesday Book and Beyond (*D.B. and B.*). See Maitland.
- Domesday Monachorum. Somner, W. Antiquities of Canterbury. Pt. 1, app. 40, 1703. See Ballard, Inquisition.
- Douglas, D. C. Feudal Documents from the Abbey of St. Edmunds. Brit. Acad., 1932.
- Dover Charters. Ed. S. P. H. Statham, 1902.
- Drake, F. Eboracum, 1736.
- DuCange. Glossarium Mediae et Infimae Latinitatis. Niort, 1883-87.

- Durham, Simeon of. *Opera Omnia*. Ed. T. Arnold. *R.S.* 2 vols., 1882-85.
- East, R. *Extracts from the Municipal Records of Portsmouth*, 1891.
- Ellis, H. *General Introduction to Domesday Book*. Record Com. 2 vols., 1833.
- English Gilds. Ed. T. Smith. *E.E.T.S.*, 1870.
- English Historical Review (*E.H.R.*), 1886, etc.
- English Register of Osney Abbey. Ed. A. Clark. *E.E.T.S.*, 2 pts., 1907-13.
- Exeter, Anglo-Norman Customal of. Ed. Schopp, J. W. and Easterling, R. C., 1925. See also Wilkinson.
- Eyton, R. W. *Key to Domesday—Dorset Survey*, 1878.
- Somerset Survey*, 1880.
- Court, Household and Itinerary of Henry II.*, 1878.
- Farrer, W. *Early Yorkshire Charters*. 3 vols., 1914-16.
- Itinerary of Henry I.* *E.H.R.* and reprint, 1919.
- Feudal Aids. P.R.O., 1899, etc.
- Foedera (O). Ed. T. Rymer and R. Sanderson. Orig. ed., 1704-35. (Rec.). Ed. A. Clarke, etc. Record Com. 4 vols., 1816-69.
- Freeman, E. A. *History of the Norman Conquest of England*. 2nd ed., 1870-76.
- Furley, J. S. *City Government of Winchester*, 1923.
- Ancient Usages of the City of Winchester*, 1927.
- Gesta Regis Henrici secundi et Ricardi [Benedictus Abbas]. Ed. W. Stubbs. *R.S.* 2 vols., 1867.
- Gesta Stephani. In *Chronicles of the reigns of Stephen*, etc. Ed. R. Howlett. *R.S.* Vol. iii., 1886.
- Gilbert, J. T. *Historic and Municipal Documents of Ireland*. *R.S.*, 1870.
- Giraldus Cambrensis. *Opera*. *R.S.* 8 vols., 1861-91.
- Giry, A. *Histoire de la ville de Saint-Omer*, 1877.
- Les Établissements de Rouen*. 2 vols., 1883-85.
- Glanvill, de Legibus et Consuetudinibus Anglie. Ed. G. E. Woodbine, 1932.
- Gneist, R. *Geschichte der Communalverfassung*, 1863.
- Green, Mrs. J. R. *Town Life in the Fifteenth Century*. 2 vols., 1894.
- Gretton, R. H. *The Burford Records*, 1920.
- Gribble, J. B. *Memorials of Barnstaple*, 1830.
- Griffiths, R. G. *History of Clifton-on-Teme*, 1932.
- Gross, C. *Gild Merchant*. 2 vols., 1890.
- Harland, J. *Mamecestre*. Chetham Soc. 3 vols., 1861-62.
- Hegel, K. *Städte und Gilden der Germanischen Völker im Mittelalter*. 2 vols., 1891.
- Historical Manuscripts Commission, Reports of. Parl. papers, 1870, etc.

- Hudson, W. and Tingey, J. C. *Records of Norwich*. 2 vols., 1906-10.
- Hunt, W. *Bristol. Historic Towns*, 1887.
- Hutchins, J. *History and Antiquities of Dorset*. 3rd ed., 4 vols., 1861-70.
- Inquisition of St. Augustine's, Canterbury. See Ballard.
- Ipswich, Customal of. See *Black Book of the Admiralty*.
- Jacob, G. *Law Dictionary*, 1782.
- Jacob, E. F. *Baronial Reform and Rebellion*, 1258-67.
- Oxford Studies*, ed. Vinogradoff., 1925.
- Jolliffe, J. E. A. *The Hidation of Kent*. *E.H.R.*, 1929.
- The Domesday of Sussex and the Rapes*. *E.H.R.*, 1930.
- Jones, W. H. *Domesday for Wiltshire*, 1865.
- Keutgen, F. *Ursprung der deutsche Stadtverfassung*, 1895.
- Lapsley, G. L. *Buzones*. *E.H.R.*, 1932.
- Law Merchant, The*. Ed. C. Gross and H. Hall. 3 vols., 1908-32.
- Lees, B. A. *Records of the Templars in England*. Brit. Acad., 1935.
- Legras, H. *Le Bourgage de Caen*, 1911.
- Lewis, E. A. *Mediaeval Boroughs of Snowdonia*, 1912.
- Liber Albus*. See *Munimenta Gildhallae*.
- Liber de Antiquis Legibus Londoniarum*. *Chronicon maiorum et vicecomitum*. Ed. T. Stapleton. Camden Soc., 1846.
- Liber Customarum*. See *Munimenta Gildhallae*.
- Liber Eliensis*. [Ed. D. J. Stewart] Anglia Christiana Soc., 1848.
- Liber Winton.* See *Domesday Book*. Vol. iv.
- Liebermann, F. *Die Gesetze der Angelsachsen*. 3 vols., 1903-16.
- Lincoln Cathedral, *Registrum Antiquissimum of*. Ed. C. W. Foster. Linc. Rec. Soc. Vols. i-iii., 1931-35.
- Lincolnshire Assize Rolls (1202-9). Ed. D. M. Stenton. Linc. Rec. Soc., 1926.
- Domesday*. Ed. C. W. Foster and T. Longley. Linc. Rec. Soc., 1924.
- Lobel, M. D. *The Borough of Bury St. Edmunds*, 1935.
- Luchaire, A. *Manuel des institutions Françaises*, 1892.
- Lynn Regis. See *Red Register*.
- Madox, T. *Firma Burgi*, 1726.
- History of the Exchequer*. 2 vols., 1769.
- Maitland, F. W. *The Origin of the Borough*. *E.H.R.*, 1896.
- Domesday Book and Beyond*, 1897.
- Township and Borough*, 1898.
- See also Pollock and Maitland.
- Malmesbury, W. of. *De Gestis Regum Anglorum*. Ed. W. Stubbs. *R.S.* 2 vols., 1887-89.
- Markham, C. A. and Cox, J. C. *Records of the Borough of Northampton*. 2 vols., 1898.
- Mayo, C. H. *Municipal Records of Dorchester*, 1908.

- Memorials of St. Edmund's Abbey. Ed. T. Arnold. *R.S.* 2 vols., 1890-96.
- Merewether, H. A. and Stephens, A. J. History of the Boroughs and Corporations of the United Kingdom. 3 vols., 1835.
- Monasticon Anglicanum. Ed. W. Dugdale, etc., 1846.
- Morris, R. H. Chester in Plantagenet and Tudor Times, 1893.
- Morris, W. A. The Mediæval English Sheriff to 1300, 1927.
- Muir, Ramsay. History of Liverpool, 1907.
- and Platt, E. M. History of Municipal Government in Liverpool to 1835, 1906.
- Munimenta Gildhallae Londoniensis. Vol. i., Liber Albus; vol. ii., Liber Custumarum; Vol. iii., Liber Horn, etc. *R.S.*, 1859-62.
- Murray, K. M. E. Constitutional History of the Cinque Ports. 1935.
- Napier, A. S. and Stevenson, W. H. Crawford Charters, 1895.
- Neilson, N. Customary Rents. Oxford Studies, ed. Vinogradoff. Vol. ii., 1910.
- Norgate, K. John Lackland, 1902.
- Norton, G. Commentaries on the History, Constitution and chartered Franchises of London. 3rd ed., 1869.
- Oak Book of Southampton. Ed. P. Studer. Southampton Record Soc. 3 vols., 1910-11.
- Oath Book of Colchester. See Colchester.
- Oman, C. England before the Norman Conquest. [1910.]
- Ordericus Vitalis. Historia Ecclesiastica. Ed. A. le Prévost. 5 vols., 1838-55.
- Ormerod, G. History of Cheshire. 2nd ed. Ed. T. Helsby, 3 vols., 1882.
- Page, W. London: its Origin and Early Development. 1923.
- Palgrave, F. Normandy and England. 2nd ed. 4 vols., 1919-21.
- Rotuli Curiae Regis. Rec. Com. 2 vols., 1835.
- Palmer, W. M. Cambridge Borough Documents, 1931.
- Pape, T. Mediæval Newcastle-under-Lyme, 1928.
- Parker, J. Early History of Oxford. Oxford Hist. Soc., 1885.
- Parliamentary Writs. Ed. F. Palgrave. Record Com. 2 vols. in 4, 1827-34.
- Patent Rolls for reign of Henry III (*Pat. R.*). P.R.O.
- Petit-Dutaillis, C. and G. Lefebvre. Studies supplementary to Stubbs' Constitutional History of England. 3 vols., 1908-29.
- Pipe Rolls (*P.R.*) 31 Hen. I. and 2 Hen. II. to 2 John. P.R.O. and Pipe Roll Soc., 1833 [repr. 1929]-1934.
- Pirenne, H. Histoire de Belgique. 3 vols., 1902-7.
- Place-Names of England. Ed. A. Mawer and F. M. Stenton. English Place-Name Society, 1924, etc.
- Pollock, F. and Maitland, F. W. History of English Law. 2nd ed. 2 vols., 1898.
- Powell, F. York. Review of Grueber and Keary's Catalogue of English Coins in B.M. (Vol. ii.). *E.H.R.*, 1896.

- Powicke, F. M. The Loss of Normandy (1189-1204), 1913.
- Ramsay, J. The Angevin Empire, 1903.
- Ramsey Abbey. See Chronicon.
- Red Book of the Exchequer. Ed. H. Hall. *R.S.* 3 vols., 1896.
- Red Books of Bristol.
- Great. Ed. E. W. W. Veale. Bristol Rec. Soc., 1931-
- Little. Ed. F. B. Bickley. 2 vols., 1900.
- Red Paper Book of Colchester. See Colchester.
- Red Register of Lynn. Ed. H. Ingleby. 2 vols. c. 1920-22.
- Registrum Antiquissimum. See Lincoln.
- Reid, R. R. The Office of Warden of the Marches. *E.H.R.*, 1917.
- Riley, H. T. Memorials of London and London Life, 1868.
- Rotuli Litterarum Clausarum (1204-27). Record Com. 2 vols., 1833-44.
- Rotuli Chartarum. Record Com., 1837.
- Rotuli Hundredorum. Record Com. 2 vols., 1812-18.
- Rotuli Litterarum Patentium (1201-16). Record Com., 1835.
- See also Patent Rolls.
- Rotuli Parliamentorum. 6 vols., c. 1783.
- Round, J. H. Ancient Charters. Pipe Roll Soc., O.S., x., 1888.
- Geoffrey de Mandeville, 1892.
- Feudal England, 1895.
- Commune of London, 1899.
- Calendar of Documents preserved in France, illustrative of the History of Great Britain and Ireland, 1899.
- "Burhbot" and "Brigbot," in Family Origins, ed. W. Page, 1930.
- St. Augustine's Abbey, Canterbury, Black Book of. Ed. G. J. Turner, and H. E. Salter. Brit. Acad. 2 vols., 1915-24.
- See also Ballard.
- Salter, H. E. Early Oxford Charters, 1929.
- Munimenta Civitatis Oxonie. Oxf. Hist. Soc., 1917.
- Schopp, J. W. See Exeter.
- Scott, J. Berwick-upon-Tweed. The History of the Town and Guild, 1888.
- Smith, T. See English Gilds.
- Southampton. See Oak Book.
- Speculum. Mediæval Academy of America. Vol. vii., 1934.
- Statutes of the Realm. Ed. A. Luders, etc., 1810-28.
- Stenton, D. M. See Lincolnshire.
- Stenton, F. M. Danelaw Charters. Brit. Acad., 1920.
- The Danes in England. Proc. Brit. Acad. Vol. xiii., 1927.
- The First Century of English Feudalism, 1932.
- Stephenson, C. The Aids of the English Boroughs. *E.H.R.*, 1919.
- The Origin of the English Town. Americ. Hist. Rev., 1926.
- The Anglo-Saxon Borough. *E.H.R.*, 1930.
- Borough and Town. Med. Acad. of America, 1933.
- Stevenson, W. H. Trinoda Necessitas. *E.H.R.*, 1914.
- See also Asser and Crawford Charters.
- Stow, J. Survey of London. Ed. C. L. Kingsford. 2 vols., 1908.

Stubbs, W. Constitutional History of England. 2nd and 3rd ed., 1878-80.
Select Charters. 9th ed. Ed. H. W. C. Davis, 1913.
Sussex Archaeological Collections, 1848, etc.

Tait, J. Mediæval Manchester, 1904.

See Ballard and Cartulary.

Thorpe, B. Diplomatarium ævi Saxonici, 1865.

Tout, T. F. Historical Essays presented to, 1925.

Trenholme, N. M. English Monastic Boroughs. University of Missouri Studies, ii. 3, 1927.

Turner, G. J. The Sheriff's Farm. Trans. Roy. Hist. Soc., N.S. Vol. xii., 1898.

See also St. Augustine's.

Turner, W. H. Selections from the Records of Oxford, 1509-83, 1880.

Unwin, G. The Gilds and Companies of London, 1908.

Victoria History of the Counties of England (V.C.H.).

Walsingham, T. Gesta Abbatum Monasterii S. Albani. Ed. H. T. Riley. R.S. 3 vols., 1867-69.

Warwick. See Black Book.

Wilkinson, B. The Mediæval Council of Exeter. With introduction by R. C. Easterling, 1931.

Willard, J. F. Taxation Boroughs and Parliamentary Boroughs, in Historical Essays in honour of James Tait, 1933.

Winchester. See Black Book, Furley and Liber Winton.

Wodderspoon, J. Memorials of Ipswich, 1850.

York Memorandum Book. Ed. M. Sellers. Pt. i. Surtees Soc., 1912.

THE ANGLO-SAXON PERIOD

I

THE ORIGINS OF THE BOROUGH

I. INTRODUCTORY

THE revival of urban life in England when the Teutonic invaders had settled down and accepted Christianity was not an isolated development. Everywhere in Western Europe successive waves of barbarian invasion had washed out Roman municipal organization, a nascent recovery was temporarily checked by the ravages of the Northmen in the ninth century, but with their repulse or settlement proceeded steadily, though at varying rates as local conditions favoured or impeded it. The rise of towns in England cannot therefore be safely studied without some knowledge of the parallel movement on the Continent.

The strong similarities which are observable in urban organization on both sides of the Channel and North Sea may be due, at first at all events, rather to the working of like causes than to direct influence. In nomenclature, for example, the fact that towns were necessarily almost always fortified seems sufficiently to account for the general application to them of the Germanic *burh*, *burg*, *bourg*,¹ without supposing borrowing. Certain features of their organization as it gradually developed, within or beyond the period with which we are immediately concerned, were in the nature of the case alike in all countries. Markets, fairs, a body of *probi homines* acting as administrators and, in the more advanced communities, as judges were urban requisites everywhere. In the case of these more highly organized communities there

¹ In the Gothic Gospels of the fourth century *baurgs* is used to translate the Greek *πόλις*, "city," as contrasted with *κώμη*, "village," which is translated *haims*—O.E. *ham* (Mark, i. 33, vi. 56; Luke, x. 10). The early application of the cognate *burg*, *burh* to the walled town in England is seen in Canterbury (*Cantwaraburh*).

are always two main problems to be solved. When and in what circumstances did the town become a separate judicial area? At what date and by what means did it secure the right of self-government? The materials for answers to these questions, especially the first, are unfortunately imperfect in all countries and a massive literature has gathered round them, especially in Germany. The view that municipal life had survived from Roman times has long been discredited, but the hot controversy whether the town was in the beginning essentially a mere natural extension of a rural community or a fortress (or an appendage of one) or the locality of a market, has not yet been settled to everybody's satisfaction, though the last suggestion has now few, if any, continental supporters.

If the early growth of the English borough has much in common with that of the continental town, it has also some marked peculiarities, due to the insular position of the country and the course of its history. The chief of these is the limited hold which feudalism obtained here as compared with Germany and still more with France. Even in Germany the Ottonian dynasty (10th century) delegated public justice in the great episcopal cities to their bishops, not without risk of confusion between the unfree inhabitants of episcopal domain and the citizens outside its bounds.¹ In thoroughly feudalized France cities had to wrest liberties from episcopal lords. In England, on the other hand, the crown retained its direct authority over all but a few small boroughs in the south-east down to the Norman Conquest and though some larger towns were mediatized by the new rulers of the land, the process never went to dangerous lengths. This direct relation to the king was doubtless in part accountable for the slower development of towns in England than abroad and for the complete absence during the Anglo-Saxon period of such urban charters as were being granted, sparingly enough, by feudal lords in France in the eleventh century and even occasionally in the tenth. Athelstan's alleged charter to Malmesbury² is of course the most obvious of post-Conquest forgeries and there is not even a medieval copy of that to Barnstaple.³

¹ F. Keutgen, *Ursprung der deutschen Stadtverfassung* (1895), pp. 14 ff.

² C.S., no. 720, vol. ii., p. 428.

³ In an inquisition taken shortly before 1344 it was found that "there was nothing certain about the charter of king Athelstan whereby the burgesses pretend that certain liberties were granted to them" (C.P.R.

The absence of military and political feudalism in Anglo-Saxon England explains a further marked difference between the early English borough and a large class of continental towns. In the Low Countries the *burg* was the feudal castle round which or a fortified ecclesiastical settlement the towns (*poorte*) mostly grew up, while in France similar settlements below the feudalized walled *cités* of Roman origin came to be distinguished from them as *bourgs* when in their turn they were surrounded with walls. This distinction between old and new was unknown in pre-Conquest England¹ where urban life began within the walls² of old Roman towns and the new *burhs* founded by Alfred and his family, when not mere forts, were normally existing settlements, now for the first time surrounded by a wall or stockaded rampart.

The scientific investigation of the origins of the English borough began much later than corresponding studies abroad and was strongly influenced by them. It was not until 1896 that Maitland, much impressed by Keutgen's theory of the vital part played by the defensive *burg* in the rise of towns in Germany, gave a forecast in the *English Historical Review*³ of the "garrison theory" of the origin of English towns which he expounded at length in the next year in *Domesday Book and Beyond*. Briefly, his theory was that the burgesses and houses recorded in Domesday Book as paying rent to manors outside the borough in the eleventh century were relics of a duty of the shire thegns of the ninth and tenth to keep men in the boroughs for their defence, who became the nucleus of the borough community.

Though slightly guarded by his admission that "no one theory will tell the story of any and every particular town"⁴ and that "we must not exclude the hypothesis that some

1343-45, p. 290). Yet in 1930 the corporation publicly celebrated the millenary of the granting of the charter to "the oldest borough in the kingdom." Malmesbury wisely made no protest.

¹ Except perhaps in a minor degree at Worcester. See below, p. 20.

² At Canterbury these had been extended northwards before the coming of St. Augustine (Bede, bk. i. c. 33; C. Cotton, *The Saxon Cathedral at Canterbury* (1929), p. 4); but the Burgate, the "Borough Gate," was in the old Roman wall. Dr. Mortimer Wheeler has recently advanced the theory that Saxon London originated in the western half of the area within the Roman wall because that, always thinly populated, had probably been found deserted, while the nucleus of *Londinium*, east of the Walbrook was still occupied through the fifth and sixth centuries by a Romano-British population, "if only as a sub-Roman slum" (*Antiquity*, viii. (1934), pp. 290 ff., cf. *ib.*, 437 ff.). This suggestion is still under discussion and in any case the first Saxon settlement would not have been one of traders.

³ xi. (1896), pp. 13 ff.

⁴ *D.B. and B.*, p. 173

places were fortified and converted into *burgs* because they were already the focuses of such commerce as there was,"¹ Maitland's theory found practically no supporter but the late Adolphus Ballard, whose exaggerated development of it and illogical attempts to link it up with the Norman castle-guard did not tend to secure its acceptance. With the death of most of the protagonists the controversy subsided without producing an alternative theory, fully worked out.

It was not until 1930 that the problem was attacked again, by an American scholar, Dr. Carl Stephenson, in an important article,² in which the whole evidence is reviewed and a conclusion reached which has features both of agreement and disagreement with Maitland's view. Dr. Stephenson rejects the "garrison theory," but goes much further in emphasizing the military character of the early boroughs. For him the normal borough remained primarily a fortress and administrative centre until the Norman Conquest. He claims to have established from the old English laws and from Domesday that, except for a few sea-ports of the south-east,³ the Anglo-Saxon borough had no really urban character. Its market, like its mint, was official, its court only a unit of the general system of hundred courts. Its population was a microcosm of the countryside, containing all its social ranks from thegn down to slave. There was no land tenure peculiar to boroughs, no burgage tenure as we know it after the Conquest. *Burgenses* (*burgware*, *burhwaru*) meant no more than inhabitants of a walled centre. There was little trade and that local. For their subsistence the burgesses mainly depended on the borough fields, which the majority of them cultivated for the benefit of a wealthy land-owning minority. Free communal life did not yet exist. It was first called forth by the settlement of French traders in the old boroughs and in new ones created by Norman barons. Uniform burgage tenure was introduced and a rapid succession of other privileges was embodied in charters from the reign of Henry I. The origin of our municipal towns is thus found not in legal criteria, such as the possession of a separate court, but in the

¹ *D.B. and B.*, p. 192; cf. p. 195.

² *E.H.R.* xlv. 177 ff. Since my article was written, Professor Stephenson has restated his thesis more fully and with some notable modifications in his book: *Borough and Town: a Study of Urban Origins in England* (Medieval Academy of America, 1933).

³ In his later work the large populations of York, Lincoln, and Norwich are recognized as evidence of Scandinavian trade. See below, p. 131.

development of a mercantile community, whose chief instrument was the merchant gild. It was essentially a social, not a legal, change.

This change, Dr. Stephenson goes on, falls into its place in the general growth of town life in Western Europe created by the revival of trade in the eleventh century. In England, as on the Continent, the *burgus* was a small lifeless unit until the age of mercantile settlement. This is of course the view for which, as regards the origin of continental towns, Professor Pirenne has secured wide acceptance. The great cities of the Netherlands are traced by him to the settlements of traders in *poorts* under the shelter of *burgs* fortified, like the English *burhs*, for defence against the Northmen. While reserving judgement on Dr. Stephenson's conception of the Anglo-Saxon borough until we have reconsidered the evidence, it may be well to note here that the parallel which he suggests is by no means exact. The boroughs founded by Alfred and his family—not to speak of the old Roman towns early re-occupied, were themselves called *ports*¹ from the first in virtue of their markets. The king's reeve in the borough was *portreeve* not *boroughreeve*. While the few dozen *ministeriales*, with the household serfs, of the *burg* in the Low Countries were consumers only, it was, we shall see, the definite policy of Edward and Athelstan to restrict trading as far as possible to the borough-ports. The Northmen here, but not in the Netherlands, settled down as active traders. It is only as royal and revenue-yielding creations that these early markets can be called "official,"² and the crown continued to retain control of the creation of markets after the Norman Conquest. Again, English boroughs were usually much larger than the *burgs* of the Netherlands.³

2. BEFORE THE DANISH INVASIONS

It seems clear that urban life in its most general sense, the aggregation of exceptional numbers at certain points, began in this country with the re-occupation of the old Roman walled towns which for a while had stood wholly or practically

¹ Professor Pirenne himself notes this early parallel. Below, p. 21, n. 3.

² There is no evidence, Professor Pirenne says, of official markets in the *burgs* of the Low Countries. Stephenson, *Borough and Town*, p. 213 n.

³ With the 25 acres of the *vieux-bourg* of Ghent, cf. the 80 acres of Oxford, Wallingford, and Wareham, boroughs of middle size.

deserted.¹ The more important became capitals of kingdoms and, in some cases, bishops' sees. In none, however, did the bishop acquire the feudal authority which passed into the hands of the French bishops in the old Roman episcopal cities of Gaul or enjoy even the delegated public authority of the German bishops in the Roman towns along the Rhine and Danube. Such administrative and ecclesiastical centres would naturally attract settlers to supply their wants, many of whom would be attached to the royal domain and the episcopal and monastic estates. There would be a market.² These centres were already, in one sense, "boroughs" for *burh*,³ the general name for a fortification, was specially applied to walled towns, but we shall not expect to detect in them all the features of the later Anglo-Saxon borough. There is evidence, for instance, that a court was held in them, but it seems to have been the king's court for a wider district than the *civitas*. With rare exceptions, such communal organization as they yet possessed would be mainly of an agricultural type. Most, if not all, of them had arable fields and their appurtenant meadow, pasture and wood, which suggests that the original settlers had formed agricultural communities which differed from others only by living within walls. The germ of a more thoroughly urban communalism lay in their market, though royal policy afterwards, though reluctantly, decided that markets and fairs were not to be exclusive marks of a borough.

That London at least was the centre of much more than local trade as early as the seventh century we know from Bede's description of the metropolis of the East Saxons as "multorum emporium populorum terra marique uenientium."⁴ A law of Hlothere and Eadric reveals Kentishmen as frequent purchasers in London.⁵ Signs of increasing trade elsewhere in the eighth and ninth centuries will come before us later. It is significant that when at the latter date the place of minting is given on the coins, eight out of the ten mints on

¹ As regards London, this is disputed by Dr. Wheeler (see above, p. 3, n. 2). Haverfield pointed out that the correct Roman names of Canterbury and Rochester, Doruernis and Dorubreuis, were known to Bede, apparently by tradition only. He ascribed this to the first English settlement in Kent having been by agreement (*E.H.R.* x. (1895), 710-11), but it may also perhaps indicate an early re-occupation of these *civitates*.

² The *uenalis locus* at Canterbury is mentioned in a charter of 786 (*C.S.* no. 248, i. 344).

³ Latin, *urbs* in Bede, etc., *arx* usually in charters.

⁴ *Hist. Eccl.*, ed. Plummer, i. 85.

⁵ Liebermann, *Ges.* i. 11 (c. 16), a. 685-6.

record were in old Roman *civitates*.¹ This is far from exhausting the Roman sites which developed into boroughs. Of the seventy-one unmediatized boroughs which appear in Domesday, some eighteen are of this type and Carlisle and Newcastle raise the number to twenty.

Apart from Bede's testimony to the trade of London, we are not altogether left to conjecture and inference from later evidence in estimating the stage reached by the future boroughs in this early period. Royal grants of land in Canterbury and Rochester, to Christ Church and St. Augustine's Abbey in the one and the see in the other, and similar gifts to thegns, have fortunately been preserved and throw a little welcome light upon the two Kentish cities. The charters attributed to Ethelbert are forgeries and the earliest genuine grant is that of Egbert, king of Kent, to Bishop Eardulf of Rochester in 765.² This is a gift of land within the walled area (*castellum*)³ described as "unum viculum cum duobus jugeribus adjacentem plateae quae est terminus a meridie hujus terrae." This and some later grants of *jugera* with houses in Rochester and Canterbury have been claimed as revealing the existence within their walls of large estates ranging up to six ploughlands and so "indicating the survival in the *civitas* of only a scanty population living by agriculture."⁴ The argument is, however, vitiated by two errors into which Professor Stephenson has fallen. He identifies *jugerum*, "acre" with *jugum*, the fourth part of a ploughland,⁵ and fails to notice that the acres were in most cases wholly or largely outside the walls. The only certain evidence of acres within them is confined to the two acres of the Rochester grant quoted above and ten in Canterbury.⁶ Even these of course are large tenements for a town, but in the ancient borough, we must not expect the small and uniform lots of those of later creation.⁷ That there was some agricultural land even within the walls

¹ *E.H.R.* xi. (1896), 759. It has even been questioned whether the evidence for Alfred's mint at Oxford is trustworthy (J. Parker, *Early History of Oxford*, pp. 366 ff.). The most recent opinion, that of Sir Charles Oman, rejects this scepticism.

² *C.S.* 196, i. 278.

³ Cf. W. H. Stevenson, *Asser*, p. 331.

⁴ *E.H.R.* xlv. (1930), 204-5.

⁵ The 30 *jugera* on the north side of Canterbury granted (a. 823) in *C.S.* 373, i. 511 are "ðritiges *aecra*" in the contemporary English endorsement.

⁶ *Ibid.* 426, i. 597.

⁷ An acre for the burgrave seems to have been a maximum allowance in the new boroughs of the thirteenth century (*B.B.C.* ii. 47, 51, 62).

we need not deny. There were closes within the walls of Lincoln as late as 1086.¹

The Latin terms applied to city messuages in these Kentish charters do not indeed on their face suggest a tenement specifically urban and on the contrary have a rural sound. *Villa* and *vicus*, if not *villulum* and *viculum*, were common Latin versions of the Anglo-Saxon *tun* and *wic* in the sense of "dwelling-place," "homestead" and by extension "village" or, more widely, any populated place, as our word "town" witnesses. While in the country at large, however, the wider meaning tended to become predominant, the original narrower sense persisted in the Kentish cities. Charters of 786² and 824³ preserve the English names of two messuages in Canterbury, Currington and Eastur Waldingtun. The contemporary English endorsement of the sale of a plot of land there in 868 describes it as "ðisne tuun."⁴ But a more specialized term was coming in. As early as 811 we find a Mercian king transferring to Archbishop Wulfred "duas possessiunculas et tertiam dimidiam, id est in nostra lingua ðridda half haga"—i.e., 2½ haws—in Canterbury with their appurtenant meadows on the east bank of the Stour,⁵ and twelve years later another king of Mercia added a small adjoining plot measuring 60 feet by 30, together with 30 acres on the north side of the city, 25 in the arable (*in arido campo*) and 5 of meadow.⁶ A Rochester charter of 855 granted "unam villam quod nos Saxonice *an haga* dicimus in meridie castelli Hrobi" with the appurtenances of land, etc., which of old belonged to it.⁷ *Haga*, afterwards softened to *haw*, was, like *tun*, a general term for an enclosed area, a dwelling-place, but it never obtained such a wide extension of application and came to be almost exclusively applied to urban tenements. Even when the word dropped out of ordinary use, it long survived in the "hawgable" rents of some old boroughs.⁸

The descriptions of the appurtenances of the Canterbury and Rochester haws, one or two of which have been quoted, show clearly that these *civitates* were in the eighth and ninth

¹ D.B. i. 336a, 2. They were called crofts.

² C.S. 248, i. 344.

³ *Ibid.* 382, i. 526.

⁴ *Ibid.* 519, ii. 134. It measured 6 rods by 3, a moderate area. Such plots could also be called "wics." See *ibid.* 373, i. 512. Hence the Latin *vicus* and *viculum*.

⁵ *Ibid.* 335, i. 467.

⁶ *Ibid.* 373, i. 511.

⁷ *Ibid.* 486, ii. 86.

⁸ E.g. Cambridge. See Maitland, *Township and Borough*, p. 48 and *passim*; W. M. Palmer, *Cambridge Borough Documents*, i (1931), lviii f., 57 ff.

centuries no mere aggregations of small agricultural estates within their Roman walls, but exhibit all those agricultural features of the English borough with the later aspect of which Maitland has made us familiar, the messuage within the walls, or suburb, and the appendant arable, meadow, pasture, wood and marsh further out. Especially noteworthy is the mention of the *urbanorum prata*¹ and *burhwarawald*,² "the boroughmen's wood," of Canterbury.

The eighth-century charter which supplies the latter name has a further interest in the combination of the grant of a large agricultural estate at Ickham with that of "the *vicus* called Curringtun," on the north side of the market-place in Canterbury. This looks very like an early instance of those town houses attached to rural manors, so numerous in Domesday Book, which Maitland wished to trace to military arrangements of tenth century date.³

In regulating the use of unenclosed fields and pastures and woods and marshes enjoyed in common, the *burgware* had constant necessity to act as a community, but the charters give hints of wider common action. Land in Canterbury was sold between 839 and 855 with the witness of the *portweorona*⁴ who were present, and a few years later a sale was witnessed among others by *innan burgware*, headed by an Athelstan who was probably the reeve of the city.⁵ The existence of other *burgware*, living without the walls is implied.⁶

The application of the term *port* to Canterbury in the first of these documents is of vital importance as showing that the city in the ninth century did not subsist on agriculture alone, but was a place of trade. That this was already the well-established meaning of *port* is clear from a contemporary London charter (857) by which Ælhun, bishop of Worcester,

¹ C.S. 449, ii. 30 (a. 845). Perhaps the *burgwara meda* of C.S. 497, ii. 102 (a. 859) in which a half *tun* participated. It is not clear to what *burh* the *burware felda* in the bounds of Challock (C.S. 378, i. 519) belonged.

² C.S. 248, i. 344 (a. 786). A Canterbury grant of 839 included two cartloads of wood in summer, by ancient custom, "in commune silfa quod nos Saxonice *in gemennisse* dicimus" (*ibid.* 426, i. 597). For the Middle English *menesse* in this transferred sense see *Place Names of Sussex*, ed. Mawer and Stenton, ii. 560.

³ Possibly another case is that of the half *tun* mentioned in note 1 above, which is said to have formerly belonged to a "Wilburgewell." For the tenement in Canterbury granted to the nuns of Lyminge in 811 "ad refugium necessitatis" see below, p. 15.

⁴ I.e. "Portmen," C.S. i. 599.

⁵ C.S. 515, ii. 128.

⁶ They appear together in 958 as witnesses of C.S. 1010, iii. 213: "iii geferscipas innan et utan burhwara."

acquired the haw of Ceolmund the reeve (*praelectus*) at a yearly rent of 12*d.* in addition to the purchase price. With the haw, it is stated, went the liberty of having "modium et pondus et mensura, sicut in porto mos est."¹ The privilege was one of exemption from royal dues, as is more clearly brought out in the grant more than thirty years later to Ælhun's successor of the *curtis* called by the Londoners "At Hwaetmundes Stane," to which was attached "urnam et trutinam ad mensurandum in emendo sive vendendo ad usum suum ad necessitatem propriam," free from all toll to the king. This, however, became payable if any of the bishop's men traded outside the house, either in the public street or on the quay (*in ripa emporiali*).²

There is much earlier evidence of royal tolls at London and elsewhere. Exemptions were granted by Ethelbald of Mercia c. 732-745 for ships belonging to the abbess of Minster in Thanet and to the bishops of Rochester and Worcester, both in the port (*in portu*, "harbour") or hythe of London and at Fordwich and Sarre on the Stour below Canterbury.³ Already in the eighth century there was some foreign trade. In 789 Charles the Great in a quarrel with King Offa closed all the Frankish ports to English merchants and, when the embargo was removed on both sides, stipulated that merchants and smugglers should not enter in the guise of pilgrims. Merchants of both nations were to have royal protection as before and direct appeal to emperor or king as the case might be. Charles wrote to Offa that his subjects complained of the length (*prolixitas*) of the cloaks (*sagi*) sent from England, and asked him to see that they were made as of old.⁴ There is no hint that any of these *negotiatores* were slave-traders.

¹ C.S. 492, ii. 95. *Portus* in this sense seems always declined as a noun of the first declension.

² *Ibid.* 561, ii. 200. In later London the tron (*trutina*) or great beam was for weighing coarse goods by the hundredweight (Riley, *Memorials of London*, p. 26 n.).

³ *Ibid.* 149, i. 216; 152, i. 220; 171, i. 246; 188, i. 267; 189, i. 268. For salt toll at Droitwich (*emptorium salis*) c. 716 see *ibid.* 138, i. 203, and in the ninth century *ibid.* 552, ii. 174 and 579, ii. 222.

⁴ This and other evidence is collected by Miss H. Cam in *Francia and England* (1912), pp. 15 f. "Cloak" is her translation of *sagus*, but these *sagi* may possibly be the "drappes ad camisas ultramarinas quae vulgo *bermiscrist* (see Du Cange, s.v.) vocitantur" purchased by the monks of St. Bertin (Giry, *Hist. de Saint-Omer*, p. 276). About 975 Irish traders brought *saga* with other merchandise to Cambridge (*Lib. Eliensis*, p. 148). Ethelwerd's story that the Danes who first landed on the south coast were taken for traders, from whom the king's official went to collect toll, may be true.

An important result of this commercial intercourse with Francia was the substitution of the silver penny for the sceatt in England and the adoption there of the gold coin known as the *mancus*. It is first mentioned in an undoubtedly genuine charter of 799.¹

The evidence which is available for a view of the condition of urban centres in England before the age of fortification against the Danes is not, to say the least, abundant and it is almost confined to the south-east, but, so far as it goes, it does not reveal a purely agricultural economy. It is a striking illustration of the little light that can be expected from the early land charters that those of Rochester and Canterbury only once mention a trader as such. A royal grant of land in Canterbury to a thegn in 839, already referred to, conveyed also, in close conjunction with two weirs on the Stour, "unum merkatozem quem lingua nostra *mangere* nominamus."² It would certainly be rash to infer that this "monger" was personally unfree³ and in any case unreasonable to draw from one instance any general conclusions as to the status of the class to which he belonged. At the best, they were clearly very humble folk, compared with the churchmen and royal servants to whom the kings were "booking" considerable portions of their domain within and without the old walls. It is possible that some of them held small tenements by folkright derived from the original agricultural settlers, but it seems likely that for the most part they were tenants or grantees of the great churches⁴ and thegns, and in the latter case it is very improbable that the tenements were conveyed by charter.⁵ There is evidence that in some quarters at any rate houses in Canterbury closely adjoined one another on the street frontages. An endorsement on a charter of 868 recording the sale for 120*d.* of a small *tuun*, measuring six rods by three and bounded on all four sides by the land of different owners, mentions that by customary law (*folcaes*

¹ C.S. 293, i. 409.

² C.S. 426, i. 598.

³ In the twelfth and thirteenth centuries burgesses and other undoubted freemen were sometimes transferred with the land they rented. See, for example, *Reg. Antiquissimum Cath. Linc.*, ii. no. 324.

⁴ In the exemption from toll of a London house of the bishop of Worcester (C.S. 561; see above, p. 10) the case of the bishop's men trading outside the privileged tenement is provided for. If they do, they must pay the king's toll.

⁵ But the *burhware*, who in the tenth century had "book acres" in the fields, may have included merchants (C.S., no. 637, ii. 314).

folcryht) two feet had to be left between houses to allow eavesdrip.¹

That any members of the thegnly class engaged in trade at this early period seems unlikely. Its junior members, the *cnihts*, had indeed a gild in Canterbury in the middle of the ninth century² and it is tempting to see in them forerunners of the *cnihts* of the chammengild there which made an exchange of houses with Christ Church about the beginning of the twelfth century.³ But it is a serious obstacle to this identification that the earlier gild witnessed a charter which reveals its existence separately from the inner *burgware*.⁴ This may possibly be a case of illogical classification, but it is safer not to take refuge in anomalies.

It will have been observed in the foregoing analysis of the Rochester and Canterbury charters that the "tenurial heterogeneity" of towns which Maitland imaginatively deduced from a supposed obligation imposed on the shire thegns of the tenth century to garrison the *burhs* and repair their walls, was already a feature in the eighth and ninth centuries in those towns for which we have detailed evidence. Tenements in *burhs* or *ports* were being granted to churches and thegns with or without definite association with estates outside, as a matter of privilege, conferring honour and profit and in no case with any military obligation beyond that which lay on land everywhere to construct and repair *burhs* (*burhbot*) and bridges and do military service.⁵

The *burhbot* did not apply to all *burhs*. This word, as we have seen, was a general term for fortified enclosure. It covered the deserted hill "camps" of earlier races as well as the re-occupied Roman *civitates* and the fortified dwellings of the English higher classes as well as those of their kings, but it was only for the old walled town and the royal house⁶ that the *burhbot* was available.

In view of the municipal future of *burh*, it may seem surprising that our local nomenclature preserves it much oftener—

¹ C.S. 519, ii. 134. This must have been in the main an urban law.

² C.S. 515, ii. 128.

³ C. Gross, *Gild Merchant*, ii. 37. See below, p. 120.

⁴ Above, p. 9.

⁵ Commonly, but inaccurately known as the *Trinoda Necessitas*. Cf. W. H. Stevenson's article in *E.H.R.* xxix (1914), 689 ff., especially p. 698.

⁶ In a Mercian charter of 836 it appears in another association than that of the *Trinoda Necessitas*. Hanbury monastery is freed "a pastu regis et principum et ab omni constructione regalis ville et a difficultate illa quam nos Saxonice *fæstingmenn* dicimus (C.S. 416, i. 581).

in the suffix -bury or borough—in village names than in those of towns, either of Roman or later origin. In the former *ceaster*, borrowed from Latin *castra*, was usually preferred to the native *burh* in either form as suffix, the only exceptions being Canterbury and Salisbury,¹ while the latter often grew out of villages with names of a different type.

For the same reason as that last mentioned, *port*, though it came to be a synonym for town, in its trading aspect, and, unlike *burh*, was exclusively urban, has left few traces in local names. Much better represented in them, because it was in older and less exclusive use, is *wic*, *wich*. A loan-word from Latin *vicus*, its original sense was "dwelling-place," "abode," from which, like *tun*, it developed the meaning "village." By a further, but early, development it was used in a sense similar to that of *port*. London was known as Lundenwic already in the last quarter of the seventh century;² its chief officer was the *wic-gerefa*. The salt workings in Cheshire and Worcestershire were *wiches*.

In this early period then the urban community had three aspects: it formed an agricultural group, its house area was usually fortified and it was to some extent engaged in trade. Of these aspects the most primitive was the agricultural, though in *burhs* of Roman origin the walls were older than the first English settlements. It is not unreasonable to suppose that such settlements, though afterwards overlaid by administrative and ecclesiastical elements, contributed a germ of communalism which later expanded under the influence of commerce. Without subscribing to von Below's theory of the origin of the town (*Stadt*) in the self-governing village (*Landgemeinde*), we may note that Maitland, though maintaining that in the absence of some further ingredient the courtless village could never have developed into the borough, admits even in *Domesday Book and Beyond*, and more fully in *Township and Borough*, that the medieval borough belonged to the genus *tun*, as indeed the name "town" and the equivalent use even in official language of *villa* and *burgus* (or *civitas*) sufficiently attest. The equivalence, it is true, was really very imperfect, ignoring a vital distinction, and its significance chiefly retrospective. In the very early period with which we have been dealing, however, the distinction

¹ Lundenburh proved a transient form. See below, p. 23.

² *Laws of Hlothaere and Eadric* (685–686), c. 16, in Liebermann, *Ges.* i. 11. Cf. C.S. 335, i. 466; *A.S.C. s.a.* 604, ed. Plummer, i. 23.

between urban and rural units was as yet material, not legal. There was nothing paradoxical in the description of Canterbury as "*regalis villa Dorovernie civitatis*."¹ Nothing in the organization of the urban vill distinguished it from the *villa regalis* which still remained purely rural. Each was governed by a royal reeve (*gerefa*), though the *wic-gerefa* of London or the *port-gerefa* of other considerable places was doubtless a more important personage than the *tun-gerefa* of the ordinary royal vill. He may have found it necessary from time to time to consult with the more important *burgware* on questions of markets and tolls, if not of administration, and in these consultations we may, if we like, see faint foreshadowings of still far distant municipal self-government. A regular assembly with a share in the town government only became possible when urban courts were created, and for these the time had not yet arrived. It may be taken as certain, indeed, that a court of justice met in these urban centres, but it was not purely urban. There is strong reason to believe that the country in this period was divided for judicial purposes into districts each of which had a *villa regalis* as its centre² and if this was so, the court meeting in London or Canterbury would not have differed essentially from that of any other such district. The name Borowara Lathe³ suggests that this was the district judicially dependent on Canterbury and the London folkmote of the twelfth century was perhaps a relic of a court which had once exercised jurisdiction over Middlesex at least.

The practical differences between the urban and the rural *villa regalis*, especially the intensive trade of the former, would doubtless of themselves in the long run have compelled division of the urban centre from its district as a distinct judicial area, but the process was much hastened by the Danish invasions and settlement which gave an urgent importance to fortified centres and played no small part in bringing about a readjustment of the areas for local justice and administration.⁴

¹ C.S. 852 (416 B), II. app. xv, a charter of Egbert of Wessex, dated 836.

² See below, p. 36.

³ The Borwart Lest of Domesday. Cf. *E.H.R.* xlv (1929), 613

⁴ See below, pp. 28-9.

3. THE NEW BURHS FORTIFIED IN THE DANISH WARS

In the foregoing pages the first period in the urban life of England has been taken to extend roughly to the accession of Alfred. The Danish raids, it is true, had been in progress for three-quarters of a century, the "heathen" were now firmly established in the North and Midlands and the fate of Wessex hung in the balance. Until Alfred's reign, however, there is no sign of any general scheme of defensive fortifications or of reorganization. The value of existing fortified centres was indeed recognized. As early as 804 the abbot and convent of Lyminge received a grant of land in Canterbury "*ad necessitatis refugium*."¹ In several charters the military services of the old "*trinoda necessitas*" are noted to be directed "*in paganos*," and in one of these the duty of destroying their fortifications is added to that of building defensive *burhs*.² Yet even Roman walls did not always give a secure refuge in this necessity. Canterbury and, according to the oldest MS. of the Chronicle, London were stormed in 851.³ The defences of the lesser *villae regales* would in most cases oppose a much weaker resistance to the fierce assaults of the Danes. It is at first sight surprising to find Alfred's contemporary biographer merely referring to these as buildings of stone which he sometimes removed to positions more becoming the royal power⁴ and distinguishing them from the cities and *burhs* (*civitates et urbes*) which he has previously mentioned as repaired by him or constructed in places where there had been none before. But Asser is reviewing the work of Alfred's reign, and a leading feature of the period which opens with it was an increasing restriction of the term *burh* to the more strongly fortified centres.

It is unlucky that the bishop did not think it necessary to specify more than one of Alfred's fortifications, the two *arcēs* which protected the bridge into Athelney,⁵ for had he done so, there might have been no dispute as to the date of the difficult but very important document, which in the absence of any heading is now known as The Burghal Hidage.⁶ Maitland

¹ C.S. 317, i. 444.

² *Ibid.* 332, i. 462 (a. 811); 335, i. 467 (a. 811); 370, i. 509 (a. 822). The last has "*arcis munitione vel destructione in eodem gente*."

³ *A S C.*, ed. Plummer, s.a.

⁴ Asser, ed. W. H. Stevenson, c. 91, p. 77.

⁵ Asser, c. 92, p. 80. However, he mentions casually the east gate of Shaftesbury (*ibid.* c. 98, p. 85).

⁶ Maitland, *D.B. and B.*, pp. 502 ff.

was inclined to think that it was drawn up under Edward the Elder, and Professor Chadwick argues from internal evidence for a date between 911 and 919.¹ Sir Charles Oman, however, in 1910,² and more recently the late W. J. Corbett,³ have claimed it as in the main an Alfredian document. Imperfect at the beginning and perhaps at the end, it contains (1) a list of thirty-one *burhs*, the hidages assigned to which are added up, and (2) an appendix, apparently later, comprising only Essex, Worcester and Warwick. The chief argument for the later date is the inclusion in the former of the Mercian Oxford and Buckingham, though it is otherwise a purely southern list. Professor Chadwick suggests that this limited inclusion was only possible shortly after the death of the Mercian ealdorman Ethelred, Alfred's son-in-law, about 911, when Edward took into his own hands London and Oxford with their districts and the intervening Buckingham was probably, he thinks, included. On the other hand, Sir Charles Oman argues that when Ethelred, according to the Chronicle, had received London in 886 from Alfred it was as his personal representative and not as ealdorman of Mercia,⁴ so that he probably obtained Oxford and Buckingham at the same time and on the same terms and their grouping with Wessex is not therefore inconsistent with an Alfredian date. But Sir Charles has already, in another connexion,⁵ accepted without demur, except at its date, a pretty obvious slip of 880 for 887, a charter which, if genuine, shows Ethelred disposing of land in the Oxford district as "dux et patricius gentis Merciorum."⁶ The question of his status would be further cleared up if Birch's identification of Hrisbyri, the scene of a Mercian witenagemot in which Ethelred made a grant three years earlier,⁷ with Prince's Risborough in Buckinghamshire could be sustained. But the name, it is said, "cannot be reconciled with the other certain forms for Risborough."⁸ A further objection, that English rule in

¹ *Anglo-Saxon Institutions*, p. 207.

² *England before the Norman Conquest*, pp. 468 ff.

³ *Cambridge Medieval History*, iii. 357.

⁴ This is inferred from its resumption (with Oxford) after Ethelred's death, though Ethelred retained the ealdormanry for some years longer.

⁵ *Op. cit.*, p. 464 n.

⁶ *C.S.* 547, ii. 166.

⁷ *Ibid.* 552, ii. 174.

⁸ Mawer and Stenton, *Place-Names of Buckinghamshire*, p. 171 n. Risbury (*D.B.* Riseberie) might be suggested as an alternative, but *Hrisbyri* is not a possible ninth-century form even for that and as *C.S.* 552 is only known from Smith's edition of Bede, the name may be a late copyist's corruption of a correct form of Risborough. Cf. the *Riseberie* of a charter c. 1155 quoted *op. cit.*, p. 170.

central Buckinghamshire in 884 is very unlikely, would lose force if Liebermann was right in his argument,¹ on independent grounds, that the peace between Alfred and Guthrum which fixes the frontier so as to leave London and all west of the Lea English did not, as now generally held, follow a recapture of London in 886, but may have been concluded as early as 880, the siege and recovery of London at the later date, if there was such an event, being the result of a temporary success of the East Anglian Danes who in 884 "broke the peace."²

So far Professor Chadwick has certainly the best of the argument, and he might have strengthened his case by pointing out that Edward and not Alfred is recorded in the Chronicle³ to have made two *burhs* at Buckingham. Professor Stenton has further called my attention to charter evidence that Porchester, which is included in the main list, belonged to the see of Winchester in Alfred's time and was not exchanged with the crown for (Bishop's) Waltham until 904.⁴ On the other hand, with the exception of Oxford and Buckingham, the main part of the Burghal Hidage seems to have constituted a complete scheme of defence for Wessex and its dependencies and for them only.

Moreover, Oxford at least, in the hands of Alfred's son-in-law, might be considered as a bridgehead of Wessex.⁵ Save Buckingham, the list contains none of the *burhs* founded by Ethelred and his wife or her brother in their offensive against the Danes. Even their *burh* at Worcester, built in Alfred's life-time, appears only in the obviously later appendix. That *burhs*, old and new, played an important part in Alfred's last campaigns against the Danes we know from Asser and the Chronicle. Unfortunately, the annalist only mentions four by name and those all with Roman walls,⁶ but by good

¹ *Ges.* iii. 84.

² *A.S.C.*, ed. Plummer, i. 80.

³ *Ibid.* p. 100. Sir Charles Oman unconvincingly assumes that Buckingham here is an error for Bedford (*op. cit.*, p. 500 n.). His appeal to the Burghal Hidage of course begs the question.

⁴ *C.S.* 613, ii. 274.

⁵ The assignment in the list of a joint hidage to Oxford and Wallingford, an undoubted West-Saxon borough, may be significant in the light of the curious fact that in each the royal demesne was an area of eight virgates (*D.B.* i. 56a, 2, 154a, 1; see below, p. 89) and of the interrelations of the two boroughs and their counties revealed in Domesday Book. For Alfred's Oxford mint, see p. 7 n.

⁶ Exeter, London, Chester and Chichester. Of these only Exeter and Chichester are in the Burghal Hidage, though Sir Charles Oman implies (*op. cit.*, p. 469) that there were a good many more and includes Twyneham first mentioned in the Chronicle under Edward and Wimborne, which is not in the list and is described as a *ham* not a *burh* in 901.

chance Asser not only describes his early fortifications at Athelney, but quite casually reveals the fact that Shaftesbury, to which in the Hidage 700 hides are assigned, was surrounded by a wall with gates.¹ It is significant, too, that the fortresses of the Hidage stand thickest in central Somerset, the starting-point of Alfred's recovery of his kingdom, round his bridge-head "work" at Lyng, the "arx munitissima" of Asser,² which completed the isolation of Athelney.

The scheme as a whole is skilfully devised to stay Danish attacks at all vulnerable points inland or on the coast.³ It is surely too elaborate to have been devised during the early difficulties of Edward's reign before he took the offensive against the Danes. Any measures of defence that he resorted to must have been mainly based upon the work of his father as we see it revealed by his biographer and chronicler. It is conceivable that the original of the corrupt MS. of the Burghal Hidage, which is all we have, was copied in the reign of Edward from an earlier document, and any anachronisms, if there be such,⁴ may have come in then.

About a third of the thirty-one⁵ *burhs* in the main list were small military centres of temporary importance and never developed into towns. Only twenty-two were accounted boroughs in the later sense, and not all these became corporate towns.⁶ Some twelve are mentioned as *ports* before the Norman Conquest, and nineteen are known to have had mints, twenty are described in Domesday Book either as *burgi* or as having *burgenses*.

The nine or ten *burhs* which never became *ports*, mint-places or boroughs may have owed their fate to the greater suitability of neighbouring places for trade and administration,⁷ but this only shows that walls alone did not make a

¹ Ed. Stevenson, c. 98, p. 85.

² *Ibid.* c. 92, p. 80.

³ Its purely military object seems attested by the absence of the Dorset Dorchester. The *burhs* were on the northern frontier and the sea coast of the shire.

⁴ Buckingham, in its strong natural position and with perhaps early slighter fortification, may have been reckoned a *burh* before Edward's time. Porchester, though belonging to the see of Winchester, may, like episcopal Worcester, have been fortified in the public interest under Alfred.

⁵ Of the two hitherto unidentified, Sceaftesege has been located by Professor Stenton as an island in the Thames, near Marlow.

⁶ Watchet, Cricklade and Lydford never attained this status.

⁷ Burpham was apparently outshadowed by Arundel, Eashing by Godalming (of which it became a tithing), Porchester by Portsmouth, Tisbury by Hindon, Bredy by Bridport, Halwell by Totnes, and Pilton by Barnstaple.

borough in the municipal sense, though, where conveniently situated, they normally provided the natural shell for the growth of town life in stormy times.

The conditions under Alfred were not favourable to urban growth. It is hardly likely that even the comparatively quiet period after the settlement of Guthrum-Athelstan in East Anglia (880) saw much revival of trade. When the Danes were not raiding England they were ravaging Francia, and commerce with that natural market was cut off. The organization of the *burhs* for national defence must have depressed the trading element where it existed and proportionately increased the predominance of the thegnly class who no doubt bore the brunt of the defence.¹ On the other hand, too much has perhaps been made of the absence of any reference to trade in Alfred's Laws except in c. 34 which required chapmen to give security in folk moot for the good conduct of those whom they proposed to take up country with them.² Traders who moved about with a train of attendants cannot fairly be dismissed as mere "wandering pedlars." We have seen Charles the Great insisting on similar security from English merchants in his country.³ Nor must it be forgotten that Alfred of set purpose added as little as was possible to the enactments of his predecessors, not knowing, he says, what additions of his would be approved by his successors.

Although a study of the map shows that the sites of the *burhs* of the Burghal Hidage were chosen for military reasons and most of their names are not recorded before the ninth century, some of these unrecorded names imply earlier settlements and there is strong probability that important fords like Oxford, Wallingford and Cricklade or the rarer bridge, as at Axbridge, had already attracted population. Such passages and the confluences of streams were the natural *nuclei* of early trade as well as obvious points to defend. That a market was the central point of the *burhs* constructed by Alfred and his Mercian son-in-law we know from the only record of such a fortification, either now or later, that affords a glimpse within

¹ But the *burgware* of London and Chichester who sallied forth against the Danes in 894-5 are clearly distinguishable from the king's thegns "at home in the forts" who gathered from all the *burhs* of the west to meet the Danes on the middle Severn. The "men who were to keep the *burhs*" have previously been mentioned as an exception from Alfred's division of the *fyrd* into two halves, one at home, and the other in the field. The thegns were for the present permanently "at home" in the *burhs*, but their residence would presumably end with the return of peace.

² Liebermann, *Ges.* i. 68-9.

³ Above, p. 10.

the ramparts.¹ At some date between 885 and 900 Ethelred and Ethelfled, at the instance of Werfrith, bishop of Worcester, ordered the construction of a *burh* there for the protection of "all the folk."² On the completion of the fortifications, Ethelred and his wife, with the approval of Alfred and of the Mercian *witan*, for the support of the church and in return for religious services on their behalf in life and after death, bestowed upon St. Peter and the bishop one-half of the revenue accruing to them as lords from the market or from the streets within and without the *burh*. This public revenue is more fully defined later in the charter as comprising *landfeoh*, perhaps the rent from demesne land later known as *landgafol* (*landgabulum*), and a tax for the repair of the wall (*burhwealles sceating*) together with the issues of justice from theft, fighting, market offences (*wohceapung*) and all others for which compensation (*bot*) was possible, so far as these breaches of law occurred in market or street. Outside these limits the bishop was to enjoy all the land and dues which the grantors' predecessors had given to the see. It would appear from this and later evidence that the bishop was the chief landowner in the area enclosed by the wall and had "sake and soke," that is the right to take the profits of justice arising out of offences upon his land.

The other half of the revenues which were divided was reserved to the grantors. The market profits did not include the most valuable tolls, for it is expressly stated that the shilling on the waggonload and the penny on the horseload were to go to the king, as they had always done at Saltwich, *i.e.*, Droitwich. This evidence of a revenue derived by the West Saxon kings from tolls on trade in English Mercia is noteworthy.

It seems fairly clear from the arrangements described in this unique charter that the old unfortified Worcester had been a mere appendage of the cathedral church, whose rights flowed from grants by Mercian or Hwiccan kings and that the market-place and the streets which led to it with the jurisdiction over them, the profits of which were to be shared with the church, were new, like the tolls reserved to the king, and constituted the return exacted by the present "lords of Mercia" for the costly work of fortification. A few years later, in 904, the church added a life-lease of a great tenement

¹ C.S. 579, ii. 221 f.

² "Eallum thæm folc(e) to gebeorge."

(*haga*) in the north-western corner of the *burh*, along with land at Barbourne outside it on the north.¹

The Worcester *burh* was exceptional in not being founded on land that was wholly or in large part royal domain. The bargain effected with Bishop Werfrith and his chapter can have been rare indeed, if not unique. It is important also to observe that the duty of repairing the walls was acquitted by a money payment not by personal service. The grouping of this payment with revenues otherwise entirely derived from the *burh* suggests that it fell upon the inhabitants only. It is perhaps possible that the reference is only to the urban portion of a wider tax levied upon the 1200 hides which are assigned to Worcester in the appendix to the Burghal Hidage. This seems less likely, however, and if the tax was purely internal, we must suppose that the military connexion between the hides and the *burh* was confined to personal service when required.

A parallel to the English *burhs* was found by Keutgen and Maitland² in the purely artificial *burgs* which Henry the Fowler a little later was raising in newly conquered lands on the north-eastern frontier of Germany and peopling from without, but the likeness is somewhat superficial. England was a long settled land. The very small *burh*, designed or adapted for military defence only and without urban possibilities may have approximated to the German type, but usually the place selected for walling had already a certain population and such elaborate arrangements as Henry was driven to make for the manning and support of the *burg* from the country round were not needed. The Worcester case might suggest a more plausible parallel with the *castra* of the Low Countries, fortified feudal and ecclesiastical centres at the foot of which trading settlements (*poorts*) grew up and were ultimately walled.³ But the absence of feudalism in England at this date makes the parallel misleading. The cathedral precincts were probably but slightly fortified and the charter of Ethelred and Ethelfled hardly suggests that the dependent population outside before the walling was chiefly occupied in trade.

¹ C.S. 608, ii. 266. The northern side of the haw was 28 rods long, the southern 19 and the eastern 24; no figure is given for the western, parallel with the river.

² E.H.R. xi. (1896) 13 ff.; D.B. and B., p. 189.

³ Pirenne, *Histoire de Belgique*, i. 2, § 1. He remarks on the equivalence of *poort* with the English *port*.

What light does this invaluable charter throw upon the vexed question of the origin of the medieval borough? Here it was the wall which made possible the trading centre, the *port*, not the trading centre which was given a protecting wall. All or nearly all of the features on which the discussion has turned appear here in full or in germ, walls, market, separate profits of justice if not a separate court, divisions of revenue between king and earl, probably an earlier agricultural community. It is not the deliberate foundation and fortification of a trading town that the charter reveals. The walls were built as a refuge for the population of a wide region, liable to sudden Danish attacks, a market was an indispensable provision for the needs of temporary and permanent inhabitants alike. Had it not been for the military necessities of the time, episcopal Worcester might have had to wait long for urban growth, for the making of markets as of walls was a prerogative of the state. Yet the market, though at the outset an incidental result of the fortification, was a vital germ of the future borough, the fortification merely the occasion which called it into existence. Circumstances decided that most towns should grow up behind walls, but exceptions can be found. Droitwich, the "*Wicum emporium salis*" of an early eighth-century character,¹ never appears as a *burh*, but it was accounted a borough in 1086 and its burgesses received a charter from King John.

The jurisdiction over market and streets at Worcester involved a local court, but it seems unlikely that this would be a purely Worcester court at this date. Elsewhere the court may usually have been that of a district centring in a royal residence, *burh* in one of its older senses, for the new *burhs* were, it would seem, nearly always fortified royal *tuns*. Worcester was not, but it would be rash to claim for it the distinction of having the first purely burghal court.

It does not seem possible to accept the opinion of the editors of the *Place-names of Worcestershire*² that the area walled at Worcester was the comparatively small district of Sudbury at the south-eastern corner of the city. A refuge for the population of a wide area must have enclosed a much greater space and not only is this confirmed by the size of the holding in one corner of it which the bishop leased to Ethelred and his wife in 904,³ but the mention of the north

¹ C.S. 138, i. 203 (a. 716-7).

² P. 22.

³ Above, p. 20.

wall and the Severn in its bounds shows that their *burh* lay in the same position north of the cathedral church as the later borough and may have been co-extensive with it.

Fortification did not usually, if ever, lead to a change in the earlier name of the place. New *burhs* with names ending in -bury or -borough generally owed them to some more primitive defences. London is a partial exception. Until now it had, as we have seen, been very commonly called Lundenwic, but this seems to have been quite superseded in the last centuries of the Anglo-Saxon period by Lundenburh. This, however, proved no more permanent. The uncompounded form Lundene, London, derived from the Roman *Londinium*, continued in use alongside it and ultimately prevailed. It is more than likely that Lundene in virtue of its walls had sometimes been called Lundenburh in the preceding age. Bede's "*urbs Lundoniae*" points to that. The increased use of the compound name may perhaps be explained by the fact that *burh* was now in everybody's mouth rather than by any repairs of the walls that Alfred may have carried out when, in 880 or shortly after,¹ he recovered the town from the Danes and entrusted its custody to his son-in-law. Some years later, in 889, Alfred and Ethelred made that gift of a tenement at Hwaetmundes Stane in the city to Bishop Werfrith of Worcester which has been mentioned above² on account of the privilege conferred with it of buying and selling within the messuage for its necessities and taking the resultant tolls, which in the streets and quay would go to the king. This is interesting as showing that the London tolls were not granted to Ethelred with the custody of the city, but, as at Worcester, were retained by the crown. It was to Alfred too, if we may trust a somewhat dubious document, as part of the restoration of London after the Danish occupation, that the sees of Worcester and Canterbury owed their adjoining sokes of an acre each by Ethelredshithe, the later Queenhithe, with quays (*navium staciones*) of equal width outside the wall.³ It seems likely that the much larger soke of Queenhithe, east of the Worcester soke, represents an earlier grant to Ethelred.⁴

London, like Worcester, must of course have been the seat of a court, but in this case we are pretty safe in identifying it with an actual later court, the *folksmote* and conjecturing

¹ See above, pp. 16-17.

² P. 10.

³ C.S. 577, ii. 220.

⁴ W. Page, *London; its Origin and Early Development* (1923), p. 130.

that its jurisdiction was not then confined to the city, but extended over a district which at least comprised Middlesex.

If the scheme of the Burghal Hidage was the work of Alfred, the fortification of Worcester seems to occupy a somewhat isolated position between the purely defensive *burhs* of that system and those erected by Edward the Elder and his sister Ethelfled in the course of their long offensive against the Danes. Like the former it was undertaken for defence only, but it was not, so far as we know, part of any general scheme. The later series of fortifications were steps in a converging advance from London and south-west Mercia upon the fortresses of the central Danelaw, but the new *burhs* were not all on the direct lines of advance for on the east Essex had to be occupied to prevent outflanking from East Anglia and on the west a combination of the Welsh and the Dublin Northmen with the Danes must at all costs be averted.

In all twenty-five *burhs* were constructed by Edward and his sister, if we include Chester and Manchester where old Roman walls were repaired. There were, however, two each at Buckingham and Hertford, and those at Bedford and Nottingham were merely bridgeheads for the attack on these Danish *burhs*. Of the twenty-one which remain after the necessary deduction only eight¹ are found as municipal boroughs later in the Middle Ages, though Manchester and Bakewell attained a quasi-burghal status under mesne lords. This small proportion, which more than reverses that of the Burghal Hidage is easily understood, since a majority of these forts were on the borders of Wales, a region much less favourable than Wessex to urban growth. Four of them are shown by their names to have been adaptations of more primitive fortifications. Four or five were so obscure that they still remain unidentified. Some were probably only temporary.

These facts emphasize the conclusion we drew from the Burghal Hidage that the mere fortification of a spot, whether already settled or not, did not secure its future as a town. For that its site must present special advantages for trade or administration or both, and this Edward himself recognized in his law restricting trade to *ports*.² Of the eight *burhs* which were to show that they possessed these advantages, all but

¹ Chester, Bridgenorth, Tamworth, Stafford, Hertford, Warwick, Buckingham, and Maldon.

² Liebermann, *Ges.* i. 138.

Bridgenorth were selected as mint-places before the Norman Conquest, indeed, with the exception of Buckingham, by Edward's son, Athelstan. Of the *burhs* which did not win special jurisdiction or corporate privileges, Witham in Essex had a mint, but this was only in the reign of Harthacnut when mints were more indiscriminately distributed.¹

None of the eight more important new *burhs* is called *port* in the Chronicle. This need not be significant, however, for *port* and *burh* were practically equivalent in the tenth century in the sense of "town," and in a region not yet free from the danger of Danish invasion the term which implied fortification might easily obtain predominance before it did elsewhere. Yet Northampton, one of the captured Danish *burhs*, is called *port* by the chronicler in 1010, and Worcester as late as 1087.²

Speaking generally, the chief Edwardian foundations had a less important future than the well-chosen centres which the Danes had fortified and made district capitals.

A study of the maps in the *Reports of the Commissioners on Municipal Boundaries and Wards* (1837), drawn before the modern growth of towns, usually detects a marked difference in lay out between the towns which first appear as Anglo-Saxon *burhs* and those which grew up later without the constriction of ramparts. Putting aside the old Roman sites, the greater compactness of such towns as Oxford, Worcester or Derby as compared with, say, Andover, Coventry or Chesterfield at once strikes the eye. It is generally held that many of the new *burhs*, both English and Danish, were modelled upon the Roman *civitates* or *castra*, and this may have been so to some extent, though the English settlers within Roman walls, Haverfield pointed out, do not seem to have taken over the old street plans and a quadrangular rampart or wall with a gate on each side is the simplest form of fortification to enclose a considerable inhabited area and therefore likely to suggest itself without imitation. Early settlements were often made at cross-roads and if walled would, as at Oxford, reproduce the Roman plan without deliberately copying it.

4. AFTER FORTIFICATION

Nearly all the chief English towns of the Middle Ages are found either among the Roman *civitates* or *burhs* re-occupied and their walls repaired, sometimes very early, or the new

¹ *E.H.R.* xi. (1896), 761 ff.

² *A.S.C.*, ed. Plummer, pp. 141 223.

burhs of the ninth and tenth centuries. "Borough" became a technical term which covered walled and unwalled towns alike. Must we therefore conclude with Maitland that fortification was the vital moment in the origin of the borough? We may certainly agree that it gave an urgent and widespread impulse to urban aggregation, which would otherwise have been a slower process, even if peace and quiet had obtained, and that it provided shelter for the trader and artisan. In an age of constant warfare walls were everywhere a necessary condition of urban growth. But Maitland's conjectural picture of the typical tenth-century *burh* as first and foremost a fortress garrisoned by the landowners of its district, who kept houses and warrior "boroughmen" (*burgware*) in it for its defence and wall-repair, has failed to secure general assent.¹ It leaves out of account the early settled *civitas* like Canterbury and the general predominance of royal domain in the borough which is so evident in Domesday. It is essentially based upon a supposed foreign parallel of more than doubtful pertinence and the bold assumption that the burgesses who were paying rent to rural lords in 1066 represented armed retainers of the predecessors of these lords less than a century and a half before. It is not supported by the solitary contemporary piece of evidence on the incidence of wall-repair which has come down to us,² and two important charters show that within less than twenty years after Edward's death a haw in a neighbouring borough was regarded as a profitable appurtenance of a rural estate, not as an acquittal of a military obligation.³

¹ A short list of the chief contributions to the controversy over this garrison theory may be of use. I. In support. F. W. Maitland, *EHR* xi. (1896), 16-17; *DB and B* (1897), pp. 186 ff; *Township and Borough*, pp. 44 f, 210 f; A. Ballard, *The Domesday Boroughs* (1904), pp. 11-40, "The Walls of Malmesbury," *EHR* xxi (1906), 98 ff, "The Burgesses of Domesday," *ibid*, pp. 699 ff, "Castle-Guard and Barons' Houses," *ibid* xxv. (1910), 712 ff, H. M. Chadwick, *Studies on Anglo-Saxon Institutions* (1905), pp. 220 ff, R. R. Reid, *EHR* xxvii (1917), 489 n. II. Against. J. Tait, *EHR* xii (1897), 772 ff, M. Bateson, *ibid* xx. (1905), 143 ff, 416, "The Burgesses of Domesday and the Malmesbury Wall," *ibid* xxi (1906), 709 ff, C. Petit Dutaillis, *Studies Supplementary to Stubbs' Constitutional History* (1908), pp. 78 ff, J. H. Round, "Burhbot and Brigbot" in *Family Origins*, ed. W. Page (1930), pp. 252 ff, C. Stephenson, "The Anglo-Saxon Borough" in *EHR* xiv (1930), 183, 203, *Borough and Town*, pp. 17 f.

² See above, p. 20.

³ In *C S* 757, 11 483 (a. 940) a grant of ten hides in Wily, Wilts, to the thegn Ordwald, there is a note that a certain meadow, the haw in Wilton that belongs to Wily, the town-hedge *bot* at Grovely and every third tree in Monnespol wood were all appurtenant to Wily, to Ordwald's *tun*. *C S*.

Maitland's over-emphasis of the military aspect of the borough—we may now conveniently use the later form of *burh*—involved an underestimate of its trading importance and a one-sided theory of the origin of the borough court. The enumeration of offences punishable at Worcester lends no support to his suggestion that the court was called into existence to repress the turbulence of a military population. It is likely indeed, as we shall see, that the purely urban court did not come until the military aspect had waned after the conquest of the Danelaw and that up to then the only courts meeting in boroughs had jurisdiction over wider areas.

Dr. Stephenson rejects the "garrison" theory, but his conception of the late Anglo-Saxon borough is equally one-sided in another direction. The normal borough, he holds, differed only from the country round in being a place of defence and therefore a natural centre of royal administration. Its trade was negligible, its social and economic system just as aristocratic and agricultural as elsewhere. Mint and market were there merely for the shelter of its walls. It is difficult, however, to reconcile this view with the legislation of Edward and Athelstan. When Edward in his first law, passed certainly before his conquests were complete and perhaps before they were begun, forbade all buying and selling outside fixed centres,¹ he did not call them *burhs* but *ports*, a term with none but trading implications and, as we have seen, already familiar in the pre-Danish period.² The chief town officer, who is normally to witness all such transactions, is not *burhgerefa*, but *portgerefa*, "portreeve," a title which was to have a long burghal history. Athelstan, again, ordered that (in Kent and Wessex) no man should mint money except in a *port*. Twelve of these ports are named in a further clause, with the number of moneys authorized for each; "for the other *burhs*, the list concludes, 'one each.'³ The use of *burh* here as equivalent to *port* seems to imply that the former was losing its military significance and coming to mean little more than 'town,' although an ordinance just above requires that every *burh* should be repaired by a fortnight after the Rogation days."

From the list just mentioned and the British Museum

786, 11 529, a. 943 (*cf* 765, 11 495), after granting seven hides at Tisted, Hants, to a thegn, adds the haws within the borough of Winchester which belong to these seven hides, with the same immunities as the land.

¹ Liebermann, *Ges* 1 138, 111 93

² See above, p. 9.

³ Liebermann, 1 158.

Catalogue of Coins¹ we learn that there were fourteen mints working in Kent and Wessex in Athelstan's reign, eight of which were new. The Catalogue supplies the names of thirteen in the Midlands, all of which were new, and the old Northern mint at York was now working for the English king. The total of twenty-eight mint-places bespeaks a considerable demand for coin, but most significant of active trade is the number of moneyers allowed to the chief *ports* by Athelstan's law, eight to London, six to Winchester, four to Canterbury (besides one each to the archbishop and the abbot of St. Augustine's), and even the two each allotted to Lewes, Southampton, and Wareham reveal a growing importance. It is clear that, thanks to the victories of Alfred and his successors, things were settling down and that, in the South more especially, trade was reviving. The crown had strong inducements to foster this revival of trade and to restrict it to the walled towns for it derived an increasing revenue from tolls, profits of justice and moneyers' fees, while the restriction simplified collection and by the greater publicity of transactions made it easier to prevent fraud.

The attempt to confine all buying and selling to boroughs was not, however, successful. Athelstan found himself obliged first to except purchases under 20*d.*² and later to withdraw the whole requirement.³ And so in Edgar's law fixing the number of witnesses of sales,⁴ the same number was assigned to rural hundreds, to undertake this supervision, as to small boroughs. Nevertheless, the advantages of the boroughs for trading were too great to leave any considerable volume of it to other centres.

Fortified towns, rare before the Danish invasions, were now numerous and widely dispersed. Even if their walls were often only of earth, like those still to be seen at Wareham, they clearly marked off these boroughs or ports from the rural "tuns" of the country side.⁵ Centres of administration,

¹ Conveniently summarized for this late Anglo-Saxon period by York Powell in *E.H.R.* xi. (1896), 759 ff.

² II Athelst. 12, Liebermann, *Ges.* i. 156. The witness of the reeves in the folk moot was accepted as an alternative to that of the portreeve or other unlying man of Edward's law. The folk moot was no doubt the district court, soon to be reorganized as the hundred court (see below, p. 36), which, there is reason to believe, usually met in a *burh* (see below, *ibid.*).

³ IV Athelst. 2, Liebermann, *Ges.* i. 171; VI. 10, *ibid.*, p. 182. It was now lawful to buy and sell out of port, provided it was done with full and credible witness.

⁴ IV Edg. 5, Liebermann, *Ges.* i. 210.

⁵ I Edw. I. 1, Liebermann, *Ges.* i. 138; IV Edg. 6, *Ges.* i. 210; II Cnut, 24, *Ges.* i. 326.

many of them had long been, but fresh centres were needed in the re-united and re-organized kingdom and as market towns and mint places, exclusively at first and predominantly always, they concentrated the new growth of trade after the storms of the invasions. Obscurely, but steadily, we may believe, a class of burgess traders was growing up within and about their walls. Materially most of the medieval English boroughs had come into existence and the difference of these urban units from ordinary agricultural communities was clearly recognized in nomenclature. Dorchester, in Dorset, for instance, which is merely a "king's tun" in the Chronicle's account of the first Danish landing in the South,¹ is a port and borough in Athelstan's mint law. How far did this comparatively new type of local community receive special treatment in form of government and legal status? We must put out of our minds at once of course any idea of a self-governing community electing its own head, the portreeve. That position was only gained, and not by all the tenth-century boroughs, after a long process of development which was not completed until the thirteenth century and only faintly shadowed forth by the end of the Anglo-Saxon period. The government of the borough remained essentially the same as that of any royal estate under a reeve (*gerefa*) of the king's appointment, with such check as was involved in customary consultation with the elders of the community. The chief difference was that in the freer air of the borough this check was more serious and in the long run became control. A really municipal constitution was still remote in 1066, nor did the Norman Conquest bring any immediate change. Indirectly, however, the way was already paved for it when in the second half of the tenth-century judicial reorganization created a primitive form of the medieval borough court, not of course as a concession to the burgesses, though it was destined to be of great use to them in their long struggle for autonomy, but merely in recognition of the needs of a populous area and of royal interests. Unfortunately, the origin of this court, the germ of the *burewaremot* and the *portmanimot* of the twelfth century, has become subject of controversy, owing chiefly to the ambiguity of the Laws in their references to courts held in boroughs. The question is complicated and demands a new chapter.

¹ *A.S.C.* s.a. 787. The identification with Dorchester is Ethelwerd's.

II

BOROUGH AND COURT

I. THE PRE-DOMESDAY EVIDENCE

THE main features of the tenth century vill, or portion of one, that was also a borough, which distinguished it from the ordinary agricultural vill, can be but brokenly discerned in the glimpses afforded by the Laws, the charters and the Chronicle. For fuller information we have to wait until Domesday Book affords material for retrospect. Meanwhile, it is possible to make some definite statements from contemporary evidence.

The borough was a place of defence against the Danish enemy, or *vice versa*, fortified or refortified by the public authority and often a natural centre for local administration whether of the shire or of some small area. It was also a place of trade, a "port," yielding a growing revenue in tolls which would have been even more important had the son and grandson of Alfred succeeded in their effort to confine all trading to the "ports." They did restrict the royal minters to these urban centres, though later kings seem to have authorized exceptions to this rule. If the public status of these centres were not sufficiently obvious, it might be safely inferred from the sharing of their revenue between king and earl which is recorded at Worcester at the first foundation of its borough, though not elsewhere until Domesday comes to our aid. The earl had no such pecuniary interest in the ancient demesne of the kingdom held by the king, being probably already provided for by the special comital estates of which we only hear later, albeit the arrangement sounds more primitive than the earl's burghal share.

The borough-port further differed from the royal vill "upland" ¹ in the division of tenure which it commonly

¹ Cf. sy hit binnan byrig, sy hit up on lande (II Cnut, 24). Two and a half centuries later the same distinction is implied in the "viles de uppe-launde" of the Statute of Winchester (Stubbs, *Select Charters*, ed. Davis, p. 466).

exhibited. The king kept much of its soil in demesne, but a more or less considerable part was granted to religious houses and local magnates. That both the king and the private landholders settled "burgesses" on their holdings is a natural presumption, though the positive evidence for it first appears in Domesday Book. No one now, with Maitland and Ballard, traces this "tenurial heterogeneity" to a territorialization of the duty of the shire or other district to garrison and repair the walls of the borough. Other reasons, such as the need of a *hospicium* or lodging for visits of business to the local centre or of a refuge in time of war, as well as the financial attraction of urban house property, sufficiently account for this tenurial connexion between town and country. Surviving charters to churches and thegns show the growth of this connexion in Kentish boroughs long before the Danish invasions.

With rare exceptions, mostly old Roman towns, the fortified area, in the nature of the case, was of small extent; houses and population were much more closely crowded together than in the countryside, and this of necessity involved some differentiation from the rural vill. Of the inner life and growth of the boroughs we know little until the eve of the Norman Conquest. In the later struggle with the Danes, the burgesses of London at least proved themselves still an effective military force. By that time they had an active trade with the Continent. Municipal growth or even aspirations we should scarcely expect to find among the slow-moving Anglo-Saxons, especially as the impulse given to it abroad by feudal tyranny was entirely absent in England. The boroughs were still primarily domanial, governed by reeves of the king's appointment, though already even in the smaller boroughs of Devon we hear of a body of *witan* ¹ with whom no doubt the reeve consulted. It is safe to say that the burgesses did not yet dream even of securing direct communal responsibility to the crown for the collection of its revenue, still less of license to elect their own officers, not that there is any doubt that at least the more important Anglo-Saxon boroughs from the tenth century onwards possessed the organ in which the first strivings towards municipal autonomy were before long to make themselves felt and which moulded the body (*communitas*) that was, nominally at any rate, sovereign in the self-governing medieval town. It does not follow that this early borough court exhibited such marked differences from

¹ *Crawford Charters*, ed. Napier and Stevenson (1895), p. 9.

other local courts as did the boroughmoots or portmoots or hustings of a later age. It is not easy, indeed, so scanty and perplexed is the evidence, to get a clear idea of this court. On the strength of Edgar's ordinance that the *burhgemot* should be held three times a year¹ it was thought until comparatively recently that such a court was a feature of all boroughs, which was more than could be said of the late medieval towns. On the other hand, the very infrequency of these meetings led Ballard to assert that the normal borough court was not independent, did not exclude the jurisdiction of the neighbouring hundred court with its monthly sessions.² A vigorous criticism from Miss Bateson³ induced him to withdraw this hasty pronouncement.⁴ From an ambiguous premise he had drawn a conclusion impossibly wide, though, as will presently be seen, not without an element of truth.⁵ Unfortunately, Liebermann had accepted it,⁶ and never saw the retraction or realized that Ballard's view was inconsistent with his own general theory of the borough court. Almost simultaneously, Professor Chadwick put forth a very different theory, namely that the later borough courts were the dwindled relics of courts which from the reign of Edward to that of Edgar served for more or less wide districts centred in the new *burhs*.⁷ The hypothesis is more applicable to the Midlands than to the South for which it was constructed, but discussion of it must be deferred for the moment.

Professor Chadwick's theory is an aberration from the general line of inquiry, which has aimed at fixing the place of the borough and its court in that new hundred organization which was carried out in the South in the first half of the tenth century and in the Midlands and East, somewhat later in the century. Maitland's cautious statement that the borough court was probably, "at least as a general rule," co-ordinate with a hundred court,⁸ has met with almost universal agreement. This leaves open the question whether a new type of court was created for the borough or whether it merely received separate hundredal jurisdiction. Maitland himself appears to have had no doubt that the second alternative was

¹ III Edg. 5, 1; Liebermann, *Ges.* i. 202.

² *The Domesday Borough* (1904), pp. 53 f., 102 f., 120 ff. and Preface.

³ *E.H.R.* xx. (1905), 146 ff.

⁴ *The English Borough in the Twelfth Century* (1914), p. 34.

⁵ See below, p. 54. ⁶ *Ges.* ii. 451, 12 g.

⁷ *Anglo-Saxon Institutions*, pp. 219 ff., especially pp. 222-3.

⁸ *D.B. and B.*, p. 209.

the right one. "At starting," he says, "the borough seems to be regarded as a vill which is also a hundred." He notes that the later borough court was sometimes called a "hundred," and suggests that, at least in the earliest time, it had jurisdiction over an area considerably larger than the walled space. "In this case the urban would hardly differ from the rural hundred. A somewhat new kind of 'hundred' might be formed without the introduction of any new idea."¹ Boroughs with such territory, even comprising several rural vills, are, of course, not uncommon, but they belong chiefly to the region north of the Thames. Maitland's generalization will hardly cover the case of such southern boroughs as Bath and Dorchester which were originally *capita* of ordinary hundreds, but appear later in possession of hundred courts of their own and of little or no extra-mural territory.

Miss Bateson, overlooking or silently rejecting this suggestion of Maitland, took the "vill that was a hundred" quite strictly and saw a "legal thought" behind it.² She was combating Ballard's argument that if a vill by exception was also a hundred, that was a mere accident and the court was an ordinary hundred court. The legal thought was the deliberate co-ordination of the typical borough and its court with the hundred and its court. In her view, too, the borough court was already differentiated from that of the rural hundred for she identified the three annual meetings of Edgar's *burhgemot* with the "great courts" of the fully-fledged borough.³ Dr. Stephenson, however, sees no evidence of such differentiation before the Norman Conquest.⁴ He brushes aside the *burhgemot* in question as the court of a district meeting in a borough, and agrees with Ballard that the court of the borough which was a hundred in itself was just an ordinary hundred court. He differs from him only in holding that such burghal hundreds, though not universal, were common and not merely isolated cases, and in finding confirmation of his view in what he believes himself to have shown to be the purely agricultural and non-urban economy of the Anglo-Saxon borough. There is no "legal thought" behind the vill-hundred, for non-burghal hundreds were often quite small and even the single vill hundred was not unknown.

A review of the whole of the evidence, upon which these

¹ *D.B. and B.*, p. 209, n. 6.

² *E.H.R.* xx. (1905), 147.

³ *Ibid.*; *Borough Customs*, i. (1904), pp. xii f.; ii. (1906), cxlv ff.

⁴ *E.H.R.* xlv. (1930), 196 ff.

divergent conclusions have been based, seems to be needed. Unluckily, the study of the problem has been somewhat let and hindered by the variety of meanings which words took on in the course of the rapid development of an early society. Perhaps the most striking illustration of this feature is afforded by the A.-S. *tun*, our "town." Originally, as we have seen, applied to a single homestead, it came, without wholly losing this meaning, to be used for an aggregation of homesteads, a village, to use a post-Conquest word, especially 'as a local unit of administration, for which Maitland devised the convenient term "vill" from its Latin equivalent *villa*, and it ended in being restricted, save in remote corners of the land, to the most highly specialised of such aggregations.

The interpretation of the word *burh* in the Laws of the Anglo-Saxon kings, which, next to Domesday Book, are our main source of information on the pre-Conquest borough, is hampered by the fact that, since its original meaning was simply "fortification," it could be applied to the fortified houses of the king, as indeed of all above the rank of common freeman, as well as to fortified towns. Counsel is still further darkened when a *burh* appears as seemingly the seat of a court, the area of whose jurisdiction is left vague, but cannot with any probability be identified with that of a borough. It is hardly surprising that a Norman translator of the Laws into Latin, within half a century of the Conquest, came to the conclusion that *burh* in these difficult passages must have the derived sense of "court" and turned it by *curia*.¹ Modern students of the Laws have found themselves equally embarrassed. Liebermann, who published his great work, *Die Gesetze der Angelsachsen*, in sections between 1898 and 1916, changed his view more than once. At first he felt no difficulty in translating *burh* in such contexts by "town" (*Stadt*, *Gerichtsstadt*), but in his glossary (1912) substituted "king's fortified house" (in one instance) or "court" (*Gericht*), and in his final commentary (1916) suggested as a general equivalent "meeting place of a court" (*Gerichtsstätte*).²

¹ *Quadrupartitus* in Liebermann, *Ges.* i. 161, translates "the to thære byrig hiron" "qui ad eam curiam obediunt," and again, *op. cit.* i. 389. Also in a passage of later date, *ibid.* i. 324. See below, pp. 37, 41 n.

² Curiously he retained *Gericht* in one passage, but, apparently feeling it inappropriate in its ordinary sense, explained it as *Amtsprengel*, "district" (*Ges.* i. 146, iii. 97). In this passage (I Athelst. 1), where the king's reeves in every *burh* are ordered to render tithes from his goods, it seems more natural to take *burh* as a fortified house which was a centre of royal domain. It is used even later for the king's house as a sanctuary (II Edm. 2), where Liebermann translates it "festes haus" (*Ges.* iii. 127).

This does not seem to be an improvement upon his second thoughts in the most important of these troublesome passages.

When King Athelstan ordains that the seniors (*yldestan men*) belonging to a *burh* shall go out (*ridan*) and put under surety the man who has neglected repeated summons to the *gemot* or confiscate the property of the persistent thief,¹ and when the same seniors, acting as doomsmen, decide whether one found guilty of arson or of secretly compassing murder shall live or die,² the court is clearly not purely urban. Maitland suggested that it was a shire court meeting in a borough,³ but there is no evidence of shire courts before the reign of Edgar and as *ridan* had then the general sense of "to go," the fact that "there was riding to be done" does not presume a very wide area.⁴ Professor Chadwick agrees with Maitland in taking the meeting-place of the court to be a borough in the ordinary sense, but sees in the passage confirmation of his theory that the Burghal Hidage represents a re-division of the southern shires into administrative and judicial districts round the new *burhs* fortified against the Danes.⁵ But the Burghal Hidage, whether it is to be assigned to the reign of Alfred or that of his son is, as we have seen, a plan of defence not a settlement of local areas.⁶ The wide variations in the hidages and the position of the boroughs, in Dorset, for instance, on northern border and sea coast only, make it hard to believe that the scheme could have served as the basis of local government. The mention in the Chronicle⁷ under 918 (915) of the seniors of Bedford and Northampton may seem to support Professor Chadwick's view, but they do not appear in any judicial capacity and the large districts appendant to such boroughs in the still unshired Midlands stand in strong contrast to the majority of those included in the Burghal Hidage.

However this may be, it can be shown, I think, that the *gemot* of Athelstan's law, though a district court, was no innovation of Edward's reign, as Professor Chadwick supposes, but belonged to a much older scheme of jurisdictional areas. In Edgar's revision of his grandfather's law⁸ the *gemot* is

¹ II Athelst. 20, 1.

² Liebermann, *Ges.* i. 388. The law is anonymous but the editor agrees that Thorpe was probably justified in attributing it to Athelstan (*ibid.* iii. 228).

³ *D.B. and B.*, p. 185.

⁴ *A.S.I.*, pp. 219 ff.

⁷ Ed. Plummer, i. 100.

⁴ Liebermann, *Ges.* iii. 105.

⁶ See above, p. 18.

⁸ III Edg. 7; Liebermann, i. 204.

the hundred court, which he had recently organized or re-organized, the "riding" is now done by men chosen from the hundred instead of the seniors of the *burh*, and the hundred shares with the offender's landlord (*l.-hlaford*) the confiscated goods which at the earlier date had been divided between the king and the seniors themselves. Now there is strong reason for believing that the hundred court was a remodelling of the ancient folkmoot which seems to have been the only regular local court in the ninth century,¹ and can be safely identified with the court mentioned in the second law of Edward.² Both this court and the hundred court met every four weeks, the same class of cases came before them and the name folkmoot still clung to its successor. The natural conclusion is that the *gemot* of Athelstan's law, which also met frequently and did business which was later done by the hundred court, was, essentially at any rate, the old monthly folkmoot. If so, we learn from this law that the meeting-place of the folkmoot was a *burh*, and as the nature of its business limited the area of its jurisdiction, and there must have been far more folkmoots than boroughs, *burh* here must have its old wider sense of "king's fortified house," which might or might not have become by this date the nucleus of a village or of a fortified town. This was the interpretation of the facts before us which approved itself to Liebermann in 1912,³ and though four years later he chose, strangely enough,⁴ to translate *burh* by the colourless *Gerichtsstätte*, he still held fast to the identification of the *gemot* in question with the ancient folkmoot.

The supposed temporary re-division of the shires of the South, in the first half of the tenth century, into burghal districts, each with its court in one of the new boroughs, remains an unproven hypothesis, which has gained more colour of probability than it deserves from the actual existence of such districts in the unshired Danelaw. The borough "thing" in each of the Five Boroughs at the end of the century, breach of whose peace involved a penalty six times as high as that of the wapentake peace, was clearly no mere urban court.⁵

¹ Liebermann, *Ges.* ii. 451, § 13 *et seq.*

² *c.* 8; *ibid.* i. 144.

³ *Ibid.* ii. 450, § 4 *g.*

⁴ Since *burh* could only have got this general sense because the folk-moots met at such centres and he had no evidence that they had ceased to do so.

⁵ III Ethelr. 1, 2; Liebermann, *Ges.* i. 228. *Cf. ibid.* ii. 451, § 12 *e.*, where Liebermann does not seem to realize that the court was a district tribunal.

Professor Chadwick's theory and that which I have preferred to it above have alike to face the re-appearance of the ambiguous *burh* in a judicial context as late as the laws of Cnut, when the burghal district court, according to its advocate, had long ceased to exist and the old folkmoot, remodelled as a hundred, had its meeting-place quite exceptionally in any sort of *burh*. The passage in Cnut's laws¹ regulates the oath which an accused man must take with compurgators to clear himself from the charge. If of hitherto unblemished reputation, he was allowed to choose his own compurgators in minimum number (simple oath) within his own hundred. A man with a bad record had to clear himself by a simple oath with compurgators chosen for him from three hundreds or, if strongly accused, by a three-fold oath similarly chosen "as widely as belongs to the *burh*." Liebermann's ultimate explanation of *burh* here is that it is used in the general sense of "meeting-place of a court," and the court is the hundred already mentioned.² This is not only awkward in itself, but it breaks the widening range of choice for compurgators in merciful proportion to the badness of the offender's local reputation. If the concession were made in one case, why not in the other? The passage is obscure, but it seems possible that the reference is after all to a borough and that the explanation lies in some such centralization of the more elaborate part of judicial procedure as we find in certain quarters after the Conquest. Failure in making the oath involved resort to the ordeal, and this required a church, a priest, if not a bishop, apparatus for the hot iron and hot water tests and a deep pit (*fossa*) for that of cold water.³ The hundred centres were often uninhabited spots convenient as meeting-places, but not for such procedure as this. There is perhaps actual record of this centralization in Ethelred's ordinance that all vouching to warranty and every ordeal in the district of the Five Boroughs should take place in "the king's borough" (*byrig*),⁴ and in Cnut's general law that there should be the same system of purgation in all boroughs,⁵ though Liebermann preferred

¹ II Cnut, 22; Liebermann, *Ges.* i. 324.

² *Ibid.* iii. 205.

³ A thirteenth-century customal of the manor of Wye in Kent, the *caput* of the possessions of Battle Abbey in that county, records that seven hundreds had no *fosse* of their own and their men had to go to Wye for the ordeal (*Customals of Battle Abbey* (Camden Soc., 1887), p. 126). The abbey took two-thirds of the *perquisita* accruing, the remaining third going to the king.

⁴ III Ethelr. 6, 1; Liebermann, *Ges.* i. 230.

⁵ II Cnut, 34; *op. cit.* i. 336.

a different interpretation of these texts. There is no ambiguity, at any rate, in the testimony of Domesday Book, that all who dwelt in a wide district round Taunton had to go to that borough to take oaths or undergo the ordeal.¹ It may be objected that Taunton was a mediatized borough and that its episcopal lord, the bishop of Winchester, was responsible for the centralization, but it is recorded in close association with the regal privileges which had been conferred with this great estate.

So far, rejecting Liebermann's counsel of despair, we have caught fleeting glimpses of courts in "boroughs," new and old, but a borough court in the urban sense has not come in sight. Until a comparatively recent date, no one doubted that the *burhgemot* which Edgar ordered to be held three times a year was such a court.² Its three annual meetings were linked up with the three "great courts" of the London folk-moot and of a number of other town courts after the Conquest, and parallels were found in the three *echte dinge* of some early urban courts on the Continent.³ But this, too, is now claimed by Professor Chadwick and his followers, including Dr. Stephenson, as a district court with a borough as its centre, though they are not in accord as to its precise nature. Professor Chadwick, adopting Maitland's "garrison" theory, suggested that "it was a meeting of the landowners who possessed *hagan* in the borough and had to provide for its defence."⁴ Dr. Stephenson⁵ discards that unlucky hypothesis, but follows Professor Chadwick in inferring from the close association of the *burhgemot* with the *scirgemot* in Edgar's ordinance that the boroughmoot was simply the equivalent of the southern shiremoot in the (as they suppose) still unshired Midlands. This is an ingenious suggestion and may be thought to gain support from the closely connected clause that follows,⁶ which may be read as prescribing the presence in the one as in the other of the shire bishop (*ðære scire biscop*) and the ealdorman, to declare respectively ecclesiastical and secular law. On the internal evidence alone, however, several objections may be taken to so construing these clauses. The abrupt introduction of two sets of courts which differ only

¹ *D.B.* i. 87b, 1.

² *III Edg.* 5, 1; Liebermann, *Ges.* i. 202.

³ See e.g. Miss Bateson in *E.H.R.* xv. 503; xx. 146. "The whole question," she says, "is of great importance in tracing out the origin of the borough court."

⁴ *A.S.I.* p. 220.

⁵ *E.H.R.* xlv (1930), 200-1.

⁶ *III Edg.* 5, 2.

in name, locality and frequency of meeting, is unusually awkward even for the Anglo-Saxon Laws. The division of the clauses, again, is not original and read continuously, as they were intended to be, the second may quite well refer only to the last mentioned court, the shiremoot. Indeed, the description of the bishop as "the shire bishop" would not be applicable to a region which still remained unshired. Lastly, if *burhgemot* and *scirgemot* were the same court under different names, why should the one have met oftener than the other? The external evidence against the suggestion under consideration is still stronger, for Cnut re-enacted Edgar's ordinance¹ long after the Midlands had been divided into shires,² and this cannot be explained away as the inclusion of an obsolete law in a general code, since Cnut himself introduced an amendment which allowed the two courts to be held oftener if necessary. That the *burhgemot* in Cnut's time was no equivalent of a shire court appears clearly in the clause³ which provides for appeal for defect of justice in the hundred court to the shiremoot, but not to the boroughmoot.

The theory that Edgar's *burhgemot* was a Midland district-court may therefore be put aside, but the new court (if new it was) still presents a difficult problem. Cnut's amendment itself adds a fresh complication, for if the court was urban and the three meetings "great courts," *echte dinge*, which imply intermediate petty or ordinary meetings, why was special authorization needed for these? Unfortunately, too, there is no further record of a *burhgemot* in the Laws or other Anglo-Saxon sources, and indeed the name is not found again until the twelfth century. Continuity cannot be assumed without strong corroborative evidence, and this is, to say the least, not abundant. The complete absence of the unambiguous *portmanimot* in Anglo-Saxon records and literature deprives us of what would have been an invaluable link. Add to all this the undoubted fact that the courts of many of our medieval boroughs, including several of the more important, developed

¹ *II Cnut*, 18 (1028-34); Liebermann, *Ges.* i. 320.

² With one exception indeed the Midland shires are not mentioned in the Chronicle before 1011, but they owed that mention to renewed Danish attacks and there is nothing to show that they were of quite recent origin. Cheshire appears as early as 980. The region of the Five Boroughs was still unshired about 997 (Liebermann, *Ges.* iii. 156), but Lincolnshire and Nottinghamshire appear in the Chronicle under 1016. In any case these Danish boroughs were not taken into account in Edgar's ordinance which was enacted for his English subjects only (*op. cit.* iii. 134, § 11, 139, § 11).

³ *II Cnut*, 19; *op. cit.* i. 321-2.

from hundred courts and not from any originally purely urban tribunal and the difficulties which beset the attempt to establish the urban character of the tenth century *burhgemot* and to connect it up with the post-conquest borough courts may be properly appreciated.

It is easier to find evidence of the existence of borough law and of borough courts in the first half of the eleventh century than to identify these courts with Edgar's *burhgemot*. The contemporary author of a tract on the duties of bishops,¹ writing apparently at Worcester, may have exaggerated their powers partly from ecclesiastical bias and partly from local usage, for the bishop of Worcester, as we have seen,² had lordship in his see town, but he cannot have invented the distinction (c. 6) between borough law (*burhriht*) and rural or, shall we say, common law (*landriht*),³ both of which, he says, should be administered by the bishop's advice (*raede*) and witness, not necessarily, we may presume, in the same court. There is no need to suppose that the further duty ascribed to the bishop of seeing that every borough measure (*burhgemet*) and every weight was correctly made could be exercised independently of a court, for it so happens that the first mention of an Anglo-Saxon court which was beyond dispute purely urban introduces it not in its judicial capacity but as the authority for a borough weight.

Towards the close of the tenth century, between 968 and 985, Ramsey Abbey received a gift of two silver cups of twelve marks *ad pondus hustingiae Londoniensis*.⁴ A court of some standing is implied, but its name, which shows strong Scandinavian influence, forbids the assumption of any long previous existence. Can it be identified with the *burhgemot* of Edgar's law, which was enacted between 959 and c. 962, according to Liebermann? Unluckily our next information about the husting is of post-Conquest date, but if we can venture, with

¹ *Episcopus*; Liebermann, *Ges.* i. 477, iii. 270-1. The editor dates it c. 1000-1050.

² Above, p. 20.

³ This distinction was apparently long preserved at Cambridge in the name of Landgrytheslane (now Pembroke Street) which ran just outside the town ditch. Maitland inferred that it marked the boundary between the ordinary land-peace and the stricter *burhgrið* within the ditch (*Township and Borough*, p. 101; cf. p. 74). That the king's *grith* or special peace was enforced in boroughs as in his court or on highways by the heavy fine of £5 we know from IV Ethelred, 4, 1 (Liebermann *Ges.* i. 234), though *burhbrece* is probably a misreading for *borhbrece* (*ibid.* iii. 165).

⁴ *Chron. Abb. Rameseiensis* (Rolls Series), p. 58. For a later reference—in 1032—to the *hustinges gewiht* see Napier and Stevenson, *Crawford Charters*, p. 78.

all reserves, to argue back from that to the tenth century, such identification is difficult. The later husting was a weekly court without trace of three or any smaller number of "great courts." Three special courts yearly were, however, a feature of the larger open-air folkmoot of post-Conquest London and, so far as that goes, there is a stronger case for seeing in it an instance of Edgar's *burhgemot*. But if it were, it might have been re-organized by him, but could hardly have been a new creation, since the evidence of its pre-existence implied in the very title of the husting, and confirmed by the primitive constitution of the folkmoot, indicates a court that went back beyond the reign of Edgar. It has been suggested above¹ that the folkmoot may have been a curtailed relic of the district court with its centre in London which seems to be implied in the so-called *Judicia civitatis Lundonie* of Athelstan's time,² but this is to venture still further into the wide and dangerous field of conjecture.

More difficult to interpret than the London evidence is that contained in the invaluable record of the land suits and purchases of Ely Abbey under Ethelred II preserved in the twelfth century, *Liber Eliensis*. The abbey had been deprived of an estate at "Staneie," apparently in the isle of Ely, by relatives of the donor, "without judgment and without the law of citizens and hundredmen" (*civium et hundretanorum*). Alderman Æthelwine frequently summoned the offenders to sessions (*placita*) of the said citizens and hundredmen, but they always refused to appear. Nevertheless the abbot continued to bring up his case at "pleas" both within the borough (*urbem*) and without, and to complain to the people (*populo*) of the injury to his house. At last Æthelwine held a *grande placitum* at Cambridge of the citizens and hundredmen before twenty-four judges who gave judgment in favour of the abbot.³ These "pleas" were clearly not sessions of a borough court in the later sense, they look more like meetings of a county court,⁴ though the clumsy title does not favour this supposition, but the prominence given to the *cives* deserves attention.

¹ P. 14.

² VI Athelst.; Liebermann, *Ges.* i. 173. It is not necessary, however, with Liebermann, following *Quadripartitus*, to translate the *byrig* in the Lundenbyrig of the Prologue by "judicial-political centre" (*ibid.* iii. 116). For Lundenburh as a regular name for the city in this age, see above, p. 23.

³ *Liber Eliensis*, i. (Anglia Christiana Soc.), p. 137.

⁴ Or district court with the borough of Cambridge as centre. But the references elsewhere to the *comitatus* of Cambridge and to the *comitatus* and *vicecomitatus* of Huntingdon (p. 139) may not be wholly anachronisms.

We hear also of the purchase money of estates being paid at Cambridge before the whole city (*coram tota civitate, coram coetu civium*), and on one of these occasions when the abbot asked for sureties (*vades*) from the seller, all cried out that Cambridge and Ipswich and Norwich and Thetford enjoyed such freedom (*libertas*) and dignity that anyone buying land there needed no sureties.¹ Was this *coetus civium* a mere casual assemblage or a regular meeting of their body, largely perhaps for administrative purposes, but conceivably also for the administration of justice among themselves? If Cambridge was a hundred in itself, as it was sixty years later, we may have here an urbanized hundred court.²

If the burgesses of Cambridge witnessed sales of land which lay remote from their walls, the *witan* of the four Devon boroughs, Exeter, Totnes, Lydford, and Barnstaple were officially informed (1018) by Bishop Eadnoth, of a life-grant of a piece of land near Crediton which he had made in return for a loan.³ The likeness between these *burhwitan* and the *optimates* who bore rule in the twelfth century borough court is unmistakable. *Witan* was certainly used sometimes in the sense of "judges."⁴ Liebermann was inclined to think that the duty imposed on *buruhwaru* in the truce with Olaf, thirty years earlier, implies a local court in each borough.⁵

What answer does our survey of the pre-Domesday evidence enable us to give to the question with which we started, whether the distinctive features which marked off the typical borough from the ordinary vill already included, as after the Norman Conquest, a separate court of justice? If we put aside the *burhgemot* of Edgar's law on the ground that its nature is still in dispute, the only direct mention of such a court is that of the London husting,⁶ but the distinction between borough law and country law attested by the tract *Episcopus*⁷ and supported by a post-Conquest survival suggests a distinction of courts, and some more indirect evidence seems to point in the same direction. To this last there ought perhaps to be added Edgar's ordinance for the creation of panels of witnesses (of sales) in all boroughs as well as in

¹ *Liber Eliensis*, i., p. 140.

² Doubts have occasionally been suggested as to the trustworthiness of the *Liber Eliensis* for this period, but there can be no real question that it is based on genuine contemporary materials.

³ Napier and Stevenson, *Crawford Charters*, pp. 9, 77.

⁴ Liebermann, *Ges.* ii. 245, s.v. *Wita*, 5; 565, 6a.

⁵ II Ethelr. 6; *op. cit.* i. 222-4, ii. 451, § 12 f.

⁶ See above, p. 40.

⁷ Above, p. 40.

every hundred.¹ It seems likely that in the one case as in the other the panel would be an emanation of a local court. A distinctive *burhriht*, again, must in the nature of things have dealt largely with cases arising between traders, often of a technical kind which could only be fairly tried by an urban body.

2. THE DOMESDAY EVIDENCE

The evidence derivable from Domesday Book is still scanty, which is not surprising in a financial record, and in part not altogether clear. Most of it comes from the North and the North Midlands. The *lagemen*, "lawmen," of Lincoln, Stamford, and York, who were or had been twelve in number in the first two towns and in all probability the same at York, where their name is Latinized *judices*, had by 1086 lost or were losing their collegiate function of judgment-finders, if that was their function,² at any rate in the Lincolnshire boroughs, for *lagemen* are there defined as "holders of sake and soke." They were thus comparable, as Professor Stenton has pointed out,³ with the owners of "sokes" within the city of London. The office was normally hereditary and there were still twelve lawmen at Stamford, as late as 1275.⁴ For a longer or shorter time the lawmen, being leading citizens, may still have played an important part in their respective borough courts, but as individuals not as an official body.

Of the lawmen of Cambridge we only learn that their heriot was that of the thegn class,⁵ but the fact is important because it raises a doubt whether Liebermann was right in concluding from the Domesday details as to the soke of the Stamford lawmen that their wergeld was only that of the ordinary freeman.⁶

¹ IV Edg. 3, 1-6. The larger boroughs were to appoint thirty-six, small boroughs and hundreds normally twelve. If a court is rightly inferred, this may seem to imply a minor borough court not sensibly different from that of the hundred, but it equally suggests a wider difference in the court of the major borough.

² Vinogradoff suggested that they may have been official exponents of the law, as the lawmen of Scandinavia were (*Engl. Society in the Eleventh Century*, pp. 5-6) and is followed by Mr. Lapsley (*E.H.R.* xlvii. 557). But cf. Liebermann, *Ges.* ii. 565.

³ *Lincolnshire Domesday* (Lincs. Rec. Soc. 19), p. xxix.

⁴ *Rot. Hund.* i. 354. Alexander Bugge mistakenly concluded that the lawmen became the governing bodies of their towns (*Vierteljahrschrift für Social- und Wirtschaftsgeschichte*, iv. 2 (1906), 257).

⁵ *D.B.* i. 189.

⁶ *Ibid.* i. 336b, 2; Liebermann, *loc. cit.* and ii. 732, § 6a. See below, p. 80.

The twelve *judices* of the city of Chester may very well, like those of York, have been known in the vernacular as lawmen, for Chester and Cheshire, though in English Mercia, came very strongly under Scandinavian influence and the number of these judges is therefore possibly significant. Domesday Book gives less space to them than to the lawmen of Lincoln and Stamford, but that little is fortunately more to our purpose. In the time of King Edward they were drawn from the men of the king, the bishop and the earl, and if any of them absented himself from the Hundred court (*hundret*) on the day of its session, without sufficient excuse, he paid as penalty 10s. to the king and the earl.¹ From this it would seem clear that, even if these Chester judges bore the same name, they had not the same status as the lawmen of the Danelaw boroughs. The mention that the city court was called the Hundred will be seen to be of vital importance when we come to discuss the nature and origin of the Anglo-Saxon borough court.

The brief glimpse of the Chester court in 1066, given by Domesday Book, owes its special value to the great rarity of such information for the pre-Conquest period, but otherwise the chief interest of the Domesday description of the city lies in its exceptionally long list of offences and their penalties. The question arises whether all these pleas, including the highest, the profits of which the king seldom granted to a subject, such as breach of his peace, came before the Hundred and its twelve doomsmen.² The palatine earls of Chester are afterwards found holding a special court of crown pleas for Chester presided over by their justiciar, minor offences coming before a court called the pentice, where the city sheriffs presided, while the portmote held by the bailiffs dealt with civil business only.³ It is obvious, however, that, in the form

¹ *D.B.* i. 262b, 2.

² The list of "the laws which were there" draws no line between the reserved pleas and other offences. At Shrewsbury they are separated by intervening matter, though the pleas are said to be the king's "there" (*ibi*), at Hereford the pleas are mentioned as in the royal demesne and so outside the customs farmed by the city reeve and shared between the king and the earl, while the description of Worcester mentions them as being the king's in the whole county. This might seem to suggest that there and elsewhere they came before the shire court, held in the borough, but before the Conquest there were no grades of jurisdiction in local courts. The hundred court could apply the severest method of proof, the ordeal, and inflict the extreme penalty of death (Liebermann, *Ges.* ii. 454, § 25b).

³ See the *Calendar of Rolls of Chester County Court, etc., 1259-97* (Cheth. Soc. N.S. 84), Introduction.

it comes before us at any rate, this distinction of courts was of post-Conquest creation. On the whole, it seems likely that the Anglo-Saxon borough court, if Chester was at all typical in this respect, could entertain cases which from the twelfth century at least would be tried by royal justices or those of great immunists like the earl of Chester. If this were so, the withdrawal of "high justice" from the borough court must have given it a more domestic character and so proportionably have facilitated its use as an organ of the municipal aspirations of the burgesses.

With one doubtful exception, to which we shall come presently, the Chester court is the only borough court which is directly mentioned in Domesday Book. It is there called the Hundred. How far was this a general name for this class of courts and if it was, what inferences are to be drawn as to their origin?

The Chester Hundred was the court of a hundred (or more accurately half-hundred) district which besides the city comprised four adjacent vills contributing about one-fourteenth to the danegeld due from the hundred. Thirteen other boroughs are definitely described in the great survey as forming hundreds or half-hundreds in themselves, with or without a rural belt outside.¹ To these we ought perhaps to add Malmesbury.² Bath, which while held by Queen Edith (*d.* 1075) had paid geld with the rural hundred of its name,³ was in the thirteenth century accounted a hundred and its court was called the hundred, as at Chester, the rural hundred being distinguished as the forinsec or out hundred.

Later evidence further suggests that other boroughs than Malmesbury which are not described as hundreds in Domesday Book were actually reckoned as such in the eleventh century. The Worcester city court was known as the hundred so late as 1241⁴ and Gloucester was reported by the sheriff in 1316 to

¹ Shrewsbury, Winchcombe, Bedford, Cambridge, Norwich, Thetford, Ipswich, Colchester, Maldon, Canterbury, Rochester, Fordwich, and Sandwich. Pevensey hundred in the Anglo-Saxon period was probably an ordinary agricultural hundred with its *caput* in the borough and its union with the borough as the "lowey" of Pevensey a Norman innovation. For its constitution in 1256, see *Sussex Arch. Coll.* iv. 210.

² See below, p. 53.

³ *D.B.* iv. 106. When it reverted to the crown after the queen's death, it was evidently claimed as an ingeldable royal manor of the south-western type (see below, p. 51), the collectors of the geld of 1084 reporting that it had not paid on the twenty hides at which it had been assessed (*D.B.* iv. 68).

⁴ *V.C.H. Worc.* iv. 382.

form a hundred in itself.¹ Both of these boroughs belong to that important type which is given separate treatment at the head of each county in Great Domesday, and has therefore been presumed fairly enough to have possessed a court independent of any rural hundred and co-ordinate with its court, but, as hundred rubrics are not attached to them, as they are in Little Domesday, the probability that the borough court was still very generally a hundred court itself has not always been duly appreciated.

It may very well be that the great condensation of the original returns imposed upon the clerks who compiled Great Domesday, caused them to omit hundred rubrics in these cases as unnecessary, while those who put together Little Domesday, having a much freer hand, inserted them together with much other detail which was suppressed in Great Domesday. It is true that the latter often gives the assessment of the borough to danegeld, and where this is exactly a hundred hides, as at Cambridge and Shrewsbury, there can be no doubt that it had a complete hundred organization. But the assessment of many boroughs, especially in the south-west,² was so low that it tells us nothing. Even Worcester was rated at no more than fifteen hides and that in a non-adjacent rural hundred. The obvious unlikelihood that the citizens of Worcester did suit to the distant court of Fishborough hundred may help to resolve the more difficult problem presented by Northampton and Huntingdon. According to the Northamptonshire Geld-Roll (1066-75), the county town was rated as twenty-five hides *byrigland* in the hundred of Spelho,³ perhaps a fourth of its original assessment. Domesday Book itself records that until King William's time Huntingdon paid geld on fifty hides as a fourth part of Hurstingstone

¹ *Feudal Aids*, ii. 263-4. Hereford, however, was returned as in Grims-worth hundred (*ibid.*, p. 385). It lay close to the southern border of the hundred. Hertford occupied a similar border position in the hundred to which it gave its name. In 1066 it paid geld as ten hides. It does not necessarily follow that either town was subject to the hundred court. A court of the vill of Hertford is mentioned in 1359 (*V.C.H. Herts.* iii. 459-6). On the other hand, the hundred court of Bristol, which is evidenced as early as 1188 may very well be of post-Conquest origin. In *Domesday Book* the borough is surveyed with the adjacent royal manor of Barton in Edredestane hundred (*D.B.* i. 163a, 2).

² Where, indeed, it was not an assessment to the danegeld. See below, p. 51.

³ Ellis, *Introduction to Domesday Book*, i. 186; Round, *Feudal England*, p. 153. The hundred adjoined the town.

hundred, a double hundred.¹ Each borough stands centrally in its county, after the Midland fashion, and, as at Leicester, three rural hundreds converge upon it. We may be practically as certain in the one case as in the other that these hundreds stopped short at the borough boundary and that the borough itself, as a separate administrative and judicial area, was an integral part of the division of the county into hundreds. As in the case of Worcester, their danegeld payments were allocated to a neighbouring rural hundred to make up its full hundred or two hundred hides. This was merely a matter of convenience and it does not imply any judicial dependence upon rural hundred courts, the meeting-places of which were some miles away. Low assessments, such as Worcester enjoyed, were evidently due to reduction by royal favour, beneficial hidation as it has been called, but there were many boroughs, even county boroughs, whose resources could not bear the taxation of even half a rural hundred, and their assessments sometimes came in useful to make a round number of hides in one of these.

Ballard suggested in 1914² that the convergence of rural hundreds upon the bounds of old Roman towns like Leicester is a very early feature, going back to their resettlement by the English, whose first bishoprics and mints were fixed in them, and indicating that they were treated as urban hundreds with independent courts. The new boroughs fortified long afterwards during the struggle with the Danes were given the same type of organization. This theory, it will be seen, assumes the early origin of the hundred and its court, a theory which was never applicable to the regions north of the Thames and is now pretty generally abandoned in the case of those south of the river. Nothing is known of the area over which the folkmoot, the predecessor of the southern hundred court, exercised jurisdiction, but there is a possibility, not altogether unsupported by evidence, that its centre was a royal *burh*³ and the court of an old Roman town may have been a district court, such as there is some reason to conjecture was the case at London,⁴ and not the purely urban tribunal of Ballard's theory. However this may be, the convergence of rural

¹ *D.B.* i. 203a, 2. William I had substituted for it a "geldum monete." The Northampton assessment was also obsolete. The "boroughland" is recorded with waste land, etc., as not having paid danegeld (Round, *op. cit.*, p. 156), but we are not told what had taken its place.

² *The English Borough in the Twelfth Century*, p. 37.

³ See above, p. 36.

⁴ Above, p. 41.

hundreds upon them was not, as he himself admits, a universal feature of boroughs which had been Roman towns, nor was it confined to them.¹ It was inevitable in the Midlands where towards the end of the tenth century many shires were drawn each round a borough as centre and divided into hundreds or wapentakes. A majority of these centres had never been Roman. Where the shires were ancient and often contained several boroughs, such neat planning was impossible, but a fairly central position, if only for a wide section of the shire area, would produce the same effect, as it did at Canterbury and at Winchester. On the other hand, Colchester, formerly so important a Roman *colonia*, occupied such a cramped position in the north-eastern corner of Essex that it was almost completely surrounded by the rural hundred of Lexden, even after it had become a full hundred by the annexation from Lexden, probably not long before the Conquest, of four adjacent vills, including the hundred *caput* itself.²

The distinction between a borough which was a full hundred, as Colchester was, and one which, like Ipswich, ranked only as a half-hundred, was financial not administrative or judicial. Outside the borough proper Ipswich had a rural "liberty" not much more than a fourth less than that which surrounded Colchester.³ The "half-hundred of Ipswich," which in 1086 gave evidence as to the land belonging in 1066 to St. Peter's church in the borough,⁴ was clearly parallel with the hundred court elsewhere and just as clearly the court of the borough. Its clumsy title soon went out of use, but the Colchester court continued to be known as the Hundred right through the Middle Ages.⁵

Maldon, like Ipswich, was reckoned as a half-hundred.

¹ Three hundreds, for example, met at Northampton which had no Roman past.

² It is a curious coincidence, if no more, that the liberty of Ipswich, which with the borough constituted a half-hundred, was later also reckoned to contain four vills or hamlets, four men and the reeve from each of which were associated with a jury of twelve from the borough in coroners' inquests (*Hist. MSS. Comm.* 9 Rep., pt. I, app., p. 226; cf. pp. 233, 236). The vills which with Chester composed the hundred of the city (*D.B.* i. 262b) may similarly have been reckoned as four in number. In Shrewsbury hundred there were three rural vills, one of which (Meole) was divided into two manors.

³ Area in 1836 (including the borough) 8450 acres (*Rep. of Municipal Boundaries Commission*, 1837), while that of Colchester was 11,700.

⁴ *D.B.* ii. 393.

⁵ *Colchester Court Rolls*, ed. W. Gurney Benham, vol. i. (1310-52), *passim*.

It is a most interesting case, for here we get a glimpse of the process of forming a borough. The borough in this instance was clearly cut out of the hundred of Witbrihtesherna (later Dengie), by which it is entirely surrounded except on the side of the Blackwater estuary, since Little Maldon, though it remained in the parish of St. Mary in the borough, was left in its old hundred.¹ Maldon is described among the manors on the *terra regis* and so does not comply with the canon that boroughs of any importance are separately described in Domesday Book.² The explanation probably is that the burgesses were all on the royal demesne and, so far as we know, the earl did not share the revenue of the borough with the king. Yet Maldon had nearly two hundred houses, as a half-hundred it had its own court, it provided a horse for land warfare and a ship for sea service, there was a mint, it received charters from Henry II and Edward I, and was incorporated by Philip and Mary in 1554. It seems possible that heterogeneous tenure and the earl's third penny were not essential to the status of a borough.

The hundred-borough was also general in Kent. Canterbury, Rochester, Fordwich, and Sandwich appear as hundreds in Domesday Book, the two cities each having a good deal of agricultural land outside their walls. There was a hundred of Hythe later, and each of the Cinque Ports, including Hastings³ in Sussex, had its hundred (court). That of Dover is mentioned as early as c. 1202-04.⁴

¹ *D.B.* ii. 29, 73, 75. Cf. 5b, 48.

² Ballard (*op. cit.*, p. 36) tried to draw a real distinction among these between the boroughs which are placed under a hundredal rubric in Domesday Book as the East-Anglian towns are, and those which have no such rubric. The former, with or without other vills, were hundreds in themselves, the latter were outside the ordinary hundred organization but had a court, co-ordinate with that of the hundred, which originated in Edgar's legislation (above, p. 38). This will not do, for neither Chester nor Shrewsbury has a hundred rubric, yet they are incidentally shown to be hundreds by Domesday itself. A practical distinction may perhaps be detected between the borough which, like Gloucester, does not appear as a hundred until later and then without other vills and the hundredal borough of Domesday with associate vills. Instances of the former type are found, however, in 1086. Maldon is one. So, too, apparently are the smaller borough-hundreds of Kent, Fordwich, and Sandwich.

³ The "Cinque Port Liberty" of Hastings has every appearance of having been cut out of the hundred of Baldslow, and Baldslow itself is just within the northern boundary of the liberty, as Lexden is within the hundred of Colchester (above, p. 48). See *Place-Names of Sussex*, ed. Mawer and Stenton, vii. 534 and map.

⁴ S. P. H. Statham, *Dover Charters* (1902), p. 456. For the "little borough" of Seasalter, see below, p. 67.

The south of England, outside Kent, where large boroughs were rare, but small boroughs were many, shows the borough community in quite a different relation to the division into hundreds. The borough which is an area entirely distinct from the rural hundreds around it occurs,¹ but is never actually called a hundred in Domesday Book.² More often, the southern borough is physically imbedded within some rural hundred to which it not infrequently gives a name and a place of meeting.³ Even Exeter lay within the great hundred of Wonford, the meeting-place of which at Heavitree was only a mile from the city. This broad contrast between the Midland and the southern borough is not surprising in view of the later date of the hundred divisions north of the Thames and the comparative fewness of boroughs there. What is unexpected is the conformity of the Kentish borough to the Midland type.

In central and, to a less extent, eastern and south-eastern England the boroughs could be treated as distinct hundredal areas when the hundreds were first plotted out. In the south and south-west, where the hundred first appears *ipso nomine* in the second quarter of the tenth century, that would have been usually impracticable. With few exceptions, the boroughs were too small and too awkwardly situated. It seems possible, even likely, however, that the problem had not normally to be faced and that the boroughs were founded within local administrative and judicial areas, with their centres in royal *burhs* or *tuns*, which were often substantially the same as the later hundreds. The hundred court was apparently here, we have seen,⁴ a re-organization of an earlier local court, the folkmoot of the ninth century. A complete system of local judicial areas would appear to be implied in the existence of this early court, and these may not have been very greatly altered in the re-organization of the next century. This was substantially Liebermann's view,⁵ it affords a reasonable explanation of the *burh* courts of Athelstan's reign without resorting to Professor Chadwick's theory of special creation, and recent research tends to confirm it.⁶ Professor Chadwick

¹ Three rural hundreds, for example, adjoined Chichester.

² For a suggestion that Malmesbury may have had a hundred organization, see below, pp. 51, 53. Ilchester was perhaps another instance.

³ E.g. Bath, Bruton, Frome, Cricklade, Dorchester, Pevensey.

⁴ Above, p. 36.

⁵ *Ges.* ii. 450, § 48; 452, §§ 13d-k; 518, § 10.

⁶ J. E. A. Jolliffe, "The Hidation of Kent," *E.H.R.* xlv (1929), 612 ff.; "The Domesday Hidation of Sussex and the Rapes," *ibid.* xlv. (1930), 427 ff.; H. Cam, "Manerium cum Hundredo," *ibid.* xlvii (1932), 353 ff.

himself was the first to call attention to this continuity,¹ but unfortunately gave an entirely different interpretation to what seems to be the most cogent piece of evidence for it.

In the south-west, the classical land of the West Saxon small borough, we get our clearest glimpse of its relation to the hundred in 1066. The borough here is actually or originally on the demesne that pertained from of old to the crown and, like all estates of that demesne, it was free from danegeld. It usually stood within a hundred and was quite commonly its *caput*, but for this particular tax it was an exempt area. An exemption shared with every rural manor of the crown did not of course constitute a burghal distinction or imply a separate borough court. A real burghal distinction, on the other hand, was possessed in 1066 by the Devon and Dorset boroughs and one in Wiltshire,² which owed certain military or naval services, some of which were commuted, and this may have been one reason why, with the exception of the three smaller Devon boroughs, they were surveyed separately at the head of their counties, though the exception is a warning not to press the suggestion too strongly. These not very onerous services, perhaps of recent origin, did not, however, relieve the boroughs of Dorset at any rate, except Shaftesbury,³ from the ancient and much heavier burden of the *firma unius noctis* which accounts for the general exemption from danegeld of the ancient demesne of the crown and the boroughs which arose upon it. The evidence of Domesday is not complete, but it shows that all the boroughs of Somerset save Bath and three out of four in Dorset were included in one or other of the groups of ancient demesne estates among which this now commuted food-rent was apportioned, while four out of the six great Wiltshire manors which are recorded as rendering each a full *firma noctis* had already burgesses at their centres. Involved in hundreds and often in *firma noctis* groups, limited to local trade, the lesser boroughs of the south-west had for the most part little future, even where they did not sink into mere market towns or villages as at Bruton and Frome. More prosperous places such as Ilchester and Milborne Port in Somerset and Calne and Cricklade in Wiltshire, though they afterwards ranked as boroughs by prescription and were represented in Parliament, never attained the status of towns of separate jurisdiction. It is not surprising that their

¹ *A.S.I.* pp. 233 ff., 249 ff.

² Malmesbury.

³ Two-thirds of which had been alienated to the abbey (*D.B.* i. 75a, 1).

possession of separate courts in an earlier age has been seriously questioned.

In the absence of any direct information upon this point, a solution of the problem may be sought by an examination of a feature of local jurisdiction, almost confined to the south and particularly to the region with which we are now concerned, that distinction between the *in* hundred and the *out* or *forinsec* hundred which Miss Cam has recently investigated with such thoroughness.¹ The recognition of the manor which was the administrative centre of a hundred and gave its name to it, as a separate inner hundred was far from being confined to manors which were early boroughs, or which developed burghal features later. Yet the fact that a number of boroughs, Andover,² Basingstoke,³ Bath,⁴ Leominster,⁵ Reading,⁶ and Wells⁷ were associated or contrasted with *forinsec* hundreds of their name, and that at Bath the distinction is possibly as old as Domesday, suggests that this reveals at least one way in which separate borough courts came into being. These in-hundred courts developed urban features while those in manors which remained mere market towns, or not even that, became purely manorial.

As Bath alone among the six boroughs mentioned above is a known Anglo-Saxon borough and the Domesday date of its in-hundred is not certain, while the evidence for the others is not earlier than the twelfth century, we are not in a position to state definitely that this particular source of borough courts goes back beyond the Norman Conquest. The distinction of in- and out-hundred is certainly not found in every case of a pre-Conquest borough in this quarter which (or a wider manor of its name) was the *caput* of a hundred. The Dorset Dorchester, for instance, at the time of the Domesday survey was locally in, and gave its name, to a hundred of more than seventy hides. Like other royal domains and their boroughs, however, in this and the neighbouring counties, it was financially independent of the hundred, contributing nothing to its geld,⁸ and by the thirteenth century

¹ In the article quoted above, p. 50, n. 6.

² *B.B.C.* i. 229.

³ *Ibid.* ii. 307.

⁴ Eyton, *Somerset Domesday*, i. 105.

⁵ Cotton MS. Domit. A. iii. f. 116 (duo hundreda de Leom').

⁶ *E.H.R.* xlvii. (1932), 360. Cf. B.M. Harl. MS. 1708, f. xix b.

⁷ *E.H.R.* xlvii. (1932), 362.

⁸ In the Geld Roll for Dorset (1084) the distinction is in one case expressed by a statement that Whitchurch hundred contained 84½ hides *præter firmam regis* (Eyton, *Key to Domesday*; *Dorset Survey*, p. 141 n.).

the hundred, with some additions, appears as a distinct hundred of St. George,¹ taking its name apparently from the saint to whom the parish church of Fordington, another ingeldable royal manor, running up to the walls of Dorchester, was dedicated. It is, however, possible that before this re-organization the geldable hundred was known as the *forinsec* hundred of Dorchester, though there is no trace of this in the Pipe Rolls or, so far as we know, in other records. In the case of the Wiltshire borough of Malmesbury, on the other hand, the question does not arise, for Domesday tells us that in its pre-Conquest farm there was included the king's share of the pleas of the two (adjacent) hundreds of Cicementone and Sutelesberg.² As it is very unlikely that the borough owed suit to two hundreds, the presumption is that it had always been reckoned as a hundred, and this seems confirmed by an early thirteenth-century record that the abbot of Malmesbury had by the king's grant three hundreds, Malmesbury, Sterkeley, and Cheggeslawe,³ the two latter being those mentioned in Domesday under more archaic names.

If this reasoning be sound, we may with some probability trace urban jurisdiction in the two boroughs to inclusion in the original division into hundreds or some later revision of it in the case of Malmesbury and to the fission of a primitive hundred, before the Conquest, in the case of Dorchester.

Of the eight towns⁴ in Somerset, the status of which as boroughs in 1066 is proved by the payment of the "third penny" of the total revenue from each of them to the local earl, though in two instances no burgesses are mentioned, five gave their names to hundreds, but it is only at Bath, the chief town of the county, that we have clear evidence then or later of fission and the establishment of an in-hundred of the borough.⁵ Bath and Milverton were in the hands of Queen Edith, the rest were included with royal manors in one or other of the *firma unius noctis* groups. Of the three which were not *capita* of hundreds, Axbridge and Langport were grouped with the neighbouring *capita* of the hundreds in

¹ *Book of Fees*, i. 88 (Inquest of 1212).

² *D.B.* i. 64b, 1.

³ *Book of Fees*, i. 379. A modern statement (quoted by W. H. Jones, *Domesday for Wiltshire* (1865), p. 223) that the boundary of the two latter hundreds ran through the centre of the borough, is apparently merely a false inference from the passage in Domesday, for Cheggeslawe (Chedglow) is called Cicementone, a name which is not found after 1086.

⁴ Bath, Ilchester, Milborne, Axbridge, Langport, Bruton, Frome and Milverton.

⁵ Above, p. 45.

which they lay, but Ilchester, the second town of the shire in population and wealth, was associated with Milborne (Port), a royal manor and borough ten miles away. Here, at any rate, there can have been no jurisdictional tie, and the burgesses must either have attended the court of one of the adjoining hundreds, perhaps that of Stone which their successors are found farming from Henry II,¹ or they had a hundred court of their own. One fact seems *prima facie* to favour the first alternative. The items of the borough revenue which was shared between king and earl are given in Domesday Book, and they do not include the perquisites of a court. This is not, however, conclusive, for the perquisites of a borough hundred court may have been comprised with those of the rural hundred courts in the profits of the pleas of the shire which king and earl shared in the same proportion as they did the render of the borough.

But whether or not Ilchester, with its 108 burgesses and found worthy of the liberties of Winchester by Henry II, had already a separate court, there seems less likelihood that the minor Somerset boroughs, only one of which had more than forty burgesses and two had none,² enjoyed that privilege, especially those in which a hundred court for a wide area regularly met.³ So far, then, as this type of village borough, the future market town, is concerned, Ballard might perhaps have had a good defence for the heterodox view which he developed in his *Domesday Boroughs* but afterwards retracted in deference to the stern reprehension of Miss Bateson.⁴ The mistake he made was in extending his theory of the subjection of burgesses to the jurisdiction of rural hundred courts to boroughs in general and in combining it with an unquestioning acceptance of that interpretation of Edgar's *burhgemot*, which sees in it a purely burghal court established in most, if not all, boroughs.⁵

¹ *Book of Fees*, i. 79.

² Frome and Milverton are not credited with burgesses either in 1066 or 1086. There was a market in both. Milverton, but not Frome, was afterwards accounted a "Borough town" and had a portreeve down to 1835.

³ The hundred which with the market at Bruton was granted to the priory before 1205 (*Mon. Angl.* vi. 336; cf. *Book of Fees*, i. 80) was clearly not a burghal hundred and the pleas (*placita*) which the men of Milborne (Port) were farming in 1212 with the market for £5 (*ibid.* p. 79) were doubtless those of the whole hundred of Milborne.

⁴ See above, p. 32.

⁵ One of his main arguments for the burghal suit to external hundreds was the insufficiency of the three meetings a year of the *burhgemot* (above, p. 38) for the needs of a trading community.

As the smallest boroughs of the south-west almost certainly did not possess separate courts, hundredal or other, while the place given to a small minority of its boroughs at the head of the survey of their counties suggests that they at least had such courts, the questions arise where was the line drawn and by what tests. The number of the burgess population would no doubt be a chief factor in the decision, and with one exception the six boroughs which occupy this exceptional position¹ had more burgesses on the royal demesne in 1066 than those which were allotted a humbler place, save Bath and Ilchester. These had almost exactly the same number of burgesses as Bridport, which is described "above the line," and the only reason apparently why they were not thus isolated was that the Domesday commissioners in Somerset adopted a different arrangement, surveying all the king's boroughs under their respective *firma noctis* groups and Queen Edith's under her separately described estate. We have seen that independently of this population test, there is some probability that they already had separate courts. Where the test seems to break down is at Malmesbury, but Domesday only gives the 1086 figure (51) and the borough may have been more populous before the Conquest. It is some slight confirmation of this line of argument that the six boroughs, with Bath, are the only mint towns, save episcopal Taunton, recorded in Domesday Book for this region. All six, with Bath and, for a time, Ilchester, are afterwards found in possession of courts of their own, while of the other seventeen royal boroughs in the four counties which are mentioned in Domesday, only seven appear later as towns of separate jurisdiction. In this land of petty boroughs, burghal status was precarious. Cricklade, Calne, Bedwin, and Milborne, though they attained to no chartered privileges, were recognized as boroughs by prescription and sent members to Parliament, but Tilshead, Warminster, Bruton, Frome, Milverton, and Lydford dropped out of the list altogether. Frome and Milverton, as we have seen, had practically ceased to be boroughs by the date of Domesday, though Milverton retained some burghal features.

An intensive study of the ecclesiastical relations between the boroughs and their vicinities may some day throw light upon the problem we have been discussing. There seems to

¹ Malmesbury, Dorchester, Bridport, Wareham, Shaftesbury, Exeter. Yet it is difficult to deny separate courts to the lesser Devon boroughs. They had *burhwitan* like Exeter (above, p. 42).

be no instance in the south-west in which the principal church of a borough was only a chapel of a rural church, as was common enough in the new boroughs founded after the Norman Conquest, but at Dorchester the parish of Frome Whitfield to the north of the town, and (in the 13th century) in the hundred of St. George, extended within the walls at one point and exemption from the borough jurisdiction was claimed for this *enclave* as late as 1670.¹ In 1086, on the other hand, the glebe of the town church was outside the borough, in the hundred of Dorchester.² At Wareham, also, the parishes of several of the town churches stretched beyond the ramparts into rural hundreds of which they formed part. It is possible that these in- and out-parishes, as they were called, represented the single parish of one original church of Wareham, a parish which was too extensive to be included as a whole within the fortifications or even within the "liberties" of the borough.³ The case may be somewhat parallel to that of Maldon.⁴

The borough which was the *caput* of a rural hundred is found elsewhere than in the south-west. Sussex, as we have seen, contained two, Pevensey and Steyning. Unfortunately they were both mediatized boroughs at the date of Domesday Book and so throw no light upon the problem of the urban court. Pevensey receives special treatment and had a mint, while the rural part of the hundred, the lowey of Pevensey, as it was afterwards called, is surveyed as a whole elsewhere, but no judicial profits are included in the unusually full enumeration of revenues derived from the burgesses. The Pevensey court was doubtless then as later a feudal court, which had absorbed the original hundred court.⁵

The court held by the abbot of Fécamp at Steyning would also be feudal, but he was not lord of the whole hundred, as the count of Mortain was of Pevensey hundred, and the hundred court of Steyning seems to have belonged to the lord of the rape.⁶

¹ C. H. Mayo, *Records of Dorchester* (1908), pp. 470 ff. For aggression on the borough by Fordington, east of the town, see pp. 469 f.

² Eyton, *Dorset Domesday*, pp. 73, 124.

³ *Ibid.* p. 73.

⁴ Above, p. 49.

⁵ In the fourteenth century it was a three-weeks court presided over by the lord's steward and entertained pleas of the crown as well as of lands and tenements (*Sussex Archaeological Collections*, iv. 212). The vill supplied only three of the twelve jurors of the vill and lowey as a member of the Cinque Ports confederation (*ibid.* p. 211).

⁶ In 1168 it is called the hundred of Bramber, which was the *caput* of his honour (*Pipe R. 14 Hen. II*, p. 196).

There still remain to be discussed those boroughs which lay within rural hundreds but were not the meeting-places of their courts, which were sometimes five or more miles away. In this class fall the three smaller boroughs of Devon. They have a very independent appearance in a casual mention of them¹ some seventy years before the Domesday survey in which, however, one, Totnes appears as a mediatized town and the others are entered on the *Terra Regis*. The subsequent mediatization of Barnstaple and the decay of Lydford obscure their earlier relation, if any, to the hundred courts.

In Wiltshire all the pre-Conquest boroughs were extra-hundredal, for geld at any rate, except Salisbury which was an ancient possession of the bishops and as a mesne manor paid geld in the hundred of Underditch.² But we may be sure that there was an episcopal court there, though perhaps not for the town alone. Indeed no burgesses are actually recorded in the town, either in 1066 or twenty years later, though the earl's "third penny" attests its burghal status.³

In Berkshire, Wallingford was locally in Hesletesford hundred, but is described at great length at the head of the county survey and the distinction which is there carefully drawn between the jurisdiction of certain immunitists in their houses and that of the king, represented by his reeve,⁴ leaves no doubt that the borough had a royal court. In Hampshire there can be almost as little doubt that Southampton, which is also independently described, had its own court, though the town was surrounded by the hundred of Mansbridge. The borough of Twyneham (now Christchurch), mentioned in 1086 as having then thirty-one masures, if of pre-Conquest date,⁵ was still doubtless judicially dependent upon the hundred of Egheiete under which the manor and borough are surveyed.

Three of the Sussex boroughs, Hastings, Arundel, and Lewes, were locally situate in hundreds with other names, but Arundel and Lewes are each described, without hundred rubric, at the head of their rapes, and their possession of urban courts, even before their mediatization by the Conqueror, is hardly doubtful. It seems to be implied at Lewes in the fines for various offences quoted as customary in the time of King Edward.⁶ Hastings unfortunately is not surveyed at all.

¹ See above, p. 42.

² W. H. Jones, *Domesday for Wiltshire*, pp. 23, 188.

³ This is also true of Marlborough.

⁴ *D.B.* i. 56b, 1.

⁵ It is included in the Burghal Hidage (above, p. 15).

⁶ *D.B.* i. 26a, 1. Hastings was locally in the hundred of Baldslow (above, p. 49).

A borough might be attracted into another hundred than that in which it was locally situated, for financial reasons, for payment of geld or of farm. Worcester, though probably already a hundred of itself, was placed, as we have seen, in another hundred for geld, and a further case will meet us presently in the east of England. An illustration of the second type is found in Surrey, where Southwark, though it lay actually in Brixton hundred, is surveyed in Domesday Book under the hundred of Kingston, for no other reason apparently than that the royal revenue from the borough was included in the farm of the king's important manor of that name. It is not necessary to suppose that the men of Southwark had to go to Kingston for justice, and indeed the Domesday account contains a passage which points almost as directly to the existence of a court within the borough as the similar but more explicit record at Wallingford.¹

The same kind of association may explain the survey of the other Surrey borough Guildford under Woking hundred, for though it actually lay within that hundred the king's reeve there is recorded as taking amends for forfeitures within the vill.²

It has been claimed³ that the nature of the relation of boroughs to hundred courts is settled by a passage, unique in Domesday, which relates to a borough at the opposite side of the Thames, but here again mediatization makes certainty unattainable. Dunwich, which lay in Blythburgh hundred, Suffolk, four miles from its *caput*, belonged to Edric of Laxfield before the Conquest, and to Robert Malet, his Norman successor, afterwards. Domesday reports that the king had this right (*consuetudo*) in Dunwich that two or three should go to the hundred (court) if properly summoned and if they failed to appear were amerced, and that if a thief was taken there he should be judged in Dunwich, but his execution should take place at Blythburgh. His goods, however, were to fall to the lord of Dunwich.⁴ There is a court therefore at Dunwich which can try even a capital case, though it cannot carry out the sentence, but it is a feudal court and we cannot be sure that it has ever been anything else. Or the other hand, the small and special attendance at the hundred court reserved by the king does not seem absolutely clear evidence of an earlier and fuller hundred suit from the town. If the arrange-

¹ *D.B.* i. 32a, 1.

² Ballard, *Domesday Boroughs*, p. 53.

³ *Ibid.* f. 30a, 1.

⁴ *D.B.* ii. 312.

ment was Norman, and it is not said to be older, it may only be an early instance of the common stipulation which bound feudal tenants to afforce higher courts in certain cases. Whether such a custom could have arisen before the Conquest in the case of a mesne borough, it would be idle, in the present state of our knowledge, to speculate.¹

Two other East Anglian boroughs are surveyed in Domesday Book under rural hundreds which did not bear their name. Yarmouth is given separate treatment among the other Norfolk boroughs at the end of the *Terra Regis*. Sudbury appears on the Suffolk *Terra Regis* as an escheated possession of Ælfgifu, mother of Earl Morcar. Sudbury, therefore, as well as Yarmouth, was in the king's hand in 1086. Both were considerably less populous than Dunwich in 1066 and very much less twenty years later. They have lived to see that already doomed town almost vanish into the sea. Yarmouth, which was subject to the earl's "third penny," may have been the meeting-place of the hundred of East Flegg to the danegeld of which it contributed no more than one-twelfth. Its borough court first appears, but not as a novelty in John's charter of 1208 with the name husting which is certain evidence of London influence.

Sudbury was locally situated on the south-western border of Babergh hundred in Suffolk, but at some unknown date it had been transferred to Thingoe hundred, though ten miles from its nearest point. Round has shown² that this was done to replace the exactly equal assessment to danegeld of Bury St. Edmunds in Thingoe, the tax having been granted to the abbey. Babergh, being a double hundred, could afford the loss. It is surely most unlikely that this book-keeping change involved suit to the Thingoe courts for the Sudbury burgesses, any more than a somewhat similar allocation of the Worcester assessment did.³ Perhaps the remark: *soca in eadem villa*, with which the Domesday description ends, means that Morcar's mother had left a court there. The usual phrase when hundred soke was claimed by the crown was: "the king and the earl have soke." Sudbury, unlike Yarmouth, was a rural manor with an urban centre, but the latter had undoubtedly two of the supposed criteria of a national borough, "heterogeneous" tenure and a mint.

¹ On Malet's forfeiture under Henry I, Dunwich reverted to the crown. It was in the queen's hands in 1156 (*Pipe R.* 1156, p. 9), but this did not last long (*ibid.* 1169, p. 99).

² *Feudal England*, pp. 100, 101 n.

³ See above, p. 46.

The results of the foregoing analysis may be briefly summarized. They lend no support to Ballard's first hasty theory that besides the infrequently meeting *burhgemot* of Edgar's law, the burgesses of every borough had to attend a hundred court without their walls;¹ a theory so soon retracted that it need not have been mentioned, had not Liebermann incautiously committed himself to it just before the retraction was published. On the other hand, the facts are hardly to be reconciled with the older view, most clearly voiced by Miss Bateson, that every pre-Conquest borough had a court co-ordinate with that of the rural hundred. The small boroughs of Somerset and Wiltshire which were farmed with villis of ancient demesne, were themselves often heads of hundreds, and in many cases, even after the Norman Conquest, remained boroughs by prescription without separate jurisdiction or sank into mere market towns, are difficult to fit into this view. The supposed universality of borough courts in the Anglo-Saxon period rests, indeed, almost entirely on the apparent generality of Edgar's institution of a *burhgemot*. If his law applied only to the unshired Midlands, as has been not very convincingly argued, or only to the greater boroughs in which, by another law of his, three times as many witnesses of sales were to be provided as in small boroughs or hundreds, burghal history before the Conquest would be much simplified.²

Whatever may be the correct interpretation of this puzzling law, the evidence of Domesday Book, confirmed by the later title of certain borough courts, leads to the conclusion that the burghal court of the Middle Ages was very generally in origin a hundred court, a unit in the complete system which was gradually worked out for the whole country except the far north, in the tenth century, though confirmation of this extension is hardly derivable from Cnut's ordinance that every freeman should be in a hundred and a tithing,³ the tithing

¹ The burgesses of some small boroughs may, we have seen (p. 54), have done suit to the court of the hundred in which their borough lay, meeting either within or without the town, but the case does not really fall under Ballard's theory, since they certainly had not a four-monthly *burhgemot* as well.

² See above, p. 42.

³ II Cnut, 20; Liebermann, *Ges.* i. 322. It would be rash to assert that the division of boroughs into wads, which under that or other names is already found in Domesday Book at Cambridge, Huntingdon, Stamford, and York, originated in Cnut's legislation, but it was certainly utilized in the working of the frankpledge system. At Canterbury, indeed, after the Conquest the corresponding division was the *borgh*, the usual local name for the tithing. Before the thirteenth century these *borghs* were reorganized as aldermanries with hundred courts, in pretty obvious imitation of the London wards and wardmoots (*Black Book of St. Augustine's* i. 394, 397; *Hist. MSS. Com.* 9 Rep. pt. 1, App. *passim*; *B.B.C.* i. 130).

being apparently the territorial tithing of the South. The larger boroughs could be treated as hundreds or half-hundreds in themselves, or in the case of London as a group of hundreds, but the smaller boroughs would have to be fitted into rural hundreds.

To Dr. Stephenson this character of the normal Anglo-Saxon borough court before 1066 as "merely a part of an ancient territorial organization" forbids us to regard it as in any sort a communal institution. "It was no more significant of urban life," he says, "than the wall that enclosed it; for both had been the work of the king, not of the community."¹ The absurdity of attributing to the Anglo-Saxon boroughs municipal liberties, which even after the Conquest were only very slowly obtained from the crown, needs no demonstration, but to make an absolute break in the history of the English borough community at the Conquest is to go too far in the opposite direction, further, indeed, than Professor Stephenson had been prepared to go in an earlier section of his article, where he admits that there are some traces of communal liberty before the Conquest, primarily in the great seaports.² Apart from such traces, however, his conception of the hundred court of the borough seems open to criticism as too static. At the date of the Conquest it had been in existence for a century at least, time enough to develop a character of its own. If at first only a unit in the general system of courts in the land at large, it shared that origin with the courts of the continental communes and free towns,³ and by the early part of the eleventh century, as we have seen,⁴ it had already evolved a *burhriht*,⁵ a body of law which, as contrasted with *landriht*, must have dealt chiefly with the special problems of

¹ *E.H.R.* xlv. (1930), 202.

² *Ibid.* p. 195.

³ The ministers of royal justice in the Carolingian empire were the *schöffen* (*scabini*) and the civic court originated in the assignment of a separate body of these to the urban area.

⁴ Above, p. 40.

⁵ The *burgherist* or *burgeristh* which occurs twice in the Somerset Domesday is a Norman mis-spelling of the same word, but it is apparently used in a different sense. Earl Harold had received in his manor of Cleeve the third penny of *burgherist* from four hundreds (*D.B.* i. 86b, 2—correcting "de" for "et" from the Exon. *D.B.*), and the list of the bishops of Winchester's customs at Taunton is headed by *burgeristh* (*ibid.* p. 87a, 1). Interpretation is difficult for *D.B.* records no borough in the four hundreds, but as one of them contained Watchet which is in the Burghal Hidage and had a mint under Ethelred II, it seems most likely that the earl's borough "third penny" is in question. Philip de Colombières, baron of Nether Stowey, had by royal grant from 1156 to 1181 ten shillings yearly *de uno burgricht* (*Pipe R.*) and the "third penny" of Langport, of Axbridge, and perhaps of Bruton, in 1086 was ten shillings. (*Cf. D.B.* i. 87a, 2 with iv. 100.)

a compact group of freemen traders and is mentioned in close association with weights and measures.¹ Even the highest class of burgesses who did not usually buy to sell, but only to supply the needs of their own households, would not be free from these problems. Apart from burgess rents, the chief sources of the king's and the earl's revenue from the borough were tolls and the profits of the court.

It was mainly in these hundredal courts adapted to the needs of burgesses that their aspirations to greater liberty and self-government first woke to life and found in them an instrument which, powerfully aided by merchant guilds, ultimately secured the realization of those aspirations and became the sovereign body, the *communitas*, of the fully developed municipality. Who can safely say that the foundations of this revolution were not being silently laid in the two centuries preceding the Conquest? It seems unsafe to argue that, because a rate-book like Domesday tells us little or nothing of these courts and is too often ambiguous in its references to the features of the borough which might be communal, there was no sense of community among its burgesses nor had they any experience in translating it into action.

The hundred court was in one respect well fitted to foster the growth of communalism in the borough. Although a royal court and presided over by a king's reeve, it had a strong popular aspect in its doomsmen and in its second officer, the hundreds-ealdor, who was certainly not a royal officer and who very probably, before as after the Conquest, was elected by his hundred. What became of him in the towns is not very clear, but perhaps he sank to be the sergeant of the borough as the alderman of the rural hundred ultimately dropped to the position of its *bedellus* or beadle.²

Though the borough court of the later Middle Ages would seem to have its fountain-head in that of the hundred, it was much influenced by a tribunal of different origin, the London husting,³ the most important of the three unique courts, folkmoot, husting, wardmoot which the quite exceptional city possessed. Unfortunately, our knowledge of the composition and working of these bodies is of entirely post-Conquest date, but for the husting it goes back to the first half of the

¹ In the larger boroughs the hundred organization had to be modified. See Edg. iv. 4, Liebermann, *Ges.* i. 210. For the king's peace in boroughs cf. *ibid.* ii. 551 ff., 555 and 661, § 11 f. See also below, p. 119, n. 3.

² *Rot. Hund.*, ii. 214.

³ See above, p. 40.

twelfth century, by the end of which the older open-air folk-moot had become a mere survival as a court of justice. Its decline had doubtless begun when the "house court" was set up in the tenth century with the object, one may surmise, of providing more suitable conditions than were possible in a large popular assembly.¹ Thus the jurisdiction which the open-air hundred court exercised in other boroughs² was in London, for the first time, used under a roof. That side of the hundred's work which was concerned with the keeping of the peace is here found in the hands of the wardmoots after the Conquest and the presumption is strong that it was done by them in Anglo-Saxon times, though the wards are not mentioned in any extant source of that date. It can hardly be without significance that the aldermen, who presided in the wardmoots, were also the judges of the Anglo-Norman husting.³

The most obvious formal differences between the fully-developed medieval borough court and the rural hundred court are its weekly or fortnightly, instead of monthly, session, and its meeting in Gild Hall, Moot Hall, or Tolbooth,⁴ instead of in the open air. In both these features, especially the former, the influence of the London husting can be seen. The restriction of the husting meetings to not more than one a week in Henry I's and Henry II's charters to London was copied in a whole series of town charters before the end of the twelfth century,⁵ and sometimes fixed the name husting upon their local court.

The conclusions to which the foregoing inquiry has led seem definitely to discourage the hope of finding a universal criterion of the early borough in the possession of a court of

¹ For this court, see W. Page, *London: its Origin and Early Development* (1923), pp. 213 ff.; *E.H.R.* xvii. 502.

² At Leicester in the twelfth century in the common churchyard (M. Bateson, *Records of Leicester*, i. 4), at Oxford in the churchyard of St. Martin (J. Parker, *Early History of Oxford*, p. 122), at Norwich in Tombland (vacant land) near St. Michael de Motstowe or ad placita (W. Hudson and J. C. Tingey, *Records of Norwich*, i. Introd. V), and at Ipswich in the Thingstead (*H.M.C.* 9 Rep. pt. 1, p. 233).

³ *E.H.R.* xvii. 487, 493.

⁴ If a court for the old English borough at Norwich continued to be held separately from that of the Norman new borough for some time after the Conquest, it was merged with the latter before the thirteenth century, the single court meeting in the new borough or Mancroft, as it was now called, no longer in the open, but in the king's Tolboth.

⁵ *B.B.C.* i. 442. The rule was applied to the hundred court of Bristol (*ibid.* p. 143).

its own. Taking the country over, such a court is a normal burghal feature, but the smaller boroughs of the south-west are exceptions both before and after the Norman Conquest. The "borough by prescription," without special jurisdiction, remains always a bar to easy generalization.

The separate court is only one of the features which have been investigated as possible criteria of the borough. In a useful table¹ Ballard has enumerated from Domesday and coin lists, seventy-three Anglo-Saxon boroughs possessing one or more of the following four features: (1) a court co-ordinate with the rural hundred court, "the *burhgemot* of Edgar's law"; (2) heterogeneous tenure, "where different tenants paid their rents to different lords"; (3) payment of one-third of the royal revenue from the borough (the "third penny") to the local earl or (occasionally) sheriff; (4) a mint. He finds 46 hundredal boroughs, 64 with heterogeneous tenure, 39 subject to the third penny, and 56 with pre-Conquest mints. All four features are found in 22 boroughs, three in a further 22. But for omissions in Domesday, known or suspected, these figures would be higher. London and Winchester, for instance, being only casually mentioned in the survey, are credited merely with mixed tenure and early mints.

Were any of these features fundamental? A court, as we have just seen, was apparently not. Nor, it would seem, was heterogeneous tenure. It was rather a natural and very general, but not universal, result of burghal growth than the essential pre-requisite implied in the "garrison" theory of Maitland and Ballard. Mints, again, were not an invariable feature of Anglo-Saxon boroughs, and in the eleventh century at any rate are recorded in places which were never recognized as boroughs.

More likely than any of these internal features to have been characteristic of all new boroughs, and of no other kind of vill, might seem the third penny. The Domesday figure is low, but there was often no occasion to mention this feature.² Luckily it tells us that the simplest of south-western boroughs, without separate court, heterogeneous tenure, mint or apparently even burgesses, were subject to this payment. Of course, they must have once had burgesses, if indeed their seeming absence is not merely one of Domesday's omissions,

¹ *The English Borough in the Twelfth Century*, pp. 43-5. Cf. p. 37.

² This is perhaps the reason why nothing is said of it at Cambridge and Bedford, where it is known to have been paid. But cf. p. 49.

and their places might yet be filled. It is plain in any case that we have not yet reached the minimum feature or features which distinguished the borough from any other royal vill and gave to it or maintained the public character implied in the earl's right to share its revenue with the king. Originally no doubt, leaving the older walled towns aside, this character would be imparted by the fortification of an open vill or group of vills for the defence of the surrounding population, and the earl's share would be the reward of his co-operation in the work. After the re-conquest of the Danelaw, however, the defensive aspect became secondary and the borough primarily a centre of local trade and administration. It is even possible that a few new centres of this kind were set up and called boroughs, though they were not fortified. At all events, there is no evidence that the minutest of the Somerset boroughs in 1066, Bruton, Frome, and Milverton, had ever been fortresses.¹

Except at Bath, which had a mint, the revenues of the Somerset boroughs which were subject to the earl's third were apparently confined to the rents of the burgesses and the profits of markets. Unfortunately no markets are recorded at Axbridge, Bruton, and Langport and, as we have seen, no burgesses at Frome and Milverton, while no rent is assigned to the five burgesses at Bruton. However this may be accounted for, whether by Domesday omissions or by the lumping of borough revenues with those of the manors in which they were imbedded, it seems very unlikely that Axbridge and Langport, which were afterwards full-fledged municipalities, or even Bruton which was less fortunate, can have been without a market at this date, while Frome² and Milverton, with apparently no burgesses, possessed one.

Despite these difficulties, the Somerset evidence on the whole suggests that tenements held by rent alone and a market were enough to constitute a borough in the middle of the eleventh century. A market by itself was not sufficient, for Domesday records some thirty in places which were not, then at any rate, reckoned as boroughs, and though some certainly and perhaps most of these were Norman creations,

¹ This seems very likely too (above p. 54) in the case of a much more important borough, Droitwich, which is known to have been a market for salt as early as the eighth century.

² As the revenue from Frome market in 1086 was £2 6s. 8d. and the earl's third only 5s. (Eyton, *Somerset Domesday*, pp. 2, 4), it would seem likely that its profits had increased since 1066.

a few are definitely stated to have existed before the Conquest.¹ Whether these went very far back may be doubted. Edward and Athelstan's attempt to restrict marketing to boroughs had failed, but it was in favour of permitted buying and selling with hundred court witnesses not of private markets. The vital importance of the market in the borough is well seen in the record of the building of the *burh* at Worcester towards the end of the ninth century.² Only the universality of this feature will explain the equivalence of borough and port. It was the chief source from which king and earl could recoup the cost of fortification and secure a permanent income.

Before the Norman Conquest then, as indeed after it, the species borough of the genus vill comprised communities of the widest diversity in size and importance. Once planned out, they had prospered or decayed, as local and national conditions favoured or restricted their growth, without much regulation from above. Trade of some sort they all had and the free tenure without which trade cannot be carried on, but beyond these uniformity must not be expected. These, however, are fundamental and form in favourable circumstances the necessary basis of all future municipal growth. A new institution has grown up capable of great expansion and full of unforeseen possibilities.

A very different conception of the Anglo-Saxon borough has recently been put forth by Dr. Stephenson. Save in the case of a few seaports it was, in his view, not really urban at all, but merely a special kind of agricultural group. The Norman Conquest is not to be regarded as supplying a new and vigorous impulse to a somewhat lethargic earlier development, but as effecting a complete transformation in the character of the borough community. The history of the English borough as an urban institution might, in fact, without much loss, be begun at 1066.³ In considering the case presented for this novel and interesting view, it will be convenient to deal first with the evidence offered in proof of the essentially agricultural character of the normal borough in the Anglo-Saxon period.

¹ Those at Launceston and "Matele" in Cornwall (*D.B.* i. 120b, 1), and at Hoxne and Clare in Suffolk (*ibid.* ii. ff. 379, 389b). Launceston was afterwards reckoned as a borough.

² Above, p. 20.

³ In his book *Borough and Town*, Dr. Stephenson has made his conclusion somewhat less sweeping. See below, p. 131.

NOTE ON THE "LITTLE BOROUGH" OF SEASALTER IN KENT

The "parvum burgum" of Seasalter by Whitstable, which Domesday Book (i. 5a, 1) says belonged to the archbishop of Canterbury's kitchen, but the "Domesday Monachorum" of Christ Church (*Mon. Angl.*, i. 101a) calls "burgus monachorum," has been a stumbling-block to those seeking a criterion of the borough in the eleventh century. It was largely agricultural and the only population mentioned is forty-eight bordars. Being only a little over five miles from Canterbury, it never seems to have had a market nor is there any record of burgesses or burgages, of court or third penny.¹ Ballard concluded that it was impossible from the evidence of Domesday to define the difference between a borough on an agricultural estate and a village. The only distinction that appears in this case is that Seasalter had valuable (oyster) fisheries which yielded in 1086 a rent of 25s., increased to £5 by the date of the "Domesday Monachorum." This local industry probably accounts for its being charged at the higher rate of 1/10th, with boroughs and manors of ancient demesne, in the parliamentary taxation of the fourteenth century and so sometimes described as a borough in the chief taxers' accounts (Willard in *Essays in honour of James Tait*, p. 422). The use of the term in the eleventh century must either be explained similarly or as a case of that south-eastern survival of *burh* as a manor-house which is found in the well-known London names Aldermanbury and Bucklersbury and in the more obscure *burh* of Werrington in Essex, given by Edward the Confessor to Westminster Abbey (*Mon. Angl.*, i. 299, no. xxi.). A further possibility might seem to be raised by the mention in 1463 of the "Borg of Seasalter" (9 *Rep. H.M.C.*, app., pt. 1, p. 103b), for *borg(h)*, "tithing," and *burg*, *burh*, "borough," were inevitably confused in Kent. But the evidence is too late for any safe inference.

¹ It was a liberty and so not in any hundred. Fordwich is also described as a small borough in Domesday Book (i. 12a, 2), but it had ninety-six masures, i.e. *burgess tenements*, in 1066.

III

THE BOROUGH FIELDS AND PASTURES

IN the article¹ to which reference has already so often been made, Dr. Stephenson finds no difference between the hundred court of the borough and those outside it, and sees in this a confirmation of his main thesis that the Anglo-Saxon borough, with a few exceptions in the south-east, was merely a walled microcosm of the rural world without. Domesday Book, he claims, shows that it had the same social and economic structure as the countryside.² Trade played little part and the burgesses were still essentially an agricultural group. It was only the growth of commerce stimulated by the Norman Conquest which transformed such groups into urban communities, towns in the modern sense of the word.

That the student of burghal history, no less after than before the Conquest, "has fields and pastures on his hands" we learnt long ago, but it is new doctrine, unknown to Maitland, that in the middle of the eleventh century they were being cultivated by peasant burgesses for their richer fellows. The evidence offered for this view consists substantially of the mention in Domesday Book of "burgesses outside the borough" at the small Devon boroughs of Barnstaple, Lydford, and Totnes,³ and of bordars at Buckingham, Huntingdon, and Norwich. Of the former, it is only those at Totnes, a mesne borough since the Conquest, who are reported to be *terram laborantes*, and even they may have been cultivating it for themselves or for the whole of the burgesses. Buckingham

¹ *E.H.R.* xlv. (1930), 177 ff.; *Borough and Town*, pp. 111 ff.

² For his similar deduction from the *tuns* of the early grants of land in Canterbury and Rochester, see above, p. 7. It is more plausible at that date, but the amount of agricultural land there could have been within the walls is greatly exaggerated.

³ The in-burgesses were respectively 40, 28 and 95, the out-burgesses 9, 41 (not 48 as Professor Stephenson says (p. 179)), and 15 (*D.B.* i. 100a, 2; 108b, 1). The further suggestion that the *burgenses Exonie urbis* who had outside the city 12 carucates of land (*ibid.* 100a, 1) were individual rich burgesses, employing such out-burgesses, is surely rash. See below, p. 114.

was a small borough on a royal manor,¹ like those of the south-west, the bordars belonged to the manor and are carefully distinguished from the burgesses. So are the 100 bordars at Huntingdon who indeed are expressly said to be subordinate to the burgesses (*sub eis*), though helping them in the payment of the king's geld.² The 480 bordars of Norwich who first appear in 1086, contrasted with the burgesses as paying no custom owing to poverty, were clearly former burgesses impoverished by the rebellion, fire, taxation and official extortion which had almost halved the burgess body in twenty years.³ They had lost all burgess qualification and become mere cottagers,⁴ getting their living, we must suppose, in the minor employments of town life. A similarly impoverished class of "poor burgesses" at Ipswich and Colchester is claimed by Dr. Stephenson as evidence that the Domesday compilers used "burgensis" and "bordarius" indifferently, but is really proof of a careful distinction, for, unlike the Norwich bordars, these poor burgesses, though they had ceased to pay the full custom, were still able to pay a poll tax.⁵ In any case, this class could have found little agricultural work at Norwich or Ipswich, for both had a singularly small amount of borough arable.

It is true that this arable at Derby and Nottingham was divided (*partita*) between a fraction of the burgesses, about a sixth in the first case and a fifth in the other, but these were not rich landowners for their "works" (*opera*) and, according to one possible interpretation of a difficult passage, their rent, were part of the royal revenue nor were they bordars for, at least at Nottingham in 1086, they had bordars under them.⁶ They ought perhaps rather to be compared with the lessees of borough land of whom we hear at Huntingdon, where the officers of the king and the earl seem to have allotted the leases among the burgesses.⁷ The tenure of the twenty-one burgesses (out of 720) of Thetford who held more than six

¹ "Buchingeham cum Bortone" (*D.B.* i. 143a, 1). Bourton may mark the site of the southern of the two forts built there by Edward the Elder (*Place-Names of Bucks.*, p. 60).

² *D.B.* i. 203a, 1. These bordars, whose existence is only mentioned for 1086, are not definitely said to have worked in the fields, which the burgesses cultivated (*ibid.* 2).

³ *Ibid.* ii. 116b, 117b.

⁴ Borde, "hut," "cottage" had no inherent rural meaning.

⁵ *D.B.* ii. 290, 106b. At Dunwich in 1086 there were 236 burgesses and 178 *pauperes homines*. The population had largely increased since 1066 when there were only 120 burgesses (*ibid.* ii. 311b).

⁶ *Ibid.* i. 280a, 1. These twenty bordars are mentioned in connexion with the agriculture of the burgesses.

⁷ *Ibid.* f. 203a, 2.

ploughlands of the king there is not clear, but this was in 1086 and they are not said to have had bordars.¹ In short, the attempt to show from Domesday Book that the Anglo-Saxon borough contained a considerable element of peasants in subjection to richer townsmen and that it was a matter of indifference whether these peasants were called bordars or burgesses cannot be sustained. The contention that "burgess" at this date meant no more than an inhabitant or contributory of a borough or walled vill must be made good, if at all, by other arguments.

The importance of "fields and pastures" even to the eleventh century borough can easily be exaggerated. At the Conquest much borough territory was in the hands of magnates, lay and ecclesiastical. This was perhaps inevitable where the territory was wide and included an outer belt of pure country. Queen Edith and Earl Gurth had had granges of four and two ploughlands respectively,² and the abbey of Ely the manor of Stoke, comprising three,³ in the half-hundred of Ipswich. In the outer ring of Colchester hundred Godric "of Colchester," perhaps a wealthy citizen, had held Greenstead and, according to the burgesses in 1086, five hides in Lexden which had been rated with the city in 1066 but no longer paid its share of the farm.⁴ The wide and rather barren tracts of arable and pasture which the king and earl are recorded as holding at Thetford⁵ were doubtless rated with the borough, but there is no indication that the burgesses had any agricultural interest in them. The six ploughlands held of the king by twenty-one of the burgesses in 1086⁶ were probably nearer the town. The remoter land of Thetford was still national in 1086 save that the Conqueror had enfeoffed Roger Bigot with the earl's former share of the portion which lay in Norfolk, but the wide region west of York, afterwards known as the wapentake of the Ainsty, though it paid geld and shared in the *trinoda necessitas* with the citizens, was held before the Conquest almost entirely by Earl Morcar, the archbishop and other landowners.

Even the nearer fields and pastures which were all that many boroughs had inherited from a purely rural past did not always escape the encroachments of the manorial lord. There is evidence, more or less direct, of this process in Domesday Book, though the survey does not always take

¹ *D.B.* ii. 119.

⁴ *Ibid.* f. 104.

² *Ibid.* ff. 290, 294.

⁵ *Ibid.* ii. 118b.

³ *Ibid.* f. 382b.

⁶ Above, p. 69.

note of the borough land, an incidental mention of sheriffs' requisition of burgess ploughs being, for instance, its only reference to the double fields of Cambridge.¹ It is a curious coincidence, if no more, that in a number of the larger boroughs, widely dispersed over the country, the amount of arable land, apart from royal demesne, was exactly or approximately twelve ploughlands.² Cambridge—on later evidence³—had about twenty, Nottingham and Thetford (?) six, and small boroughs like Torksey and Lydford only two. Yet Huntingdon with nearly four times as many burgesses as Lydford had hardly more.⁴ Some boroughs, especially among those which were founded late on royal estates, Bridport for instance, had little or none. Maldon had apparently only 81 acres which was held by no more than 15 of about 180 burgesses who possessed houses.⁵ Even Dorchester, an old Roman town, seems, as we have seen,⁶ to have had no open fields of its own. But much more populous and important boroughs were little better provided with land. Norwich with its 1320 burgesses had no more than Maldon within its boundaries,⁷ though it had another 80 acres in the neighbouring hundred of Humbleyard.⁸ Ipswich, with 538 burgesses and 40 acres among them,⁹ stands still lower in the scale. Nothing but abundance of urban employment will explain these figures.

In large boroughs like these the growth of suburbs may have reduced the arable area, but a more general cause was the extension of manorialism into town fields. At Ipswich the granges of Queen Edith and Earl Gurth perhaps intruded upon them.

This eating away of burghal arable probably began earliest round the old Roman cities. The oldest Canterbury charters

¹ *D.B.* f. 189a, 1. Later evidence shows that this does not mean that no custom was due from them. The survey records, however, that the lawmen and burgesses of Stamford had 272 acres free of all custom (*ibid.* i. 336b, 2) while the burgesses' land of Exeter paid it only to the city (*ibid.* i. 100a, 1).

² Exeter and Derby each 12, Lincoln, 12½ (excluding the bishop's ploughland), Colchester about 11½ (computed from details including 80 acres "in commune burgensium").

³ Maitland, *Township and Borough*, p. 54.

⁴ *D.B.* i. 203a, 2.

⁵ *Ibid.* ii. 5b.

⁶ Above, p. 56.

⁷ *D.B.* ii. 116. Not including 181 acres of arable and a little meadow belonging in alms to churches held by burgesses, 112 acres and meadow belonging to Stigand's church of St. Michael and 180 acres held by the king and the earl.

⁸ *Ibid.* f. 118.

⁹ *Ibid.* f. 290. A further 85 acres belonged to the churches of the borough.

show that tenements in the city had appendant land outside the walls, but Domesday Book records little such arable. Much of the land on the northern and south-eastern sides of the city now formed the large manors of Northwood and Langport, belonging to the archbishop and the abbey of St. Augustine's respectively.¹ Between them, they had no fewer than 167 burgesses in the city, whose gable or ground rent went to them, not to the king. The only land outside York which its burgesses are said to have cultivated² belonged to the archbishop. Ten ploughlands at Leicester, including the greater part of the eastern field of the borough, were in the fief of the bishops of Lincoln,³ and had perhaps been so when their see was in the town (680-869). The Countess Judith's possession of six ploughlands outside it, belonging to the borough, is only recorded for 1086,⁴ but they may have been held by her husband Waltheof before the Conquest. At Lincoln, apart from the bishops' *manerium* of Willingthorpe or Westgate with its one ploughland,⁵ which may or may not have dated from before the Conquest, there were, it has been seen, twelve and a half ploughlands in which the burgesses had an interest, but four and a half of these had been granted by 1066 to lawmen and churches.⁶ In the latter they would possibly pay an economic rent, but in the eight which were demesne of king and earl the *landgable* of their town houses might cover the agricultural appurtenances. Gloucester seems to have had less than 300 acres outside its walls.⁷ Possibly the royal manor of the Barton of Gloucester, outside its east gate, represented its older, wider territory.⁸

Of towns not of Roman origin or episcopal, few can have had so little arable land as Oxford. Its northern suburb grew up on land which from before the Conquest formed a rural hundred, later known as Northgate Hundred and not incorporated with the borough until the sixteenth century. In 1066 the manors of Walton and Holywell in this hundred came up to the north wall of the town. Maitland was inclined

¹ *D.B.* i. 5a, 1, 12a, 1.

² In part (*per loca*): *D.B.* i. 298a, 2.

³ *Ibid.* f. 230b, 2.

⁴ *Ibid.* f. 230a, 1.

⁵ *Ibid.* f. 336a, 2; *Registrum Antiquissimum*, ed Foster, i. 189, 268.

⁶ *D.B. loc. cit.* Queen Edith's tenure of the two carucates at Torksey was temporary. They reverted to the royal demesne at her death.

⁷ Blakeway, *The City of Gloucester* (1924), p. 99. There were at least 300 burgesses in 1066 (H. Ellis, *Introd. to Domesday*, ii. 446).

⁸ *Cf.* Barton by Bristol in the farm of which the issues of the borough were included in 1086.

to fancy that they were formed out of the fields of an older, more agricultural Oxford.¹

Where the borough arable had always been limited in amount, as at Huntingdon, manorialism was less likely to creep in.²

Too much stress must not be laid, therefore, upon the agricultural aspect of the Anglo-Saxon borough. Clearly there were some boroughs which were practically as urban as a modern town, while those which retained most arable land were often much less agricultural than they may seem since its cultivation was left to a small number of the burgesses. There is one conspicuous instance, however, in which the land is known to have been very generally distributed among them. This was at Colchester, where it was so important a feature that a complete census of these royal burgesses and the houses and land held by them was taken and included in Domesday Book.³ The number of burgesses was 276 and the number of acres divided among them 1297 or not far short of eleven ploughlands. Round, anticipating Professor Stephenson, remarks: "The whole effect produced is that of a land-owning community, with scarcely any traces of a landless, trading element."⁴ Closer examination modifies this impression, despite the complete absence of trade descriptions. In the first place nearly one-half of these burgesses, 124, had houses only and must in most cases have got their living otherwise than off the land. Secondly, the burgesses had often more houses than one, in two cases as many as ten and a half and thirteen. There were seventy-seven more houses than burgesses and their tenants must be added in part to the landless class, though perhaps they included the twenty-two burgesses who had land but no houses. Again, the land shares were usually small, only 8 acres per head on the average and less than half that for two-thirds of the landholding burgesses as the following table will make clear:—

¹ *Township and Borough*, p. 45. *Cf.* p. 7. He included Wolvercote, but this was in a different hundred.

² Only king and earl drew custom from the fields which "belonged" to the borough (*D.B.* i. 203a, 2).

³ *Ibid.* ii. 104-6. The figures resulting are those of 1086. There may have been changes since 1066 which are not recorded.

⁴ *V.C.H. Essex*, i. 417.

Landholding Burgesses.	Number of acres apiece.	Total acreage.
I	42	
22	20 to 30	907½
31	10 to 19	
98	½ to 9	389½
152		1297

We have only to compare these holdings with the villein's yardland of 30 acres to see that, as there was no question of impoverishment here, all paying the full royal customs, the land can only have been a subsidiary element of their livelihood, especially as those who had about as much as a villein were obviously the leading people in the town. The list is primarily rather one of tenements than of burgesses since, besides seven priests and some women, it includes the abbot of St. Edmunds and three lay Norman lords.

Round's further remark that many of these small holdings must have been distant from the walls suggests that he did not realize that they all lay, as it is pretty clear they must have done, in open fields belonging to the borough.¹ The outer rural zone of its territory, an addition of no great age,² was at this time largely, if not wholly, manorial.

The Colchester terrier enables us to get an idea of what the Cambridge fields must have been like before gifts and sales to monasteries and colleges, with other changes, had obscured their original features in the manner described so vividly by Maitland in *Township and Borough*.

It is very unlikely that there was a borough in England which still fitted into what has been called its arable "shell" more closely than Colchester did. Nevertheless the foregoing analysis tends to confirm the conclusions we have drawn from the evidence of Domesday as to burghal agriculture in general. It gives absolutely no support to Professor Stephenson's theory that, in boroughs where agriculture still prevailed, a class of dependent peasants, occasionally called burgesses in the general sense of inhabitants of a borough, cultivated the land of the richer men, who, he holds, are always so called in the survey. The theory, as we have seen, still more markedly breaks down where, as at Norwich, the agricultural shell has almost disappeared—though it is just here that

¹ A "Portmannesfeld" is mentioned in an early charter of the local abbey of St. John (Round, *op. cit.* p. 423).

² Above, p. 48.

Professor Stephenson finds nearly five hundred burgess peasants—and where, as at Maldon, it has never been more than a small appendage to a borough which had been cut out of a larger estate. The features in certain boroughs on which the theory is based are capable of other explanation.¹

At Lincoln two of the lawmen held a ploughland apiece and a third was joint holder of another, but it is doubtful whether they ranked as burgesses.² Here, if anywhere, were the theory sound, one would expect mention of peasant burgesses or "bordars," but there is none. Nor do we hear elsewhere of these peasant burgesses, dependent on fellow burgesses, who, had they existed, must have become as unfree as rural bordars.³ Manorialism in borough fields came from without not from within, and even this extraneous manorialism contained no threat to the personal or economic freedom of the burgess. On the contrary, for there is much truth in the remark of Maitland that "we may even regard an arable 'shell' as an impediment to the growth of municipality."⁴

If the Anglo-Saxon boroughs, which had agricultural pasts, could lose more or less of their fields and yet be able to support such large populations, for those times, as many of them contained, it is clear that economically they were substantially urban and not agricultural units. Domesday supplies plenty of figures for estimates of these burghal populations, but they do not lend themselves to such precise calculations as we could wish. The numbers given are often those of messuages (*mansiones*, *masurae*) or more rarely houses, and it may be sometimes doubtful whether each messuage harboured one house or burgess only.⁵ Moreover, the figures

¹ Above, p. 68.

² See below, p. 87.

³ If the poorer burgesses had had to cultivate richer burgesses' land, it might be thought that *a fortiori* they would have been called upon for the same service on the little demesne estates of arable, meadow and pasture, which the king or the king and earl reserved at Colchester (92 acres of arable, 10 meadow and 240 pasture and meadow: *D.B.* ii. 107), Lincoln (231 acres in land and 100 acres meadow: *ibid.* i. 336a, 2) and Nottingham (3 ploughlands and 12 acres meadow: *ibid.* 280a, 1). But where mentioned the cultivators are villeins and bordars of the ordinary rural type. Cf. Derby (*ibid.* 280a, 2—Litchurch).

⁴ *Township and Borough*, p. 45.

⁵ At Northampton it is stated that there were as many messuages as burgesses, and at Derby and Ipswich the equivalence of burgess and messuage is involved in the comparison of the state of things in 1066 and 1086. On the other hand, the "140 burgesses less half a house" (*domus*) at Huntingdon who had only 80 haws or messuages (not 20 as Professor Stephenson reads) among them (*D.B.* i. 203a), and the three haws at Guildford where dwelt six men (*ibid.* f. 30a, 1) suggest that the half burgage

for baronial burgesses are not usually stated for both 1066 and 1086, as are usually those of the burgesses on royal demesne, but for the latter date merely. Nevertheless, by assuming the equation of burghess = tenement, choosing the clearer cases and occasionally using a 1086 figure with all reserves, some rough estimates may be reached which will be below rather than above the truth. The usual multiplication by five for the household has been adopted. The figures of course would be increased if the number of non-burgesses, who did not hold tenements rendering royal customs, could be estimated, but no evidence is available. As London and Winchester do not appear in the survey, York comes out easily first. Our estimate of the population on the royal demesne and in the archbishop's exempt "shire" is over 8000, and if the barons' burgesses were as numerous as twenty years afterwards, 700 or so would have to be added. Next in the list is Norwich, the most satisfactory figure, for it includes all *burghesses* in 1066, in number 1320, and gives a total population of 6600. Lincoln comes third with a royal burghess population alone of 5750, and as there were about 120 baronial burgesses in 1086, the city may have been only slightly less populous than Norwich. Thetford ranks fourth with a total population approaching 4750. There is a considerable drop to Ipswich which had, however, over 3000 burghess inhabitants, if we carry back the seventy-one baronial burgesses of 1086. It is abundantly evident that such populations must have been predominantly urban in occupations and means of subsistence.

The validity of Dr. Stephenson's theory can be tested in yet another way. If the Anglo-Saxon borough had been, as he supposes, essentially a group of agricultural units, each similar to the villein and bordar unit of the rural manor, we should expect in the one case as in the other to find the unit treated as a whole for purposes of taxation and charged with its due proportion of the danegeld laid upon the borough. But this was not the case. It is true that the borough was assessed for the tax in hides or carucates, like the open country, but, as Domesday clearly shows, there was never any question of the hide (carucate) or its fractions in the repartition of the geld among the burgesses. It was charged upon the house

of later times was already not unknown. At Colchester there were more houses than burgesses, but this was in 1086 (above p. 73). They were not "waste" houses, however, such as were many in the boroughs at that date.

within the walls,¹ or the messuage on which it was built,² any agricultural land outside being for this purpose, as it was perhaps usually for rent, regarded as merely an appendage of the urban tenement. The amount of money due upon the hidage of the borough was divided equally between these tenements.

The theory under discussion is, indeed, impossible to reconcile with the plain facts of Domesday Book. What we find there is a twofold division of the burgesses into king's tenants and tenants of external magnates. The theory involves a cross division into burghess landlords and their agricultural dependents, who might or might not be called burgesses, for which there is absolutely no direct evidence and indeed every presumption to the contrary. It is based upon a mistaken interpretation of certain passages in Domesday and a misunderstanding of some features—in part, temporary—of the urban life there described. Maitland's conclusion in the case of Cambridge still stands fast, *mutatis mutandis*, for early boroughs of the type which had a good deal of agricultural land:—

"Already in the Confessor's time it paid geld for a hundred hides: that is, it paid ten times what the ordinary Cambridgeshire village would pay. Clearly, therefore, in the eleventh century it was not a vill of the common kind; its taxable wealth did not lie wholly in its fields. But fields it had. It was cast in an agrarian mould."³ In this respect Cambridge stands at one end of the scale. At the other end is Maldon where one-twelfth of the burgesses had (in 1086) little more than half a hide of land apiece and the rest "nothing beyond their houses in the borough."⁴

¹ As at Chester (*D.B.* i. 262b, 1).

² As at Shrewsbury (*ibid.* 252a, 1).

³ *Township and Borough*, p. 54.

⁴ *D.B.* ii. 5b. For Professor Stephenson's later admission of some urban character in towns such as Norwich, see below, p. 131.

IV

THE BURGESSES AND THEIR TENURE

OVER-EMPHASIS upon the agricultural aspect of the Anglo-Saxon borough and inadequate appreciation of its character as a *port* are not the only questionable features in the picture which Dr. Stephenson has drawn from Domesday Book. With Professor Stenton he has been so much impressed by the apparent variety of condition among its burgesses disclosed in the survey as to deny that *burgensis* was a technical term or had any reference to personal status.¹ Professor Stenton sees nothing more definite in it than "dweller in a borough."² Dr. Stephenson would add "or contributory thereto," perhaps to cover the case of that very doubtful class (at this date) of *burgenses ruremanentes*.³ He is in full agreement, however, with Professor Stenton's statement that "there may have existed as much variety between the different classes of free tenant upon a manor in the open country."⁴ Indeed he would go much further, for in his opinion a burgess might be landless and economically dependent on a landowner or even personally unfree. The uniform burgage tenure of the twelfth century could not exist in such conditions and was in fact a Norman innovation.⁵

Professor Stenton's view, though insufficiently founded on the one case of the Stamford sokemen,⁶ who are not clearly proved to have been reckoned as burgesses, has some support from the East Anglian boroughs, but the tenurial variations found there, inconsistent as they are with the neatness of later burgage tenure, do not exclude common features which distinguish the burgess not only from the country freeholder,

but also from other inhabitants of the borough and so invalidate his definition of *burgensis*.

The more sweeping conclusions of Dr. Stephenson from the Domesday evidence are too largely based upon that portion of it which immediately applies to the state of things in 1086 after twenty years of baronial exploitation. A close investigation of what is definitely reported for the age before the Conquest will, I think, show that the most essential features of burgage tenure, free holding of building plots, with small agricultural appurtenances, at low and more or less uniform rents, subject to various public services, was substantially in existence at that date. Before entering upon this inquiry, however, it will be well to see what light Domesday and the Anglo-Saxon sources have to throw upon the personal condition of the pre-Conquest burgesses.

I. SOCIAL STATUS OF THE ANGLO-SAXON BURGESSES

As might be expected from their numbers and the severe condensation of the survey, especially in Great Domesday, burgesses are seldom mentioned by name. Even in the much more expansive Little Domesday, the list of some 276 king's burgesses of Colchester,¹ already mentioned, stands quite alone. Lists of this kind may indeed have been prepared in other cases and omitted in the final compilation. From such a list may very likely have been derived the names of the burgesses of Winchester and their holdings T.R.E. which are recorded in the survey of the city drawn up under Henry I.²

Even when one or two burgesses are subjects of specific mention they are not named except in Little Domesday and there but rarely. An Edstan is mentioned at Norwich as the only king's burgess who could not alienate his land without royal license.³ Among the holders of churches at Ipswich in 1086 one Cullingus is distinguished as a burgess.⁴ Another burgess of that borough, Aluric, is entered elsewhere as having inherited from his father Rolf, 12 acres in the neighbouring village of Thurlston.⁵

¹ See above, p. 73.

² D.B. iv. 531 ff.

³ *Ibid.* ii. 116. He was an important person and very probably the king's reeve (W. Hudson, *Records of Norwich*, i. 1). His land was, it may be suggested, official reeve-land.

⁴ A distinction not easily reconciled with the explanation of *burgensis* proposed by Professors Stenton and Stephenson (above, p. 78).

⁵ D.B. ii. 446. For two or three named burgesses of Lincoln, cf. p. 87, n. 5.

¹ E.H.R. xlv. 180; *Borough and Town*, pp. 77 ff.

² *Lincolnshire Domesday*, ed. C. W. Foster, *Introd.*, pp. xxxiv-xxxv.

³ I cannot find in Domesday evidence of those groups of "foreign" burgesses of which Miss Bateson made so much (E.H.R. xx. 148 f.).

⁴ *Lincolnshire Domesday*, *loc. cit.*

⁵ *Op. cit.* pp. 188-90.

⁶ See p. 80.

If the inclusion of Aluric's little rural holding in the *terra vavassorum* is to be taken as indicating his status, the case is of special interest as evidence that the English burgess was not always a simple freeman. For in a legal collection not of later date than 1135 the *vavasseur* is identified with the "average" or "lesser" thegn of Anglo-Saxon times,¹ while Professor Stenton sees in the *vavassores* "the predecessors of the *milites* on whom the administration of royal justice had come to depend before the end of that (the twelfth) century."² This little piece of evidence fits in neatly with that which comes from Hereford where the burgesses who had horses in King Edward's day were subject to the lesser thegn's heriot of horse and arms.³ We are not entitled to infer, however, that this type of burgess was more than exceptional. London indeed had its *burhthegns*,⁴ and Liebermann at least took the thegns of the Cambridge thegn gild to have been burgesses⁵ and not, as Maitland suggested, merely members of a Cambridgeshire club.⁶ The Norman sheriff Picot exacted thegnly heriots, including horse and arms, from the Cambridge lawmen, but his English predecessor had taken only 20s. in money from each.⁷ Even this was much higher than the average country socager's heriot of a year's rent, but there is still some doubt whether the lawmen were ever reckoned as burgesses. Those of Stamford are said to have shared the use of the borough fields with the burgesses.⁸ In any case, though highly privileged, they were not of thegnly rank, for their wergild was apparently that of the ordinary freeman.⁹ Another privileged body in that borough whose inclusion among the burgesses remains doubtful, despite Professor Stenton's acceptance, was that of the sokemen who had seventy-seven messuages in full ownership (*in dominio*) free from all royal custom save the amends of their forfeitures, heriot, and toll. These largely exempt tenements are clearly contrasted with the hundred and forty-seven of the preceding clause, which corresponds to the normal enumeration of royal

¹ II Cnut, 71, 2; Liebermann, *Ges.* i. 358, ii. 501; Chadwick, *A.-S. Institutions*, p. 82 n.

² *English Feudalism, 1066-1166*, p. 22.

³ D.B. i. 179a, 1. The three marks "relief" of the Derbyshire or Nottinghamshire thegn with six or less manors, "whether he dwells within or without borough" (D.B. i. 280b, 1) is a different matter.

⁴ Liebermann, *Ges.* ii. 571, § 9a; W. Page, *London*, pp. 219 f.; below, p. 257.

⁵ Liebermann, *loc. cit.*

⁶ D.B. and B., p. 191.

⁷ D.B. i. 189a, 1.

⁸ *Ibid.* f. 336b, 2. See below, p. 87.

⁹ So Liebermann (*Ges.* ii. 565, § 4a, 732, § 6a); but may it not have been that of their men?

burgesses or houses in other boroughs, for these are expressly stated to have rendered all customs. The importance of the distinction will appear in the next section.

The mention at Nottingham of *domus equitum* contrasted with *domus mercatorum*¹ has been thought to reveal the presence among the burgesses there of members of that class of semi-military retainers of Anglo-Saxon nobles who were known as *cnihts*. The *cnihtengilds* of London, Winchester, and Canterbury, the last of which appears as early as the ninth century sufficiently attest the importance of the part they played in burghal history,² but the Nottingham identification is almost certainly mistaken. The *equites* only occur on the lands of the Norman barons, there is no mention of pre-Conquest *antecessores*, and there seems every probability that they were not Englishmen at all but the *milites* or armed French retainers of the barons.³

It will be noticed that the difficult passages we have been discussing all refer to boroughs which, save Hereford, had been settled or strongly influenced by Danes, and that burgesses of thegnly rank are only discerned with certainty at Hereford and perhaps, in one case, at Ipswich. Nor do we find them in the other western boroughs, for the heriot of 10s., which was exacted from the horseless burgess of Hereford, was universal at Shrewsbury and Chester. Its more advanced position against the Welsh may perhaps account for the special armed class of burgesses at Hereford.

Wergilds afford a simpler indication of social standing in Anglo-Saxon times than heriots do, but unfortunately Domesday throws no direct light upon burgess wergilds, unless indeed the Stamford lawmen were burgesses and this, as we have seen, is doubtful. Still, as they were apparently not thegns, we may safely infer that the less privileged burgesses were not. The first clear mention of a burgess wergild is that of the Londoners in Henry I's charter to the city. This sum of 100 Norman shillings was somewhat higher than the wergild of the ordinary West Saxon or Mercian freeman (*ceorl*) before the Conquest,⁴ but far below that of

¹ D.B. i. 280a, 1.

² See below, pp. 120-22.

³ For the use of *eques* for *miles* in the Norman period see Stenton, *English Feudalism*, p. 155, and Ballard, *An Eleventh Century Inquisition of St. Augustine's, Canterbury*, Introd., p. xviii (Brit. Acad. Records, vol. iv.).

⁴ The 200 shillings of the English *ceorl*'s wergild were only of 5*d.* in Wessex and 4*d.* in Mercia, and the sum was therefore equivalent to £4 3*s.* 4*d.* and £3 6*s.* 8*d.* Norman respectively.

the thegn.¹ Liebermann, in his glossary under London,² regarded its £5 wergild as pre-Conquestual and a southern equivalent to the £8 of the thegns of the Cambridge gild, whom he took to be the upper class of burgesses there, but in the article Wergild,³ apparently realizing the difficulties which this suggestion raised, he seems to associate it with Norman alterations in wergilds. It is to be noticed that, whatever may have been the case before the Conquest, there was no distinction of wergild among the London citizens after it.

Although the mention in 1018 of the *witan* of the boroughs of Devon⁴ is sufficient to show that the aristocratic organization of the borough community in the Norman age was no new thing, it is impossible to draw a clear picture of the upper class in the boroughs from such scanty and ambiguous evidence as we have been putting together. The most direct glimpse we get of it in Domesday is perhaps the statement that the twelve judges of Chester were taken from the men of the king and the bishop and the earl,⁵ but it would be highly dangerous to make inferences from this even to other boroughs in which all three were interested.

As for the mass of the burgesses, their fully free status is clearly established by the evidence of Domesday, the almost complete absence of any private service for their tenements save rent, the frequent mention of their power to sell them and the rarer references to mortgages and in some East Anglian boroughs the striking correspondence of the terms in which their position is stated to those used of freeholders elsewhere, all this leaves no doubt that they must be classed, *mutatis mutandis* with the freemen who held by what came to be known as socage tenure, where that prevailed and with similar but more burdened freeholders elsewhere. Undue stress has been laid in criticism of this view upon the hunting and guard services required from the burgesses of Hereford and Shrewsbury during royal visits, the summer reaping on an adjacent royal manor by the former and the *merchet* payable on the marriage of their daughters by the latter. The demands made upon the freemen, within and without the boroughs, varied with local conditions. In the western frontier-land they were inevitably more onerous than, to go to the other

end of the scale, in Scandinavianized East Anglia. The services exacted were mostly of a public character; the hunting and reaping services, which the Normans regarded as servile, were among those required from thegnly lords of manors in the land between Ribble and Mersey¹ and *merchet*, as Maitland showed long ago, was being paid in Northumberland as late as the thirteenth century by men who held whole villis in thegnage.² It should be noted, too, that such services—though not apparently *merchet*—were laid upon the burgesses of Hereford indifferently, with no exception for those who had the horse and arms of the thegn.

More pertinent to the question at issue are the half-dozen cases collected from Domesday by Professor Stephenson of what he terms villein-burgesses, doing some sort of agricultural service.³ There are really only four in which work on the land is more or less clearly indicated, for the Tewkesbury burgesses at Gloucester “servientes ad curiam” were no more rendering agricultural service than the bishop of Worcester’s forty-five demesne houses in that city which rendered nothing “nisi opus in curia episcopi,”⁴ and the *servitium* which Nigel’s five haws at Arundel gave instead of rent is equally vague nor need their occupants have been burgesses. We might almost deduct a third, for the Wichbold burgesses in Droitwich did only two days’ boon work in the year on their manor besides “serving at court.” Such occasional agricultural service is indicative of free tenants not of villeins. The remaining three cases are stronger. That of Steyning in Sussex is perhaps, however, capable of another interpretation than Professor Stephenson’s. In that borough, belonging to Fécamp abbey, it is said that 118 masures “ad curiam operabantur sicut villani T.R.E.,”⁵ but the Worcester “opus in curia” suggests a non-agricultural service in this instance also, while “sicut villani” need only mean “as villeins do.” It was the duty of the West Derby thegns to build the king’s houses “sicut villani,”⁶ but that did not make them villeins. The somewhat similar Tamworth passage is not, however, open to this explanation, for the eight burgesses belonging in 1086 to the king’s neighbouring manor of Drayton (Basset) “ibi operantur sicut *alii* villani.”⁷ Possibly we have here

¹ Six times that of the *ceorl*.

² *Ges.* ii. 571, § 9a.

³ *Ibid.* p. 732, § 5. The £5 *burhbrece* (more probably *borhbryce*) of Ethelred II’s London law (*ibid.* i. 234) was not, as Miss Bateson supposed (*E.H.R.* xvi. (1901), 94), a wergild (see Liebermann, *op. cit.* iii. 165).

⁴ Above, p. 42.

⁵ *D.B.* i. 262b.

¹ *D.B.* i. 269b, 2.

² *E.H.R.* v. (1890), 630 ff.

³ *Ibid.* xlv. 189 n.

⁴ *D.B.* i. 173b, 1.

⁵ *Ibid.* f. 17a, 2.

⁶ *Ibid.* f. 269b, 2.

⁷ *Ibid.* f. 246b, 2.

a glimpse of a transition period in the conversion of a villein into a fully free burgess, when, if his manor was near, he did not immediately escape from all his customary duties there. The two Shrewsbury burgesses who were cultivating St. Julian's half-hide at Shelton¹ were certainly doing agricultural work, but they were paying rent and were clearly not of villein status.

It may be noted, in conclusion, that in all the six cases but one (Steyning) the service is stated as obtaining in 1086 only, and is not necessarily therefore of Anglo-Saxon origin. And even if it were, the freedom of these burgesses from the cultivation of (at least) manorial "yardlands" placed them in a position very different to that of the purely agricultural villein. They were, too, an almost negligible minority² among the thousands of burgesses enumerated in Domesday. It is unsafe to argue without further proof, as Dr. Stephenson does, that these cases are only casual records of a more widespread custom and further evidence that the Anglo-Saxon borough was, socially and tenurially, as lacking in uniformity as the countryside. It is evidence that burgage tenure in its fullest form had not been attained in the eleventh century, but an equal want of uniformity in its successor might be deduced from the emancipation of the burgesses of Lancaster from ploughing and other servile customs as late as 1193,³ the release of the burgesses of Leicester by the earl their lord from a mowing commutation about the same date⁴ and the reservation of a day's ploughing and a day's mowing every year by the founder of the new borough of Egremont c. 1202.⁵

The *villanus* even on his manor, and *a fortiori* in a borough, was personally a free man, but if Professor Stephenson's interpretation of a passage in Little Domesday holds good, a burgess might be a serf, and a serf in the eleventh century, though not a mere chattel, was "in the main a rightless being," a slave. The passage in question runs: "In the same borough [Ipswich] Richard [Fitz-Gilbert] has thirteen burgesses whom Phin had T.R.E.; over four of these he had soke and sake, one of them is a *serf* (*servus*), and over twelve commendation only." The numbers, if not also the sense, have suffered from over-compression, but taking the wording

¹ *D.B.* i. 253a, 1.

² The total is 154, of which 118 (if each haw had its burgess) were at Steyning.

³ *B.B.C.* i. 95.

⁴ *Ibid.* p. 94.

⁵ *Ibid.* p. 95.

as it stands, it is plain that the burgess, though a serf in 1086, had not been one or at least not known to have been one twenty years before, for a serf could not be subject to sake and soke or free to commend himself to a lord. If this is not merely an instance of that degradation of status which was so common an effect of the Norman Conquest, it may be the earliest recorded case of the reverse process, the enfranchisement of the serf in the free air of the town.

To sum up. There is little direct or unambiguous evidence about the personal condition of the burgesses before the Conquest. Yet it is not impossible to make some more or less general statements on this head. There were certainly men of thegnly rank among these burgesses in some boroughs, and the rest, the great majority, must necessarily, unless altogether unjustifiable inferences are drawn from the Ipswich "serf-burgess," have been ordinary free men. For there was no middle rank between thegn and ceorl. In this aspect there was no distinction between burgess and villein, their wergild was the same. Another kind of distinction was, however, drawn between them by their different relation to the land and this was reflected in their heriots. The agricultural villein's heriot was his best beast,¹ while even in those western boroughs which diverged most widely from later standards of borough freedom, money heriots only were required from the ordinary burgesses. This contrast, which was vastly accentuated by the deterioration of the villein's status under Norman manorialism, did not indeed extend to the rural rent-paying tenant, for his heriot was also a money one,² yet conditions peculiar to the boroughs had long been drawing other, though far less sharp, lines between the rental tenures which the Normans distinguished as burgage and socage. The very existence of the former before the Conquest has been denied, but the sceptics have allowed themselves to be so impressed by the developments of two centuries as to overlook completely the essential unity of a nascent and a fully organized system.

¹ *Leis Willelme*, 20, 3; Liebermann, *Ges.* i. 507. Liebermann strangely states that burgesses paid their best beast as heriot until released from it by the crown in the twelfth century (*ibid.* ii. 307 s.v. "Besthaupt").

² A year's rent in the Norman period (*Leis Willelme*, 20, 4; Liebermann, *Ges.* ii. 507, 515, iii. 291).

2. THE "CUSTOM OF BURGESSES"

Recent scholarship insists that in the normal Domesday borough *burgensis* means no more than inhabitant of a walled town and has no reference to legal status. Domesday indeed mentions here and there besides burgesses classes with other names, lawmen, sokemen, villeins, bordars, cottars, and even serfs, but it is claimed that all these were burgesses, too, and that it is only the caprice of the compilers which usually reserves the name for the richer, landholding inhabitants.¹ This, however, is pure conjecture, for save in two ambiguous cases² Domesday never applies burgess and any one of these other terms interchangeably to a single person or group of persons. It is obviously risky to identify the "poor burgess" of one borough as of the same status as the villein or bordar of another. On the other hand, Domesday not infrequently distinguishes burgesses from some of these classes, from lawmen at Stamford,³ from villeins at Nottingham,⁴ from bordars at Norwich⁵ and Huntingdon.⁶ The same distinction is clearly implied in the statements that the bishop of Lincoln's houses in that city⁷ and the abbot of Malmesbury's nine cottars (*cosceaz*) outside the walls of that borough⁸ "gelded with the burgesses." It can be seen, too, in the singling out of two or three of the fifty odd baronial houses at Hertford as having formerly belonged to burgesses.⁹

Wherein lay this distinction? The bishop of Lincoln's houses in his see town will give us a starting-point. They were exempt from all burghal "customs" and their tenants therefore did not rank as burgesses, though they were assessed with them to the (*dane*)geld.¹⁰ No more did the abbot of Malmesbury's rural cottars or the hundred bordars at

¹ Above, p. 78.

² That of the "serf-burgess" at Ipswich (above, p. 84) and that of a lawman included among burgesses (below, p. 87, n. 5).

³ *Lagemanni et burgenses habent cclxxii acras sine omni consuetudine* (*D.B.* i. 336b, 2).

⁴ *Ibid.* f. 280: fuerunt T.R.E. clxxiii burgenses et xix villani.

⁵ *Ibid.* ii. 116b: modo sunt in burgo dclxv burgenses Anglici et consuetudines reddunt et cccclxxx bordarii qui propter pauperiem nullam reddunt consuetudinem.

⁶ *Ibid.* i. 203a, 1: In duobus ferlingis T.R.E. fuerunt et sunt modo cxvi burgenses consuetudines omnes et geldum regis reddentes et sub eis sunt c bordarii qui adjuuant eos ad persolutionem geldii.

⁷ *Ibid.* f. 336a, 1.

⁸ *Ibid.* f. 64b, 1.

⁹ *Ibid.* f. 132a, 1.

¹⁰ *Ibid.* f. 336a, 1. Remigius episcopus habet, 1 maneriolum . . . cum saca et soca et cum thol et theim super . . . et super lxxviii mansiones praeter geldum regis quod dant cum burgensibus.

Huntingdon who were under the burgesses (*sub eis*) and helped them in payment of the geld.

It would seem then that a burgess was not any resident in a borough, but one whose tenement was assessed to the borough customs or, as we should say, rates, though the eleventh-century customs cover a rather different range of payments. More direct statements of the burgess qualification come from Colchester and York. At Colchester, in 1086, Eudo *dapifer* was in possession of five houses which in 1066 had been held by burgesses, "rendering all custom of burgesses."¹ At York, apart from the archbishop, who had one of the seven "shires" of the city with all customs, it is noted that but one great thegn, four judges (for life only) and the canons had their houses on any freer terms than as burgesses (*nisi sicut burgenses*).² Here the customs had been little decreased by alienation. Even the bishop of Durham's house, for which full exemption was claimed in 1086, was declared by the burgesses not to have been more quit than a burgess house twenty years before, except that St. Cuthbert had the toll of himself and his men.³ With these statements may be compared the Winchester evidence as to twelve persons dispossessed for the building of the Conqueror's new house; "these held houses and were burgesses and did (*faciebant*) custom."⁴

We seem now in a position to explain the distinction drawn at Stamford between the lawmen and the burgesses who shared 272 acres of arable land. The lawmen here as at Lincoln had extensive immunities.⁵ So, too, had the sokemen who held seventy-seven *mansiones* here, and it may well be doubted whether they ranked as burgesses, despite Professor Stenton's opinion to the contrary.⁶

The number of burgesses could be depleted by inability to render custom as well as by special exemptions. The 480 *bordarii* at Norwich in 1086, who rendered nothing, had clearly once been burgesses, but were now impoverished cottagers.⁷

The "minor burgesses" of Derby,⁸ the "poor burgesses"

¹ *D.B.* ii. 106, 106b.

² *Ibid.* i. 298a, 1.

³ *Ibid.*

⁴ *Ibid.* iv. 534a.

⁵ One of the three burgesses of Lincoln who, according to the Lincolnshire "Clamores" (*D.B.* i. 376a, 2), were mortgagees T.R.E. of land in Lawress hundred, was indeed Godred, a lawman of the city, but the others were not and a rural hundred court would not make fine distinctions.

⁶ *The Lincolnshire Domesday*, ed. C. W. Foster and T. Longley (Lincs. Rec. Soc. 19), pp. xxxiv-xxxv.

⁷ See p. 69; *borde*, "small house," "cottage" in Old French.

⁸ *D.B.* i. 280a, 2.

of Ipswich,¹ and the burgesses rendering custom only from their heads of Colchester² had fared but slightly better, the latter rendering only a small poll-tax towards the king's geld, yet they had not wholly lost their burgess status. These were the wreckage of the Conquest and its sequel of castle-building, rebellion, heavy taxation and official and baronial extortion. Such losses of burgess customs are carefully noted in Domesday Book, for these customs formed an important part of the royal revenue and the diminished body of burgesses was struggling to avoid being forced to make up the deficiency. Nor was the king likely to make allowance for the compensation he was receiving in another direction. It was, as we have seen, one of the features which distinguished most old English boroughs from the ordinary vill that the king had to share their revenue with a high local official, almost always the earl, usually in the proportion of two to one.³ These comital thirds, though not formally abolished, were by the escheat of earldoms practically crown revenue in most cases in 1086. Yet the formal distinction and the possibility of the creation of new earls must have stood in the way of any abatement of royal demands.

In holding that the burgess tenement rendering customs was the unit for the collection of this revenue in the eleventh as in the twelfth century, we have fortunately not to rely solely upon indirect inferences from Domesday data. The great survey itself incidentally supplies direct confirmation of this view. In its description of Chester it records an illuminating decision of the Cheshire county court that the land, on part of which the church of St. Peter in the market-place (*de Foro*) stood, had never, as its Norman grantee, Robert of Rhuddlan, claimed, been attached to an outside manor, was not therefore thegnland (*leinland*),⁴ but belonged to the borough and had always been in the custom (*in consuetudine*) of the king and earl, as that of other burgesses was (*sicut aliorum burgensium*).⁵ From this it may be concluded that

¹ D.B. ii. 290a.

² *Ibid.* ff. 106a, b.

³ Above, p. 64.

⁴ This was not the ordinary meaning of the term—"a plot carved out of the manorial territory for a special purpose" (Vinogradoff, *English Society in the Eleventh Century*, p. 371). The *theinland* at Winchester, on the bishop's fief, from which Herbert the Treasurer rendered T.R.H. the same custom as his antecessor T.R.E. (D.B. iv. 535a) perhaps belonged to this latter category.

⁵ *Ibid.* i. 262b, 2. The manor in question was apparently West Kir[k]by in Wirral which Robert had given along with St. Peter's to the Norman abbey of Evroult. His gift was confirmed by William I and Henry I,

land in a borough which had long been recognized as not subject to this custom might be treated as part of a rural manor. Its inhabitants were not burgesses, and this seems to be confirmed by Robert's calling his three tenants on the land in dispute *hospites* in a charter executed before the decision and *burgenses* in one granted after it. The vital distinction in the early borough then according to this decision, was between customary land tenanted by burgesses and land free from custom which was not so tenanted.¹ The former was, strictly speaking, the only borough land. In two boroughs, remote from Cheshire, it seems possible to identify it as a definite area. A chance remark in Domesday that one of the messuages in Oxford held in 1086 by Walter Giffard had been granted to his *antecessor* by King Edward out of the eight virgates which were then *consuetudinariae*² carries back beyond the Conquest the "Octovirgate regis" from the custom of which twelfth-century kings made grants of landgable.³ It is certainly no mere coincidence that at Wallingford King Edward had also eight virgates in which were 276 haws rendering gable and special service by road or water to four royal manors.⁴ It would seem that in both cases this area represents the original lay-out of an artificial borough, the revenue from which was reserved for king and earl. In boroughs which had grown up within Roman walls, so simple a plan is not to be expected. Canterbury, for instance, was more an ecclesiastical than a royal city. The king received gable from no more than fifty-one householders, though he had jurisdiction over 212 more.⁵ There seems to have been some hesitation locally as to whether the latter should be described as burgesses. The transcript of the original Domesday returns made for the monks of St. Augustine's calls them first *homines*, then *liberi homines* and perhaps finally *burgenses*, as Domesday Book does.⁶ At Norwich and Thetford, probably too at Buckingham, there is evidence

as well as by Earl Ranulf I of Chester (Orderic Vitalis, *Hist. Eccl.*, ed. Le Prévost, iii. 19, v. 186; Davis, *Regesta Regum Anglo-Normannorum*, no. 140; Round, *Cal. of Docs. in France*, nos. 632, 636; *Chartulary of Chester Abbey*, ed. Tait (Chetham Soc.), pp. 288 ff.). It was not the ownership of the church and its land that was in dispute but the terms on which they were held.

¹ The territorial distinction is clearly expressed in a Thetford entry: abbas de Eli habet iii aeclesias et i domum liberae et ii mansuras in consuetudine, in una est domus (D.B. ii. 119a).

² *Ibid.* i. 154a, 1.

³ H. E. Salter, *Early Oxford Charters*, nos. 66, 78, 96.

⁴ D.B. i. 56a, 2. Cf. p. 17, n. 5.

⁵ D.B. i. 2a, 1.

⁶ *Inq. St. August.*, ed. Ballard (British Acad. Record Series IV), 7, 9, 10.

that the burgesses, with few exceptions, were free to commend themselves to other lords but did not thereby transfer the king's customs to them.¹

The customs lay upon the tenement or the house on it rather than on the burgess. These could be used interchangeably as in the extraordinary expression "140 burgesses less half a house" at Huntingdon.² Norman magnates and religious houses appear in the list of king's burgesses at Colchester.³ The burgess of Hereford who fell into poverty had to resign his house to the reeve, so that the king should not lose the service,⁴ and this, though with perhaps less formality, happened elsewhere in hundreds of cases after the Conquest.

The rent—landgable or gable—of the house or tenement, was obviously the most fundamental of the "customs" rendered by the burgess, and in the Domesday description of Cambridge it is contrasted with the others grouped under the latter name.⁵ As these rents were fixed and had been often usurped by the Norman barons, they are much more frequently mentioned separately than such variable customs as toll and judicial perquisites which are frequently concealed in the amounts of general or special farms.

There are cases of uniformity of rent either for the whole borough or for a particular class of tenement, as in later burgage tenure. Where, very exceptionally, Domesday states the amount of the gable per tenement, it is either a single figure, as at Malmesbury, where it was 10*d.*,⁶ and apparently at Lincoln, where it was 1*d.*,⁷ or two figures, as at Hereford, where masures within the walls paid 7½*d.* and those without 3½*d.*, or three, as at Southampton, where they were 6*d.*, 8*d.* and 12*d.* Where we have only the total amount of the gable and the number of houses no more than an average is possible. At Huntingdon some details point to a rate of 10*d.*,⁸ as at Malmesbury, but the totals do not confirm the suggestion, while at Exeter there are no separate totals, but frequent references to "king's custom" paid or withheld, which in

¹ See below, pp. 89, 92.

² D.B. i. 203a, 1.

³ Ibid. ii. 104 ff.

⁴ Ibid. i. 179a, 1.

⁵ Ibid. 189a, 1. De consuetudinibus hujus villae vii lib. et de Landgable vii lib. et ii orae et duo denarii.

⁶ Ibid. i. 64b, 1.

⁷ Ibid. f. 336a, 1: de una quaque [mansione] unum denarium idest Landgable. This was taken by a privileged thegn, but 1*d.* was the general rate during the Middle Ages (Hemmeon, *Burgage Tenure*, p. 69).

⁸ D.B. i. 203a, 1. For wider variety in older towns, cf. p. 97.

every case but one was 8*d.*¹ The rate, uniform or average, varies from the Lincoln 1*d.* up to what is almost exactly 16*d.*, the ounce of the small mark, at Canterbury.² It was 15*d.* at Bath,³ and within a farthing of that at Gloucester.⁴ An average of about 9½*d.* is observable at Wallingford,⁵ and (in 1086) in the Wiltshire boroughs of Calne⁶ and Tilshead.⁷

The Lincoln rate continued to be the same throughout the medieval period, and the total of the Cambridge hawgable in 1485 was within a few shillings of that of the landgable in 1086.⁸ That splitting of tenements and even of houses, which made such rents generally lower in the later period, had already begun. At Huntingdon there were no less than 139½ burgesses, *i.e.*, houses, on 80 haws or tenements.⁹

So far the evidence of Domesday and of the later Winchester survey seems to confirm the broad distinction drawn by the Chester judgement between land in the borough rendering custom to king and earl, the tenants of which alone were burgesses, and land which belonged to external manors and was known as thegnland. The two surveys make it clear that burgess houses normally rendered all customs and that there were, even in 1066, other houses, varying in number in different boroughs, which were wholly or partially exempt. The Norman compilers of Domesday, in accordance with their feudal ideas, endeavoured to arrange the facts under two categories (1) royal demesne (*dominium* or *terra regis*), (2) baronial land (*terra baronum*).¹⁰ But the loose Anglo-Saxon system did not lend itself well to logical classification, the compilers found themselves with many exceptions and cross-divisions on their hands and their attempt to deal with these is often far from clear. It was quite logical, indeed, to collect under the second head the numerous cases of houses once liable to all customs which the Norman barons had entered upon with or without the king's license and were withholding the customs. The burgesses of Hertford complained that

¹ D.B. i. 102a, 1 (Drogo of bp. of Coutances), 103b, 2 (abbot of Tavistock), 104a, 2 (Battle Abbey), 108b, 1 (Judhel), 110a, 2 (Wm. Chievre), 113b, 1 (Rich. (fitz Turol)), 115b, 2 (Tetbald), 116a, 2 (Alured (Britto)), 117a, 1 (Osbern (de Salceid)), 117a, 2 (Godebold).

² *Inq. St. August.*, p. 7.

³ D.B. i. 87a, 2. Cf. p. 111, n. 1.

⁴ Ellis, *Introd. to Domesday*, ii. 446.

⁵ D.B. i. 56a, 1.

⁶ Ibid. f. 64b, 2.

⁷ Ibid. f. 65a, 1.

⁸ W. M. Palmer, *Cambridge Borough Docs.* I. lix.

⁹ D.B. loc. cit.

¹⁰ E.g. at Warwick: "the king has 113 houses in demesne and the king's barons have 112" (D.B. i. 238a, 1).

tenements formerly tenanted by burgesses had been unjustly taken from them (*sibi injuste ablatis*) by such aggressors,¹ which means that they had ceased to contribute to the customs for which the king held the burgesses responsible. At Gloucester some twenty-five houses which had rendered custom in 1066 were paying none twenty years later,² at Colchester only two out of sixty-six rendered full custom,³ and at Exeter there is frequent mention of custom withheld (*retenta*).⁴ Such cases were put on record at the instance of the burgess jurors who no doubt hoped that the king would be stirred up to reclaim his rights.⁵ Norman usurpation, however, will not account for facts which conflict with that sharp distinction between *terra consuetudinaria* and thegnland which the Chester county court drew after the Conquest. Most of the Colchester houses on the *terra baronum* in 1086 had been held by external lords, thegns and others, in 1066, and a third of the number are expressly recorded to have been appurtenant to rural manors, yet they had, without exception, rendered all customs of burgesses. They had either been granted to these lords on condition of continued payment of customs or perhaps more probably the burgesses had merely commended themselves to them, and commendation, as we have seen in the cases of Norwich and Thetford, left the king's customs practically unaffected. This is what seems to have happened at Buckingham where the barons of 1086 had burgesses who were still rendering to the king money payments averaging about 3*d.* as well as larger rents to their Norman lords, as they had done to King Edward and the English thegns whom the Normans succeeded.⁶ They are usually described as the "men" of the thegns, and this distinctly points to commendation. An absolutely clear instance is that of the twelve burgesses of Ipswich over whom the thegn Phin had nothing T.R.E. but commendation, and who "dwelt on their own land and rendered all custom in the borough."⁷ Such tenements in the pre-Conquest borough formed a middle term

¹ *D.B.* i. 132a, 1. On the other hand, a house, once a burgess's, given by the king to Harduin de Scalers, still rendered all custom. For a transfer of a tenant by Henry I "de consuetudine regis in terram Rad. Roselli" see *Liber Winton.* in *D.B.* iv. 535a. The record of a gift of houses in Exeter by William I to Baldwin the sheriff (*ibid.* i. 105b, 2, iv. 293) says nothing of the custom.

² *Ibid.* ii. 106b, 107.

³ *Ibid.* i. 162a, 1.

⁴ See p. 91, n. 1.

⁵ Nor were they wholly disappointed, for the expressed purpose of the survey of Winchester ordered by Henry I was the recovery of such lost revenue (*D.B.* iv. 531a).

⁶ *Ibid.* f. 143a, 1.

⁷ *Ibid.* ii. 393a.

between land over which the king alone had lordship, *dominium* in the Norman sense and thegnland free of custom as defined in the Chester ruling, but by 1086 it had been almost eliminated,¹ either by royal grants of exemption or, much more commonly, by baronial non-payment of customs.

In the case of commended tenements, then, there is no need for surprise when we find burgesses on the land of thegns, rendering customs to the king, even, exceptionally, in 1086. The "thegmland" of the Cheshire doomsmen,² on the contrary, was land for which it was claimed that it was not "customary" and therefore not borough land, though locally in the borough. In other words, Robert of Rhuddlan had maintained that the land in dispute did not merely "belong" to his manor of West Kir[k]by in the usual sense that it yielded a revenue to it, but was actually part and parcel of it, manorial not burghal land. Such a pretension was probably a novel Norman attempt at encroachment.

More difficult, at first sight, to reconcile with the Chester ruling that the burgess was one who rendered custom to the king and earl is the presence of burgesses upon land in boroughs which was legally quit of such custom. The two great churches of Canterbury, for instance, had large numbers of burgesses in the city, appurtenant to rural manors,³ though by ancient privilege they took all customs on their land, the king receiving nothing.⁴ The explanation seems to be that when burgess tenements were granted to churches and lay magnates along with the customs due from them, the customary tenure was not altered and the tenants would remain burgesses. An interesting confirmation comes from Lincoln. In 1086 the bishop's *maneriolum* and eighty-one houses were quit of all custom save danegeld.⁵ But the "little manor" of Willingthorpe or Westgate is described as "*burgum* de Willigtorp" in a papal bull of 1126,⁶ and this was no mere slip, for some forty years later the bishop's court decided that four *mansiones* there were free of all service "*preter burgagium*."⁷ Clearly

¹ See p. 92.

² See above, p. 88.

³ E.g. ninety-seven belonged to the Christ Church manor of Northwood (*D.B.* i. 5a, 1).

⁴ *Ipsae ecclesiae suas consuetudines quietas habuerunt R.E. tempore* (*ibid.* f. 2a, 1; *Inq. St. August.*, p. 7).

⁵ *D.B.* i. 336a, 1.
⁶ *Reg. Antiquiss.*, ed. C. W. Foster (Lincs. Rec. Soc.), i. 188 ff. Domesday speaks of the "bishop's borough" at Chester which gelded with the city (*D.B.* i. 262b, 1).

⁷ F. M. Stenton, *Danelaw Charters* (Brit. Acad.), p. 343.

some part, at least, of the "manor" was held of the bishop by burgage rent. All this may seem to conflict with the statement of Domesday that the bishops' houses merely gelded with the burgesses, which almost seems to imply that their tenants were not burgesses. But here, as in the Chester judgement, burgesses must be taken in the restricted sense of royal burgesses whose customs formed the king's revenue. The borough jurors and the Domesday commissioners were not specially interested in houses or burgesses which by privilege did not contribute to that revenue, which were not "in consuetudine regis." If the king's custom was being illegally withheld, it was another matter.

Such complete exemptions as were enjoyed by the Canterbury and Lincoln churches and by the archbishop of York,¹ who had all the customs in one of the seven "shires" of the city, and a third of those of a second, were of course exceptional. Not all churches were so highly favoured. Of Ramsey abbey's thirty-two burgesses at Huntingdon, twelve were indeed quit of all custom save (dane)geld, but the rest paid 10d. each yearly to the king, all the other customs going to the abbot.² The abbot of Peterborough's privileges in the Northamptonshire ward of Stamford included landgable and toll, but the other customs were the king's.³ Great thegns like Merlesuain at York and Tochi at Lincoln might have their halls quit of all custom, but the full privilege did not extend to any other houses they might possess. Tochi had landgable from thirty, but the king retained toll and forfeiture, if the burgesses swore truly in 1086.⁴ On the other hand, three thegns of Kent shared with Queen Edith and the great churches the right to all customs on their tenements in Canterbury.⁵ The Queen also had seventy houses in Stamford free of everything except baker's custom ((*consuetudo panificis*)).⁶

In all these cases, the tenure of the houses remained customary burghal tenure whether the whole or only part of the customs were alienated by the crown. The houses might revert to it, Queen Edith's being held only for life were certain to do so. The revenue from the houses was assigned towards

¹ *D.B.* i. 298a, 1.

² *Ibid.* f. 203a, 1.

³ *Ibid.* f. 336b, 2. For burgesses rendering full customs to the king though on the abbot of Winchester's demesne in that city, see *D.B.* iv. 534a.

⁴ *Ibid.* i. 336a, 1.

⁵ *Ibid.* f. 2a, 1; *Inq. St. August.* p. 9.

⁶ *D.B.* i. 336b, 2.

her dower, just as two-thirds of the revenue of Exeter was earmarked for it.¹

To trace an institution beyond the Norman Conquest is to find oneself in an atmosphere of dimmer conceptions and less well-defined boundaries than prevailed afterwards, but it is at least clear that the division of really practical importance in the pre-Conquest borough was not between king's land and land held by churches and thegns, but between land which paid custom in whole or in part to the king and earl and land that was wholly exempt. King's land might be, though it rarely was, exempt² and, as we have seen, land held by subjects quite commonly rendered full customs. Domesday's sharp distinction between *terra regis* and *terra baronum* in boroughs was a result of the Conquest. The Anglo-Saxon king, like his Norman successor, was chiefly interested in the land that rendered custom to him, but in his time the land "in consuetudine regis" was not, as it had virtually become by 1086, identical with the land over which he had sole lordship, the land of his demesne, in Norman language.

As the whole administration of the Anglo-Saxon borough turned upon the customs and these were "the customs of the burgesses," who are distinguished from episcopal tenants and other classes of men living in some boroughs, it is impossible to agree with Professors Stenton and Stephenson that *burgensis* before the Conquest had no technical meaning. In maintaining that the term was without reference to legal status, Dr. Stephenson relies chiefly on the mention in some Domesday boroughs of considerable numbers of landless burgesses, poor men, villeins and bordars, even a serf. But, as we have seen,³ none of these, save a few villeins,⁴ existed before the Conquest. They were mostly the result of disturbances set up by that great change. Nor are they called burgesses in 1086, unless they contributed something to the king's custom, if it were only a penny on their heads. In one case this element was actually created by the rapid growth of a borough after the Conquest. Dunwich with its 120 burgesses in 1066 had

¹ *D.B.* i. 100a, 1.

² There were two such houses at Winchester: one held T.R.E. by Stenulf the priest, and the other by Aldrectus frater Odonis (*D.B.* iv. 533b).

³ Above, pp. 84, 88.

⁴ The nineteen villeins at Nottingham in 1066 are distinguished from the burgesses and were probably the predecessors of the eleven villeins who were cultivating in 1086 the ploughland once belonging to King Edward (*D.B.* i. 280a, 1), the nine villeins mentioned at Derby (*ibid.* col. 2) were on the adjacent royal manor of Litchurch.

grown in the next twenty years into a town of 236 burgesses and 178 "poor men."¹ Of course such a class of non-burgesses is found in most, if not all, boroughs throughout the Middle Ages and later.

It is even more misleading to convert the great majority of the burgesses of Maldon into such poor burgesses, because (in 1086) they "held nothing beyond their houses in the borough."² This was a case of a borough with a very small appendage of agricultural land, and houses of course stand here for messuages in the town. Maldon was an early case of a borough with practically no agricultural "shell."³ It is therefore on late and irrelevant evidence that Professor Stephenson arrives at his conclusion that *burgensis* in the Anglo-Saxon period "meant nothing more than an inhabitant or contributory to a borough."⁴ This period, so far as the Domesday evidence relating to it goes, knew no burgesses who were not holders of messuages either rendering customs to the king or some other lord or to both or in rare cases expressly exempt from payment.

3. TENURE BY CUSTOMS AND BURGAGE TENURE

If the pre-Conquest burgess was a freeman who held a messuage and house in a borough, with or without a share in its fields, by the render of customs of which a money-rent or landgable was the most vital, the general likeness of his tenure to the burgage tenure of the twelfth century seems sufficiently obvious. Dr. Stephenson, however, with his conception of the ordinary Anglo-Saxon borough as only a piece of the countryside walled off and exhibiting the same patchwork of tenure, refuses to see any resemblance save in a few exceptional boroughs. Burgage tenure, in his opinion, was as French in origin as in name. He rejects the late Dr. Hemmeon's argument from the continuity of the landgable in burgage tenure on the ground that it was equally the rent payable by the *geneat* of the *Rectitudines* who was subject to all kinds of onerous services as well as the gable. "Really to mark burgage tenure," he says, "landgable must be a heritable money rent in return for all service."⁵ If that be

¹ *D.B.* ii. 311b.

² *Ibid.* f. 5b.

³ See above, p. 71.

⁴ See p. 78.

⁵ *E.H.R.* xlv (1930), 186. Hemmeon did not claim that the fully developed burgage tenure existed before the Conquest, but insisted on the presence of its most essential feature in the landgable: "the lands

so, there was as little real burgage tenure in the early years of the twelfth century as before the Conquest. The Winchester survey of Henry I notes no change in the several *consuetudines*, in addition to landgable, for which the burgess was liable under Edward the Confessor. It was the king's expressed intention to have them all enforced.¹ They included other monetary dues than the landgable, the *brugeld* or brewing money² and the *fripeni*³ together with personal services, not merely the town watch (*wata*),⁴ but carrying duty (*avra*, *avera*)⁵ and feeding prisoners (*pascere prisonem*).⁶ The landgable itself was paid, if paid at all, not at the uniform rate characteristic of new Norman boroughs, but at the various rates which had obtained in 1066, of which 6d. per house is the most prominent. In other respects, too, there was actually less uniformity than there had been half a century before, at any rate in the heart of the city. Two-thirds of the houses in the High Street which had been inhabited by burgesses rendering full customs had passed into other hands and were paying nothing. "Boni cives," it was complained in some cases, had been replaced by "pauperes."⁷ Nothing had been done and nothing of course could be done to get rid of the old church sokes which were the greatest obstacles to the unitary development of the city. Still, untidy as were Winchester arrangements under Henry I, judged by the standard of small Norman boroughs, there is every reason to believe that it could already be described as having burgage tenure. There is no likelihood that contemporary York showed more uniformity and fewer survivals of the past, yet Henry in the last decade of his reign confirmed to the men of Beverley "*liberum burgagium*

in the boroughs were held not by leases nor in base tenure, but by this fixed heritable money rent and seldom by any additional services. This is burgage tenure" (*Burgage Tenure in England*, p. 162).

¹ Henricus rex uolens scire quid rex Edwardus habuit omnibus modis Wintonie in suo dominico . . . volebat enim illud inde penitus habere (*D.B.* iv. 531).

² This was a Hereford custom in 1066 (*ibid.* i. 179a, 1). It was closely associated with the landgable (*ibid.* iv. 531a, 539b). It appears (as brugable) in the same association at Oxford under Stephen (Salter, *Early Oxford Charters*, no. 66) and as brugavel and brithengavel at Exeter throughout the Middle Ages (J. W. Schopp and R. C. Easterling, *The Anglo-Norman Customal of Exeter* (1925), pp. 21, 30). It was abolished at Marlborough in 1204 (*B.B.C.* i. 151). Cf. the aletol of Rye (*ibid.* p. 97).

³ The tithing penny of the frankpledge system. See N. Neilson, *Customary Rents*, pp. 170-1 (Oxford Studies, ed. Vinogradoff).

⁴ E.g. *D.B.* iv. 534b.

⁵ *Ibid.* p. 533a.

⁶ *Ibid.* p. 537b. Henry I exempted the citizens of Rouen from this (Round, *Cal. of Docs. in France*, p. 32).

⁷ *D.B.* iv. p. 532.

which Gross mainly relied. The actual charter (1299) might indeed seem incompatible with his view. It opens with the *liber burgus* clause to which is attached the grant of the liberties pertaining "ad liberum burgum" usually reserved for the *Volumus* clause, with a proviso (*ita tamen quod*) that the borough should be kept by a warden appointed by the king, *i.e.* not by an elective mayor. Eight liberties and customs are then separately granted: the right of devise, return of writs, freedom from external pleading, an elective coroner, a royal prison and gallows (for judgement of infangenethief and utfangenethief), freedom from tolls throughout the king's dominions, lot and scot in tallages by all enjoying the liberties, and two markets and a fair. The free borough and liberties clause and each of these grants are individually recited in the *Volumus* section.¹ On the face of it, there seems to be a distinction made between the liberties pertaining to a free borough and those which are specified. Fortunately, there has been preserved and printed by Madox² the petition from the men of Kingston on which the charter was granted, and this contains the substance of its clauses in practically the same order. The inclusion of the proviso about the warden, and the petition and charter of the men of Ravenserod, identical except in the market and fair clause, seem to show that the petition was not uninfluenced from above,³ but it may well be that the anxiety of the applicants to have their most important privileges set out in full accounts for their separate position in the charter. At any rate, we have a definite statement in the report of an *ad quod damnum* inquiry before the royal council (which has preserved the petition), that these were free borough privileges. The petitioners, it is stated, asked to be allowed to use and enjoy "quibusdam Libertatibus ad Liberum Burgum in Regno vestro pertinentibus." For any liberties and customs not specified but authorized by the general clause of their charter the new burgesses perhaps used Scarborough as their model, since they asked for exemption from toll as enjoyed by the burgesses of that town.

¹ Madox, *Firma Burgi* (1726), pp. 272-3.

² *History of the Exchequer*, i. 423.

³ The town had been governed by royal wardens since Edward I acquired it from the abbot of Meaux in 1293. The townsmen had held by rent from the abbey and under the king the vill is occasionally called a borough before 1299 (J. Bilson, *Wyke-upon-Hull in 1293* (Hull, 1928), pp. 61 ff., 71, 104). It will be noted that the warden proviso implies that an elective head was a normal liberty of a free borough.

Still further confirmation of Gross's interpretation of *liber burgus* comes from a charter of Edward which does not found a new borough, but enlarges an old one. In 1298 he annexed the lands of Pandon to the borough of Newcastle-on-Tyne and ordained that they should be one vill and one borough.¹ The charter goes on to grant that the burgesses of Newcastle should have in the lands and tenements of Pandon "liberum burgum sicut habent in predicta villa Novi Castri cum omnibus libertatibus et liberis consuetudinibus ad liberum burgum pertinentibus."² Here *liber burgus* must certainly carry more than the mere conversion of the Pandon lands and tenements into Newcastle burgages, for that is the subject of a special clause.³

Lastly, at Liverpool, where there was no question of new foundation or extension, we find the burgesses in 1292 identifying free borough with their lease of the farm of the town.⁴ Their case was weak, for they had no perpetual lease, but the claim confirms Gross's view.

This Liverpool identification of *liber burgus* with financial autonomy perhaps reveals a tendency of the term at the end of the thirteenth century to take on a narrower and more technical meaning. For the number of *liberi burgi* was certainly decreasing. This was the inevitable result of the extension of higher franchises to the more advanced boroughs and the differentiation produced by the reorganization of the police system culminating in the Statute of Winchester (1285) and by the introduction of a higher borough rate in national taxation. The smaller mesne boroughs whose privileges did not extend much beyond burghage tenure were losing burghal status and descending into the new category of *villae mercatoriae*. The process was somewhat slow, and was not complete until the fourteenth century was well advanced, but its causes lay far back. Among the boroughs which suffered this fate was Manchester. Recognized as a borough in royal inquisitions as late as 1322, and having a charter of 1301 closely following that of Salford (a *liber burgus*), it was judicially declared in 1359 not to be held by its lords as a borough but as a *villa mercatoria*,⁵ a

¹ *B.B.C.* ii. 41.

² *Ibid.* p. 6.

³ *Ibid.* p. 52.

⁴ See above, p. 196, n. 2. The Liverpool historians describe the lease as a fee farm, but a fee farm was a lease in perpetuity and the Liverpool grants were only for terms of years.

⁵ Harland, *Mamecestre*, iii. 449. Yet in the sense of "merchants-town" the term could be applied even to Norwich (Hudson, *Rec.* i. 63); cf. *Law Merchant* (Selden Soc.), ii. 104; Madox, *Firma Burgi*, 250, i, and *B.B.C.* II. lii. ff.

octovirgate regis (consuetudinariae), 17 n 5, 89, early meeting-place of court, 63 n 2, early loss of fields, 72-3, war service, 128, comital (?) houses, 145, farm, 154, fee farm, 191, liberties, 197-8, gild merchant, 226-7, 231, grant of land to Osney Abbey, 226-7, seal, 235, 239, burgesses and St Frideswide's, 235, early councils, 276-7, mayor, 291 n 4 See Mints

P

Page, Dr W, on London, 24 (1206) 269 n 1
 Pandon See Newcastle-on-Tyne
Panificis consuetudo See Baker's custom
 Parishes, borough, 55-6, 271
 Parliament, use of *communitas*, commune and "commons" in, 247, parliamentary boroughs, 357-8
 Peace, king's (*grith*), 40 n 3, 62 n 1, 119 n 3
 borough, 119
 justices of the, 335
 Pembroke, relief, 99, gild merchant, 349
 Penny, silver, replaces sceatt, 11
 Penrhyn [Cornwall], *liber burgus*, 206
 Peterborough, Abbey of, 94, 98, 102
 Petersfield [Hants], 229 n 5
 Petit-Dutaillis, C, 26 n 1, on commune of London, 347, on the urban meaning of *communitas*, 243 n 2, on Commons in Parliament, 247 n 2
 Pevensey, 56, lowey, 45 n 1, 56, in Cinque Ports confederation, 56 n 5, farm, 154
 Pillory, 208
 Pilton [Somerset], 18 n 7
 Pirenne, H, on town origins, 5, 21, on A-S merchants in Low Countries, 118 n 1, on *port*, 21 n 3
 Plymouth, common council, 329
 Pontefract [Yorks], free burghage, 215-16
 Poorte, in Low Countries, 3, 5, 21, 131, 135
 Porchester [Hants], 17, 18 nn 4, 7
Port, alternative name for A-S borough, 5, 10, 13, 18, 21 n 3, 22, 24-5, 27-9, 30, 341
gerefa, 5, 14, 27
 See also Borough and Trade

Portmanshethe, 229
 Portmen, 270-1
 Portmoot, Portmanimot, 39, 225-6, 231, 233-4 287 n 3, 354 See Borough, Courts
 Portsmouth, 18 n 7, jurats, 289 n 2, 294 n 2
Potentiores, 243, 271, 284, 286, 291, 303 4, 319-20, 330-2
 Primogeniture, 111 n 3
 Prison, 204, 208
 Prisoners, custom of feeding, 97, of arresting and guarding, 134 n 3
 Probate, borough, 355 See Devise
 Provostry (*prepositura*), office of royal reeve (bailiff), 186, 225, 230, 234, seal, 239, 271.
Prudhommes, probi homines, (1) the body of burgesses, 244, 257, 286 n 3
 (2) official body of a borough, 244, 257, 266-70, 278-9, 286 n 3, 292, 307

R

Ramsey, Abbey of, 94
 Ravenserod [Yorks], 204
 Reading [Berks], 52, farm, 150, 154, mediatized, 155
 Recorder, borough, 331
 Reeves See Earl, King, *Port* and Provostry
 Reid, Miss R R, 26 n 1.
 Relief, 98-9
Renta, 104 and n 4
 Rhuddlan [co Flint], liberties, 203, 210, Robert of, 88-9, 93
 Richard I and the boroughs, 177-9, 182, 252
 Rochester, land grants to see, 7-9, *castellum*, 7, bp Eardwulf of, 7, hundred, 45 n 1, farm, 150, 152
 Romney, reliefs for ship-service, 125, barons, 260-1
 Marsh, *juratores, jurati* of, 289 n 1
 Rouen, Emma, viscountess of, 170, commune of, alleged copying of at London, 266-70, 292, 295, 296 n 2, 297
 Round, J H, 26 n 1, 73-4, on *tertius denarius*, 141 n 3, on commune of London, 181-2, 266-70, 340, 347, on supposed Picard origin of the Cinque Ports organization, 293-4
 Rye [Sussex], barons, 260

S

Sagus[m], cloak (?), 10 n 4
 St Albans, surrenders charter and seal, 237
 St George, hundred of [Dorset], 52-3, 56
 Saint-Omer [France, Pas de Calais], 110, 247 n 2
 Sake and Soke, 125-6, 128
 Sale of burghages, 101, 355
 Salford [Lancs], heriot, 99
 Salisbury, episcopal man and bor, 57
 New, seal, 236-7
 Saltash [Cornwall], 105 n 6
 Sandwich, hundred, 45 n 1, 49 n 2, reliefs for ship-service, 125-6, mediatized, 140, farm, 152, barons, 260, seal, 260, incorporation, 261 n 7
 Sarre [Kent] 10
Scabini (schoffen), 61 n 3, 266, 269, 295 See *Skivini*
 Scandinavia, early trade with, 118, mercantile settlements in Danelaw, 131 2
 Scarborough [Yorks], farm, 172, liberties, 204, 211, non-burgesses, 215 n 1
 Scaftesege [Bucks], 18 n 4
 Seals, municipal, 230, 235-7, 250-1, 257 8 260-1
 in France, 299 n 3
 Seasalter [Kent], 'little borough' of, 67, 141
 Sea-service See Cinque Ports and Maldon
Seniores, senatores, 301 See Borough
 Senlis, Simon de, lord of Northampton, 155 6
 Shaftesbury [Dorset], east gate of 15 n 5, 18, 51, 55, 356
 Sherborne [Dorset], burghages at, 207
 Sheriff, the Anglo-Norman, 149-51 225. See *Firma burgi*.
 the A-S, 147-8 See *Firma burgi*
 exclusion of, 217, 345-7, borough, 44, 331, 352
 Shrewsbury, 44, hundred, 45, liberty, 48 n 3, heriot, 81, merchet, 82, French borough, 105, mediatized, 149, 155, lease of farm, 174-5, 178, fee farm, 187, councils, 324
 Skivini, ? aldermen, 252, 266, 292, 297
 Skynburgh [co Cumb], *liber burgus*, 201, 209

Socage, tenure by, in boroughs, 82, 107 and n 2 134, 218, 343
 Socager, heriot of, 80
 Soke of king and earl, 146
 Sokemen in boroughs, 78, 80 87
 Sokes, 23, 43, 97
 Southampton [Hants], 28, 57, land-gable, 90, 100, 109 n 2, farm, 170, 178, fee farm, 185 n 11, gild merchant and non gildsmen, 230-1, 249 n 2, alderman and mayor, 232 3, council, 279
 Southwark, 58
 Sovereign, of Irish borough See Kilkenny
 Speaker, common (*praelocutor*), 324
 Stafford, 24, comital houses, 145, third penny, 149 n 2, farm, 153-4, *liber burgus*, 197, 199, 217 n 1
 Stamford, lawmen, 43, 80, wards, 60 n 3, arable, 71 n 1, sokemen, 78, 80, abbot of Peterborough's ward, 94, baker's custom, 94, mediatized, 162 n 1
 Stenton, Prof, on meaning of *burgensis* in A-S times, 78, 95, on sokemen of Stamford, 78, 87
 Stephenson, Dr Carl, conception of the A-S borough, 4-5, 27, 130 8, 248, on borough and hundred courts, 33, 61, on *burghemot*, 38, on the agricultural character of the ordinary A-S borough, 68-77, on effect of Norman settlements 103-8, 131-2, on the meaning of *burgensis* in A-S times, 78-9, 86, 95-6, on "villein and "serf" burgesses, 83-5, on origins of Cambridge, 131-2, on Scandinavian trading settlements in Danelaw, 131-2, on borough aids, 166 n 3, on *firma burgi* and election of reeves, 185-93, on *liber burgus*, 217-20, on municipal development in twelfth century, 248, on the origin of mayors and town councils, 296-301
 Sterkeley hundred [Wilts], 53
 Steyning [Sussex] borough and hundred, 56, 83
 Stockport [co Chester], *liber burgus*, 201
 Sudbury [Suffolk], transferred to Thingoe Hd for danegeld, 59
 Sunderland [co Durham], 349 50

