Domesday Book and Beyond:
Three Essays in the Early History of England

Frederic William Maitland

Essay One

Domesday Book

At midwinter in the year 1085 William the Conqueror wore his crown at Gloucester and there he had deep speech with his wise men. The outcome of that speech was the mission throughout all England of 'barons,' 'legates' or 'justices' charged with the duty of collecting from the verdicts of the shires, the hundreds and the vills a descriptio of his new realm. The outcome of that mission was the descriptio preserved for us in two manuscript volumes, which within a century after their making had already acquired the name of Domesday Book. The second of those volumes, sometimes known as Little Domesday, deals with but three counties, namely Essex, Norfolk and Suffolk, while the first volume comprehends the rest of England. Along with these we must place certain other documents that are closely connected with the grand inquest. We have in the so-called Inquisitio Comitatus Cantabrigiae, a copy, an imperfect copy, of the verdicts delivered by the Cambridgeshire jurors, and this, as we shall hereafter see, is a document of the highest value, even though in some details it is not always very trustworthy.(1*) We have in the so-called Inquisitio Eliensis an account of the estates of the Abbey of Ely in Cambridgeshire, Suffolk and other counties, an account which has as its ultimate source the verdicts of the juries and which contains some particulars which were omitted from Domesday Book.(2*) We have in the so-called Exon Domesday an account of Cornwall and Devonshire and of certain lands in Somerset, Dorset and Wiltshire; this also seems to have been constructed directly or indirectly out of the verdicts delivered in those counties, and it contains certain particulars about the amount of stock upon the various estates which are omitted from what, for distinction's sake, is sometimes called the Exchequer Domesday.(3*) At the beginning of this Exon Domesday we have certain accounts relating to the payment of a great geld, seemingly the geld of six shillings on the hide that William levied in the winter of 1083-4, two years before the deep speech at Gloucester.(4*) Lastly in the Northamptonshire Geld Roll,(5*) we have some precious information about fiscal affairs as they stood some few years before the survey.(6*)

Such in brief are the documents out of which, with some small help from the Anglo-Saxon dooms and land-books, from the charters of Norman kings and from the so-called Leges of the Conqueror, the Confessor and Henry I, some future historian may be able to reconstruct the land-law which obtained in the conquered England of 1086, and (for our records frequently speak of the tempus Regis Edwardi) the unconquered England of 1065. The reflection that but for the deep speech at Gloucester, but for the lucky survival of two or three manuscripts, he would have known next to nothing of that law, will make him modest and cautious. At the present moment, though much has been done towards forcing Domesday Book to yield its meaning, some of the legal problems that are raised by it, especially those which concern the time of

King Edward, have hardly been stated, much less solved. It is with some hope of stating, with little hope of solving, them that we begin this essay. If only we can ask the right questions we shall have done something for a good end. If English history is to be understood, the law of Domesday Book must be mastered. We have here an absolutely unique account of feudalism in two different stages of its growth, the more trustworthy, though the more puzzling, because it gives us particulars and not generalities.

Puzzling enough it certainly is, and this for many reasons. Our task may be the easier if we state some of those reasons at the outset.

To say that Domesday Book is no collection of laws or treatise on law would be needless. Very seldom does it state any rules in general terms, and when it does so we shill usually find cause for believing that this rule is itself an exception, a local custom, a provincial privilege. Thus, if we are to come by general rules, we must obtain them inductively by a comparison of many thousand particular instances. But further, Domesday Book is no register of title, no register of all those rights and facts which constitute the system of landholdership. One great purpose seems to mould both its form and its substance; it is a geld-book.

When Duke William became king of the English, he found (so he might well think) among the most valuable of his newly acquired regalia a right to levy a land-tax under the name of geld or danegeld. A detailed history of that tax cannot be written. It is under the year 991 that our English chronicle first mentions a tribute paid to the Danes;(7*) £10,000 was then paid to them. In 994 the yet larger sum of £16,000(8*) was levied. In 1002 the tribute had risen to £24,000,(9*) in 1007 to £30,000;(10*) in 1009 East Kent paid £3,000;(11*) £21,000 was raised in 1014;(12*) in 1018 Cnut when newly crowned took £72,000 besides £11,000 paid by the Londoners;(13*) in 1040 Harthacnut took £21,099 besides a sum of £11,048 that was paid for thirty-two ships.(14*) With a Dane upon the throne, this tribute seems to have become an occasional war-tax. How often it was levied we cannot tell; but that it was levied more than once by the Confessor is not doubtful.(15*) We are told that he abolished it in or about the year 1051, some eight or nine years after his accession, some fifteen before his death. No sooner was William crowned than 'he laid on men a geld exceeding stiff.' In the next year 'he set a mickle geld' on the people. In the winter of 1083-4 he raised a geld of 72 pence (6 Norman shillings) upon the hide. That this tax was enormously heavy is plain. Taking one case with another, it would seem that the hide was frequently supposed to be worth about £1 a year and there were many hides in England that were worth far less. But grievous as was the tax which immediately preceded the making of the survey, we are not entitled to infer that it was of unprecedented severity. It brought William but £415 or thereabouts from Dorset and £510 or thereabouts from Somerset.(16*) Worcestershire was deemed to contain about 1200 hides and therefore, even if none of its hides had been exempted, it would have contributed but £360. If the huge sums mentioned by the chronicler had really been exacted, and that too within the memory of men who were yet living, William might well regard the right to levy a geld as the most precious jewel in his English crown. To secure a due and punctual payment of it was worth a gigantic effort, a survey such as had never been made and a record such as had never been penned since the grandest days of the old Roman Empire. But further, the assessment of the geld

sadly needed reform. Owing to one cause and another, owing to privileges and immunities that had been capriciously granted, owing also, so we think, to a radically vicious method of compiling the geldable areas of counties and hundreds, the old assessment was full of anomalies and iniquities. Some estates were over-rated, others were scandalously under-rated. That William intended to correct the old assessment, or rather to sweep it away and put a new assessment in its stead, seems highly probable, though it has not been proved that either he or his sons accomplished this feat.(17*) For this purpose, however, materials were to be collected which would enable the royal officers to decide what changes were necessary in order that all England might be taxed in accordance with a just and uniform plan. Concerning each estate they were to know the number of geldable units ('hides' or 'carucates') for which it had answered in King Edward's day, they were to know the number of plough oxen that there were upon it, they were to know its true annual value, they were to know whether that value had been rising or falling during the past twenty years. Domesday Book has well been called a rate book, and the task of spelling out a land law from the particulars that it states is not unlike the task that would lie before any one who endeavoured to construct our modern law of real property out of rate books, income tax returns and similar materials. All the lands, all the land-holders of England may be brought before us, but we are told only of such facts, such rights, such legal relationships as bear on the actual or potential payment of geld. True, that some minor purposes may be achieved by the king's commissioners, though the quest for geld is their one main object. About the rents and renders due from his own demesne manors the king may thus obtain some valuable information. Also he may learn, as it were by the way, whether any of his barons or other men have presumed to occupy, to 'invade,' lands which he has reserved for himself. Again, if several persons are in dispute about a tract of ground, the contest may be appeased by the testimony of shire and hundred, or may be reserved for the king's audience; at any rate the existence of an outstanding claim may be recorded by the royal commissioners. Here and there the peculiar customs of a shire or a borough will be stated, and incidentally the services that certain tenants owe to their lords may be noticed. But all this is done sporadically and unsystematically. Our record is no register of title, it is no feodary, it is no custumal, it is no rent roll; it is a tax book, a geld book.

We say this, not by way of vain complaint against its meagreness, but because in our belief a care for geld and for all that concerns the assessment and payment of geld colours far more deeply than commentators have usually supposed the information that is given to us about other matters. We should not be surprised if definitions and distinctions which at first sight have little enough to do with fiscal arrangements, for example the definition of a manor and the distinction between a villein and a 'free man', involved references to the apportionment and the levy of the land-tax. Often enough it happens that legal ideas of a very general kind are defined by fiscal rules; for example, our modern English idea of 'occupation' has become so much part and parcel of a system of assessment that lawyers are always ready to argue that a certain man must be an 'occupier' because such men as he are rated to the relief of the poor. It seems then a fair supposition that any line that Domesday Book draws systematically and sharply, whether it be between various classes of men or between various classes of tenements, is

somehow or another connected with the main theme of that book-geldability, actual or potential.

Since we have mentioned the stories told by the chronicler about the tribute paid to the Danes, we may make a comment upon them which will become of importance hereafter. Those stories look true, and they seem to be accepted by modern historians. Had we been told just once that some large number of pounds, for example £60,000, was levied, or had the same round sum been repeated in year after year, we might well have said that such figures deserved no attention, and that by £60,000 our annalist merely meant a big sum of money. But, as will have been seen, he varies his figures from year to year and is not always content with a round number; he speaks of £21,099 and of £11,048.(18*) We can hardly therefore treat his statements as mere loose talk and are reluctantly driven to suppose that they are true or near the truth. If this be so, then, unless some discovery has yet to be made in the history of money, no word but 'appalling' will adequately describe the taxation of which he speaks. We know pretty accurately the amount of money that became due when Henry I or Henry II imposed a danegeld of two shillings on the hide. The following table constructed from the pipe rolls will show the sum charged against each county. We arrange the shires in the order of their indebtedness, for a few of the many caprices of the allotment will thus be visible, and our table may be of use to us in other contexts.(18*)

Approximate Charge of a Danegeld of Two Shillings on the Hide in the Middle of the Twelfth Century

	£
Wiltshire	389
Norfolk	330
Somerset	278
Lincoln	266
Dorset	248
Oxford	242
Essex	236
Suffolk	235
Sussex	210
Bucks	205
Berks	202
Gloucester	190
S. Hants	180
Surrey	177
York	160
Warwick	129
N. Hants.	120
Salop	118
Cambridge	114
Derby & Nottingham	110
Hertford	110
Bedford	110
Kent	105
Devon	104
Worcester	101
Leicester	100
Hereford	94
Middlesex	85
Huntingdon	71

Stafford	44
Cornwall	23
Rutland	12
Northumberland	100
Cheshire(20*)	0
Total	5198

Now be it understood that these figures do not show the amount of money that Henry I and Henry II could obtain by a danegeld. They had to take much less. When it was last levied, the tax was not bringing in £3500, so many were the churches and great folk who had obtained temporary or permanent exemptions from it. We will cite Leicestershire for example. The total of the geld charged upon it was almost exactly or quite exactly £100. On the second roll of Henry II's reign we find that £25 7s. 6d. have been paid into the treasury, that £22 8s. 3d. have been 'pardoned' to magnates and templars, that £51 8s. 2d. are written off in respect of waste, and that 16s. 0d. are still due. On the eighth roll the account shows that £62 12s. 7d. have been paid and that £37 6s. 9d. have been 'pardoned.' No, what our table displays is the amount that would be raised if all exemptions were disregarded and no penny forborne. And now let us turn back to the chronicle and (not to take an extreme example) read of £30,000 being raised. Unless we are prepared to bring against the fathers of English history a charge of repeated, wanton and circumstantial lying, we shall think of the danegeld of AEthelred's reign and of Cnut's as of an impost so heavy that it was fully capable of transmuting a whole nation. Therefore the lines that are drawn by the incidence of this tribute will be deep and permanent; but still we must remember that primarily they will be fiscal lines.

Then again, we ought not to look to Domesday Book for a settled and stable scheme of technical terms. Such a scheme could not be established in a brief twenty years. About one half of the technical terms that meet us, about one half of the terms which, as we think, ought to be precisely defined, are, we may say, English terms. They are ancient English words, or they are words brought hither by the Danes, or they are Latin words which have long been in use in England and have acquired special meanings in relation to English affairs. On the other hand, about half the technical terms are French. Some of them are old Latin words which have acquired special meanings in France, some are Romance words newly coined in France, some are Teutonic words which tell of the Frankish conquest of Gaul. In the one great class we place scira, hundredum, wapentac, hida, berewica, inland, haga, soka, saka, geldum, gablum, Scotum, heregeat, gersuma, thegnus, sochemannus, burus, coscet; in the other comitatus, carucata, virgata, bovata, arpentum, manerium, feudum, alodium, homagium, relevium, baro, vicecomes, vavassor, villanus, bordarius, colibertus, hospes. It is not in twenty years that a settled and stable scheme can be formed out of such elements as these. And often enough it is very difficult for us to give just the right meaning to some simple Latin word. If we translate miles by soldier or warrior, this may be too indefinite; if we translate it by knight, this may be too definite, and yet leave open the question whether we are comparing the miles of 1086 with the cniht of unconquered England or with the knight of the thirteenth century. If we render vicecomes by sheriff we are making our sheriff too little of a vicomte. When comes is before us we have to choose between giving Britanny an earl, giving Chester a

count, or offending some of our comites by invidious distinctions. Time will show what these words shall mean. Some will perish in the struggle for existence; others have long and adventurous careers before them. At present two sets of terms are rudely intermixed; the time when they will grow into an organic whole is but beginning.

To this we must add that, unless we have mistaken the general drift of legal history, the law implied in Domesday Book ought to be for us very difficult law, far more difficult than the law of the thirteenth century, for the thirteenth century is nearer to us than is the eleventh. The grown man will find it easier to think the thoughts of the school-boy than to think the thoughts of the baby. And yet the doctrine that our remote forefathers being simple folk had simple law dies hard. Too often we allow ourselves to suppose that, could we but get back to the beginning, we should find that all was intelligible and should then be able to watch the process whereby simple ideas were smothered under subtleties and technicalities. But it is not so. Simplicity is the outcome of technical subtlety; it is the goal not the starting point. As we go backwards the familiar outlines become blurred; the ideas become fluid, and instead of the simple we find the indefinite. But difficult though our task may be, we must turn to it.

NOTES:

1. Inquisitio Comitatus Cantabrigiae, ed. N. E. Hamilton. When, as sometimes happens, the figures in this record differ from those given in Domesday Book, the latter seem to be in general to more correct, for the arithmetic is better. Also it seems plain that the compilers of the Domesday had, even for districts comprised in the Inquisitio, other materials besides those that the Inquisitio contains. For example, that document says nothing of some of the royal manors. [Since this note was written, Mr. Round, Feudal England, pp. 10 ff. has published the same result after an elaborate investigation.]

2. This is printed in D. B. vol. iv. and given by Hamilton at the end of his Inq. Com. Cantab. As to the manner in which it was compiled see Round, Feudal England, 133 ff.

3. The Exon Domesday is printed in D. B. vol. iv.

4. Round, Domesday Studies, i. 91: 'I am tempted to believe that these geld rolls in the form in which we now have them were compiled at Winchester after the close of Easter 1084, by the body which was the germ of the future Exchequer.'

5. Printed by Ellis, Introduction to Domesday, i. 184.

6. Round, Feudal England, 147.

7. Earle, Two Chronicles, 130-1.

8. Ibid. 132-3.

9. Ibid. 137.

10. Ibid. 141.

11. Ibid. 142.

12. Ibid. 151.

13. Ibid. 160-1.

14. Ibid. 167.

15. There is a valuable paper on this subject, A Short Account of Danegeld [by P. C. Webb] published in 1756.

16. D. B. iv. 26, 489.

17. In 1194 the tax for Richard's ransom seems, at least in Wiltshire, to have been distributed in the main according to the assessment that prevailed in 1084; Rolls of the King's Court (Pipe Roll Soc.) i. Introduction, p. xxiv.

18. The statement in AEthelred, ii. 7 (Schmid, p. 209) as to a payment of £22,000 is in a general way corroborative of the chronicler's large figures.

19. The figures will be given more accurately on a later page.

20 Cheshire pays no geld to the king. This loss is compensated by a sum which is sometimes exacted from Northumberland.

1. PLAN OF THE SURVEY

England was already mapped out into counties, hundreds or wapentakes and vills. Trithings or ridings appear in Yorkshire and Lincolnshire, lathes in Kent, rapes in Sussex, while leets appear, at least sporadically in Norfolk.(1*) These provincial peculiarities we must pass by, nor will we pause to comment at any length on the changes in the boundaries of counties and of hundreds that have taken place since the date of the survey. Though these changes have been many and some few of them have been large,(2*) we may still say that as a general rule the political geography of England was already stereotyped. And we see that already there are many curious anomalies, 'detached portions' of counties, discrete hundreds, places that are extra-hundredal,(3*) places that for one purpose are in one county and for another purpose in another county.(4*) We see also that proprietary rights have already been making sport of arrangements which in our eyes should be fixed by public law. Earls, sheriffs and others have enjoyed a marvellous power of taking a tract of land out of one district and placing it, or 'making it lie' in another district.(5*) Land is constantly spoken of as though it were the most portable of things; it can easily be taken from one vill or hundred and be added to or placed in or caused to lie in another vill or hundred. This 'notional movability' of land, if we may use such a term, will become of importance to us when we are studying the formation of manors.

For the present, however, we are concerned with the general truth that England is divided into counties, hundreds or wapentakes and vills. This is the geographical basis of the survey. That basis, however, is hidden from us by the form of our record. The plan adopted by those who fashioned Domesday Book out of the returns provided for them by the king's commissioners is a

curious, compromising plan. We may say that in part it is geographical, while in part it is feudal or proprietary. It takes each county separately and thus far it is geographical; but within the boundaries of each county it arranges the lands under the names of the tenants in chief who hold them. Thus all the lands in Cambridgeshire of which Count Alan is tenant in chief are brought together, no matter that they lie scattered about in various hundreds. Therefore it is necessary for us to understand that the original returns reported by the surveyors did not reach the royal treasury in this form. At least as regards the county of Cambridge, we can be certain of this. The hundreds were taken one by one; they were taken in a geographical order, and not until the justices had learned all that was to be known of Staplehow hundred did they call upon the jurors of Cheveley hundred for their verdict. That such was their procedure we might have guessed even had we not been fortunate enough to have a copy of the Cambridgeshire verdicts; for, though the commissioners seem to have held but one moot for each shire, still it is plain that each hundred was represented by a separate set of jurors.(6*) But from these Cambridgeshire verdicts we learn what otherwise we could hardly have known. Within each hundred the survey was made by vills.(7*) If we suppose the commissioners charging the jurors we must represent them as saying, not 'Tell us what tenants in chief have lands in your hundred and how much each of them holds,' but 'Tell us about each vill in your hundred, who holds land in it.' Thus, for example, the men of the Armingford hundred are called up. They, make a separate report about each vill in it. They begin by stating that the vill is rated at a certain number of hides and then they proceed to distribute those hides among the tenants in chief. Thus, for example, they say that Abington was rated at 5 hides, and that those 5 hides are distributed thus:(8*)

	hides	virgates
Hugh Pincerna holds of the bishop of Winchester	2 1/2	1/2
The king	1/2	
Ralph and Robert hold of Hardouin de Eschalers	1	1 1/2
Earl Roger	1	
Picot the sheriff	1/2	
Alwin Hamelecoc the bedel holds of the king		1/2
	5	0

Now in Domesday Book we must look to several different pages to get this information about the vill of Abington, -- to one page for Earl Roger's land, to another page for Picot's land, and we may easily miss the important fact that this vill of Abington has been rated as a whole at the neat, round figure of 5 hides. And then we see that the whole hundred of Armingford has been rated at the neat, round figure of 100 hides, and has consisted of six vills rated at 10 hides apiece and eight vills rated at 5 hides apiece.(9*) Thus we are brought to look upon the vill as a unit in a system of assessment. All this is concealed from us by the form of Domesday Book.

When that book mentions the name of a place, when it says that Roger holds Sutton or that Ralph holds three hides in Norton, we regard that name as the name of a vill; it may or may not be also the name of a manor. Speaking very generally we may

say that the place so named will in after times be known as a vill and in our own day will be a civil parish. No doubt in some parts of the country new vills have been created since the Conqueror's time. Some names that occur in our record fail to obtain a permanent place on the roll of English vills, become the names of hamlets or disappear altogether; on the other hand, new names come to the front. Of course we dare not say dogmatically that all the names mentioned in Domesday Book were the names of vills; very possibly (if this distinction was already known) some of them were the names of hamlets; nor, again, do we imply that the villa of 1086 had much organization; but a place that is mentioned in Domesday Book will probably be recognized as a vill in the thirteenth, a civil parish in the nineteenth century. Let us take Cambridgeshire by way of example. Excluding the Isle of Ely, we find that the political geography of the Conqueror's reign has endured until our own time. The boundaries of the hundreds lie almost where they lay, the number of vills has hardly been increased or diminished. The chief changes amount to this: -- A small tract on the east side of the county containing Exning and Bellingham has been made over to Suffolk; four other names contained in Domesday no longer stand for parishes, while the names of five of our modern parishes -- one of them is the significant name of Newton -- are not found there.(10*) But about a hundred and ten vills that were vills in 1086 are vills or civil parishes at the present day, and in all probability they then had approximately the same boundaries that they have now.

This may be a somewhat too favourable example of permanence and continuity. Of all counties Cambridgeshire is the one whose ancient geography can be the most easily examined; but wherever we have looked we have come to the conclusion that the distribution of England into vills is in the main as old as the Norman conquest.(11*) Two causes of difficulty may be noticed, for they are of some interest. Owing to what we have called the 'notional movability' of land, we never can be quite sure that when certain hides or acres are said to be in or lie in a certain place they are really and physically in that place. They are really in one village, but they are spoken of as belonging to another village, because their occupants pay their geld or do their services in the latter. Manorial and fiscal geography interferes with physical and villar geography. We have lately seen how land rated at five hides was comprised, as a matter of fact, in the vill of Abington; but of those five hides, one virgate 'lay in' Shingay, a half-hide 'lay in' Litlington while a half-virgate 'lay and had always lain' in Morden.(12*) This, if we mistake not, leads in some cases to an omission of the names of small vills. A great lord has a compact estate, perhaps the whole of one of the small southern hundreds. He treats it as a whole, and all the land that he has there will be ascribed to some considerable village in which he has his hall. We should be rash in supposing that there were no other villages on this land. For example, in Surrey there is now-a-days a hundred called Farnham which comprises the parish of Farnham, the parish of Frensham and some other villages. If we mistake not, all that Domesday Book has to say of the whole of this territory is that the Bishop of Winchester holds Farnham, that it has been rated at 60 hides, that it has been worth the large sum of £65 a year and that there are so many tenants upon it.(12*) We certainly must not draw the inference that there was but one vill in this tract. If the bishop is tenant in chief of the whole hundred and has become responsible for all the geld that is levied therefrom, there is no great reason why the surveyors should trouble

themselves about the vills. Thus the simple Episcopus tenet Ferneham may dispose of some 25,000 acres of land. So the same bishop has an estate at Chilcombe in Hampshire; but clearly the name Ciltecumbe covers a wide territory for there are no less than nine churches upon it.(14*) We never can be very certain about the boundaries of these large and compact estates.

A second cause of difficulty lies in the fact that in comparatively modern times, from the twelfth century onwards, two or three contiguous villages will often bear the same name and be distinguished only by what we may call their surnames -- thus Guilden Morden and Steeple Morden, Stratfield Saye, Stratfield Turgis, Stratfield Mortimer, Tolleshunt Knights, Tolleshunt Major, Tolleshunt Darcy. Such cases are common; in some districts they are hardly exceptional. Doubtless they point to a time when a single village by some process of colonization or subdivision become two villages. Now Domesday Book seldom enables us to say for certain whether the change has already taken place. In a few instances it marks off the little village from the great village of the same name.(15*) In some other instances it will speak, for example, of Mordune and Mordune Alia, of Emingeforde and Emingeforde Alia, or the like, thus showing both that the change has taken place, and also that it is so recent that it is recognized only by very clumsy terms. In Cambridgeshire, since we have the original verdicts, we can see that the two Mordens are already distinct; the one is rated at ten hides, the other at five.(16*) On the other hand, we can see that our Great and Little Shelford are rated as one vill of twenty hides,(17*) our Castle Camps and Shudy Camps as one vill of five hides.(18*) Elsewhere we are left to guess whether the fission is complete, and the surnames that many of our vills ultimately acquire, the names of families which rose to greatness in the twelfth and thirteenth centuries, will often suggest that the surveyors saw but one vill where we see two.(19*) However, the broad truth stands out that England was divided into vills and that in general the vill of Domesday Book is still a vill in after days.(20*)

The 'vill' or 'town' of the later middle ages was, like the 'civil parish' of our own day, a tract of land with some houses on it, and this tract was a unit in the national system of police and finance.(21*) But we are not entitled to make for ourselves any one typical picture of the English vill. We are learning from the ordnance map (that marvellous palimpsest, which under Dr Meitzen's guidance we are beginning to decipher) that in all probability we must keep at least two types before our minds. On the one hand, there is what we might call the true village or the nucleated village. In the purest form of this type there is one and only one cluster of houses. It is a fairly large cluster; it stands in the midst of its fields, of its territory, and until lately a considerable part of its territory will probably have consisted of spacious 'common fields.' In a country in which there are villages of this type the parish boundaries seem almost to draw themselves.(22*) On the other hand, we may easily find a country in which there are few villages of this character. The houses which lie within the boundary of the parish are scattered about in small clusters; here two or three, there three or four. These clusters often have names of their own, and it seems a mere chance that the name borne by one of them should be also the name of the whole parish or vill.(23*) We see no traces of very large fields. On the face of the map there is no reason why a particular group of cottages should be reckoned to belong to this parish rather than to the next. As our eyes grow accustomed to

the work we may arrive at some extremely, important conclusions such as those which Meitzen has suggested. The outlines of our nucleated villages may have been drawn for us by Germanic settlers, whereas in the land of hamlets and scattered steads old Celtic arrangements may never have been thoroughly effaced. Towards theories of this kind we are slowly winning our way. In the meantime let us remember that a villa of Domesday Book may correspond to one of at least two very different models or may be intermediate between various types. It may be a fairly large and agrarianly organic unit, or it may be a group of small agrarian units which are being held together in one whole merely, by an external force, by police law and fiscal law.(24*)

Two little fragments of 'the original one-inch ordnance map' will be more eloquent than would be many paragraphs of written discourse. The one pictures a district on the border between Oxfordshire and Berkshire cut by the Thames and the main line of the Great Western Railway; the other a district on the border between Devon and Somerset, north of Collumpton and south of Wiveliscombe. Neither is an extreme example. True villages we may easily find. Cambridgeshire, for instance, would have afforded some beautiful specimens, for many of the 'open fields' were still open when the ordnance map of that county was made. But throughout large tracts of England, even though there has been an 'inclosure' and there are no longer any open fields, our map often shows a land of villages. When it does so and the district that it portrays is a purely agricultural district, we may generally assume without going far wrong that the villages are ancient, for during at least the last three centuries the predominant current in our agrarian history has set against the formation of villages and towards the distribution of scattered homesteads. To find the purest specimens of a land of hamlets we ought to go to Wales or to Cornwall or to other parts of 'the Celtic fringe'; very fair examples might be found throughout the west of England. Also we may perhaps find hamlets rather than villages wherever there have been within the historic period large tracts of forest land. Very often, again, the parish or township looks on our map like a hybrid. We seem to see a village with satellitic hamlets. Much more remains to be done before we shall be able to construe the testimony of our fields and walls and hedges, but at least two types of vill must be in our eyes when we are reading Domesday Book.(25*)

To say that the villa of Domesday Book is in general the vill of the thirteenth century and the civil parish of the nineteenth is to say that the areal extent of the villa varied widely from case to case. More important is it for us to observe that the number of inhabitants of the villa varied widely from case to case. The error into which we are most likely to fall will be that of making our vill too populous. Some vills, especially some royal vills, are populous enough; a few contain a hundred households; but the average township is certainly much smaller than this.(26*) Before we give any figures, it should first be observed that Domesday Book never enables us to count heads. It states the number of the tenants of various classes, sochemanni, villani, bordarii, and the like, and leaves us to suppose that each of these persons is, or may be, the head of a household. It also states how many servi there are. Whether we ought to suppose that only the heads of servile households are reckoned, or whether we ought to think of the servi as having no households but as living within the lord's gates and being enumerated, men, women and able-bodied children, by the head -- this is a difficult question. Still we may reach some results which will

enable us to compare township with township. By way of fair sample we may take the Armingford hundred of Cambridgeshire, and all persons who are above the rank of servi we will include under the term 'the non-servile population'.(27*)

Armingford Hundred

	Non-servile population	Servi	Total
Abingdon	19	0	19
Bissingbourn	35	3	38
Clapton	19	0	19
Croydon	29	0	29
Hatley	18	3	21
Litlington	37	6	43
Melbourn	62	1	63
Meldreth	44	7	51
Morden	43	11	54
Morden Alia	50	0	50
Shingay	18	0	18
Tadlow	27	4	31
Wendy	12	4	16
Whaddon	44	6	50
Total	457	45	502

Here in fourteen vills we have an average of thirty-two non-servile households for every vill. Now even in our own day a parish with thirty-two houses, though small, is not extremely small. But we should form a wrong picture of the England of the eleventh century if we filled all parts of it with such vills as these. We will take at random fourteen vills in Staffordshire held by Earl Roger.(28*)

	Non-servile population	Servi	Total
Claverlege	45	0	45
Nordlege	9	0	9
Alvidelege	13	0	13
Halas	40	2	42
Chenistelei	11	0	11
Otne	7	1	8
Nortberie	20	1	21
Erlide	8	2	10
Gaitone	16	0	16
Cressvale	8	0	8
Dodintone	3	0	3
Modreshale	5	0	5
Almentone	8	0	8
Metford	7	1	8
Total	200	7	207

Here for fourteen vills we have an average of but fourteen non-servile. households and the servi are so few that we may neglect them. We will next look at a page in the survey of

Somersetshire which describes certain vills that have fallen to the lot of the bishop of Coutances.(29*)

Here we have on the average but eleven non-servile households for each village, and even if we suppose each servus to represent a household, we have not fourteen households. Yet smaller vills will be foUnd in Devonshire, many vills in which the total number of the persons mentioned does not exceed ten and near half of these are servi. In Cornwall the townships, if townships we ought to call them, are yet smaller; often we can attribute no more than five or six families to the vill even if we include the servi.

	Non-servile population	Servi	Total
Winemeresham	8	3	11
Chetenore	3	1	4
Widicumbe	21	6	27
Harpetrev	10	2	12
Hotune	11	0	11
Lilebere	6	1	7
Wintreth	4	2	6
Aisecome	11	7	18
Clutone	22	1	23
Temesbare	7	3	10
Nortone	16	3	19
Cliveham	15	1	16
Ferenberge	13	6	19
Cliveware	6	0	6
Total	153	36	189

Unless our calculations mislead us, the density of the population in the average vill of a given county varies somewhat directly with the density of the population in that county; at all events we cannot say that where vills are populous, vills will be few. As regards this matter no precise results are attainable; our document is full of snares for arithmeticians. Still if for a moment we have recourse to the crude method of dividing the number of acres comprised in a modern county by the number of the persons who are mentioned in the survey of that county, the outcome of our calculation will be remarkable and will point to some broad truth.(30*) For Suffolk the quotient is 46 or thereabouts; for Norfolk but little larger;(31*) for Essex 61, for Lincoln 67; for Bedford, Berkshire, Northampton, Leicester, Middlesex, Oxford, Kent and Somerset it lies between 70 and 80, for Buckingham, Warwick, Sussex, Wiltshire and Dorset it lies between 80 and 90; Devon, Gloucester, Worcester, Hereford are thinly peopled, Cornwall, Stafford, Shropshire very thinly. Some particular results that we should thus attain would be delusive. Thus we should say that men were sparse in Cambridgeshire, did we not remember that a large part of our modern Cambridgeshire was then a sheet of water. Permanent physical causes interfere with the operation of the general rule. Thus Surrey, with its wide heaths, has, as we might expect, but few men to the square mile. Derbyshire has many vills lying waste; Yorkshire is so much wasted that it can give us no valuable result; and again, Yorkshire and Cheshire were larger than they are now, while Rutland and the adjacent counties had not their present boundaries. For all this, however, we come to a very general rule: -- the density of the population decreases as

we pass from east to west. With this we may connect another rule: land is much more valuable in the east than it is in the west. This matter is indeed hedged in by many thorny questions; still, whatever hypothesis we may adopt as to the mode in which land was valued, one general truth comes out pretty plainly, namely, that, economic arrangements being what they were, it was far better to have a team-land in Essex than to have an equal area of arable land in Devon.

Between eastern and western England there were differences visible to the natural eye. With these were connected unseen and legal differences, partly as causes, partly as effects. But for the moment let us dwell on the fact that many an English vill has very few inhabitants. We are to speak hereafter of village communities. Let us therefore reflect that a community of some eight or ten householders is not likely to be a highly organized entity. This is not all, for these eight or ten householders will often belong to two, three or four different social and economic, if not legal, classes. Some may be sokemen, some villani, bordarii, cotarii, and besides them there will be a few servi. If a vill consists, as in Devonshire often enough it will, of some three villani, some four bordarii and some two servi, the 'township-moot,' if such a moot there be, will be a queer little assembly; the manorial court, if such a court there be, will not have much to do. These men cannot have many communal affairs; there will be no great scope for dooms or for by-laws; they may well take all their disputes into the hundred court, especially in Devonshire where the hundreds are small. Thus of the visible vill of the eleventh century and its material surroundings we may form a wrong notion. Often enough in the west its common fields (if common fields it had) were not wide fields; the men who had shares therein were few and belonged to various classes. Thus of two villages in Gloucestershire, Brookthorpe and Harescombe, all that we can read is that in Brostrop there were two teams, one villanus, three bordarii, four servi, while in Hersecome there were two teams, two bordarii and five servi.(32*) Many a Devonshire township can produce but two or three teams. Often enough our 'village community' will be a heterogeneous little group whose main capital consists of some 300 acres of arable land and some 20 beasts of the plough.

On the other hand, we must be careful not to omit from our view the rich and thickly populated shires or to imagine or to speak as though we imagined that a general theory of English history can neglect the East of England. If we leave Lincolnshire, Norfolk and Suffolk out of account we are to all appearance leaving out of account not much less than a quarter of the whole nation.(33*) Let us make three groups of counties: (1) a South-Western group containing Devon, Somerset, Dorset and Wiltshire: (2) a Mid- Western group containing the shires of Gloucester, Worcester, Hereford, Salop, Stafford and Warwick: (3) an Eastern group containing Lincolnshire, Norfolk and Suffolk. The first of these groups has the largest; the third the smallest acreage. In Domesday Book, however, the figures which state their population seem to be these:(34*) --

South-Western Group:	49,155
Mid-Western Group:	33,191
Eastern Group:	72,883

These figures are so emphatic that they may cause us for a moment to doubt their value, and on details we must lay no stress. But we have materials which enable us to check the

general effect. In 1297 Edward I levied a lay subsidy of a ninth.(35*) The sums borne by our three groups of counties were these: --

	£
South-Western Group:	4,038
Mid-Western Group:	3,514
Eastern Group:	7,329

There is a curious resemblance between these two sets of figures. Then in 1377 and 1381 returns were made for a poll-tax.(36*) The number of polls returned in our three groups were these: --

	1377	1381
South-Western Group:	183,842	106,086
Mid-Western Group:	158,245	115,679
Eastern Group:	255,498	182,830

No doubt all inferences drawn from medieval statistics are exceedingly precarious; but, unless a good many figures have conspired to deceive us, Lincolnshire, Norfolk and Suffolk were at the time of the Conquest and for three centuries afterwards vastly richer and more populous than any tract of equal area in the West.

Another distinction between the eastern counties and the rest of England is apparent. In many shires we shall find that the name of each vill is mentioned once and no more. This is so because the land of each vill belongs in its entirety to some one tenant in chief. We may go further: we may say, though at present in an untechnical sense, that each vill is a manor. Such is the general rule, though there will be exceptions to it. On the other hand, in the eastern counties this rule will become the exception. For example, of the fourteen vills in the Armingford hundred of Cambridgeshire there is but one of which it is true that the whole of its land is held by a single tenant in chief. In this county it is common to find that three or four Norman lords hold land in the same vill. This seems true not only of Cambridgeshire, but also of Essex, Suffolk, Norfolk, Lincoln, Nottingham, Derby, and some parts of Yorkshire. Even in other districts of England the rule that each vill has a single lord is by no means unbroken in the Conqueror's day and we can see that there were many exceptions to it in the Confessor's. A careful examination of all England vill by vill would perhaps show that the contrast which we are noting is neither so sharp nor so ancient as at first sight it seems to be: nevertheless it exists.

A better known contrast there is. The eastern counties are the home of liberty.(37*) We may divide the tillers of the soil into five great classes; these in order of dignity and freedom are (1) liberi homines, (2) sochemanni, (3) villani, (4) bordarii, cotarii, etc., (5) servi. The two first of these classes are to be found in large numbers only in Norfolk, Suffolk, Lincolnshire, Nottinghamshire, Leicestershire and

Northamptonshire. We shall hereafter see that Cambridgeshire also has been full of sokemen, though since the Conquest they have fallen from their high estate. On the other hand, the number of servi increases pretty steadily as we cross the country from east to west. It reaches its maximum in Cornwall and Gloucestershire; it is very low in Norfolk, Suffolk, Derby, Leicester, Middlesex, Sussex; it descends to zero in Yorkshire and Lincolnshire. This descent to zero may fairly warn us that the terms with which we are dealing may not bear precisely the same meaning in all parts of England, or that a small class is apt to be reckoned as forming part of a larger class. But still it is clear enough that some of these terms are used with care and express real and important distinctions.

Of this we are assured by a document which seems to reproduce the wording of the instructions which defined the duty of at least one party of royal commissioners.(38*) We are about to speak of the mode in which the occupants of the soil are classified by Domesday Book, and therefore this document deserves our best attention. It runs thus: -- The King's barons inquired by the oath of the sheriff of the shire and of all the barons and of their Frenchmen and of the whole hundred, the priest, reeve and six villani of every vill, how the mansion (mansio) is called, who held it in the time of King Edward, who holds it now, how many hides, how many plough-teams on the demesne, how many plough teams of the men, how many villani, how many cotarii, how many servi, how many liberi homines, how many sochemanni, how much wood, how much meadow, how much pasture, how many mills, how many fisheries, how much has been taken away therefrom, how much added thereto, and how much there is now, how much each liber homo and sochemannus had and has: -- All this thrice over, to wit as regards the time of King Edward, the time when King William gave it, and the present time, and whether more can be had thence than is had now.(39*)

Five classes of men are mentioned and they are mentioned in an order that is extremely curious: -- villani, cotarii, servi, liberi homines, sochemanni. It descends three steps, then it leaps from the very bottom of the scale to the very top and thence it descends one step. A parody of it might speak of the rural population of modern England as consisting of large farmers, small farmers, cottagers, great landlords, small landlords. But a little consideration will convince us that beneath this apparent caprice there lies some legal principle. We shall observe that these five species of tenants are grouped into two genera. The king wants to know how much each liber homo, how much each sochemannus holds; he does not want to know how much each villanus, each cotarius, each servus holds. Connecting this with the main object of the whole survey, we shall probably be brought to the guess that between the sokeman and the villein there is some broad distinction which concerns the king as the recipient of geld. May it not be this: -- the villein's lord is answerable for the geld due from the land that the villein holds, the sokeman's lord is not answerable, at least he is not answerable as principal debtor for the geld due from the land that the sokeman holds? If this be so, the order in which the five classes of men are mentioned will not seem unnatural. It proceeds outwards from the lord and his mansio. First it mentions the persons seated on land for the geld of which he is responsible, and them it arranges in an 'order of merit.' Then it turns to persons who, though in some way or another connected with the lord and his mansio, are themselves tax-payers, and concerning them the commissioners are to inquire how much each of

them holds. Of course we cannot say that this theory is proved by the statement that lies before us; but it is suggested by that statement and may for a while serve us as a working hypothesis. If this theory be sound, then we have here a distinction of the utmost importance. For one mighty purpose, the purpose that is uppermost in King William's mind, the villanus is not a landowner, his lord is the landowner; on the other hand, the sochemannus is a landowner, and is taxed as such. We are not saying that this is a purely fiscal distinction. In legal logic the lord's liability for the geld that is apportioned on the land occupied by his villeins may be rather an effect than a cause. A lawyer might argue that the lord must pay because the occupier is his villanus, not that the occupier is a villanus because the lord pays. And yet, as we may often see in legal history, there will be action and reaction between cause and effect. The geld is no trifle. Levied at that rate of six shillings on the hide at which King William has just now levied it, it is a momentous force capable of depressing and displacing whole classes of men. In 1086 this tax is so much in everybody's mind that any distinction as to its incidence will cut deeply into the body of the law.

Now this classification of men we will take as the starting point for our enterprise. If we could define the liber homo, sochemannus, villanus, cotarius, servus, we should have solved some of the great legal problems of Domesday Book, for by the way we should have had to define two other difficult terms, namely manerium and soca. It would then remain that we should say something of the higher strata of society, of earls and sheriffs, of barons, knights, thegns and their tenures, of such terms as alodium and feudum, of the general theory of landownership or landholdership. We will begin with the lowest order of men, with the servi, and thence work our way upwards. But our course cannot be straightforward. There are so many terms to be explained that sometimes we shall be compelled to leave a question but partially answered while we are endeavouring to find a partial answer for some yet more difficult question.

NOTES:

1. D. B. ii. 109 b.: 'Hundret de Grenehou 14 letis.' 1b. 212 b. 'Hundret et Dim. de Clakelosa de 10 leitis.' Round, Feudal England, 101.

2. Some of them are mentioned by Ellis, Introduction, i. 34-9.

3. D. B. i. 184 b: 'Haec terra non geldat nec consuetudinem dat nec in aliquo hundredo iacet': i. 157 'Haec terra nunquam geldavit nec alicui hundredo pertinet nec pertinuit': i. 357 b 'Hae duae carucatae non siunt in numero alicuius hundredi neque habent pares in Lincolescyra.'

4. D. B. i. 207 b: 'Jacet in Bedefordscira set geldum dat in Huntedonscire'; i. 61 b 'Jacet et appreciata est in Gratentun quod est in Oxenefordscire et tamen dat scotum in Berchescire'; i. 132 b, the manor of Weston 'lies in, Hitchin which is in Hertfordshirc, but its wara 'lies in' Bedfordshire, i.e. it pays geld, it 'defends itself' in the latter county; i. 189 b, the wara of a certain hide 'lies in' Hinxton which is in Cambridgeshire, but the land belongs to the manor of Chesterford and therefore is valued in Essex. D. B. i. 178: five hides 'geld

and plead' in Worcestershire, but pay their farm in Herefordshire.

5. D. B. i. 157 b: 'Has [terras in Oxenefordscire] coniunxit terrae suae in Glowecestrescire'; i. 209 b 'foris misit de hundredo ubi se defendebat, T. R. E.'; i. 50 'et misit foras comitatum et misit in Wiltesire.' See also Ellis, i. 36.

6. See Round, Feudal England, p. 118. Mr Round seems to think that the commissioners made a circuit through the hundreds. I doubt they did more than their successors the justices in eyre were wont to do, that is, they held in the shire-town a moot which was attended by (1) the magnates of the shire who spoke for the shire, (2) a jury from every hundred, (3) a deputation of villani from every township. See the Yorkshire and Lincolnshire Clamores (i. 375) where we may find successive entries beginning with (a) Scyra testatur, (b) Westreding testatur, (c) Testatur wapentac. Strikingly similar entries are found on the eyre rolls. As Sir F. Pollock (Eng. Hist. Rev. xi. 213) remarks, it is misleading to speak of the Domesday 'survey'; Domesday inquest would be better.

7. See Round, Feudal England, p. 44.

8. Inquis. Com. Cantab. 60.

9. See the table in Round, Feudal England, p. 50. I had already selected this beautiful specimen before Mr Round's book appeared. He has given several others that are quite as neat.

10. Of course we take no account of urban parishes.

11. Eyton's laborious studies have made this plain as regards some counties widely removed from each other; still, e.g. in his book On Somerset, he has now and again to note that names which appear in D. B. are obsolete.

12. Inq. Com. Cant. 60-1.

13. D. B. i. 31.

14. D. B. i. 41. We shall return to this matter hereafter.

15. A good many cases will be found in Essex and Suffolk.

16. Inq. Com. Cantab. 51, 53.

17. Ibid. 47.

18. Ibid. 29.

19. Maitland, Surnames of English Villages, Archaeological Review, iv. 233.

20. We do not mean to imply that there were not wide stretches of waste land which were regarded as being 'extra-villar,' or common to several vills.

21. Hist. Eng. Law, i. 547.

22. This of course would not be true of cases in which the lands

of various villages were intermixed in one large tract of common field. As to these 'discrete vills,' see Hist. Eng. Law, i. 549.

23. This name-giving cluster will usually contain the parish church and so will enjoy a certain pre-eminence. But we are to speak of a time when parish churches were novelties.

24. See Meitzen, Siedelung und Agrarwesen der Germanen, especially ii, 119 ff.

25. When the hamlets bear names with such ancient suffixes as -ton, -ham, -by, -worth, -wick, -thorpe, this of course is in favour of their antiquity. On the other hand, if they are known merely by family names such as Styles's, Nokes's, Johnson's or the like, this, though not conclusive evidence of, is compatible with, their modernity. Meitzen thinks that in Kent and along the southern shore the German invaders founded but few villages. The map does not convince me that this inference is correct.

26. When more than five-and-twenty team-lands or thereabouts are ascribed to a single place, we shall generally find reason to believe that what is being described is not a single vill. See above, p. 36.

27. Inq. Com. Cant. 51 fol. In a few cases our figures will involve a small element of conjecture.

28. D. B. i. 248. We have tried to avoid vills in which it is certain or probable that some other tenant in chief had an estate.

29. D. B. i. 88. We have tried to make sure that no tenant in chief save the bishop had land in any of these vills, and this we think fairly certain, except as regards Harptree and Norton. There are now two Harptrees, East and West, and four or more Nortons.

30. We take the figures from Ellis, Introduction, ii. 41 7 ff.

31. Very possibly this figure is too low. There is reason to think that some the free men and sokemen of these counties get counted twice or thrice over because they hold land under several different lords. On the other hand Ellis (Introduction, ii. 491) would argue that the figure is too high. But the words Alii ibi tenent which occur at the end of numerous entries mean, we believe, not that there are in this vill other unenumerated tillers of the soil, but that the vill is divided between several tenants in chief.

32. D. B. i. 162 b.

33. Ellis's figures are: England 283, 242: the three counties, 72,883.

34. We take these figures from Ellis.

35. Lay Subsidy, 25 Edw. 1. (Yorkshire Archaeological Society), pp. xxxi-xxxv. Fractions of a pound are neglected.

36. Powell, The Rising in East Anglia, 120-3. The great decrease between 1377 and 1381 in the number of persons taxed, we must not

try to explain.

37. See the serviceable maps in Seebohm, Village Community, 86. But they seem to treat Yorkshire unfairly. It has 5.5 per cent of sokemen.

38. This is found at the beginning of the Inquisitio Eliensis; D. B. iv. 497; Hamilton, Inquisitio, 97. See Round, Feudal England, 133 ff.

39. We must not hastily draw the inference that every party of commissioners received the same set of instructions. Perhaps, for example, carucates, not hides, were mentioned in the instructions given to those commissioners who were to visit the carucated counties. Perhaps the non-appearance of servi in Yorkshire and Lincolnshire may be due to no deeper cause.

2. THE SERFS

The existence of some 25,000 serfs is recorded. In the thirteenth century servus and villanus are, at least among lawyers, equivalent words. The only unfree man is the 'serf-villein' and the lawyers are trying to subject him to the curious principle that he is the lord's chattel but a free man in relation to all but his lord.(1*) It is far otherwise in Domesday Book. In entry after entry and county after county the servi are kept well apart from the villani, bordarii, cotarii. Often they are mentioned in quite another context to that in which the villani are enumerated. As an instance we may take a manor in Surrey;(2*) -- 'In demesne there are 5 teams and there are 25 villani and 6 bordarii with 14 teams. There is one mill of 2 shillings and one fishery and one church and 4 acres of meadow, and wood for 150 pannage pigs, and 2 stone-quarries of 2 shillings and 2 nests of hawks in the wood and 10 servi.' Often enough the servi are placed between two other sources of wealth, the church and the mill. In some counties they seem to take precedence over the villani; the common formula is 'In dominio sunt a curucae et b servi et c villani et d bordarii cum e carucis.' But this is delusive; the formula is bringing the servi into connexion with the demesne teams and separating them from the teams of the tenants. We must render it thus -- 'On the demesne there are a teams and b servi; and there are c villani and d bordarii with e teams.' Still we seem to see a gently graduated scale of social classes, villani, bordarii, cotarii, servi, and while the jurors of one county will arrange them in one fashion, the jurors of another county may adopt a different scheme. Thus in their classification of mankind the jurors will sometimes lay great stress on the possession of plough oxen. In Hertfordshire we read: -- 'There are 6 teams in demesne and 41 villani and 17 bordarii have 20 teams... there are 22 cotarii and 12 servi.(3*) -- 'The priest, 13 villani and 4 bordarii have 6 teams... there are two cotarii and 4 servi.'(4*) -- 'The priest and 24 villani have 13 teams... there are 12 bordarii, 16 cotarii and 11 servi.'(5*) A division is in this instance made between the people who have oxen and the people who have none; villani have oxen, cotarii and servi have none; sometimes the bordarii stand above this line, sometimes below it.

Of the legal position of the servus Domesday Book tells us little or nothing; but earlier and later documents oblige us to

think of him as a slave, one who in the main has no legal rights. He is the theów of the Anglo-Saxon dooms, the servus of the ecclesiastical canons. But though we do right in calling him a slave, still we might well be mistaken were we to think of the line which divides him from other men as being as sharp as the line which a mature jurisprudence will draw between thing and person. We may well doubt whether this principle -- 'The slave is a thing, not a person' -- can be fully understood by a grossly barbarous age. It implies the idea of a person, and in the world of sense we find not persons but men.

Thus degrees of servility are possible. A class may stand, as it were, half-way between the class of slaves and the class of free men. The Kentish law of the seventh century as it appears in the dooms of AEthelbert,(6*) like many of its continental sisters, knows a class of men who perhaps are not free men and yet are not slaves; it knows the laet as well as the theów. From what race the Kentish laet has sprung, and how, when it comes to details, the law will treat him -- these are obscure questions, and the latter of them cannot be answered unless we apply to him what is written about the laeti, liti and lidi of the continent. He is thus far a person that he has a small wergild but possibly he is bound to the soil. Only in AEthelbert's dooms do we read of him. From later days, until Domesday Book breaks the silence, we do not obtain any definite evidence of the existence of any class of men who are not slaves but none the less are tied to the land. Of men who are bound to do heavy labour services for their lords we do hear, but we do not hear that if they run away they can be captured and brought back. As we shall see by and by, Domesday Book bears witness to the existence of a class of buri, burs, coliberti, who seem to be distinctly superior to the servi, but distinctly inferior to the villeins, bordiers and cottiers. It is by no means impossible that they, without being slaves, are in a very proper and intelligible sense unfree men, that they have civil rights which they can assert in courts of law, but that they are tied to the soil. The gulf between the seventh and the eleventh centuries is too wide to allow of our connecting them with the laet of AEthelbert's laws, but still our documents are not exhaustive enough to justify us in denying that all along there has been a class (though it can hardly have been a large class) of men who could not quit their tenements and yet were no slaves. As we shall see hereafter, liberty was in certain contexts reckoned as a matter of degree; even the villanus, even the sochemannus, was not for every purpose liber homo. When this is so, the theów or servus is like to appear as the unfreest of persons rather than as no person but a thing.

In the second place, we may guess that from a remote time there has been in the condition of the theów a certain element of praediality. The slaves have not been worked in gangs nor housed in barracks.(7*) The servus has often been a servus casatus, he has had a cottage or even a manse and yardland which de facto he might call his own. There is here no legal limitation of his master's power. Some slave trade there has been; but on the whole it seems probable that the theów has been usually treated as annexed to a tenement. The duties exacted of him from year to year have remained constant. The consequence is that a free man in return for a plot of land may well agree to do all that a theów usually does and see in this no descent into slavery. Thus the slave gets a chance of acquiring what will be as a matter of fact a peculium. In the seventh century the church tried to turn this matter of fact into matter of law. 'Non licet homini,' says

Theodore's Penitential, 'a servo tollere pecuniam, quam ipse labore suo adquesierit.'(8*) We have no reason for thinking that this effort was very strenuous or very successful, or that the law of the eleventh century allowed the servus any proprietary rights; and yet he might often be the occupier of land and of chattels with which, so long as he did his customary services, his lord would seldom meddle.

In the third place, we may believe that for some time past police law and punitive law have been doing something to conceal, if not to obliterate, the line which separates the slave from other men. A mature jurisprudence may be able to hold fast the fundamental principle that a slave is not a person but a thing, while at the same time it both limits the master's power of abusing his human chattel and guards against those dangers which may arise from the existence of things which have wills, and sometimes bad wills, of their own. But an immature jurisprudence is incapable of this exploit. It begins to play fast and loose with its elementary notions. It begins to punish the criminous slave without being quite certain as to how far it is punishing him and how far it is punishing his master. Confusion is easy, for if the slave be punished by death or mutilation, his master will suffer, and a pecuniary mulct exacted from the slave is exacted from his master. Learned writers have come to the most opposite opinions as to the extent to which the Anglo-Saxon dooms by their distribution of penalties recognize the personality of the theów. But this is not all. For a long time past the law has had before it the difficult problem of dealing with crimes and delicts committed by poor and economically dependent free men, men who have no land of their own, who are here to-day and gone to-morrow, 'men from whom no right can be had.' It has been endeavouring to make the lords answerable to a certain extent for the misdeeds of their free retainers. If a slave is charged with a crime his master is bound to produce him in court. But the law requires that the lord shall in very similar fashion produce his free 'loaf eater,' his mainpast, nay, it has been endeavouring to enforce the rule that every free man who has no land of his own shall have a lord bound to produce him when he is accused. Also it has been fostering the growth of private justice. The lord's duty of producing his men, bond and free, has been becoming the duty of holding a court in which his men, free and bond, will answer for themselves. How far this process had gone in the days of the Confessor is a question to which we shall return.(9*)

For all this, however, we may say with certainty that in the eleventh century the servi were marked off from all other men by definite legal lines. What is more, we may say that every man who was not a theów was in some definite legal sense a free man. This sharp contrast is put before us by the laws of Cnut as well as by those of his predecessors. If a freeman works on a holiday, he pays for it with his healsfang; if a theównian does the like, he pays for it with his hide or his hide-geld.(10*) Equally sharp is the same distinction in the Leges Henrici, and this too in passages which, so far as we know, are not borrowed from Anglo-Saxon documents. For many purposes 'aut servus aut liber homo' is a perfect dilemma. There is no confusion whatever between the villani and the servi. The villani are 'viles et inopes personae' but clearly enough they are liberi homines. So also in the Quadripartitus, the Latin translation of the ancient dooms made in Henry I's reign, there is no confusion about this matter; the theówman becomes a servus, while villanus is the equivalent for ceorl. The Norman writers still tell how according to the old law of the English the villanus might become a thegn

if he acquired five hides of land;(11*) at times they will put before us villani and thaini or even villani and barones as an exhaustive classification of free men.(12*)

Let us learn what may be learnt of the servus from the Leges Henrici. Every man is either a liber homo or a servus.(13*) Free men are either two-hundred-men or twelve-hundredmen; perhaps we ought to add that there is also a class of six-hundred-men.(14*) A serf becomes such either by birth or by some event, such as a sale into slavery, that happens in his lifetime.(15*) Servile blood is transmitted, from father to child; some lords hold that it is also transmitted by mother to child.(16*) If a slave is to be freed this should be done publicly, in court, or church or market, and lance and helmet or other the arms of free men should be given him, while he should give his lord thirty pence, that is the price of his skin, as a sign that he is henceforth 'worthy of his hide.' On the other hand, when a free man falls into slavery then also there should be a public ceremony. He should put his head between his lord's hands and should receive as the arms of slavery some bill-hook or the like.(17*) Public ceremonies are requisite, for the state is endangered by the uncertain condition of accused criminals; the lords will assert at one moment that their men are free and at the next moment that these same men are slaves.(18*) The descent of a free man into slavery is treated as no uncommon event; the slave may well have free kinsfolk.(19*) But, to come to the fundamental rule, the villanus, the meanest of free men, is a two-hundred-man, that is to say, if he be slain the very substantial wergild of 200 Saxon shillings or £4 must be paid to his kinsfolk,(20*) while a man-bót of 30 shillings is paid to his lord.(21*) But if a servus be slain his kinsfolk receive the comparatively trifling sum of 40 pence while the lord gets the man-bót of 20 shillings.(22*) That the serf's kinsfolk should receive a small sum need not surprise us. Germanic law has never found it easy to carry the principle that the slave is a chattel to extreme conclusions; but the payment seems trifling and half contemptuous; at any rate the life of the villein is worth the life of twenty-four serfs.(23*) Then again, it is by no means certain that a lord cannot kill his serf with impunity. 'If,' says our text, 'a man slay his own serf, his is the sin and his is the loss': -- we may interpret this to mean that he has sinned but sinned against himself.(24*) Then again, for the evil deeds of his slave the master is in some degree responsible. If my slave be guilty of a petty theft not worthy of death, I am bound to make restitution; if the crime be a capital one and he be taken handhaving, then he must 'die like a free man.'(25*) If my slave be guilty of homicide, my duty is to set him free and hand him over to the kindred of the slain, but apparently I may purchase his life by a sum of 40 shillings, a sum much less than the wer of the slain man.(26*) We must not be too hard on the owners of delinquent slaves. There are cases, for example, in which, several slaves having committed a crime, one of them chosen by lot must suffer for the sins of all.(27*) Our author is borrowing from the laws of several different centuries and does not arrive at any neat result; nor must we wonder at this, for the problems presented to jurisprudence by the crimes and delicts of slaves are very intricate. Then again, we have the rule that if free men and serfs join in a crime, the whole guilt is to be attributed to the free: he who joins with a slave in a theft has no companion.(28*) On the whole, though the slave is likely to have as a matter of fact a peculium of his own, a peculium out of which he may be able to pay for his offences and even perhaps to purchase his liberty,(29*) the servus of our Leges seems to be in

the main a rightless being. We look in vain for any trace of that idea of the relativity of servitude which becomes the core of Bracton's doctrine.(30*) At the same time we observe that many, perhaps most, of the rules which mark the slavish condition of the serf are ancient rules and rules that are becoming obsolete. In the twelfth century the old system of wer and bót is already vanishing, though an antiquarian lawyer may yet try to revivify it. When it disappears altogether before the new law, which holds every grave crime to be a felony, and punishes almost every felony with death,(31*) many grand differences between the villein and the serf will have perished. The gallows is a great leveller.

If now we recur to the days of the Conquest, we cannot doubt that the law knew a definite class of slaves, and marked them off by many distinctions from the villani and cotarii, and even from the coliberti. Sums that seem high were being paid for men whose freedom was being purchased.(32*) At Lewes the toll paid for the sale of an ox was a halfpenny; on the sale of a man it was fourpence.(33*) In later documents we may sometimes see a distinction well drawn. Thus in the Black Book of Peterborough, compiled in 1127 or thereabouts, we may read how on one of his manors the abbot has eight herdsmen (bovarii), how each of them holds ten acres, has to do labour services and render loaves and poultry. And then we read that each of them must pay one penny for his head if he be a free man (liber homo), while he pays nothing if he be a servus.(34*) This is a well-drawn distinction. Of two men whose economic position is precisely the same, the one may be free, the other a slave, and it is the free man, not the slave, who has to pay a head-penny. Now when the Conqueror's surveyors, or rather the jurors, call a man a servus they are, so it seems to us, thinking rather of his legal status than of his position in the economy of a manor. At any rate we ought to observe that the economic stratification of society may cut the legal stratification. We are accustomed perhaps to suppose that while the villani have lands that are in some sense their own, while they support themselves and their families by tilling those lands, the servus has no land that is in any sense his own, but is fed at his lord's board, is housed in his lord's court, and spends all his time in the cultivation of his lord's demesne lands. Such may have been the case in those parts of England where we hear of but few servi; those few may have been inmates of the lord's house and have had no plots of their own. But such can hardly have been the case in the south-western counties; the servi are too many to be menials. Indeed it would seem that these servi sometimes had arable plots, and had oxen, which were to be distinguished from the demesne oxen of their lords -- not indeed as a matter of law, but as a matter of economic usage.(35*) It is plain that the legal and the economic lines may intersect one another; the menial who is fed by the lord and who must give his whole time to the lord's work may be a free man; the slave may have a cottage and oxen and a plot of arable land, and labour for himself as well as labouring for his lord. Hence a perplexed and uncertain terminology: -- the servus who has land and oxen may be casually called a villanus,(36*) and we cannot be sure that no one whom our record calls a servus has the wergild of a free man. Nor can we be sure that the enumeration of the servi is always governed by one consistent principle. In the shires of Gloucester, Hereford and Worcester we read of numerous ancillae -- in Worcestershire of 677 servi and 101 ancillae(37*) -- and this may make us think that in this district all the able-bodied serfs are enumerated, whether or no they have cottages to

themselves.(38*) We may strongly suspect that the king's commissioners were not much interested in the line that separated the villani from the servi, since the lord was as directly answerable for the geld of any lands that were in the occupation of his villeins as he was for the geld of those plots that were tilled for him by his slaves. That there should have been never a theów in all Yorkshire and Lincolnshire is hardly credible, and yet we hear of no servi in those counties.

This being so, we encounter some difficulty if we would put just the right interpretation on a remarkable fact that is visible in Essex. The description of that county tells us not only how many villani, bordarii and servi there are now, but also how many there were in King Edward's day, and thus shows what changes have taken place during the last twenty years. Now on manor after manor the number of villeins and bordiers, if of them we make one class, has increased, while the number of servi has fallen. We take 100 entries (four batches of 25 apiece) and see that the number of villani and bordarii has risen from 1486 to 1894, while the number of servi has fallen from 423 to 303. We make another experiment with a hundred entries. This gives the following result: --

	1066	1086
Villani	1273	1247
Bordarii	810	1241
Servi	384	312

This decrease in the number of servi seems to be pretty evenly distributed throughout the county.(39*) We shall not readily ascribe the change to any mildheartedness of the lords. They are Frenchmen, and in all probability they have got the most they could out of a mass of peasantry made malleable and manageable by the Conquest. We may rather be entitled to infer that there has been a considerable change in rural economy. For the cultivation of his demesne land the lord begins to rely less and less on the labour of serfs whom he Reeds, more and more upon the labour of tenants who have plots of their own and who feed themselves. From this again we may perhaps infer that the labour services of the villani and bordarii are being augmented. But at any rate it speaks ill of their fate, that under the sway of foreigners, who may fairly be suspected of some harshness and greed, their inferiors, the true servi, are somewhat rapidly disappearing. However, it is by no means impossible that with a slavery so complete as that of the English theów the Normans were not very familiar in their own country.(40*)

NOTES:

1. Hist. Eng. Law, i. 398.

2. D. B. i. 34, Limenesfeld.

3. D. B. i. 132 b, Hiz.

4. D. B. i. 132 b, Waldenei.

5. D. B. i. 136, Sandone.

6. AEthelb. 26.

7. Tacitus, Germ. c. 25: 'Caeteris servis non in nostrum morem, descriptis per familiam ministeriis, utuntur. Suam quisque sedem, suos penates regit. Frumenti modum dominus aut pecoris aut vestis ut colono iniungit, et servus hactenus paret.'

8. Haddan and Stubbs, Councils, iii. 202.

9. See on the one hand Maurer, K. U. i. 410, on the other a learned essay by Jastrow, Zur strafrechtlichen Stellung der Sklaven, in Gierke's Untersuchungen zur Deutsche Geschichte, vol. i. Maurer holds that the Anglo-Saxon slave is in the main a chattel, that e.g. the master must answer for the delicts of his slave in the same way that the owner answers for damage done by his beasts, and that this liability can be clearly marked off from the duty of the lord of free retainers who is merely bound to produce them in court. Jastrow, on the contrary, thinks that even at a quite early time the Anglo-Saxon slave is treated as a person by criminal law; he has a wergild; he can be fined; his trespasses are never compared to the trespasses of beasts; the lord's duty, if one of his men is charged with crime, is much the same whether that man be free or bond. Any theory involves an explanation of several passages that are obscure and perhaps corrupt.

10. Cnut, ii. 45-6.

11. Schmid, Appendix v. (Of Ranks); Pseudoleges Canuti, 60 (Schmid, p. 431).

12. Leg. Hen. 76 sect. 7: 'Differentia tamen weregildi multa est in Cantia villanorum et baronum.'

13. Ibid. 76 sect. 2.

14. Ibid. 76 sect. 3.

15. Ibid. 76 sect. 3.

16. Ibid. 77; see Hist. Eng. Law, i. 405.

17. Ibid. 78 sect. 2. The difficult strublum we leave untouched.

18. Ibid. 78 sect. 2 from Cnut, ii. 20. On this see Jastrow's comment, op. cit. p. 80.

19. Ibid. 70 sect. 5.

20. Ibid. 70 sect. 1; 76 sect. 4.

21. Ibid. 69 sect. 2.

22. Leg. Hen. 70 sect. 4: 'Si liber servum occidat similiter reddat parentibus 40 den. et duas mufflas et unum pullum [al. billum] mutilatum.' The mufflae are thick gloves. Compare Ancient Laws of Wales, i. 239, 511; injured he receives a saraad; the bondman has no galanas (wergild) but if 'the saraad of a bondman is twelve pence, six for a coat for him, three for trousers, one for buskins, one for a hook and one for a rope, and if he be a woodman let the hook-penny be for an axe.' If we read billum instead of pullum the English rule may remind us of the Welsh.

His hedger's gloves and bill-hook are the arms appropriate to the serf, 'servitutis, arma'. cf. Leg. Hen. 78 sect. 2. As to the man-bót see Liebermann, Leg. Edwardi, p. 71.

23. In Leg. Hen. 81 sect. 3 (a passage which seems to show that by his master's favour even the servus may sometimes sue for a wrong done to him) we have this sum: -- villanus: cothsetus: servus:: 30: 15: 6.

24. Ibid. 75 sect. 4: 'suum peccatum est et dampnum.' See also 70 sect. 10, an exceedingly obscure passage.

25. Ibid. 59 sect. 23.

26. Ibid. 70 sect. 5; but for this our author has to go back as far as Ine.

27. Ibid. 59 sect. 25.

28. Leg. Hen. 59 sect. 24; 85 sect. 4: 'Solus furatur qui cum servo furatur.'

29. Ibid. 78 sect. 3; 59 sect. 25.

30. Hist. Eng. Law, i. 398, 402.

31. Hist. Eng. Law, ii. 457.

32. See Bath manumissions, Kemble, Saxons, i. 507 ff. Sometimes a pound or a half-pound is paid.

33. D. B. i. 26.

34. Chron. Petrob. 163.

35. D. B. i. 105 b, Devon: 'Rolf tenet de B[alduino] Boslie... Terra est 8 carucis. In dominio est 1 caruca et dimidia et 7 servi cum 1 caruca.' D. B. iv. 265; 'Balduinus habet 1 mansionem quae vocatur Bosleia... hanc possunt arare 8 carrucae et modo tenet eam Roffus de Balduino. Inde habet R. 1 ferdinum et 1 carrucam et dimidiam in dominio et villani tenent aliam terram et habent ibi 1 carrucam. Ibi habet R. 7 servos.' In the Exeter record these seven serfs seem to get reckoned as being both servi and villani. So in the account of Rentis, D. B. iv. 204-5, the lord is said to have one quarter of the arable in demesne and two oxen, while the villani are said to have the rest of the arable and one team; but the only villani are 8 coliberti and 4 servi.

36. See p. 59, note 2.

37. Ellis, Introduction, ii. 504-6.

38. See, for example, the following Herefordshire entry, D. B. i. 180 b: 'In dominio sunt 2 carucae et 4 villani et 8 bordarii et prepositus et bedellus. Inter omnes habent 4 carucas. Ibi 8 inter servos et ancillas et vaccarius et daia.'

39. Mr Round has drawn attention to the great increase of bordarii: Antiquary (1882) vi. 9. In the second of our two experiments the cases were taken from the royal demesne and the lands the churches. The surveys of Norfolk and Suffolk profess to

enumerate the various classes of peasants T. R. E.; but commonly each entry reports that there has been no change. Without saying that we disbelieve these reports, we nevertheless say that a verdict which asserts that things have always (semper) been as they now are may easily be the outcome of nescience.

40. Hist. Eng. Law, i. 53-4.

3. THE VILLEINS

Next above the servi we see the small but interesting class of buri, burs or coliberti. Probably it was not mentioned in the writ which set the commissioners their task, and this may well be the reason why it appears as but a very small class. It has some 900 members; still it is represented in fourteen shires: Hampshire, Berkshire, Wiltshire, Dorset, Somerset, Devon, Cornwall, Buckingham, Oxford, Gloucester, Worcester, Hereford, Warwick, Shropshire -- in short, in the shires of Wessex and western Mercia. Twice over our record explains a piece of rare good fortune -- that buri and coliberti are all one.(1*) In general they are presented to us as being akin rather to the servi than to the villani or bordarii, as when we are told, 'In demesne there is one virgate of land and there are 3 teams and 11 servi and 5 coliberti, and there are 15 villani and 15 bordarii with 8 teams.'(2*) But this rule is by no means unbroken; sometimes the coliberti are separated from the servi and a precedence over the cotarii or even over the bordarii is given them. Thus of a Wiltshire manor it is written, 'In demesne there are 8 teams and 20 servi and 41 villani and 30 bordarii and 7 coliberti and 74 cotarii have among them all 27 teams.'(3*) Again of a Warwickshire manor, 'There is land for 26 teams; in demesne are 3 teams and 4 servi and 43 villani and 6 coliberti and 10 bordarii with 16 teams.'(4*) A classification which turns upon legal status is cut by a classification which turns upon economic condition. The colibertus we take to be an unfreer man (how there come to be degrees of freedom is a question to be asked by and by) than the cotarius or the bordarius, but on a given manor he may be a more important person, for he may have plough beasts while the cotarius has none; he may have two oxen while the bordarius has but an ox.

In calling him a colibertus the Norman clerks are giving him a foreign name, the etymological origin of which is very dark;(5*) but this much seems plain, that in the France of the eleventh century a large class bearing this name had been formed out of ancient elements, Roman coloni and Germanic liti, a class which was not rightless (for it could be distinguished from the class of servi, and a colibertus might be made a servus by way of punishment for his crimes) but which yet was unfree, for the colibertus who left his lord might be pursued and recaptured.(6*) As to the Englishman upon whom this name is bestowed we know him to be a gebúr, a boor, and we learn something of him from that mysterious document entitled 'Rectitudines Singularum Personarum.(7*) His services, we are told, vary from place to place; in some districts he works for his lord two days a week and during harvest-time three days a week; he Pays gafol in money, barley, sheep and poultry; also he has ploughing to do besides his week-work; he pays hearthpenny; he and one of his fellows must between them feed a dog. It is usual to provide him with an outfit of two oxen, one cow, six sheep, and seed for

seven acres of his yardland, and also to provide him with household stuff; on his death all these chattels go back to his lord. Thus the boor is put before us as a tenant with a house and a yardland or virgate, and two plough oxen. He will therefore play a more important part in the manorial economy than the cottager who has no beasts. But he is a very dependent person; his beasts, even the poor furniture of his house, his pots and crocks, are provided for him by his lord. Probably it is this that marks him off from the ordinary villanus or 'townsman,' and brings him near the serf. In a sense he may be a free man. We have seen how the law, whether we look for it to the code of Cnut or to the Leges Henrici, is holding fast the proposition that every one who is not a theówman is a free man, that every one is either a liber homo or a servus. We have no warrant for denying to the boor the full wergild of 200 shillings. He pays the hearthpenny, or Peter's penny, and the document that tells us this elsewhere mentions this payment as the mark of a free man.(8*) And yet in a very true and accurate sense he may be unfree, unfree to quit his lord's service. All that he has belongs to his lord; he must be perpetually in debt to his lord; he could hardly leave his lord without being guilty of something very like theft, a abstraction of chattels committed to his charge. Very probably if he flies, his lord has a right to recapture him. On the other hand, so dependent a man will be in a very strict sense a tenant at will. When he dies not only his tenement but his stock will belong to the lord; like the French colibert he is mainmortable. At the same time, to one familiar with the cartularies of the thirteenth century the rents and services that this boor has to pay and perform for his virgate will not appear enormous. If we mistake not, many a villanus of Henry III's day would have thought them light. Of course any such comparison is beset by difficulties, for at present we know all too little of the history of wages and prices. Nevertheless the intermediation of this class of buri or coliberti between the serfs and the villeins of Domesday Book must tend to raise our estimate both of the legal freedom and of the economic welfare of that great mass of peasants which is now to come before us.(9*)

That great mass consists of some 108,500 villani, some 82,600 bordarii, and some 6,800 cotarii and coscets.(10*) Though in manor after manor we may find representatives of each of these three classes, we can see that for some important purpose they form but one grand class, and that the term villanus may be used to cover the whole genus as well as to designate one of its three species. In the Exon Domesday a common formula, having stated the number of hides in the manor and the number of teams for which it can find work, proceeds to divide the land and the existing teams between the demesne and the villani -- the villani, it will say, have so many hides and so many teams. Then it will state how many villani, bordarii, cotarii there are. But it will sometimes fall out that there are no villani if that term is to be used in its specific sense, and so, after having been told that the villani have so much land and so many teams, we learn that the only villani on this manor are bordarii.(11*) The lines which divide the three species are, we may be sure, much rather economic than legal lines. Of course the law may recognise them upon occasion,(12*) but we cannot say that the bordarius has a different status from that of the villanus. In the Leges both fall under the term villani; indeed, as hereafter will be seen, that term has sometimes to cover all men who are not servi but are not noble. Nor must we suppose that the economic lines are drawn with much precision or according to any one uniform

pattern. Of villani and bordarii we may read in every county; cotarii or coscets in considerable numbers are found only in Kent, Sussex, Surrey, Middlesex, Wiltshire, Dorset, Somerset, Berkshire, Hertford and Cambridge, though they are not absolutely unknown in Buckingham, in Devon, in Hereford, Worcester, Shropshire, Yorkshire. We cannot tell how the English jurors would have expressed the distinction between bordarii and cotarii, for while the cot is English, the borde is French. If we are entitled to draw any inference from the distribution of the cottiers, it would be that the smallest of small tenements were to be found chiefly along the southern shore; but then there are no cotarii in Hampshire, plenty in Sussex, Surrey, Wiltshire and Dorset. Again, in the two shires last mentioned some distinction seems to be taken between the coscets and the cotarii, the former being superior to the latter.(13*) Two centuries later we find a similar distinction among the tenants of Worcester Priory. There are cotmanni whose rents and services are heavier, and whose tenements are presumably larger than those of the cotarii, though the difference is not very great.(14*)

The vagueness of distinctions such as these is well illustrated by the failure of the term. bordarius (and none is more prominent in Domesday Book) to take firm root in this country.(15*) The successors of the bordarii seem to become in the later documents either villani with small or cottiers with large tenements. Distinctions which turn on the amount of land that is possessed or the amount of service that is done cannot be accurately formulated and forced upon a whole country. Perhaps in general we may endow the villanus of Domesday Book with a virgate or quarter of a hide, while we ascribe to the bordarius a less quantity and doubt whether the cotarius usually had arable land. But the survey of Middlesex, which is the main authority, touching this matter, shows that the villanus may on occasion have a whole hide,(16*) that is four virgates, and that often he has but half a virgate; it shows us that the bordarius, though often he has but four or five acres, may have a half virgate, that is as much as many a villanus;(17*) it shows us that the cotarius may have five acres, that is as much as many a bordarius,(18*) though he will often have no more than a croft.(19*) In Essex we hear of bordarii who held no arable land.(20*) Nor dare we lay down any stern rule about the possession of plough beasts. It would seem as if sometimes the bordarius had oxen, while sometimes he had none.(21*) The villanus might have two oxen, but he might have more or less. We may find that in Cornwall a single team of eight is forthcoming where there are(22*)

3 villani,	4 bordarii,	2 servi
2 "	2 "	3 "
0 "	5 "	2 "
1 "	5 "	1 "
2 "	5 "	4 "
2 "	3 "	1 "
3 "	6 "	3 "

In some Gloucestershire manors every villein seems to have a full plough team.(23*) Merely economic grades are essentially indefinite. Who could have defined a 'cottage' in the eleventh century? Who can define one now?(24*)

In truth the vast class of men that we are examining must have been heterogeneous to a high degree. Not only were some members of it much wealthier than others, but in all probability

some were economically subject to others. So it was in later days. In the thirteenth century we may easily find a manor in which the lord is paying hardly any wages. He gets nearly all his agricultural work done for him by his villeins and his cottiers. Out of his cottiers however he will get but one day's work in the week. If then we ask what the cottiers are doing during the rest of their time, the answer surely must be that they are often working as hired labourers on the villein's virgates, for a cottier cannot have spent five days in the week over the tillage of his poor little tenement. It is a remarkable feature of the manorial arrangement that the meanest of the lord's nativi are but rarely working for him. Thus if we were to remove the lord in order that the village community might be revealed, we should still see not only rich and poor, but employers and employed, villagers and 'undersettles.'

Now all these people are in a sense unfree, while yet in some other sense they are free. Let us then spend a short while in discussing the various meanings that freedom may have in a legal classification of the sorts and conditions of men. When we have put out of account the rightless slave, who is a thing, it still remains possible to say that some men are unfree, while others are free, and even that freedom is a matter of degree. But we may use various standards for the measurement of liberty.

Perhaps in the first place we shall think of what German writers call Freizügigkeit, the power to leave the master whom one has been serving. This power our ancestors would perhaps have called 'fare-worthiness.'(25*) If the master has the right to recapture the servant who leaves his service, or even if he has the right to call upon the officers of the state to pursue him and bring him back to his work, then we may account this servant an unfree man, albeit the relation between him and his master has been created by free contract. Such unfreedom is very distinct from rightlessness. As a freak of jurisprudence we might imagine a modern nobleman entitled to reduce by force and arms his fugitive butler to well-paid and easy duties, while all the same that butler had rights against all the world including his master, had access to all courts, and could even sue for his wages if they were not punctually paid. If we call him unfree, then freedom will look like a matter of degree, for the master's power to get back his fugitive may be defined by law in divers manners. May he go in pursuit and use force? Must he send a constable or sheriff's officer? Must he first go to court and obtain a judgment, 'a decree for specific performance' of the contract of service? The right of recapture seems to shade off gradually into a right to insist that a breach of the contract of service is a criminal offence to be punished by fine or imprisonment.

Then, again, there may seem to us to be more of unfreedom in the case of one who was born a servant than in the case of one who has contracted to serve, though we should note that one may be born to serve without being born rightless.

More to the point than these obvious reflections will be the remark that in the thirteenth century we learn to think of various spheres or planes of justice. A right good in one sphere may have no existence in another. The rights of the villeins in their tenements are sanctioned by manorial justice; they are ignored by the king's courts. Here, again, the ideas of freedom and unfreedom find a part to play. True that in the order of legal logic freedom may precede royal protection; a tenure is protected because it is free; still men are soon arguing that it is free because it is protected, and this probably discloses an

idea which lies deep:(26*) -- the king's courts, the national courts, are open to the free; we approach the rightlessness of the slave if our rights are recognized only in a court of which our lord is the president.

The thirteenth century will also supply us with the notion that continuous agricultural service, service in which there is a considerable element of uncertainty, is unfree service. Where from day to day the lord's will counts for much in determining the work that his tenants must do, such tenants, even if they be free men, are not holding freely. But uncertainty is a matter of degree, and therefore unfreedom may easily be regarded as a matter of degree.(27*)

Then, again, in the law books of the Norman age we see distinct traces of a usage which would make liber or liberalis an equivalent for our noble, or at least for our gentle. The common man with the wergild of 200 shillings, though indubitably he is no servus, is not liberalis homo.(28*)

Lastly, in our thirteenth century we learn that privileges and exceptional immunities are 'liberties' and 'franchises.' What is our definition of a liberty, a franchise? A portion of royal power in the hands of a subject. In Henry III's day we do not say that the Earl of Chester is a freer man, more of a liber homo, than is the Earl of Gloucester, but we do say that he has more, greater, higher liberties.

Therefore we shall not be surprised if in Domesday Book what we read of freedom, of free men, of free land is sadly obscure. Let us then observe that the villanus both is and is not a free man.

According to the usual terminology of the Leges, everyone who is above the rank of a servus, but below the rank of a thegn, is a villanus. The villanus is the non-noble liber homo. All those numerous sokemen of the eastern counties whom Domesday ranks above the villani, all those numerous liberi homines whom it ranks above the sokemen, are, according to this scheme, villani if they be not thegns. And this scheme is still of great importance, for it is the scheme of bót and wer. By what have been the most vital of all the rules of law, all these men have been massed together; each of them has a wer of two hundred shillings.(29*) This, we may remark in passing, is no trivial sum, though the shillings are the small Saxon shillings of four pence or five pence. There seems to be a good deal of evidence that for a long time past the ox had been valued at 30 pence, the sheep at 5 pence.(30*) At this rate the ceorl's death must be paid for by the price of some twenty-four or thirty oxen. The sons of a villanus who had but two oxen must have been under some temptation to wish that their father would get himself killed by a solvent thegn. Very rarely indeed do the Leges notice the sokeman or mention liberi homines so as to exclude the villani from the scope of that term.(31*) Domesday Book also on occasion can divide mankind into slaves and free men. It does so when it tells us that on a Gloucestershire manor there were twelve servi whom the lord had made free.(32*) It does so again when it tells us that in the city of Chester the bishop had eight shillings if a free man, four shillings if a serf, did work upon a festival.(33*) So in a description of the manor of South Perrott in Somerset we read that a certain custom is due to it from the manor of 'Cruche' (Crewkerne), namely that every freeman must render one bloom of iron. We look for these free men at 'Cruche' and see no one on the manor but villani, bordarii, coliberti and servi.(34*) Of the Count of Mortain's manor of Bickenhall it is written that every free man renders a bloom of iron at the king's

manor of Curry; but at Bickenhall there is no one above the condition of a villanus.(35*) Other passages will suggest that the villanus sometimes is and sometimes is not liber homo. On a Norfolk manor we find free villeins, liberi villani.(36*)

For all this, however, there must be some very important sense in which the villanus is not free. In the survey of the eastern counties he is separated from the liberi homines by the whole class of sochemanni. 'In this manor,' we are told, 'there was at that time a free man with half a hide who has now been made one of the villeins.(37*) At times the word francus is introduced so as to suggest for a moment that, though the villein may be liber homo, he is not francus.(38*) But this suggestion, even if it be made, is not maintained, and there are hundreds of passages which implicitly deny that the villein is liber homo. But then these passages draw the line between freedom and unfreedom at a point high in the legal scale, a point far above the heads of the villani. At least for the main purposes of Domesday Book the free man is a man who holds land freely. Let us observe what is said of the men who have been holding manors. The formula will vary somewhat from county to county, but we shall often find four phrases used as equivalent, 'X tenuit et liber homo fuit,' 'X tenuit ut liber homo,' 'X tenuit et cum terra sua liber fuit,' 'X tenuit libere.'(39*) But this freeholding implies a high degree of freedom, freedom of a kind that would have shocked the lawyers of a later age.

With some regrets we must leave the peasants for a while in order that we may glance at the higher strata of society. We may take it as certain that, at least in the eyes of William's ministers, the ordinary holder of a manor in the time of the Confessor had been holding it under (sub) some lord, if not of (de) some lord. But then the closeness of the connexion between him and his lord, the character of the relation between lord, man and land, had varied much from case to case. Now these matters are often expressed in terms of a calculus of personal freedom. But let us begin with some phrases which seem intelligible enough. The man can, or he cannot, 'sell or give his land'; he can, or he cannot, 'sell or give it without the licence of his lord';(40*) he can sell it if he has first offered it to his lords; he can sell it on paying his lord two shillings.(41*) This seems very simple: -- the lord can, or (as the case may be) cannot, prevent his tenant from alienating the land; he has a right of preemption or he has a right to exact a fine when there is a change of tenants. But then come phrases that are less in harmony with our idea of feudal tenure. The man cannot sell his land 'away from' his lord,(42*) he cannot give or sell it 'outside' a certain manor belonging to his lord,(43*) or, being the tenant of some church, he cannot 'separate' his land from the church,(44*) or give or sell it outside the church.(45*)

We have perhaps taken for granted under the influence of later law that an alienation will not impair the lord's rights, and will but give him a new instead of an old tenant. But it is not of any mere substitution such as this that these men of the eleventh century are thinking. They have it in their minds that the man may wish, may be able, utterly to withdraw his land from the sphere of his lord's rights. Therefore in many cases they note with some care that the man, though he can give or sell his land, cannot altogether put an end to such relation as has existed between this land and his lord. He can sell, but some of the lord's rights will 'remain,' in particular the lord's 'soke' over the land (for the present let us say his jurisdiction over the land) will remain.(46*) The purchaser will not of necessity

become the 'man' of this lord, will not of necessity owe him any servitium or consuetudo, but will come under his jurisdiction.(47*) Interchanging however with these phrases,(48*) we have others which seem to point to the same set of distinctions, but to express them in terms of personal freedom. The man can, or else he cannot, withdraw from his lord, go away from his lord, withdraw from his lord's manor; he can or he cannot withdraw with his land; he can or cannot go to another lord, or go wherever he pleases.(49*) Some of these phrases will, if taken literally, seem to say that the persons of whom they are used are tied to the soil; they cannot leave the land, or the manor, or the soke. Probably in some of these cases the bond between man and lord is a perpetual bond of homage and fealty, and if the man breaks that bond by refusing the due obedience or putting himself under another lord, he is guilty of a wrong.(50*) But of pursuing him and capturing him and reducing him to servitude there can be no talk. Many of these persons who 'cannot recede' are men of wealth and rank, of high rank that is recognized by law, they are king's thegns or the thegns of the churches, they are 'twelve-hundred men.'(51*) However, it is not the man's power to leave his lord so much as the power to leave his lord and take his land with him that these phrases bring to our notice; or rather the assumption is made that no one will want to leave his lord if he must also leave his land behind him. And then this power of taking land from this lord and bringing it under another lord is conceived as an index of personal freedom. Thus we read: 'These men were so free that they could go where they pleased.'(52*) and again, 'Four sokemen held this land, of whom three were free, while the fourth held one hide but could not give or sell it.'(53*) Not that no one is called a liber homo unless he has this power of 'receding' from his lord; far from it; all is a matter of degree; but the free man is freer if he can 'go to what lord he pleases,' and often enough the phrases 'X tenuit et liber homo fuit,' 'X tenuit libere,' 'X tenuit ut liber homo' seem to have no other meaning than this, that the occupant of the land enjoyed the liberty of taking it with him whithersoever he would. Therefore there is no tautology in saying that the holder of the land was a thegn and a free man, though of course there is a sense, there are many senses, in which every thegn is free.(54*) All this talk of the freedom that consists in choosing a lord and subjecting land to him may well puzzle us, for it puzzled the men of the twelfth century. The chronicler of Abingdon abbey had to explain that in the old days a free man could do strange things.(55*)

Comparisons may be instituted between the freedom of one free man and that of another: -- 'Five thegns held this land of Earl Edwin and could go with their land whither they would, and below them they had four soldiers, who were as free as themselves.'(56*) A high degree of liberty is marked when we are told that, 'The said men were so free that they could sell their land with soke and sake wherever they would.'(57*) But there are yet higher degrees of liberty. Of Worcestershire it is written, 'When the king goes upon a military expedition, if anyone who is summoned stays at home, then if he is so free a man that he has his sake and soke and can go whither he pleases with his land, he with all his land shall be in the king's mercy.'(58*) The free man is the freer if he has soke and sake, if he has jurisdiction over other men. Exceptional privileges, immunities from common burdens, are already regarded as 'liberties.' This is no new thing; often enough when the Anglo-Saxon land books speak of freedom they mean privilege.

The idea of freedom is equally vague and elastic if, instead of applying it to men, we apply it to land or the tenure of land. Two bordarii are now holding a small plot; 'they themselves held it freely in King Edward's day.'(59*) Here no doubt there has been a fall; but how deep a fall we cannot be sure. To say that a man's land is free may imply far more freedom than freehold tenure implies in later times; it may imply that the bond between him and his lord, if indeed he has a lord, is of a purely personal character and hardly gives the lord any hold over the land.(60*) But this is not all. Perfect freedom is not attained so long as the land owes any single duty to the state. Often enough -- but exactly how often it were no easy task to tell -- the libera terra of our record is land that has been exempted even from the danegeld; it is highly privileged land.(61*) Let us remember that at the present day, though the definition of free land or freehold land has long ago been fixed, we still speak as though free land might become freer if it were 'free of land-tax and tithe rent-charge.'

If now we return to the villanus and deny that he is liber homo and deny also that he is holding freely, we shall be saying little and using the laxest of terms. There are half-a-dozen questions that we would fain ask about him, and there will be no harm in asking them, though Domesday Book is taciturn.

Is he free to quit his lord and his land, or can he be pursued and captured? No one word can be obtained in answer to this question. We can only say that in Henry II's day the ordinary peasant was regarded by the royal officials as ascriptitius; the land that he occupied was said to be part of his lord's demesne; his chattels were his lord's.(62*) But then this was conceived to be, at least in some degree, the result of the Norman Conquest and subsequent rebellions of the peasantry.(63*) To this we may add that in one of our sets of Leges, the French Leis of William the Conqueror, there are certain clauses which would be of great importance could we suppose that they had an authoritative origin, and which in any case are remarkable enough. The nativus who flies from the land on which he is born, let none retain him or his chattels; if the lords will not send back these men to their land the king's officers are to do it.(64*) On the other hand, the tillers of the soil are not to be worked beyond their proper rent; their lord may not remove them from their land so long as they perform their right services.(65*) Whether or no we suppose that in the writer's opinion the ordinary peasant was a nativus (of nativi Domesday Book has nothing to say) we still have law more favourable to the peasant than was the common law of Bracton's age: -- a tiller who does his accustomed service is not to be ejected; he is no tenant at will.

Hereafter we shall show that the English peasants did suffer by the substitution of French for English lords. But the question that we have asked, so urgent, so fundamental, as it may seem to us, is really one which, as the history of the Roman coloni might prove, can long remain unanswered. Men may become economically so dependent on their lords, on wealthy masters and creditors, that the legal question whether they can quit their service has no interest. Who wishes to leave his all and go forth a beggar into the world? On the whole we can find no evidence whatever that the men of the Confessor's day who were retrospectively called villani were tied to the soil. Certainly in Norman times the tradition was held that according to the old law the villanus might acquire five hides of land and so 'thrive to thegn-right.'(66*)

Our next question should be whether he was subject to seignorial justice. This is part of a much wider question that we must face hereafter, for seignorial justice should be treated as a whole. We must here anticipate a conclusion, the proof of which will come by and by, namely, that the villanus sometimes was and sometimes was not the justiciable of a court in which his lord or his lord's steward presided. All depended on the answer to the question whether his lord had 'sake and soke.' His lord might have justiciary rights over all his tenants, or merely over his villani, or he might have no justiciary rights, for as yet 'sake and soke' were in the king's gift, and the mere fact that a lord had 'men' or tenants did not give him a jurisdiction over them.

With this question is connected another, namely, whether the villani had a locus standi in the national courts. We have seen six villani together with the priest (undoubtedly a free man) and the reeve of each vill summoned to swear in the great inquest.(67*) One of the most famous scenes recorded by our book is that in which William of Chernet claimed a Hampshire manor on behalf of Hugh de Port and produced his witnesses from among the best and eldest men of the county; but Picot, the sheriff of Cambridgeshire, who was in possession, replied with the testimony of villeins and mean folk and reeves, who were willing to support his case by oath or by ordeal.(68*) Again, in Norfolk, Roger the sheriff claimed a hundred acres and five villani and a mill as belonging to the royal manor of Brainfort, and five villani of the said manor testified in his favour and offered to make whatever proof anyone might adjudge to them, but the half-hundred of Ipswich testified that the land belonged to a certain church of St Peter that Wihtgar held, and he offered to deraign this.(69*) Certainly this does not look as if villani were excluded from the national moots. But a rule which valued the oath of a single thegn as highly as the oath of six ceorls would make the ceorl but a poor witness and tend to keep him out of court.(70*) The men who are active in the communal courts, who make the judgments there, are usually men of thegnly rank; but to go to court as a doomsman is one thing, to go as a litigant is another.(71*)

We may now approach the question whether, and if so in what sense, the land that the villanus occupies is his land. Throughout Domesday Book a distinction is sedulously maintained between the land of the villeins (terra villanorum) and the land that the lord has in dominio. Let us notice this phrase. Only the demesne land does the lord hold in dominio, in ownership. The delicate shade of difference that Bracton would see between dominicum and dominium is not as yet marked. In later times it became strictly correct to say that the lord held in demesne (in dominico suo) not only the land which he occupied by himself or his servants, but also the lands held of him by villein tenure.(72*) This usage appears very plainly in the Dialogue on the Exchequer. 'You shall know,' says the writer, 'that we give the name demesnes (dominica) to those lands that a man cultivates at his own cost or by his own labour, and also to those which are possessed in his name by his ascriptitii; for by the law of his kingdom not only can these ascriptitii be removed by their lords from the lands that they now possess and transferred to other places, but they may be sold and dispersed at will; so that rightly are both they and the lands which they cultivate for the behalf of their lords accounted to be dominia.'(73*) Far other is the normal, if not invariable, usage of Domesday Book. The terrae villanorum, the silvae villanorum, the piscariae villanorum, the molini villanorum -- for the villeins have woods and fisheries

and mills -- these the lord does not hold in dominio.(74*) Then again the oxen of the villeins are carefully distinguished from the oxen of the demesne, while often enough they are not distinguished from the oxen of those who in every sense are free tenants.(75*) Now as regards both the land and the oxen we seem put to the dilemma that either they belong to the lord or else they belong to the villeins. We cannot avoid this dilemma, as we can in later days, by saying that according to the common law the ownership of these things is with the lord, while according to the custom of the manor it is with the villeins, for we believe that a hall-moot, a manorial court, is still a somewhat exceptional institution.

On the whole we can hardly doubt that both in their land and in their oxen the villeins have had rights protected by law. Let us glance once more at the scheme of bót and wer that has been in force. A villein is slain; the manbót payable to his lord is marked off from the much heavier wergild that is payable to his kindred. If all that a villein could have belonged to his lord such a distinction would be idle.

Still we take it that for one most important purpose the villein's land is the lord's land: -- the lord must answer for the geld that is due from it. Not that the burden falls ultimately on the lord. On the contrary, it is not unlikely that he makes his villeins pay the geld that is due from his demesne land; it is one of their services that they must 'defend their lord's inland' against the geld. But over against the state the lord represents as well the land of his villeins as his own demesne land. From the great levy of 1084 the demesne lands of the barons had been exempted,(76*) but no doubt they had been responsible for the tax assessed on the lands held by their villani. We much doubt whether the collectors of the geld went round to the cottages of the villeins and demanded here six pence and there four pence; they presented themselves at the lord's hall and asked for a large sum. Nay, we believe that very often a perfectly free tenant paid his geld to his lord, or through his lord.(77*) Hence arrangements by which some hides were made to acquit other hides; such, for example, was the arrangement at Tewkesbury; there were fifty hides which had to acquit the whole ninety-five hides from all geld and royal service.(78*) And then it might be that the lord, enjoying a special privilege, was entitled to take the geld from his tenants and yet paid no geld to the king; thus did the canons of St Petroc in Cornwall(79*) and the monks of St Edmund in Suffolk.(80*) But as regards lands occupied by villeins, the king, so it seems to us, looks for his geld to the lord and he does not look behind the lord. This is no detail of a fiscal system. A potent force has thus been set in motion. He who pays for land -- it is but fair that he should be considered the owner of that land. We have a hint of this principle in a law of Cnut: -- 'He who has "defended" land with the witness of the shire is to enjoy it without question during his life and on his death may give or sell it to whom he pleases.'(81*) We have another hint of this principle in a story told by Heming, the monk of Worcester: -- in Cnut's time but four days of grace were given to the landowner for the payment of the geld; when these had elapsed, anyone who paid the geld might have the land.(82*) It is a principle which, if it is applied to the case of lord and villein, will attribute the ownership of the land to the lord and not to the villein.

And then we would ask: What services do the villeins render? A deep silence answers us, and as will hereafter be shown, there are many reasons why we should not import the information given

us by the monastic cartularies, even such early cartularies as the Black Book of Peterborough, into the days of the Confessor. No doubt the villeins usually do some labour upon the lord's demesne lands. In particular they help to plough it. A manor, we can see, is generally so arranged that the ratio borne by the demesne oxen to the demesne land will be smaller than that borne by the villeins' oxen to the villeins' land. Thus, to give one example out of a hundred, in a Somersetshire manor the lord has four hides and three teams, the villeins have two hides and three teams.(83*) But then the lord gets some help in his agriculture from those who are undoubtedly free tenants. The teams of the free tenants are often covered by the same phrase that covers the teams of the villeins.(84*) Radknights who are liberi homines plough and harrow at the lord's court.(85*) The very few entries which tell us of the labour of the villeins are quite insufficient to condemn the whole class to unlimited, or even to very heavy work. On a manor in Herefordshire there are twelve bordiers who work one day in the week.(86*) On the enormous manor of Leominster there are 238 villani and 85 bordarii. The villani plough and sow with their own seed 140 acres of their lord's land and they pay 11 pounds and 52 pence.(87*) On the manor of Marcle,which also is in Herefordshire, there are 36 villani and 10 bordarii with 40 teams. These villani plough and sow with their own seed 80 acres of wheat and 71 of oats.(88*) At Kingston, yet another manor in the same county, 'the villani who dwelt there in King Edward's day carried venison to Hereford and did no other service, so says the shire.(89*) On one Worcestershire manor of Westminster Abbey 10 villeins and 10 bordiers with 6 teams plough 6 acres and sow them with their own seed; on another 8 villeins and 6 bordiers with 6 teams do the like by 4 acres.(90*) This is light work. Casually we are told of burgesses living at Tamworth who have to work like the other villeins of the manor of Drayton to which they are attached,(91*) and we are told of men on a royal manor who do such works for the king as the reeve may command;(92*) but, curiously enough, it is not of any villeins but of the Bishop of Worcester's riding men (radmanni) that it is written 'they do whatever is commanded them'.(93*)

With our thirteenth century cartularies before us, we might easily underrate the amount of money that was already being paid as the rent of land at the date of the Conquest. In several counties we come across small groups of censarii, censores, gablatores who pay for their land in money, of cervisarii and mellitarii who bring beer and honey. Renders in kind, in herrings, eels, salmon are not uncommon, and sometimes they are 'appreciated', valued in terms of money. The pannage pig or the grass swine, which the villeins give in return for mast and herbage, is often mentioned. Throughout Sussex it seems to be the custom that the lord should have 'for herbage' one pig from every villein who has seven pigs.(94*) But money will be taken instead of swine, oxen or fish.(95*) The gersuma, the tailla, the theoretically free gifts of the tenants, are sums of money. But often enough the villanus is paying a substantial money rent. We have seen how at Leominster villeins plough and sow 140 acres for their lord and pay a rent of more than £11.(96*) At Lewisham in Kent the Abbot of Gand has a manor valued at £30; of this £2 is due to the profits of the port while two mills with 'the gafol of the rustics' bring in £8 12s.(97*) Such entries as the following are not uncommon -- there is one villein rendering 30d.(98*) -- there is one villein rendering 10s(99*) -- 46 cotarii with one hide render 30 shillings a year(100*) -- the villeins give 13s 4d

by way of consuetudo.(101*) No doubt it would be somewhat rare to find a villein discharging all his dues in money -- this is suggested when we are told how on the land of St Augustin one Wadard holds a large piece 'de terra villanorum' and yet renders no service to the abbot save 30s a year.(102*) At least in one instance the villeins seem to be holding the manor in farm, that is to say, they are farming the demesne land and paying a rent in money or in provender.(103*) We dare not represent the stream of economic history as flowing uninterruptedly from a system of labour services to a system of rents. We must remember that in the Conqueror's reign the lord very often had numerous serfs whose whole time was given to the cultivation of his demesne. In the south-western counties he will often have two, three or more serfs for every team that he has on his demesne, and, while this is so, we cannot safely say that his husbandry requires that the villeins should be labouring on his land for three or four days in every week.

As a last question we may ask: What was the English for villanus? It is a foreign word, one of those words which came in with the Conqueror. Surely, we may argue, there must have been some English equivalent for it. Yet we have the greatest difficulty in finding the proper term. True that in the Quadripartitus and the Leges villanus generally represents ceorl; ceorl when it is not rendered by villanus is left untranslated in some such form as cyrliscus homo. But then ceorl must be a wider word than the villanus of Domesday Book, for it has to cover all the non-noble free men; it must comprehend the numerous sochemanni and liberi homines of northern and eastern England. This in itself is not a little remarkable; it makes us suspect that some of the lines drawn by Domesday Book are by no means very old; they cannot be drawn by any of those terms that have been current in the Anglo-Saxon dooms or which still are current in the text-books that lawyers are compiling. To suppose that villanus is equivalent to gebúr is impossible; we have the best warrant for saying that the Latin for gebúr is not villanus but colibertus.(104*) Nor can we hold that the villanus is a geneat. In the last days of the old English kingdom the geneat, the 'companion,' the 'fellow,' appears as a horseman who rides on his lord's errands; we must seek him among the radmanni and rachenistres and drengi of Domesday Book.(105*) We shall venture the guess that when the Norman clerks wrote down villanus, the English jurors had said túnesman. As a matter of etymology the two words answer to each other well enough; the villa is the tún, and the men of the villa are the men of the tún. In the enlarged Latin version of the laws of Cnut, known as Instituta Cnuti, there is an important remark: -- tithes are to be paid both from the lands of the thegn and from the lands of the villeins -- 'tam de dominio liberalis hominis, id est thegenes, quam de terra villanorum, id est tuumannes (corr. tunmannes).'(106*) Then in a collection of dooms known as the Northumbrian Priests' Law there is a clause which orders the payment of Peter's pence. If a king's thegn or landlord (landrica) withholds his penny, he must pay ten half-marks, half to Christ, half to the king; but if a túnesman withholds it, then let the landlord pay it and take an ox from the man.(107*) A very valuable passage this is. It shows us how the lord is becoming responsible for the man's taxes; if the tenant will not pay them, the lord must. It is then in connexion with this responsibility of the lord that the term townsman meets us, and, if we mistake not, it is the lord's responsibility for geld that is the chief agent in the definition of the class of villani. The pressure of taxation, civil and

ecclesiastical, has been forming new social strata, and a new word, in itself a vague word, is making its way into the vocabulary of the law.(108*)

The class of villeins may well be heterogeneous. It may well contain (so we think) men who, or whose ancestors, have owned the land under a political supremacy, not easily to be distinguished from landlordship, that belongs to the king; and, on the other hand, it may well contain those who have never in themselves or their predecessors been other than the tenants of another man's soil. In some counties on the Welsh march there are groups of hospites who in fact or theory are colonists whom the lord has invited on to his land;(109*) but this word, very common in France, is not common in England. Our record is not concerned to describe the nature or the origin of the villein's tenure; it is in quest of geld and of the persons who ought to be charged with geld, and so it matters not whether the lord has let land to the villein or has acquired rights over land of which the villein was once the owner. Therefore we lay down no broad principle about the rights of the villein, but we have suggested that taken in the mass the villani of the Confessor's reign were far more 'law-worthy' than were the villani of the thirteenth century. We cannot treat either the legal or the economic history of our peasantry as a continuous whole; it is divided into two parts by the red thread of the Norman Conquest. That is a catastrophe. William might do his best to make it as little of a catastrophe as was possible, to insist that each French lord should have precisely the same rights that had been enjoyed by his English antecessor; it may even be that he endeavoured to assure to those who were becoming villani the rights that they had enjoyed under King Edward.(110*) Such a task, if attempted, was impossible. We hear indeed that the English 'redeemed their lands,' but probably this refers only to those English lords, those thegns or the like, who were fortunate enough to find that a ransom would be accepted.(111*) We have no warrant for thinking that the peasants, the common 'townsmen,' obtained from the king any covenanted mercies. They were handed over to new lords, who were very free in fact, if not in theory, to get out of them all that could be got without gross cruelty.

We are not left to speculate about this matter. In after days those who were likely to hold a true tradition, the great financier of the twelfth, the great lawyer of the thirteenth century, believed that there had been a catastrophe. As a result of the Conquest, the peasants, at all events some of the peasants, had fallen from their free estate; free men, holding freely, they had been compelled to do unfree services.(112*) But if we need not rely upon speculation, neither need we rely upon tradition. Domesday Book is full of evidence that the tillers of the soil are being depressed.

Here we may read of a free man with half a hide who has now been made one of the villeins,(113*) there of the holder of a small manor who now cultivates it as the farmer of a French lord graviter et miserabiliter,(114*) and there of a sokeman who has lost his land for not paying geld, though none was due;(115*) while the great Richard of Tonbridge has condescended to abstract a virgate from a villein or a villein from a virgate.(116*) But, again, it is not on a few cases in which our record states that some man has suffered an injustice that we would rely. Rather we notice what it treats as a quite common event. Free men are being 'added to' manors to which they did not belong. Thus in Suffolk a number of free men have been added to the manor of Montfort; they pay no 'custom' to it before the Conquest, but now they pay £15;

AElfric who was reeve under Roger Bigot set them this custom.(117*) Hard by them were men who used to pay 20 shillings, but this same AElfric raised their rent to 100 shillings.(118*) 'A free man held this land and could sell it, but Waleran father of John has added him to this manor':(119*) -- Entries of this kind are common. The utmost rents are being exacted from the farmers: -- this manor was let for three years at a rent of £12 and a yearly gift of an ounce of gold, but all the farmers who took it were ruined(120*) -- that manor was let for £3 15s. but the men were thereby ruined and now it is valued at only 45s.(121*) About these matters French and English cannot agree: -- this manor renders £70 by weight, but the English value it at only £60 by tale(122*) -- the English fix the value at £80, but the French at £100(123*) -- Frenchmen and Englishmen agree that it is worth £50, but Richard let it to an Englishman for £60, who thereby lost £10 a year, at the very least.(124*) 'It cannot pay,' 'it can hardly pay,' 'it could not stand' the rent, such are the phrases that we hear. If the lord gets the most out of the farmer to whom he has leased the manor, we may be sure that the farmer is making the most out of the villeins.

But the most convincing proof of the depression of the peasantry comes to us from Cambridgeshire. The rural population of that county as it existed in 1086 has been classified thus:(125*) --

sochemanni	213
villani	1902
bordarii	1428
cotarii	736
servi	548

But we also learn that the Cambridgeshire of the Confessor's day had contained at the very least 900 instead of 200 sokemen.(126*) This is an enormous and a significant change. Let us look at a single village. In Meldreth there is a manor; it is now a manor of the most ordinary kind; it is rated at 3 hides and 1 virgate, but contains 5 team-lands; in demesne are half a hide and one team, and 15 bordarii and 3 cotarii have 4 teams, and there is one servus. But before the Conquest this land was held by 15 sokemen; 10 of them were under the soke of the Abbey of Ely and held 2 hides and half a virgate; the other 5 held 1 hide and half a virgate and were the men of Earl AElfgar.(127*) What has become of these fifteen sokemen? They are now represented by fifteen bordiers and five cottiers; and the demesne land of the manor is a new thing. The sokemen have fallen, and their fall has brought with it the consolidation of manorial husbandry and seignorial power. At Orwell Earl Roger has now a small estate; a third of it is in demesne, while the residue is held by 2 villeins and 3 bordiers, and there is a serf there. This land had belonged to six sokemen, and those six had been under no less than five different lords; two belonged to Edith the Fair, one to Archbishop Stigand, one to Robert Wimarc's son, one to the king, and one to Earl Aelfgar.(128*) Displacements such as this we may see in village after village. No one can read the survey of Cambridgeshire without seeing that the freer sorts of the peasantry have been thrust out, or rather thrust down.

Evidence so cogent as this we shall hardly find in any part of the record save that which relates to Cambridgeshire and Bedfordshire. But great movements of the kind that we are examining will hardly confine themselves within the boundaries of a county. A little variation in the formula which tells us who

held the land in 1066 may hide from us the true state of the case. We cannot expect that men will be very accurate in stating the legal relationships that existed twenty years ago. Since the day when King Edward was alive and dead many things have happened, many new words and new forms of thought have become familiar. But taking the verdicts as we find them, there is still no lack of evidence. In Essex we may see the liberi homines disappearing.(129*) But we need not look only to the eastern counties. At Bromley, in Surrey, Bishop Odo has a manor of 32 hides, 4 of which had belonged to 'free men' who could go where they pleased, but now there are only villeins, cottiers, and serfs.(130*) We turn the page and find Odo holding 10 hides which had belonged to 'the alodiaries of the vill.'(131*) In Kent Hugh de Port is holding land that was held by 6 free men who could go whither they would; there are now 6 villeins and 14 bordiers there, with one team between them.(132*) Students of Domesday were too apt to treat the antecessores of the Norman lords as being in all cases lords of manors. Lords of manors, or rather holders of manors, they often were, but as we shall see more fully hereafter, when we are examining the term manerium, such phrases are likely to deceive us. Often enough they were very small people with very little land. For example these six free men whom Hugh de Port represents had only two and a half team-lands. We pass by a few pages and find Hugh de Montfort with a holding which comprises but one team-land and a half; he has 4 villeins and 2 bordiers there. His antecessores were three free men, who could go whither they would.(133*) They had need for but 12 oxen; they had no more land than they could easily till, at all events with the help of two or three cottages or slaves. To all appearance they were no better than peasants. They or their sons may still be tilling the land as Hugh's villeins. When we look for such instances we very easily find them. The case is not altered by the fact that the term 'manor' is given to the holdings of these antecessores. In Sussex an under-tenant of Earl Roger has an estate with four villeins upon it. His antecessores were two free men who held the land as two manors. And how much land was there to be divided between the two? There was one team-land. Such holders of maneria were tillers of the soil, peasants, at best yeomen.(134*) If they were of thegnly rank, this again does not alter the case. When in the survey of Dorset we read how four thegns held two team-lands, how six thegns held two team-lands, eight thegns two team-lands, nine thegns four team-lands, eleven thegns four team-lands,(135*) we cannot of course be certain that each of these groups of co-tenants had but one holding; but thegnly rank is inherited, and if a thegn will have nine or ten sons there will soon be tillers of the soil with the wergild of twelve hundred shillings. Now if these things are being done in the middling strata of society, if the sokemen are being suppressed or depressed in Cambridgeshire, the alodiaries in Sussex, what is likely to be the fate of the poor? They will have to till their lord's demesne graviter et miserabiliter. He can afford to dispense with serfs, for he has villeins.

A last argument must be added. What we see in the thirteenth century of the ancient demesne of the crown(136*) might lead us to expect that in Domesday Book 'the manors of St Edward' would stand out in bold relief. Instead of a population mainly consisting of villeins, shall we not find upon them large numbers of sokemen, the ancesters of the men who in after days will be protected by the little writ of right and the Monstraverunt? Nothing of the kind. The royal manor differs in no such mode as this from any other manor. If it lies in a county in which other

manors have sokemen, then it may or may not have sokemen. If it lies in a county in which other manors have no sokemen, it will have none. Cambridgeshire is a county in which there are some, and have been many, sokemen; there is hardly a sokeman upon the ancient demesne. In after days the men of Chesterton, for example, will have all the peculiar rights attributed by lawyers to the sokemen of St Edward. But St Edward, if we trust Domesday Book, had never a sokeman there; he had two villeins and a number of bordiers and cottiers.(137*) It seems fairly clear that from an early time, if not from the first days of the Conquest onwards, the king was the best of landlords. The tenants of those manors that were conceived as annexed to the crown, those tenants one and all, save the class of slaves which was disappearing, got a better, a more regular justice than that which the villeins of other lords could hope for. It was the king's justice, and therefore -- for the king's public and private capacities were hardly to be distinguished -- it was public justice, and so became formal justice, defined by writs, administered in the last resort by the highest court, the ablest lawyers. And so sokemen disappear from private manors. Some of them as tenants in free socage may maintain their position; many fall down into the class of tenants in villeinage. On the ancient demesne the sokemen multiply; they appear where Domesday knew them not; for those who are protected by royal justice can hardly (now that villeinage implies a precarious tenure) be called villeins, they must be 'villein sokemen' at the least. Whether or no we trust the tradition which ascribes.to the Conqueror a law in favour of the tillers of the soil, we can hardly doubt that the villani and bordarii whom Domesday Book shows us on the royal manors are treated as having legal rights in their holdings. And if this be true of them, it should be true of their peers upon other manors. Yes, it should be true; the manorial courts that are arising should do impartial justice even between lord and villeins; but who is to make it true?

NOTES:

1. D. B. i. 38, Coseham: '8 burs i. coliberti.' Ib. 38 b Dene: 'et coliberti [vel bures interlined].'

2. D. B. i. 65, Wintreburne.

3. D. B. i. 75, Bridetone et Bere.

4. D. B. i. 239 b, Etone.

5. Guérard, Cartulaire de L'Abbaye de S. Père de Chartres, vol. i. p. xlii.

6. The position of the coliberti is discussed by Guérard, loc. cit and by Lamprecht, Geschichte des Französischen Wirthschaftslebens (in Schmoller's Forschungen, Bd i.), p. 81. Guérard says, 'Les coliberts peuvent se placer à peu près indifféremment ou au dernier des hommes libres, ou à la tête des hommes engagés dans des liens de la servitudei'

7. Schmid. App. iii. c. 4.

8. Rectitudines, c. 3.

9. Occasionally the coliberti of D. B. are put before us as paying rents in money or in kind. Thus D. B. i. 38, Hants: 'In Coseham sunt 4 hidae quae pertinent huic manerio ubi T. R. E. erant 8 burs i. coliberti cum 4 carucis reddentes 50 sol. 8 den. minus.' D. B. i. 179 b. Heref.: 'Villani dant de consuetudine 13 sol. et 4 den. et [sex] coliberti reddunt 3 sextarios frumenti et ordei et 2 oves et dimidiam cum agnis et 2 den. et unum obolum.' D. B. i. 165: 'et in Glouucestre 1 burgensis reddens 5 den. et 2 coliberti reddentes 34 den.' In a charter coming from Bishop Denewulf (K. 1079) we read of three wite-theówmen who were boor-born and three who were theów-born.

10. Ellis, Introduction, ii. 511-14.

11. For examples see D. B. iv. 211 and the following pages.

12. Leg. Hen. 81, sect. 3 'Quidam villani qui sunt eiusmodi leierwitam et blodwitam et huiusmodi minora forisfacta emerunt a dominis suis, vel quomodo meruerunt de suis et in suos, quorum letgefoth vel overseunessa est 30 den.; cothseti 15 den.; servi 6 den.'

13. D. B. i. 71, Haseberie: '5 villani et 13 coscez et 2 cotarii.' Ibid 80 b: Chinestanestone: '18 villani et 14 coscez et 4 cotarii.'

14. Worcester Register, 59 b (Sedgebarrow): four cotmanni, each of whom pays 20d. or works one day a week and two in autumn; two cottarii, each whom pays 12d. or works one day a week. Ibid. 69 b (Shipston): two cotmanni, each of whom pays 3s. or works like a virgater; two cottarii, each of whom pays 13d. Ibid. 76 a (Cropthorn): two cotmanni, each of whom pays 2s. or works like a cottarius; two cottarii, each of whom pays 18d. or works one day a week.

15. Vinogradoff, Villainage, 149, gives a few instances of its occurrence; but it seems to be very rare.

16. D. B. i. 127 b, Fuleham: 'Ibi 5 villani quisque 1 hidam.' There are a good many other instances.

17. D. B. i. 130, Hamtone; 'et 4 bordarii quisque de dimidia virga.'

18. D. B. i. 127, Herges: 'et 2 cotarii de 13 acris.'

19. D. B. i. 127b, Fuleham: 'et 22 cotarii de dimidia hida et 8 cotarii de suis hortis.'

20. D. B. ii. 75 b: 'et 5 bordarii super aquam qui non tenent terram.'

21. D. B. i. 163 b, Turneberie: 'et 42 villani et 18 radchenistre cum 21 carucis et 23 bordarii et 15 servi et 4 coliberti.' Ibid 164, Hechanestede: 'et 5 villani et 8 bordarii cum 6 carucis; ibi 6 servi.'

22. D. B. iv. 21 5-223; on p. 223 there are two villani with one ox.

23. D. B. i. 164, Tedeneham: 'Ibi erant 38 villani habentes 38

carucas.' Ibid. 164 b, Nortune, '15 villani cum 15 carucis; Stanwelle, 5 villani cum 5 carucis.'

24. Malden, Domesday Survey of Surrey (Domesday Studies, ii.) 469, says that in Surrey 'bordarii and cotarii only occur once together upon the same manor, and very seldom in the same hundred.... There are three hundreds, Godalming, Wallington and Elmbridge, where the cotarii are nearly universal to the exclusion of bordarii. In the others the bordarii are nearly or quite universal, to the exclusion of the cotarii.'

25. Thorpe, Diplomatarium, 623, King Eadwig declares that a certain churchward of Exeter is 'free and fare-worth.

26. Hist. Eng. Law, i, 541 ff.

27. Hist. Eng. Law, i, 354-5.

28. Liebermann, Instituta Cnuti, Transact. Roy. Hist. Soc. vii. 93.

29. Leg. Will. Conq. 1. 8: 'La were del thein 20 lib. in Merchenelahe, 25 lib. in Westsexenelahe. La were del vilain 100 sol. en Merchenelahe e ensement en Westsexene.' Leg. Henr. 70, 1: 'In Westsexa quae caput regni est et legum, twyhindi, i.e. villagi, wera est 4 lib.; twelfhindi, i.e. thaigi, 25 lib.' Ibid. 76, section 2: 'Omnis autem wera liberorum est aut servorum... liberi alii twyhindi, alii syxhindi, alii twelfhindi'; section 6, twihindus = cyrliscus = villanus. As to the 100 shillings in the first of these passages, see Schmid, p. 676. There is some other evidence that the equation, 1 Norman shilling = 2 English shillings, was occasionally treated as correct enough. As to the six-hynde man, see Schmid, p. 653; we may doubt whether he existed in the eleventh century, but according to the Instituta Cnuti the radchenistres of the west may have been six-hynde. We must got draw from Alfred's treaty with the Dages (Schmid, p. 107) the inference that the normal ceorl was seated on gafol-land. This international instrument is settling an exceptionally high tariff for the maintenance of the peace. Every man, whatever his rank, is to enjoy the handsome wergild of 8 half-marks of pure gold, except the Danish lysing and the English eeorl who is seated on gafol-land; these are to have but the common wer of 200 shillings. The parallel passage in AEthelred's treaty (Schmid, p. 207) sets £50 on every free man if he is killed by a man of the other race. See Schmid, p. 676.

30. Ine, 55: a sheep with a lamb until a fortnight after Easter is worth 1 shilling. AEethelstan, vi. 6: a horse 120 pence, an ox 30 pence, a cow 20, a sheep 1 shilling (5 pence). Ibid. 8, sect. 5: an ox 30 pence. Schmid, App. 1. c. 7: a horse 30 shillings, a mare 20 shillings, an ox 30 pence, a cow 24 pence, a swine 8 pence, a sheep 1 shilling, a goat 2 pence, a man (i.e. a slave) 1 pound. Schmid, App. iii. c. 9: a sheep or 3 pence. D. B. i. 117 b.: an ox or 30 pence. D. B. i. 26: Tolls at Lewes; for a mag 4 pence, an ox a halfpenny. This preserves the equation that we have already seen, namely, 1 slave = 8 oxen. Thus the full team is worth one pound. On the twelfth-century Pipe Rolls the ox often costs 3 shillings (= 36 pence) or even more.

31. In Leg. Will. Conq. 1. 16, we hear of the forisfacturae (probably the 'insult fines') due to archbishops, bishops,

counts, barons and sokemen; the baron has 10 shillings, the sokeman 40 pence. In the same document, e. 20, section 2, we read of the reliefs of counts, barons, vavassors and villeins. Leg. Edw. Conf. 12, section 4, speaks of the manbót due in the Danelaw. on the death of a villanus or a socheman 12 ores are paid, on the death of a liber homo 3 marks.

32. D. B. i. 167 b, Heile: 'ibi erant 12 servi quos Willelmus liberos fecit.'

33. D. B. i 263: 'Si quis liber homo facit opera in die feriato inde episcopus habet 8 solidos. De servo autem vel ancilla feriatum diem infringente, habet episcopus 4 solidos.' Compare Cnut, ii. 45.

34. D. B. i. 86: 'Huic manerio reddebatur T. R. E. de Cruche per annum consuetudo, hoc est 6 oves cum agnis totidem, et quisque liber homo i. blomam ferri.' South Perrott had belonged to the Confessor, Crewkerne to Edith, probably 'the rich and fair.' For the description of Cruche see D. B. i. 86 b. As to the 'bloom' of iron see Ellis, Introduction, i. 136.

35. D. B. i. 92. See also p. 87 b, the accont of Seveberge.

36. D. B. ii. 145.

37. D. B. ii. I: 'In hoc manerio erat tunc temporis quidam liber homo de dimidia hida qui modo effectus est unus de villanis.'

38. Thus D. B. i. 127, Mid.: 'inter francos et villanos 45 carucae'; Ibid. 70, Wilts: '4 villani et 3 bordarii et unus fracus cum 2 carucis'; Ibid. 241, Warw.: 'Ibi sunt 3 francones homines cum 4 villanis et 3 bordariis.' Sometimesfrancus may be an equivalent for francigena; e.g. i.254b, where in one entry we have unus francigena and in the next unus francus homo. But an Englishman may be francus; ii. 54 b "accepit 15 acras de uno franco teigno et misit cum terra sua.' However, it is not an insignificant fact that the very name of Frenchman (francigena) must have suggested free birth.

39. Eor examples see the surveys of Warwick, Stafford and Shropshire.

40. D. B. ii. 260: 'et 7 homines qui possent vendere terram suam si eam prius obtulissent domino suo.'

41. D. B. ii. 278 b: 'si vellent recedere daret quisqe 2 solidos.' Ibid. 207: 'et possent recedere si darent 2 solidos.'

42. D. B. ii. 435: 'Et super Vlnoht habuit commendationem antecessor R. Malet, teste hundredo, et non potuit vendere nec dare de eo terram suam.' Ibid. 397: 'viderunt eum iurare quod non poterat dare [vel] vendere terram suam ab antecessore Ricardi.'

43. D. B. i. 145: 'Ioc manerium tenuit Aluuinus homo Estan, non potuit dare nec vedere extra Brichelle manerium Estani.'

44. D. B. i. 133: 'Hanc terram tenuit Aluric Blac 2 hidas de Abbate Westmonasterii.T. R. E.: non poterat separate ab aecclesia'

45. D B. ii. 216 b: 'Ita est in monasterio quod nec vendere nec forisfacere potest extra ecclesia.'

46. For example, D. B. i. 201: 'terram suam vendere potuerunt, soca vero remansit Abbati.' D. B. ii, 78: 'et poterant vendere terram set soca et saca remanebat antecessori Alberici.' Ibid. ii. 92 b: 'unus sochemannus fuit in hac terra de 15 acris quas poterat vendere, set soca iacebat in Warleia terra S. Pauli.'

47. But the consuetudo, rent or the like, may 'remain': D. B. ii. 181 b: 'et possent vendere terram suam set consuetudo remanebat in manerio.' And so the commendatio may 'remain'; ii. 357 b: 'Hi poterant dare et vendere terram, set saca et soca et commendatio remanebant Sancto [Eadmundo].'

48. For example, D. B. i. 201: 'Homines Abbatis de Ely fuerunt et 4 terram suam vendere potuerunt, soca vero remansit Abbati, et quartus 1 virgam et dimidiam habuit et recedere non poutuit.' See the important evidence produced by Round, Feudal England,24, as to the equivalence of these phrases.

49. One of the commonest terms is recedere -- 'potuit recedere' -- 'non potuit recedere'. i. 41, 'non potuit cum terra recedere ad alium dominum'; i. 56 b, 'to liberi homines T. R. E. tenebant 12 hidas et dimidiam de terra eiusdem manerii sed inde recedere non poterant'; ii. 19 b, 'non poterant recedere a terra sine licentia Abbatis'; ii. 57 b, 'non poterant recedere ab illo manerio'; ii 66, 'non poterant removere ab illo manerio'; ii. 41, 'non poterant recedere a soca Wisgari'; ii. 41 b, 'nec poterant abire sine iussu domini'; i. 66 b, 'qui tenuit T. R. E. non poterat ab aecclesia diverti [separari'] ; ii. 116, 'unus [burgensis] erat ita dominicus ut non posset recedere nec homagiurn facere sine licentia ([Stigandi]'; ii. 119, 'de istis hominibus erant 36 ita dominice Regis Edwardi ut non pssent esse homines cuiuslibet sed semper tamen consuetudo regis remanebat preter herigete.' A remarkable form is, ii. 57 b, 'non potuit istam terram mittere in aliquo loco nisi in abbatia.' Then 'potuit ire quo voluit,' 'non potuit ire quolibet' are common enough.

50. Ine, c. 39: He who leaves his lord without permission pays sixty shillings to his lord.

51. For example, D. B. i. 41: 'Tres taini tenuerunt de episcopo et non potuerunt ire quolibet.'

52. D. B. i. 35 b, Tornecrosta.

53. D. B. i. 212 b, Stanford.

54. D. B. i. 249 b: 'Tres taini tenuerunt et liberi homines fuerunt'; 256, 'Ipsi taini liberi erant'; 259 b, 'Quatuor taini tenuerunt ante eum et liberi fuerunt.'

55. Chron. Abingd. i. 490: 'Nam quidam dives, Turkillus nomine, sub Haroldi comitis testimonio et consultu, de se cum sua terra quae Kingestun dicitur, ecclesiae Abbendonensi et abbati Ordrico homagium fecit; licitum quippe libero cuique, illo in tempore, sic agere erat.'

56. D. B. i. 180 b: 'et poterant ire cum terra quo volebant, et

habebant sub se 4 milites, ita liberos ut ipsi erant.'

57. D. B. ii. 59.

58. D. B. i. 172: 'si ita liber homo est ut habeat socam suam et sacam et cum terra sua possit ire quo voluerit.'

59. D. B. i. 84 b.

60. D. B. ii. 213: 'Hanc terram calumpniatur esse liberam Vlchitel homo Hermeri, quocunque modo iudicetur, vel bello vel iudicio, et alius est praesto probare eo modo quod iacuit ad ecclesiam [S. Adeldredae] die quo rex Edwardus obiit. Set totus hundretus testatur eam fuisse T. R. E. ad S. Adeldredam.'

61. See in particular the survey of Gloucestershire; D. B. i. 165 b: 'Hoc manerium quietum est a geldo et ab omni forensi servitio praeter aecclesiae'; Ibid. 'Haec terra libera fuit et quieta ab omni geldo et regali servitio'. 170, 'Una hida et dimidia libera a geldo.' When after reading these passage's we come upon the following (167 b), 'Isdem W. tenet Tatinton: Ulgar tenuit de rege Edwardo: haec terra libera est,' and when we observe that the land is not hidated, we shall probably infer that 'This land is free' means 'This land is exempt from geld, and [perhaps] from all other royal service.'

62. Dialogus, i. c. 11; ii. c. 14.

63. Dialogus, i. c. 10.

64. Will. Conq. i. 30, 31: 'Si les seignurages ne facent altri gainurs venir a lour terre, la justise le facet.' The Latin version is ridiculous: 'Si domini terrarum non procurent idoneos cultores ad terras suas colendas, iustitiarii hoc faciant.' The translator seems to have been puzzled by the word altri or autrui.

65. Ibid. 29.

66. Schmid, App. v.; vii., 2, 9-11; Pseudoleges Canuti, 60-1 (Schmid, p. 431).

67. D. B. iv. 497.

68. D. B. i. 44 b: 'Istam terram calumpniatur Willelmus de Chernet, dicens pertinere ad manerium de Cerneford feudum Hugonis de Port per hereditatem sui antecessoris et de hoc suum testimonium adduxit de melioribus et antiquis hominibus totius comitatus et hundredi; et Picot contraduxit suum testimonium de villanis et vili plebe et de prepositis, qui volunt defendere per sacramentum ve dei iudicium, quod ille qui tenuit terram liber homo fuit et potuit ire cum terra sua quo voluit. Sed testes Willelmi nolunt accipere legem nisi regis Edwardi usque dum diffiniatur per regem.' It seems possible that William's witnesses wished to insist on the ancient rule that the oath of one thegn would countervail the oaths of six ceorls. This was the old English law (lex Edwardi) on which they relied.

69. D. B. ii. 393: 'et 5 villani de eodem manerio testantur ei et offerunt legem qualem quis iudicaverit; set dimidium hundret de Gepeswiz testantur quod hoc iacebat ad ecclesiam T. R. E. et

Wisgarus tenebat et offert derationari.'

70. Schmid, App. vi.; Leg. Hen. 64 sect. 2: 'thaini iusiurandum contravalet iusiurandum sex villanorum.'

71. Leg. Hen. 29, sect. 1.

72. Hist Eng. Law, i. 344.

73. Dialogus, i. c. 11

74. D. B. i. 67 b; 'De terra villanorum dedit abbatissa uni militi 3 hidas et dimidiam.' Ibid. 89: 'tenet Johannes de episcopo 2 hidas de terra villanorum.' Ibid. i. 169: 'unus francigena tenet terram unius villani.' Ibid. 164: 'In Sauerna 11 piscariae in dominio et 42 piscariae villanorum.' Ibid. 230: 'Silva dominica 1 leu. long. et dim. leu. lat. Silva villanorum 4 quarent. long. et 3 quarent. lat.' Ibid. 7 b: '5 molini villanorum.' We have not seen dominicum used as a substantive; but in the Exon. D. B. iv. 75 we have dominicatus Regis, for the king's demesne. There is already a slight ambiguity about the term dominium. We may say that a church has a manor in dominio, meaning thereby that the manor as a whole is held by the church itself and is not held of it by any tenant; and then we may go on to say that only one half of the land comprised in this manor is held by the church in dominio. Cf. Hist. Eng. Law, ii. 126.

75. For example, D. B. i. 159: 'Nunc in dominio 3 carucae et 6 servi, et 26 villani cum 3 bordariis et 15 liberi homines habent 30 carucas.' Ibid. 165: 'In dominio 2 carucae et 9 villani et 6 bordarii et presbyter et unus rachenistre cum 10 carucis.' Ibid. 258 b: 'et 3 villani et 2 bordarii et 2 francigenae cum 2 carucis.' But such entries are common enough.

76. Round, Domesday Studies, i. 97.

77. D. B. i. 28: 'Ipse Willelmus de Braiose tenet Wasingetune.... De hac terra tenet Gislebertus dim. hidam, Radulfus I hidam, Willelmus 3 virgas, Leuuinus dim. hidam qui potuit recedere cum terra sua et dedit geldum domino suo et dominus suus nichil dedit.'

78. B. i. 163, b.

79. D. B. i. 121: 'Omnes superius descriptas terras tenebant T. R. E. S. Petrocus; huius sancti terrae nunquam reddiderunt geldum nisi ipsi aecclesiae.' D. B. iv. 187: 'Terrae S. Petrochi nunquam reddiderunt gildum hisi sancto.'

80. D. B. ii. 372: 'Et quando in hundreto solvitur ad geldum 1 libra tunc inde exeunt 60 denarii ad victum monachorum.'

81. Cnut, ii. 79: 'And se þe land gewerod haebbe be scire gewitnisse....' The A.-S. werian is just the Latin defendere.

82. Heming, Cartulary, i. 278; Round, Domesday Studies, i. 89. Compare the story in D. B. i. 216 b: Osbern or Osbert the fisherman claims certain land as having belonged to his 'antecessor'; 'sed postquam rex Willelmus in Angliam venit, ille gablum de hac terra dare noluit et Radulfus Taillgebosc gablum dedit et pro forisfacto ipsam terram sumpsit et cuidam suo militi

tribuit.'

83. D. B. iv. 245, Cruca.

84. See above p. 81, note 3.

85. D. B. i. 163: 'Ibi erant villani 21 et 9 rachenistres habentes 26 carucas et 5 coliberti et unus bordarius cum 5 carucis. Hi rachenistres arabant et herciabant ad curiam domini.' Ibid. 'Ibi 19 liberi homines rachenistres habentes 48 carucas cum suis hominibus.' Ibid. 166: 'De terra huius manerii tenebant radchenistres, id est liberi homines, T. R. E., qui tamen omnes ad opus domini arabant et herciabant et falcabant et metebant.'

86. D. B. i. 186, Ewias.

87. D. B. i. 180.

88. D. B. i. 179 b.

89. D. B. i. 179 b.

90. D. B. i. 174 b.

91. D. B. i. 246 b. So the burgesses of Steyning (i. 17) 'ad curiam operabantur sicut villani T. R. E.'

92. D. B. i. 219.

93. D. B. i. 174 b: 'Ipsi radmans secabant una die in anno et omne servitium quod eis iubebatur faciebant.' The position of these tenants will be discussed hereafter in connexion with St. Oswald's charters.

94. D. B.. i. 16 b: 'De herbagio, unus porcus de unoquoque villano qui habet septem porcos.' In the margin stands 'Similiter per totum Sussex.'

95. D. B. i. 12 b: 'Ibi tantum silvae unde exeunt de pasnagio 40 porci aut 54 denarii et unus obolus.' Ibid. 191 b: 'De presentacione piscium 12 solidi et 9 denarii.' Ibid. 117 b: 'aut unum bovem aut 30 denarios.'

96. See above p. 84.

97. D. B. i. 12 b.

98. D. B. i. 11 b, Hamestede.

99. D. B. i. 117 b, Colun.

100. D. B. i. 127, Stibenhede.

101. D. B. i. 179 b, Lene.

102. D. B. i. 12 b, Norborne.

103. D. B. i. 127 b: 'Wellesdone tenent canonici S. Pauli.... Hoc manerium tenent villani ad firmam canonicorum. In dominio nil habetur.'

104. See above p. 62.

105. This matter will be discussed when we deal with St. Oswald's charters.

106. Schmid, p. 263 (note). This document is Dr. Liebermann's Instituta Cnuti (Trans. Rov. Hist. Soc. vii. 77).

107. Schmid, App. ii. 57-9.

108. For the rest, the word túnesman appears in Edgar iv. 8, 13, in connexion with provisions against the theft of cattle.

109. D. B. i 259, 259 b.

110. Leg. Will. i. 29.

111. D. B. ii. 360 b: 'Hanc terram habet Abbas in vadimonio pro duabus marcis auri concessu Engelrici quando redimebant Anglici terras suas.' Sometimes the Englishman gets back his land as a bedesman: i. 218, 'Hanc terram tenuit pater hujus hominis et vendere poterit T. R. E. Hanc rex Willelmus in elemosina eidem concessit'; i. 211, 'Hanc terram tenuit Avigi et potuit dare cui voluit T R. E. Hanc. ei postea rex Willelmus concessit et per breve R. Tallebosc commendavit ut eum servaret'; i. 218 b, a similar case.

112. Dialogus, i. c. 10; Bracton, f. 7. On both passages see Vinogradoff, Villainage, p. 121.

113. D. B. ii. 1: 'In hoc manerio erat tunc temporis quidam liber homo... qui modo effectus est unus de villanis.'

114. D. B. i. 148 b: 'In Merse tenet Ailric de Willelmo 4 hidas pro uno manerio..... Istemet tenuit T. R. E. sed modo tenet ad firmam de Willelmo graviter et miserabiliter.'

115. D. B. i. 141: 'Hanc terram sumpsit Petrus vicecomes de isto sochemanno Regis Willelmi in manu eiusdem Regis pro forisfactura de gildo Regis se non reddidisse ut homines sui dicunt. Sed homines de scira non portant vicecomiti testimonium, quia semper fuit quieta de gildo et de aliis erga Regem quamdiu tenuit, testante hundret.'

116. D. B. i. 30: 'Ricardus de Tonebrige tenet de hoc manerio unam virgatam cum silva unde abstulit rusticum qui ibi manebat.'

117. D. B. ii. 282 b: 'et istam consuetudinem constituit illis Aluricus prepositus in tempore R. Bigot.'

118. D. B. ii. 284 b.

119. D. B. ii. 84 b.

120. D. B. ii. 353 b: 'omnes fuerunt confusi.'

121. D. B. ii. 440 b: 'sed homines inde fuerunt confusi.'

122. D. B. i. 65, Aldeborne.

123. D. B. ii. 18, Berdringas.

124. D. B. ii. 38 b, Tachesteda.

125. Ellis, Introduction, ii. 428. We give Ellis's figures, but think that he has exaggerated the number of sokemen who were to be found in 1086.

126. We make considerably more than 900 by counting only those who are expressly described as sokemen and excluding the many persons who are simply described as homines capable of selling their land.

127. Hamilton, Inquisitio, 65.

128. Hamilton, Inquisitio, 77.

129. Thus e.g. D. ii. 87 b: 'Hidingham tenet Garengerus de Rogero pro 25 acris quas tenuerunt 15 liberi homines T. R. E.'

130. D. B. i. 31.

131. D. B. i. 31 b: 'Et 10 hidas tenebant alodiarii villae'

132. D. B. i. 10 b.

133. D. B. i. 13, Essella.

134. D. B. i. 24.

135. D. B. 83, 83 b.

136. Vinogradoff, Villainage, 89 ff.; Hist. Engl. Law, i. 366 ff.

137. D. B. i. 189 b.

4. The Sokemen

Now of a large part of England we may say that all the occupiers of land who are not holding 'manors'(1*) will belong to some of those classes of which we have already spoken. They will be villeins, bordiers, cottiers, 'boors' or serfs. Here and there we may find a few persons who are described as liberi homines. In some of the western counties, Gloucester, Worcester, Hereford, Shropshire, there are rachenistres or radmans; between the Ribble and the Mersey we may find a party of drengs. Still it is generally true that two of those five classes that seem to have been mentioned in King William's writ,(2*) the sochemanni and the liberi homines, are largely represented only in certain counties. They are to be seen in Essex, yet more thickly in Suffolk and Norfolk. In Lincolnshire nearly half of the rural population consists of sokemen, though there is no class of persons described as liberi homines. There are some sokemen in Yorkshire, but they are not very numerous and there are hardly any liberi homines. We have seen how in Cambridgeshire and Bedfordshire the sokemen have fared ill; but still some are left there. Traces of them may be found in Hertford and Buckingham; they are thick in Leicester, Nottingham and Northampton; there are some in Derbyshire. There have been sokemen in Middlesex(3*) and in Surrey;(4*) but they have been suppressed; a few remain in

Kent;(5*) so we should be rash were we to find anything characteristically Scandinavian in the sokemen. Even in Suffolk they are suffering ill at the hands of their new masters,(6*) while in Cambridgeshire, Bedfordshire, Hertfordshire they have been suppressed or displaced.

We have now to enter on a difficult task, a discussion of the relation which exists between these sochemanni and liberi homines on the one hand and their lord upon the other. The character of this relation varies from case to case. We may distinguish three different bonds by which a man may be bound to a lord, a personal bond, a tenurial bond, a jurisdictional or justiciary bond. But the language of Domesday Book is not very patient of this analysis. However, in the second volume we very frequently come upon two ideas which are sharply contrasted with each other; the one is expressed by the term commendatio, the other by the term soca.(7*) To these we must add the great vague term consuetudo, and we shall also have to consider the phrases which describe the various degrees of that freedom of 'withdrawing himself with his land' that a man may enjoy.

In order that we may become familiar with the use made of these terms and phrases we will transcribe a few typical entries:

Two free men, of whom AElfwin had not even the commendation.(8*)
Of these men Harold had not even the commendation.(9*)

Thus commendation seems put before us as the slightest bond that there can be between lord and man. Very often we are told that the lord had the commendation and nothing more.(10*) Thus it is contrasted with the soke: --

His predecessor had only the commendation of this, and Harold had the soke.(11*)
Of these six free men St Benet had the soke, and of one of them the commendation.(12*)

And the commendation is contrasted with the 'custom,' the consuetudo, perhaps we might say the 'service': --

Of the said sokeman Ralph Peverel had a custom of 3 shillings a year, but in the Confessor's time his ancestor had only the commendation.(13*)
R. Malet claims 18 free men, 3 of them by commendation, and the rest for all custom.(14*)

And the soke is contrasted with the consuetudo: --

To this manor belong 4 men for all custom, and other 4 for soke only.(15*)

In a given case all these bonds may be united: --

There are 7 sokemen who are the Saint's men with sake and soke and all custom.(16*)
Over this man the Saint has sake and soke and commendation with all custom.(17*)

Then if the man 'withdraws,' or gives or sells his land, we often read of the soke 'remaining'; we sometimes read of the commendation, the custom, the service 'remaining'.

These free men could sell or give their land, but the commendation and the soke and sake would remain to St. Edmund.(18*)

These men could sell their land, but the soke would remain to the Saint and the service (servitium), whoever might be the buyer.(19*)

They could give and sell their land, but the soke and the commendation and the service would remain to the Saint.(20*)

But after all, these distinctions are not maintained with rigour, for the soke is sometimes spoken of as though it were a species of consuetudo. We have a tangled skein in our hands.

The thread that looks as if it would be the easiest to unravel, is that which is styled 'mere commendation.' The same idea is expressed by other phrases -- 'he committed himself to Bishop Herman for his defence'(21*) -- 'they submitted themselves with their land to the abbey for defence'(22*) -- 'he became the man of Goisfrid of his own free will'(23*) -- 'she put herself with her land in the hand of the queen.'(24*) 'Homage' is not a common term in Domesday Book, but if, when speaking of the old time, it says, as it constantly does, that one person was the man of another, no doubt it is telling us of a relationship which had its origin in an oath and a symbolic ceremony.(25*) 'She put herself into the hands of the queen' -- we should take these words to mean just what they say. An Anglo-Saxon oath of fealty (hyldád) has been preserved.(26*) The swearer promises to be faithful and true to his lord, to love all that his lord loves and eschew all that his lord eschews. He makes no distinct reference to any land, but he refers to some compact which exists between him and his lord: -- He will be faithful and true on condition that his lord treats him according to his deserts and according to the covenant that has been established between them.

To all seeming there need not be any land in the case; and, if the man has land, the act of commendation will not give the lord as a matter of course any rights in that land. Certainly Domesday Book seems to assume that in general every owner or holder of land must have had a lord. This assumption is very worthy of notice. A law of AEthelstan(27*) had said that lordless men 'of whom no right could be had' were to have lords, but this command seems aimed at the landless folk, not at those whose land is a sufficient surety for their good behaviour. The law had not directly commanded the landed men to commend themselves, but it had supplied them with motives for so doing.(28*) What did a man gain by this act of submission? Of advantages that might be called 'extra-legal' we will say nothing though in the wild days of AEthelred the Unready, and even during the Confessor's reign, there was lawlessness enough to make the small proprietor wish that he had a mightier friend than the law could be. But there were distinct legal advantages to be had by commendation. In the first place, the life of the great man's man was protected not only by a wer-gild, but by a man-bót: -- a man-bót due to one who had the power to exact it; and if, as one of our authorities assures us, the amount of the man-bót varied with the rank of the lord,(29*) this would help to account for a remarkable fact disclosed by Domesday Book, namely, that the chosen lord was usually a person of the very highest rank, an earl, an archbishop, the king. Then, again, if the man got into a scrape, his lord might be of service to him. Suppose the man accused of theft: in certain cases he might escape with a single, instead of a triple ordeal, if he had a lord who would swear to his good character.(30*) In yet other cases his lord would come forward as

his compurgator; perhaps he was morally bound to do so; and, being a man of high rank, would swear a crushing oath. And within certain limits that we cannot well define the lord might warrant the doings of his man, might take upon himself the task of defending an action to which this man was subjected.(31*) What the man has sought by his submission is defensio, tuitio; the lord is his defensor, tutor, protector, advocatus, in a word, his warrantor.(32*)

Of warranty we are accustomed to think chiefly in connexion with the title to land: -- the feoffor warrants the feoffee in his enjoyment of the tenement. But to all appearance in the eleventh century it is rather as lord than as giver, seller or lender, that the vouchee comes to the defence of his man. If the land is conceived as having once been the warrantor's land, this may be but a fiction: -- the man has given up his land and then taken it again merely in order that he may be able to say with some truth that he has it by his lord's gift. But we cannot be sure that as yet any such fiction is necessary. 'I will defend any action that is brought against you for this land': -- as yet men see no reason why such a promise as this, if made with due ceremony, should not be enforced. A certain amount of 'maintenance' is desirable in their eyes and laudable.

Though we began with the statement that where there is commendation there may yet be no land in the case, we have none the less been already led to the supposition that often enough land does get involved in this nexus between man and lord. No doubt a landless man may commend himself and get no land in return for his homage; but with such an one Domesday Book is not concerned. The cases in which it takes an interest are those in which a landholder has commended himself. Now we dare not say that a landholder can never commend himself without commending his land also.(33*) Howbeit, the usual practice certainly is that a man who submits or commits himself for 'defence' or 'protection' shall take his land with him; he 'goes with his land' to a lord. Very curious are some of the instances which show how large a liberty men have enjoyed of taking land wherever they please. 'Tostig bought this land from the church of Malmesbury for three lives': -- in this there is nothing strange; leases for three lives granted by churches to thegns have been common. But of course we should assume that during the lease the land could have no other lord than the church of Malmesbury. Not so, however, for during his lease Tostig 'could go with that land to whatever lord he pleased.'(34*) In Essex there was before the Conquest a man who held land; that land in some sort belonged to the Abbey of Barking, and could not be separated from the abbey; but the holder of it was the man ('merely the man' say the jurors) of one Leofhild the predecessor of Geoffrey de Mandeville.(35*) In this last case we may satisfy ourselves by saving that a purely personal relation is distinguished from a tenurial relation; the man of Leofhild is the tenant of the abbey. But what of Tostig's case? Land that he holds of the church of Malmesbury, and that too by no perpetual tenure, he can commend to another lord. From the man's point of view, protection, defence, warranty, is the essence of commendation, and the warranty that he chiefly needs is the warranty of his possession, of the title by which he holds his land. it cannot but be therefore that the lord to whom he commends himself and his land, should be in some sort his landlord.

Not that he need pay rent, or perform other services in return for the land. The land is his land; he has not obtained it from his lord; on the contrary he has carried it to his lord.

Mere commendation is therefore distinguished by a score of entries from a relation that involves the payment of consuetudines. Doubtless however the lord obtains 'a valuable consideration' for all that he gives. Part of this will probably lie without the legal sphere. He has a sworn retainer who will fight whenever he is told to fight. But even the law allows the man to go great lengths in his lord's defence.(36*) In a rough age happy is the lord who has many sworn to defend him. When at a later time we see that the claimant of land must offer proof 'by the body of a certain free man of his,' we are taught that the lords have relied upon the testimony and the strong right arms of their vassals. That in all cases the lord got more than this we cannot say, though perhaps commendation carried with it the right to the heriot, the horse and armour of the dead man.(37*) The relation is often put before us as temporary. Numerous are the persons who 'can seek lords where they choose' or who can 'go with their land wherever they please.' How large a liberty these phrases accord to lord and man it were hard to tell. We cannot believe that either party to the contract could dissolve it just at the moment when the other had some need to enforce it; but still at other times the man might dissolve it, and we may suppose that the lord could do so too. But the connexion might be of a more permanent kind. Perhaps in most cases in which we are told that a man cannot withdraw his land from his lord the bond between them is regarded as something other than commendation -- there is commendation and something more. But this is no universal truth. You might be the lord's man 'merely by commendation' and yet be unable to sell your land without the lord's leave.(38*) At any rate, in one way and another 'the commendation' is considered as capable of binding the land. The commended man will be spoken of as holding the land under (sub) his lord, if not of (de) his lord.(39*) In many cases if he sells the land 'the commendation will remain to his lord' -- by which is meant, not that the vendor will continue to be the man of that lord (for the purposes of the Domesday inquest this would be a matter of indifference) but that the lord's rights over the land are not destroyed. The purchaser comes to the land and finds the commendation inhering in it.(40*)

And so, again, the lord's rights under the commendation seem to constitute an alienable and heritable seignory. It is thus that we may best explain the case, very common in East Anglia, in which a man is commended half to one and half to another lord.(41*) Thus we read of a case in which a free man was commended, as to one-third to Wulfsige, and as to the residue to Wulfsige's two brothers.(42*) In this instance it seems clear that the commendation has descended to three co-heirs. In other cases a lord may have made over his rights to two religious houses; thus we hear of a man who is common to the Abbots of Ely and St. Edmund's.(43*) In some cases a man may, in others he may not, be able to prevent himself being transferred from lord to lord, or from ancestor to heir. What passes by alienation or inheritance may be regarded rather as a right to his commendation than as the commendation itself.(44*) Of course there is nothing to hinder one from being the man of several different lords. AElfric Black held lands of the Abbot of Westminster which he could not separate from the church, but for other lands he was the man of Archbishop Stigand.(45*) Already a lofty edifice is being constructed; B, to whom C is commended, is himself commended to A; and in this case a certain relation exists between C and A; C is 'sub-commended' to A.(46*)

In a given case the somewhat vague obligation of the

commended man may be rendered definite by a bargain which imposes upon him the payment of rent or the performance of some specified services. When this is so, we shall often find that the land is moving, if we may so speak, not from the man but from the lord. The man is taking land from the lord to hold during good behaviour,(47*) or for life.(48*) or for lives. A form of lease or loan (loén) which gives the land to the lessee and to two or three successive heirs of his has from of old been commonly used by some of the great churches.(49*) Also we see landowners giving up their land to the churches and taking it back again as mere life tenants. During their lives the church is to have some 'service,' or at least some 'recognition' of its lordship, while after their deaths the church will have the land in demesne.(50*) This is something different from mere commendation. We see here the feuda oblata or beneficia oblata which foreign jurists have contrasted with feuda or beneficia data. The land is brought into the bargain by the man, not by the lord. But often the land comes from the lord, and the tenancy is no merely temporary tenancy; it is heritable. The king has provided his thegns with lands; the earls, the churches, have provided their thegns with lands, and these thegns have heritable estates, and already they are conceived as holding them of (de) the churches, the earls, the king. But we must not as yet be led away into any discussion about the architecture of the very highest storeys of the feudal or vassalic edifice. It must at present suffice that in humbler quarters there has been much letting and hiring of land. The leases, if we choose to call them so, the gifts, if we choose to call them so, have created heritable rights and perdurable relationships.

There is no kind of service that cannot be purchased by a grant or lease of land. Godric's wife had land from the king because she fed his dogs.(51*) AElfgyfu the maiden had land from Godric the sheriff that she might teach his daughter orfrey work.(52*) The monks of Pershore stipulate that their dominion shall be recognized by 'a day's farm' in every year, that is, that the lessee shall once a year furnish the convent with a day's victual.(53*) The king's thegns between the Ribble and the Mersey have 'like villeins' to make lodges for the king, and fisheries and deer-hays, and must send their reapers to cut the king's crops at harvest time.(54*) The radmen and radknights of the west must ride on their lord's errands and make themselves generally useful; they plough and harrow and mow, and do whatever is commanded them.(55*)

But we would here speak chiefly of the lowly 'free men' and sokemen of the eastern counties. Besides having their commendation and their soke, the lord very often has what is known as their consuetudo or their consuetudines. Often they are the lord's men de omni consuetudine. In all probability the word when thus employed, when contrasted with commendation on the one hand and with soke on the other, points to payments and renders to be made in money and in kind and to services of an agricultural character. Of such services only one stands out prominently; it is very frequently mentioned in the survey of East Anglia; it is fold-soke, socafaldae. The man must not have a fold of his own; his sheep must lie in the lord's fold. It is manure that the lord wants; the demand for manure has played a large part in the history of the human race. Often enough this is the one consuetudo, the one definite service, that the lord gets out of his free mens. And then a man who is consuetus ad faldam, tied to his lord's fold, is hardly to be considered as being in all respects a 'free' man. Those who are not 'fold-worthy' are to

be classed with those who are not 'moot-worthy' or 'fyrd-worthy.' We are tempted to say that a man's caput is diminished by his having to seek his lord's fold, just as it would be diminished if he were excluded from the communal courts or the national host.(56*) From the nature of this one consuetudo and from the prominence that is given to it, we may guess the character of the other consuetudines. Suit to the lord's mill would be analogous to suit to his fold.(57*) Of 'millsoke' we read nothing, but often enough a surprisingly large part of the total value of a manor is ascribed to its mill, and we may argue that the lord has not invested capital in a costly undertaking without making sure of a return. We may well suppose that like the radmen of the west the free men and sokemen of the east give their lord some help in his husbandry at harvest time. From a document which comes to us from the abbey of Ely, and which is slightly older than the Domesday inquest, we learn that certain of St Etheldreda's sokemen in Suffolk had nothing to do but to plough and thresh whenever the abbot required this of them; others had to plough and weed and reap, to carry the victual of the monks to the minster and furnish horses whenever called upon to do so.(58*) This seems to point rather to 'boon-days' than to continuous 'week-work,' and we observe that the sokemen of the east like the radmen of the west have horses. Occasionally we learn that a sokeman has to pay an annual sum of money to his lord; sometimes this looks like a substantial rent, sometimes like a mere 'recognition'; but the words that most nearly translate our 'rent,' redditus, census, gablum are seldom used in this context. All is consuetudo.

It is an interesting word. We perhaps are eager to urge the dilemma that in these cases the land must have been brought into the bargain either by the lord or by the tenant: -- either the lord is conceived as having let land to the tenant, or the theory is that the tenant has commended land to the lord. But the dilemma is not perfect. It may well be that this relationship is thought of as having existed from all time; it may well be that this relationship, though under slowly varying forms, has really existed for several centuries, and has had its beginning in no contract, in no bargain. In origin the rights of the lord may be the rights of kings and ealdormen, rights over subjects rather than rights over tenants. The word consuetudo covers taxes as well as rents, and, if the sokeman has to do work for his lord, very often, especially in Cambridgeshire and Hertfordshire, he has to do work for the king or for the sheriff also. If he has to do carrying service for the lord, he has to do carrying service (avera) for the sheriff also or in lieu thereof to pay a small sum of money.(59*) And another aspect of this word consuetudo is interesting to us. Land that is burdened with customs is customary land (terra consuetudinaria).(60*) As yet this term does not imply that the tenure, though protected by custom, is not protected by law; there is no opposition between law and custom; the customary tenant of Domesday Book is the tenant who renders customs, and the more customs he renders the more customary he is.(61*)

This word consuetudo is the widest of words. Perhaps we find the best equivalent for consuetudines in our own vague. 'dues'.(62*) It covers what we should call rents; it covers what we should call rates and taxes; but further it covers what we should call the proceeds and profits of justice: Let us construe a few entries. At Romney there are burgesses who in return for the service that they do on the sea are quit of all customs except three, namely, larceny, peace-breach and ambush.(63*) In

Berkshire King Edward gave to one of his foresters half a hide of land free from all custom, except the king's forfeiture, such as larceny, homicide, hám-fare and peace-breach.(64*) In what sense can a crime be a custom? In a fiscal sense. A crime is a source of revenue. In what sense should we wish to have our land free of crimes, free even, if this be possible, of larceny and homicide? In this sense: -- we should wish that no money whatever should go out of our land, neither by way of rent, nor by way of tax, rate, toll, nor yet again by way of forisfactura, of payment for crime committed. We should wish also that our land with the tenants on it should be quit or quiet (quieta) from the incursions of royal and national officers, whether they be in search of taxes or in search of criminals and the fines due from criminals, and we should also like to put those fines in our own pockets. Justice therefore takes its place among the consuetudines: 'larceny' is a source of income.(65*) A lord who has 'his customs,' is a lord who has among other sources of revenue, justice or the profits of justice.(66*) 'Justice or the profits of justice,' we say, for our record does not care to distinguish between them. It is thinking of money while we are engaged in questioning it about the constitution and competence of tribunals. It gives us but crooked answers. However, we must make the best that can be made of them, and in particular must form some opinion about the consuetudines known as sake and soke.

NOTES:

1. We shall see hereafter that some of these so-called 'manors' are but small plots and their holders small folk.

2. See above p. 47.

3. D. B. i. 128 b, 129, 129 b.

4. D. B. i. 34, 35 b.

5. D. B. i. 13.

6. D. B. ii. 287. There are free men, apparently 120 in number, of whom it is written: 'Hii liberi homines qui tempore regis Eduardi pertinebant in soca de Bercolt, unusquisque gratis dabat preposito per annum 4 tantum denarios, et reddebat socam sicut lex ferebat, et quando Rogerius Bigot pruis habuit vice-comitatum statuerunt ministri sui quod redderent 15 libras per annum, quod non faciebant T. R. E. Et quando Robertus Malet habuit vicecomitatum sui ministri creverunt illos ad 20 libras. Et quando Rogerius Bigot eos rehabuit dederunt similiter 20 libras. Et modo tenet eos Aluricus Wanz tali consuetudine qua erant T. R. E.' This is a rare instance of a re-establishment of the status quo ante conquestum.

7. Compare Round, Feudal England, 33.

8. D. B. ii. 187 b: 'Ex his non habuit Ailwinus suus antecessor etiam commendationem.'

9. D. B. ii. 287: 'De his hominibus... non habuit Haroldus etiam commendationem.'

10. D. B. ii. 153 b: 'Unde Suus antecessor habuit commendationem

tantum.' Ibid. 154: 'Alstan liber homo Edrici commend[atione] tantum.'

11. D. B. ii. 161 b.

12. D. B. ii. 244.

13. D. B. ii. 6: 'De predicto sochemano habuit Rad. Piperellus consuetudinem in unoquoque anno per 3 solidos, set in T. R. E. non habuit eius antecessor nisi tantum modo commendationem.'

14. D. B. ii. 171 b: 'Calumpniatur R. Malet 18 liberos homines, 3 commendatione et alios de omni consuetudine.'

15. D. B. ii. 250 b: 'Huic manerio adiacent semper 4 homines de omni consuetudine et alii 4 ad socham tantum.'

16. D. B. ii. 356 b.

17. D. B. ii. 357.

18. D. B. ii. 353 b.

19. D. B. ii. 362: 'set soca remaneret sancto et servitium quicunque terram emeret.'

20. D. B. ii. 358.

21. D. B. i. 58: 'Pater Tori tenuit T. R. E et potuit ire quo voluit sed pro sua defensione se commisit Hermanno episcopo et Tori Osmundo episcopo similiter.'

22. D. B. i. 32 b: 'set pro defensione se cum terra abbatiae summiserunt'

23. D. B. ii. 62 b: 'et T. R. W. effectus est homo Goisfridi sponte sua.'

24. D. B. i. 36 b: 'T. R. W. femina quae hanc terram tenebat misit se cum ea in manu reginae.' Ibid 36: 'Quidam liber homo hanc terram tenens et quo vellet abire valens commisit se in defensione Walterii pro defensione sua.'

25. D. B. ii. 172: 'Hos calumpniatur Drogo de Befrerere pro homagio tantum;' This seems equivalent to the common 'commendatione tantum.' D. B. i. 225 b: 'fuerunt homines Burred et iccirco G. episcopus clamat hominationem eorum.'

26. Schmid, App. x.

27. AEthelst, ii. 2.

28. Also it had declared that every man must have a pledge, and probably the easiest way of fulfilling this command was to place oneself under a lord who would put one into a tithing.

29. Leg. Edw. Conf. 12 sect. 5; but this is contradicted by Leg. Henr. 87, sect. 4.

30. AEthelr. i. 1, sect. 2; compare AEthelr. iii 3, sect. 4.

31. Leg. Hen. 82, sect. 6; 85, sect. 2.

32. D. B. ii. 18 b: 'inde vocat dominum suum ad tutorem.' Ibid. 103: 'vocavit Ilbodonem ad tutorem et postea non adduxit tutorem.' Ibid. 31 b: 'revocat eam ad defensorem. D. B. i. 141 b: 142: 'sed Harduinus reclamat Petrum vicecomitem ad protectorem.' Ibid. 227 b: 'et dicit regem suum advocatum esse.'

33. D. B. ii. 71 b: 'Phenge tenet idem Serlo de R[anulfo Piperello] quod tenuit liber homo.. qui T. R. W. effectus est homo antecessoris Ranulfi Piperelli, set terram suam sibi non dedit.' This however is not quite to the point.

34. D. B. i. 72: 'Toti emit eam T. R. E. de aecclesia Malmesburiensi ad etatem trium hominum et infra hunc terminum poterat ire cum ea ad quem vellet dominum.'

35. D. B. ii. 57b: 'Et haec terra quam modo tenet G. fuit in abbatia de Berchingis sicuti hundret testatur; set ille qui tenuit hanc terram fuit tantum modo homo [Leuild)] antecessoris Goisfridi et non potuit istam terram mittere in aliquo loco nisi in abbatia.'

36. Leg. Hen. 82, sect. 3.

37. D. B. ii. 118 b: 'In burgo [de Tetfort] autem erant 943 burgenses T. R. E. De his habuit Rex omnem consuetudinem. De istis hominibus erant 36 ita dominice Regis E. ut non possent esse homines alicuius sine licentia Regis. Alii omnes poterant esse homines cuiuslibet set semper tamen consuetuedo Regis remanebat preter herigete.' Compare D. B. i. 336 b. Stamford: 'In his custodiis sunt 72 mansi sochemanorum, qui habent terras suas in dominio, et qui petunt dominos ubi volunt, super quos Rex nichil aliud habet nisi emendationem forisfacturae eorum et heriete et theloneum.' In this case commendation would not carry the heriot with it.

38. D. B. ii. 201: 'Liber homo de 80 acris terrae Almari episcopi et Alwoldi abbatis commend[atione] tantum, suam nec vendere.' et hic homo erat monasterio quod non potuit dare terram suam nec vendere.' See another entry of the same kind on the same page.

39. D. B. i. 50 b: "Hic Alwinus tenuit hanc terram T. R. E. sub Wigoto pro tuitione; modo tent cam sub Milone.'

40. For example, D. B. ii. 353 b: 'Hii poterant dare et vendere terram suam T. R. E. set commend[atio] et soca et saca remanebat S. Edmundo.'

41. D. B. ii. 182 b: ' Ulchetel habuit dimidiam commendationem de illo T. R. E. et de uxore ipsius totam commendationem.' Ibid. 249 b: 'Medietas istius hominis fuit antecessoris Baingnardi commendatione tantum et alia medietas S. Edmundi cum dimidia terra.' The contrast between dimidii homines and integri homines is common enough. See D. B. ii. 309: one man has a sixth and another five-sixths of a commendation.

42. D. B. ii. 333 b.

43. D. B. ii. 125 b.

44. D. B. i. 58. Tori 'committed himself for defence' to Bp. Herman; Tori's son has done the same to Osmund, the successor of Herman.

45. D. B. i. 133: 'sed pro aliis terris homo archiepiscopi Stigandi fuit.'

46. On the whole this seems to be the meaning of 'subcommendation.' We read a good deal of men who were sub-commended to the antecessor of Robert Malet. This seems to be explained by such an entry as the following (ii. 313 b): 'Eadric holds two free men who were commended to Eadric, who himself was commended to (another) Eadric, the antecessor of Robert Malet.'

47. D. B. i. 45 b: 'Quidam frater Edrici tenuit tali conventione, quod quamdiu bene se haberet erga eum [Edricum] tamdiu terram de eo teneret, et si vendere vellet, non alicui nisi ei de quo tenebat vendere vel dare liceret.'

48. Cases of life tenancies will be found in D. B. i. 47, Stantune; 67 b, Newetone; 80, Catesclive; 177 b, Witune,; ii. 373, 444 b.

49. D. B. i. 46b, 66 b, 72, 175. We shall return to this when in the next essay we speak of loanland.

50. D. B. i. 67 b: 'Hanc terram reddidit sponte sua aecclesiae Hardingus qui in vita sua per convent[ionem] debebat tenere.' See also the case in i. 177 b. Again, ii. 431: 'terram quam cepit cum uxore sua... misit in ecclesia concedente muliere tali conventione quod non potuit vendere nec dare de aecclesia.' For a 'recognitio' see i. 175, Persore.

51. D. B. i. 57 b.

52. D. B. i. 149: 'De his tenuit Aluuid puella 2 hidas... et de dominica firma Regis Edwardi habuit ipsa dimidiam hidam quam Godricus vicecomes ei concessit quamdiu vicecomes esset, ut illa doceret filiam ejus aurifrisium operari.'

53. D. B. i. 175: 'Hanc emit quidam Godricus teinus regis Edwardi vita trium haeredum et dabat in anno monachis unam firmam pro recognitione.'

54. D. B. i. 269 b.

55. See above p. 83. Their tenure will be discussed hereafter in connexion with St. Oswald's land-loans.

56. D. B. ii. 187 b: 'In Carletuna 27 liberi homines et dimidius sub Olfo commendatione tantum et soca falde... 15 liberi homines sub Olfo soca falde et commendatione tantum.'

57. D. B. ii. 203 b; 'In eadem villa 12 homines 6 quorum erant in soca falde et alii 6 erant liberi.' Ibid. 361 b: '70 liberi... super hos homines habet et semper habuit sacam et socam et omnem eonsuetudinem et ad faldam pertinent omnes preter 4.' Ibid. ii. 207: '17 liberi homines consueti ad faldam et commendati.' The term 'fold-worthy' occurs in a writ of Edward the Confessor; of the men of a certain district as are moot-worthy, he gives to St. Benet of Ramsey soke over such of the men of certain district as

are moot-worthy, fyrd-worthy, and fold-worthy: Earle, Land Charters, p. 343: Kemble, iv. p. 208.

58. In later extents of East Anglian manors the fold-soke plays an important part. Cart. Rams. iii. 267: 'R. tenuit unam carucatam terrae cum falda sua pro octo solidis. A dabat pro terra sua quadraginta denarios et oves eius erant in falda Abbatis... H. triginta acras pro quatuor solidis et oves eius sunt in manu domini....'

59. See the document printed by Hamilton at the end of the Inquisitio Com. Cantabr. p. 192. 'Isti solummodo arabunt et contererent messes eiusdem loci quotienscunque abbas preceperit....' 'Ita proprie sunt abbati ut quotienscunque ipse preceperit in anno arabunt suam terram, purgabunt et colligent segetes, portabunt victum monachorum ad monasterium, equos eorum in suis necessitatibus semper habebit.' For more of this matter see Round, Foudal England, 30.

60. D. B. i. 141: there are four sokemen who are men of AEthelmaer and who cannot sell their land without his consent; but they are under the king's sake and soke and jointly provide the sheriff with one avera every year or four pence.

61. D. B. i. 249: 'Haec terra fuit consuetudinaria solummodo de theloneo regis sed aliam socam habebat.'

62. D. B. ii. 273 b: 'In eadem 8 consuetudinarii ad faldam sui antecessoris.' Ibid. 215: '8 homines consuetudinarios ad hoc manerium.'

63. D. B. i. 280: 'Dua partes Regis et tercia comitis de censu et theloneo et forisfactura et de omni consuetudine.' Ibid. 42: 'Unam aecclesiam et 6 capellas cum omni consuetudine vivorum et mortuorum.'

64. D. B. i. 10 b: 'et sunt quieti pro servitio maris ab omni consuetudine preter tribus, latrocinio, pace infracta, et forestel.'

65. D. B. i. 61 b: 'solutam ab omni consuetudine propter forestam custodiendam excepta forisfactura Regis, sicut est latrocinium, et homidicium, et heinfara, et fracta pax.'

66. D. B. i. 52: 'Hi infrascripti habent in Hantone consuetud[ines] domorum suarum.' Ibid. 249: 'Haec terra fuit consuetudinaria solummodo de theloneo Regis sed socam aliam habebat.'

5. SAKE AND SOKE

We may best begin our investigation by recalling the law of later times. In the thirteenth century seignorial justice, that is, justice in private hands, has two roots. A certain civil jurisdiction belongs to the lord as such; if he has tenants enough to form a court, he is at liberty to hold a court of and for his tenants. This kind of seignorial justice we call specifically feudal justice. But very often a lord has other and greater powers than the feudal principle would give him; in

particular he has the view of frankpledge and the police justice that the view of frankpledge implies. All such powers must in theory have their origin in grants made by the king; they are franchises. With feudal justice therefore we contrast 'franchisal' justice.(1*)

Now if we go back to the Norman period we shall begin to doubt whether the feudal principle -- the principle which as a matter of course gives the lord justiciary powers over his tenants -- is of very ancient origin.(2*) The state of things that then existed should be revealed to us by the Leges Henrici; for, if that book has any plan at all, it is a treatise on the law of jurisdiction, a treatise on 'soke.' To this topic the writer constantly returns after many digressions, and the leading theme of his work is found in the following sentence: -- 'As to the soke of pleas, there is that which belongs properly and exclusively to the royal fiscus; there is that which it participates with others; there is that which belongs to the sheriffs and royal bailiffs as comprised in their ferms; there is that which belongs to the barons who have soke and sake.(3*) But, when all has been said, the picture that is left on our minds is that of a confused conflict between inconsistent and indefinite principles, and very possibly the compiler in giving us such a picture is fulfilling the duty of a faithful portrayer of facts, though he does not satisfy our demand for a rational theory.

On the one hand, it seems plain that there is a seignorial justice which is not 'franchisal.' Certain persons have a certain 'soke' apart from any regalities which may have been expressly conceded to them by the king. But it is not clear that the legal basis of this soke is the simple feudal principle stated above, namely, that jurisdiction springs from the mere fact of tenure. An element of which we hear little in later days is prominent in the Leges, the element of rank or personal status. 'The archbishops, bishops, earls and other 'powers' (potestates) have sake and soke, toll, team and infangenethef in their own lands.(4*) Here the principle seems to be that men of a certain rank have certain jurisdictional powers, and the vague term potestates may include in this class all the king's barons. But then the freeholding vavassores have a certain jurisdiction, they have the pleas which concern wer and wíte (that is to say 'emendable' pleas) over their own men and their own property, and sometimes over another man's men who have been arrested or attached in the act of trespass.(5*) Whatever else we may think of these vavassores, they are not barons and probably they are not immediate tenants of the king.(6*) It is clear, however, that there may be a 'lord' with 'men' who yet has no sake or soke over them.(7*) We are told indeed that every lord may summon his man to stand to right in his court, and that if the man be resident in the remotest manor of the honour of which he holds, he still must go to the plea.(8*) Here for a moment we seem to have a fairly clear announcement of what we call the simple feudal principle, unadulterated by any element of personal rank; still our text supposes that the lord in question is a great man, he has no mere manor but an honour or several honours. On the whole, our law seems for the time to be taking the shape that French law took. If we leave out of sight the definitely granted franchisal powers, then we may say that a baron or the holder of a grand fief has 'high justice,' or, if that term be too technical, a higher justice, while the vavassor has 'low justice' or a lower justice. But in this province, as in other provinces, of English law personal rank becomes of less and less importance. The rules which would determine it and its consequences are never allowed

to become definite, and in the end a great generalization surmounts all difficulties: -- every lord has a certain civil justice over his tenants; whatsoever powers go beyond this, are franchises.

As to the sort of jurisdiction that a lord of our Leges has, we can make no statement in general terms. Such categories as 'civil' and 'criminal' are too modern for use. We must of course except the pleas of the crown, of which a long and ungeneralized list is set before us.(9*) We must except the pleas of the church. We must except certain pleas which belong in part to the king and in part to the church.(10*) Then we observe that the justice of an archbishop, bishop or earl, probably the justice of a baron also, extends as high as infangenethef, while that of a vavassor goes no higher than such offences as are emendable. The whole matter however is complicated by royal grants. The king may grant away a demesne manor and retain not only 'the exclusive soke' (i.e. the soke over the pleas of the crown) but also 'the common soke' in his hand,(11*) and a great man may by purchase acquire soke (for example, we may suppose the hundredal soke) over lands that are not his own.(12*) Then again, we may suspect that what is said of 'soke' in general does not apply to any jurisdiction that a lord may exercise over his servi and villani. As to the servi, very possibly the lord's right over them is still conceived as proprietary rather than jurisdictional, while for his villani (serf and villein are not yet convertible terms) the lord, whatever his rank may be, will probably hold a 'hallmoot'(13*) and exercise that 'common soke' which does not infringe the royal preserves. On the whole, the law of the thirteenth century seems to evolve itself somewhat easily out of the law of these Leges, the process of development being threefold: (1) the lord's rank as bishop, abbot, earl, baron, becomes unimportant; (2) the element of tenure becomes all-important; the mere fact that the man holds land of the lord makes him the lord's justiciable; thus a generalization becomes possible which permits even so lowly a person as a burgess of Dunstable to hold a court for his tenants;(14*) (3) the obsolescence of the old law of wíte and wer the growth of the new law of felony, the emergence in Glanvill's book of the distinction between criminal and civil pleas as a grand primary distinction, the introduction of the specially royal processes of presentment and inquest, bring about a new apportionment of the field of justice and a rational demarcation of feudal from franchisal powers. Still when we see the lords, especially the prelates of the church, relying upon prescription for their choicest franchises,(15*) we may learn (if such a lesson be needed) that new theories could not master all the ancient facts.

Whether the Conqueror or either of his sons would have admitted that any justice could be done in England that was not his justice, we may fairly doubt. They issued numerous charters which had no other object than that of giving or confirming to the donees 'their sake and soke,' and, so far as we can see, there is no jurisdiction, at least none over free men, that is not accounted to be 'sake and soke.' Occasionally it is said that the donees are to have 'their court.' However far the feudalization of justice had gone either in Normandy or in England before the Conquest, the Conquest itself was likely to conceal from view the question whether or no all seignorial jurisdiction is delegated from above; for thenceforward every lay tenant in chief, as no mere matter of theory, but as a plain matter of fact, held his land by a title derived newly and immediately from the king. Thus it would be easy for the king to

maintain that, if the lords exercised jurisdictional powers, they did so by virtue of his grant, an expressed grant or an implied grant. Gradually the process of subinfeudation would make the theoretical question prominent and pressing, for certainly the Norman nobles conceived that, even if their justice was delegated to them by the king, no rule of law prevented them from appointing sub-delegates. If they claimed to give away land, they claimed also to give away justice, and no earnest effort can have been made to prevent their doing this.(16*)

Returning from this brief digression, we must consider sake and soke as they are in Domesday Book. For a moment we will attend to the words themselves.(17*) Of the two soke is by far the commoner; indeed we hardly ever find sake except in connexion with soke, and when we do, it seems just an equivalent for soke. We have but an alliterative jingle like 'judgment and justice.'(18*) Apparently it matters little or nothing whether we say of a lord that he has soke, or that he has sake, Or that he has soke and sake. But not only is soke the commoner, it is also the wider word; we can not substitute sake for it in all contexts. Thus, for example, we say that a man renders soke to his lord or to his lord's manor; also we say that a piece of land is a soke of such and such a manor; no similar use is made of sake.

Now as a matter of etymology sake seems the easier of the two words. It is the Anglo-Saxon sacu, the German Sache, a thing, a matter, and hence a 'matter' or 'cause' in the lawyer's sense of these terms, a 'matter' in dispute between litigants, a 'cause' before the court. It is still in use among us, for though we do not speak of a sake between two persons, we do speak of a man acting for another's sake, or for God's sake, or for the sake of money.(19*) In Latin therefore sake may be rendered by placitum: -- 'Roger has sake over them' will become 'Rogerius habet placita super eos'.(20*) Roger has the right to hold plea over them. Thus easily enough sake becomes the right to have a court and to do justice.

As to soke, this has a very similar signification, but the route by which it attains that signification is somewhat doubtful. We must start with this that soke, socna, soca, is the Anglo-Saxon, socn and has for its primary meaning a seeking. It may become connected with justice or jurisdiction by one or by both of two ways. One of these is explained by a passage in the Leges Henrici which says that the king has certain causes or pleas 'in socna i.e. quaestione sua.' The king has certain pleas within his investigation, or his right to investigate. A later phrase may help us: -- the king is entitled to 'inquire of, hear and determine' these matters.(21*) But the word might journey along another path which would lead to much the same end. It means seeking, following, suing, making suit, sequi, sectam, facere. The duty known as socafaldae is the duty of seeking the lord's fold. Thus soca may be the duty of seeking or suing at the lord's court and the correlative right of the lord to keep a court and exact suit. Without denying that the word has traversed the first of the two routes, the route by way of 'investigation' -- in the face of the Leges Henrici we can hardly deny this -- we may confidently assert that it has traversed the second, the route by way of 'suit'. There are several passages which assure us that soke is a genus of which fold-soke is a species. Thus: -- 'Of these men Peter's predecessor had fold-soke and commendation and Stigand had the other soke.'(22*) In a document which is very closely connected with the great survey we find what seems to be a Latin translation of our word. The churches of Worcester and

Evesham were quarrelling about certain lands at Hamton. Under the eye of the king's commissioners they came to a compromise, which declared that the fifteen hides at Hamton belonged to the bishop of Worcester's hundred of Oswaldslaw and ought to pay the king's geld and perform the king's services along with the bishop and ought 'to seek the said hundred for pleading': -- requirere ad placitandum, this is the main kind of 'seeking' that soke implies.(23*) If we look back far enough in the Anglo-Saxon dooms, there is indeed much to make us think that the act of seeking a lord and placing oneself under his protection, and the consequences of that act, the relation between man and lord, the fealty promised by the one, the warranty due from the other, have been known as sócn.(24*) If so, then there may have been a time when commendation and soke were all one. But this time must be already ancient, for although we do not know what English word was represented by commendatio, still there is no distinction more emphatically drawn by Domesday Book than that between commendatio and soca.

Now when we meet with soca in the Leges Henrici we naturally construe it by some such terms as 'jurisdiction', 'justice,' 'the right to hold a court.' We have seen that the author of that treatise renders it by the Latin quaestio. We also meet the following phrases which seem clear enough: -- 'Every cause shall be determined in the hundred, or in the county, or in the hallmoot of those who have soke, or in the courts of the lords;(25*) '... according to the soke of pleas, which some have in their own land over their own men, some over their own men and strangers, either in all causes or in some causes':(26*)... 'grithbrice or hámsócn or any of those matters which exceed their soke and sake':(27*) 'in capital causes the soke is the king's.'(28*) So again our author explains that though a baron has soke this will not give him a right to justice over himself; no one, he says, can have his own forfeiture; no one has a soke of impunity: 'nullus enim socnam habet impune peccandi.'(29*) The use that Domesday Book makes of the word may not be quite so clear. Sometimes we are inclined to render it by suit, in particular when fold-soke is contrasted with 'other soke.' But very generally we must construe it by justice or by justiciary rights, though we must be careful not to introduce the seignorial court where it does not exist, and to remember that a lord may be entitled to receive the wites or fines incurred by his criminous men without holding a court for them. Those men may be tried and condemned in a hundred court, but the wite will be paid to their lord. Then the word is applied to tracts of land. A tract over which a lord has justiciary power, or a wite-exacting power, is his soke, and very often his soke is contrasted with those other lands over which he has rights of a more definitely proprietary kind. But we must turn from words to law.

Already before the Conquest there was plenty of seignorial justice in England. The greatest of the Anglo-Saxon lords had enjoyed wide and high justiciary rights. Naturally it is of the rights of the churches that we hear most, for the rights that they had under King Edward they still claim under King William. Foremost among them we may notice the church of Canterbury. On the great day at Penenden Heath, Lanfranc proved that throughout the lands of his church in Kent the king had but three rights; all other justice was in the hands of the archbishop.(30*) In Warwickshire the Archbishop of York has soke and sake, toll and team, church-scot and all other 'forfeitures' save those four which the king has throughout the whole realm.(31*) These four forfeitures are probably the four reserved pleas of the crown

that are mentioned in the laws of Cnut -- mundbryce, hámsócn, forsteal and fyrdwíte.(32*) But even these rights though usually reserved to the king may have been made over to the lord. In Yorkshire neither king nor earl has any 'custom' within the lands of St Peter of York, St John of Beverley, St Wilfrid of Ripon, St Cuthbert of Durham and the Holy Trinity. We are asked specially to note that in this region there are four royal highways, three by land and one by water where the king claims all forfeitures even when they run through the land of the archbishop or of the earl.(33*) Within this immense manor of Taunton the Bishop of Winchester has pleas of the highest class, and three times a year without any summons his men must meet to hold them.(34*) In Worcestershire seven of the twelve hundreds into which the county is divided are in the heads of four great churches; Worcester has three, Westminster two, Evesham one, Pershore one. Westminster holds its lands as freely as the king held them in his demesne; Pershore enjoys all the pleas of the free men; no sheriff can claim anything within the territory of St Mary of Worcester, neither in any plea, nor in any other matter.(35*) In East Anglia we frequently hear of the reserved pleas of the crown. In this Danish district they are accounted to be six in number; probably they are grídbrice, hámsócn, fihtwíte and fyrdwíte, outlaw's-work and the receipt of outlaws.(36*) Often we read how over the men of some lord the king and the earl have 'the six forfeitures,' or how 'the soke of the six forfeitures' lies in some royal manor.(37*) But then there is a large tract in which these six forfeitures belong to St Edmund; some other lord may have sake and soke in a given parcel of that tract, but the six forfeitures belong to St Edmund; they are indeed 'the six forfeitures of St Edmund.'(38*) Other arrangements were possible. We hear of men over whom St Benet had three forfeitures.(39*) The lawmen of Stamford had sake and soke within their houses and over their men, save geld, heriot, larceny and forfeitures exceeding 40 ores of silver.(40*) Certain burgesses of Romney serve the king on the sea, and therefore they have their own forfeitures, save larceny, peace-breach and forsteal, and these belong, not to the king, but to the archbishop.(41*) Sometimes King William will be careful to limit his confirmation of a lord's sake and soke to the 'emendable forfeitures,' the offences which can be paid for with money.(42*)

That in the Confessor's day justiciary rights could only be claimed by virtue of royal grants, that they did not arise out of the mere relation between lord and man, lord and tenant, or lord and villein, seems to us fairly certain. In the first place, as already said, soke is frequently contrasted with commendation. In the second place, as we turn over the pages of our record, we shall see it remarked of some man, who held a manor in the days before the Conquest, that he had it with sake and soke, and the remark is made in such a context that thereby he is singled out from among his fellows.(43*) Thus it is said of a little group of villeins and sokemen in Essex that 'their lord had sake and soke.'(44*) Not that we can argue that a lord has no soke unless it is expressly ascribed to him. The surveyors have no great interest in this matter. Sometimes such a phrase as 'he held it freely' seems to serve as an equivalent for 'he held it with sake and soke.'(45*) It is said of the Countess Judith, a lady of exalted rank, that she had a manse in Lincoln without sake and soke.(46*) Then we are told that throughout the city of Canterbury the king had sake and soke except in the lands of the Holy Trinity (Christ Church), St Augustin, Queen Edith, and three other lords.(47*) We have a list of fifteen persons who had sake

and soke in the two lathes of Sutton and Aylesford,(48*) a list of thirty-five persons who had sake and soke, toll and team in Lincolnshire (it includes the queen, a bishop, three abbots and two earls)(49*) and a list of nineteen persons who had similar rights in the shires of Derby and Nottingham.(50*) Such lists would have been pointless had any generalization been possible. Then in East Anglia it is common enough to find that the men who are reckoned to be the liberi homines of some lord are under the soke of another lord or render their soke to the king and the earl, that is to say, to the hundred court. Often enough it is said somewhat pointedly that the men over whom the king and the earl have soke are liberi homines, and this may for a moment suggest that the lord as a matter of course has soke over such of his men as are not ranked as 'free men'; possibly it may suggest that freedom in this context implies subjection to a national as opposed to a seignorial tribunal.(51*) But on the one hand a lord often enough has soke over those who are distinctively 'free men,'(52*) while on the other hand, as will be explained below, he has not the soke over his sokeman.(53*)

But we must go further and say that the lord has not always the soke over his villeins. This is a matter of much importance. An entry relating to a manor in Suffolk seems to put it beyond doubt: -- In the hundred and a half of Sanford Auti a thegn held Wenham in King Edward's time for a manor and three carucates of land; there were then nine villani, four bordarii and one servus and there were two teams on the demesne; Auti had the soke over his demesne and the soke of the villeins was in Bercolt.(54*) Now Bercolt, the modern Bergholt, was a royal manor, the seat of a great court, which had soke over many men in the neighbouring villages. To all seeming it was the court for the hundred, or 'hundred-and-a-half,' of Sanford.(55*) Here then we seem to have villeins who are not under the soke of their lord but are the justiciables of the hundred court. In another case, also from Suffolk, it is said of the lord of a manor that he had soke 'only over the demesne of his hall,' and this seems to exclude from the scope of his justiciary rights the land held by thirty-two villeins and eight bordiers.(56*) We may find the line drawn at various places. Not very unfrequently in East Anglia a lord has the soke over those men who are bound to his sheep-fold, while those who are 'foldworthy' attend the hundred court.(57*) In one case a curious and instructive distinction is taken: -- 'In Farwell lay in King Edward's day the sake and soke of all who had less than thirty acres, but of all who had thirty acres the soke and sake lay in the hundred.'(58*) In this case the line seems to be drawn just below the virgater, no matter the legal class to which the virgater belongs. To our thinking it is plain enough that many a manerium of the Confessor's day had no court of its own. As we shall see hereafter, the manors are often far too small to allow of our endowing each of them with a court. When of a Cheshire manor we hear that 'this manor has its pleas in its lord's hall' we are being told of something that is exceptional.(59*) In the thirteenth century no one would have made such a remark. In the eleventh the halimote or hall-moot looks like a novelty.

Seignorial justice is as yet very closely connected with the general scheme of national justice. Frequently the lord who has justice has a hundred. We remember how seven of the twelve hundreds of Worcestershire are in the hands of four great churches.(60*) St Etheldreda of Ely has the soke of five and a half hundreds in Suffolk.(61*) In Essex Swain had the half-hundred of Clavering, and the pleas thereof brought him in

25s. a year.(62*) In Nottinghamshire the Bishop of Lincoln had all the customs of the king and the earl throughout the wapentake of Newark.(63*) The monks of Battle Abbey claimed that the sake and soke of twenty-two hundreds and a half and all royal 'forfeitures' were annexed to their manor of Wye.(64*) But further -- and this deserves attention -- when the hundredal jurisdiction was not in the hands of some other lord, it was conceived as belonging to the king. The sake and soke of a hundred or of several hundreds is described as 'lying in,' or being annexed to, some royal manor and it is farmed by the farmer of that manor. Oxfordshire gives us the best example of this. The soke of four and a half hundreds belongs to the royal manor of Bensington, that of two hundreds to Headington, that of two and a half to Kirtlington, that of three to Upton, that of three to Shipton, that of two to Bampton, that of two to Bloxham and Adderbury.(65*) What we see here we may see elsewhere also.(66*) If then King William gives the royal manor of Wye to his newly founded church of St Martin in the Place of Battle, the monks will contend that they have obtained as an appurtenance the hundredal soke over a large part of the county of Kent.(67*)

The law seems as yet, if we may so speak, unconscious of the fact that underneath or beside the hundredal soke a new soke is growing up. It seems to treat the soke over a man or over a piece of land as an indivisible thing that must 'lie' somewhere and cannot be in two places at once. It has indeed to admit that while one lord has the soke, the king or another lord may have certain reserved and exalted 'forfeitures,' the three forfeitures or the four or the six, as the case may be;(68*) but it has no classification of courts. The lord's court, if it be not the court of an ancient hundred, is conceived as the court of a half-hundred, or of a quarter of a hundred,(69*) or as the court of a district that has been carved out from a hundred.(70*) Thus Stigand had the soke of the half-hundred of Hersham, save Thorpe which belonged to St Edmund, and Pulham which belonged to St Etheldreda;(71*) thus also the king had the soke of the half-hundred of Diss, except the land of St. Edmund, where he shared the soke with the saint, and except the lands of Wulfgaet and of Stigand.(72*) But it is impossible to maintain this theory. The hundred is becoming full of manors, within each of which a lord is exercising or endeavouring to exercise a soke over all, or certain classes, of his men. It is possible that in Lincolnshire we see the beginnings of a differentiating process; we meet with the word frisoca, frigsoca, frigesoca. Whether this stands for 'free soken,' or, as seems more likely, for 'frid soken,' soke in matter relating to the peace, it seems to mark off one kind of soke from other kinds.(73*) We have to remember that in later days the relation of the manorial to the hundredal courts is curious. In no accurate sense can we say that the court of the manor is below the court of the hundred. No appeal, no complaint of false judgment, lies from the one to the other; and yet, unless the manor enjoys some exceptional privilege, it is not extra-hundredal and its jurisdiction in personal causes is over-lapped by the jurisdiction of the hundred court: the two courts arise from different principles.(74*) In Domesday Book the feudal or tenurial principle seems still struggling for recognition. Already the Norman lords are assuming a soke which their antecessores did not enjoy.(75*) As will be seen below, they are enlarging and consolidating their manors and thereby rendering a manorial justice possible and profitable. Whether we ought to hold that the mere shock and jar of conquest and dispossession was sufficient to set up the process which covered

our land with small courts, or whether we ought to hold that an element of foreign law worked the change, is a question that will never be answered unless the Norman archives have yet many secrets to tell. The great 'honorial' courts of later days may be French; still it is hardly in this region that we should look for much foreign law. It is in English words that the French baron of the Conqueror's day must speak when he claims justiciary rights. But that the process was far from being complete in 1086 seems evident.

Many questions about the distribution and the constitution of the courts we must leave unsolved. Not only does our record tell us nothing of courts in unambiguous words, but it hardly has a word that will answer to our 'court.' The term curia is in use, but it seems always to signify a physical object, the lord's house or the court-yard around it, never an institution, a tribunal.(76*) Almost all that we are told is conveyed to us under the cover of such words as sake, soke, placita, forisfacturae. We know that the Bishop of Winchester has a court at Taunton, for his tenants are bound to come together thrice a year to hold his pleas without being summoned.(77*) This phrase -- 'to hold his pleas' -- seems to tell us distinctly enough that the suitors are the doomsmen of the court. Then, again, we have the well-known story of what happened at Orwell in Cambridgeshire. In that village Count Roger had a small estate; he had land for a team and a half. This land had belonged to six sokemen. He had borrowed three of them from Picot the sheriff in order that they might hold his pleas, and having got them he refused to return them.(78*) That the court that he wished to hold was a court merely for his land at Orwell is highly improbable, but he had other lands scattered about in the various villages of the Wetherly hundred, though all his tenants amounted to but 14 villeins, 42 bordiers, 15 cottiers, and 4 serfs. We cannot draw the inference that men of the class known as sokemen were necessary for the constitution of a court, for at the date of the survey there was no sokeman left in all Roger's land in Cambridgeshire; the three that he borrowed from Picot had disappeared or were reckoned as villeins or worse. Still he held a court and that court had doomsmen. But we cannot argue that every lord who had soke, or sake and soke, had a court of his own. It may be that in some cases he was satisfied with claiming the 'forfeitures' which his men incurred in the hundred courts. This is suggested to us by what we read of the earl's third penny.

In the county court and in every hundred court that has not passed into private hands, the king is entitled to but two-thirds of the proceeds of justice and the earl gets the other third, except perhaps in certain exceptional cases in which the king has the whole profit of some specially royal plea. The soke in the hundred courts belongs to the king and the earl. And just as the king's rights as the lord of a hundredal court become bound up with, and are let to farm with, some royal manor, so the earl's third penny will be annexed to some comital manor. Thus the third penny of Dorsetshire was annexed to Earl Harold's manor of Pireton,(79*) and the third penny of Warwickshire to Earl Edwin's manor of Cote.(80*) Harold had a manor in Herefordshire to which belonged the third penny of three hundreds;(81*) Godwin had a manor in Hampshire to which belonged the third penny of six hundreds;(82*) the third penny of three Devonian hundreds belonged to the manor of Blackpool.(83*) Now, at least in some cases, the king could not by his grants deprive the earl of his right; the grantee of soke had to take it subject to the earl's

third penny. Thus for the shires of Derby and Nottingham we have a list of nineteen persons who were entitled to the king's two-pence, but only three of them were entitled to the earl's penny.(84*) The monks of Battle declared that throughout many hundreds in Kent they were entitled to 'the king's two-pence'; the earl's third penny belonged to Odo of Bayeux.(85*) And so of certain 'free men' in Norfolk it is said that 'their soke is in the hundred for the third penny.'(86*) A man commits an offence; he incurs a wíte; two-thirds of it should go to his lord; one-third to the earl: in what court should he be tried? The answer that Domesday Book suggests by its silence is that this is a matter of indifference; it does not care to distinguish between the right to hold a court and the right to take the profits of justice. Just once the veil is raised for a moment. In Suffolk lies the hundred of Blything; its head is the vil of Blythburgh where there is a royal manor.(87*) Within that hundred lies the considerable town of Dunwich, which Edric holds as a manor. Now in Dunwich the king has this custom that two or three men shall go to the hundred court if they be duly summoned, and if they make default they shall pay a fine of two ores, and if a thief be caught there he shall be judged there and corporeal justice shall be done in Blythburgh and the lord of Dunwich shall have the thief's chattels. Apparently in this case the lord of Dunwich will see to the trying but not to the hanging of the thief; but, at any rate, a rare effort is here made to define how justice shall be done.(88*) The rarity of such efforts is very significant. Of course Domesday Book is not a treatise on jurisdiction; still if there were other terms in use, we should not be for ever put off with the vague, undifferentiated soke. On the whole, we take it that the lord who enjoyed soke had a right to keep a court if he chose to do so, and that generally he did this, though he would be far from keeping a separate court for each of his little manors; but if his possessions were small he may have contented himself with attending the hundred court and claiming the fines incurred by his men. Sometimes a lord seems to have soke only over his own demesne lands;(89*) in this case the wites that will come to him will be few. We may in later times see some curious compromises. If a thief is caught on the land of the Prior of Canterbury at Brook in Kent, the borhs-elder and frank-pledges of Brook are to take him to the court of the hundred of Wye, which belongs to the Abbot of Battle. Then, if he is not one of the Prior's men, he will be judged by the hundred. But if he is the Prior's man, then the bailiff of Brook will 'crave the Prior's court.' The Prior's folk will then go apart and judge the accused, a few of the hundredors going with them to act as assessors. If the tribunal thus constituted cannot agree, then once more the accused will be brought back into the hundred and will there be judged by the hundredors in common. In this instance we see that even in Henry II's day the Prior has not thoroughly extricated his court from the hundred moot.(90*)

It seems possible that a further hint as to the history of soke is given us by certain entries relating to the boroughs. It will already have become apparent that if there is soke over men, there is also soke over land: if men 'render soke' so also acres 'render soke.' We can see that a very elaborate web of rules is thus woven. One man strikes another. Before we can tell what the striker ought to pay and to whom he ought to pay it, we ought to know who had soke over the striker, over the stricken, over the spot where the blow was given, over the spot where the offender was attached or arrested or accused. 'The men of Southwark testify that in King Edward's time no one took toll on the strand

or in the water-street save the king, and if any one in the act of committing an offence was there challenged, he paid the amends to the king, but if without being challenged he escaped under a man who had sake and soke, that man had the. amends.'(91*) Then we read how at Wallingford certain owners of houses enjoyed 'the gafol of their houses, and blood, if blood was shed there and the man was received inside before he was challenged by the king's reeve, except on Saturday, for then the king had the forfeiture on account of the market; and for adultery and larceny they had the forfeiture in their houses, but the other forfeitures were the king's.'(92*) We cannot hope to recover the intricate rules which governed these affairs, rules which must have been as intricate as those of our 'private international law.' But the description of Wallingford tells us of householders who enjoy the 'forfeitures' which arise from crimes committed in their own houses, and a suspicion may cross our minds that the right to these forfeitures is not in its origin a purely jurisdictional or justiciary right. However, these householders are great people (the Bishop of Salisbury, the Abbot of St. Albans are among them), their town houses are considered as appurtenant to their rural manors and the soke over the manor comprehends the town house. And so when we read how the twelve lawmen of Stamford had sake and soke within their houses and over their own men 'save geld, and heriot, and corporeal forfeitures to the amount of 40 ores of silver and larceny' we may be reading of rights which can properly be described as justiciary.(93*)

But a much more difficult case comes before us at Warwick.(94*) We first hear of the town houses that are held by great men as parts of their manors, and then we hear that 'besides these houses there are in the borough nineteen burgesses who have nineteen houses with sake and soke and all customs.' Now we cannot easily believe that the burgess's house is a jurisdictional area, or that in exacting a mulct from one who commits a crime in that house the burgess will be playing the magistrate or exercising a right to do justice or take the profits of justice by virtue of a grant made to him by the king. Rather we are likely to see here a relic of the ancient 'house-peace.'(95*) If you commit an act of violence in a man's house, whatever you may have to pay to the person whom you strike and to the king, you will also have to make amends to the owner of the house, even though he be but a ceorl or a boor, for you have broken his peace.(96*) The right of the burgess to exact a mulct from one who has shed blood or committed adultery within his walls may in truth be a right of this kind, and yet, like other rights to other mulcts, it is now conceived as an emanation of sake and soke. If in the eleventh century we hear but little of this householder's right, may this not be because the householder has surrendered it to his lord, or the lord has usurped it from the householder, and thus it has gone to swell the mass of the lord's jurisdictional rights? At Broughton in Huntingdonshire the Abbot of Ramsey has a manor with some sokemen upon it 'and these sokemen say that they used to have legerwite (fornication-fine), bloodwite and larceny up to fourpence, and above fourpence the Abbot had the forfeiture of larceny.'(97*) Various interpretations may be set upon this difficult passage. We may fashion for ourselves a village court (though there are but ten sokemen) and suppose that the commune of sokemen enjoyed the smaller fines incurred by any of its members. But we are inclined to connect this entry with those relating to Wallingford and to Warwick and to believe that each sokeman has enjoyed a right to exact a sum of money for the breach of his peace. The

law does not clearly mark off the right of the injured housefather from the right of the offended magistrate. How could it do so? If you commit an act of violence you must pay a wite to the king. Why so? Because you have wronged the king by breaking his peace and he requires 'amends' from you. With this thought in our minds we may now approach an obscure problem.

We have said that seignorial justice is regarded as having its origin in royal grants, and in the main this seems true. We hardly state an exception to this rule if we say that grantees of justice become in their turn grantors. Not merely could the earl who had soke grant this to one of his thegns, but that thegn would be said to hold the soke 'under' or 'of' the earl. Justice, we may say, was already being sub-infeudated.(98*) But now and again we meet with much more startling statements. Usually if a man over whom his lord has soke 'withdraws himself with his land,' or 'goes elsewhere with his land,' the lord's soke over that land 'remains': he still has jurisdictional rights over that land though it is commended to a new lord. We may be surprised at being very frequently told that this is the case, for we can hardly imagine a man having power to take his land out of one sphere of justice and to put it into another. But that some men, and they not men of high rank, enjoyed this power seems probable. Of a Hertfordshire manor we read: 'In this manor there were six sokemen, men of Archbishop Stigand, and each had one hide, and they could sell, saving the soke, and one of them could even sell his soke with the land.'(99*) This case may be exceptional; there may have been a very unusual compact between the archbishop and this egregiously free sokeman; but the frequency with which we are told that on a sale the soke 'remains' does not favour this supposition.

We seem driven to the conclusion that in some parts of the country the practice of commendation had been allowed to interfere with jurisdictional relationships: that there were men who could 'go with their land to what lord they chose' and carry with them not merely their homage, but also their suit of court and their 'forfeitures.' This may seem to us intolerable. If it be true, it tells us that the state has been very weak; it tells us that the national scheme of justice has been torn to shreds by free contract, that men have had the utmost difficulty in distinguishing between property and political power, between personal relationships and the magistracy to which land is subject. But unless we are mistaken, the housepeace in its decay has helped to produce this confusion. In a certain sense a mere ceorl has had what is now called a soke -- it used to be called a mund or grid -- over his house and over his loaf-eaters: that is to say, he has been entitled to have money paid to him if his house-peace were broken or his loafeaters beaten. This right he has been able to transfer to a lord. In one way or another it has now come into the lord's hand and become mixed up with other rights. In Henry I's day a lawyer will be explaining that if a villein receives money when blood is shed or fornication is committed in his house, this is because he has purchased these forfeitures from his lord.(100*) This reverses the order of history.

Such is the best explanation that we can give of the men who sell their soke with their land. No doubt we are accusing Domesday Book of being very obscure, of using a single word to express some three or four different ideas. In some degree the obscurity may be due to the fact that French justiciars and French clerks have become the exponents of English law. But we may gravely doubt whether Englishmen would have produced a result

more intelligible to us. One cause of difficulty we may perhaps remove. In accordance with common wont we have from time to time spoken of seignorial jurisdiction. But if the word jurisdiction be strictly construed, then in all likelihood there never has been in this country any seignorial jurisdiction. It is not the part of the lord to declare the law (ius dicere); 'curia domini debet facere iudicia et non dominus.(101*) From first to last this seems to be so, unless we take account of theories that come to us from a time when the lord's court was fast becoming an obsolete institution.(102*) So it is in Domesday Book. In the hundred court the sheriff presides; it is he that appoints a day for the litigation, but the men of the hundred, the men who come together 'to give and receive right,' make the judgments.(103*) The tenants of the Bishop of Winchester 'hold the bishops' pleas' at Taunton; Earl Roger borrows sokemen 'to hold his pleas.'(104*) Thus the erection of a new court is no very revolutionary proceeding; it passes unnoticed. If once it be granted that all the justiciary profits arising from a certain group of men or tract of land are to go to a certain lord, it is very much a matter of indifference to kings and sheriffs whether the lord holds a court of his own or exacts this money in the hundred court. Indeed, a sheriff may be inclined to say 'I am not going to do your justice for nothing; do it yourself.' So long as every lord will come to the hundred court himself or send his steward, the sheriff will have no lack of capable doomsmen. Then the men of the lord's precinct may well wish for a court at their doors; they will be spared the long journey to the hundred court; they will settle their own affairs and be a law unto themselves. Thus we ought not to say that the lax use of the word soke covers a confusion between 'jurisdiction' and the profits of 'jurisdiction, 'and if we say that the confusion is between justice and the profits of justice, we are pointing to a distinction which the men of the Confessor's time might regard as somewhat shadowy. in any case their lord is to have their wites; in any case they will get the judgment of their peers; what is left to dispute about is mere geography, the number of the courts, the demarcation of justiciary areas. We may say, if we will, that far-sighted men would not have argued in this manner, for seignorial justice was a force mighty for good and for ill; but it has not been proved to our satisfaction that the men who ruled England in the age before the Conquest were far-sighted. Their work ended in a stupendous failure.

To the sake and soke of the old English law we shall have to return once more in our next essay. Our discussion of the sake and soke of Domesday Book was induced by a consideration of the various bonds which may bind a man to a lord. And now we ought to understand that in the eastern counties it is extremely common for a man to be bound to one lord by commendation and to another lord by soke. Very often indeed a man is commended to one lord, while the soke over him and over his land 'lies in' some hundred court which belongs to another lord or is still in the hands of the king and the earl. How to draw with any exactness the line between the rights given to the one lord by the commendation and to the other lord by the soke we cannot tell. For instance, we find many men who cannot sell their land without the consent of a lord. This we may usually regard as the result of some term in the bargain of commendation; but in some cases it may well be the outcome of soke. Thus at Sturston in Norfolk we see a free man of St Etheldreda of Ely; his sake and soke belong to Archbishop Stigand's manor of Earsham (Sturston and Earsham lie some five miles apart); now this man if he wishes to give or sell his land

must obtain the licence both of St Etheldreda and of Stigand.(105*) And so as regards the forfeiture of land. We are perhaps accustomed to think of the escheat propter delictum tenentis as having its origin in the ideas of homage and tenure rather than in the justiciary rights of the lord. Howbeit there is much to make us think that the right to take the land of one who has forfeited that land by crime was closely connected with the right to other wites or forisfacturae. 'Of all the thegns who hold land in the Well wapentake of Lincolnshire, St Mary of Lincoln had two-thirds of every forisfactura and the earl the other third; and so of their heriots; and so if they forfeited their land, two-thirds went to St Mary and the remainder to the earl.(106*) 'St Mary has not enfeoffed these thegns; but by some royal grant she has two-thirds of the soke over them. In Suffolk one Brungar held a small manor with soke. He was a 'free man' commended to Robert Wimarc's son; but the sake and soke over him belonged to St Edmund. Unfortunately for Brungar, stolen horses were found in his house, and we fear that he came to a bad end. At any rate he drops out of the story. Then St Edmund's Abbot, who had the sake and soke, and Robert, who had the commendation, went to law, and right gladly would we have heard the plea; but they came to some compromise and to all seeming Robert got the land.(107*) If we are puzzled by this labyrinthine web of legal relationships, we may console ourselves with the reflection that the Normans were also puzzled by it. They seem to have felt the necessity of attributing the lordship of land to one lord and one only (though of course that lord might have another lord above him), of consolidating soke with commendation, homage with justice, and in the end they brought out a simple and symmetrical result, albeit to the last the relation of seignorial to hundredal justice is not to be explained by any elegant theory of feudalism.

Yet another problem shall be stated, though we have little hope of solving it. The writ, or rather one of the writs, which defined the scope of the survey seems to have spoken of liberi homines and sochemanni as of two classes of men that were to be distinguished from each other. In Essex, Suffolk and Norfolk this distinction is often drawn. In one and the same manor we shall find both 'free men' and sokemen;(108*) we may even hear of sokemen who formerly were 'free men.'(109*) But the import of this distinction evades us. Sometimes it is said of sokemen that they 'hold freely.'(110*) We read that four sokemen held this land of whom three were free, while the fourth had one hide but could not give or sell it.(111*) This may suggest that the principle of the division is to be found in the power to alienate the land, to 'withdraw' with the land to another lord.(112*) There may be truth in the suggestion, but we cannot square it with all our cases.(113*) Often enough the 'free man' cannot sell without the consent of his lord.(114*) We have just met with a 'free man' who had to obtain the consent both of the lord of his commendation and of the lord of his soke.(115*) On the other hand, the sokeman who can sell without his lord's leave is no rare being,(116*) and it was of a sokeman that we read how he could sell, not only his land, but also his soke.(117*)

Again, we dare not say that while the 'free man' is the justiciable of a national court, the soke oven the sokeman belongs to his lond. Neither side of this proposition is true. Very often the soke over the 'free man' belongs to a church or to some other lord,(118*) who may or may not be his lord by commendation.(119*) Very often the lord has not the soke over his sokemen. This may seem a paradox, but it is true. We make it

cleaner by saying that you may have a man who is your man and who is a sokeman, but yet you have no soke over him; his soke 'lies' or 'is rendered' elsewhere. This is a common enough phenomenon, but it is apt to escape attention. When we are told that a certain English lord had a sokeman at a certain place, we must not jump to the conclusion that he had soke over that man of his. Thus in Hertfordshire AEthelmaer held a manor and in it there were four sokemen; they were, we are told, his homines: but over two of them the king had sake and soke.(120*) Unless we are greatly mistaken, the soke of many of the East Anglian sokemen, no matter whose men they were, lay in the hundred counts. This prevents our saying that a sokeman is one over whom his lord has soke, or one who renders soke to his lord. We may doubt whether the line between the sokemen and the 'free men' is drawn in accordance with any one principle. Not only is freedom a matter of degree, but freedom is measured along several different scales. At one time it is to the power of alienation or 'withdrawal' that attention is attracted, at another to the number or the kind of the services and 'customs' that the man must render to his lord. When we see that in Lincolnshire there is no class of 'free men' but that there are some eleven thousand sokemen, we shall probably be persuaded that the distinction drawn in East Anglia was of no very great importance to the surveyors or the king. It may have been a matter of pure personal rank. These liberi homines may have enjoyed a wergild of more than 200 shillings, for in the Norman age we see traces of a usage which will not allow that any one is 'free' if he is not noble.(121*) But perhaps when the Domesday of East Anglia has been fully explored, hundred by hundred and vill by vill, we shall come to the conclusion that the 'free men' of one district would have been called sokemen in another district.(122*)

Some of these sokemen and 'free men' had very small tenements. Let us look at a list of tenants in Norfolk. 'In Carleton were 2 free men with 7 acres. In Kicklington were 2 free men with 2 acres. In Forncett 1 free man with 2 acres. In Tanaton 4 free men with 4 acres. In Wacton 2 free men with 1 1/2 acres. In Stratton 1 free man with 4 acres. In Moulton 3 free men with 5 acres. In Tibenham 2 free men with 7 acres. In Aslacton 1 free man with 1 acre.'(123*) These eighteen free men had but sixteen oxen among them. We think it highly probable that in the survey of East Anglia one and the same free man is sometimes mentioned several times; he holds a little land under one lord, and a little under another lord; but in all he holds little. Then again, we see that these small freemen often have a few borders or even a few free men 'below them.'(124*) And then we observe that, while some of them are spoken of as having belonged to the manors of their lords, others are reported to have had manors of their own.

NOTES:

1. Hist. Eng. Law, i. 558. The terms here used were adopted when the Introduction to the Selden Society's Select Pleas in Manorial Courts (1888) was being written. M. Esmein in his Cours d'histoire du droit français, ed. 2 (1895), p. 259, has insisted on the same distinction but has used other and perhaps apter terms. According to him 'la justice rendue par les seigneurs' (my seignorial justice) is either 'la justice seigneuriale' (my franchisal justice) or 'la justice féodale' (my feudal justice).

2. See Liebermann, Leges Edwardi, p. 88.

3. Leg. Hen. 9, sect. 9.

4. Leg. Henr. 20 sect. 2.

5. Leg. Henr. 27.

6. Hist. Eng. Law, i. 532.

7. Leg. Henr. 57 sect. 8. Cf. 59 sect. 19.

8. Leg. Henr. 55.

9. Leg. Henr. 10. sect. 1.

10. Leg. Henr. 11 sect. 1. This explains the 'participatio' of 9 sect. 9.

11. Leg. Henr. 19.

12. Leg. Henr. 20 sect. 2.

13. Leg. Henr. 9 sect. 4; 20 sect. 2; 57 sect. 8; 78 sect. 2.

14. Hist. Eng. Law, i. 574.

15. Hist. Eng. Law, i. 571.

16. See e.g. Geoffrey Clinton for Kenilworth, Monast. vi. 221: 'Concedo... ut habeant curiam suam... ita libere... sicut ego meam curiam... ex concessu regis melius et firmius habeo.' Robert of Ouilly for Osney, ibid. p. 'Volo... quod habeant curiam ipsorum liberam de suis hominibus de omnimodis transgression et defalits, et quieti sint tam ipsi quam eorum tenentes de omnimodis curiae meae sectis.'

17. See Liebermann, Leg. Edw. p. 91.

18. Thus in D. B. ii. 409 we find two successive entries, the 'in saca regis et comitis' of the one, being to all seeming an equivalent for the 'in soca regis et comitis' of the other. D. B. ii. 416: 'de omnibus habuit antecessor Rannulfi commendationem et sacam excepto uno qui est in soca S. Edmundi.' Ibid. ii. 391 b: 'liberi homines Wisgari cum saca... liber homo... sub Witgaro cum soca.' In the Iquisitio Eliensis (e.g. Hamilton, p. 109) saca is sometimes used instead of soca in the common formula 'sed soca remansit abbati.' In D. B. ii. 264 b, a scribe having written 'sed habet sacam' has afterwards substituted an o for the a; we have noted no other instance of such care.

19. Hist. Eng. Law, i. 566.

20. D. B. i. 184, Ewias.

21. Leg. Henry. 201. The author of Leg. Edw. Conf., c. 22, also attempts to connect soke with seeking, but his words are exceedingly obscure: 'Soche est quod si aliquisquaerit aliquid interrasua,etiam furtum, sua est iustitia, si inventum sit an non.' On the whole we take this nonsense to mean that my right of soke is my right to do justice in case any one seeks (by way of

legal proceedings) anything in my land, even though the accusation that he brings be one of theft, and even though the stolen goods have not been found on the thief. Already the word is a prey to the etymologist.

22. D. B. ii. 256.

23. Heming Cart. i. 75-6: 'quod illae 15 hidae iuste pertinent ad Osuualdeslaue hundredum episcopi et debent cum ipso episcopo censum regis solvere et omnia alia servitia ad regem pertinentia et inde idem requirere ad placitandum.' Another account of the same transaction, ibid. 77, says 'et [episcopus] deraciocinavit socam et sacam de Hantoma ad suum hundred Osuualdeslauue quod ibi debent placitare et geldum et expeditionem et cetera legis servitia de illis 15 hidis secum debent persolvere.'

24. Schmid, Glossar. s. v. sócen. The word, it would seem, first makes its way into the vocabulary of the law as describing the act of seeking a sanctuary and the protection that a criminal gains by that act. A forged charter of Edgar for Thorney Abbey, Red Book of Thorney, Camb. Univ. Lib,. f. 4, says that the word is a Danish word -- 'Regi vero pro consensu et eiusdem mercimonii licentia ac pro reatus emendatione quam Dani socne usitato nominant vocabulo, centum dedit splendidissimi auri mancusas.'

25. Leg. Henr. 9 sect. 4.

26. Ibid.

27. Ibid. 22.

28. Ibid. 20 sect. 3.

29. Ibid. 24.

30. Selden's Eadmer, p. 197; Bigelow, Placita Anglo-Norman, p. 7.

31. D. B. i. 238 b, Alvestone.

32. Cnut, ii. 12. We may construe these terms by breach of the king's special peace, attacks on houses, ambush, neglect of the summons to the host. In Hereford, D. B. i. 179, the king is accounted to have three pleas, breach of his peace, hámfare, which is the same as hámsócn, and forsteal; and besides this he receives the penalty from a man who wakes default in military service.

33. D. B. 298 b.

34. D. B. i. 87 b: 'Istae consuetudines pertinent ad Tantone, burgheristh, latrones, pacis infractio, hainfare, denarii de hundret, et denarii S. Petri; ter in anno teneri placita episcopi sine ammonitione; profectio in exercitum cum hominibus episcopi.' See also the English document, Kemble, Cod. Dipl. iv. p. 233. The odd word burgheristh looks like a corrupt form of burgrid (the peace of the burh), or of burhgerihta (burhrights, borough-dues), which word occurs in the English document.

35. D. B. i. 172, 175.

36. Cnut ii. 12, 13, 14. Perhaps when in other parts of England

the pleas of the crown are reckoned to be but four, it is treated as self-evident that the outlaw falls into the king's hand, as also the man who harbours an outlaw. If fihtwíte is the right word, we must suppose with Schmid (p. 586) that a fihtwite was only paid when there was homicide. A fine mere fighting or drawing blood would not have been a reserved plea.

37. D. B. ii. 179 b: 'Et iste Withri habebat sacham et socam super istam terram et rex et comes 6 forisfacturas.' Ibid. 223: 'In Cheiunchala soca de 6 forisfacturis.'

38. D. B. ii. 413 b: 'socam et sacam praeter 6 forisfacturas S. Eadmundi.' Ibid. 373: 'S. Eadmundus 6 forisfacturas.' Ibid. 384 b: 'Tota hec terra iacebat in dominio Abbatiae [de Eli] T. R. E. cum omni consuetudine praeter sex forisfacturas S. Eadmundi.'

39. D. B. ii. 244: 'sex liberi homines... ex his habet S. Benedictus socam et de uno commendationem et de 24 tres forisfacturas.'

40. D. B. i. 336 b: 'praeter geld et heriete et forisfacturam corporum Suorum de 40 oris argenti et praeter latronem.' Such a phrase as 'geld, heriot and thief' is instructive.

41. D. B. i. 4 b.

42. William I for Ely, Hamilton, Inquisitio, p. xviii.: 'omnes alias forisfacturas quae emendabiles sunt.'

43. D. B. ii. 195: 'Super hos habuit T. R. E. Episcopus 6 forisfacturas sed hundret nee vidit breve nee sigillum nec concessum Regis.'

44. D. B. ii. 34 b.

45. See e.g. D. B. i. 220.

46. D. B. i. 336: 'Rogerius de Busli habet unum mansum Sueni filiicum Suaue cum saca et soca. Judita comitissa habet unum mansum Stori sine saca et soca.'

47. D. B. i. 2.

48. D. B. i. 1 b.

49. D. B. i. 337.

50. D. B. i. 280 b.

51. D. B. ii. 185 : 'Super omnes liberos istius hundreti [de Northerpingeham] habet Rex sacam et socam.' Ibid. 188 b: 'Rex et comes de omnibus istis liberis hominibus socam.' Ibid. 203: 'Et de omnibus his liberis [Episcopi Osberni] soca in hundreto.'

52. D. B. ii. 210: 'Super omnes istos liberos homines habuit Rex Eadwardus socam et sacam, et postea Guert accepit per vim, sed Rex Willelmus dedit [S. Eadmundo] cum manerio socam et sacam de omnibus liberis Guert sicut ipse tenebat; hoc reclamant monachi.'

53. Below, p. 137.

54. D. B. ii. 425 b.

55. D. B. ii. 287, 287 b: 'Sanfort Hund. et dim... Supradictum manerium scilicet Bercolt... cum soca de hundreto et dimidio reddebat T. R. E. 24 lib.' On subsequent pages it is often said that the soke of certain persons or lands is in Bergholt.

56. D. B. ii. 408 b: 'Hagala tenuit Gutmundus sub Rege Edwardo pro manerio 8 car[ueatarum] terrae cum soca et saca surer dominium hallae tantum. Tunc 32 villani... 8 bordarii... 10 servi. Semper 4 carucae in dominio. Tunc et post 24 carucae hominum..,. Sex sochemanni eiusdem Gutmundi de quibus soca est in hundreto.

57. D. B. ii. 216: 'De Redeham habebat Abbas socam super hos qui sequebantur faldam, et de aliis soca in hundreto.' Ibid. 129 b: 'Super omnes istos qui faldam Comitis requirebant habebat Comes socam sacam, super alios omnes Rex et Comes.' Ibid. 194b: 'In Begetuna et tenuit Episcopus Almarus per emptionem T. R. E. cum soca et saca de Comite Algaro de bor[dariis] et sequentibus faldam carucatas terrae.' Ibid. 350 b: 'habebat socam et sacam super hallam et 3 bordarios.'

58. D. B. ii. 130 b.

59. D. B. i. 265 b: 'Hoc manerium habet suum placitum in aula domini sui.'

60. Above, p. 118.

61. D. B. ii. 385 b.

62. D. B. ii. 46 b.

63. D. B. i. 283 b.

64. D. B. i. 11 b; Chron. de Bello (Anglia Christiana Soc.) p. 28; Battle Custumals (Camd. Soc.), p. 126.

65. D. B. i. 154b.

66. D. B. 39 b, Hants: 'Huic manerio pertinet soca duorum hundredorum.' Ibid. 64 b, Wilts: 'In hac firma erant placita hundretorum de Cicementone et Sutelesberg quae regi pertinebant.' Ibid. ii. 185: 'Super omnes liberos istius hundreti habet rex sacam et socam.' Ibid. ii. 113 b: 'Soca et sacha de Grenehou hundreto pertinet ad Wistune manerium Regis, quicunque ibi teneat, et habent Rex et Comes.'

67. See above, note 1.

68. Above, p. 119.

69. D. B. ii. 379: 'Super ferting de Almeham habet W. Episcopus socam et sacam.'

70. D. B. i. 184: 'Haec terra non pertinet... ad hundredum. De hac terra habet Rogerius 15 sexatarios mellis et 15 porcos quando homines sunt ibi et placita super eos.'

71. D. B. ii. 139 b.

72. D. B. ii. 114.

73. D. B. i. 340, 346, 357 b, 366, 368 b (ter). See also on f. 344, 344 b, the symbol fd in the margin. The word fridsócn occurs in AEthelr. VIII, 1 and Cnut i. 23, where it seems to stand for a sanctuary, an asylum.

74. If one of A's tenants is sued in a personal action in the hundred court he will have to answer there unless A appears and 'claims his court.' This comes out plainly in certain rolls of the court of Wisbeach Hundred, which by the kind permission of the Bishop of Ely, I have examined. On a roll of 33 Edw. I, we find Stephen Hamond sued for a debt; 'et super hoc venit Prior Elyensis et petit curiam suam; et Thomas Doreward petit curiam suam de dicto Stephano residente suo et tenente suo.' The petition is refused on the ground that Stephen is not his tenant, and Doreward's prior's petition is refused on the ground that it is unprecedented

75. D. B. ii. 291: 'Et fuit in soca Regis. Postquam Briennus habuit, nullam consuetudinem reddidit in hundreto.' Ibid. 240: 'Hoc totum tenuit Lisius pro uno manerio; modo tenet Eudo successor illius et in T. R. E. soca et saca fuit in hundreto; set modo tenet Eudo.' -- Ibid. 240 b; 'Soca istius terre T. R. E. iacuit in Folsa Regis; modo habet Walterius [Giffardus].' -- Ibid. 285 b: the hundred testified that in truth the King and Earl had the soke and sake in the Confessor's day, but the men of the vill say that Burchard likewise (similiter) had the soke of his free men as well as of his villeins.

76. D. B. i. 35 b: 'Duo fratres tenuerunt T. R. E.; unusquisque habuit domum suam et tamen manserunt in unia curia.' Ibid. 103 b; 'Ibi molendinum serviens curiae.' Ibid. I63: 'arabant et herciabant ad curiam domini.'

77. D. B. i. 87 b. Kemble, Cod. Dip., iv. p. 233: 'and þriwa secan gemot on 12 mondum.'

78. D. B. i. 193 b; Hamilton, Inquisitio, 77-9.

79. D. B. i. 75.

80. D. B. i. 238.

81. D. B. i. 186.

82. D. B. i. 38 b.

83. D. B. i. 101.

84. D. B. i. 280 b: 'Hic notantur qui habuerunt socam et sacam et thol et thaim et consuetudinem Regis 2 denariorum... Horum omnium nemo habere potuit tercium denarium comitis nisi eius concessu et hoc quamdiu viveret, preter Archiepiscopum et Ulf Ferisc et Godeue Comitissam.'

85. See above p. 123, note 1.

86. D. B. ii. 123 b: 'De istis est soca in hundreto ad tercium denarium.

87. D. B. ii. 282.

88. D. B. ii. 312: 'Rex habet in Duneuuic consuetudinem hanc quod duo vel tres ibunt ad hundret si recte moniti fuerint, et si hoc non faciunt, forisfacti sunt de 2 oris, et si latro ibi fuerit captus ibi judicabitur, et corporalis iusticia in Blieburc capietur, et sua pecunia remanebit dominio de Duneuuic.' It seems to us that the first ibi must refer to Dunwich and therefore that the second does so likewise. Still the passage is ambiguous enough.

89. See above, p. 121.

90. Battle Custumals (Camden Soc.) 136. This is an interesting example, for it suggests an explanation of the common claim to hold a court 'outside' the hundred court (petit curiam suam extra hundredum). The claimant's men will go apart and hold a little court by themselves outside 'the four benches' of the hundred.

91. D. B. i. 32: 'et si quis forisfaciens ibi calumpniatus fuisset, Regi emendabat; si vero non calumpniatus abisset sub eo qui sacam et socam habuisset, ille emendam de reo haberet.' Compare with this the account of Guildford, Ibid. 30.

92. D. B. i. 5 6 b.

93. D. B. i. 336 b.

94. D. B. i. 238.

95. The passages from the dooms are collected by Schmid s. v. Hausfriede, Feohtan.

96. Ine, 6 sect. 3: 'If he fight in the house of a gavel-payer or boor, let him give 30 shillings by way of wite and 6 shillings to the boor.'

97. D. B. i. 204.

98. D. B. ii. 419 b: 'Cercesfort tenuit Scapius teinnus Haroldi... Scapius habuit socam sub Haroldo.' -- Ibid. 313: 'Heroldus socam habuit et Stanuuinus de eo.... Idem Stannuuinus socam habuit de Heroldo.'

99. D. B. i. 142 b: 'et vendere potuerunt praeter socam; unus autem corum etiam socam suam cum terra vendere poterat.' comp. D. B. ii. 230: 'Huic manerio iacent 5 liberi homines ad socam tantum commend [ati] et 2 de omni consuetudine.' -- Ibid. ii. 59: 'In Cingeham tenuit Sauinus presbyter 15 acras... in eadem villa tenuit Etsinus 15 acras... Isti supradicti fuerunt liberi ita quod ipsi possent vendere terram cum soca et saca ut hundrems testatur.' -- Ibid. ii. 40 b: 'et iste fuit ita liber quod posset ire quo vellet cum soca et sacha set tantum fuit homo Wisgari.'

100. Leg. Henr. 81 sect. 3: 'Quidam, villani qui sunt, eiusmodi leierwitam et blodwitam et huiusmodi minora forisfacta emerunt a dominis suis, vel quomodo meruerunt, de suis et in suos, quorum flet-gefoth vel overseunessa est 30 den.; coth seti 15 den.; servi 6 (al. 5) den.' The flet-gefoth seems to be the sum due for fighting in a man's flet or house.

101. Munimenta Gildhallae, i. 66.

102. Hist. Eng. Law, i. 580-2.

103. D. B. ii. 424; 'Et dicunt etiam quod istam terram R[anulfus] calumpniavit supra Radulfum, et vicecomes Rogerius denominavit illis constitutum tempus m[odo] ut ambo adfuissent; Ranulfo adveniente defuit Radulfus et iccirco diiudicaverunt homines hundreti Rannulfum esse saisitum.' -- Ibid. i. 165 b: 'Modo iacet in Bernitone hundredo iudicio hominum eiusdem hundredi.' -- Ibid. i. 58 b: 'unde iudicium non dixerunt, sed ante Regem ut iudicet dimiserunt.' -- Ibid. 182 b; 'In isto hundredo ad placita conveniunt qui ibi manent ut rectum faciant et accipiant.'

104. Above, p. 125.

105. D. B. ii. 186: 'In Sterestuna tenuit 1 liber homo S. Aldrede T. R. E. et Stigandi erat soca et saco in Hersam, set nec dare nec vendere poterat terram suam sine licentia S. Aldrede et Stigandi.'

106. D. B. ii. 376.

107. D. B. ii. 401 b: 'Eodem tempore fuerunt furati equi inventi in domo istius Brungari, ita quod Abbas cuius fuit soca et saca et Rodbertus qui habuit commendationem super istum venerunt de hoc furto ad placitum, et sicut hundret testatur discesserunt amicabiliter sine iudicio quod vidissed (sic) hundret.'

108. E.g. D. B. ii. 35 b: 'quas tenuerunt 2 sochemanni et 1 liber homo.'

109. D. B. ii. 28 b: 'Huic manerio iacent 5 sochenmanni quorum 2 occupavit Ingelricus tempore Regis Willelmi qui tunc erant liberi homines.'

110. D. B. ii. 83: '3 sochemanni tenentes libere.' -- Ibid. 88 b: 'tunc fuit 1 sochemannus qui libere tenuit 1 virgatam.' -- Ibid. 58: 'in hac terra sunt 13 sochemanni qui libere tenent.'

111. D. B. i. 212 b, Bedf.: 'Hanc terram tenuerunt 4 sochemanni quorum 3 liberi fuerunt, quartus vero unam hidam habuit, sed nec dare nec vender.e potuit.'

112. D. B. i. 35 b, 'Isti liberi homines ita liberi fuerunt quod poterant ire quo volebant.' -- Ibid. ii. 187: '5 homines... ex istis erant 4 liberi ut non possent recedere nisi dando 2 solidos.'

113. Round, Feudal England, 34.

114. D. B. ii. 59 b, Essex: 'quod tenuerunt 2 liberi homines... set non poterant recedere sine liceintia illius Algari.' -- Ibid. 216 b, Norf.: 'Ibi sunt 5 liberi homines S. Benedicti commendatione tantum... et ita est in monasterio quod nec vendere ned forisfacere pot[uerunt] extra ecclesia set soca est in hundredo.' -- Ibid. i. 137 b, Herts: 'duo teigni..... vendere non potuerunt.' -- Ibid. i. 30 b, Hants: 'Duo liberi homines tenuerunt de episcopo T. R. E. sed recedere cum terra non potuerunt.'

115. Above,p. 135, note 1.

116. E.g. D. B. i. 129 b: 'In hac terra fuerunt 5 sochemanni de 6 hidis quas potuerunt dare vel vendere sine licentia dominorum suorum.'

117. Above, p. 132, note 1.

118. E.g. D. B. ii, 358: '7 liberos homines... hi poterant dare vel vendere terram set saca et soca et commendatio et servitium remanebant Sancto [Edmundo].'

119. D. B. ii. 186: 'In Sterestuna tenuit unus liber homo S. Aldredae T. R. E. et Stigandi erat soca et saco in Hersam.' -- Ibid. 139 b: 'habuit socam et sacam... de commendatis suis.'

120. D. B. i. 141.

121. Liebermann, Leges Edwardi, p. 72. The most important passage is Leg. Edw. 12 sect. 4: 'Manbote in Danelaga de villano et de socheman 12 oras [=20 sol.]: de liberis hominibus 3 marcas [=40 sol.].'

122. A study of the Hundred Rolls might prepare us for this result. One jury will call servi those whom another jury would have called villani. See e.g. R. H. ii. 688 ff.

123. D. B. ii. 189, b. 190.

124. D. B. ii. 318: 'In Suttona tenet idem W. [de Cadomo] de R. Malet 2 liberos homines commendatos Edrico 61 acr[arum] et sub 1 ex ipsis 5 liberi [sic] homines.' -- Ibid. 321 b: 'In Caldecota 6 liberi homines commendati Leuuino de Bachetuna 74 acr. et 7 liberi homines sub eis commend[ati] de 6 acr. et dim.'

6. The Manor

This brings us face to face with a question that we have hitherto evaded. What is a manor? The word manerium appears on page after page of Domesday Book, but to define its meaning will task our patience. Perhaps we may have to say that sometimes the term is loosely used, that it has now a wider, now a narrower compass, but we cannot say that it is not a technical term. Indeed the one statement that we can safely make about it is that, at all events in certain passages and certain contexts, it is a technical term.

We may be led to this opinion by observing that in the description of certain counties -- Middlesex, Buckingham, Bedford, Cambridge, Huntingdon, Derby, Nottingham, Lincoln, York -- the symbol M, which represents a manor, is often carried out into the margin, and is sometimes constrasted with the S which represents a soke and the B which represents a berewick. This no doubt has been done -- though it may not have been very consistently done -- for the purpose of guiding the eye of officials who will turn over the pages in search of manors. But much clearer evidence is forthcoming. Throughout the survey of Essex it is common to find entries which take such a form as this: 'Thurkil held it for two hides and for one manor'.

'Brithmaer held it for five hides and for one manor'; 'Two free men who were brothers held it for two hides and for two manors'; 'Three free men held it for three manors and for four hides and twenty-seven acres;(1*) in Sussex again the statement 'X tenuit pro uno manerio'(2*) frequently occurs. Such phrases as 'Four brothers held it for two manors, Hugh received it for one manor,(3*) -- 'These four manors are now for one manor'(4*) -- 'Then there were two halls, now it is in one manor,'(5*) -- 'A certain thegn held four hides and it was a manor,(6*) -- are by no means unusual.(7*) A clerk writes 'Elmer tenuit' and then is at pains to add by way of interlineation 'pro manerio.'(8*) 'Eight thegns held this manor, one of them, Alwin, held two hides for a manor; another, Ulf, two hides for a manor; another, Algar, one hide and a half for a manor; Elsi one hide, Turkill one hide, Lodi one hide, Osulf one hide, Elric a half-hide'(9*) -- when we read this we feel sure that the scribe is using his terms carefully and that he is telling us that the holdings of the five thegns last mentioned were not manors. And then Hugh de Port holds Wallop in Hampshire 'for half a manor.'(10*) But let us say at once that at least one rule of law, or of local custom, demands a definition of a manerium. In the shires of Nottingham and Derby a thegn who has more than six manors pays a relief of £8 to the king, but if he has only six manors or less, then a relief of 3 marks to the sheriff.(11*) It seems clear therefore that not only did the Norman rulers treat the term manerium as an accurate term charged with legal meaning, but they thought that it, or rather some English equivalent for it, had been in the Confessor's day an accurate term charged with legal meaning.

The term manerium seems to have come in with the Conqueror,(12*) though other derivatives frow the Latin verb manere, in particular mansa, mansio, mansiuncula had been freely employed by the scribes of the land-books. But these had as a rule been used as representatives of the English hide, and just for this reason they were incapable of expressing the notion that the Normans desired to express by the word manerium. In its origin that word is but one more name for a house. Throughout the Exeter Domesday the word mansio is used instead of the manerium of the Exchequer record, and even in the Exchequer record we way find these two terms used interchangeably: -- 'Three free men belonged to this manerium; one of them had half a hide and could withdraw himself without the licence of the lord of the mansio.'(13*) If we look for the vernacular term that was rendered by manerium, we are likely to find it in the English heal. Though this is not connected with the Latin aula, still these two words bearing a similar meaning meet and are fused in the aula, haula, halla of Domesday Book.

Now this term stands in the first instance for a house and can be exchanged with curia. You may say that there is meadow enough for the horses of the curia,(14*) and that there are three horses in the aula;(15*) you may speak indifferently of a mill that serves the hall,(16*) or of the mill that grinds the corn of the court.(17*) But further, you may say that in Stonham there are 50 acres of the demesne land of the hall in Creeting, or that in Thorney there are 24 acres which belong to the hall in Stonham,(18*) or that Roger de Rames has lands which once were in the hall of St Edmund,(19*) or that in the hall of Grantham there are three carucates of land,(20*) or that Guthmund's sake and soke extended only over the demesne of his hall.(21*) We feel that to such phrases as these we should do no great violence were we to substitute 'manor' for 'hall.' Other phrases serve to bring these two words very closely together. One and the same page

tells us, first, that Hugh de Port holds as one manor what four brothers held as two manors, and then, that on another estate there is one hall though of old there were two halls:(22*) -- these two stories seem to have the same point. 'Four brothers held this; there was only one hall there.'(23*) 'Two brothers held it and each had his hall; now it is as one manor.'(24*) 'In these two lands there is but one hall.'(25*) 'Then there were two halls; now it is in one manor.'(26*) 'Ten manors; ten thegns, each had his hall'(27*) 'Ingelric set these men to his hall... Ingelric added these men to his manor.'(28*)

We do not contend that manerium and halla are precisely equivalent. Now and again we shall be told of a manerium sine halla(29*) as of some exceptional phenomenon. The term manerium has contracted a shade of technical meaning; it refers, so we think, to a system of taxation, and thus it is being differentiated from the term hall. Suppose, for example, that a hall or manor has meant a house from which taxes are collected, and that some one removes that house, houses being very portable things:(30*) 'by construction of law,' as we now say, there still may be a hall or manor on the old site; or we may take advantage of the new wealth of words and say that, though the hall has gone, the manor remains: to do this is neater than to say that there is a 'constructive' hall where no hall can be seen. Then again, manerium is proving itself to be the more elastic of the two terms. We may indeed speak of a considerable stretch of land as belonging to or even as 'being in' a certain hall, and this stretch may include not only land that the owner of the hall occupies and cultivates by himself or his servants, but also land and houses that are occupied by his villeins:(31*) still we could hardly talk of the hall being a league long and a league wide or containing a square league. Of manerium, however, we may use even such phrases as those just mentioned.(32*) For all this, we can think of no English word for which manerium can stand, save hall; tún, it is clear enough, was translated by villa, not by manerium.

If now we turn from words to look at the things which those words signify, we shall soon be convinced that to describe a typical manerium is an impossible feat, for on the one hand there are enormous maneria and on the other hand there are many holdings called maneria which are so small that we, with our reminiscences of the law of later days, can hardly bring ourselves to speak of them as manors. If we look in the world of sense for the essence of the manerium we shall find nothing that is common to all maneria save a piece of ground -- very large it may be, or very small -- held (in some sense or another) by a single person or by a group of co-tenants, for even upon a house we shall not be able to insist very strictly. After weary arithmetical labours we might indeed obtain an average manor; we might come to the conclusion that the average manor contained so many hides or acres, possibly that it included land occupied by so many sokemen, villeins, bordiers, serfs; but an average is not a type, and the uselessness of such calculations will soon become apparent.

We may begin by looking at a somewhat large manor. Let it be that of Staines in Middlesex, which is held by St Peter of Westminster.(33*) It is rated at 19 hides but contains land for 24 plough-teams. To the demesne belong 11 hides and there are 13 teams there. The villeins have 11 teams. There are: --

3 villeins with a half-hide apiece.
4 villeins with a hide between them.

8 villeins with a half-virgate apiece.
36 bordiers with 3 hides between them.
1 villein with 1 virgate.
4 bordiers with 40 acres between them.
10 bordiers with 5 acres apiece.
5 cottiers with 4 acres.
8 bordiers with 1 virgate.
3 cottiers with 9 acres.
13 serfs.
46 burgesses paying 40 shillings a year.

There are 6 mills of 64 shillings and one fish-weir of 6s. 8d. and one weir which renders nothing. There is pasture sufficient for the cattle of the vill. There is meadow for the 24 teams, and in addition to this there is meadow worth 20s a year. There is wood for 30 pigs; there are 2 arpents of vine yard. To this manor belong four berewicks. Altogether it is worth £35 and formerly it was worth £40. -- This is a handsome manor. -- The next manor that is mentioned would be a fairer specimen. It is Sunbury held by St Peter of Westminster.(34*) It is rated at 7 hides and there is land for but 6 teams. To the demesne belong 4 hides and there is one team there. The villeins have 4 teams. There are: --

A priest with a half-virgate.
8 villeins with a virgate apiece.
2 villeins with a virgate.
5 bordiers with a virgate.
5 cottiers.
1 serf.

There is meadow for 6 teams and pasture enough for the cattle of the vill. Altogether it is worth £6 and has been worth £7. Within this one county of Middlesex we can see wide variations. There are manors which are worth £50 and there are manors which are not worth as many shillings. The archbishop's grand manor at Harrow has land for 70 teams;(35*) the Westminster manor of Cowley has land for but one team and the only tenants upon it are two villeins.(36*)

But far larger variations than these are to be found. Let us look at a few gigantic manors. Leominster in Herefordshire had been held by Queen Edith together with sixteen members.(37*) The names of these members are given and we may find them scattered about over a wide tract of Herefordshire. In this manor with its members there were 80 hides. In the demesne there were 30 teams. There were 8 reeves and 16 beadles and 8 radknights and 238 villeins, 75 bordiers and 82 male and female serfs. These in all had 230 teams; so that with the demesne teams there were no less than 260. Further there were Norman barons paying rents to this manor. Ralph de Mortemer for example paid 15s and Hugh de Lacy 6s. 8d. It is let to farm at a rent of £60 and besides this has to support a house of nuns; were it freed from this duty, it might, so thinks the county, be let at a rent of £120. It is a most interesting manor, for we see strong traces of a neat symmetrical arrangement: -- witness the 16 members, 8 reeves, 8 radknights, 16 beadles; very probably it has a Welsh basis.(38*) But we have in this place to note that it is called a manor, and for certain purposes it is treated as a single whole. For what purposes? Well, for one thing, it is let to farm as a single whole. This, however, is of no very great importance, for landlords and farmers may make what bargains they please. But

also it is taxed as a single whole. It is rated at the nice round figures of 80 hides.

No less handsome and yet more valuable is Berkeley in Gloucestershire.(39*) It brought in a rent of £170 of refined money. It had eighteen members which were dispersed abroad over so wide a field that a straight line of thirty miles would hardly join their uttermost points.(40*) 'All the aforesaid members belong to Berkeley.' There were 29 radknights, 162 villeins, 147 bordiers, 22 coliberts, 161 male and female serfs, besides some unenumerated men of the radknights; on the demesne land were 54 1/2 teams; and the tenants had 192. Tewkesbury also is a splendid manor. 'When it was all together in King Edward's time it was worth £100,' though now but £50 at the most can be had from it and in the turmoil of the Conquest its value fell to £12.(41*) It was a scattered unit, but still it was a unit for fiscal purposes. It was reckoned to contain 95 hides, but the 45 which were in demesne were quit of geld, and matters had been so arranged that all the geld on the remaining 50 hides had, as between the lord and his various tenants, been Tewkesbury; the members were dispersed abroad; but 'they gelded in Tewkesbury.'(42*)

No list of great manors would be complete without a notice of Taunton.(43*) 'The bishop of Winchester holds Tantone or has a mansion called Tantone. Stigand held in in King Edward's day and it gelded for 54 hides and 2 1/2 virgates. There is land for 100 teams, and besides this the bishop in his demesne has land for 20 teams which never gelded.' 'With all its appendages and customs it is worth £154 12d.' 'Tantone' then is valued as a whole and it has gelded as a whole. But 'Tantone' in this sense covers far more than the borough which bears that name; it covers many places which have names of their own and had names of their own when the survey was made.(44*) We might speak of the bishop of Exeter's manor of Crediton in Devon which is worth £75 and in which are 264 villeins and 73 bordiers,(45*) or of the bishop of Winchester's manor of Chilcombe in Hampshire where there are nine churches,(46*) but we turn to another part of England.

If we wish to see a midland manor with many members we may look at Rothley in Leicestershire.(47*) The vill at Rothley itself is not very large and it is separately valued at but 62s. But 'to this manor belong the following members,' and then we read of no less than twenty-one members scattered over a large area and containing 204 sokemen who with 157 villeins and 94 bordiers have 82 teams and who pay in all £31 8s. 1d. Their rents are thus reckoned as forming a single whole. In Lincolnshire Earl Edwin's manor of Kirton had 25 satellites, Earl Morcar's manor of Caistor 16, the Queen's manor of Horncastle 15.(48*) A Northamptonshire manor of 27 hides lay scattered about in six hundreds.(49*)

It is common enough to see a town-house annexed to a rural manor. Sometimes a considerable group of houses or 'haws' in the borough is deemed to 'lie in' or form part of a manor remote from its walls. Thus, to give but two examples, twelve houses in London belong to the Bishop of Durham's manor of Waltham in Essex; twenty-eight houses in London to the manor of Barking.(50*) Not only these houses but their occupants are deemed to belong to the manor; thus 80 burgesses in Dunwich pertain to one of the Ely manors.(51*) The berewick (bereuita)(52*) also frequently meets our eye. Its name seems to signify primarily a wick, or village, in which barley is grown; but, like the barton (bertona) and the grange (grangia) of later

days, it seems often to be a detached portion of a manor which is in part dependent on, and yet in part independent of, the main body. Probably at the berewick the lord has some demesne land and some farm buildings, a barn or the like, and the villeins of the berewick are but seldom called upon to leave its limits; but the lord has no hall there, he does not consume its produce upon the spot, and yet for some important purposes the berewick is a part of the manor. The berewick might well be some way off from the hall; a manor in Hampshire had three berewicks on the mainland and two in the Isle of Wight.(53*)

Then again in the north and east the manor is often the centre of an extensive but very discrete territory known as its soke. One says that certain lands are 'soke' or are 'the soke,' or are 'in the soke' of such a manor, or that 'their soke belongs' to such a manor. One contrasts the soke of the manor with the 'inland' and with the berewicks.(54*) The soke in this contest seems to be the territory in which the lord's rights are, or have been, of a justiciary rather than of a proprietary kind.(55*) The manor of the eastern counties is a discrete, a dissipated thing. Far from lying within a ring fence, it often consists of a small nucleus of demesne land and villein tenements in one village, together with many detached parcels in many other villages, which are held by 'free men' and sokemen. In such a case we may use the term manerium now in a wider, now in a narrower sense. In valuing the manor, we hardly know whether to include or exclude these free men. We say that the manor 'with the free men' is worth so much,(56*) or that the manor 'without the free men' is worth so much,(57*) that the manor is worth £10 and that the free men pay 40 shillings,(58*) that Thurmot had soke over the manor and over three of the free men while the Abbot of Ely had soke over the other three.(59*)

From one extreme we may pass to the other extreme. If here were huge manors, there were also tiny manors. Let us begin in the south-west of England. Quite common is the manor which is said to have land for but one team; common also is the manor which is said to have land for but half a team. This means, as we believe, that the first of these manors has but some 120 acres of arable, while the second has but 60 acres or thereabouts. 'Domesday measures' are, it is well known, the matter of many disputes; therefore we will not wholly rely upon them, but will look at some of these 'half-team' manors and observe how much they are worth, how many tenants and how much stock they have upon them.

(i) A Somersetshire manor.(60*) Half the land is in demesne; half is held by 7 bordiers. The only plough beasts are 4 oxen on the demesne; there are 3 beasts that do not plough, 20 sheep, 7 acres of underwood, 20 acres of pasture. It is worth 12s, formerly it was worth 10s.

(ii) A Somersetshire manor.(61*) A quarter of the land is in demesne; the rest is held by 2 villeins and 3 bordiers. The men have one team; apparently the demesne has no plough-oxen. No other animals are mentioned. There are 140 acres of wood, 41 acres of moor, 40 acres of pasture. It is worth 12s. 6d. and has been worth 20s.

(iii) A Somersetshire manor.(62*) All the land, save 10 acres, is in demesne; 2 bordiers hold the 10 acres. There is a team on the demesne; there are 2 beasts that do not plough, 7 pigs, 16 sheep, 4 acres of meadow, 7 of pasture. Value, 6s.

(iv) A Somersetshire manor.(63*) The whole of the arable is in demesne; the only tenant is a bordier. There are 4 plough-oxen

and 11 goats and 7 acres of underwood. Value, 6s.
(v) A Devonshire manor.(64*) To all seeming all is in demesne and there are no tenants. There are 4 plough-beasts, 15 sheep, 5 goats, 4 acres of meadow. Value, 3s.

We have been at no great pains to select examples, and yet smaller manors may be found, manors which provide arable land for but two oxen. Thus.

(vi) A Devonshire manor.(65*) Value, 3s. All seems to be in demesne; we see no tenants and no stock.
(vii) A Somersetshire manor(66*) occupied by one villein. We read nothing of any stock. Value, 15d.
(viii) A Somersetshire manor(67*) with 3 bordiers on it. Value, 4s.
(ix) A Somersetshire manor(68*) with one bordier on it. Value, 30d.

The lowest value of a manor in this part of the world is, so far as we have observed, one shilling; that manor to all appearance was nothing but a piece of pasture land.(69*) Yet each of those holdings is a mansio, and the Bishop of Winchester's holding at Taunton is a mansio.
From one side of England we will journey to the other side; from Devon and Somerset to Essex and Suffolk. We soon observe that in describing the holdings of the 'free men' and sokemen of this eastern district as they were in King Edward's day, our record constantly introduces the term manerium. A series of entries telling us how 'a free man held x hides or carucates or acres' will ever and anon be broken by an entry that tells us how 'a free man held x hides or carucates or acres for a manor'.(70*) We soon give up counting the cases in which the manor is rated at 60 acres. We begin counting the cases in which it is rated at 30 acres and find them numerous; we see manors rated at 24 acres, at 20, at 15, at 12 acres. But this, it may be said, tells us little, for these manors may be extravagantly underrated.(71*) Let us then look at a few of them.

(i) In Espalle Siric held 30 acres for a manor; there were always 3 bordiers and one team and 4 acres of meadow; wood for 60 pigs and 13 beasts. It was then worth 10s.(72*)
(ii) In Torentuna Turchetel a free man held 30 acres for a manor; there were always 2 bordiers and one team and a half. It is worth 10s.(73*)
(iii) In Bonghea Godric a free man held 30 acres for a manor; there were 1 bordier and 1 team and 2 acres of meadow. It was then worth 8s.(74*)
(iv) Three free men and their mother held 30 acres for a manor. There was half a team. Value, 5s.(75*)
(v) In Rincham a free man held 30 acres for a manor. There were half a team and one acre of meadow. Value, 5s.(76*)
(vi) In Wenham AElfgar a free man held 24 acres for a manor. Value, 4s.(77*)
(vii) In Torp a free man held 20 acres for a manor. One team; wood for 5 pigs. Value, 40d.(78*)
(viii) In Tudenham AElfric the deacon, a free man, held 12 acres for a manor. One team, 3 bordiers, 2 acres of meadow, 1 rouncey, 2 beasts that do not plough, 11 pigs, 40 sheep. Value, 3s.(79*)

We are not speaking of curiosities; the sixty-acre manor was

very common in Essex, the thirty-acre manor was no rarity in Suffolk.

Now it is plain enough that the 'lord' of such a manor -- or rather the holder of such a manor, for there was little lordship in the case -- was often enough a peasant, a tiller of the soil. He was under soke and under commendation; commended it may be to one lord rendering soke to another. Sometimes he is called a sokeman.(80*) But he has a manor. Sometimes he has a full team, sometimes but half a team. Sometimes he has a couple of bordiers seated on his land, who help him in his husbandry. Sometimes there is no trace of tenants, and his holding is by no means too large to permit of his cultivating it by his own labour and that of his sons. No doubt in the west country even before the Conquest these petty mansiones or maneria were being accumulated in the hands of the wealthy. The thegn who was the antecessor of the Norman baron sometimes held a group, a geographically discontinuous group, or petty manors as well as some more substantial and better consolidated estates. But still each little holding is reckoned a manor, while in the east of England there is nothing to show that the nameless free men who held the manors which are said to consist of 60, 40, 30 acres had usually more than one manor apiece. When therefore we are told that already before the Conquest England was full of manors, we must reply: Yes, but of what manors?(81*)

Now were the differences between various manors a mere difference in size and in value, a student of law might pass them by. Our notion of ownership is the same whether it be applied to the largest and most precious, or to the smallest and most worthless of things. But in this case we have not to deal with mere differences in size or value. The examples that we have given will have proved that few, if any, propositions of legal import will hold good of all maneria. We must expressly reject some suggestions that the later history of our law may make to us. 'A manor has a court of its own': -- this is plainly untrue. To say nothing of extreme cases, of the smallest of the manors that we have noticed, we cannot easily believe that a manor with less than ten tenants has a court of its own, yet the number of such manors is exceedingly large. 'A manor has freehold tenants': -- this of course we must deny, unless we hold that the villani are freeholders. 'A manor has villein or customary tenants': -- even this proposition, though true of many cases, we cannot accept. Not only may we find a manor the only tenants upon which are liberi homines,(82*) but we are compelled to protest that a manor need not have any tenants at all. 'A manor must contain demesne land': -- this again we cannot believe. In one case we read that the whole manor is being farmed by the villeins so that there is nothing in demesne,(83*) while in other cases we are told that there is nothing in demesne and see no trace of any recent change.(84*) Thus, one after another, all the familiar propositions seem to fail us, and yet we have seen good reason to believe that manerium has some exact meaning. It remains that we should hazard an explanation.

A manor is a house against which geld is charged. To the opinion that in some way or another the definition of a manor is intimately connected with the great tax we shall be brought by phrases such as the following: 'Richard holds Fivehide of the Earl which Brihtmaer held in King Edward's time for forty acres and for a manor.'(85*) -- 'Two free men who were brothers, Bondi and AElfric, held it for two hides and for two manors.'(86*) When we say that a man holds land 'as' or 'for' (pro) forty acres, we mean that his holding, be its real size what it may, is rated to

the geld at forty acres. If we add the words 'and as (or for) one manor,' surely we are still speaking of the geld. For one moment the thought may cross our minds that, besides a tax on land, there has been an additional tax on 'halls,' on houses of a certain size or value; but this we soon dismiss as most unlikely. To raise but one out of many objections: had there been such a house-tax, it would have left plain traces of itself in those 'Geld inquests' of the southwestern counties that have come down to us. Rather we regard the matter thus: -- The geld is a land-tax, a tax of so much per hide or carucate. In all likelihood it has been assessed according to a method which we might call the method of subpartitioned provincial quotas. The assumption has been made that a shire or other large district contains a certain number of hides; this number has then been apportioned among the hundreds of that shire, and the number allotted to each hundred has been. apportioned among the vills of that hundred. The common result is that some neat number of hides, five, ten or the like is attributed to the vill.(87*) This again has been divided between the holdings in that vill. Ultimately it is settled that for fiscal purposes a given holding contains, or must be deemed to contain, this or that number of hides, virgates, or acres. Thus far the system makes no use of the manerium. But it now has to discover some house against which a demand may be made for every particular penny of geld. Despite the 'realism' of the system, it has to face the fact that, after all, taxes must be paid by men and not by land. Men live in houses. It seeks the tax-payer in his house. Now, were all the occupiers of land absolute owners of the land that they occupied, even were it true that every acre had some one person as its absolute owner, the task would be simple. A schedule of five columns, such we are familiar with, would set forth 'Owner's Name,' 'Place of Residence,' 'Description of Geldable Property,' 'Hidage,' 'Amount due.' But the occupier is not always the owner; what is more, there is no absolute ownership. Two, three, four persons will be interested in the land; the occupier will have a lord and that lord a lord; the occupier may be a serf, a villein, a sokeman; there is commendation to be considered and soke and all the infinite varieties of the power to 'withdraw' the land from the lord. Rude and hard and arbitrary lines must be drawn. Of course the state will endeavour to collect the geld in big sums. It will endeavour to make the great folk answer for the geld which lies on any land that is in any way subject to their power; thus the cost of collecting petty sums will be saved and the tax will be charged on men who are solvent. The central power may even hold out certain advantages to the lord who will become responsible for the geld of his tenants or justiciables or commended men. The hints that we get in divers counties that the lord's 'inland' has borne no geld seem to point in this direction, though the arrangements about this matter seem to have varied from shire to shire.(88*) On the pipe rolls of a later day we see that the geld charged against the magnates is often 'pardoned.' For one reason the king cannot easily tax the rich; for another he cannot easily tax the poor; so he gets at the poor through the rich. The small folk will gladly accept any scheme that will keep the tax-collector from their doors, even though they purchase their relief by onerous promises of rents and services. The great men, again, may find advantage in such bargains; they want periodical rents and services, and in order to obtain them will accept a certain responsibility for occasional taxes. This process had gone very far on the eve of the Conquest. Moreover the great men had enjoyed a large liberty

of paying their geld where they pleased, of making special compositions with the king, of turning some wide and discrete territory into a single geld-paying unit, of forming such 'manors' as Taunton or Berkeley or Leominster.

In King Edward's day the occupiers of the soil might, so it seems to us, be divided by the financier into three main classes. In the first class we place the man who has a manor. He has, that is, a house at which he is charged with geld. He may be a great man or a small, an earl or a peasant; he may be charged at that house with the geld of a hundred hides or with the geld of fifteen acres. In the second class we place the villeins, bordiers, cottiers. The geld apportioned to the land that they occupy is demanded from their lord at his manor, or one of his manors. How he recoups himself for having to make this payment, that is his concern; but he is responsible for it to the king, not as guarantor, but as principal debtor. But then, at least in the east and north, there are many men who fall into neither of these classes. They are not villeins, they are sokemen or 'free men'; but their own tenements are not manors; they belong to or 'lie in' some manor of their lord. These men, we think, can be personally charged with the geld; but they pay their geld at their lord's hall and he is in some measure bound to exact the payment.

Anything that could be called a strict proof of this theory we cannot offer; but it has been suggested by many facts and phrases which we cannot otherwise explain. In the first place, our record seems to assume that every holding either is a manor or forms part of a manor.(89*) Then we are told how lands 'geld' at or in some manor or at the caput manerii. Thus lands which lie many miles away from Tewkesbury, but which belong to the manor of Tewkesbury, 'geld in Tewkesbury.'(90*) Sometimes the same information is conveyed to us by a phrase that deserves notice. A piece of land is said to 'defend itself' in or at some manor, or, which is the same thing, to have its wara or render its wara, that is to say, its defence, its answer to the demand for geld, there.(91*) 'In Middleton two sokemen had 16 acres of land and they rendered their wara in the said Middleton, but they could give and sell their land to whom they pleased.'(92*) When we are told that certain lands are in warnode Drogonis or in warnode Archiepiscopi, it is meant that the lands belong to Drogo or the Archbishop for the purpose of 'defence' against the geld.(93*) It is not sufficient that land should be taxed, it must be taxed 'in' some place, which may be remote from that in which, as a matter of physical fact, it lies.(94*) One clear case of a free tenant paying his geld to his lord is put before us: -- 'Leofwin had half a hide and could withdraw with his land and he paid geld to his lord and his lord paid nothing.'(95*) Besides this we have cases in which the lord enjoys the special privilege of collecting the geld from his tenants and keeping it for his own use.(96*) A remarkable Kentish entry tells us that at Peckham the archbishop had an estate which had been rated at six sullungs, and then that 'of the land of this manor a certain man of the archbishop held a half-sullung which in King Edward's day gelded with these six sullungs, although being free land it did not belong to the manor save for the purpose of the scot.'(97*) Here we have land so free that the one connexion between it and the manor to which it is attributed consists in the payment of geld -- it gelds along with the other lands of the manor. In the great lawsuit between the churches of Worcester and Evesham about the lands at Hamton, the former contended that these lands should pay their geld along with the other estates of the bishop.(98*)

Let us observe the first question that the commissioners are to ask of the jurors. What is the name of the mansio? Every piece of geldable land is connected with some mansio, at which it gelds. Let us observe how the commissioners and the jurors proceed in a district where the villae and the mansiones or maneria are but rarely coincident. The jurors of the Armingford hundred of Cambridgeshire are speaking of their country vill by vill. They come to the vill of Abington.(99*) Abington, they say, was rated at five hides. Of these five hides the king has a half-hide; this lies in Litlington. Earl Roger has one virgate; this lies in his manor of Shingay. Picot the sheriff has a half-virgate; this lies and has always lain in Morden. In what sense important to the commissioners or their master can a bundle of strips scattered about in the fields of Abington be said to lie in Litlington, in Shingay, or in Morden? We answer that it gelds there.

Hence the importance of the hall. It is the place where geld is demanded and paid. A manor without a hall is a thing to be carefully noted, otherwise some geld may be lost.(100*) A man's land has descended to his three sons: if 'there is only one hall,' but one demand for geld need be made; if 'each has his hall,' there must be three separate demands. When we are told that two brothers held land and that each had his house (domus) though they dwelt in one court (curia), a nice problem is being put before us: -- Two halls, or one hall -- Two manors or one manor?(101*)

The petty maneria of Suffolk, what can they be but holdings which geld by themselves? The holders of them are not great men, they have no tenants or just two or three bordiers; sometimes they can not 'withdraw' their lands from their lords. But still they pay their own taxes at their own houses.

In supposing that forces have been at work which tend to make the lord responsible for the taxes of his men, we are not without a warrant in the ancient dooms. 'If a king's thegn or a lord of land (landrica) neglects to pay the Rome penny, let him forfeit ten half-marks, half to Christ, half to the king. If a "townsman" withholds the penny, let the lord of the land pay the penny and take an ox from the man, and if the lord neglects to do this, then let Christ and the king receive the full bót of 12 ores.'(102*) The right of doing justice is also the duty of doing justice. It is natural that the lord with soke should become a tax-gatherer, and he will gladly guarantee the taxes if thereby he can prevent the king's officers from entering his precinct and meddling with his justiciables. At no time has the state found it easy to collect taxes from the poor; over and over again it has been glad to avail itself of the landlord's intermediation.(103*)

Our theory that while the lord is directly and primarily responsible for the geld of his villeins, he is but subsidiarily responsible for the geld of those of his sokemen or 'free men' who are deemed to belong to his manor, is founded in part on what we take to have been the wording of King William's writ,(104*) in part on the form taken by the returns made thereto. The writ draws a marked line between the villein and the sokeman. The king wishes to know how much land each sokeman, each liber homo, holds; he does not care that any distinction should be drawn between the lord's demesne lands and the lands of the villeins. And, on the whole, his commands are obeyed. A typical entry in the survey of East Anglia will first describe in one mass the land held by the lord and his villeins, will tell us how many carucates this land is rated at, how many teams there are on the demesne, and how many the men have, then it will enumerate sheep

and pigs and goats, and then, as it were in an appendix, it will add that so many sokemen belong to this manor and that between them they hold so many carucates or acres.(105*) In Suffolk even the names of these humble tenants are sometimes recorded.(106*) And then, we have seen(107*) that there is some doubt as to whether or no these men are or are not to be reckoned as part of the manor for all purposes. We have to say that the manor 'with the free men,' or 'without the free men', is worth so much.

After all, we are only supposing that the fashion in which the danegeld was put in charge resembled in some of its main outlines the fashion in which a very similar tax was put in charge under Richard I. In 1194, the land-tax that was levied for the payment of the king's ransom seems to have been assessed according to the hidage stated in Domesday Book.(108*) Then in 1198 a new assessment was made. We are told that the king ordained that every baron should with the sheriff's aid distrain his men to pay the tax cast upon them, and that if, owing to the baron's default, distresses were not made, then the amount due from the baron's men should be seized from the baron's own demesne and he should be left to recoup himself as best he could.(109*) Now it is a liability of this sort that we are venturing to carry back into the Confessor's day. The lord is responsible to the state as principal, and indeed as sole, debtor for so much of the geld as is due from his demesne land and from the land of his villani, while as regards any lands of 'free men' or sokemen which are attached to his manor, his liability is not primary nor absolute; he is bound to take measures to make these men pay their taxes; if he fails in this duty, then their taxes will become due from his demesne.(110*)

When we read that in Nottinghamshire the relief of the thegn who had six manors or less was three marks, while his who had more than six manors was eight pounds,(111*) this may seem to hint that some inferior limit was set to the size of the manor. If so, it was drawn at a very low point in the scale of tenements. Possibly some general rule had compelled all men who held less than a bovate or half-virgate to 'add' themselves to the manor of some lord. But the Nottinghamshire rule is rude and arbitrary. He who has seven houses against which geld is charged is a big man. On the other hand, it is probable that the Norman lords brought with them some notion, and not a very modest notion, of what a reasonably sufficient manerium should be. The king has in some cases rewarded them by a promise of ten or twenty manors without specifying very carefully what those manors are to be like. He has promised Count Eustace a hundred manors.(112*) Thus we would explain a not uncommon class of entries: -- 'fourteen free men commended to Wulfsige were delivered to Rainald to make up (ad perficiendum) this manor of Carlington.'(113*) -- in Berningham a free man held 20 acres of land and this was delivered to Walter Giffard to make up Letheringsett.'(114*) -- 'Peter claims the land which belonged to seventeen free men as having been delivered to him to make up this manor.'(115*) -- 'This land was delivered to Peter to make up some, but his men do not know what, manor.'(116*) The small 'free men' of the east have been 'added to' manors to which they did not belong in King Edward's day. A few of the free men of Suffolk still 'remain in the king's hand' ready to be delivered out to complete the manors of their conquerors.(117*) Here too we may perhaps find the explanation of the entry which says that Hugh de Port held Wallop 'for half a manor.'(118*) The king has promised him a dozen or score of manors; and this estate at Wallop worth but fifteen shillings a year, really no gentleman

would take it for a manor.

Such then is the best explanation that we can offer of the manerium of Domesday Book. About details we may be wrong, but that this term has a technical meaning which is connected with the levy of the danegeld we can not doubt. It loses that meaning in course of time because the danegeld gives way before newer forms of taxation. It never again acquires a technical meaning until the late days when retrospective lawyers find the essence of a manor in its court.(119*)

NOTES:

1. D. B. ii, 21, 26, 37 b, 59 b.

2. D. B. i. 21.

3. D. B. i. 45.

4. D. B. i. 6 b.

5. D. B. i. 27.

6. D. B. i, 163.

7. So in the Exeter record D. B. iv. 390: 'Tenuerunt 3 tegni pro 4 mansionibus, et Robertus habet illas pro 1 mansione.'

8. D. B. i. 169 b. Similar interlineations in i. 98.

9. D. B. i. 148; on f. 149 is a similar case.

10. D. B. i. 45 b.

11. D. B. i. 280 b.

12. In several passages in D. B. the word seems to be manerius.

13. D. B. ii. 96 b: 'Huic manerio iacebant 3 liberi homines, unus tenuit dim, hidam et potuit abire sine licentia domini ipsius mansions.'

14. D. B. i. 149, Wicombe.

15. D. B. ii. 38 b, Hersam.

16. D. B. i. 174, b. Poiwic.

17. D. B. i. 268, Gretford.

18. D. B. ii. 350 b.

19. D. B. ii. 263: 'sed fuerunt in aula S. Edmundi.'

20. D. B. i. 337 b.

21. D. B. ii. 408 b: 'cum soca et saca super dominium hallae tantum.'

22. D. B. i. 45, Wicheham, Werste.

23. D. B. i. 20, Waliland.

24. D. B. i. 11 b, Acres.

25. D. B. i. 26 b, Eldretune.

26. D. B. i. 27, Percinges.

27. D. B. i. 284 b, AEttune.

28. D. B. ii. 29 b, 30 b.

29. D. B. i. 307 b, Burghedurum; 308, Ternusc.

30. D. B. i. 63: 'Ipse quoque transportavit hallam et alias domos et pecuniam in alio manerio.'

31. D. B. i. 338 b: 'Ad huius manerii aulam pertinent Catenai et Usun 4 car. terrae ad geldum. Terra ad 8 carucas. Ibi in dominio 2 carucae et 20 villani et 15 sochemanni et 10 bordarii habentes 9 carucas. Ibi 360 acre prati. Ad eundem manerium iacet hec soca: -- In Linberge 4 car. terrae etc.'

32. Throughout Yorkshire the phrase is common, 'Totum manerium x. leu. long. et y. leu. lat.'

33. D. B. i. 128.

34. D. B. i. 128 b.

35. D. B. i. 127.

36. D. B. i. 128 b.

37. D. B. i. 180.

38. Compare the cases in Seebohm, Village Community, 267.

39. D. B. i. 163.

40. If we mistake not, the Osleuuorde of the record is Ashleworth, which, though some miles to the north of Gloucester, either still is, or but lately was, a detached piece of the Berkeley hundred.

41. D. B. i. 163.

42. D. B. i. 163 b: 'Hanc terram dedit regina Rogerio de Buslei et geldabat pro 4 hidis in Tedechesberie.'

43. D. B. i. 87 b; iv. 161.

44. Eyton, Somerset, ii. 34.

45. D. B. i. 101 b; iv. 107.

46. D. B. i. 41.

47. D. B. i. 230.

48. D. B. i. 338-9.

49. D. B. i. 220, Tingdene.

50. D. B. ii. 15 b, 17 b.

51. D. B. ii. 385 b.

52. The form bereuita is exceedingly common, but must, we think, be due to a mistake; c has been read as t.

53. D. B. i. 38 b, Edlinges. Some of the 'wicks' seem to have been dairy farms. D. B. i. 58 b: 'et wika de 10 pensis caseorum.' On the Glastonbury estates we find persons called wikarii, each of whom has a wika. Glastonbury Rentalia, 39: 'Thomas de Wika tenet 5 acras et 50 oves matrices et 12 vaccas... Philippus de Wika tenet unum ferlingum et 50 oves matrices et 12 vaccas.' Ibid. 44: 'A. B. tenet unum ferlingum et 50 oves matrices et 12 vaccas pro 1 sol. pro wika.' Ibid. 48: 'Ricardus de Wika tenet 5 acras et 50 oves matrices et 12 vaccas. Alanus de Wika eodem modo.' Ibid. p. 51.

54. D. B. i. 350: 'In Osgotebi et Tauelebi 2 bo[vatae] inland et 1 bo[vata] soca huius manerii.' D. B. i. 338 b: 'Hiboldeston est bereuuita non soca et in Grangeham sunt 2 car[ucatae] inland et in Springetorp dim. car[ucata] est inland. Reliqua omnis est soca.'

55. When therefore, as is often the case, we find that the occupants of 'the soke are not sokemen but villeins, this seems to point to a recent depression of the peasantry.

56. D. B. ii. 330 b: 'In illo manerio... sunt 35 liberi homines.... Tunc valuerunt liberi homines 4 libras. Manerium cum liberis hominibus valet modo 24 libras.'

57. D. B. ii. 358 b: 'Hoc manerium exceptis liberis tunc valuit 30 solidos.'

58. D. B. ii. 289 b.

59. D. B. ii. 285 b.

60. D. B. iv. 397; i. 93 b, Ichetoca.

61. D. B. iv. 411; 94 b, Tocheswilla.

62. D. B. iv. 398; i. 93 b, Pilloc.

63. D. B. iv. 341; i. 96, Sordemanneford.

64. D. B. iv. 355; i. 116 b, Labera.

65. D. B. iv. 367; i. 112 b. Oplomia.

66. D. B. iv. 338; i. 95 b, Aisseforda.

67. D. B. iv. 395; i. 93. Terra Colgrini.

68. D. B. iv. 394; i. 93, Rima.

69. D. B. iv. 338; i. 95 b, Aisseforda.

70. As the term manerium is often represented by the mere letter M or m. we will refer to some cases in which it is written in full. D. B. ii. 295 b: '40 acras pro uno manerio'; Ibid. 311 b: 'In eadem villa est 1 liber homo de 40 acris et tenet pro manerio.'

71. The question whether the acreage stated in the Suffolk survey is real or rateable cannot be briefly debated. We hope to return to it.

72. D. B. ii. 322 b, 323.

73. D. B. ii. 323.

74. D. B. ii. 288.

75. D. B. ii. 309.

76. D. B. ii. 297 b.

77. D. B. ii. 377.

78. D. B. ii. 333.

79. D. B. ii. 423.

80. D. B. ii. 316: 'In Aldeburc tenuit Uluricus sochemannus Edrici T. R. E. 80 acras pro manerio.' Ibid. 353: 'Nordberiam tenuit Eduinus presbyter sochemannus Abbatis 30 acras pro manerio.'

81. We have taken our examples of small manors from the east and the south-west because Little Domesday and the Exeter Domesday give details which are not to be had elsewhere. But instances may be found in many other parts of England. Thus in Sussex, i. 24, two free men held as two manors land rated at a hide and sufficient for one team; it is now tilled by four villeins. In the Isle of Wight, D. B. i. 39 b, five free men held as five manors land sufficient for two teams; it is now tilled by four villeins. In Gloucestershire, D. B. i. 170, is a manor worth ten shillings with two serfs upon it; also a manor rated at one virgate. In Derbyshire, i. 274 b, land sufficient for four teams and rated as four carucate had formed eight manors. In Nottinghamshire, D. B. i. 285 b, land sufficient for a team and a half and valued at ten shillings had formed five manors for five thegns, each of whom had his hall.

82. D. B. ii. 380: 'In Thistledona tenet 1 liber homo Ulmarus commendatus S. Eldrede 60 acras pro manerio et 5 liberi homines sub se.'

83. D. B. i. 127 b: 'Wellesdone tenent canonici S. Pauli... Hoc manerium tenant villani ad firmam canonicorum. In dominio nil habetur.'

84. D.B. 235 b: Billesdone, 'In dominio nil fuit nec est.' Ibid. 166 b, Glouc.: 'Isdem Willelmus [de Ow] tenet Alvredestone. Bondi tenuit T. R. E. Ibi 3 hidae geldantes. Nil ibi est in dominio, sed 5 villani et 3 bordarii habent 3 carucas.' 'Isdem Willelmus tenet Odelavestone. Brictri filius Algari tenuit. Ibinil in

dominio nisi 5 villani cum 5 carucis.' D. B. iv 396: 'Rogerius habet 1 mansionem quae vocatur P.... et reddit gildum pro dimidia virgata; hanc potest arare 1 carruca. Hanc tenet Anschetillus de Rogerio. Ibi habet Anschetillus 4 bordarios qui tenent totam illam terram et habent ibi 1 carrucam et 1 agrum prati, et reddit 10 solidos.'

85. D. B. ii. 31.

86. D. B. ii. 59 b.

87. I leave this sentence as it stood before Mr Round had published in his Feudal England the results of his brilliant researches. Of the 'five-hide unit' I already knew a good deal; of the 'six-carucate unit' I knew nothing.

88. Round, Domesday Studies, i. 109.

89. D. B. i. 35: 'In Driteham tenet Ricardus filius Gisleberti] 1 hidam et dimidiam. AElmar tenuit de Rege E. pro uno manerio... In eadeum Dritehanm est 1 hida et dimidia quam tenuit Aluric de Rege E. pro uno manerio, et postea dedit illam terram uxori suae et filiae ed aecclesiam de Certesy, sicuti homines de hundredo testantur. Ricardus [filius calumniatur. Non iacet ulli manerio, nec pro manerio tenet, set Gisleberti] liberata fuit ei et modo 3 hidae geldant pro una hida et dimidia.' To say of the second of these two plots that it neither is a manor not yet belongs to a manor, is to say that it is shirking the geld. D. B. i. 48: 'Walerannus tenet Dene.... Ista tera non adiacet ulli suo manerio.' Here suo = Waleranni. Waleran seems to be holding land without good title.

90. D. B. i. 163 b, Clifort. D. B. i. 58 b: 'In Winteham tenet Hubertus de Abbate 5 hidas, de terra villanorum fuerunt 4, et geldaverunt cum hidis manerii.'

91. The word wara means defence; it comes from a root which has given us, wary, warrant, warn, guarantee, weir, etc. See Vinogradoff, Villainage, 243.

92. D. B. i. 212.

93. D. B. i. 340, 366, 368. Is not the last part of the word A.-S. notu, (business, office)?

94. D. B. i. 132 b: 'Hoc manerium tenuit Heraldus Comes et iacuit et iacet in Hiz [Hitchin, Herts] sed wara hujus manerii iacuit in Bedefordscire T. R. E. in hundredo de Maneheue., D. B. i. 190, 'Haec terra est bereuuicha in Neuport [Essex] set wara ejus iacet in Grantebrige.' When in the survey of Oxfordshire, i. 160, it is said, 'Ibi 1 hida de warland in dominio,' the taxed land is contrasted with the inland, which in this county has gone untaxed.

95. D. B. i. 28.

96. See the cases of the monks of Bury and the canons of S. Petroc, above, p. 82.

97. D. B. i. 4 b: 'De terra huius manerii ten[uit] unus homo archiepiscopi dimid. solin et cum his 6 solins geldabat T. R. E.

quamvis non pertineret manerio nisi de scoto quia libera terra erat.' The scotum in this context seems to be or to include the geld. Compare D. B. i. 61 b: 'Haec terra iacet et appreciata est in Gratentun quod est in Oxenfordscire et tamen dat scotum in Berchescire.' D. B. ii. 11: 'In Colecestra habet episcopus 14 domos et 4 acras non reddentes consuetudinem praeter scotum nisi episcopo.'

98. See above, p. 115.

99. Hamilton, Inquisitio, 60.

100. Above, p. 142.

101. D. B. i. 35 b.

102. Northumbrian Priests' Law, 58, 59 (Schmid, p. 369).

103. An Act of 1869 (32-3 Vic. c. 41) allowed the owners of certain small houses to agree to pay the rates which under the ordinary law would become due from the occupiers, and authorized the vestries to allow such owners a commission of 25 per cent. See also the instructive recital in 59 Geo. III. c. 12, sec. 19: -- The small occupiers are evading the poors' rate, and the owners exact higher rents than they would otherwise get, on the ground that the occupiers cannot be effectually assessed.

104. See above, p. 47.

105. E.g. D. B. ii. 389 b, 'Clarum tenuit Aluricus pro manerio 24 car. terrae T. R. E. Tunc 40 villani.... Tunc 12 carucae in dominio. Tunc 36 carucae hominum.... Huic manerio semper adiacent 5 sochemani cum omni consuetudine 1 car. terrae et dim. Semper 1 caruca et dimidia.'

106. E.g. D. B. ii. 339: 'In eadem villa 14 Liberi homines commendati, Godricus faber et Edricus et Ulnotus et Osulfus et Uluricus et Stanmarus et Leuietus et Wihtricus et Blachemanus et Mansuna et Leuinus et Ulmarus et Ulfah et aLter Ulfah et Leofstanus de 40 acris et habent 2 carucas et valent 10 solidos.'

107. Above, p. 148.

108. Rolls of the King's Court, Ric. I (Pipe Roll. Soc.), p. xxiv. But apparently there had been considerable rearrangements in some of the counties.

109. Hoveden, iv. 46. The important words are these: 'Statutum etiam fuit quod quilibet baro cum vicecomite faceret districtiones super homines suos; et si per defectum baronum districtiones factae non fuissent, caperetur de dominico baronum quod super homines suos restaret reddendum, et ipsi barones ad homines suos inde caperent.' The baron's homines we take to be freeholder; he would be absolutely liable for the tax cast upon his villeinage. As to the tax of 1198 see Eng. Hist, Rev, iii. 501, 701; iv. 105, 108.

110. In Dial. de Scac. ii. 14, the author tells us that until recently if a baron who owed money to the crown was insolvent, the goods of his knights could be seized. The idea of subsidiary liability is not too subtle for the time.

111. Above, p. 140.

112. D. B. ii. 9: 'set Comes Eustachius 1 ex illis [hidis] tenet que non est de suis c. [100] mansionibus.'

113. D. B. ii. 233 b.

114. D. B. ii. 242 b.

115. D. B. ii. 258.

116. D. B. ii. 258.

117. D. B. ii. 447.

118. D. B. i. 45 b.

119. Two objections to our theory may be met by a note. (1) Some manors are free of geld, and therefore to make our definition correct we ought to say that a manor is a tenement which either pays its geld at a single place or which would do so were it not freed from the tax by some special privilege. A manerium does not cease to be a manerium by being freed from geld. (2) In later days we may well find a manor holden of another manor, so that a plot of land may be within two manors. If this usage of the term can be traced back into Domesday Book our doctrine is in great jeopardy. But we have noticed no passage which clearly and unabiguously says that a tract of land was at one and the same time both a manerium and also a part of another manerium. To this we must add that of the distribution of maneria T. R. E. we only obtain casual and very imperfect tidings. If T. R. W. a free man has been 'added to' a manerium, the commissioners have no deep interest in the inquiry whether T. R. E. his tenement was itself an independent manerium. A great simplification has been effected and the number of maneria has been largely reduced.

7. Manor and Vill

After what has now been said, it is needless to repeat that in Domesday Book the manerium and the villa are utterly different things.(1*) In a given case the two may coincide, and throughout a great tract of England such cases were common and we may even say that they were normal. But in the east this was not so. We may easily find a village which taken as a whole has been utterly free from seignorial domination. Orwell in Cambridgeshire will be a good example.(2*)

In King Edward's day this vill of Orwell was rated at 4 hides: probably it was somewhat underrated for at the date of the survey it was deemed capable of finding land for nearly 6 teams. The following table will show who held the four hides before the Conquest: --

	H.	V.	A.
Two sokemen, men of Edith the Fair			2/3
A sokeman, man of Abp Stigand			1 1/3
A sokeman, man of Robert Wimarc's son			1 1/3
A sokeman, man of the King			2/3

A sokeman, man of Earl AElfgar	1 1/3		
A sokeman, man of Earl Waltheof	3		
A sokeman, man of the King	1/3		
Sigar, a man of AEsgar the Staller	1 1/3		
Turbert, a man of Edith the Fair	3 1/4	5	
Achil, a man of Earl Harold	1		
A sokeman of the King	1		
St. Mary of Chatteris	1/3		
St. Mary of Chatteris	1/4		
	4	0	

0(3*)

It will be seen that eight of the most exalted persons in the land, the king, the archbishop, three earls, two royal marshals or stallers, and that mysterious lady known as Edith the Fair, to say nothing of the church of Chatteris, had a certain interest in this little Cambridgeshire village. But then how slight an interest it was! Every one of the tenants was free to 'withdraw himself,' 'to give or sell his land.' Now we cannot say that all of them were peasants. Achil the man of Harold seems to have had other lands in the neighbouring villages of Harlton and Barrington.(4*) It is probable that Turbert, Edith's man, had another virgate at Kingston:(5*) he was one of the jurors of the hundred in which Orwell lay.(6*) Sigar the man of AEsgar was another juror, and held land at Thriplow, Foxton, Haslingfield and Shepreth; he seems to have been his lord's steward.(7*) But we may be fairly certain that the unnamed sokemen tilled their own soil, though perhaps they had help from a few cottagers. And they cannot have been constantly employed in cultivating the demesne lands of their lords. They must go some distance to find any such demesne lands. The Wetherley hundred, in which Orwell lies, is full of the sokemen of these great folk: Waltheof, for example, has 3 men in Comberton, 4 in Barton, 3 in Grantchester, 1 in Wratworth: but he has no demesne land, and if he had it, he could not get it tilled by these scattered tenants. The Fair Edith has half a hide in Haslingfield and we are told that this belongs to the manor of Swavesey. Now at Swavesey Edith has a considerable manor,(8*) but it can not have got much in the way of labour out of a tenant who lived at Haslingfield, for the two villages are a long ten miles apart. As to the king's sokemen, their only recorded services are the avera and the inward. The former seems to be a carrying service done at the sheriff's bidding and to be only exigible when the king comes into the shire, while inward seems to be the duty of forming a body guard for the king while he is in the shire: -- if in any year the king did not come, a small sum of money was taken instead.(9*)

Lest it should be thought that in picking out the village of Orwell we have studiously sought a rare case, we will here set out in a tabular form what we can learn of the state of the hundred in which Orwell lies. The Wetherley hundred contained twelve vills: it was a land of true villages which until very lately had wide open fields.(10*) In the Confessor's day the lands in it were allotted thus: --

Cambridgeshire. Wetherley Hundred(11*)

1. COMBERTON. A vill of 6 hides.

	H.	V.	A.	C.	B.

1. Seven sokemen of the King 1 1 0
A sokeman, man of Earl Waltheof | 4
0
A sokeman, man of Abp Stigand | 3 0

2. A man of Earl Waltheof 1 15 1
0

3. A sokeman, man of the King 1 0
A sokeman, man of Abp Stigand 1 15 2
0
A sokeman, man of Earl Waltheof 1 15

4. The King 2 2 0 5
0

5 3 15(12*) 12
0

II. BARTON. A vill of 7 hides.

1. Two sokemen, men of Earl
Waltheof 1 1 15
A sokeman, man of Earl Waltheof 3 15(13*) 5
0
A sokeman, man of Earl Waltheof 1 0

2. Juhael, the King's hunter 1 0 0 1
0

3. A sokeman, man of Edith the Fair 2 0

4. Twenty-three sokemen of the King 3 0 0 6
0

7 0 0 12
0

III. GRANTCHESTER. A vill of 7 hides.(14*)

1. Five sokemen, men of the King 3 0 1
0

2. Two sokemen, men of the King 2 1 0 6
0
A sokeman, man of AEsgar the Staller 2 0

3. A sokeman, man of Earl AElfgar 3 0
Three sokemen, men of Earl 4
0
Waltheof 2 0 0

4. Godman, a man of Edith the Fair 1 15 1
0

5. Juhael, the King's hunter 1 0
4

6. Wulfric, the King's man 15
3

7 0 0 12
7

IV. HASLINGFIELD. A vill of 20 hides.

1. The King 7 1 0 8
0

2. Five sokemen, men of the King 3 0 0
A sokeman, man of AEsgar the 4
0
Staller 1 3 0

3. Ealdred, a man of Edith the Fair 1 0 15 1
4

4. Edith the Fair, belonging to Swavesey 2 0
4

5. Sigar, a man of AEsgar the Staller 5 0 0 6
0

6. Two sokemen of the King 1 1 3 2
0

7. Merewin, a man of Edith the Fair 12 0
0

20 0 0 22
0

V. HARLTON. A vill of 5 hides.

H. V. A. C. B.

1. Achil, a King's thegn and under
him five sokemen of whom
four were his men while the
fifth was the man of Ernulf 4 0 0 6
0

2. Godman, a man of AEsgar the Staller 1 0 0 1
0

5 0 0 7
0

VI. BARRINGTON. A vill of 10 hides.

1. Eadric Púr, a King's thegn 3 0
Fifteen sokemen, men of the King 4 1 15
Four sokemen, men of Earl AElfgar 2 0 15
Three sokemen, men of AEsgar the 11
0
Staller 1 0 0
Eadric Púr, holding of the Church
of Chatteris 15

2. The Church of Chatteris 2 0 0 4
0

3. Ethsi, holding of Robert Wimarc's son 20
3

4. Achil the Dane, a man of Earl Harold 40
6

5. A sokeman, man of the King 15
2

11 0 0(15*) 17
3

VII. SHEPRETH. A vill of 5 hides.

1. Four sokemen, men of the King 1/2 0 15 2
2
A sokeman, man of Earl AElfgar

2. The Church of Chatteris 1 1 15 1
4

3. Sigar, a man of AEsgar the Staller 1 0 0 1
0

4. Heming, a man of the King 1 15
4

5. The Church of Ely 15
2

5 0 0 5
4

VIII. ORWELL. A vill of 4 hides.

1. Two sokemen, men of Edith the Fair 20
A sokeman, man of Abp Stigand 1 10
A sokeman, man of Robert 1
4
Wimarc's son 1 10
A sokeman, man of the King 20
A sokeman, man of Earl AElfgar 1 10

2. A sokeman, man of Earl Waltheof 3 0 1
0
A sokeman, man of the King 10

3. Sigar, a man of AEsgar the Staller 1 10
4

4. Turbert, a man of Edith the Fair 3 12 1/2 1
4

5. Achil, a man of Earl Harold 1 0
2

6. A sokeman, man of the King 1 0

3

7. The Church of Chatteris 10
1

8. The Church of Chatteris 7 1/2
1/2

4 0 0 5
2 1/2

IX. WRATWORTH. A vill of 4 hides.

1. A sokeman, man of Edith the Fair 3 10
A sokeman, man of Abp Stigand 3 0
A sokeman, man of Earl AElfgar 1 10 3
0
A sokeman, man of Robert Wimarc's son 10
A sokeman, man of the King 20

2. A sokeman, man of Earl Waltheof 2 20
A sokeman, man of Robert Wimarc's son 10 1
0

3. A sokeman, man of Edith the Fair 1 10
4

4. A sokeman, man of the King 1 0
3

5. Two sokemen, men of the King 2 0
4

4 0 0 5
3

X. WHITWELL. A vill of 4 hides.

H. V. A. C. B.

1. A sokeman, man of Earl AElfgar 1 20
A sokeman, man of Robert
Wimarc's son 1 0 1 4
A sokeman, man of the King 2 0

2. A sokeman, man of Abp Stigand 15
A sokeman, man of Edith the Fair 10 4
[A sokeman] 15

3. Six sokemen, men of the King 1 1 0
A sokeman, man of Robert
Wimarc's son 2 0 2 0
A sokeman, man of Earl AElfgar 1 0

4. Godwin, a man of Edith the Fair 2 0 1 0

4 0 0 5 0

XI. WIMPOLE. A vill of 4 hides.

1. Edith the Fair	2	2	15	3	0
2. Earl Gyrth	1	1	15	2	0
	4	0	0	5	0

XII. ARRINGTON. A vill of 4 hides.

1. AElfric, a King's thegn	1	1	10		
A sokeman, man of Earl Waltheof	1	0	0		
A sokeman, man of the Abbot of Ely	1	0	0	8	0
A sokeman, man of Robert Wimarc's son					20
2. A man of Edith the Fair	2	0		4	
	4	0	0	(16*)8	4

Now if by a 'manor' we mean that our historical economists usually mean when they use that term, we must protest that before the Norman Conquest there were very few manors in the Wetherley hundred. In no case was the whole of a village coincident with a manor, with a lord's estate. The king had considerable manors in Comberton and Haslingfield. Sigar had a manor at Haslingfield; the church of Chatteris had a manor at Barrington besides some land at Shepreth; Wimpole was divided between Edith and Earl Gyrth; Harlton between Achil and Godman. But in Barton, Grantchester, Shepreth, Orwell, Wratworth, Whitwell and Arrington we see nothing manorial, unless we hold ourselves free to use that term of a little tenement which to all appearance might easily be cultivated by the labour of one household, at all events with occasional help supplied by a few cottagers. Indeed it is difficult to say what profit some of the great people whose names we have mentioned were deriving from those of their men who dwelt in the Wetherley hundred. We take the Mercian earl for example.(17*) One of the sokemen of Grantchester, four of the sokemen of Barrington, one of the sokemen of Shepreth, one of the sokemen of Orwell, one of the sokemen of Wratworth, two of the sokemen of Whitwell were AElfgar's men. That AElfgar got a little money or a little provender out of them is probable, that they did some carrying service for him is possible and perhaps they aided him at harvest time on some manor of his in another part of the county; but that they were not the tillers of his land seems clear.(18*)

What is more, our analysis of this Wetherley hundred enables us to drive home the remark that very often a sokeman was not the sokeman of his lord or, in other words, that he was not under seignorial justice.(19*) AElfgar had ten sokemen scattered about in six villages. Did he hold a court for them? We think not. Did they go to the court of some distant manor? We think not. The court they attended was the Wetherley hundred-moot. One of the sokemen in Arrington was in a somewhat exceptional position -- exceptional, that is, in this hundred. Not only was he the man of the Abbot of Ely, but his soke belonged to the Abbot; and if he sold his tenement, and this he could do without the Abbot's consent, the soke over his land would 'remain' to the Abbot.(20*) He was not only his lord's man but his lord's justiciable and probably attended some court outside the hundred. But for the more part these men of Wetherley were not the justiciables of their lords. It was a very free hundred when the Normans came there: much too free for the nation's welfare we may think, for

these sokemen could go with their land to what lord they pleased. Also be it noted in passing that the churches have little in Wetherley.

In 1086 there had been a change. The sokemen had disappeared. The Norman lords had made demesne land where their English antecessores possessed none. Count Roger had instituted a seignorial court at Orwell. He had borrowed three sokemen 'to hold his pleas' from Picot the sheriff and had refused to give them up again.(21*) Apparently they had sunk to the level of villani. Two centuries afterwards we see the hundred of Wetherley once more. There is villeinage enough in it. The villein at Orwell, for example, holds only 10 acres but works for his lord on 152 days in the year, besides boon-days.(22*) And yet we should go far astray if we imposed upon these Cambridgeshire villages that neat manorial system which we see at its neatest and strongest in the abbatial cartularies. The villages do not become manors. The manors are small. The manors are intermixed in the open fields. There are often freeholders in the village who are not the tenants of any lord who has a manor there. A villein will hold two tenements of two lords. The villein of one lord will be the freeholder of another. The 'manorial system' has been forced upon the villages, but it fits them badly.(23*)

In the thirteenth century the common field of a Cambridgeshire village was often a very maze of proprietary rights, and yet the village was an agrarian whole. Let us take, for example, Duxford as it stood in the reign of Edward I.(24*) We see 39 villein tenements each of which has fourteen acres in the fields. These tenements are divided between five different manors. Four of our typical 'townsmen' hold of Henry de Lacy, who holds of Simon de Furneaux, who holds of the Count of Britanny, who holds of the king. Two hold of Ralph of Duxford, who holds of Basilia wife of Baldwyn of St George, who holds of William Mortimer, who holds of Simon de Furneaux, who holds of the Count of Britanny, who holds of the king. Eight hold of the Templars, who hold of Roger de Colville, who holds of the Earl of Albemarle, who holds of the king. Nine hold of William le Goyz, who holds of Henry of Boxworth, who holds of Richard de Freville, who holds of the king. Sixteen hold of John d'Abernon, who holds of the Earl Marshal, who holds of the king. Three of the greatest 'honours' in England are represented. Three monasteries and two parochial churches have strips in the fields. And yet there are normal tenements cut according to one pattern, tenements of fourteen acres the holders of which, though their other services may differ, pay for the more part an equal rent.(25*) The village seems to say that it must be one, though the lords would make it many. And then we look back to the Confessor's day and we see that a good part of Duxford was held by sokemen.(26*)

Perhaps we shall be guilty of needless repetition; but what is written in Domesday Book about maneria is admirably designed for the deception of modern readers whose heads are full of 'the manorial system.' Therefore let us look at two Hertfordshire villages. In one of them there is a manerium which Ralph Basset holds of Robert of Ouilly.(27*) It has been rated at 4, but is now rated at 2 hides. There is land for 4 teams. In demesne are 2 teams; and 3 1/2 villani with 2 sokemen of 1 hide and 5 bordarii have 2 teams. There are 1 cottager and 1 serf and a mill of 10 shillings and meadow for 3 teams. It is now worth £3; in King Edward's day it was worth £5. Now here, we say, is a pretty little manor of the common kind. Let us then explore its past history. 'Five sokemen held this manor.' Yes, we say, before the Conquest this manor was held in physically undivided shares by

five lords. Their shares were small and they were humble people; but still they had a manor. But let us read further. 'Two of them were the men of Brihtric and held 1 1/2 hides; other two were the men of Osulf the son of Frane and held 1 1/2 hides; and the fifth was the man of Eadmer Atule and held a hide.' We will at once finish the story and see how Robert of Ouilly came by this manor. 'No one of these five sokemen belonged to his antecessor Wigot; every one of them might sell his land. One of them bought (i.e. redeemed) his land for nine ounces of gold from King William, so the men of the hundred say, and afterwards turned for protection to Wigot.' So Robert's title to this manor is none of the best. But are we sure that before the Conquest there was anything that we should call a manor? These five sokemen who have unequal shares, who have three different lords, who hold in all but 4 team-lands, whose land is worth but £5, do not look like a set of co-parceners to whom a 'manor' has descended. When Robert of Ouilly has got his manor there are upon it 2 sokemen, 3 villeins, 5 bordarii, a cottager and a serf. It was not a splendid manor for five lords.

We turn over a few pages. Hardouin of Eschalers has a manor rated at 5 1/2 hides.(28*) It contains land for 8 teams. In with demesne are 2 hides less 20 acres, and 3 teams; 11 villani the priest and 5 bordarii have 5 teams. There are 4 cottagers and 6 serfs. It is worth £9; in the Confessor's day it was worth £10. Who held this manor in the past? Nine sokemen held it. Rather a large party of joint lords, we say; but still, families will grow. Howbeit, we must finish the sentence: -- 'Of these, one, Sired by name, was the man of Earl Harold and held 1 hide and 3 virgates for a manor; another, Alfred, a man of Earl AElfgar, held 1 1/2 hides for a manor; and the other seven were sokemen of King Edward and held 2 hides and 1 virgate and they supplied the sheriff with 9 pence a year or 2 1/4 averae (carrying services).' No, we have not been reading of the joint holders of a 'manor'; we have been reading of peasant proprietors. Two of them were substantial folk; each of the two held a manerium at which geld was paid; the other seven gelded at one of the king's maneria under the view of his bailiffs. Maneria there have been everywhere; but 'manors' we see in the making. Hardouin has made one under our eyes.

We hear the objection that, be it never so humble, a manor is a manor. But is that truism quite true? If all that we want for the constitution of a manor is a proprietor of some land who has a right to exact from some other man, or two or three other men, the whole or some part of the labour that is necessary for the tillage of his soil, we may indeed see manors everywhere and at all times. Even if we introduce a more characteristically medieval element and demand that the tillers shall be neither menial servants nor labourers hired for money, but men who make their living by cultivating for their own behoof small plots which the proprietor allows them to occupy, still we shall have the utmost difficulty if we would go behind manorialism. But suppose for a moment that we have a village the land of which is being held by nine sokemen, each of whom has a hide or half-hide scattered about in the open fields, and each of whom controls the labour of a couple of serfs, shall we not be misleading the public and ourselves if we speak of nine manors or even of nine 'embryo manors'? At any rate it is clear enough that if these estates of the sokemen are 'embryo manors,' then these embryos were deposited in the common fields. In that case the common fields, the hides and yardlands of the village are not the creatures of manorialism.

We have seen free villages; we have seen a free hundred. We might have found yet freer hundreds had we gone to Suffolk. We have chosen Cambridgeshire because Cambridgeshire cannot be called a Danish county, except in a sense in which, notwithstanding the wasted condition of Yorkshire, about one half of the English nation lived in Danish counties. When men divide up England between the three laws, they place Cambridgeshire under the Danelaw; but to that law they subject about one half of the inhabitants of England. There may have been many men of Scandinavian race in Cambridgeshire; but we find hundreds not wapentakes, hides not carucates, while among the names of villages there are few indeed which betray a Scandinavian origin. The Wetherley hundred was not many miles away from the classic fields of Hitchin.(29*)

But in truth we must be careful how we use our Dane. Yorkshire was a Danish county in a sense in which Cambridgeshire was not Danish; it was a land of trithings and wapentakes, a land without hides, where many a village testified by its name to a Scandinavian settlement. And yet to all appearance it was in the Confessor's day a land where the manors stood thick.(30*) Then we have that wonderful contrast between Yorkshire and Lincolnshire which Ellis summed up in these figures: --

	Sochemanni	Villani	Bordarii
Lincolnshire	11,503	7,723	4,024
Yorkshire	447	5,079	1,819

Perhaps this contrast would have been less violent if Yorkshire had not been devastated: but violent it is and must be. It will provoke the remark that the 'faults' (if any faults there be) in a truly economic stratification of mankind are not likely to occur just at the boundaries of the shires, whereas so long as each county has a court from which there is no appeal to any central tribunal, we may expect to find that lines which have their origin in fiscal practice will be sharp lines and will coincide with the metes and bounds of jurisdictional districts.

Nor should it escape remark that the names by which a grand distinction is expressed are in their origin very loose terms and etymologically ill-fitted to the purpose that they are serving. In English the villanus is the túnesman or, as we should say, the villager. And yet to all seeming the sokeman is essentially a villager. What is more, the land where the sokemen and 'free men' lived was a land of true villages, of big villages, of limitless 'open fields,' whereas the hamleted west was servile. Then again sokeman is a very odd term. If it signified that the man to whom it is applied was always the justiciable of the lord to whom he was commended, we could understand it. Even if this man were always the justiciable of a court that had passed into private hands, we could still understand it. But apparently there are plenty of sokemen whose soke 'is' or 'lies' in those hundred courts that have no lord but the king. The best guess that we can make as to the manner in which they have acquired their name is that in an age which is being persuaded that some 'service' must be done by every one who holds land, suit of court appears as the only service that is done by all these men. They may owe other services; but they all owe suit of court. If so we may see their legal successors in those freeholders of the twelfth century who are 'acquitting' their lords and their villages by doing suit at the national courts.(31*) But when a new force comes into play (and the tribute to the pirate was a new and a powerful force)

new lines of demarcation must be drawn, new classes of men must be formed and words will be borrowed for the purpose with little care for etymological niceties. One large and widely-spread class may find a name for itself in a district where the ordinary 'townsmen' or villagers are no longer treated as taxpayers responsible to the state, while some practice peculiar to a small part of the country may confer the name of 'sokemen' on those tillers of the soil who are rated to the geld. We are not arguing that this distinction, even when it first emerged, implied nothing that concerned the economic position of the villein and the sokeman. The most dependent peasants would naturally be the people who could not be directly charged with the geld, and the peasants who could not pay the geld would naturally become dependent on those who would pay it for them; still we are not entitled to assume that the fiscal scheme accurately mirrored the economic facts, or that the varying practice of different moots and different collectors may not have stamped as the villeins of one shire those who would have been the sokemen of another.(32*)

Be this as it may, any theory of English history must face the free, the lordless, village and must account for it as for one of the normal phenomena which existed in the year of grace 1066. How common it was we shall never know until the material contained in Domesday Book has been geographically rearranged by counties, hundreds and vills. But whether common or not, it was normal, just as normal as the village which was completely subject to seignorial power. We have before us villages which, taken as wholes, have no lords. What is more, it seems obvious enough that, unless there has been some great catastrophe in the past, some insurrection of the peasants or the like, the village of Orwell and other villages might be named by the dozen -- has never had a lord. Such lordships as exist in it are plainly not the relics of a dominion which has been split up among divers persons by the action of gifts and inheritances. The sokemen or Orwell have worshipped every rising sun. One has commended himself to the ill-fated Harold, another to the ill-fated Waltheof, a third has chosen the Mercian AElfgar, a fourth has placed himself under the aspiring Archbishop; yet all are free to 'withdraw.' We have here a very free village indeed, for its members enjoy a freedom of which no freeholder of the thirteenth century would even dream, and in a certain sense we have here a free village community. How much communalism is there? Of this most difficult question only a few words will now be said, for our guesses about remote ages we will yet a while reserve.

In the first place, we cannot doubt that the 'open field system' of agriculture prevails as well in the free villages as in those that are under the control of a lord. The sokeman's hide or virgate is no ring-fenced 'close' but is composed of many scattered strips. Again, we can hardly doubt that the practice of 'co-aration' prevailed. The sokeman had seldom beasts enough to make up a team. It is well known that the whole scheme of land-measurements which runs through Domesday Book is based upon the theory that land is ploughed by teams of eight oxen. It is perhaps possible that smaller teams were sometimes employed; but when we read that a certain man 'always ploughed with three oxen,'(33*) or used 'to plough with two oxen but now ploughs with half a team,'(34*) or 'used to plough with a team but now ploughs with two oxen,'(35*) we are reading, not of small teams, but of the number of oxen that the man in question contributed towards the team of eight that was made up by him and his neighbours. When of a piece of land in Bedfordshire it is said that 'one ox ploughs there,' this means that the land in question supplies but

one ox in a team of eight;(36*) and here and not in any monstrous birth do we find the explanation of 'terra est dimidio bovi et ibi est semibos':(37*) -- there is a sixteenth part of a teamland and its tenant along with some other man provides an ox. There may have been light ploughs as well as heavy ploughs, but the heavy plough must have been extremely common, since the term 'plough team' (caruca) seems invariably to mean a team of eight.

Then one notable case meets our eye in which the ownership of land, of arable land, seems to be attributed to a village community. In Goldington, a village in Bedfordshire, Walter now holds a hide; there is land for one team and meadow for half a team. 'The men of the vill held this land in common and could sell it.'(38*) Apparently the men of the vill were AElfwin Sac, a man of the Bishop of Lincoln who held half a team-land and 'could do what he liked with it,' nine sokemen who held three team-lands between them, three other sokemen who held three team-lands, and AElfmaer, a man of Asgil who held three team-lands.(39*) How it came about that these men, besides holding land in severalty, held a tract in common, we are left to guess. Nor can we say whether such a case was usual or unusual. Very often in Little Domesday we meet an entry which tells how x free men held y acres and had z teams; for example, how 15 free men held 40 acres and had 2 teams.(40*) In general we may well suppose that each of them held his strips in severalty, but we dare not say that such a phrase never points to co-ownership.

Then as to such part of the land as is not arable: -- Even in the free village a few enclosed meadows will probably be found; but the pasture ground lies open for 'the cattle of the vill.' At the date of the survey, though several Norman lords have estates in one vill, the common formula used in connexion with each estate is, not 'there is pasture for the cattle of this manor, or of this land,' but 'there is pasture for the cattle of the vill.' Occasionally we read of 'common pasture in a context which shows that the pasture is common not to several manorial lords but to the villeins of one lord.(41*) In the hundred of Coleness in Suffolk there is a pasture which is common to all the men of the hundred.(42*) But, as might be expected, we hear little of the mode in which pasture rights were allotted or regulated. Such rights were probably treated as appurtenances of the arable land: -- 'The canons of Waltham claim as much wood as belongs to one hide.'(43*) If the rights of user are known, no one cares about the bare ownership of pasture land or wood land: -- it is all one whether we say that Earl Edwin is entitled to one third of a certain wood or to every third oak that grows therein.(44*)

Sometimes the ownership of a mill is divided into so many shares that we are tempted to think that this mill has been erected at the cost of the vill. In Suffolk a free man holds a little manerium which is composed of 24 acres of land, 1 1/2 acres of meadow and 'a fourth part of the mill in every third year.'(45*): -- he takes his turn with his neighbours in the enjoyment of the revenue of the mill. We may even be led to suspect that the parish churches have sometimes been treated as belonging to the men of the vill who have subscribed to erect or to endow them. In Suffolk a twelfth part of a church belongs to a petty manerium which contains 30 acres and is cultivated by two bordiers with a single team.(46*) When a parish church gets its virgate by the 'charity of the neighbours,'(47*) when nine free men give it twenty acres for the good of their souls,(48*) we may see in this some trace of communal action.

Incidentally we may notice that the system of virgate holdings seems quite compatible with an absence of seignorial

control. In the free village, for example in Orwell, we shall often find that one man has twice, thrice or four times as much as another man: -- the same is the case in the manorialized villages of Middlesex, where a villein may have as much as a hide or as little as a half-virgate; but all the holdings will bear, at least in theory, some simple relation to each other. Thus in Orwell the virgates are divided into thirds and quarters, and in several instances a man has four thirds of a virgate. In Essex and East Anglia, though we may find many irregular and many very small holdings, tenements of 60, 45, 40, 30, 20, 15 acres are far commoner than they would be were it not that a unit of 120 acres will very easily break into such pieces. Domesday Book takes no notice of family law and its 'vendere potuit' merely excludes the interference of the lord and does not imply that a man is at liberty to disappoint his expectant heirs. Very possibly there has been among the small folk but little giving or selling of land.

Nor is a law which gives the dead man's land to all his sons as co-heirs a sufficient force to destroy the system of hides and virgates when once it is established by some original allotment. In the higher ranks of society we see large groups of thegns holding land in common, holding as the Normans say 'in parage.' We can hardly doubt that they are co-heirs holding an inheritance that has not been physically partitioned.(49*) Sometimes it is said of a single man that he holds in parage.(50*) This gives us a valuable hint. Holding in parage implies that one of the 'pares,' one of the parceners -- as a general rule he would be the eldest of them -- is answerable to king and lord for the services due from the land, while his fellows are bound only to him; they must help him to discharge duties for which he is primarily responsible.(51*) This seems the import of such passages as the following -- 'Five thegns held two bovates; one of them was the senior [the elder, and we may almost say the lord] of the others'(52*) -- 'Eight thegns held this manor; one of them Alli, a man of King Edward, was the senior of the others'(53*) -- 'Godric and his brothers held three carucates; two of them served the third'(54*) -- 'Chetel and Turver were brothers and after the death of their father they divided the land, but so that Chetel in doing the king's service should have help from Turver his brother'(55*) -- 'Siwate, Alnod, Fenchel and Aschil divided the land of their father equally, and they held in such wise that if there were need for attendance in the king's host and Siwate could go, his brothers were to aid him [with money and provisions]; and on the next occasion another brother was to go and Siwate like the rest was to help him; and so on down the list; but Siwate was the king's man.'(56*) No doubt similar arrangements were made by co-heirs of lowlier station.(57*) The integrity of the tenement is maintained though several men have an interest in it. In relation to the lord and the state one of them represents his fellows. When the shares become very small, some of the claimants might be bought out by the others.(58*)

But, to return to the village, we must once more notice that the Canons of St Paul's have let their manor of Willesden to the villeins.(59*) This leads us to speculate as to the incidence and collection of those great provender rents of which we read when royal manors are described. In King Edward's day a royal manor is often charged with the whole or some aliquot share of a 'one night's farm,' that is one day's victual for the king's household. Definite amounts of bread, cheese, malt, meat, beer, honey, wool have to be supplied; thus, for example, Cheltenham

must furnish three thousand loaves for the king's dogs and King's Barton must do the like.(60*) Then too Edward the sheriff receives as the profits of the shrievalty of Wiltshire, 130 pigs, 32 bacons, certain quantities of wheat, malt, oats, and honey, 400 chicken, 1600 eggs, 100 cheeses, 100 lambs, 52 fleeces.(61*) Between the king and the men of the manor, no doubt there stands a farmer, either the sheriff or some other person, who is bound to supply the due quantity of provender; but to say that this is so does not solve the problem that is before us. We have still to ask how this due quantity is obtained from the men of the village. It is a quantity which can be expressed by round figures; it is 3000 dog-cakes, or the like. We do not arrive at these pretty results by adding up the rents due from individuals. Again, just in the counties which are in the homes of freedom we hear much of sums of money that are paid to a lord by way of free will offering.(62*) In Norfolk and Suffolk the villagers will give a yearly gersuma, in Lincoln they will pay a yearly tailla, and this will be a neat round sum; very often it is 20 shillings, or 40 or 10.

In this particular we seem to see an increase of something that may be called communalism, as we go backwards. Of course in the cartularies of a later age we may discover round sums of money which, under the names of 'tallage' or 'aid' are imposed upon the vill as a whole; but in general we may accept the rule that tributes to be paid by the vill as a whole, in money or in kind, are not of recent origin. They are more prominent in the oldest than in other documents. As examples, we may notice the 'cornage' of the Boldon Book -- one vill renders 20 shillings, another 30 shillings for cornage;(63*) also the contributions of sheep, poultry, bread and cloth which the vills of Peterborough Abbey bring to the monks on the festival of their patron saint-one vill supplying ten rams and twenty ells of cloth, another four rams, five ells of cloth, ten chicken and three hundred loaves.(64*) But then we have to notice that a village which has to pay a provender rent or even a tailla or gersuma is not altogether a free village. Its communal action is called out by seignorial pressure.

And as we go backwards the township seems to lose such definiteness as is given to it by the police law of the thirteenth century.(65*) This was to be expected, for such law implies a powerful, centralized state, which sends its justices round the country to amerce the townships and compel these local communities to do their duties. Once and once only does the township appear in the Anglo-Saxon dooms. This is in a law of Edgar. If a man who is on a journey buys cattle, then on his return home he must turn them on to the common pasture, 'with the witness of the township.' If he fails to do so, then after five nights the townsmen are to give information to the elder of the hundred, and in that case they and their cattle-herd will be free of blame, and the men who brought the cattle into the town will forfeit them, half to the lord and half to the hundred. If, on the other hand, the townsmen fail in the duty of giving information, their herd will pay for it with his skin.(66*) The township has very little organization of which the state can make use. It does not seem even to have an 'elder' or head-man, and, from the threat of a flogging, we may gather that its common herdsman will be a slave. Purchases of cattle cannot be made 'with the witness of the township'; the purchaser ought to seek out two or three of those twelve standing witnesses who are appointed for every hundred.(67*) So again, in the twelfth century we see the finder of a stray beast bringing it into the

vill; he conducts it to the church-door and tells his story to the priest, the reeve and as many of the best men of the vill as can be got together. Then the reeve sends to the four neighbouring vills, calls in from each the priest, the reeve and three or four men and recounts the tale in their presence. Then on the following day he goes to the head-man of the hundred and puts the whole matter before him and delivers up the beast to him, unless indeed the place where it was found straying was within the domain of some lord who had sake and soke.(68*) Here again, the organization of the township appears to be of a most rudimentary kind. It has no court, unless its lord has sake and soke; it has no power to detain an estray for safe custody. In this very simple case it requires the help of other vills and must transit the cause to the hundred court. And so again, though there may be some reason for thinking that at one time the murder fine -- the fine payable if the slayer of a foreigner was not arrested -- was primarily eligible from the vill in which the corpse was found, the hundred being but subsidiarily liable, still this rule seems to have been soon abandoned and the burden of the fine, a fine far too heavy for a single vill, was cast upon the hundred.(69*) For all this, however, the law knew and made use of the township. The Domesday commissioners required the testimony of the priest, the reeve and six villani of every vill. So soon as the law about suit to the hundred court becomes at all plain, the suit is due rather from vills than from men, and the burden is discharged by the lord of the vill or his steward, or, if neither of them can attend, then by the priest, the reeve and four of the vill's best men.(70*)

How could these requirements be met by a vill which had no lord? It would be a fair remark that the existence of such vills is not contemplated by the Norman rulers. The men who will represent the vill before the Domesday commissioners will in their eyes be villani. This assumption is becoming true enough. We have seen Orwell full of sokemen; in 1086 there is never a sokeman in it; there is no one in it who is above the rank of a villein. Count Roger and Walter Giffard, Count Alan and Geoffrey de Mandeville can make such arrangements about the suit of Orwell, the reeveship of Orwell, as they think fit. Everywhere the Frenchmen are consolidating their manors, creating demesne land where their English antecessores had none, devising scientific frontiers, doing what in them lies to make every vill a manor. Thus is evolved that state of things which comes before us in the thirteenth century. The work of the foreigners was done so completely that we can see but very little of the institutions that they swept away.

On the whole, however, we shall do well not to endow the free township of the Confessor's day with much organization. We may be certain that, at least as a general rule, it had no court; we may doubt very gravely whether it always had any elder, head-man, or reeve. Often it was a small and yet a heterogeneous and a politically distracted body. Some of its members might be attached to the house of Godwin, some had sworn to live and die for the house of Leofric. Just because it is free it has few, if any, communal payments to make. Only if it comes under a single lord will it have to render a provender rent, a tailla or gersuma. As a sphere for communal action there remains only the regulation of the arable lands, the woods and waste. We cannot say for certain that these give scope for much regulation. The arable strips are held in severalty; if by chance some of them are held in common, this in all probability is a case rather of co-ownership than of communal ownership. The pasture rights may

well be regarded as appurtenances of the arable strips. The practice of 'co-aration' need not be enforced by law. the man who will not help his neighbours must be content to see his own land unploughed. The course of agriculture is fixed and will not be often or easily altered. The 'realism' which roots every right and duty in a definite patch of soil, the rapid conversion of new arrangements into immemorial customs, the practice of taking turn and turn about, the practice of casting lots, these will do much towards settling questions such as our modern imaginations would solve by means of a village council. No doubt, from time to time a new departure is made; new land is reclaimed from the waste, perhaps the pasture rights are stinted or redistributed, a mill is built or a church is endowed; -- but all this requires no periodic assemblies, no organization that we dare call either permanent or legal. Once in five years or so there may be something to be done, and done it will be by a resolution of the villagers which is or calls itself a unanimous resolution. If the Cambridgeshire townships had been land-owning corporations, each of them would have passed as a single unit into the hands of some Norman baron. But this did not happen. On the contrary, the Norman barons had to content themselves with intermixed strips; the strips of AElfgar's men went to Count Roger, the strips of Edith's men went to Count Alan. We are far from denying the existence of a communal sentiment, of a notion that somehow or another the men of the vill taken as a whole owned the lands of the vill, but this sentiment, this notion, if strong, was vague. There were no institutions in which it could realize itself, there was no form of speech or thought in which it could find an apt expression. It evaded the grasp of law. At the touch of jurisprudence the township became a mere group of individuals, each with his separate rights.(71*)

NOTES:

1. D. B. ii. 174: 'Hec villa fuit in duobus maneriis T. R. E.' Ibid. i. 164: 'De his 2 villis fecit Comes W. unum manerium.'

2. Inquisitio, 77-9.

3. This result comes out correctly if 1 H = 4 V = 120 A. For the state of this vill T. R. W. see Round, Feudal England, 40.

4. His plot at Orwell is said to belong to Harlton. Then at Harlton we find an Achil with sokemen under him, and though in D. B. he is described as a king's thegn, this is not incompatible with his being the man of Harold for some of his lands. At Barrington Achillus Danaus homo Haroldi has a holding of 40 acres.

5. Inquisitio, 86.

6. Ibid. 68.

7. Ibid. 43, 44, 45, 73, 76.

8. D. B. i. 195.

9. D. B. i. 139: 'De consuetudine 1 averam inveniebat cum Rex in scyra veniebat, si non 5 den. reddebat.' D. B. i. 190, '[Sochemanni in Fuleberne] reddunt per annum 8 libras arsas et

pensatas et unoquoque anno 12 equos et 12 inguardos si Rex in vicecomitatu veniret, si non veniret 12 sol. et 8 den.; T. R. E. non reddebant vicecomiti nisi averas et inguardos vel 12 sol. et 8 den. et superplus invasit Picot [vicecomes] super Regem.'

10. Wratworth has completely disappeared from the modern map; its territory seems to be included in that of the present Orwell. See Rot. Hund. ii. 559 and Lysons, Magna Britannia, ii. 243. A small hamlet called Malton seems to represent it. Whitwell also is no longer the name of a village, while the modern Coton is not mentioned in D. B. There is now a Whitwell Farm near the village of Coton, but in the parish of Barton. The modern Coton does not seem to be the ancient Whitwell, for on Subsidy Rolls we may find Whitwell annexed to Barton and Coton to Grantchester.

11. The figures in our first column represent the division of the vill among the Norman lords. H. V. A. stand for Hides, Virgates, Acres. By C. and B. we signify the Carucae and Boves for which 'there was land.'

12. There is some small error in this case.

13. A small conjectural emendation.

14. The Inq. Com. Cant. says 6 hides.

15. An error of one hide in the particulars. The two records do not fully agree.

16. A small emendation justified by Inq. Eliensis (Hamilton, p. 110).

17. AElfgar died before King Edward; Freeman, Norman Conquest, ed. 3, iii. 469, places his death in or about 1062.

18. The history of the earldoms during Edward's reign is exceedingly obscure. See Freeman's elaborate note: Ibid., 555. In particular Cambridgeshire seems to have lain now in one and now in another earldom. Thus it comes about that Cambridgeshire sokemen are commended some to AElfgar, some to Waltheof, some to Harold, some to Gyrth. AElfgar, for example, had at one time been earl in East Anglia. Men who had commended themselves to an earl would, unless they 'withdrew themselves,' still be his men though he had ceased to be earl of their county.

19. See above, p. 137. Observe how frequently our record speaks of 'sochemanni homines Algari' and the like. These. sokemen are AElfgar's men; but are not properly his sokemen.

20. Inq. Com. Cant. 110. This is from the Inquisitio Eliensis. Compare p. 113.

21. Inq. Com. Cant. 77-8.

22. Rot. Hund. ii. 558.

23. One instance may suffice. In Sawston (Rot. Hund. ii. 575-80) are three manors, A, B, C; A has a sub-manor. One Thomas Dovenel holds in villeinage of the lord of A; in villeinage of the lord of B; in freehold of the lord of B; in freehold of a tenant of the lord of B; in freehold of a tenant of a tenant of the lord of

B.

24. Rot. Hund. ii. 580.

25. On four out of the five manors the rent is 2s. 3d.; on the fifth 3s. 0d.

26. Inq. Com. Cant. 41.

27. D. B. i. 137 b.

28. D.B. i. 141 b.

29. Inq. Com. Cant. pp. 108-110. As names of the Abbot of Ely's we have Grimmus, sokemen in Meldreth and neighbouring villages we have Grimmus, Alsi Cild, Wenesi, Alsi, Leofwinus, AEdricus, Godwinus, Almarus, Aluricus frater Goduuini, AEdriz, Alsi Berd, Alricus Godingessune, Wenestan, Alwin Blondus, Alfuuinus, Aluredus, Alricus Brunesune, Alware, Hunud, Hunwinus, Brizstanus. This does not point to a preponderance of Norse or Danish blood.

30. Owing to the wasted condition of Yorkshire, the information that we obtain of the T. R. E. is meagre and perfunctory. But what seems characteristic of this county is a holding of two or three ploughlands which we might fairly call an embryo manor.

31. See the early extents in Cart. Rams. iii. Thus (242) at Hemingford: 'R. V. tenet tres virgatas et dimidiam et sequitur hundredum et comitatum.... R. H. tenet duas virgatas et sequitur hundredum et comitatum.' Elsworth (249): 'R. filius T. duas virgatas. Pro altera sequitur comitatum et hundredum; pro altera solvit quinque solidos.' Brancaster (261): 'Cnutus avus Petri tenebat terram suam libere in tempore Regis Henrici et sequebatur comitatum et hundredum, et fuit quietus ab omni servitio.' See also Vinogradoff, Villainage, 441 ff.

32. Some thirty years ago the whole political world of England was agitated by controversy about the 'compound householder.' Was he to have a vote? The historian of the nineteenth century will not treat the compound householders as forming one homogeneous class of men whose general status could be marked off from that of other classes. Nor, it is to be hoped, will etymological guesses lead him to believe that the compound householder held a compound house. He will say that a landlord 'compounded for' the rates of the aforesaid householder. Mutatis mutandis, may not the villein have been the compound householder of the eleventh century?

33. D. B. ii. 204: '3 liberi homines... semper arant cum 3 bobus.'

34. D. B. ii. 184 b.

35. D. B. ii. 192 b.

36. D. B. i. 211.

37. D. B. i. 218 b. Compare the 'dimidius porcus' of ii. 287.

38. D. B. i. 213 b; 'Hanc terram tenuerunt homines villae communiter et vendere potuerunt.'

39. D. B. i. 210, 212 b, 213 b.

40. D. B. i. 214: 'In Meldone Johannes de Roches occupavit iniuste 25 acras super homines qui villam tenent.' This is a vague phrase.

41. e. g. D. B. i. 112 b: 'Colsuen homo Episcopi Constantiensis aufert ab hoc manerio communem pasturam quae ibi adiacebat T. R. E. et etiam T. R. W. quinque annis.'

42. D. B. ii. 339 b.

43. D. B. i. I40 b.

44. D. B. i. 75: 'tercia vero pars vel tercia quercus erat Comitis Eduini.'

45. D. B. ii. 404 b: 'et in tercio anno quarta pars mol [endini].'

46. D. B. ii. 291 b.

47. D. B. ii. 24 b.

48. D. B. ii. 438.

49. D. B. i. 83 : 'sex taini in paragio,' 'quatuor taini in paragio.' Ibid. 83 b: 'novem taini in paragio.' Ibid. 168 b: 'quinque fratres tenuerunt pro 5 maneriis et poterant ire quo volebant et pares erant.'

50. D. B. i. 96 b: 'dim. hida quam tenebat T. R. E. unus tainus in paragio.' Ibid. 40: 'Brictric tenuit de episcopo in paragio.'

51. But it was possible for several men to be holding in parage and yet for each of them to have a separate manerium. This seems to imply that their holdings were physically separate and that each holding was separately liable for geld, though as regards other matters, e.g. military service, the division was ignored.

52. D. B. i. 291.

53. D. B. i. 145 b.

54. D. B. i. 341.

55. D. B. i. 354.

56. D. B. i. 375 b: 'Siuuate et Alnod et Fenchel et Aschil equaliter et pariliter diviserunt inter se terram patris sui T. R. E. et ita tenuerunt ut si OpUs fuit expeditione Regis et Siuuate potuit ire, alii fratres iuverunt eum. Post istum, ivit alter et Siuuate cum reliquis iuvit eum; et sic de omnibus. Siuuate tamen fuit homo Regis.'

57. D. B. i. 206: 'sex sochemanni id est Aluuoldus et 5 fratres eius habuerunt 4 hid. et dim. ad geldum.'

58. D. B. i. 233: 'Hanc terram tenuerunt 2 fratres pro 2 maneriis, et postea emit alter ab altero partem suam et fecit

unum manerium de duobus T. R. E.'

59. D. B. i. 127 b: 'Hoc manerium tenent villani ad firmam canonicorum.'

60. D. B. i. 162 b.

61. D. B. i. 69.

62. D. B. ii. 118 b Yarmouth: 'De gersuma has 4 libras dant burgenses gratis et amicitia.'

63. Thus D. B. iv. 568: 'Due ville reddunt 30 sol. de cornagio.' Ib. 570: Queryngdonshire reddit 76 sol. de cornagio.'

64. Black Book of Peterborough, passim.

65. Hist. Engl. Law, i. 550.

66. Edgar iv. 8. 9.

67. Ibid. 6.

68. Leg. Edw. Conf. 24.

69. Leg. Edw. Conf. 15. Compare Leg. Henr. 91; Leg. Will. Conq. i. 22; Leg. Will Conq. iii. 3

70. Leg. Henr. 7 sect. 7.

71. It is possible that the entry (i. 204) which tells how the sokemen of Broughton enjoyed the smaller wites points to a free village court; but we have put another interpretation upon this; see above, p. 130.

8. The Feudal Superstructure

It remains that we should speak very briefly of the higher ranks of men and the tenure by which they held their land. Little accurate information can be extorted from our record. The upper storeys of the old English edifice have been demolished and a new superstructure has been reared in their stead. It is not the office of Domesday Book to tell us much even of the new nobility, of the services which the counts and barons are to render to the king in return for their handsome endowments: -- as to the old nobility, that has perished. Still there are some questions that we ought to ask.

The general theory that all land tenure, except indeed the tenure by which the king holds land in demesne, is dependent tenure, seems to be implied, not only by many particular entries, but also by the whole scheme of the book. Every holder of land, except the king, holds it of (de) some lord, and therefore every acre of land that is not royal demesne can be arranged under the name of some tenant in chief. Even a church will hold its land, if not of the king, then of some other lord.(1*) The terms of the tenure are but very rarely described, for Domesday Book is no feodary. Just now and again a tenure in elemosina is noticed and in some of these cases this term seems already to bear the technical sense that it will have in later days; the tenant owes

a spiritual, but no secular service.(2*) A few instances of what later lawyers would call a 'tenure by divine service,' as distinct from a tenure in frank-almoin, may be found.(3*) A few words here and there betray the existence of tenure by knight's service and of castle guard.(4*) In the servientes Regis who have been enfeoffed in divers counties we may see the predecessors of the tenants by serjeanty.(5*) We shall remark, however, the absence of those abstract terms which are to become the names of the various tenures. We read of servientes, sochemanni, villani, burgenses, but not of seriantia,(6*) socagium, villenagium, burgagium. As we pursue our retrogressive course through the middle ages, we do not find that the law of personal condition becomes more and more distinct from the law of land tenure; on the contrary, the two become less and less separable.

It has sometimes been said that a feudal tenure was the only kind of land tenure that the Norman conquerors could conceive. In a certain sense this may be true, but we should have preferred to say that probably they could not easily conceive a kind of tenure that was not dependent: -- every one who holds land (except he be the king) holds it of someone else. The adjective 'feudal' was not in their vocabulary, and their use of the word feudum -- occasionally we meet the older feum(7*) -- is exceedingly obscure. Very rarely does it denote a tenure or a mass of rights; usually, though it may connote rights of a certain order, it denotes a stretch of land; thus we may read of the fee of the Bishop of Bayeux, thereby being meant the territory which the bishop holds. Occasionally, however, we hear of a man holding land in feudo. One instance may be enough to show that such a phrase did not imply military tenure: -- 'William the Chamberlain held this manor in feudo of the Queen [Matilda] at a rent of £3 a year and after her death he held it in the same fashion of the king.'(8*) All sense of militariness, and all sense of precariousness, that the word has ever had in its continental history, seems to be disappearing. Already the process has begun which will make it applicable to every person who has heritable rights in land. William the Chamberlain is, we take it, already a fee farmer, that is, a rent-paying tenant with heritable rights.(9*) As to the word beneficium, which feum or feudum has been supplanting, we shall hardly find it with its old meaning. It seems to be holding its own onlv within the sphere of ecclesiastical rights, where the 'benefice' will survive until our own day.(10*)

A yet more interesting and equally foreign word is not unfrequently used, namely, alodium. The Norman commissioners deemed that a large number of English tenants in Kent, Sussex, Surrey and Hampshire and some in Berkshire had been alodiarii or aloarii and had held in alodium or sicut alodium. The appearance of this term in one district and In one only is far from proving that there had been anything peculiar in the law of that district. It may well be a mere chance that the liberi homines of other counties are not called alodiaries. Still in Hampshire, where alodíaríes abounded, it was not every free man holding land who had an alod.(11*) Perhaps we shall be right in thinking that the term pointed to heritability: -- the free man who holds land but has no alod has only an estate for life. Certainly it does not mean that the tenant has no lord. The alodiary may hold his alod 'of' his lord'.(12*) he may owe service to , his lord.(13*) he may pay a relief.(14*) he may have no power 'to withdraw himself with his land' from his lord.(15*) The Norman lawyers had no speculative objection to the existence of alodiaries; it in no way contradicted such doctrine of tenure as they had formed. In

1086 there were still alodiaries in Berkshire,(16*) and in royal charters of a much later day there is talk of the alodiaries of Kent as of an existing class.(17*) It is just possible that William's commissioners saw some difference between holding in feudo and holding in alodio. If ever they contrasted the two words, they may have hinted that while the feudum has been given by the lord to the man, the alodium has been brought by the man to the lord; but we cannot be very certain that they ever opposed these terms to each other.(18*) Such sparse evidence as we can obtain from Normandy strengthens our belief that the wide, the almost insuperable, gulf that modern theorists have found or have set between 'alodial ownership' and 'feudal tenure' was not perceptible in the eleventh century.(19*) It can be no part of our task to trace the history of these terms alodium and feudum behind the date at which they are brought into England but hereafter we shall see that here in England a process had been at work which, had these terms been in use, would have brought the alod very near to the feud, the feud very near to the alod.

It is probable that this process had gone somewhat further in Normandy than in England. It is probable that the Normans knew that in imposing upon all English lands 'the formula of dependent tenure' they were simplifying matters. They seem to think, and they may be pretty right in thinking, that every English land-holder had held his land under (sub) some lord; but apparently they do not think that every English land-holder had held his land of (de) some lord. Not infrequently they show that this is so. Thus one Sigar holds a piece of Cambridgeshire of Geoffrey de Mandeville; he used to hold it under AEsgar the Staller.(20*) We catch a slight shade of difference between the two prepositions; sub lays stress on the lord's power, which may well be of a personal or justiciary, rather than of a proprietary kind, while de imports a theory about the origin of the tenure; it makes the tenant's rights look like derivative rights: -- it is supposed that he gets his land from his lord. And at least in the eastern counties -- so it may well have seemed to the Normans -- matters sadly needed simplification. Even elsewhere and when a large estate is at stake they cannot always get an answer to the question 'Of whom was this land holden?(21*) Still they thought that some of the greatest men in the realm had held their lands, or some of their lands, of the king or of someone else. The formulas which are used throughout the description of Hampshire and some other counties seem to assume that every holder of a manor, at all events if a layman, had held it of the king, if he did not hold it of another lord. Tenure in feudo again they regarded as no innovation.(22*) They saw the work of subinfeudation: -- Brihtmaer held land of Azor and Azor of Harold; we may well suppose that Harold held it of the king and that some villeins held part of it of Brihtmaer, and thus we see already a feudal ladder with no less than five rungs.(23*) They saw that the thegns owed 'service' to their lords.(24*) They saw the heriot; they sometimes called it a relief.(25*) We cannot be sure that this change of names imported any change in the law; when a burgess of Hereford died the king took a heriot, but if he could not get the heriot he took the dead man's land.(26*) They saw that in certain cases an heir had to 'seek' his ancestor's lord if he wished to enjoy his ancestor's land.(27*) They saw that many a free man could not give or sell his land without his lord's consent. They saw that great and powerful men could not give or sell their land without the king's consent.(28*)

They saw something very like military tenure. No matter with which we have to deal is darker than the constitution of the

English army on the eve of its defeat. We may indeed safely believe that no English king had ever relinquished the right to call upon all the free men of his realm to resist an invader. On the other hand, it seems quite clear that, as a matter of fact, 'the host' was no longer 'the nation in arms.' The common folk of a shire could hardly be got to fight outside their shire, and ill-armed troops of peasants were now of little avail. The only army upon which the king could habitually rely was a small force. The city of Oxford sent but twenty men or twenty pounds.(29*) Leicester sent twelve men:(30*) Warwick sent ten.(31*) In Berkshire the law was that, if the king called out the host, one soldier (miles) should go for every five hides and should receive from each hide four shillings as his stipend for two months' service. If the man who was summoned made default, he forfeited all his land to the king; but there were cases in which he might send one of his men as a substitute, and for a default committed by his substitute he suffered no forfeiture, but only a fine of fifty shillings.(32*) It is probable that a similar 'five-hide rule' obtained throughout a large part of England. The borough of Wilton was bound to send twenty shilling or one man 'as for an honour of five hides.'(33*) When an army or a fleet was called out, Exeter 'served to the amount of five hides.'(34*) All this points to a small force of well armed soldiers. For example, 'the five-hide rule' would be satisfied if Worcestershire sent a contingent of 240 men. But not only was the army small; it was a territorial army; it grew out of the soil.

At first sight this 'five-hide rule' may seem to have in it little that is akin to a feudal system of knights' fees. We may suppose that it will work thus: -- The host is summoned; the number of hides in each hundred is known. To dispatch a company of soldiers proportioned to the number of the hides, for example twenty warriors if the hundred contains just one hundred hides, is the business of the hundred court and the question 'Who must go?' will be answered by election, rotation or lot. But it is not probable that the territorializing process will stop here, and this for several reasons. An army that cannot be mobilized without the action of the hundred moots is not a handy force. While the hundredors are deliberating, the Danes or Welshmen will be burning and slaying. Also a king will not easily be content with the responsibility of a fluctuating and indeterminate body of hundredors; he will insist, if he can, that there must be some one person answerable to him for each unit of military power. A serviceable system will not have been established until the country is divided into 'five-hide units,' until every man's holding is such an unit, or is composed of several such units, or is an aliquot share of such an unit. Then again the holdings with which the rule will have to deal are not homogeneous; they are not all of one and the same order. It is not as though to each plot of land there corresponded some one person who was the only person interested in it; the occupiers of the soil have lords and again those lords have lords. The king will insist, if he can, that the lords who stand high in this scale must answer to him for the service that is due from all the lands over which they exercise a dominion, and then he will leave them free to settle, as between themselves and their dependants, the ultimate incidence of the burden: -- thus room will be made for the play of free contract. At all events, when, as is not unusual, some lord is the lord of a whole hundred and of its court, the king will regard him as personally liable for the production of the whole contingent that is due from that hundred. In this way a system will be evolved which for many practical purposes will be

indistinguishable from the system of knights' fees, and all this without any help from the definitely feudal idea that military service is the return which the tenant makes to the lord for the gift of land that the lord has made to the tenant.

That this process had already done much of its work when the old English army received its last summons, we cannot doubt, though it is very possible that this work had been done sporadically. We see that the land was being plotted out into five-hide units. In one passage the Norman clerks call such unit an honour, an 'honour of five hides'.(35*) There is an old theory based upon legal texts that such an honour qualifies its lord or owner to be a thegn. If a ceorl prospers so that he has five hides 'to the king's útware,' that is, an estate rated as five hides for military purposes, he is worthy of a thegn's wergild.(36*) Then the Anglo-Saxon charters show us how the kings have been endowing their thegns with tracts of territory which are deemed to contain just five or some multiple of five hides.(37*) The thegn with five hides will have tenants below him; but none of them need serve in the host if their lord goes, as he ought to go, in person. Then each of these territorial units continues to owe the same quantum of military service, though the number of persons interested in it be increased or diminished, and thus the ultimate incidence of the duty becomes the subject-matter of private arrangements. That is the point of a story from Lincolnshire, which we have already recounted: -- A man's land descends to his four sons; they divide it equally and agree to take turns in doing the military service that is due from it; but only the eldest of them is to be the king's man.(38*) Then we see that the great nobles lead or send to the war all the milites that are due from the lands over which they have a seignory. There are already wide lands which owe military service -- we cannot put it otherwise -- to the bishop of Winchester as lord of Taunton:they owe 'attendance in the host along with the men of the bishop.'(39*) The churches of Worcester and Evesham fell out about certain lands at Hamton; one of the disputed questions was whether or no Hamton ought to do its military service 'in the bishop's hundred of Oswaldslaw' or elsewhere.(40*) This question we take to be one of great importance to the bishop. Lord of the triple hundred of Oswaldslaw, lord of three hundred hides, he is bound to put sixty warriors into the field and he is anxious that men who ought to be helping him to make up this tale shall not be serving in another contingent.

But from Worcestershire we obtain a still more precious piece of information. The custom of that county is this: -- When the king summons the host and his summons is disregarded by one who is a lord with jurisdiction, 'by one who is so free a man that he has sake and soke and can go with his land where he pleases,' then all his lands are in the king's mercy. But if the defaulter be the man of another lord and the lord sends a substitute in his stead, then he, the defaulter, must pay forty shillings to his lord -- to his lord, not to the king, for the king has had the service that was due; but if the lord does not send a substitute, then the forty shillings which the defaulter pays to the lord, the lord must pay to the king.(41*) A feudalist of the straiter sort might well find fault with this rule. He might object that the lord ought to forfeit his land, not only if he himself fails to attend the host, but also if he fails to bring with him his due tale of milites. Feudalism was not perfected in a day. Still here we have the root of the matter -- the lord is bound to bring into the field a certain number of milites, perhaps one man from

every five hides, and if he cannot bring those who are bound to follow him, he must bring others or pay a fine. His man, on the other hand, is bound to him and is not bound to the king. That man by shirking his duty will commit no offence against the king. The king is ceasing to care about the ultimate incidence of the military burden, because he relies upon the responsibility of the magnates. How this system worked in the eastern counties where the power of the magnates was feebler, we cannot tell. It is not improbable that one of the forces that is attaching the small free proprietors to the manors of their lords is this 'five-hide rule'; they are being compelled to bring their acres into five-hide units, to club together under the superintendence of a lord who will answer for them to the king, while as to the villeins, so seldom have they fought that they are ceasing to be 'fyrd-worthy'.(42*) But in the west we have already what in substance are knights' fees. The Bishop of Worcester held 300 hides over which he had sake and soke and all customs; he was bound to put 60 milites into the field; if he failed in this duty he had to pay 40 shillings for each deficient miles. At the beginning of Henry II's reign he was charged with 60 knights' fees.(43*)

We are not doubting that the Conqueror defined the amount of military service that was to be due to him from each of his tenants in chief, nor are we suggesting that he paid respect to the rule about the five hides, but it seems questionable whether he introduced any very new principle. A new theoretic element may come to the front, a contractual element: -- the tenant in chief must bring up his knights because that is the service that was stipulated for when he received his land. But we cannot say that even this theory was unfamiliar to the English. The rulers of the churches had been giving or 'loaning' lands to thegns. In so doing they had not been dissipating the wealth of the saints without receiving some 'valuable consideration' for the gift or the loan (laen); they looked to their thegns for the military service that their land owed to the king. To this point we must return in our next essay; but quite apart from definitely feudal bargains between the king and his magnates, between the magnates and their dependants, a definition of the duty of military service which connects it with the ownership of land (and to such a definition men will come so soon as the well-armed few can defeat the ill-armed many) will naturally produce a state of things which will be patient of, even if it will not engender, a purely feudal explanation. If one of the men to whom the Bishop of Worcester looks for military service makes a default, the fine that is due from him will go to the bishop, not to the king. Why so? One explanation will be that the bishop has over him a sake and soke of the very highest order, which comprehends even that fyrd-wíte, that fine for the neglect of military duty, which is one of the usually reserved pleas of the crown.(44*) Another explanation will be that this man has broken a contract that he made with the bishop and therefore owes amends to the bishop: -- to the bishop, not to the king, who was no party to the contract. Sometimes the one explanation will be the truer, sometimes the other. Sometimes both will be true enough. As a matter of fact, we believe that these men of the Bishop of Worcester or their predecessors in title have solemnly promised to do whatever service the king demands from the bishop.(45*) Still we can hardly doubt which of the two explanations is the older, and, if we attribute to the Norman invaders, as perhaps we may, a definite apprehension of the theory that knight's service is the outcome of feudal compacts, this still leaves open the inquiry

whether the past history of military service in Frankland had not been very like the past history of military service in England. Already in the days of Charles the Great the duty of fighting the Emperor's battles was being bound up with the tenure of land by the operation of a rule very similar to that of which we have been speaking. The owner of three (at a later time of four) manses was to serve; men who held but a manse apiece were to group themselves together to supply soldiers. Then at a later time the feudal theory of free contract was brought in to explain an already existing state of things.(46*)

Closely connected with this matter is another thorny topic, namely, the status of the thegn and the relation of the thegn to his lord. In the Confessor's day many maneria had been held by thegns; some of them were still holding their lands when the survey was made and were still called thegns. The king's thegns were numerous, but the queen also had thegns, the earls had thegns, the churches had thegns and we find thegns ascribed to men who were neither earls nor prelates but themselves were thegns.(47*) Many of the king's thegns were able to give or sell the lands that they held, 'to go to whatever lord they pleased.'(48*) On the other hand, many of the thegns of the churches held lands which they could not 'withdraw' from the churches;(49*) in other words 'the thegn-lands' of the church could not be separated from the church.(50*) The Conqueror respected the bond that tied them to the church. The Abbot of Ely complained to him that the foreigners had been abstracting the lands of St Etheldreda. His answer was that her demesne manors must at once be given back to her, while as for the men who have occupied her thegn-lands, they must either make their peace with the abbot or surrender their holdings.(51*) Thus the abbot seems to have had the benefit of that forfeiture which his thegns incurred by espousing the cause of Harold. We see therefore that the relation between thegn, lord and land varied from case to case. The land might have proceeded from the lord and be held of the lord by the thegn as a perpetually inheritable estate, or as an estate granted to him for life, or granted to him and two successive heirs;(52*) on the other hand, the lord's hold over the land might be slight and the bond between thegn and lord might be a mere commendation which the thegn could at any time dissolve. Again, the relation between thegn and lord is no longer conceived as a menial, 'serviential' or ministerial relation. The Taini Regis are often contrasted with the Servientes Regis.(53*) The one trait of thegnship which comes out clearly on the face of our record is that the thegnis a man of war.(54*) But even this trait is obscured by language which seems to show that there has been a great redistribution of military service. Though there is no Latin word that will translate thegn except miles, though these two terms are never contrasted with each other, and though there are thegns still existing, still of these two terms one belongs to the old, the other to the new order of things.(55*) Thus thegnship is already becoming antiquated and we are left to guess from older dooms and later Leges what was its essence in the days of King Edward.

The task is difficult for we can see that this institution has undergone many changes in the course of a long history and yet cannot tell how much has remained unchanged. We begin by thinking of thegnship as a relation between two men. The thegn is somebody's thegn. The household of the great man, but more especially the king's household, is the cradle of thegnship. The king's thegns are his free servants -- servants but also companions. In peace they have duties to perform a out his court

and about his person; they are his body-guard in war. Then the king -- and other great lords follow his example -- begins to give lands to his thegns, and thus the nature of the thegnship is modified. The thegn no longer lives in his lord's court; he is a warrior endowed with land. Then the thegnship becomes more than a relationship, it becomes a status. The thegn is a 'twelve hundred man'; his wergild and his oath contervail those of six ceorls. This status seems to be hereditary; the thegn's sons are 'dearer born' than are the sons of the ceorl.(56*) But we cannot tell how far this principle is carried. We cannot easily reconcile this hereditary transmission of thegn-right with the original principle that thegnship is a relation between two men. We may have thegns who are nobody's thegns, or else we may have persons entitled to the thegnly wergild who yet are not thegns. What is more, since the law which regulates the inheritance of land does not favour the first-born, we may have poor thegns and landless thegns. Yet another principle comes into play. A duty of finding well armed warriors for the host is being territorialized; every five hides should find a soldier. The thegn from of old has to attend the host with adequate equipment; the men who under the new system have to attend the host with horse and heavy armour are usually thegns. Then the man who has five hides, and who therefore ought to put a warrior into the field, is a thegn or is entitled to be a thegn. The ceorl obtains the thegnly wergild if he has an estate rated for military purposes at five hides. Another version of this tradition requires of the ceorl who 'thrives to thegn-right' five hides of his own land, a church, a kitchen, a house in the burh, a special office in the king's hall. To be 'worthy of thegn-right' may be one thing, to be a thegn, another. To be a thegn one must be some one's thegn. The prosperous ceorl will be no thegn until he has put himself under some lord. But the bond between him and his lord may be dissoluble at will and may hardly affect his land. It is, we repeat, very difficult to discover how these various principles were working together. checking and controlling each other in the first half of the eleventh century. Several inconsistent elements seem to be blended. There is the element of hereditary caste: -- the thegn transmits thegnly blood to his offspring. There is the element of personal relationship: -- he is the thegn of some lord and owes fealty to that lord. There is the military element: -- he is a warrior who has horse and heavy armour and is bound to fight the nation's battles. Connected with this last there is the proprietary element: -- each five hides must send a warrior to the host; the man with five hides is entitled to become, perhaps he may be compelled to become a thegn, a warrior.(57*)

On the whole, we gather from Domesday Book that the military element is subduing the others. The thegn is the man who for one reason or another is a warrior. For one reason or another, we say; for the class of thegns is by no means homogeneous. On the other hand, we see the thegns of the churches, who have been endowed by the prelates in order that they may do the military service due from the ecclesiastical lands. Many of the prelates have thegns, and for the creation of thegn-lands by the churches it would not be easy to find any explanation save that which we have already found in the territorialization of military service. The thegn might pay some annual 'recognition' to the church, he might send his labourers to help his lord for a day or two at harvest time; but we may be sure that he was not rack-rented and that, if military service be left out of account, the church was a loser by endowing him. Here the land proceeds from the lord to the thegn; the thegn cannot give or sell it; the holder of that

land can have no lord but the church; if he forfeits the land, he forfeits it to the church. But, on the other hand, we see numerous king's thegns who are able 'to go to what lord they please.' We may see in them landed proprietors who by the play of 'the five-hide rule' have become bound to serve as warriors. We may be fairly certain that they have not been endowed by the king, otherwise they would not enjoy the liberty, that marvellous liberty, of leaving him, of putting themselves under the protection and the banner of some earl or some prelate. Not that every thegn will (if we may borrow phrases from a later age) possess a full 'thegn's fee' or owe the service of a whole warrior. Large groups of thegns we may see who obviously are brothers or cousins enjoying in undivided shares the inheritance of some dead ancestor. They may take it in turns to go to the war; the king may hold the eldest of them responsible for all the service; but each of them will be called a thegn, will be entitled to a thegnly wergild and swear a thegnly oath. Still, on the whole, the thegn of Domesday Book is a warrior, and he holds -- though perhaps along with his coparceners -- land that is bound to supply a warrior.

In the main all thegns seem to have the same legal status, though they may not be all of equal rank. All of them seem to have the wergild of twelve hundred shillings. A law of Cnut, after describing the heriot of the earl, distinguishes two classes of thegns; there is 'the king's thegn who is nighest to him' and whose heriot includes four horses and 50 mancuses of gold, and 'the middle thegn' or 'less thegn' from whom he gets but one horse and one set of arms or £2.(58*) This law should we think be read in connexion with the rule that is recorded by Domesday Book as prevailing in the shires of Derby and Nottingham: -- the thegn who had fewer than seven manors paid a relief of 3 marks to the sheriff, while he who had seven and upwards paid £8 to the king.(59*) A rude line is drawn between the richer and the poorer thegns of the king. The former deal immediately with the king and pay their reliefs directly to him; the latter are under the sheriff and their reliefs are comprised in his farm. Thus the wealthy thegns, like the barones maiores of later days, are 'nigher to' the king than are the 'less-thegns' or those barones minores who in a certain sense are their successors.

The kings, the earls and the churches have of course many demesne manors. Of the ecclesiastical estates we shall speak in our next essay, for they can be best examined in the light that is cast upon them by the Anglo-Saxon charters. Here we will merely observe that some of the churches have not only large, but well compacted territories. The abbey of St Etheldreda, for example, besides having outlying manors, holds the two hundreds which make up the isle of Ely; her property in Cambridgeshire is valued at £318.(60*) The earls also are rich in demesne manors and so is the king.

King William is much richer than King Edward was. The Conqueror has been chary in appointing earls and consequently he has in his hand, not only the royal manors, but also a great many comital manors, to say nothing of some other estates which, for one reason or another, he has kept to himself. Edward had been rich, but when compared with his earls he had not been extravagantly rich. In Somersetshire, for example, there were twelve royal manors which may have brought in a revenue of £500 or thereabouts, whIle there were fifteen comital manors which were worth nearly £300.(61*) The royal demesne had been a scattered territory; the king had something in most shires, but

was far richer in some than in others. It was not so much in the number of his manors as in their size and value that he excelled the richest of his subjects. Somehow or another he had acquired many of those vills which were to be the smaller boroughs and the market towns of later days. We may well suppose that from of old the vills that a king would wish to get and to keep would be the flourishing vills, but again we can not doubt that many a vill has prospered because it was the king's.

Among the manors which William holds in the south-west a dIstinction is drawn by the Exeter Domesday. The manors which the Confessor held are 'The King's Demesne which belongs to the kingdom,' while those which were held by the house of Godwin are the 'Comital Manors.'(62*) So in East Anglia certain manors are distinguished as pertaining or having pertained to the kingdom or kingship, the regnum or regio.(63*) This does not seem to have implied that they were inalienably annexed to the crown, for King Edward had given some of them away. Neither when it speaks of the time of William, nor when it speaks of the time of Edward, does our record draw any clear line between those manors which the king holds as king and those which he holds in his private capacity , though it may just hint that certain ancient estates ought not to be alienated. The degree in which the various manors of the crown stood outside the national system of finance, justice and police we cannot accurately ascertain. Some, but by no means all, pay no geld. Of some it is said that they have never paid geld. Perhaps in these ingeldable manors we may see those which constituted the royal demesne of the West Saxon kings at some remote date. Of the king's vill of Gomshall in Surrey it is written: 'the villeins of this vill were free from all the affairs of the sheriff.'(64*) as though it were no general truth that with a royal manor the sheriff had nothing to do.

As with the estates of the king, so with the estates of the earls, we find it impossible to distinguish between private property and official property. Certain manors are regarded as the 'manors of the shire' (mansiones de comitatu(65*)); certain vills are 'comital vills.'(66*) they belong to 'the consulate.'(67*) Hereditary right tempered by outlawry was fast becoming the title by which the earldoms were holden. The position of the house of Leofric in Mercia was far from being as strong as the position of the house of Rolf in Normandy, and yet we may be sure that King Harold would not have been able to treat the sons of AElfgar as removable officers. But one of the best marked features of Domesday Book, a feature displayed on page after page, the enormous wealth of the house of Godwin, seems only explicable by the supposition that the earlships and the older ealdormanships had carried with them a title to the enjoyment of wide lands. That enormous wealth had been acquired within a marvellously short time. Godwin was a new man: nothing certain is known of his ancestry. His daughter's marriage with the king will account for something; Harold's marriage with the daughter of AElfgar will account for somethings, for instance, for manors which Harold held in the middle of AElfgar's country;(68*) and a great deal of simple rapacity is laid to the charge of Harold by jurors whose testimony is not to be lightly rejected;(69*) but the greater part of the land ascribed to Godwin, his widow and his sons, seems to consist of comitales villae.

The wealth of the earls is a matter of great importance. If we subtract the estates of the king, the estates of the earls, and the estates of the churches -- and, as we shall see hereafter, the churches had obtained the bulk of their wealth

directly from the kings, -- if we subtract again the lands which the king, the earls, the churches have granted to their thegns, the England of 1065 will not appear to us a land of very great landowners, and we may obtain a valuable hint as to one of the origins of feudalism. A vast amount of land is or has recently been held by office-holders, by the holders of the kingship, the earlships, or the ealdormanships. We seem to see their proprietary rights arising in the sphere of public law, growing out of governmental rights, which however themselves are conceived as being in some sort proprietary . Many a passage in Domesday Book will suggest to us that a right to take tribute and a right to take the profits of justice have helped to give the king and the earls their manors and their seignories. Even in his own demesne manors the king is apt to appear rather as a tribute taker than as a landowner. Manors of very unequal size and value have had to supply him with equal quantities of victuals; each has to give 'a night's farm' once a year. Then from the counties at large he has taken a tribute; from Oxfordshire, for example, £10 for a hawk, 20 shillings for a sumpter horse, £23 for dogs and 6 sesters of honey;(70*) from Worcestershire £10 or a Norway hawk, 20 shillings for a sumpter horse;(71*) from Warwickshire £23 for 'the dog's custom,' 20 shillings for a sumpter horse, £10 for a hawk and 24 sesters of honey.(72*) The farm of the county that the sheriff pays is made up out of obscure old items of this sort. Many men who are not the king's tenants must assist him in his hunting, must help in the erection of his deer-hays.(73*) Then there are the avera and the inwards that are exacted by the king or his sheriff from sokemen who are not the king's men. The sheriff also is entitled to provender rents; out of 'the revenues which belong to the shrievalty' of Wiltshire, Edward of Salisbury gets pigs, wheat, barley, oats, honey, poultry, eggs, cheeses, lambs and fleeces; and besides this he seems to have 'reveland' which belongs to him as sheriff.(74*) Then we see curious payments in money and renders in kind made to some royal or some comital manor by the holders of other manors. In Devonshire, Charlton which belongs to the Bishop of Coutances, Honiton which belongs to the Count of Mortain, Smaurige which belongs to Ralph de Pomerai, Membury which belongs to William Chevre, Roverige which belongs to St Mary of Rouen, each of these manors used to pay twenty pence a year to the royal manor of Axminster.(75*) In Somersetshire there are manors which have owed consuetudines, masses of iron and sheep and lambs to the royal manors of South Perrott and Cury, or the comital manors of Crewkerne and Dulverton.(76*) Then again, we find that pasture rights are connected with justiciary rights: -- Godwin had a manor in Hampshire to which belonged the third penny of six hundreds, and in all the woods of those six hundreds he had free pasture and pannage;(77*) the third penny of three hundreds in Devonshire and the third animals of the moorland pastures were annexed to the manor of Molland.(78*) Many things seems to indicate that the distinction between private rights and governmental powers has been but faintly perceived in the past.

If now we look at that English state which is the outcome of a purely English history, we see that it has already taken a pyramidal or conical shape. It is a society of lords and men. At its base are the cultivators of the soil, at its apex is the king. This cone is as yet but low. Even at the end of William's reign the peasant seldom had more than two lords between him and the king, but already in the Confessor's reign he might well have three.(79*) Also the cone is obtuse: the angle of its apex will grow acuter under Norman rulers. We can indeed obtain no accurate

statistics, but the number of landholders who were King Edward's men must have been much larger than the tale of the Norman tenants in chief. In the geographical distribution of the large estates under William there is but little more regularity than there was under his predecessor. In Cheshire and in Shropshire the Conqueror formed two great fiefs for Hugh of Avranches and Roger of Montgomery, well compacted fiefs, the like of which England had not yet seen. But the units which William found in existence and which he distributed among his followers were for the more part discrete units, and seldom did the Norman baron acquire as his honour any wide stretch of continuous territory. Still a great change took place in the substance of the cone, or, if that substance is made up of lords and men and acres, then in the nature of, or rather the relation between, the forces which held the atoms together. Every change mikes for symmetry simplicity, consolidation. Some of these changes will seem to us predestined. To speculate as to what would have happened had Harold repelled the invader would be vain, and certainly we have no reason for believing that in that case the formula of dependent tenure would ever have got hold of every acre of English land and every right in English land. The law of 'land loans' (Lehnrecht) would hardly have become our only land law , had not a conqueror enjoyed an unbounded power, or a power bounded only by some reverence for the churches, of deciding by what men and on what terms every rood of England should be holden. Had it not been for this, we should surely have had some franc alleu to oppose to the fief, some Eigen to oppose to the Lehn. But if England was not to be for ever a prey to rebellions and civil wars, the power of the lords over their men must have been -- not indeed increased, but -- territorialized; the liberty of 'going with one's land to whatever lord one chose' must have been curtailed. As yet the central force embodied in the kingship was too feeble to deal directly with every one of its subjects, to govern them and protect them. The intermediation of the lords was necessary; the state could not but be pyramidal; and, while this was so, the freedom that men had of forsaking one lord for another, of forsaking even the king for the ambitious earl, was a freedom that was akin to anarchy. Such a liberty must have its wings clipt; free contract must be taught to know its place; the lord's hold over the man's land must become permanent. This change, if it makes at first for a more definite feudalism, or (to use words more strictly) if it substitutes feudalism for vassalism, makes also for the stability of the state, for the increase of the state's power over the individual, and in the end for the disappearance of feudalism. The freeholder of the thirteenth century is much more like the subject of a modern state than was the free man of the Confessor's day who could place himself and his land under the power and warranty of whatever lord he chose. Lordship in becoming landlordship begins to lose its most dangerous element; it is ceasing to be a religion, it is becoming a 'real' right, a matter for private law. Again, we may guess, if we please, that but for the Norman Conquest the mass of the English peasantry would never have fallen so low as fall it did. The 'sokemen' would hardly have been turned into 'villeins,' the 'villeins' would hardly have become 'serfs.' And yet the villeins of the Confessor's time were in a perilous position. Already they were occupying lands which for two most important purposes were reckoned the lands of their lord, land for which their lords gelded, lands for which their lords fought. Even in an English England the time might have come when the state, refusing to look behind their lords, would have

left the protection of their rights to a Hofrecht, to 'the custom of the manor.'

It is, we repeat it, vain to speculate about such matters, for we know too little of the relative strength of the various forces that were at work, and an accident, a war, a famine, may at any moment decide the fate, even the legal fate, of a great class. And above all there is the unanswerable question whether Harold or any near successor of his would or could have done what William did so soon as the survey was accomplished, when he proved that, after all, the pyramid was no pyramid and that every particle of it was in immediate contact with him, and 'there came to him all the land-sitting men who were worth aught from over all England, whosesoever men they were, and they bowed themselves to him, and became this man's men.'(80*)

NOTES:

1. D. B. i. 91: 'Ecclesia Romana beati Petri Apostoli tenet de Rege Peritone.' Ib. 157: 'Ecclesia Sancti Dyonisii Parisii tenet de Rege Teigtone. Rex Edwardus ei dedit.' Ib. 20 b: 'Abbas de Grestain tenet de Comite 2 hidas in Bedingham.'

2. Hist. Eng. Law, i. 220.

3. D. B. i. 218 b: 'Rex vero Willelmus sibi postea in elemosina concessit, unde pro anima Regis et Regine omni ebdomada 2 feria missam persolvit.' D. B. ii. 133: 'et cantat unaquaque ebdomada tres missas.'

4. D. B. i. 3: 'reddit unum militem in servitio Archiepiscopi.' Ib. 10 b; 'servitium unius militis.' Ib. 32: 'servitium unius militis.' Ib. 151 b: 'inveniebat 2 loricatos in custodiam de Windesores.'

5. Hist. Eng. Law, i. 268.

6. But D. B. i. 218 b gives us 'tenet in ministerio Regis.'

7. D. B. i. 4 b: 'De terra huius manerii tenet Godefridus in feuo dimid. solin.' Ib. 36 b: 'Humfridus Camerarius tenet de feuo Reginae Cumbe.' Ib. 336 b: 'Ipsam [domum] clamat Normannus Crassus de feuo Regis.'

8. D. B. i. 129 b: 'Postea Willelmus Camerarius tenuit de Regina in feudo pro 3 lib. per annum de firma, et post mortem Reginae eodem modo tenuit de Rege.'

9. But, as in general a farmer would have no heritable rights, holding in fee may be contrasted with holding in farm. D. B. i. 230 b: 'Has terras habet Goduinus de Rege ad firmam, Dislea vero tenet de Rege in feudo.' So again it may be contrasted with the husband's rights in his wife's marriage portion. D. B. i. 214 b: 'De ista terra tenet Pirotus 3 hidas de maritagio suae feminae et unam hidam et terciam partem unius hidae tenet in feudum de Nigello.'

10. D. B. i. 158: Robert de Ouilly holds forty-two houses in Oxford, some meadow-land and a mill 'cum beneficio S. Petri,' i.e. together with the benefice of S. Peter's church. Elsewhere, i. 273, we read that King William gave a manor to the monks of

Burton 'pro beneficio suo'. , but the meaning of this is bv no means clear.

11. D. B. i. 144 b: 'Duo.homines tenuerunt de Alwino sed non fuit alod.' The same phrase occurs on f. 46.

12. D. B. i. 22: 'Aluuard et Algar tenuerunt de Rege pro 2 maneriis in alodia... AElueua tenuit de Rege Edwardo sicut alodium.' Ib. 26: 'Godwinus Comes tenuit et de eo 7 aloarii.'

13. D. B. i. 60 b: 'Duo alodiarii tenuerunt T. R. E.... Unus servivit Reginae, alter Bundino.'

14. D. B. i. 1: 'Quando moritur alodiarius, Rex inde habet relevationem terrae.'

15. D. B. i. 52 b: 'Has hidas tenuerunt 7 alodiarii de Episcopo nec poterant recedere alio vel ab illo.'

16. D. B. i. 63 b: 'Ibi sunt 5 alodiarii.'

17. See charter of John for St. Augustin's, Canterbury, Rot. Cart. p. 105: omnes allodiarios quos eis habemus datos.' This phrase seems to descend through a series of charters from two charters of the Conqueror in which the 'swa fele þegna swa ic heom togeleton habbe' of the one appears in the other as 'omnes allodiarios.' If so, we get from the Conqueror's own chancery the equation þegn = alodiarius. Hist. Mon. S. August. 349-50.

18. D. B. i. 23: in two successive entries we have 'Offa tenuit de Episcopo in feudo.... Almar tenuit de Goduino Comite in alodium.' So again, i. 59: 'Blacheman tenuit de Heraldo Comite in alodio... Blacheman tenuit in feudo T R. E.' The suggestion has been made that alodium represents book-land; see Pollock, Land Laws, ed. 3. p. 27; Eng. Hist. Rev. xi. 227; but we gravely doubt whether the humbler alodiarii had books. The author of the Quadripartitus renders bócland by terra hereditaria, terra testimentalis, terra libera and even by feudum (Edg. ii. 2); alodium occurs inthe Instituta Cnuti. Afterthiswecanhardly say for certain that D. B. does not use alodium and feodum as equivalents, both representing a heritable estate, as absolute an ownership of land as is conceivable.

19. Hist. Eng. Law, i. 46.

20. D. B. i. 197.

21. D. B. i. 238 b: 'Reliquas autem 7 hidas et dimidiam tenuit [sic] Britnodus et Aluui T. R. E., sed comitatus nescit de quo tenuerint.'

22. D. B. i. 23: 'Offa tenuit de episcopo in feudo.' Ib. i. 59 b: 'Blacheman tenuit in feudo T. R. E.'

23. D. B. i. 28 b: 'Bricmar tenuit de Azor et Azor de Heraldo... Terra est 2 camcis. In dominio est una et 2 villani et 2 bordarii cum dimidia caruca.'

24. D. B. i. 75 b: 'De eadem terra ten[ent] 3 taini 3 hidas et reddunt 3 libras excepto servicio.' Ib. 86 b: 'Huic manerio est addita dimidia hida. Tres taini tenebant T. R. E. et serviebant

preposito manerii per consuetudinem absque omni firma donante.'

25. D. B. i. 1: 'Quando moritur alodiarius, Rex inde habet relevationem terrae.'

26. D. B. i. 179: 'Burgensis cum caballo serviens, cum moriebatur, habebat Rex equum et arma eius. De eo qui equum non habebat, si moreretur, Rex aut 10 solidos aut terram eius cum domibus.'

27. D. B. i. 50 b: 'Alric tenet dimidiam hidam. Hanc tenuit pater eius de Rege E. Sed hic Regem non requisivit post mortem Godric sui avunculi qui eam custodiebat.'

28. D. B. i. 238 b: 'Huic aecclesiae dedit Aluuinus vicecomes Cliptone concessu Regis Edwardi et filiorum suorum pro anima sua.' Ib. 59: 'De hoc manerio scira attestatur, quod Edricus eum tenebat deliberavit illum filio suo qui erat in Abendone monarchus ut ad firmam illud teneret et sibi donec viveret necessaria vitae donaret; post mortem vero eius manerium haberet. Et ideo nesciunt homines de scira quod abbatiae pertineat, neque enim inde viderunt brevem Regis vel sigillum. Abbas vero testatut quod in T. R. E. misit ille manerium ad aecclesiam unde erat et inde brevem et sigillum R. E.'

29. D. B. i. 154: 'Quando Rex ibat in expeditione, burgenses 20 ibant cum eo pro omnibus aliis, vel 20 libras dabant Regi ut omnes essent liberi.'

30. D. B. i. 230: 'Quando Rex ibat in exercitu per terram, de ipso burgo 12 burgenses ibant cum eo.'

31. D. B. i. 238: 'Consuetudo Waruuic fuit, ut eunte rege per terram in expeditionem, decem burgenses de Waruuic pro omnibus aliis irent.'

32. D. B. i. 57 b.

33. D. B. i. 64 b: 'Quando Rex ibat in expeditione vel terra vel mari, habebat de hoc burgo aut 20 solidos ad pascendos suos buzecarlos, aut unum hominem ducebat secum pro honore 5 hidarum.'

34. D. B. i. 100: 'Quando expeditio ibat per terram aut per mare serviebat haec civitas quantum 5 hidae terrae.'

35. Above, p. 195, note 5.

36. Schmid, App. vii. c. 2. sect. 9-12; App. v; Pseudoleges Canuti (i.e. Instituta Cnuti) 60, 61 (Schmid, p. 431).

37. Of this we shall speak in another Essay.

38. D. B. i. 375 b; above, p. 182.

39. D. B. i. 87 b: 'Istae consuetudines pertinent ad Tantone.... profectio in exercitum cum hominibus episcopi.... Hae duae terrae non debent exercitum.'

40. See above, p. 116, note 1.

41. D. B. 172: 'Quando Rex in hostem pergit, si quis edictum eius

vocatus remanserit, si ita liber homo est ut habeat socam suam et sacam et cum terra sua possit ire quo voluerit, de omni terra sua cst in misericordia Regis. Cuiuscumque vero alterius domini homo si de hoste remanserit et dominus eius pro eo alium hominem duxerit, 40 sol. domino Suo qui vocatus fuit emendabit. Quod si ex toto nullus pro eo abierit, ipse quidem domino suo 40 sol. dabit, dominus autem eius totidem solidis Regi emendabit.'

42. See above, p. 106, note 3.

43. See Round, Feudal England, 249.

44. D. B. i. 208: 'Testantur homines de comitatu quod Rex Edwardus dedit Suineshefet Siuuardo Comiti soccam et sacam, et sic habuit Haroldus comes, praeter quod geldabant in hundredo et in hostem cum eis abant.' It is here noted that though Harold had sake and soke over Swineshead, it paid its geld and did its military duty in the hundred. Our record would hardly mention such a point unless very often the exaction of geld and military service was one of the rights and duties of the lord who had sake and soke.

45. In the next chapter we shall speak of the bishop's land-loans.

46. See the capitularies of 807 and 808 (ed. Boretius,. pp. 134, 137). Also, Fustel de Coulanges, Les transformations de la royauté, 515 ff. It may well be doubted whether the five-hide rule had not been borrowed by English kings from their Frankish neighbours. Stubbs, Const. Hist. i. 208 ff.

47. D. B. i. 152 b: 'duo teigni homines Alrici filii Goding.' Ib. 'Hoc manerium tenuit Azor filius Toti teignus Regis Edwardi et alter teignus homo eius tenuit unam hidam et vendere potuit.'

48. D. B. i. 84 b: at the end of a list of royal thegns 'Omnes qui has terras T. R. E. tenebant, poterant ire ad quem dominum volebant.'

49. D. B. i. 41: 'Tres taini tenuerunt de episcopo et non potuerunt ire quolibet.'

50. D. B. i. 91: 'Hae terrae erant tainland in Glastingberie T. R. E. nec poterant ab aecclesia separari.'

51. Hamilton, Inquisitio, pp. xviii, xix.

52. D. B. i. 66 b: 'De hac eadem terra 3 hidas vendiderat abbas cuidam taino T. R. E. ad aetatem triutu hominum, et ipse abbas habebat inde servitum, et postea debet redire ad dominium.' Ib. i. 83 b: 'Ipsa femina tenet 2 hidas in Tatentone quae erant de dominio abbatiae de Cernel; T. R. E. duo teini tenebant prestito.'

53. D. B. i. 64 b: 'Herman et alii servientes Regis... Odo et alii. taini Regis... Herueus et alii ministri Regis.' Ib. 75 : 'Guddmund et alii taini... Willelmus Belet et alii servientes Regis.'

54. D. B. i. 56 b (Berkshire custom): 'Tainus vel miles Regis dominicus moriens, pro relevamento dimittebat Regi omnia arma sua

et equum unum cum sella, alium sine sella.'

55. D. B. i. 83: 'Bricsi tenuit miles Regis E.' Such entries are rare. D. B. i. 66: 'De eadem terra huius manerii ten[ent] duo Angli.... Unus ex eis est miles iussu Regis et nepos fuit Hermanni episcopi.' Here the king compels an Englishman to become a miles. D. B. i. 180 b: 'Quinque taini... habebant sub se 4 milites.' The warrior was not necessarily of thegnly rank.

56. See the passages collected by Schmid, Gesette, p. 667.

57. In their treatment of the thegnship of the last days before the Conquest, Maurer lays stress upon the proprietory element. Schmid upon the hereditary. See Little, and Thegns, H. R. iv. 723.

58. Cnut, ii. 71.

59. D. B. i. 280 b.

60. Hamilton, Inquisitio, 121.

61. Eyton, Somerset, i. 84.

62. D. B. iv. 75 : 'Dominicatus Regis ad Regnum pertinens in Devenescira.' Ib. 99: 'Mansiones de Comitatu.' Eyton, Somerset, i. 78.

63. D. B. ii. 119: 'Hoc manerium fuit de regno, sed Rex Edwardus dedit Radulfo Comiti.' Ib. 144: 'Suafham pertinuit ad regionem et Rex E. dedit R. Comiti.' Ib. 281 b: 'Terra Regis de Regione quam Rogerus Bigotus servat.' Ib. 408 b: 'Tornei manerium Regis de regione.' Mr Round, Feudal England, p. 140, treats regio as a mere blunder; but it may well stand for kingship.

64. D. B. i. 30 b: 'Huius villae villani ab omni re vicecom[itis] sunt quieti.'

65. D. B. iv. 99.

66. Pseudoleges Canuti (=Liebermann's Instituta Cnuti), 55 (Schmid, p. 430): 'Comitis rectitudines secundum Anglos istae sunt communes cum rege: tertius denarius in villis ubi mercatum convenerit, et in castigatione latronum, et comitales villae, quae ad comitatum eius pertinent.'

67. D. B. ii. 118 b: 'Terre Regis in Tetford... est una leugata terre in longa et dim. in lato de qua Rex habet duas partes: de his autem duabus partibus tercia pars in consulatu iacet.' But this seems to mean that only this part of the land is in the county of Norfolk. Ibid. i. 246: in Stafford the king has twenty-two houses 'de honore comitum.'

68. D. B. i. 246.

69. Ellis, Introduction, i. 313. When twenty years after Harold's death a question about the title to land is at issue, there seems no reason why the jurors should tell lies about Harold.

70. D. B. i. 154 b.

71. D B. i. 72.

72. D. B. i. 238.

73. D. B. i. 56 b: Berkshire custom, 'Qui monitus ad stabilitionem venationis non ibat 50 sol. Regi emendabat.' See also the Hereford custom, Ib. 179; also Rectitudines (Schmid, App. III.) c. 1.

74. D. B. i. 69. But the meaning of reveland is obscure. The most important passages about it are in D. B. i. 57 b (Eseldeborne), 181 (Getune). D. B. i. 83: 'Hanc tenet Aiulf de Rege quamdiu erit vicecomes.'

75. D. B. i. 100.

76. D. B. i. 86, 86 b, 92, 97; so in Devonshire, 117 b: 'Hoc manerium debet per consuetudinem in Tavetone manerium Regis aut 1 bovem aut 30 denarios.'

77. D. B. i. 38 b.

78. D. B. i. 101: 'Ipsi manerio pertinet tercius denarius de hundredis Nortmoltone et Badentone et Brantone et tercium animal pasturae morarum.'

79. Above, p. 193.

80. Chron. ann. 1085.

9. The Boroughs

Dark as the history of our villages may be, the history of the boroughs is darker yet; or rather, perhaps, the darkness seems blacker because we are compelled to suppose that it conceals from our view changes more rapid and intricate than those that have happened in the open country. The few paragraphs that follow will be devoted mainly to the development of one suggestion which has come to us from foreign books, but which may throw a little light where every feeble ray is useful. At completeness we must not aim, and in our first words we ought to protest that no general theory will tell the story of every or any particular town.(1*)

In the thirteenth century a legal, though a wavering, line is drawn between the borough and the mere vill or rural township.(2*) It is a wavering line, for stress can be laid now upon one and now upon another attribute of the ancient and indubitable boroughs, and this selected attribute can then be employed as a test for the claims of other towns. When in Edward I's day the sheriffs are being told to bid every borough send two burgesses to the king's parliaments, there are somewhat more than 150 places to which such summonses will at times be addressed, though before the end of the middle ages the plumber of 'parliamentary boroughs' will have shrunk to 100 or thereabouts.(3*) Many towns seem to hover on the border line and in some cases the sheriff has been able to decide whether or not a town shall be represented in the councils of the realm. Yet if we go back to the early years of the tenth century, we shall still find this contrast between the borough and the mere

township existing as a contrast where legal consequences flow. Where lies the contrast? What is it that makes a borough to be a borough? That is the problem that we desire to solve. It is a legal problem. We are not to ask why some places are thickly populated or why trade has flowed in this or that channel. We are to ask why certain vills are severed from other vills and are called boroughs.

We may reasonably wish, however, since mental pictures must be painted, to know at the outset whereabouts the line will be drawn, and whether when we are speaking of the Conqueror's reign and earlier times we shall have a large or a small number of boroughs on our hands. Will it be a hundred and fifty, or a hundred, or will it be only fifty? At once we will say that some fifty boroughs stand out prominently and will demand our best attention, though a second and far less important class was already being formed.

In the middle of the twelfth century the Exchequer was treating certain places in an exceptional fashion. It was subjecting them to a special tax in the form of an auxilium or donum. This fact we may take as the starting point for our researches. Now if we read the unique Pipe Roll of Henry I's reign and the earliest Pipe Rolls of Henry II's we observe that an 'aid' or a 'gift' is from time to time collected from the 'cities and boroughs,' and if we put down the names of the towns which are charged with this impost, we obtain a remarkable result.(4*) Speaking broadly we may say that the only towns which pay are 'county towns.' For a large part of England this is strictly true. We will follow the order of Domesday Book, beginning however with its second zone. If London is in Middlesex,(5*) it is Middlesex's one borough. In Hertfordshire is Hertford. In Buckinghamshire is Buckingham, but no aid can be expected from it. In Oxfordshire is Oxford. In Gloucestershire is Gloucester, but Winchcombe also asserts its burghal rank. In Worcestershire is Worcester, while Droitwich appears occasionally with a small gift. Hereford is the one borough of Herefordshire. Turning to the third zone, we pass rapidly through Cambridgeshire, Huntingdonshire, Bedfordshire and Northamptonshire; each has its borough. This will be true of Leicestershire also; but Leicester is by this time so completely in the hands of its earl that the king gets nothing from it. Nor, would it seem, does he get anything from Warwick. Half in Warwickshire, half in Staffordshire lies Tamworth; Stafford also pays. At times Bridgenorth appears beside Shrewsbury. Nothing is received from Chester, for it is the head of a palatinate. Derby, Nottingham and York are the only representatives of their shires. Lincolnshire has Stamford on its border as well as Lincoln in its centre. Norfolk has Thetford as well as Norwich; but Suffolk has only Ipswich and Essex only Colchester.

In the southern zone matters are not so simple. Kent contains Canterbury and Rochester; Surrey contains Guildford and Southwark; Sussex only Chichester. Hampshire has Winchester; Southampton is receiving special treatment. Wallingford represents Berkshire. When we get to Wiltshire and Dorset we are in the classical land of small boroughs. There are various little towns whose fate is in the balance; Marlborough and Calne seem for the moment to be the most prominent. In Somersetshire, whatever may have been true in the past, Ilchester is standing out as the one borough that pays an aid. Exeter has now no second in Devonshire. If there is a borough in Cornwall, it makes no gift to the king.

We may obtain some notion of the relative rank of these towns

if we set forth the amounts with which they are charged in 1130 and in 1156, though the materials for this comparison are unfortunately incomplete.

	Pipe Roll 31 Hen. I £	Pipe Roll 2 Hen. II £
London	120	120
Winchester	80	
Lincoln	60	60
York	40	40
Norwich	30	33 1/3
Exeter		20
Canterbury	20	13 1/3
Colchester	20	12 2/3(6*)
Oxford	20	20
Gloucester	15	15
Wallingford	15	
Worcester		15
Cambridge	12	12
Hereford		10
Thetford	10	
Northampton	10	
Rochester		10
Nottingham |	15	15
Derby |		
Wiltshire boroughs	17	
Calne		1
Dorset boroughs	15	
Huntingdon	8	8
Ipswich	7	3 1/3
Guildford	5	5
Southwark	5	5
Hertford	5	
Stamford	5	
Bedford	5	6 2/3
Shrewsbury		5
Droitwich		5
Stafford	3 1/3	3 1/3
Winchcombe	3	5
Tamworth	2 3/4	1 1/4(7*)
Ilchester		2 1/2
Chichester(8*)		

Now we are not putting this forward as a list of those English towns that were the most prosperous in the middle of the twelfth century. We have made no mention of flourishing seaports, of Dover, Hastings, Bristol, Yarmouth. Nor is this a list of all the places that are casually called burgi on rolls of Henry II's reign. That name is given to Scarborough, Knaresborough, Tickhill, Cirencester and various other towns. New tests of 'burgality' (if we may make that word) are emerging and old tests are becoming obsolete. We see too that some towns are dropping out of the list of aid-paying boroughs. In 1130 Wallingford has thrice failed to pay its aid of £15 and the whole debt of £45 must be forgiven to the burgesses pro paupertate eorum.(9*) So Wallingford drops out of this list. Probably Buckingham has dropped out at an earlier time for a similar reason. But still this list, especially in the form that it takes in Henry I's time, is of great importance to those who are going to study the boroughs of Domesday Book. It looks like a traditional list. It

deals out nice round sums. It is endeavouring to keep Wallingford on a par with Gloucester and above Northampton. It is retaining Winchcombe.

If we make the experiment, we shall discover that this catalogue really is a good prologue to Domesday Book. We will once more visit the counties which form the second zone. The account that our record gives of Hertfordshire has a preface. That preface deals with the borough of Hertford and precedes even the list of the Hertfordshire tenants in chief. Buckingham in Buckinghamshire and Oxford in Oxfordshire are similarly treated. In Gloucestershire the city of Gloucester and the borough of Winchcombe are described before the body of the county is touched. In Worcestershire, Herefordshire, Cambridgeshire, Huntingdonshire, Bedfordshire, Northamptonshire, Leicestershire, Warwickshire, Staffordshire,(10*) Shropshire, Cheshire, Derbyshire, Nottinghamshire(11*) and Yorkshire the same procedure is adopted: the account of the shire's city or borough precedes the account of the shire. In Lincolnshire the description of the county is introduced by the description of Lincoln and Stamford; also of Torksey, which had been a place of military importance and seems to have been closely united with the city of Lincoln by some governmental bond.(12*) Convenient arrangement is not the strong point of 'Little Domesday'; but what is said therein of Colchester is said at the very end of the survey of Essex, while Norwich, Yarmouth and Thetford stand at the end of the royal estates in Norfolk, and Ipswich stands at the end of the royal estates in Suffolk.

If now we enter the southern zone and keep in our minds the scheme that we have seen prevailing in the greater part of England, we shall observe that the account of Kent has a prologue touching Dover, Canterbury and Rochester. In Berkshire an excellent account of Wallingford precedes the rubric Terra Regis. Four places in Dorset are singled out for prefatory treatment, namely, Dorchester, Bridport, Wareham and Shaftesbury. In Devon Exeter stands, if we may so speak, above the line, and stands alone, though Barnstaple, Lidford and Totness are reckoned as boroughs. Of the other counties there is more to be said. If we compare the first page of the survey of Somerset with the first pages that are devoted to its two neighbours, Dorset and Devon, we shall probably come to the conclusion that the compilers of the book scrupled to put any Somerset vill on a par with Exeter, Dorchester, Bridport, Wareham and Shaftesbury. In each of the three cases the page is mapped out in precisely the same fashion. The second column is headed by Terra Regis. A long way down in the first column begins the list of tenants in chief. The upper part of the first column contains in one case the account of Exeter, in another the account of the four Dorset boroughs, but in the third case, that of Somerset, it is left blank. In Wiltshire, Malmesbury and Marlborough stand above the line; but, if we look to the foot of the page, we shall suspect that the compilers can not easily force their general scheme upon this part of the country. In Surrey, no place stands above the line. Guildford is the first place mentioned in the Terra Regis; Southwark seems to be inadequately treated on a later page. The case of Sussex is like that of Somerset; the list of the tenants in chief is preceded by a blank space. In Hampshire a whole column is left blank. On a later page the borough of Southampton has a column to itself; in the next column stands the Terra Regis of the Isle of Wight. And now let us turn back to the Middlesex that we have as yet ignored. Nearly two columns, to say nothing of some precedent pages are void.(13*)

Now we must not be led away into speculations which would be vain. We must not, for example, inquire whether the information that had been obtained touching London and Winchester was too bulky to fill a room that had been left for it. We must not inquire whether something was to be said of Chichester or Hastings, of Ilchester or of Bristol, that has not been said. But apparently we may attribute to King William's officials a certain general idea. It is an idea which suits the greater part of England very well, though they find difficulties in their way when they endeavour to impose it on some of the counties that lie south of the Thames. The broad fact stands clear that throughout the larger part of England the commissioners found a town in each county, and in general one town only, which required special treatment. They do not locate it on the Terra Regis; they do not locate it on any man's lands. It stands outside the general system of land tenure.

For a while, then, let us confine our attention to these county towns, and we shall soon see why it is that they are rarely brought under any rubric which would describe them as pieces of the king's soil or pieces of some one else's soil. The trait to which we allude we shall call (for want of a better term) the tenurial heterogeneity of the burgesses. In those boroughs that are fully described we seldom, if ever, find that all the burgesses have the same landlord. Of course there is a sense in which, according to the view of the Domesday surveyors and of all later lawyers, every inch of borough land is held of one landlord, namely, the king; but in that sense every inch of England has the same landlord. The fact that we would bring into relief is this, that normally the burgesses of the borough do not hold their burgages immediately of one and the same lord; they are not 'peers of a tenure'; the group that they constitute is not a tenurial group. Far rather we shall find that, though there will be some burgesses holding immediately of the king, there will be others whose titles can be traced to the king only through the medium of other lords. And the mesne lord will often be a very great man, some prelate or baron with a widespread honour. Within the borough he will, to use the language of Domesday Book, 'have' or 'hold' a small group of burgesses, and sometimes they will be reckoned as annexed to or as 'lying in' some manor distant from the town. It seems generally expected that the barons of the county should have a few burgages apiece in the county town. This arrangement does not look new. Seemingly the great men of an earlier day, the antecessores of the Frenchmen, have owned town-houses: not so much houses for their own use, as houses or 'haws' (hagae) in which they could keep a few 'burgesses.'

Some examples of this remarkable arrangement should be given. First we will look at Oxford. The king has many houses; the Archbishop of Canterbury has 7; the Bishop of Winchester 9; the Bishop of Bayeux 18; the Bishop of Lincoln 30; the Bishop of Coutances 2; the Bishop of Hereford 3 ; the Abbot of St. Edmunds's 1; the Abbot of Abingdon 14; the Abbot of Eynsham 13. And so with the worldly great:the Count of Mortain has 10; Count Hugh has 7; the Count of Evreux 1; Robert of Ouilly 12; Roger of Ivry 15; Walter Giffard 17: -- but we need not repeat the whole long list.(1*)

It is so at Wallingford; King Edward had 8 virgates on which were 276 houses, and they paid him £11 rent; Bishop Walkelin of Winchester has 27, which pay 25 shillings; the Abbot of Abingdon has two acres, on which are 7 houses paying 4 shillings; Milo Crispin has 20 houses, which pay 12 shillings and 10 pence; and

so forth.(15*) Further, it is said that the Bishop's 27 houses are valued in Brightwell; and, turning to the account of Brightwell, there, sure enough, we find mention of the 25 shillings which these houses pay.(16*) Milo's 20 houses are said to 'lie in' Newnham; he has also in Wallingford 6 houses which are in Hazeley, 1 which is in Stoke, 1 which is in Chalgrove, one acre with 6 houses which is in Sutton, one acre with 11 houses which is in Bray; 'all this land' we are told 'belongs to Oxfordshire, but nevertheless it is in Wallingford.' Yes, Milo's manor of Chalgrove lies five, his manor of Hazeley lies seven, miles from Wallingford; nevertheless, houses which are physically in Wallingford are constructively in Chalgrove and Hazeley. That we are not dealing with a Norman novelty is in this case extremely plain. Wallingford is a border town. We read first of the Berkshire landowners who have burgesses within it. There follows a list of the Oxfordshire 'thegns' who hold houses in Wallingford. Archbishop Lanfranc and Count Hugh appear in this context as 'thegns' of Oxfordshire.

When we have obtained this clue, we soon begin to see that what is true of Oxford and Wallingford is true even of those towns of which no substantive description is given us. Thus there are 'haws' or town-houses in Winchester which are attached to manors in all corners of Hampshire, at Wallop, Clatford, Basingstoke, Eversley, Candover, Strathfield, Minstead and elsewhere. Some of the manors to which the burghers of London were attached are not, even in our own day, within our monstrous town; there are some at Banstead and Bletchingley in Surrey, at Waltham and Thurrock in Essex. But in every quarter we see this curious scheme. At Warwick the king has in his demesne 113 houses, and his barons have 112.(17*) Of the barons' houses it is written: 'These houses belong to the lands which the barons hold outside the borough and are valued there.' Or turn we to a small town: -- at Buckingham the barons have 26 burgesses; no one of them has more than 5.(18*) The page that tells us this presents to us an admirable contrast between Buckingham and its future rival. Aylesbury is just an ordinary royal manor and stands under the rubric Terra Regis. Buckingham is a very petty townlet; but it is a borough, and Count Hugh and the Bishop of Coutances, Robert of Ouilly, Roger of Ivry, Arnulf of Hesdin and other mighty men have burgesses there. As a climax we may mention the case of Winchcombe. The burgages in this little town were held by many great people. About the year 1100 the king had 60; the Abbot of Winchcombe 40; the Abbot of Evesham 2; the Bishop of Hereford 2; Robert of Bellême 3 ; Robert Fitzhamon 5, and divers other persons of note had some 29 houses among them.(19*) However poor, however small, Winchcombe may have been, it radically differed from the common manor and the common village.

We have seen above how in the Conqueror's day the Abbey of Westminster had a manor at Staines(20*) and how that manor included 48 burgesses who paid 40s. a year. Were those burgesses really in Staines, and was Staines a borough? No, they were in the city of London. The Confessor had told his Middlesex thegns how he willed that St Peter and the brethren at Westminster should have the manor (cotlif) of Staines with the land called Staninghaw (mid dam lande Staeningehaga) within London and all other things that had belonged to Staines.(21*) Is not the guess permissible that Staining Lane in the City of London,(22*) wherein stood the church of St Mary, Staining, was so called, not 'because stainers lived in it' but because it once contained the haws of the men of Staines? We must be careful before we find boroughs in Domesday Book, for its language is deceptive. Perhaps

we may believe that really and physically there were forty-six burgesses in the vill of St Albans;(23*) but, after what we have read of Staines, can we be quite sure that these burgesses were not in London? The burgesses who de iure 'are in' one place are often de facto in quite another place.

We may for a moment pass over two centuries and turn to the detailed account of Cambridge given to us by the Hundred Rolls, the most elaborate description that we have of any medieval borough. Now in one sense the 'vill' or borough of Cambridge belongs to the king, and, under him, to the burgesses, for they hold it of him in capite at a fee-farm rent. But this does not mean that each burgess hold his tenement of the corporation or communitas of burgesses, which in its turn holds every yard of land of the king in chief. It does not even mean that each burgess holds immediately of the king, the communitas intervening as farmer of the king's rents.(24*) No, the titles of the various burgesses go up to the king by many various routes. Some of them pay rents to the officers of the borough who are the king's farmers; but many of them do not. The Chancellor and Masters of the University, for example, hold three messuages in the vill of Cambridge; 'but,' say the sworn burgesses, 'what they pay for the same, we do not know and cannot discover.'(25*) How could it be otherwise? Domesday Book shows us that the Count of Britanny had ten burgesses in Cambridge.(26*) Count Alan's houses will never be held in chief of the crown by any burgess: they will form part of the honour of Richmond to the end of time. We may take another example which will show the permanence of proprietary arrangements in the boroughs. From an account of Gloucester which comes to us from the year 1100 or thereabouts we learn that there were 300 houses in the king's demesne and 313 belonging to other lords. From the year 1455 we have another account which tells of 310 tenements paying landgavel to the king's farmers and 346 which pay them nothing.(27*)

Perhaps no further examples are needed. But this tenurial heterogeneity seems to be an attribute of all or nearly all the very ancient boroughs, the county towns. In some cases the king was the landlord of far the greater number of the burgesses. In other cases the bishop became in course of time the lord of some large quarter of a town in which his cathedral stood. At Canterbury and Rochester, at Winchester and Worcester, this process had been at work from remote days; the bishops had been acquiring land and 'haws' within the walls.(28*) But we can see that in Henry I's day there were still four earls who were keeping up their interest in their burgesses at Winchester.(29*) In the later middle ages we may, if we will, call these places royal boroughs and the king's 'demesne boroughs,' for the burgesses derive their 'liberties' directly from the king. But we must keep these ancient boroughs well apart from any royal manors which the king has newly raised to burghal rank. In the latter he will be the immediate landlord of every burgess; in the former a good deal of rent will be paid, not to him, nor to the community as his farmers, but to those who are filling the shoes of the thegns of the shire.

This said, we will turn back our thoughts to the oldest days. The word that deserves our best attention is burh, the future borough, for little good would come of an attempt to found a theory upon the Latin words, such as civitas, oppidum and urbs which occur in some of those magniloquent land-books.(30*) Now it seems fairly clear that for some long time after the Germanic invasions the word burh meant merely a fastness, a stronghold, and suggested no thick population nor any population at all. This

we might learn from the map of England. The hill-top that has been fortified as a burh. Very often it has given its name to a neighbouring village.(31*) But, to say nothing of hamlets, we have full two hundred and fifty parishes whose names end in burgh, borough or bury, and in many cases we see no sign in them of an ancient camp or of an exceptionally dense population. It seems a mere chance that they are not tons or hams, worths or thorpes. Then again, in Essex and neighbouring shires it is common to find that in the village called X there is a squire's mansion or a cluster of houses called X-bury. Further, we can see plainly from our oldest laws that the palisade or entrenchment around a great man's house is a burh. Thus Alfred: The king's burh-bryce (the sum to be paid for breaking his burh) is 120 shillings, an archbishop's 90 shillings, another bishop's 60 shillings, a twelve-hundred man's 30 shillings, a six-hundred-man's 15 shillings, a ceorl's edor-bryce (the sum to be paid for breaking his hedge) 5 shillings.(32*) The ceorl, whose wer is 200 shillings, will not have a burh, he will only have a hedge round his house; but the man whose wer is 600 shillings will probably have some stockade, some rude rampart; he will have a burh.

We observe the heavy bót of 120 shillings which protects the king's burh. May we not see here the very first stage in the legal history of our boroughs? We pass over some centuries and we read in a statement of the Londoners' customs that a man who is guilty of unlawful violence must pay the king's burh-bryce of five pounds.(33*) And then the Domesday surveyors tell us how at Canterbury every crime committed in those streets which run right through the city is a crime against the king, and so it is if committed upon the high-roads outside the city for the space of one league, three perches and three feet.(34*) This curious accuracy over perches and feet sends us to another ancient document: -- 'Thus far shall the king's peace (grid) extend from his burh-geat where he is sitting towards all four quarters, namely, three miles, three furlongs, three acre-breadths, nine feet, nine hand-breadths, nine barleycorns.'(35*) And then we remember how Fleta tells us that the verge of the king's palace is twelve leagues in circumference, and how within that ambit the palace court, the king's most private court, has jurisdiction.(36*)

Has not legal fiction been at work since an early time? Has not the sanctity of the king's house extended itself over a group of houses? The term burh seems to spread outwards from the defensible house of the king and with it the sphere of his burh-bryce is amplified. Within the borough there reigns a special peace. This has a double meaning: -- not only do acts which would be illegal anywhere become more illegal when they are done within the borough, but acts which would be legal elsewhere are illegal there. King Edmund legislating against the blood-feud makes his burh as sacred as a church; it is a sanctuary where the feud may not be prosecuted.(37*) If in construing such a passage we doubt how to translate burh, whether by house or by borough, we are admitting that the language of the law does not distinguish between the two. The Englishman's house is his castle, or, to use an older term, his burh; the king's borough is the king's house, for his house-peace prevails in its streets.(38*)

Our oldest laws seem to know no burh other than the strong house of a great (but he need not be a very great) man. Early in the tenth century, however, the word had already acquired a new meaning. In AEthelstan's day it seems to be supposed by the

legislator that a moot will usually be held in a burh. If a man neglects three summonses to a moot, the oldest men of the burh are to ride to his place and seize his goods.(39*) Already a burh will have many men in it. Some of them will be elder-men, aldermen. A moot will be held in it. Very possibly this will be the shire-moot, for, since there is riding to be done, we see that the person who ought to have come to the moot may live at a distance.(40*) A little later the burh certainly has a moot of its own. Edgar bids his subjects seek the burh-gemót as well as the scyr-gemót and the hundred-gemót. The borough-moot is to be held thrice a year.(41*) At least from this time forward, the borough has a court. An important line is thus drawn between the borough and the mere tún. The borough has a court; the village has none, or, if the villages are getting courts, this is due to the action of lords who have sake and soke and is not commanded by national law. National law commands that there shall be a moot thrice a year in every burh.

The extension of the term burh from a fortified house to a fortified group of houses must be explained by those who are skilled in the history of military affairs. It is for them to tell us, for example, how much use the Angles and Saxons in the oldest days made of the entrenched hill-tops, and whether the walls of the Roman towns were continuously repaired.(42*) Howbeit, a time seems to have come, at latest in the struggle between the Danish invaders and the West-Saxon kings, when the establishment and maintenance of what we might call fortified towns was seen to be a matter of importance. There was to be a cluster of inhabited dwellings which as a whole was to be made defensible by ditch and mound, by palisade or wall. Edward the Elder and the Lady of the Mercians were active in this work. Within the course of a few years burgs were 'wrought' or 'timbered' at Worcester, Chester, Hertford, Witham in Essex, Bridgnorth, Tamworth, Stafford, Warwick, Eddisbury, Warbury, Runcorn, Buckingham, Towcester, Maldon, Huntingdon.(43*) Whatever may be meant by the duty of repairing burgs when it is mentioned in charters coming from a somewhat earlier time, it must for the future be that of upholding those walls and mounds that the king and the lady are rearing. The land was to be burdened with the maintenance of strongholds. The land, we say. That is the style of the land-books. Land, even though given to a church, is not to be free (unless by exceptional favour) of army-service, bridge-work and borough-bettering or borough-fastening. Wallwork(44*) is coupled with bridge-work; to the duty of maintaining the county bridges is joined the duty of constructing and repairing the boroughs. Shall we say the 'county boroughs'?

Let us ask ourselves how the burden that is known as burh-bót, the duty that the Latin charters call constructio, munitio, restauratio, defensio, arcis (for arx is the common term) will really be borne. Is it not highly probable, almost certain, that each particular tract of land will be ascript to some particular arx or castellum,(45*) and if, for instance, there is but one burh in a shire, all the lands in that shire must help to better that burh. Apportionment will very likely go further. The man with five hides will know how much of the mound or the wall he must maintain, how much 'wall-work' he must do. We see how the old bridge-work becomes a burden on the estates of the county landowners. From century to century the Cambridgeshire landowners contribute according to their hidage to repair the most important bridge of their county, a bridge which lies in the middle of the borough of Cambridge. Newer arrangements, the rise of castles and of borough communities, have relieved them from

the duty of 'borough-fastening;' but the bridge-work is apportioned on their lands.

The exceedingly neat and artificial scheme of political geogrAphy that we find in the midlands, in the country of the true 'shires,' forcibly suggests deliberate delimitation for military purposes. Each shire is to have its borough in its middle. Each shire takes it name from its borough. We must leave it for others to say in every particular case whether and in what sense the shire is older than the borough or the borough than the shire: whether an old Roman chester was taken as a centre or whether the struggles between Germanic tribes had fixed a circumference. But a policy, a plan, there has been, and the outcome of it is that the shire maintains the borough.(46*)

There has come down to us in a sadly degenerate form a document which we shall hereafter call 'The Burghal Hidage.'(47*) It sets forth, so we believe, certain arrangements made early in the tenth century for the defence of Wessex against Danish inroads. It names divers strongholds, and assigns to each a large number of hides. A few of the places that it mentions we have not yet found on the map. Beginning in the east of Sussex and following the order of the list, we seem to see Hastings, Lewes, Burpham (near Arundel), Chichester, Porchester, Southampton, Winchester, Wilton, Tisbury (or perhaps Chisenbury), Shaftesbury, Twyneham, Wareham, Bredy, Exeter, Halwell near Totness, Lidford, Barnstaple, Watchet, Axbridge; then Langport and Lyng (which defend the isle of Athelney), Bath, Malmesbury, Cricklade, Oxford, Wallingford, Buckingham, Eastling near Guildford, and Southwark. Corrupt and enigmatical though this catalogue may be, it is of the highest importance. It shows how in the great age of burg-building the strongholds had wide provinces which in some manner or another were appurtenant to them, and it may also give us some previous hints about places in Wessex which once were national burgs but which forfeited their burghal character in the tenth century. Guildford seems to have risen at the expense of Eastling and Totness at the expense of Halwell, while Tisbury, Bredy and Watchet (if we are right in fancying that they are mentioned) soon lost caste. Lyng is not a place which we should have named among the oldest of England's burgs, and yet we have all read how Alfred wrought a 'work' at Athelney. In Wessex burgs rise and fall somewhat rapidly. North of the Thames the system is more stable. Also it is more artificial, for north of the Thames civil and military geography coincide.

Let us now look once more at the Oxford of Domesday Book. The king has twenty 'mural houses'(48*) which belonged to Earl AElfgar; they pay 13s. 2d. He has a house of 6d. which is constructively at Shipton; one of 4d. at Bloxham; one of 30d. at Risborough and two of 4d. at Twyford in Buckinghamshire. 'They are called mural houses because, if there be need and the king gives order, they shall repair the wall.' There follows a list of the noble houseowners, an archbishop, six bishops, three earls and so forth. 'All the above hold these houses free because of the reparation of the wall. All the houses that are called "mural" were in King Edward's time free of every thing except army service and wall-work.' Then of Chester we read this:(49*) -- 'To repair the wall and the bridge, the reeve called out one man from every hide in the county, and the lord whose man did not come paid 40s. to the king and earl.' The duty of maintaining the bulwark of the county's borough is incumbent on the magnates of the county. They discharge it by keeping haws in the borough and burgesses in those haws.(50*)

We may doubt whether the duty of the county to its borough

has gone no further than mere 'wall-work.' A tale from the older Saxony may come in well at this point. When the German king Henry the Fowler was building burgs in Saxony and was playing the part that had lately been played in England by Edward and AEthelflaed, he chose, we are told, the ninth man from among the agrarii milites; these chosen men were to live in the burgs; they were to build dwellings there for their fellows (confamiliares) who were to remain in the country tilling the soil and carrying a third of the produce to the burgs, and in these burgs all concilia and conventus und convivia were to be held.(51*) Modern historians have found in this story some difficulties which need not be noticed here. Only the core of it interests us. Certain men are clubbed together into groups of nine for the purpose of maintaining the burg as a garrisoned and victualled stronghold in which all will find room in case a hostile inroad be made.

Turning to England we shall not forget how in the year 894 Alfred divided his forces into two halves; half were to take the field, half to remain at home, besides the men who were to hold the burgs;(52*) but at all events we shall hardly go astray if we suggest that the thegns of the shire have been bound to keep houses and retainers in the borough of their shire and that this duty has been apportioned among the great estates.(53*) We find that the baron of Domesday Book has a few burgesses in the borough and that these few burgesses 'belong' in some sense or another to his various rural manors. Why should he keep a few burgesses in the borough and in what sense can these men belong some to this manor and some to that? To all appearance this arrangement is not modern. King Edmund conveyed to his thegn AEthelweard an estate of seven hides at Tistead in Hampshire and therewith the haws within the burg of Winchester that belonged to those seven hides.(54*) When the Bishop of Worcester loaned out lands to his thegns, the lands carried with them haws in the 'port' of Worcester.(55*) We have all read of the ceorl who 'throve to. thegn-right., He had five hides of his own land, a church and a kitchen, a bell-tower and a burh-geat-setl, which, to our thinking, is just a house in the 'gate,' the street of the burh.(56*) He did not acquire a town-house in order that he might enjoy the pleasures of the town. He acquired it because, if he was to be one of the great men of the county, he was bound to keep in the county's burh retainers who would do the wallwork and hoard provisions sent in to meet the evil day when all men would wish to be behind the walls of a burh.

We have it in our modern heads that the medieval borough is a sanctuary of peace, an oasis of 'industrialism' in the wilderness of 'militancy.' Now a sanctuary of peace the borough is from the very first. An exceptional and exalted peace reigns over it. If you break that peace you incur the king's burh-bryce. But we may strongly suspect that the first burgmen, the first burgenses, were not an exceptionally peaceful folk. Those burhwaras of London who thrashed Swegen(57*) and chose kings were no sleek traders; nor must we speak contemptuously of 'trained bands of apprentices' or of 'the civic militia.' In all probability these burg-men were of all men in the realm the most professionally warlike. Were we to say that in the boroughs the knightly element was strong we might mislead, for the word knight has had chivalrous adventures. However, we may believe that the burgensis of the tenth century very often was a cniht, a great man's cniht, and that if not exactly a professional soldier (professional militancy was but beginning) he was kept in the borough for a military purpose and was perhaps being fed by the manor to which he belonged. These knights formed gilds for religious and

convivial purposes. At Cambridge there was a gild of thegns, who were united in blood-brotherhood. We cannot be certain that all these thegns habitually lived in Cambridge. Perhaps we should rather say that already a Cambridgeshire club had its head-quarters in Cambridge and there held its 'morning-speeches' and its drinking bouts. These thegns had 'knights' who seem to have been in some sort inferior members of the gild and to have been bound by its rules.(58*) Then we hear of 'knight-gilds' at London and Canterbury and Winchester.(59*) Such gilds would be models for the merchant-gilds of after-days, and indeed when not long after the Conquest we catch at Canterbury our first glimpse of a merchant-gild, its members are calling themselves knights: knights of the chapman-gild.(60*) Among the knights who dwelt in the burg such voluntary societies were the more needful, because these men had not grown up together as members of a community. They came from different districts and had different lords. In this heterogeneity we may also see one reason why a very stringent peace, the king's own house-peace, should be maintained, and why the borough should have a moot of its own. When compared with a village there is something artificial about the borough.

This artificiality exercised an influence over the later fate of the boroughs. The ground had been cleared for the growth of a new kind of community, one whose members were not bound together by feudal, proprietary, agricultural ties. But the strand that we have been endeavouring to trace is broken at the Conquest. The castle arises. It is garrisoned by knights who are more heavily armed and more professionally militant than were their predecessors. The castle is now what wants defending; the knights who defend it form no part of the burghal community, and perhaps 'the castle fee' is in law no part of the borough. And yet let us see how in the twelfth century the king's castle at Norwich was manned. It was manned by the knights of the Abbot of St Edmund's. One troop served there for three months and then was relieved by another, and those who were thus set free went home to the manors with which the abbot had enfeoffed them and which they held by the service of castle-guard.(61*) Much in this arrangement is new; the castle itself is new; but it is no new thing, we take it, that the burh should be garrisoned by the knights of abbots or earls. And who built the castles, who built the Tower of London? Let us read what the chronicler says of the year 1097: -- Also many shires which belonged to London for work(62*) were sorely harassed by the wall that they wrought around the tower, and by the bridge, which had been nearly washed away, and by the work of the king's hall that was wrought at Westminster. There were shires or districts which of old owed this work or work of this kind to London-bury.(63*)

Long before the Conquest, however, a force had begun to play which was to give to the boroughs their most permanent characteristic. They were to be centres of trade. We must not exclude the hypothesis that some places were fortified and converted into burgs because they were already the focuses of such commerce as there was. But the general logic of the process we take to have been this: -- The king's burh enjoys a special peace: Even the men who are going to or coming from it are under royal protection: Therefore within its walls men can meet together to buy and sell in safety: Also laws which are directed against theft command that men shall not buy and sell elsewhere: Thus a market is established: Traders begin to build booths round the market-place and to live in the borough. A theory has indeed been brilliantly urged which would find the legal germ of the

borough rather in a marketpeace than in the peace of a burg.(64*) But this doctrine has difficulties to meet. A market-peace is essentially temporary, while the borough's peace is eternal. A market court, if it arises, will have a jurisdiction only over bargains made and offences committed on market-days, whereas the borough court has a general competence and hears pleas relating to the property in houses and lands. Here in England during the Angevin time the 'franchise,' or royally granted right, of holding a market is quite distinct from the legal essence of the borough. Lawful markets are held in many places that are not boroughs; indeed in the end by calling a place 'a mere market-town' we should imply that it was no borough. Already in Domesday Book this seems to be the case. Markets are being held and market-tolls are being taken in many vills which are not of burghal rank.(65*) Perhaps also we may see the boroughpeace and the market-peace lying side by side. In the Wallingford of the Confessor's day there were many persons who had sake and soke within their houses. If anyone spilt blood and escaped into one of those houses before he was attached, the owner received the blood-wite. But it was not so on Saturdays, for then the money went to the king 'because of the market.'(66*) Thus the king's borough-peace seems to be intensified on market-days; on those days it will even penetrate the houses of the immunists. So at Dover some unwonted peace or 'truce' prevailed in the town from St Michael's Day to St Andrew's: that is to say, during the herring season.(67*)

The establishment of a market is not one of those indefinite phenomena which the historian of law must make over to the historian of economic processes. It is a definite and a legal act. The market is established by law. It is established by law which prohibits men from buying and selling elsewhere than in a duly constituted market. To prevent an easy disposal of stolen goods is the aim of this prohibition. Our legislators are always thinking of the cattle-lifter. At times they seem to go the full length of decreeing that only in a 'port' may anything be bought or sold, unless it be of trifling value; but other dooms would also sanction a purchase concluded before the hundred court. He who buys elsewhere runs a risk of being treated as a thief if he happens to buy stolen goods.(68*) Official witnesses are to be appointed for this purpose in every hundred and in every burh: twelve in every hundred and small burh, thirty-three in a large burh.(69*) Here once more we see the burh co-ordinated with the hundred. A by-motive favours this establishment of markets. Those who traffic in the safety of the king's burh may fairly be asked to pay some toll to the king. They enjoy his peace; perhaps also the use of royal weights and measures, known and trustworthy, is another part of the valuable consideration that they receive. First and last throughout the history of the boroughs toll is a matter of importance.(70*) It gives the king a revenue from the borough, a revenue that he can let to farm. Also, though we do not think that the borough court was in its origin a mere market court, the disputes of the market-place will provide the borough court with plentiful litigation, and in this quarter also the king will find a new source of income. Among the old land-books that which speaks most expressly of the profits of jurisdiction as the subject-matter of a gift is a charter which concerns the town of Worcester. AEthelred and AEthelflaed, the ealdorman and lady of the Mercians, have, at the request of the bishop, built a burh at Worcester, and they declare that of all the rights that appertain to their lordship both in market (on ceapstowe) and in street, within the burh and without, they have given half to God

and St Peter, with the witness of King Alfred and all the wise of Mercia. The lord of the church is to have half of all, be it land-fee, or fiht-wite, stealing, wohceapung (fines for buying or selling contrary to the rules of the market) or borough-wall-scotting.(71*) Quite apart from the rent of houses, there is a revenue to be gained from the borough.

Another rule has helped to define the borough, and this rule also has its root among the regalia. No one, says King AEthelstan, is to coin money except in a port; in Canterbury there may be seven moneyers, four of the king, two of the bishop, one of the abbot; in London-borough eight; in Winchester six; in Lewes two; in Hastings one; in Chichester one; in Hampton two; in Wareham two; in Exeter two; in Shaftesbury two, and in each of the other boroughs one.(72*) Already, then, a burh is an entity known to the law: every burh is to have its moneyer.

We have thus to consider the burh (1) as a stronghold, a place of refuge, a military centre: (2) as a place which has a moot that is a unit in the general, national system of moots: (3) as a place in which a market is held. When in the laws this third feature is to be made prominent, the burh is spoken of as a port, and perhaps from the first there might be a port which was not a burh.(73*) The word port was applied to inland towns. To this usage of it the portmoot or portmanmoot that in after days we may find in boroughs far from the coast bears abiding testimony. On the other hand, except on the seaside, this word has not become a part of many English place names.(74*) If, as seems probable, it is the Latin portus, we apparently learn from the use made of it that at one time the havens (and some of those havens may not have been in England) were the only known spots where there was much buying and selling. But be it remembered that a market-place, a ceap-stow, does not imply a resident population of buyers and sellers; it does not imply the existence of retailers.(75*)

We cannot analyse the borough population; we cannot weigh the commercial element implied by port or the military element implied by burh; but to all seeming the former had been rapidly getting the upper hand during the century which preceded the making of Domesday Book. If we are on the right track, there was a time when the thegns of the shire must have regarded their borough haws rather as a burden than as a source of revenue. They kept those haws because they were bound to keep them. On the other hand, the barons of the Conqueror's day are deriving some income from these houses. Often it is very small. Count Hugh, for example, has just one burgess at Buckingham who pays him twenty-six pence a year.(76*) All too soon, it may be, had the boroughs put off their militancy. Had they retained it, England might never have been conquered. Houses which should have been occupied by 'knights' were occupied by chapmen.

But this is not the whole difficulty. Even if we could closely watch the change which substitutes a merchant or shopkeeper for a 'knight' as the typical burg-man or burgess, we should still have to investigate an agrarian problem. Very likely we ought to think that even on the eve of the Conquest the group of men which dwells within the walls is often a group which by tilling the soil produces a great part of its own food, though some men may be living by handicraft or trade and some may still be supported by those manors to which they 'belong.' In one case the institutions that are characteristic of burh and port may have been superimposed upon those of an ancient village which had common fields. In another an almost uninhabited spot may have been chosen as the site for a stronghold. In the former and, as

we should fancy, the commoner case a large choice is open to the constructive historian, for he may suppose that the selected village was full of serfs or full of free proprietors, that the soil was royal demesne or had various landlords. In one instance he may think that he sees the coalescence of several little communities that were once distinct; in another the gradual occupation of a space marked out by Roman walls. The one strong hint that is given to us by Domesday Book and later documents is that our generalities should be few and that, were this possible, each borough should be separately studied.

As a rule, quite half of the burgesses in any of those county towns that are fully described in the survey are the king's own burgesses, and in some cases his share is very large. This suggests that the land on which the borough stands has been royal land and that the king provided the shire thegns with sites for their haws. For their haws they have sometimes been paying him small rents. On the other hand, at Leicester, though the king has some 40 houses, the great majority belong to Hugh of Grantmesnil. He has about 80 houses which pertain to 17 different manors and which may in the past have been held by many different thegns; but he also holds 110 houses which are not allotted to manors and which have probably come to him as the representative of the earls and ealdormen of an older time.(77*) This looks as if in this case the soil had been not royal but 'comital' land at the time when the place was fortified and when the landowners of the shire, including perhaps the king, were obliged to build houses within the wall. But though we fully admit that each of our boroughs has lived its own life, our evidence seems to point to the conclusion that in those truly ancient boroughs of which we have been speaking, though there might be many inhabitants who held and who cultivated arable land lying without the walls, there were from a remote time other burgesses who were not landowners and were not agriculturists and yet were men of importance in the borough. If we look, for example, at the elaborate account of Colchester we shall first read the names of the king's burgesses. 'Of these 276 burgesses of the king, the majority have one house and a plot of land of from one to twenty-five acres; some possess more than one house and some have none; they had in all 355 houses and held 1296 acres of land'.(78*) But these were not the only burgesses. Various magnates had houses which were annexed to their rural manors. Count Eustace (to name a few) had 12, Geoffrey de Mandeville 2, the Abbot of Westminster 4, the Abbess of Barking 3, and seemingly to these houses no strips in the arable fields were attached.(79*) Thus, though many of the burgesses may till the soil, the borough community is not an agrarian community. We cannot treat it as a village community that has prospered and slowly changed its habits. A new principle has been introduced, an element of heterogeneity. The men who meet each other in court and market, the men who will hereafter farm the court and market, are not the shareholders in an agricultural concern.

That tenurial heterogeneity of which we have been speaking had another important effect. When in later days a rural manor is being raised to the rank of a liber burgus, the introduction of 'burgage tenure' seems to be regarded as the very essence of the enfranchisement.(80*) Probably this feature had appeared in many boroughs at an early date. The lord with lands in Oxfordshire may have been bound to keep a few houses and retainers in Oxford. If, however, the commercial element in the town began to get the better of the military element, if Oxford became a centre of trade, then a house in Oxford could be let for a money rent. In

Domesday Book the barons are drawing rents from their borough houses. If any return is to be made by the occupier to the owner it will take the form of a money rent; it can hardly take another form. Thus tenure at a money rent would become the typical tenure of a burgage tenement. It will be a securely heritable tenure, because the landlord is an absentee and has too few tenants in the town to require the care of a resident reeve. But there may have been many dwellers in some of the boroughs who were bound to help in the cultivation of a stretch of royal or episcopal demesne that lay close to the walls. In the west some of the king's burgesses seem to have been holding under onerous terms. At Shrewsbury, which lies near the border of Wales where every girl's marriage gave rise to an amobyr, a maid had to pay ten, a widow twenty shillings when she took a husband, and a relief of ten shillings was due when a burgess died.(81*) At Hereford the reeve's consent was necessary when a burgage was to be sold, and he took a third of the price. When a burgess died the king got his horse and arms (these Hereford burgesses were fighting men); if he had no horse, then ten shillings 'or his land with the houses.' Anyone who was too poor to do his service might abandon his tenement to the reeve without having to pay for it. Such an entry as this seems to tell us that the services were no trivial return for the tenement.(82*)

On the other hand, we may see at Stamford what seem to be the remains of a very free group of settlers, presumably Danes. The town contains among other houses 77 houses of sokemen 'who hold their lands in demesne and seek lords wherever they please, and over whom the king has nothing but wite and heriot and toll.' These may be the same persons who hold 272 acres of land and pay no rent for it.(83*) At Norwich, again, we seem to hear of a time when the burgesses were free to commend themselves to whomever they would, and were therefore living in houses which were all their own, and for which they paid no rent.(84*) It is very possible that, so far as landlordly rights are concerned, there was as much difference between the eastern and the western towns as there was between the eastern and the western villages. Still if we look at borough after borough, tenure at a money rent is the tenure of the burgage houses that we expect to find, and such a tenure, even if in its origin it has been precarious, is likely to become heritable and secure. As to the shire thegns, they have in some cases paid to the king small rents for their haws; but in others, for example at Oxford, tenure by wall-work has been their tenure, and when in other towns we find them paying rent to the king we may perhaps see commuted wall-work.

Traces are few in Domesday Book of any property that can be regarded as the property of a nascent municipal corporation, and even of any that can be called the joint or common property of the burgesses. In general each burgess holds his house in the town of the king or of some other lord by a several title, and, if he has laod in the neighbouring fields, this also he holds by a several title. 'In the borough of Nottingham there were in King Edward's day 183 burgesses and 19 villani. To this borough belong 6 carucates of land for the king's geld and one meadow and certain small woods... This land was divided between 38 burgesses and [the king] received 75 s. 7d. from the rent of the land and the works of the burgesses.' 'In the borough of Derby there were in King Edward's day 243 resident burgesses.... To this borough belong 12 carucates of land for the geld, but they might be ploughed by 8 teams. This land was divided among 41 burgesses who had 12 teams.(85*) In these cases we see plainly enough that such arable land as is in any way connected with the borough has been

held by but a few out of the total number of the burgesses. Therefore we must deal cautiously with entries that are less explicit. When, for example, in the description of Stamford we read "Lagemanni et burgenses habent cclxxii acras sine omni consuetudine,'(86*) we must not at once decide that there is any ownership by the burgesses as a corporation, or any joint ownership, or even that all the burgesses have strips in these fields, though apparently the burgesses who have strips pay no rent for them. This is the fact and the only fact that the commissioners desire to record. They do not care whether every burgess has a piece, or whether (as was certainly the case elsewhere) only some of them held land outside the walls. When of Norwich we read 'et in burgo tenent burgenses xliii capellas,'(87*) we do not suppose that all the Norwich burghers have chapels, still less that they hold the forty-three chapels as co-owners, still less that these chapels belong to a corporation. We remember that the Latin language has neither a definite nor an indefinite article. Therefore when of 80 acres at Canterbury, which are now held by Ralph de Colombiers, we read 'quas tenebant burgenses in alodia de rege,' we need not suppose that these acres had belonged to the (i.e. to all the) burgesses of Canterbury.(88*) So of Exeter it is written: 'Burgenses Exoniae urbis habent extra civitatem terram xii caruc[arum] quae nullam consuetudinem reddunt nisi ad ipsam civitatem.' This, though another interpretation is possible, may only mean that there are outside the city twelve plough-lands which are held by burgesses whose rents go to make up that sum of £18 which is paid to the king, or rather in part to the sheriff and in part to the queen dowager, as the ferm of the city.(89*) Concerning Colchester there is an entry which perhaps ascribes to the community of burgesses the ownership or the tenancy of fourscore acres of land and of a strip eight perches in width surrounding the town wall; but this entry is exceedingly obscure.(90*) Another dark case occurs at Canterbury. We are told that the burgesses or certain burgesses used to hold land of the king 'in their gild.'(91*) Along with this we must read another passage which states how in the same city the Archbishop has twelve burgesses and thirty-two houses which 'the clerks of the vill hold in their gild.' Apparently in this last case we have a clerical club or fraternity holding land, and the burgher's gild may be of much the same nature, a voluntary association. Not very long after the date of Domesday, for Anselm was still alive, an exchange of lands was made between the convent (hired, familia) of Christ Church and the 'cnihts' of the chapman gild of Canterbury. The transaction takes place between the 'hired' on the one hand, the 'heap' (for such is the word employed) on the other. The witnesses to this transaction are Archbishop Anselm and the 'hired' on the one hand, Calveal the portreeve and 'the eldest men of the heap' on the other.(92*) But to see a municipal corporation in the burghers' gild of Domesday Book would be very rash. We do not know that all the burghers belonged to it or that it had any governmental functions.(93*)

We may of course find that a group of burgesses has 'rights of common;' but rights of common, though they are rights which are to be enjoyed in common, are apt to be common rights in no other sense, for each commoner has a several title to send his beasts on to the pasture. Thus 'all the burgesses of Oxford have pasture in common outside the wall which brings in [to the king] 6s. 8d.'(94*) The soil is the king's; the burgesses pay for the right of grazing it. The roundness of the sum that they pay seems indeed to hint at some arrangement between the king and the

burgesses taken in mass; but probably each burgess, and the lord of each burgess, regard a right of pasture as appurtenant to a burgage tenement. The case is striking, for we have seen how heterogeneous a group these Oxford burgesses were.(95*) No less than nine prelates, to say nothing of earls and barons, had burgesses in the city. We must greatly doubt whether there is any power in any assembly of the burgesses to take from the Bishop of Winchester or the Count of Mortain the customary rights of pasture that have been enjoyed by the tenants of his tenements.

We might perhaps have guessed that the boroughs would be the places of all others in which such communalism as there was in the ancient village community would maintain and develop itself, until in course of time the borough corporation, the ideal borough, would stand out as the owner of lands which lay within and without the wall. But, if we have not been going astray, we may see why this did not happen, at least in what we may call the old national boroughs. The burgensic group was not homogeneous enough. We may suppose that some members of it had inherited arable strips and pasture rights from the original settlers; but others were 'knights' who had been placed in the haws of the shire-thegns, or were merchants and craftsmen who had been attracted by the market, and for them there would be no room in an old agrarian scheme. Indeed it is not improbable that, even as regards rights of pasture, there was more difference between burgess and burgess then there was between villager and villager. In modern times it is not unknown that some of the burgesses will have pasture rights, while others will have none, and in those who are thus favoured we may fancy that we see the successors in title of the king's tenants who turned out their beasts on the king's land.(96*)

We have seen that in the boroughs a group of men is formed whose principle of cohesion is not to be found in land tenure. The definition of a burgess may involve the possession of a house within or hard by the walls; but the burgesses do not coalesce as being the tenants or the men of one lord; and yet coalesce they will. They are united in and by the moot and the market-place, united under the king in whose peace they traffic; and then they are soon united over against the king, who exacts toll from them and has favours to grant them. They aspire to farm their own tolls, to manage their own market and their own court. The king's rights are pecuniary rights; he is entitled to collect numerous small sums. instead of these he may be willing to take a fixed sum every year, or, in other words, to let his rights to farm.

This step seems to have been very generally taken before the Conquest. Already the boroughs were farmed. Now the sums which the king would draw from a borough would be of several different kinds. In the first place, there would be the profits of the market and of the borough court. In the second place, there would be the gafol, the 'haw-gavel' and 'land-gavel' arising from tenements belonging to the king and occupied by burgesses. In the third place, there might be the danegeld; but the danegeld was a tax, an occasional tax, and for the moment we may leave it out of our consideration. Now the profits of the market and court seem to have been farmed. The sums that they bring in to the king are round sums. The farmer seems to have been the sheriff or in some cases the king's portreeve. We can find no case in which it is absolutely clear to our minds that the borough. itself, the communitas burgi, is reckoned to be the king's farmer. Again, the king's gafol, that is his burgage rents, may be farmed: they are computed at a round sum. Thus at Huntingdon ten pounds are paid by way of land-gafol, and we may be fairly certain that the sum

of the rents of the individual burgesses who held their tenements immediately of the king (there were other burgesses who belonged to the Abbot of Ramsey) did not exactly make up this neat sum.(97*) In this case, however, the sum due to the king from his farmer, probably the sheriff, in respect of the land-gafol is expressly distinguished from the sum that he has to pay for the farm of the borough (firma burgi): -- at least in its narrowest sense, the burgus which is farmed is not a mass of lands and houses, it is a market and a court.(98*) But, though we find no case in which the community of the borough is unambiguously treated as the king's farmer, there are cases in which it seems to come before us as the sheriff's farmer. 'The burgesses' of Northampton pay to the sheriff £30 10s. per annum: -- 'this belongs to his farm.'(99*) The sheriff of Northamptonshire is liable to the king for a round sum as the farm of the shire, but 'the burgesses' of Northampton are liable to the sheriff for a round sum. This may mean that for this round sum they are jointly and severally liable, while, on the other hand, they collect the tolls and fines, perhaps also the king's burgage rents, and have an opportunity of making profit by the transaction.

We must not be in haste to expel the sheriff from the boroughs of the shire, or to bring the burgesses into immediate contact with the king's treasury. We must remember that at the beginning of Henry II's reign there is scarcely an exception to the rule that the boroughs of the shire are in the eyes of auditors at the Exchequer simply parts of that county which the sheriff farms. So far as the farm is concerned, the royal treasury knows nothing of any boroughs.(100*) The sheriff of Gloucestershire, for example, accounts for a round sum which is the farm of his county; neither he nor any one else accounts to the king for any farm of the borough of Gloucester. If, as is most probable, the borough is being farmed, it is being farmed by some person or persons to whom, not the king, but the sheriff has let it for a longer or shorter period at a fixed rent. Here, again, we see the likeness between a borough and a hundred. The king lets the shire to farm; the shire includes hundreds and boroughs; the sheriff 'lets the hundreds to farm; the sheriff lets the boroughs to farm.' A few years later a new arrangement is made. The king begins to let the borough of Gloucester to farm. A sum of £50 (blanch) is now deducted from the rent that the sheriff has been paying for his shire, and, on the other hand, Osmund the reeve accounts for £55, which is the rent of the borough. We must not antedate a change which is taking place very gradually in the middle of the twelfth century. Nor must we at once reject the inference that, as the bailiffs to whom the sheriff lets the hundreds are chosen by him, so also the bailiffs or port-reeves to whom he lets the boroughs are or have been chosen by him. It seems very possible that one of the first steps towards independence that a borough takes is that its burgesses induce the sheriff to accept their nominee as his farmer of the town if they in mass will make themselves jointly and severally liable for the rent. These movements take place in the dark and we cannot date them; but to antedate them would be easy.

We also see that the 'geld' that the borough has to pay is a round sum that remains constant from year to year. Cambridge, for example, is assessed at a hundred hides, Bedford at half a hundred.(101*) Now we have good reason to believe that in the open country also, a round sum of geld or (and this is the same thing) a round number of hides had been thrown upon the hundreds, that the sum thrown upon a hundred was then partitioned among the vills, and that the sum thrown upon a vill was partitioned among

the persons who held land in the vill. In the open country, however, when once the partition had-been made, the number of hides that was cast upon the land of any one proprietor seems to have been fixed for good and all.(102*) If we suppose, for example, that a vill had been assessed at ten hides and that five of those units had been assigned to a certain Edward, then Edward or his successors in title would always have to pay for five hides, and would have to pay for no more although the other proprietors in the vill obtained an exemption from the tax or were insolvent. In short, the tax though originally distributed by a partitionary method was not repartitionable. On the other hand, in the boroughs a more communal arrangement seems to have prevailed. In some sense or another, the whole borough, no matter what its fortunes might be, remained answerable for the twenty, fifty or a hundred hides that had been imposed upon it. Such a difference would naturally arise. In the open country the taxational hidation was supposed to represent and did represent, albeit rudely, a state of facts that had once existed. The man who was charged with a hide ought in truth to have had one of those agrarian units that were commonly known as hides. But when a borough was charged with hides, a method of taxation that was adapted to and suggested by rural arrangements was being inappropriately applied to what had become or would soon become an urban district. Thus the gross sum that is cast upon the borough does not split itself once and for all into many small sums each of which takes root in a particular tenement. The whole sum is eligible from the whole borough every time a geld is imposed. It is repartionable.

For all this, however, we must be careful not to see more communalism or more local self-government than really exists. At first sight we may think that we detect a communal or a joint liability of all the burgesses for the whole sum that is due from the borough in any one year. 'The English born' burgesses of Shrewsbury send up a piteous wail.(103*) They still have to pay the whole geld as they paid it in the Confessor's day, although the earl has taken for his castle the sites of fifty-one houses, and other fifty houses are waste, and forty-three French burgesses hold houses which used to pay geld, and the earl has given to the abbey, which he has founded, thirty-nine burgesses who used to pay geld along with the others. But when we examine the matter more closely, we may doubt whether there is here any joint and several (to say nothing of any corporate) liability.
Very various are the modes in which a land-tax or house-tax may be assessed and levied. Suppose a tax of £100 imposed upon a certain district in which there are a hundred houses. Suppose it also to be law that, though some of these houses come to the hands of eleemosynary corporations (which we will imagine to enjoy an immunity from taxation) still the whole £100 must be raised annually from the householders of the district. For all this, we have not as yet decided that any householder will ever be liable, even in the first instance, for more than his own particular share of the £100. A readjustment of taxation there must be. It may take one of many forms. There may be a revaluation of the district, and the £100 may be newly apportioned by some meeting of householders or some government officer. But, again the readjustment may be automatic. Formerly there were 100 houses to pay £100. Now there are 90 houses to pay £100. That each of the 90 must pay ten-ninths of a pound is a conclusion that the rule of three draws for us. In the middle ages an automatic readjustment was all the easier because of the common assumption that the value of lands and houses was known to

everyone and that one virgate in a manor was as good as another, one 'haw' in a borough as good as another.(104*) We do not say that the complaint of the burgesses at Shrewsbury points to no more than an automatic readjustment of taxation which all along has been a taxation of individuals; still the warning is needful that the exaction at regular or irregular intervals of a fixed amount from a district, or from the householders or inhabitants of a district, an amount which remains constant though certain portions of the district obtain immunity from the impost, does not of necessity point to any kind of liability that is not the liability of one single individual for specific sums which he and he only has to pay; nor does it of necessity point to any self-governing or self-assessing assembly of inhabitants.(105*)

Returning, however, to the case of Northampton, it certainly seems to tell us of a composition, not indeed between the burgesses and the king, but between the burgesses and the sheriff. 'The burgesses of Northampton pay to the sheriff £30 10s.' We may believe that 'the burgesses' who pay this sum have a chance of making a profit. If so, 'the burgesses' are already beginning to farm 'the borough.' From this, nevertheless, we must not leap to corporate liability or corporate property. Very likely the sheriff regards every burgess of Northampton as liable to him for the whole £30 10s.; very certainly, as we think, he does not look for payment merely to property which belongs, not to any individual burgess nor to any sum of individual burgesses, but to 'the borough' of Northampton. Nor if the burgesses make profit out of tolls and fines, does it follow that they have a permanent common purse; they may divide the surplus every year,(106*) or we may suspect them of drinking the profits as soon as they are made.

Entries which describe the limits that are set to the duty of military or of naval service may seem more eloquent. Thus of Dover we are told that the burgesses used to supply twenty ships for fifteen days in the year with twenty-one men in each ship, and that they did this because the king had released to them his sake and soke.(107*) Here we seem to read of a definite transaction between the king of the one part and the borough of the other part, and one which implies a good deal of governmental organization in the borough. We would say nothing to lessen the just force of such a passage, which does not stand alone;(108*) but still there need be but little more organization in the borough of Dover than there is in Berkshire. It was the custom of that county that, when the king summoned his host, only one soldier went from every five hides, while each hide provided him with four shillings for his equipment and wages.(109*) We may guess that in a county such a scheme very rapidly 'realized' itself and took root in the soil, that in a borough there was less 'realism,' that there were more frequent readjustments of the burden; but the difference is a difference of degree.

Of anything that could be called the constitution of the boroughs, next to nothing can we learn. We may take it that in most cases the king's farmer was the sheriff of the shire; in some few cases, as for example at Hereford, the reeve of the borough may have been directly accountable to the king.(110*) We know no proof that in any case the reeve was an elected officer. Probably in each borough a court was held which was a court for the borough; probably it was, at least as a general rule, co-ordinate with a hundred court, and indeed at starting the borough seems to be regarded as a vill which is also a hundred.(111*) The action of this court, however, like the action of other hundred courts, must as time went on have been hampered

by the growth of seignorial justice. The sake and soke which a lord might have over his men and over his lands were certainly not excluded by the borough walls. He had sometimes been expressly told that he might enjoy these rights 'within borough and without borough.' It is difficult for us to realize the exact meaning that 'sake and soke' would bear when ascribed to a prelate or thegn who had but two or three houses within the town. Perhaps in such cases the town houses were for jurisdictional purposes deemed to be situate within some rural manor of their lord. But in a borough a lord might have a compact group of tenants quite large enough to form a petty court. In such a case the borough court would have the seignorial courts as rivals, and many a dispute would there be. At Lincoln one Tochi had a hall which undoubtedly was free 'from all custom'; but he had also thirty houses over which the king bad toll and forfeiture. So the burgesses swore; but a certain priest was ready to prove by ordeal that they swore falsely.(112*) In these cases the lord's territory would appear in later times as a little 'liberty' lying within the borough walls. The middle ages were far spent before such liberties had become more petty nuisances.(113*) In the old cathedral towns, such as Canterbury and Winchester, the bishop's jurisdictional powers and immunities were serious affairs, for the bishop's tenants were numerous.(114*) Nevertheless, in the great and ancient boroughs, the boroughs which stand out as types and models, there was from a very remote time a court, a borough-moot or portman-moot, which was not seignorial, a court which was a unit in a national system of courts.

Of the form that the borough court took we can say little. Perhaps at first it would be an assembly of all the free burgmen or port-men. As its business increased in the large boroughs, as it began to sit once a week instead of thrice a year, a set of persons bound to serve as doomsmen may have been formed, a set of aldermen or lawmen whose offices might or might not be hereditary, might or might not 'run with' the possession of certain specific tenements. A 'husting' might be formed, that is, a house-thing as distinct from a 'thing' or court held in the open air. Law required that there should be standing witnesses in a borough, before whom bargains and sales should take place. Such a demand might hasten the formation of a small body of doomsmen. In Cambridge there were lawmen of thegnly rank;(115*) in Lincoln there were twelve lawmen;(116*) in Stamford there had been twelve, though at the date of Domesday Book there were but nine;(117*) we read of four iudices in York,(118*) and of twelve iudices in Chester.(119*) So late as 1275 the twelve lawmen of Stamford lived on in the persons of their heirs or successors. There are, said a jury, twelve men in Stamford who are called lawmen because their ancestors were in old time the judges of the laws (iudices legum) in the said town; they hold of the king in chief; by what service we do not know. but you can find out from Domesday Book.(120*) Over the bodies of these, presumably, Danish, lawmen there has been much disputation. We know that taken individually the lawmen of Lincoln were holders of heritable franchises, of sake and soke. We know that among the twelve iudices of Chester were men of the king, men of the earl, men of the bishop; they had to attend the 'hundred', that is, we take it, the borough court. We know no more; but it seems likely that we have to deal with persons who collectively form a group of doomsmen, while individually each of them is a great man, of thegnly rank, with sake and soke over his men and his lands; his office passes to his heir.(121*) On the whole, however, we must doubt whether the generality of English boroughs had arrived at

even this somewhat rudimentary stage of organization. In 1200 the men of Ipswich, having received a charter from King John, decided that there should be in their borough twelve chief portmen, 'as there were in the other free boroughs in England,' who should have full power to govern and maintain the town and to render the judgments of its court.(122*) Now Ipswich has a right to be placed in the class of ancient boroughs, of county towns, and yet to all appearance it had no definite class of chief men or doomsmen until the year 1200. Still we ought not to infer from this that the town moot had been in practice a democratic institution. There may be a great deal of oligarchy, and oligarchy of an oppressive kind, though the ruling class has never been defined by law. Domesday Book allows us to see in various towns a large number of poor folk who cannot pay taxes or can only pay a poll tax. We must be chary of conceding to this crowd any share in the dooms of the court.(123*)

But what concerns the government of the boroughs has for the time been sufficiently said by others. In our few last words we will return to our first theme, the difference between the borough and the mere township.

We have seen that in Domesday Book a prominent position is conceded to certain towns. They are not brought under any rubric which would place them upon the king's or any other person's land. It must now be confessed that there are some other towns that are not thus treated and that none the less are called boroughs. If, however, we remember that burgesses often are in law where they are not in fact, the list that we shall make of these boroughs will not be long. Still such boroughs exist and a few words should be said about them. They seem to fall into two classes, for they are described as being on the king's land or on the land of some noble or prelate. Of the latter class we will speak first. It does not contain many members and in some cases we can be certain that in the Confessor's day the borough in question had no other lord than the king. Totness is a case in point. It now falls under the title Terra Judhel de Tottenais; but we are told that King Edward held it in demesne.(124*) In Sussex we see that Steyning, Pevensey and Lewes are called burgi,(125*) Steyning is placed on the land of the Abbot of Fécamp, Pevensey on that of the Count of Mortain and Lewes on that of William of Warenne; but at Lewes there have been many haws appurtenant to the rural manors of the shire thegns.(126*) In Kent the borough of Hythe seems to be completely under the archbishop.(127*) He has burgesses at Romney over whom he has justiciary rights, but they serve the king.(128*) The 'little borough called Fordwich' belonged to the Abbot of St Augustin. But of this we know the history. The Confessor gave him the royal two-thirds, while the bishop of Bayeux as the successor of Earl Godwin gave him the comital one-third.(129*) Further north, Louth in Lincolnshire and Newark in Nottinghamshire seem to be accounted boroughs; they both belong to the bishop of Lincoln; but in the case of Newark (which was probably an old burh) we may doubt whether his title is very ancient.(130*) We are told that at Tattershall, the Pontefract of later days,(131*) there are sixty 'minute burgesses,' that is, we take it, burgesses in a small way. Ilbert de Lacy is now their lord; but here again we may suspect a recent act of mediatization.(132*) Grantham in Lincolnshire is placed on the Terra Regis; it had belonged to Queen Edith; there were, however, seventy-seven tofts in it which belonged to 'the sokemen of the thegns,' that is, to the sokemen of the thegns of the shire.(133*) Then in Suffolk we see that Ipswich is described at the end of the section which deals with

the royal estates; a similar place is found for Norwich, Yarmouth and Thetford in the survey of Norfolk.(134*) But for Dunwich we must look elsewhere. There were burgesses at Dunwich; but to all seeming the royal rights over the town had passed into the hands of Eadric of Laxfield.(135*) The successor of the same Eadric has burgesses among his tenants at Eye.(136*) There are burgesses at Clare, though Clare belongs altogether to the progenitor of the lordly race which will take its name from this little town.(137*) But at least in this last case, the burgesses may be new-comers, or rather perhaps we may see that an old idea is giving way to a newer idea of a borough, and that if men engaged in trade or handicraft settle round a market-place and pay money-rents to a lord they will be called burgesses, though the town is no national fortress. At Berkhampstead 52 burgesses are collected in a burbium, but they may be as new as the two arpents of vineyard.(138*) We must not say dogmatically that never in the days before the Conquest had a village become a borough while it had for its one and only landlord some person other than the king, some bishop, or some thegn. This may have happened at Taunton. In 1086, there were burgesses at Taunton and it enjoyed 'burh-riht,' and yet from a very remote time it had belonged to the bishops of Winchester. But the cases in which we may suppose that a village in private hands became a burgus and that this change took place before the Norman invasion seem to be extremely few. In these few the cause of the change may have been that the king by way of special favour imposed his burhgrid upon the town and thereby augmented the revenue of its lord.(139*)

As to the boroughs that are regarded as standing on the king's land, these also seem to be few and for the more part they are small. There are burgesses at Maldon;(140*) but Maldon is not placed by the side of Colchester;(141*) it is described among, but Bristol the royal estates. There are burgesses at Bristol;(142*) is not placed beside Gloucester and Winchcombe. Perhaps we should have heard more of it, if it had not, like Tamworth, stood on the border of two counties. In the south-west the king's officials seem to be grappling with difficulties as best they may. In Dorset they place Dorchester, Bridport, Wareham and Shaftesbury above the rubric Terra Regis,(143*) and we cannot find that they reckon any other place as a borough. In Devonshire we see Exeter above the line; Lidford and Barnstaple, however, are called boroughs though they are assigned to the king's land, and (as already said) Totness is a borough, though it is mediatized and is described among the estates of its Breton lord.(144*) No borough in Somerset is placed above the line, though we learn that the king has 107 burgesses in Ilchester who pay him 20 shillings,(145*) and that he and others have burgesses at Bath.(146*) Perhaps the space that stands vacant before the list of the tenants in chief should have been filled with some words about these two towns. Axbridge, Langport and Milborne seem to be boroughs; Axbridge and Langport occur in that list of ancient fortresses which we have called The Burghal Hidage.(147*) Wells was an episcopal, Somerton a royal manor; we have no reason for calling either of them a borough. In Hampshire another of the ancient fortresses, Twyneham (the modern Christ Church) is still called burgus, but seems to be finding its level among the royal manors.(148*) In Wiltshire Malmesbury and Marlborough are placed above the line. We learn that the king receives £50 from the burgus of Wilton,(149*) and we also learn incidentally that various lords have burgesses in that town; for example, the bishop of Salisbury has burgesses in Wilton who belong to his manor of Salisbury.(150*) Old Salisbury ('old Sarum' as we

foolishly call it) seems to be a mere manor belonging to the bishop; but the king receives its third penny. He receives also the third penny of Cricklade, which we have named before now as one of the old Wessex strongholds, and several of the county magnates had burgesses there. On the other hand Calne, Bedwind and Warminster are reckoned to be manors on the king's land. Burgesses belong to them; but whether those burgesses are really resident in them may not be quite certain.(151*) Devizes we cannot find. That puzzles should occur in this quarter is what our general theory might lead us to expect. In the old home of the West-Saxon kings there may well have been towns which had long ago secured the name and the peace of royal burgs, though they manifested none of that tenurial heterogeneity which is the common mark of a borough. A town, a village, which not only belonged to the king but contained a palace or house in which he often dwelt, would enjoy his special peace, and might maintain its burghal dignity long after there was little, if any, real difference between it and other manors or villages of which the king was the immediate landlord. Already in 1086 there may have been 'rotten boroughs,' boroughs that were rotten before they were ripe.(152*)

A borough belongs to the genus villa (tún). In age after age our task is to discover its differentia, and the task is hard because, as age succeeds age, changes in law and changes in fact are making the old distinctions obsolete while others are becoming important. Let us observe, then, that already when Domesday Book was in the making those ancient attributes of which we have been speaking were disappearing or were fated soon to disappear. We have thought of the typical borough as a fortified town maintained by a district for military purposes. But already the shire thegns have been letting their haws at a rent and probably have been letting them to craftsmen and traders. Also the time has come for knight-service and castles and castle-guard. We have thought of the typical borough as the sphere of a special peace. But the day is at hand when a revolution in the criminal law will destroy the old system of wer and wíte and bót, and the king's peace will reign always and everywhere.(153*) We have thought of the typical borough as a town which has a court. But the day is at hand when almost every village will have its court, its manorial court. New contrasts, however, are emerging as the old contrasts fade away. Against a background of villeinage and week-work, the borough begins to stand out as the scene or burgage tenure. The service by which the burgess holds his tenement is a money rent. This may lead to a large increase in the number of boroughs. If a lord enfranchises a manor, abolishes villein customs, takes money rents, allows his tenants to farm the court and perhaps also to farm a market that he has acquired from the king, he will be said to create a liber burgus.(154*) Merchant gilds, elected bailiffs, elected mayors and common seals will appear and will complicate the question. There will follow a time of uncertainty and confusion when the sheriffs will decide as suits them best which of the smaller towns are boroughs and which are not.

If the theory that we have been suggesting is true, all or very nearly all our ancient boroughs (and we will draw the line of ancientry at the Conquest) are in their inception royal boroughs. The group of burgesses when taken as a whole had no superior other than the king. His was the peace that prevailed in the streets; the profits of the court and of the market were his, though they were farmed by a reeve. Rarely, however, was he the landlord of all the burgesses. In general not a few of them lived

in houses that belonged to the thegns of the shire. We must be careful therefore before we speak of these towns as 'boroughs on the royal demesne.' For the more part, the compilers of Domesday Book have refused to place them on the Terra Regis. In course of time some of them will be currently spoken of as boroughs on or of the royal demesne. The rights of those who represent the thegns of the shire will have become mere rights to rent, and, their origin being forgotten, they will even be treated as mere rent-charges.(155*) The great majority of the burgesses will in many instances be the king's immediate tenants and he will be the only lord of that incorporeal thing, 'the borough,' the only man who can grant it a charter or let it to farm. But we must distinguish between these towns and those which at the Conquest were manors on the king's land. These latter, if he enfranchises them, will be boroughs on the royal demesne in an exacter sense. So, again, we must distinguish between those ancient boroughs which the king has mediatized and those manors of mesne lords which are raised to the rank of boroughs. We have seen that from the ancient borough the king received a revenue of tolls and fines. Therefore he had something to give away. He could mediatize the borough. Domesday Book shows us that this had already been done in a few instances.(156*) At a later time some even of the county towns passed out of the king's hands into the hands of earls. This happened at Leicester and at Warwick. The earl succeeded to the king's rights, and the burgesses had to go to the earl for their liberties and their charters. But such cases are very distinct from those in which a mesne lord grants an enfranchising charter to the men of a place which has hitherto been one of his manors, and by speaking of boroughs which are 'on the land of mesne lords' we must not confuse two classes of towns which have long had different histories. In the ancient boroughs there is from the first an element that we must call both artificial and national. The borough does not grow up spontaneously; it is made; it is 'wrought'; it is 'timbered.' It has a national purpose; it is maintained 'at the cost of the nation' by the duty that the shire owes to it. This trait may soon have disappeared, may soon have been forgotten, but a great work had been done. In these nationally supported and heterogeneously peopled towns a new kind of community might wax and thrive.

NOTES:

1. A sketch of the principal argument of this section was published in Eng. Hist. Rev., xi. 13, as a review of Keutgen's Untersuchungen über den Ursprung der deutschen Stadtverfassung. The origin of the French and German towns bas become the theme of a large and very interesting literature. A good introduction to this will be found in an article by M. Pirenne, L'origine des constitutions urbaines, Revue historique, liii. 52, lvii. 293, and an article by Mr Ashley, Quarterly Journal of Economics, vol. x. July, 1896. The continuous survival of Roman municipal institutions even in Gaul seems to be denied by almost all modern students.

2. Hist. Eng. Law, i. 625.

3. Stubbs, Const. Hist. iii. 448.

4. We must exclude cases in which the king takes an aid from his

whole demesne, e.g. for his daughter's marriage, for in such a case many royal manors which have no right to be called boroughs must make a gift.

5. Round, Geoffrey de Mandeville, 347, has excellent remarks on this point.

6. Nearly.

7. This may come only from the Staffordshire part of Tamworth.

8. Chichester pays in later years; but very little.

9. Pipe Roll, 31 Hen. I. p. 139.

10. Was the blank space in D. B. i. 246 left for the borough of Tamworth? This borough is incidentally mentioned in D. B. i. 238, 246, 246 b.

11. But the account of the two sister boroughs here falls between the accounts of the two sister counties.

12. D. B. i. 337. It is even called a suburbium of Lincoln, though it lies full 10 miles from the city.

13. The one glimpse that I have had of the manuscript suggested to me (1) that the accounts of some of the boroughs were postscripts, and (2) that space was left for accounts of London and Winchester. The anatomy of the book deserves examination by an expert.

14. D. B. i. 154.

15. D. B. i. 56.

16. D. B. i. 58.

17. D. B. i. 238.

18. D. B. i. 143.

19. Ellis, Introduction, ii. 446; Winchcombe Land-boc, ed. Royce, p. xiv; Stevenson, Rental of Gloucester, p. ix.

20. D. B. i. 128, 128 b; and above, p. 144.

21. K. 855 (iv. 211).

22. Stow, Survey, ed. Strype, Bk. iii. p. 121.

23. D. B. i. 135 b.

24. Hist. Eng. Law, i. 636.

25. Rot. Hund. ii. 361.

26. D. B. i. 189.

27. Rental of Gloucester, ed. W. H. Stevenson: Gloucester, 1890, p. x.

28. There are many examples in Kemble's Codex.

29. Pipe Roll, 31 Hen. I. p. 41: 'Vicecomes reddit compotum de £80 de auxilio civitatis.... Et in perdonis.... Comiti de Mellent 25 sol.... Comiti de Lerecestria 35 sol.... Comiti de Warenna 16 sol.... Comiti. Gloecestriae 116 sol. et 8 den. See also the Liber Wintoniae, D. B. iv. 531 ff.

30. In the A.-S. land-books the word civitas is commonly applied to Worcester, Winchester, Canterbury, and other such places, which are both bishops' sees and the head places of large districts. But (K. v. p. 180) Gloucester is a civitas, and for some time after the Conquest it is rather the county town than the cathedral town that bears this title. Did anyone ever speak of Selsey or Sherborne as a civitas? In 803 (K. v. p. 65) the bishops of Canterbury, Lichfield, Leicester, Sidnacester, Worcester, Winchester, Dunwich, London and Rochester style themselves bishops of civitates, while those of Hereford, Sherborne, Elmham and Selsey do not use this word. But an inference from this would be rash.

31. An interesting example is this. In 779 Offa conveys to a thegn land at Sulmonnesburg. The boundaries mentioned in the charter are those of the present of Bourton-on-the-Water. 'Sulmonnesburg... is the ancient camp parish close to Bourton which gave its name to the Domesday Hundred of Salmanesberie, and at a gap in the rampart of which a Court Leet was held till recently.' See C. S. Taylor, Pre-Domesday Hide of Gloucestershire, Trans. Bristol and Gloucestershire Archaeol. Soc. vol. xviii. pt. 2. As regards the nanmes of hills and of villages named from hills there may occasionally be some difficulty in marking off those which go back to beorh (berry, berrow, barrow) from those which go back to burh (burgh, borough, bury). Mr. Stevenson tells me that in the West of England the termination -borough sometimes represents -beorh.

32. Alfred, 40; Ine, 45.

33. Aethelr. iv. 4. The Quadripartitus is our only authority for these Instituta; but Dr. Liebermann (Quadrip. p. 138) holds that the translator had in front of him a document written before the Conquest. Schmid would read borh-bryce: see p. 541; but this emendation seems needless. Has Ilot the sum been Normanized? The king's burh-bryce used to be 120 (i.e. in English 'a hundred') shillings, and a hundred Norman shillings make £5. So according to the Berkshire custom (D. B. i. 56 b) he who by night breaks a civitas pays 100 shillings to the king and not (it is noted) to the sheriff.

34. D. B. i. 2: 'Concordatum est de rectis callibus quae habent per civitatem introitum et exitum, quicunque in illis forisfecerit, regi emendabit.' See the important document contained in a St. Augustin's Cartulary and printed in Larking, Domesday of Kent, Appendix, 35: 'Et omnes vie civitatis que habent duas portas, hoc est introitum et exitum, ille sunt de consuetudine Regis.'

35. Schmid, App. XII; Leg. Henr. c. l6.

36. Fleta, p. 66; see also 13 Ric. II. stat. I. cap. 3.

37. Edmund, II, 2.

38. See also Schmid, App. IV gride and be munde), section 15; 'If any man fights or steals in the king's burh or the neighbourhood (the 'verge'), he forfeits his life, if the king will not concede that he be redeemed by a wergild.'

39. AEthelstan, II. 20.

40. K. 1334 (vi. p. 195): a contract made at Exeter before Earl Godwin and all the shire.

41. Edgar, III. 5; Cnut, II. l8.

42. Mention is made of the walls of Rochester and Canterbury in various charters from the middle of cent. viii onwards: K. vol. i. pp. 138, 183, 274; vol. ii. pp. I, 26, 36, 57, 86; vol. v. p. 68.

43. Green, Conquest of England, 189-207.

44. For instance, K. iii. pp. 5, 50.

45. K. I 154 (v. 302): 'adiacent etiam agri quamplurimi circa castellum quod Welingaford vocitatur.' K. 152 (i. 183): 'castelli quod nominatur Hrofescester.' -- K. 276 (ii. 57): 'castelli Hrobi.'

46. A beautiful example is given by Staffordshire and Warwickshire. Each has its borough in its centre, while Tamworth on the border is partly in the one shire, partly in the other. See Pipe Roll, 31 Hen. I. 75, 76, 107, 108. As to these Mercian shires, see Stubbs, Const. Hist., i. 123; Green, Conquest of England, 237: 'Hertfordshire, Buckinghamshire and Bedfordshire are other instances of purely military creation, districts assigned to the fortresses which Eadward raised at these points.'

47. See our index under Burghal Hidage. Mr W. H. Stevenson's valuable aid in the identification of these burgs is gratefully acknowledged.

48. D. B. i. 154.

49. D. B. i. 262 b.

50. It will be understood that we are not contending for an exact correspondence between civil and military geography. Oxford and Wallingford are border towns. Berkshire men help to Oxford, and Oxfordshire men help to maintain Wallinford.

51. Widukind, 1. 35. For comments see Waitz, Heinrich V. 95 ; Richter, Annalen, iii. 8; Giesebrecht, Kaiserzeit (ed. 5), i. 222, 811; Keutgen, Ursprung der deutschen Stadtverfassung, p. 44. Giesebrecht holds that Edward's measures may well have been Henry's model.

52. A.-S. Chron. ann. 894.

53. A charter of 899 (K. v. p. 141) professes to tell how King Alfred, Abp Plegmund and AEthelred ealdorman of the Mercians held a moot 'de instauratione urbis Londoniae.' One result of this

moot was that two plots of land inside the walls, with hythes outside the walls, were given by the king, the one to the church of Canterbury,the other to the church of Worcester. How will the instauratio of London be secured by such grants?

54. K. 1144 (v. 280). Other cases: K. 663 (Chichester), 673 (Winchester), 705 (Warwick), 724 (Warwick), 746 (Oxford), 1235 (Winchester).

55. K. 765-6, 805.

56. Schmid, App. V This might mean a seat (of justice) in the gate of his own burh. But this dOcument will hardly be older than, if so old as, cent. x., by which time we should suppose that burh more often pointed to a borough than to a strong house. We may guess that in the latter sense it was supplanted by the hall of which we read a great deal in Domesday. See above, p. 109. However, it does not seem certain that O. E. geat can mean street.

57. A.-S. Chron. ann. 994.

58. Thorpe, Diplomatarium, 610. When the Confessor sends a writ to London he addresses it to the bishop, portreeve and burh-thegns. See K. iv. pp. 856, 857, 861, 872.

59. Gross, Gild Merchant, i. 183, 189.

60. Gross, op. cit. ii. 37.

61. Hist. Eng. Law, i. 257.

62. A.-S. Chron. ann. 1097: 'Eac manege sciran þe mid weorce to Lundenne belumpon...' Thorpe thought good to substitute scipan for sciran.

63. D. B. i. 298. Outside York were some lands which gelded with the city; 'et in tribus operibus Regis cum civibus erant.' This refers to the trinoda necessitas.

64. Sohm, Die Entstehung des deutschen Städtewesens: Leipzig,. 1890.

65. Ellis, Introduction , i. 248-253.

66. D. B. i. 56 b.

67. D. B. i. 1. Black Book of the Admiralty, ii. 158: 'the herring season, that is fronm St. Michael's Day to St. Clement's (Nov. 23).' St. Andrew's Day is Dec. 1.

68. Edward, I. 1; AEthelstan, II. 12, 13; IV. 2; VI. 10; Edmund, III. 5; Edgar, IV. 7-11 ; Leg. Will. I. 45; Leg. Will. III. 10. See Schmid, Glossar. s. v. Marktrecht.

69. Edgar, IV. 3-6. We should expect rather 36 than 33, and xxxvi might easily become xxxiii.

70. 3. K. 280 (ii. 63), 316 (ii. 118).

71. Kemble, Cod. Dip. 1075 (v. 142); Kemble, Saxons, ii. 328;

Thorpe, 136: 'ge landfeoh, ge fihtwite, ge stale, go wohceapung, ge burhwealles sceatinge.' In D. B. i. 173 it is said that the Bishop of Worcester had received received the third penny of the borough. Apparently in the Confessor's day he received £6, the third of a sum of £18. As to the early history of markets, see the paper contributed by Mr C. I. Elton to the Report of the Royal Commission on Market Rights, 1889.

72. AEthelstan, II. 14.

73. The general equivalence of port and burh we may perhaps infer from AEthelstan, II. 14: No one is to coin money outside a port, and there is to be a moneyer in every burh.

74. Stockport, Langport, Amport, Newport-Pagnell, Milborne Port, Littleport are instances. But a very small river might be sufficient to make a place a haven.

75. Seemingly if this O.-E. port is not Lat. portus, it is Lat. porta, and there is some fascination suggestion that the burh-geat, or in modern German the Burg-gasse, in which the market is held, was described in Latin as porta burgi. In A.D. 762 (K. i. p. 133) we have a house 'quae iam posita est.' ad Quenegatum urbis Dorouernis in foro posita est.' In A.D. 845 (K. ii. p. 26) we find a 'publica strata' in Canterbury 'ubi appellatur Weoweraget,' that is, the gate of the men of Wye. But what we have to account for is the adoption of port as an English word, and if our ancestors might have used geat, they need not have borrowed. In A.D. 857 (K. ii. p. 63) the king bestows on the church of Worcester certain liberties at a spot in the town of London, 'hoc est, quod habeat intus liberaliter modium et pondera et mensura sicut in porto mos est ad fruendum.' To have public weight and measures is characteristic of a portus (= haven). The word may have spread outwards from London. Dr Stubbs (Const. Hist. i. 439) gives a weighty vote for porta; but the continental usage deserves attention. Pirenne, Revue historique, lvii. 75: 'Toutes les villes anciennes [en Flandre] s'y forment au bord des eaux et portent le nom caractéristique de portus, c'est-à-dire de débarcadères. C'est de ce mot portus que vient le mot flamand poorter, qui désigne le bourgeois.' See D. B. i, 181 b: 'in Hereford Port.'

76. D. B. i. 143,

77. D. B. i. 230.

78. Cutts, Colchester, 65; Round in The Antiquary, vol. vi (1882), p. 5.

79. D. B. ii. 106-7. See Round, op. cit., p. 25 2.

80. Hist. Eng. Law, i. 629.

81. D. B. i. 252.

82. D. B. i. 179. So at Chester (i. 262 b) it is considered possible that the heir will not be able to pay the relief of ten shillings and will forfeit the tenement.

83. D. B. i. 336.

84. D. B. ii. 116. See also the case of Thetford (D. B. ii, 119), where there had been numerous burgesses who could choose their lords.

85. D. B. i. 280.

86. D. B. i. 336 b.

87. D. B. ii. 117.

88. D. B. i. 2. In 923 (K. v. p. 186) we hear of land outside Canterbury alled Burhuuare bocaceras, apparently acres booked to [certain] burgesses.

89. D. B. i. 100.

90. D. B. ii. 107: 'In commune burgensum iiii. xx. acrae terrae; et circa murum viii percae; de quo toto per annum habent burgenses lx. sol. ad servicium regis si opus fuerit, sin autem, in commune dividunt.' As to this most difficult passage, see Round, Antiquary, vol. vi. (1882) p. 97. Perhaps the most natural interpretation of it is that the community or commune of the burgesses holds this land and receives by way of rent from tenants, to whom it is let, the sum of 60 shillings a year, which, if this be necessary, goes to make up what the borough has to pay to the king, or otherwise is divisible among the burgesses. But, as Mr Round rightly remarks, 60 shillings for this land would be a large rent.

91. D. B. i. 2: 'Ipsi quoque burgenses habebant de rege 33 acras terrae in gildam suam.' Another version says, "33 agros terre quos burgenses semper habuerunt in gilda eorum de donis omnium regum.' The document here cited is preserved in a cartulary of St. Augustin, and is printed in Larking, Domesday of Kent, App. 35. It is closely connected with the Domesday Survey and is of the highest interest.

92. Gross, Gild Merchant, ii. 37.

93. We do not even know for certain that when our record says that the burgesses and the clerks held land 'in gildanm suam,' more was meant than that the land was part of their geldable property. See Gross, Gild Merchant, i. 189. In the Exon Domesday the geld is giidum.

94. D. B. i. 154.

95. See above, p. 179.

96. In modern York the freemen inhabiting the different wards had rights of pasture varying fronm ward to ward: Appendix to Report of Municipal Corporations' Commissioners, 1835, p. 1745. York is one of the towns in which we may perhaps suppose that there has been a gradual union of several communities which were at one time agrarianly distinct. See D. B. i. 298. Dr Stubbs seems to regard this as a common case and speaks of 'the townships which made up the burh' (Const. Hist. i. 101). We cannot think that the evidence usually points in this direction, and have grave doubts as to the existence within the walls of various communities that were called townships. Within borough walls we must not leap from parish to township.

97. D. B. i. 203. As to the whole of this matter see Mr Round's paper on Domesday Finance in Domesday Studies. vol. i.

98. Hist. Eng. Law, i. 635.

99. D. B. i. 2l9.

100. The case of London is anomalous; but not so anomalous as it is often supposed to be. On this point see Round, Geoffrey de Mandeville, 347 ff. On the Pipe Roll of 2 Hen. II (pp. 24, 28) the citizens of Lincoln are accounting for a farm of £180, while the sheriff in consequence of this arrangement is credited with £140 (blanch) when he accounts for the farm of the shire. This is as yet a rare phenomenon.

101. As to the round sums cast on the boroughs, see Round in Domesday Studies, i. 117 ff.; also Round, Feudal England, 156.

102. This may not have been the case in East Anglia.

103. D. B. i. 252.

104. D. B. i. 298. Of York we read: 'In the geld of the city are 84 carucates of land, each of which gelds as much as one house in the city.' This seems to point to an automatic adjustment. To find out how much geld any house pays, divide the total sum that is thrown upon York by the number of houses + 84.

105. Mr Round (Domesday Studies, i. 129) who has done more than anyone else for the elucidation of the finance of Domesday, has spoken of 'the great Anglo-Saxon principle of collective liability.' This may be a useful term, provided that we distinguish (a) liability of a corporation for the whole tax whenever it is levied; (b) joint and several liability of all the burgesses for the whole tax whenever it is levied; (c) liability of each burgess for a share of the whole tax, the amount that he must pay in any year being affected by an increase or decrease in the number of contributories.

106. See the entry touching Colchester, above, p. 244, note 2.

107. D. B. i. 1.

108. D. B. i. 238. The custom of Warwick was that when the king made an expedition by land ten burgesses of Warwick should go for all the rest. He who did not go when summoned [summoned by whom?] paid 100 shillings to the king; [so his offence was against the king not against the town.] And if the king went against his enemies by sea, they sent him four boat-swains or four pounds in money.

109. D. B. i. 56 b.

110. D. B. i. 179.

111. At Chester (D. B. i. 262 b) the twelve civic iudices paid a fine if they were absent without excuse from the 'hundret.' This seems to mean that their court was called a hundred moot. It is very possible that, at least in the earliest time, the moot that was held in the borough had jurisdiction over a territory

considerably larger than the walled space, and 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.

112. D. B. i. 336.

113. Hist. Eng. Law, i. 631.

114. Green, Town Life, vol. i. ch. xi.

115. D. B. i. 189.

116. D. B. i. 336 b.

117. D. B. i. 336 b.

118. D. B. i. 298.

119. D. B. i. 262 b.

120. R. H. i. 354-6.

121. Besides the well known English books, see a paper by Konrad Maurer, Sitzungsberichte der Akademie der Wissenschaften zu München, Philosoph.-philolog. Classe, 1887, vol. ii. p. 363. In the Leges Edw. Conf. 38 section 2, the 'lagemanni et meliores homines de burgo' seem to serve as inquest men, rather than doomsmen; while the lahmen of the document concerning the Dunsetan (Schmid, App. I.) seen to be doomsmen.

122. Gross, Gild Merchant, ii. 114 ff.; Hist. Eng. Law, i. 642.

123. D. B. ii. 290, Ipswich: 'Modo vero sunt 110 burgenses qui consuetudinem reddunt et 100 pauperes burgenses qui non possunt reddere ad geltum Regis nisi unum denarium de suis capitibus.' D. B. ii. 116, Norwich: 'Modo sunt in burgo 665 burgenses anglici et consuetudines reddunt, et 480 bordarii qui propter pauperiem nullam reddunt consuetudinem.'

124. D. B. i. 108 b.

125. Whether the novum burgum mentioned in D. B. i. 17 is Winchelsea or Rye or a new town at Hastings seems to be disputable. See Round, Feudal England, 568.

126. D. B. i. 26 b, 27.

127. D. B. i. 4 b.

128. D. B. i. 4 b. See also, 10 b.

129. D. B. i. 12.

130. D. B. i. 345, 283 b. It has been said that Leofric gave Newark to the see.

131. Dodsworth's Yorkshire Notes, ed. R. Holmes (reprinted from Yorkshire Archaeological Journal), p. 126.

132. D. B. i. 316 b. The estate is ingeldable and therefore looks

like an ancient possession of the king.

133. D. B. 337 b: 'Toftes sochemanorum teignorum.' Some commentators have seen here 'sokemen thegns'; but the other interpretation seems far more probable.

134. Had these towns been described in Great Domesday, they would probably have been definitely placed outside the Terra Regis.

135. D. B. ii. 311, 312, 385.

136. D. B. ii. 319 b.

137. D. B. ii. 389 b: 'semper unum mercatum modo 43 burgenses.' For Sudbury, see D. B. ii. 286; for Beccles, 369 b.

138. D. B. i. 136 b: 'In burbio huius villae 52 burgenses.' The word burbium looks as if some one had argued that as suburbium means an annex to a town, therefore burbium must mean a town. But the influence of burh, burg, bourg may be suspected. A few pages back (132) the burgum of Hertford seems to be spoken of as as 'hoc suburbium'. It is of course to be remembered that burgus or burgum was a word with which the Normans were familiar: it was becoming the French bourg. It is difficult to unravel any distinctively French thread in the institutional history of our boroughs during the Norman age; but the little knot of traders clustered outside a lord's castle at Clare or Berkhampstead, at Tutbury, Wigmore or Rhuddlan, may have for its type rather a French bourg than an English burh. Indeed at Rhuddlan (i. 269) the burgesses have received the law of Breteuil.

139. For Taunton, see D. B. i. 87 b: 'Istae consuetudines pertinent ad Tantone: burgeristh, latrones, pacis infractio, hainfare, denarii de hundred, denarii S. Petri, ciricieti.' Compare the document which stands as K. 897 (iv. 233): 'Daet is aerest... seo men redden into Tantune cirhsceattas and burhgerihtu.' See also K. 1084 (v. 157): 'ut episcopi homines [apud Tantun] tam nobiles quam ignobiles... hoc idem ius in omni haberent dignitate quo regis homines perfruuntur, regalibus fiscis commorantes.'

140. D. B. ii. 5 b.

141. D. B. ii. 104.

142. D. B. i. 163.

143. D. B. i. 75.

144. D. B. i. 100, 108 b.

145. D. B. i. 86 b.

146. D. B. i. 87.

147. See above, p. 188.

148. D. B. 38 b, 44.

149. D. B. 64 b.

150. D. B. 66.

151. The burgesses belonging to Ramsbury are really at Cricklade: D. B. i. 66.

152. It seems very possible that already before the Conquest some boroughs had fallen out of the list. In cent. x. we read, for example, of a burh at Towcester and of a burh at Witham in Essex. We must not indeed contend that a shire-supported town with tenurial heterogeneity came into existence whever Edward the Elder of the Lady of the Mercians 'wrought a burh.' But still during a time of peace the walls of a petty burh would be neglected, and, if the great majority of the inhabitants were the king's tenants, there would be little to distinguish this place from a royal village of the common kind. See for Towcester, D.B. i. 219 b; for Witham, D. B. ii. 1 b. In later days we may see an old borough, such as Buckingham, falling very low and sending no burgesses to parliament. It will be understood that we have not pledged ourselves to any list of the places that were boroughs in 1066. There are difficult cases such as that of St. Albans; see above, p. 181. But, we are persuaded that few places were deemed burgi, except the shire towns.

153. A last relic of the old borough peace may be found in Britton's definition of burglary (i. 42): 'Burglars are those who feloniously in time of peace break churches, or the houses of others, or the walls or gates of our cities or boroughs (de nos citez ou de nos burgs).'

154. By a charter of enfranchisement a lord might introduce burgage tenure and abolish 'servile customs'; but it must be, to say the least, doubtful whether he could, without the king's licence, confer upon a village the public status of a borough and e.g. authorize it to behave like a hundred before the justices in eyre. This is one of the reasons why sheriffs can draw the line where they please, and why some towns which have been enfranchised never obtain a secure place in the list of parliamentary boroughs.

155. Hist. Eng. Law, i. 630. When it is being said that if land in the borough escheats, it always escheats to the king, the mesne tenures are already forgotten within the borough, just as in modern times we have forgotten them in open country. The burgher's power of devising his land made escheat a rare event, and so destroyed the evidence of mesne tenure.

156. See above, p. 256. Also the king might give away an undivided share of the borough. Apparently the church of Worcester had received the third penny of the city ever since the day when the burh was wrought by the ealdorman and lady of the Mercians. See above, p. 237.

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