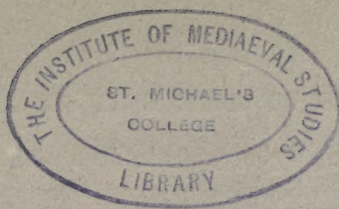


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THE STUDY OF EARLY MUNICIPAL HISTORY IN ENGLAND

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FELLOW OF THE ACADEMY

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THE twentieth century opened with the brightest prospects for the study of early municipal history in this country, prospects which have since become lamentably overclouded. A group of distinguished scholars had made a remarkable and unprecedented advance in the solution of the most obscure problems presented by the initial growth of urban life in England. In the past the subject had been chiefly in the hands of lawyers and local antiquaries, and neither class was well equipped to grapple with its real difficulties. One outstanding work there was, the *Firma Burgi* (1726) of that admirable eighteenth-century scholar, Thomas Madox, but, great and permanent as is its value, it deals with an aspect of municipal growth which was comparatively simple to one of his immense knowledge of the national archives. Much more complicated problems were attacked, and to a large extent solved, in the last decade of the nineteenth century and the first lustrum of this. Charles Gross dispersed the cloud of error which had exaggerated the part played by the merchant gild in the evolution of our municipal constitutions. Mary Bateson found a French key to some of the most striking peculiarities of the post-Conquest borough, revealed the great mass of archaic law which the boroughs preserved throughout the Middle Ages, and edited the most complete collection of the records of a single borough which has yet appeared. Maitland showed that the oldest English boroughs were rooted in the soil, that the mediaeval burgher was still interested in agriculture, had one foot on mother earth outside his walls. His gifts of subtle insight and bold suggestion were never more evident respectively than in the analysis of the transition from 'commonness' to 'corporateness' in the English borough which rounds off a famous chapter of the *History of English Law* and in the more debatable

treatment of the Domesday boroughs in *Domesday Book and Beyond*. We may think that the boldness has gone too far in the latter case, without withholding from him and his zealous disciple, Adolphus Ballard,¹ the credit of having made what is really the first of our documentary materials for the history of English boroughs more intelligible and more significant.

A later stream of French influence than that detected by Miss Bateson was explored by Dr. Horace Round in articles on the Cinque Ports² and the Commune of London.³

All these workers were in the prime of life, and in the ordinary course many years of fruitful investigation might have been expected from them. But a sort of fatality seems to have attended on the group. Dr. Round is still happily with us, though he has not pursued the municipal studies of earlier years, but all the others had died before the end of 1915, Maitland, the longest-lived of them, at the early age of fifty-six. The loss to this particular branch of historical research was irreparable. The barrenness of the last decade in this field, with the notable exception of an excellent study of *Burgage Tenure in England*,⁴ by a young American scholar, Dr. Hemmeon, a pupil of Gross, cannot be attributed wholly to the war and its sequel.

Maitland's chief contributions to the story of the evolution of our oldest towns emphasized two somewhat opposite features of their origin—continuity with the nucleus of an agricultural township and the stimulation produced by a period of foreign invasion, the latter perhaps over-emphasized.

In impressing upon us that 'those who would study the early history of our towns have fields and pastures on their hands', Maitland did not claim originality. The very word 'town' is an unmistakable finger-post. Beginning as an Old English word for a village, or even a single homestead, it has been narrowed down in this country, though not in New England, to mean an urban as distinguished from a rural community. The transition thus indicated had been noted by Stubbs, but the vivid picture of the agricultural aspects of mediaeval Cambridge in *Township and Borough* placed it in a new and stronger light.

More novel was Maitland's attempt to account for the possession by our chief towns, when they first come well into view after the

¹ *The Domesday Boroughs*, 1904.

² *Feudal England* (1895), 552 ff.

³ *The Commune of London and other Studies* (1899), 229 ff.

⁴ *Harvard Historical Studies*, xx (1914).

Norman Conquest, of a court which was not that of a rural township, if indeed the township had a court, which he did not believe,¹ but parallel with the court of the hundred which was an aggregation of townships. He traced this borough court with some other features of later town life to the age of the Danish invasions. The necessity of defence brought about the fortification of many old and new centres, and he suggested that courts were established in them to settle the quarrels of the ruffling warriors placed in them by the landowners of the county, upon whom the burden of their upkeep was thrown. The general application of the term 'borough', which means a place of defence, to such towns was regarded by him as supporting this 'garrison theory' of the origin of our oldest towns. Though whole-heartedly adopted by Ballard, it has not secured universal acceptance. Maitland himself explained, in answer to criticism, that he did not mean to offer it as a solution of the problem in all towns, or even as completely covering the ground in those where it is most plausible. It does not profess, therefore, to account for the urban organization of towns which, like London, Lincoln, or Canterbury, had existed, if not from Roman times, at any rate from a date not much later, or even of a distinctly later town like Norwich. There were other influences making for urban aggregation and organization, especially the growth of trade. It is significant that the general spread of the term 'borough' was accompanied by the use of a word which expressed the trading aspect of the same community. This was 'port', the derivation of which from *portus*, 'harbour', seems, like the parallel word 'poort' in the Netherlands, to point to the first seats of trade having been on the coast or navigable rivers.

The existence of a military element, fleeting or more durable, in many boroughs need not be denied, but it was not the only element, and its identification with the burgesses who in *Domesday Book* are recorded in most of the greater boroughs as belonging to some rural manor and paying rent to it, or occupying houses which paid such rents, is very dubious. *Domesday* itself shows that the lordship of burgesses and houses was being transferred pretty freely before the Conquest, and the burgesses' right of sale and bequest may account for a good many of these manorial ownerships. The tendency of the rural landowner to acquire property in the local town, and even to reside there occasionally, is early evidenced and continued down to modern times. 'Tenurial heterogeneity', the awkward phrase which Maitland coined to express the fact that such boroughs were on no

¹ Professor Vinogradoff is less sceptical (*Growth of the Manor*, 194, 274).

single lord's land, whether king's or subject's, may have grown up quite independently of military arrangements.

The borough which was the property of one lord was not, however, unknown in Anglo-Saxon times, witness the little borough of Seasalter in Kent, which belonged to the monks of Christ Church, Canterbury, and the revenue from which went to support the kitchen of the monastery.¹ Not the least striking of the effects of the Norman Conquest in the field of municipal history was the wide extension of this class of dependent or seignorial boroughs, of which more will be said later.

Another result of the Conquest is the real beginning of our evidence for municipal history. We have no genuine pre-Norman town charter, much less any civic record, judicial or administrative, of that date. For these latter, indeed, we have to wait until the later years of the twelfth century, but there is a growing stream of charters from the first establishment of the new dynasty. More than three hundred had been issued by the Crown and private lords before the end of John's reign, and these have been brought together in a form convenient for students of borough formation and organization by Ballard in the first volume of *British Borough Charters*.² Materials for a further volume, extending to the death of Edward I, had been largely collected by him before his death, in 1915, and will shortly be published.

It is noteworthy that the most liberal grantor of charters to royal boroughs was John, whose appreciation of the sums they were ready to pay for privileges was probably not checked by much consideration whether the permanent interests of the Crown would be served by the greater independence he allowed to the towns. However, the leases of Crown revenue which he gave were such hard bargains that there is no reason to suppose that those interests suffered materially. His son was less lavish, except when in dire financial straits, as in the year or two before the Barons' War, and his grandson even less so, save where the foundation and enhancement of towns served his general policy.

The policy of enlightened self-interest on the whole pursued by our Norman sovereigns can be well studied in their treatment of those older towns which may now be called royal cities and boroughs, not because they stood on the ancient lands of the Crown, but because it chose to claim these lordless areas as part of the royal demesne. The application to them of the Crown right to levy tallage at will from its ancient demesne—that is, what had been Crown property in 1066—was fruitful in results. It yielded a revenue which, even when ultimately

¹ *D. B.* i. 5.

² Cambridge, 1913.

made dependent on parliamentary consent, retained traces of its origin in the higher rate at which the towns and the ancient demesne were charged, and it disposed the king to grant to them such privileges as would enable them better to meet this and their other financial obligations to the Crown. Indeed, we need not limit royal graciousness quite so narrowly, for, where nothing was lost by so doing, the claim of the Crown dependents to special favour was fully recognized. From this point of view the curious parallelism of some of the privileges of royal boroughs and those of ancient demesne is instructive. Both were quit of suit to shire and hundred courts and in general exempt from taking their cases to outside courts, other than the highest. They both ultimately almost excluded the sheriff. The privilege of freedom from toll throughout England, or even the whole of the king's dominions, was generally enjoyed by both. Both gave freedom to the serf unclaimed by his lord for a year and a day. Moreover, some communities on ancient demesne are found in enjoyment of such special features of borough tenure as the right of sale and bequest of their tenements, and larger urban communities thereon; e.g. Basingstoke and Kingston-on-Thames, though not formally called boroughs, attained a status which was practically indistinguishable from that of recognized boroughs. This burghal aspect of ancient demesne¹ becomes troublesome when we attempt to define a borough, just as it created difficulties when the demesne was taxed at the borough rate by parliament. There was some uncertainty at first as to who should give the consent of the men on ancient demesne, and, in default of a more logical solution, it was finally settled in favour of the knights of the shire,² whose normal constituents paid at a lower rate and to whose expenses the demesne men successfully refused to contribute.³

A familiar feature of royal charter giving to towns is the grant of the liberties of highly privileged communities, like London, Winchester, or Hereford, to other boroughs, new or old. Although these liberties were usually set out in full, the standardization of formula must have greatly lightened the labour of the clerks of the royal chancery. So mechanically, in fact, were the models followed that many towns which received the liberties of London had in their charters references to that peculiarly London institution the Portsoken, as if it were a local area.

¹ See Pollock and Maitland, *Hist. of Eng. Law*, i. 384, and Hemmeon, *Burgage Tenure in England*, *passim*.

² *Rot. Parl.* i. 457 (16 Edw. II, 1322).

³ *Ibid.* iii. 44, 64; Benham, *Red Book of Colchester*, 58.

Privileges of such imposing lineage were highly valuable to a growing community, but could not arrest the decline of a weak one. Not all the liberties of Winchester availed to save Henry III's new borough of Warenmouth (1247), in Northumberland, from early extinction, and the exact locality of the *Nova Villa*, founded by Edward I in Dorset, with the liberties of London, seems to have been forgotten until a lucky accident enabled me to identify it with a spot near the port of Ower Passage in the Isle of Purbeck.¹

As the word 'liberties' implies, these chartered privileges were usually, and especially at first, of a negative rather than a positive kind. The simpler sort exempted the recipients from some onerous service or payment. The most valuable privilege of the latter kind was a general exemption from local tolls, which was sometimes extended to the foreign dominions of the Crown. An exception was often made for the tolls of London. A good example of release from burdensome services was the exemption from finding lodging for the king's retinue, whether demanded by force or by the billet of the marshal, which spread from London through Bristol to the larger Irish boroughs. Canterbury and Rochester had to be content with the requirement of an order from the marshal.

Even such a liberty as that of electing a justice to try Crown pleas homicide, and other serious offences arising in the borough, which looks positive enough, was really negative, for it was chiefly prized as excluding the sheriff or other royal officer from entering the town to try such cases. This rare privilege, so far as I know, was only granted twice, to London by Henry I and to Colchester by Richard I. The Colchester case was belated, for Henry II's institution of regular circuits of the royal justices, who superseded the sheriffs for this purpose, proved fatal to the extension of the privilege. From this time, however, many towns were empowered to elect a coroner or coroners to take the preliminary steps for the trial of Crown pleas, which had been one of the duties of the town justice, and the sheriff was thus excluded even from this humbler interference in the town. A few boroughs which were not shire-towns were favoured by special visits of the royal justices to try Crown pleas, but only in one exceptional case was there any reversion to the old expedient of municipal

¹ In looking up a reference to the *Calendar of Patent Rolls*, 1281-92, my eye was caught on p. 217 by the appointment on 7 January, 1286, of commissioners to lay out a new town at Gotowre super Mare in the parish of Studland. Merchants and others taking plots and beginning to build were to enjoy the liberties of Lyme and Melcombe (which were those of London), and a charter to that effect was promised. The well-known charter to *Nova Villa*, granted on 10 May following (*Cal. Chart. Rolls*, ii. 387), fulfilled this promise.

justices. It is significant of the abnormal position of Chester that in it alone of all the towns within the four seas Edward I allowed Crown pleas to be tried by the mayor and bailiffs.¹

It was the position of the sheriff as the local financial agent of the Crown which made the towns eager to take perpetual leases of the royal revenue derived from them, even at rents so oppressive that their chief citizens were frequently mulcted for arrears or, as a last resort, the liberties of the town were temporarily taken into the hands of the Crown and the elective officers superseded by royal nominees. For the right of dealing directly with the exchequer they were willing to pay large sums down and to incur burdens which many of them found almost too heavy to be borne. It is striking evidence of their dislike of the sheriff. The nearer tyrant was the most to be feared.

The rapacious John was the great distributor of such leases, *feefarm* grants they were called, and so, more than any other king, made himself responsible for the development of the greater boroughs as areas locally within but administratively outside the counties. The process was not even approximately complete, however, so long as the sheriff had the right of entry to serve writs of the exchequer for non-payment of the farm, or general judicial writs in cases arising in the town courts or those of the justices on circuit. It was not until Henry III had involved himself in a morass of debt and exhausted the patience of his barons that this further step was conceded, in order to raise the wind. In 1255-7 nearly a score of towns bought the privilege of return of writs, the right, that is, of receiving writs of the Crown and reporting their execution. The Crown still sent the writs to the sheriff, and so far the administrative unity of the shire was preserved, a point of some importance when parliamentary writs came later into question, but his officers were not allowed to do more than deliver the writs into the hands of the town bailiffs. The Crown, of course, retained the right of authorizing the sheriff to enter the town by special mandate, if its wishes could not be otherwise enforced. This expedient was resorted to when the citizens of Oxford and Cambridge showed themselves impotent to deal with the many doubtful characters who resorted to the Universities, we are told, 'for mischief and not for study'.²

Emancipation from the sheriff, though it had gone far, was not absolutely complete until a borough was constituted a county of itself with its own sheriffs receiving all writs direct from the Crown and its

¹ Charter of 1300 (Morris, *Chester in Plantagenet and Tudor Reigns*, 492).

² *Rot. Parl.* v. 425.

mayor acting as royal escheator. The only towns in this position before 1373, when Bristol got it, were Chester (in part) and London.

The virtual emancipation of the greater royal boroughs from the shires in which they lay was accompanied by the growth of a special town spirit and organization which seems to have been greatly stimulated by the communal movement on the Continent. Here again King John is in the front of the stage. It was he who in his factious days during Richard's absence authorized the setting up of a sworn commune in London, and as king he issued the first charter, also to London, which arranged for the election of a civic head with the new French title of mayor, whose first appearance had probably been coincident with the swearing of the commune. Scholars have differed as to the length of life of the London commune. Dr. Round, in 1899, held that the oath of the twenty-four in 1206-7 to do justice and take no bribe, which he found in a manuscript collection of London documents of this period,¹ implied a body derived from the 'vingt-quatre' of Rouen, and probably the parent of the later Common Council, as well as the practical existence of the commune so late as the middle of John's reign.

These conclusions were vigorously disputed by Miss Bateson² and M. Petit-Dutaillis,³ who convinced themselves that the twenty-four in question were no others than the aldermen. So far as disproof of this identification goes to prove Dr. Round's view, it may be said to be established, for my friend Professor Unwin has called attention to the existence, in the printed Close Roll of the year in question, of a royal order, unknown to all the disputants, which is clearly a mandate to the barons of London to elect this very body of twenty-four.⁴

Some doubt may perhaps be felt whether this body, which was to be elected to remedy the misgovernment of the existing civic administration, was intended to be permanent, and it is not easy to meet Miss Bateson's point that their oath says nothing of consultative functions, while the oath of the later common councillor says nothing of anything else, for he had no judicial function. On the other hand, the order for the election of the twenty-four does mention financial as well as judicial duties. Moreover, this was just the period at which similar bodies were coming into existence in less prominent English boroughs.

When Ipswich, in 1200, received a charter granting to the burgesses the fee farm of the borough with the right to elect bailiffs and coroners,

¹ *Commune of London*, 237.

² *Eng. Hist. Rev.* xvii. 507-8.

³ *Studies Supplementary to Stubbs*, i. 99.

⁴ *Finance and Trade under Edward III*, 13. Professor Unwin was mistaken in supposing that they were merely to report on the maladministration of the city.

they decided to elect twelve sworn chief portmen 'to govern and maintain the said borough and its liberties, to render its judgements and to ordain and do what should be done for the state and honour of the town', and they took an oath to that effect. As soon as the portmen were elected and sworn, they exacted from the assembled burgesses an oath upon the book to be loyal and assistant to their bailiffs, coroners, and twelve portmen. The unique record from which this is taken¹ may perhaps be mistaken in asserting the existence in 1200 of such bodies in all the other free boroughs of England, but the Ipswich case was clearly not an isolated one, and it is a new institution which is in question. The whole proceedings at Ipswich, of which the election of the portmen was only part, are strongly reminiscent of communal organization abroad. In the case before us the councillors bore an English name, but similar bodies appear not long after with the significant title of *jurats* or *jurés*, not merely in the Cinque Ports where, as Dr. Round has shown, there is abundant evidence of direct French influence, but in inland towns like Leicester. The oath of the twenty-four *jurés* of Leicester was almost identical with that of the twelve portmen of Ipswich. Add to this that before the end of John's reign certainly eight, and probably nine, of the most important English towns had instituted civic magistrates with the French name of mayor, a number largely increased under Henry III, and we come to the conclusion that the influence of foreign civic progress on England at the end of the twelfth century has probably not yet been fully appreciated.

We hear little of these sworn bodies of twelve or twenty-four during the thirteenth century, and there has consequently been a disposition to post-date the rise of town councils, but the character of the accessible records may very well conceal the facts. The Ipswich example shows that, except in such a special case as arose in London in 1207, the creation of such select bodies was left to the voluntary action of the burgesses, and so, save for an occasional appearance in preambles, their existence would hardly be suspected from royal charters.

In the personality of the mayor and bailiffs, who represented the communities in their relations with the central power, the Crown took a closer interest. Yet, if we may judge from the silence of many charters, express licences to appoint mayors and bailiffs were not always required. They had, however, commonly to be presented to the king or his representative for approval.

In days not yet remote the gild merchant was very generally held to have been the germ and vital principle of the constitution of the

¹ Gross, *Gild Merchant*, ii. 116 ff.

mediaeval borough. This error was dispelled once and for all by the late Charles Gross, whose epoch-making monograph appeared no longer ago than 1890. It was an error which illustrated the worst features of English historical amateurishness, unjustifiable generalizations from partial and misunderstood evidence, and incapacity to grasp a complicated problem as a whole. Those who held it managed to ignore the fact that towns of the first importance, London itself and Norwich, never had the institution which they regarded as the source of municipal structure. Cases like that of Leicester, where the personnel of the borough court and of the gild was apparently the same, and the town's business done in the latter was on the whole more important than that which came before the portmanmoot, seem to have hypnotized even so good a local antiquary as James Thompson. It is not strange that in a community predominantly commercial the newer and more flexible organization of the gild should sometimes have been preferred to a court which was primarily judicial and greatly tied by ancient precedent. In the words of Gross 'this fraternity was not the germ of the English municipality, but only a potent factor in its evolution'.

The thoroughness with which Gross executed his task is well illustrated by the fact that, though Ballard and others have ransacked all available sources for fresh charters during the last thirty years, only one town possessing a merchant gild has been added to his list. This is the borough of Brecon in the March of Wales. We may add that Gross was misled by Summers, the historian of Sunderland, into the attribution to that town of a gild to which it was not entitled. Henry III's 'new borough of Warnemouth' or Warenmouth in Northumberland disappeared so completely that by the end of the seventeenth century its unclaimed charter was calmly appropriated by the burgesses of Sunderland, an offshoot of Bishop Wearmouth in Durham. That their pretension should have been admitted by the royal courts, as it was, is evidence that the early history of the palatinate of Durham was as little understood by the judges of Charles II's time as the etymology of place-names. For, of course, a mediaeval charter to Sunderland would have been granted by the bishop and no eccentricity of sound-change could have converted Wearmouth into Warnemouth.

Leaving the royal towns, we pass to that great class of boroughs which stood on the lands of feudal lords, lay or ecclesiastical, and were mostly of their creation, for the Crown seldom granted a royal borough to a subject, however great. Outside the palatinates, the mediatized town was exceedingly rare.

Unlike the towns which had no lord but the king and in the great majority of cases boasted immemorial origin, the mesne or seignorial borough was, with rare exceptions, a post-Conquest creation which we owe to the Norman lord's recognition of the value of urban centres in the peaceful penetration of newly conquered districts, and as sources of larger income than could be raised from purely agricultural communities.

The second motive continued to operate long after the first had ceased to exist except in Wales and Ireland, where it was largely responsible for the creation of many boroughs, both by the Crown and by private lords. In Wales and Ireland the mediaeval boroughs were English outposts in an unfriendly country, as the first Norman boroughs in England had been.

As they were more artificial than the older boroughs, these new creations show a much greater uniformity in the size and rent of tenements or *burgages*, as the Normans called them, and of their appurtenances in the town fields and meadows. There was probably also more uniformity of legal custom. It is not surprising that their founders should have been apt to take as models for these new towns the little *bourgs* of their native Normandy. Yet until the beginning of this century their predominantly foreign origin had not been grasped. We owe its recognition and the discovery of the widespread influence of one small Norman *bourg* to the now famous articles of Miss Bateson on the 'Laws of Breteuil'.¹ An unfortunate confusion of *Britolium*, the Latinized form of Breteuil, with Bristol had misled even the very elect, and of the list of nearly fifty boroughs which Gross had entered in his table of affiliations as directly or indirectly drawing their institutions from Bristol, nearly half were at once struck out. This would have been a notable achievement, even if it had not been accompanied by a patient and elaborate attempt to recover the lost customs of Breteuil from the charters and customals of her daughter towns on this side the Channel. This part of Miss Bateson's work has more recently been subjected to severe criticism by Dr. Hemmeon² with greater acumen than good taste, and more fully and courteously by Ballard.³ It must be admitted that, as was natural enough in the first flush of so striking a reversal of preconceived ideas, Miss Bateson showed somewhat less than her usual caution in the work of reconstruction. She did not allow sufficiently for the intermixture of English with Norman customs in documents, few of which belong to the first age of Anglo-Norman borough-making.

¹ *Eng. Hist. Rev.* xv, xvi.

² *Burgage Tenure in England*, 166 ff.

³ *Eng. Hist. Rev.* xxx. 646 ff.

The strength of this influence of the native English borough upon the new foundations is attested by the prevalence in some of them of that power of free or restricted bequest of land which was so striking a feature in the normal English borough, but did not exist in those of Normandy. The possibility of the inclusion of some custom which, though Norman was not Bretollian, does not seem to have been quite excluded by Miss Bateson, and there was a distinct element of danger in assuming the general identity of the customs of Verneuil, which have been preserved, with those of its neighbour Breteuil. The mere fact that King John granted the liberties of Verneuil to Breteuil in 1199 suggests that there must have been important differences. In drawing exactly the opposite conclusion from this grant, Miss Bateson seems unconsciously to have let the wish be father to the thought. It is not very safe to ascribe Verneuil customs to Breteuil unless there is strong support from other quarters. There is some reason to believe, therefore, that the reconstruction of the laws of Breteuil errs by excess, but Ballard himself inserted in his alternative draft exemption from the assize of *mort d'ancestor*, which was only devised in the reign of Henry II, on the strength of an obviously absurd legal argument of the thirteenth century. Nor did either of Miss Bateson's critics do adequate justice to the general merits of articles which revolutionized the study of mediaeval urban institutions in England.

In considering some features of this class of seignorial boroughs in which French influence played a very important, though not exclusive part, we may put aside the small number of cities and boroughs, Bath, Chester, Leicester, Newcastle-under-Lyme, and for a short time Exeter, which were mediatized by the Crown in favour of a member of the royal house or other great magnate. His interest was mainly financial and did not very seriously retard their growth. Leicester, it is true, had no fee-farm grant from her earls until long after most royal boroughs possessed it, but, as we have seen, the farm was a doubtful blessing except in so far as it prevented the financial intermeddling of the sheriff, and from that Leicester was already exempt. Chester had its own sheriffs before any other English city, and, as already stated, obtained from Edward I the unique privilege of having its Crown pleas tried by the mayor and bailiffs.

The boroughs which were founded by Anglo-Norman lords, with or without a written charter, were very numerous and varied greatly in size and importance. Local magnates anxious to increase the revenue from their estates were not always good judges of the economic possibilities of the sites at their disposal. Many such

foundations were still-born or failed to reach maturity. Of the twenty-three boroughs created in the poor and backward county of Lancaster between 1066 and 1372 with burgesses ranging in number from six up to one hundred and fifty or so, only four retained an established borough status at the end of the Middle Ages. Many had become extinct, though vestiges of burgage tenure in some cases kept their memory alive, the rest, such as Manchester and Warrington, had lost any germs of independence they had once possessed and lapsed into a sort of urban manors. As early as 1300, a lord of Warrington, alarmed at the growing aspirations of its borough court, had forced the townsmen to renounce it and take their cases to his manorial court.¹ Some of these extinct and dormant boroughs were revived by the industrial revolution, but at the present day seven have no higher rank than that of urban districts (or part thereof) and five are governed by parish councils.

Lancashire laboured under some special disadvantages, but economic difficulties and the dead hand of manorialism were operative everywhere, and arrested the progress of many a promising borough. The extent to which they were at the mercy of their lords is well illustrated by the story of Burford in Oxfordshire, to which Mr. R. H. Gretton has recently devoted an admirable monograph.² Under the lordship of great absentee earls, and afterwards of the Crown by escheat, the little borough attained a status which superficially seemed as well established as that of many a small royal borough, but the sale of the Crown rights early in the seventeenth century and the settlement of the purchaser in the town proved fatal to its liberties, already undermined by the absence of substantial trade.

A point which has been much discussed is the exact basis of the application of the term borough on the one hand to such large and ancient towns as Leicester or Northampton, not to speak of those which enjoyed the higher title of city, and on the other to petty manorial communities with a mere handful of burgesses. In other words, what was the lowest common denominator of a borough, or, as Maitland put it, 'the inferior limit of burgality'?

Some common features all boroughs had, which were essential but not distinctive. Every borough, large or small, possessed by prescription or by royal licence a market and a fair or fairs, but in England licences were freely granted to feudal lords for manors which they had no intention of converting into boroughs. I say in England because

¹ *V. C. H., Lancs.*, iii. 319 where 'burgesses' is a slip for 'community' (*communitas*).

² *The Burford Records*, Oxford, 1920.

in Scotland such licences seem to have been confined to boroughs. In an article published posthumously on 'The Theory of the Scottish Borough', Ballard showed that the Scottish kings went on the principle of giving each borough, royal or baronial, the latter comparatively few, a complete monopoly of trade in a definite area, which was in some cases a whole shire.¹

The court of the borough has been confidently claimed as a distinctive feature, and if all boroughs had possessed the full hundredal court which the greater towns enjoyed perhaps the claim might be allowed. But the usual court of a seignorial borough, even when called a portmoot, was the ordinary feudal court baron of the normal rural manor, and like it might or might not possess some small criminal jurisdiction. At Manchester this criminal jurisdiction (in cases of theft) was deliberately withheld and reserved for the lord's higher court. Any growth of independence was repressed by the presidency of the lord's steward or bailiff, and in the significant case of Warrington, where a long minority had enabled the burgesses to assert some freedom, the court was suppressed altogether. This seems to have been a court of burgesses only, but the courts in all boroughs were not so limited. At Bakewell, for instance, the freeholders of the manor were joined with the burgesses both in the court and in the privileges granted by the charter.

We are not justified, therefore, in regarding a court of burgesses as a universal criterion of a borough, and, even if it were, it would be rather a reflection of the essence of the institution than the essence itself. For it seems obvious that where there were burgages and burgesses there was in some sense a borough. It is the great merit of Dr. Hemmeon's book on *Burgage Tenure in England* that it emphasizes this tenure as the vital principle of the borough everywhere. It is true that he has to admit the presence of burgage tenure on ancient demesne in places where apparently there was no borough, at least in name, but there are exceptions to all rules, and the Middle Ages were full of them. Complication, cross-divisions, and blurred outlines, rather than logical categories and clear-cut definitions, were the characteristic features of their slow and painful process of evolution.

In the widest sense of the word, then, the mediaeval borough may be defined as an area in which the tenements were held by low quit-rents in lieu of all service, and were more or less freely transferable by sale, gift, and bequest, subject in many cases in varying degrees to the rights of the family and of the lord, where there was one. The latter sometimes exacted a transfer fee, more rarely reserved a right of pre-

¹ *Scott. Hist. Rev.* xiii. 16 ff.

emption, and very generally prohibited alienation of burgages to certain categories of persons, chiefly religious houses and Jews.

Charters tended to stereotype custom in boroughs just at the time when the royal judges were developing the common law outside them. Among the peculiarities of borough law which resulted, the most striking was the not uncommon, though often restricted, right of bequest of land by will, which had been suppressed in the common law. Hence in some borough records we find a double system of probate, legacies of chattels being proved before the ecclesiastical authority, bequests of land and tenements before the mayor or bailiffs.¹ This right of devise of land was less usual in the Anglo-Norman boroughs than in the old English ones because their Norman models did not know it.

The wide use of the term 'borough', which has just been explained, could not efface the practical distinction between the old royal towns and the host of petty boroughs which had been called into existence since 1066. With the expansion of the national administration and the growth of Government demands upon the purses and services of the nation, this distinction was emphasized and a new and narrower use of 'borough' began to appear in official documents. It was only the larger boroughs as a rule which already in the late twelfth century sent a full delegation of twelve to meet the justices on circuit, and when, in 1252, boroughs were ordered to set a night watch of twelve men from Ascension Day to Michaelmas for the arrest of suspicious characters, and other villis one of four or six according to their size,² it is quite evident that the mass of small boroughs fell into the latter class. They would have found a watch of twelve an intolerable and an unnecessary burden. The twelve burgesses of Rochdale, who at one time formed the whole privileged community, would have got no sleep at night for four months in the year!

Our interpretation of the order of 1252 is borne out by the regulation of the same date that the musters of the local force afterwards known as the militia should be held in boroughs by the mayor or the bailiffs, if there was no mayor, and in other villis by new officers called constables.³ Constables are henceforth a feature common to the rural township and the manorial borough.⁴

Thus, for practical reasons, official nomenclature drew a line between boroughs and non-boroughs on a basis of population and administrative equipment. This narrower sense of 'borough' was evidently in

¹ See, for instance, Ingleby, *The Red Book of King's Lynn*, i, *passim*.

² Stubbs, *Select Charters*, ed. Davis, 363.

³ *Ibid.*

⁴ In the larger towns they appear only as ward officers.

the mind of Edward I when in his early experiments in parliamentary representation he twice ordered the sheriffs to send up representatives of boroughs and *villae mercatoriae*.¹ The accepted translation of *villa mercatoria* by 'market town', which might mean the ordinary manor with a market but without burgage tenure, has concealed the fact that, though some of these were apparently included under this head, undoubted boroughs in the wider sense were also comprised. Indeed the sheriffs in 1275 drew the borough line so high as to exclude even Shaftesbury, which had appeared in Domesday Book as a borough. This is only comprehensible when it is realized that *villa mercatoria* really meant 'merchant town',² as *lex mercatoria* meant 'merchant law' and *gilda mercatoria* 'merchant gild'. It implied a town with the larger trade transacted in fairs of general resort rather than in the weekly market frequented chiefly by local buyers and sellers. 'Fair law' was almost a synonym for the 'law merchant'.³

Unfortunately for clearness, Edward dropped this distinction between borough and merchant-town after 1283. From that date the parliamentary writs to the sheriffs mentioned boroughs only. This did not, however, bring about a reduction in the number of representatives. On the contrary, there was a large increase in the parliament of 1295 which continued on the whole for some time. In view of the new principle of taxing boroughs at a higher rate than the counties, it was not the interest of the Crown to limit their numbers, and this at least was well understood by the sheriffs, upon whom it fell to decide which towns in their counties were boroughs. But they were sadly confused by the king's wide use of 'borough' in the writs, and the Pipe Rolls show that they described certain parliamentary boroughs as *villae mercatorum*. Indeed, the sheriff of Cornwall, in 1295, had so lost his bearings as to enter four undoubted boroughs as merchant-towns.⁴ There was some excuse, therefore, for those contradictory accounts in their returns of the number of boroughs in their shires which have rather shocked modern historians. In the evident hope of clearing up the confusion, the Government in 1316 called on the sheriffs to make a special return of all boroughs and vills in their bailliwicks, but the result can have given little satisfaction, for uniformity is certainly not the strong point of the reports which are known to us as the *Nomina Villarum*.⁵ There was

¹ In 1275 and 1283.

² It was sometimes written *villa mercatorum*.

³ Fleta explained *lex mercatoria* as *ius nundinarum*.

⁴ *Parl. Writs*, i. 35.

⁵ Printed, so far as they survive, in *Feudal Aids* (P. R. O.).

a tendency, it is true, in a number of counties, to revert to the stricter interpretation of borough which was official under Henry III, but there were conspicuous exceptions, the most glaring being that of Devonshire, where the sheriff returned twenty boroughs, most of which were seignorial. In the long run, the canon of parliamentary boroughs was settled from below by the inability or unwillingness of the weaker towns to bear the burden of sending representatives, and not by any neat scheme imposed from above.

In what has been said, I have attempted, very imperfectly, I fear, to indicate in the first place the main results of the remarkable outburst of investigation of our early municipal history which began with Gross's work on the gild merchant and was unhappily so soon cut short, and secondly to sketch some of the conclusions to which I have been led in the course of the pious task of completing and editing Ballard's collections for a volume of thirteenth-century charters. The whole of the charters of the formative period will soon be accessible to students. The silence of charters, however, on many important aspects of urban development is profound. Much spade-work remains to be done in the unpublished records of some of our oldest towns before the ground is clear for the future historian of municipal growth in England. To trace that growth from the advent of the town-hating Angles and Saxons down to these latter days, when five-sixths of the population of Great Britain are massed upon pavements, is a task worthy of the best powers of an historian of institutions.

