

## THE CIRCLE AND THE CROSS

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### CHAPTER XXVII

#### SECULAR USES OF THE CHURCH (*continued*)

*Barrows as Manorial Courts—Churchyards as Manorial Courts—The Tounecherche of Leicester—The Halimote—Charters of Beauchief Abbey—Godmanchester's Moot-hall—Thorpe-le-Soken—'Terra Cuthberti'—'Sac' and 'Soc'—The Vestry—Why no Municipal Buildings in Early England—Vinogradoff's Conclusions—The Manor of Celtic Origin—Druidism merging into Christianity—Who built the first Churches?—Different ownership of Church and Churchyard—Possession of a church a proof of Freedom—Identity of 'Circus,' 'Curia,' and 'Church'—Dual Ownership of Churches—The Circle in Folklore and in Magic.*

At the Irish *Aenachs*, that is, at the barrows of the dead, the old laws were recited and new laws were promulgated. There is abundant evidence for the close association of the mound and the law throughout the centuries and in every part of the British Isles: the Celtic *cruc* and the Teutonic moot-hill were alike in their origin and in their use: each was a 'law-hill,' and each was either actually or symbolically a barrow, the exact counterpart of the Homeric *ἐπὶ κῆλος*, the sign visible of Themis, encircling its central symbol of a sepulture, the 'goodly Posideum.'

In precisely the same way the church has been at one time or other the scene of every process of law and even of every form of punishment short perhaps of the actual death-penalty. It was the customary courthouse of the period, where sat the judge and his jury. The Prior of Christ-

church, Hants., used the great porch of the church as an office, and the place occupied by his table is still pointed out. In the eleventh century the south porch of Canterbury cathedral was used as a court of justice, and had evidently long been so used, for 'litigants from all parts of England' flocked to it.<sup>1</sup> In the church were made oaths and attestations, testaments were sworn, lands were surrendered, deeds of transfer were executed, acts of sale and purchase of every kind were completed, rents and mortgages and other debts were paid,<sup>2</sup> slaves were manumitted, and every form of legal act was completed. In Chaucer's day the church-porch of St. Paul's was the regular scene of lawyers' consultations, and in St. Paul's John Wyclif was put upon his trial. In the church men and women did penance or underwent trial by ordeal, and the stocks and 'juggs' were commonly either close beside the building, within the churchyard, or at any rate just without the gate of it. The 'juggs' were sometimes affixed actually to the church-door.<sup>3</sup> There is no doubt whatever that each and all of these things had their place at the same spot before any structural church existed—that the real *venue* was not the church, but the churchyard. In some cases there is documentary proof of the fact; at King's Ripton, Hunts., for example, surrenders of land were made according to the custom of the manor in the thirteenth century, not in the church, but in the churchyard.<sup>4</sup> In the latter part of the thirteenth century John de Bokeselle had to make 'a yearly render of a rose in the octave of St. John Baptist in the cemetery of Salehurst' for all services due in respect of his lands in the parish.<sup>5</sup>

*Canon 79* of Ecgbert declares that manslaughter within the precincts (*saepta*) of a monastery shall be punished by

<sup>1</sup> Willis, *Canterbury Cathedral*, p. 11.

<sup>2</sup> The church was commonly utilized as a bank for the safe keeping of valuables. At Lincoln even the Jews deposited their documents in the cathedral; in the anti-Jewish riots in the thirteenth century, the mob forced its way into the building and destroyed the deeds.

<sup>3</sup> At Talland, Cornwall, the stocks stood within the church porch (1893). They still stand in the churchyard at Thornton, near Ingleton, Lancs.; at Mylor, near Falmouth, Cornwall; and at Lovington,

Som.; just outside it at West Chiltonington, Sussex; at Saddleworth, W.R.; at Rock, Worc.; at Painswick, Gloucesters.; and at White Waltham, Berks. In the last-named case they stood within the garth until half a century ago. The juggs are to be seen at Refirth, Shetland, affixed to the door of the church. Similarly the 'scold's bridle,' the ducking-stool, and the pillory were kept in the church, which was the equivalent of the modern police-station.

<sup>4</sup> *Selden Society Publications*, ii, 120.

<sup>5</sup> L. I. Hodson, *Hist. of Salehurst*, p. 57.

lifelong exile or by lifelong dedication to God, but the very next *Canon* (80) says *Qui peccant in loco sancto, in eodem quoque occidendi sunt*. Any shedding of blood within the church or churchyard required, however, to be 'reconciled' according to a set formula by the bishop. Needless to say the irrepressible habit of using the churchyard as a recreation-ground led to constant brawls and to consequent effusion of blood, so that the bishops found it impossible to 'reconcile' all such pollutions in person. Bishop Sutton of Lincoln told the Pope so in 1291, and asked to be allowed to commission a priest, with holy water blessed by the bishop, to perform the necessary 'reconciliation.'<sup>1</sup> Archbishop Laud quarrelled with the burgesses of Tewkesbury because the latter, 'according to ancient custom,' persisted in holding their sessions in the churchyard. He was compelled, however, to admit that 'temporal courts might be held on consecrated ground or within the church upon urgent occasion,' but he insisted that it was not lawful to do so in cases involving 'trial for blood.'<sup>2</sup> Yet the parishioners of Ravenstonedale, Westmorland, exercised jurisdiction of life and death within their church, sitting behind the altar, and within the churchyard was an arched vault which was used as a lock-up.<sup>3</sup> The actual execution of their sentences possibly took place on Gallow Hill, a little distance away.

Places of sepulture, barrows and cromlechs, have been, and indeed still are, the customary scenes of moots of various kinds, and more particularly of manorial courts<sup>4</sup>; whence the frequency of such names at Mutlow Hill near Balsham, Cambs., Muthill, a village near Crieff, and Modbury (*D.B. Moteberia*) in Devon. In southern Scotland the name of Mote Hill is frequent, and the mounds so called are not seldom found in the immediate vicinity of cromlechs. Prior to 1154, the court of the sokemén of Stoneleigh, in the Hundred of Knightlow, Warw., met in the open air at a spot called Motstowehull, *i.e.* at a barrow. In 1154 the parish passed into the hands of the Church, an abbey was founded, and the abbat presently made a new moot in the

<sup>1</sup> *V.C.H. Lincs.*, ii, 33.

<sup>2</sup> Jeaffreson, *Book about the Clergy*, i, 341.

<sup>3</sup> Addy, *Church and Manor*, p. 188. But in other cases the lock-up was actually

within the church, as in the chamber over the north porch of the church of Ticehurst, Sussex.

<sup>4</sup> For examples, see *Proc. S.A.*, 2nd Ser., viii, 282.

centre of the village<sup>1</sup>; but the original place of meeting had been a *stowe-hull*, which means a barrow.<sup>2</sup> Some of the courts actually met at night, as for example that of Knightlow Hill, in the parish of Ryton-on-Dunsmore, near Coventry, where the 'wroth-money' is still paid in the customary manner at the accustomed mound and hour<sup>3</sup>; and that of the manor of Stanbridge, held at King's Hill near Rochford, in Essex, on the Wednesday following Michaelmas Day. This is known as the 'Lawless' or the 'Whispering' Court. The customary court of the commoners of the Forest of Epping is still held on Goldings Hill, between the hours of 11 and 12 p.m. on the night of Nov. 11th. Such cases at once recall the midnight fair at Christ's Kirk (ch. xxvi), and the only explanation of the identity of practice in regard to funerals, fairs, and courts, is to be found in the fact that all alike were centred about sepulchral barrows.

Christian barrows, that is to say churchyards, and by consequence even churches in the upshot, were similarly the scenes of manorial and other courts, and of moots of various kinds.<sup>4</sup> A moot was held in St. Paul's, London, in 973.<sup>5</sup> The court of the manor of Lewes, Sussex, was held in the churchyard of St. John sub Castro so late as 1467.<sup>6</sup> A presentment made in the year 1472 states that 'all the parishioners' of Gate Helmsley and Stamford Bridge 'hold pleas and other temporal meetings in the church and churchyard.'<sup>7</sup> In 1260 the King's Justices, when on circuit, held their courts in the churches of St. Nicholas and

<sup>1</sup> *Domum curie in medio ville de Stonle* (Vinogradoff, *Villeinage in England*, pp. 382, 430). Unhappily, the actual date of the transfer is unknown. Parker believed the existing church to date from much the same time as the foundation of the Abbey. It will be noticed that the villagers were previously *sokemen*, which means that they were entitled to manage their own affairs, i.e. to have their own moot; but, for whatever reason, their ancient moot-hill had not been in *medio ville*.

<sup>2</sup> Above, ch. xxiv.

<sup>3</sup> On the eve of Martinmas (Nov. 11) and before the morrow's sunrise. Knightlow gave its name to the Hundred. The memory of such usages is preserved in not infrequent names like Moneybury and Money Hill attaching to barrows. Moneybury is a

barrow in Ashridge Park, Berkhamsted, and a long barrow in Piddinghoe, Sussex, is known as Moneyburgh. Greenwell (*British Barrows*, p. 329) advanced another explanation of such names.

<sup>4</sup> J. R. Green, *Conquest of England* (1883), p. 13: 'The village church seems often to have been built on the very mound that had served till then for the gatherings of the townfolk.' Green recognized that the Christian church had inherited the functions of the pre-Christian moot. He had also observed that churches commonly stand on mounds. But he did not grasp the true origin of such mounds, or the reason why they came to be used as moots.

<sup>5</sup> *Codex Diplomaticus*, no. 580.

<sup>6</sup> W. Heneage Legge, *Guide to Lewes*, p. 22, citing from MSS. in Lambeth Palace.

<sup>7</sup> York Fabric Rolls, p. 256.

St. Andrew in Newcastle.<sup>1</sup> Four centuries later the Justices of the Peace customarily held their sessions in the churchyard at Tewkesbury,<sup>2</sup> and Archbishop Laud's protest against the practice was itself regarded as at least as great an illegality. The court-leet of the manor of Poynings, Sussex, was meeting in 1811 in the porch of the parish church, and had so met for centuries.<sup>3</sup> Three large stones lying within the churchyard of Ste. Marie du Castel in Guernsey 'marked the spot where open-air courts were held until recent years.'<sup>4</sup> Beside an old yew-tree in the churchyard of Totteridge, Middlesex, met the Hundred-court of the district.<sup>5</sup> The court of the Hundred of Earsham, Norfolk, met in the churchyard of the village of that name, near Bungay.<sup>6</sup>

Authority tried in vain to stop the practice, and the failure is evidence of its deep-rooted antiquity. Myrc directed, the parish-priests of the fifteenth century to see that 'court-holdynge or such manner chost (strife)' should not be permitted in the 'seyntwary' (churchyard),<sup>7</sup> but on into the seventeenth century the practice continued to be the subject of rebuke. It was the same in Scotland, where repeated laws forbade the holding of courts *in sancta ecclesia vel in cimeterio, aut in aliquo alio loco sacrato*.<sup>8</sup> Manorial courts were held in the churches of Yoxall and Alrewas, both in Staffordshire, in an unbroken sequence from the time of Edward III down to the eighteenth century.<sup>9</sup> The practice is in fact a commonplace of ecclesiology from the Conquest onward. But it did not originate with the Conquest. It was as old as the church, that is, as the churchyard.

In Wales about the same date the same practice prevailed. The *Laws of Howel* expressly mention the *mynwent* as a customary court of law (ch. xix), and moreover the proper court for the cognizance of certain cases of graver kind. They make further the pregnant remark that, whereas in courts held elsewhere it was necessary to provide

<sup>1</sup> Rendel, *Newcastle-on-Tyne*, p. 121.

<sup>2</sup> Jeaffreson, *Book about the Clergy*, p. 341.

<sup>3</sup> *Gent's Magazine*, 1811.

<sup>4</sup> Johnson, *Byways*, p. 34.

<sup>5</sup> Lloyd, *Hist. of Highbgate*, p. 21.

<sup>6</sup> W. A. Dutt, *Little Guide to Norfolk*. The churchyard was formerly of oval plan.

<sup>7</sup> *Instructions to Parish Priests*, v. 338.

<sup>8</sup> Skene, *Acts of Parliament of Scotland*, i, 388. The attentive reader will notice the use of *vel* in the citation, and will draw the legitimate inference, viz. that *ecclesia* and *cimeterium* expressed much the same idea.

<sup>9</sup> J. C. Cox, *Three Centuries of Derbysire Annals* (1890), i, pp. 390-1.

relics upon which the litigants might take their oaths, 'relics were not needful in the case of trials held in the *mynwent*, because that was itself the place of relics.' It becomes plain that the use of the structural church as a court-house in later times was but the necessary outcome of the earlier use of the churchyard as a moot. Evidently the practice goes back, not merely to a time when no structural 'church' as yet existed, but to the still remoter time when Christianity was not. It had grown up about the pagan barrow, and passed thence, just as did fairs and



CHURCHYARD OF HAMPTON GAY, NEAR OXFORD.  
(After a sketch by Miss Margaret Neave, 1929.)

feasts and other matters, directly and necessarily to the Christian barrow, the *ciric*.

The original scene of the moots of the burgesses of Oxford was the churchyard of St. Martin in Carfax. It is the oldest church in the city, occupying the very centre of the old town. In all likelihood its garth was the original *ciric* built in accordance with Archbishop Cuthbert's directions in the eighth century.

At Corfe, in Dorset, the town-hall is built into the



northwestern side of the churchyard, which is still sub-circular. The hall has two stories, and the rise of the garth is such that the door of the upper story originally opened to the garth and at the same level, while that of the lower story is level with the roadway without. This lower room is the old prison. In the upper room, the town-hall proper, the quarrymen are still annually sworn in. From time beyond memory they had entered the hall from the churchyard, of which it is in effect a part, and when (*circa* 1872) the old doorway was bricked up and a more convenient entry made from the street, the men of Corfe declined to make use of it, battering an entry by the old approach. To proceed to any municipal business save by way of the *ciric* was not to be thought of, because it had never been done. At Chew Magna, Som., the medieval court-house stands in a similar position at the entrance to the churchyard. When at long last it was felt proper to separate the secular from the religious functions of the church, it was still felt that the former should be housed as near to the latter as might be, and the secular town-hall was built at first actually within the garth, at a later date just upon its edge. Complete separation of the two has occurred only within the last century or so.

In a charter (twelfth century) of Robert Earl of Leicester it is ordered that the burgesses of that town shall not be required to go outside the borough to plead, *sed tantummodo ad Coumecherchiam, sicut antiquitus constitutum fuit*. For the obviously corrupt *Coumecherchiam* Miss Bateson suggested either *Toucherchiam* or *Communecherchiam*, and beyond doubt the place intended was the town church (-yard).<sup>1</sup> Burghs, that is to say chartered towns, had their own moots, the *burgomotus* of lawyers' Latin, just as had the Hundreds and the counties; and the meeting-place of the burgomote was commonly outside the walls, just as was usually that of the Romano-British community in its *circus*.<sup>2</sup> The people of the burgh of Leicester were specially privileged to hold theirs within

<sup>1</sup> *Records of the Borough of Leicester*. Commenting upon this suggestion, S. O. Addy (*Church and Manor*, p. 251) remarks: 'The church (*cherche*) is plain, but where is the yard?' The answer is that *cherche* originally meant '(church-) yard.' The charter proves that it had not ceased to

bear that meaning in Leicestershire in the twelfth century.

<sup>2</sup> Cf. above, ch. ix, on the A.-S. right of *burggeat-setl*. The question arises whether the extra-mural position of the normal *burgomotus* were not directly inherited from that of the normal extra-mural *circus*.

their civic churchyard 'as they had always done (*sicut antiquitus constitutum fuit*).<sup>1</sup> So it would seem that they had enjoyed the privilege of a moot of some sort before they were promoted to the dignity of a burgh, and that this moot met in the churchyard.<sup>1</sup>

Here then is an indisputable case in which the earlier village-moot—the 'town-meeting'—was continued upon the original site under the new style and dignity of a burgomote. There is no apparent reason why other such village-moots should not have been similarly continued as manorial courts—no reason why the many manorial courts which customarily met in churchyards, should not likewise be the continuation of older village-moots under another name and with somewhat altered powers.<sup>2</sup>

Where were the moots of other free and extra-manorial communities which had not yet attained to the dignity of burghs? Some sort of moot they must have had, and the case of Leicester provides the answer. It was the *toune-cherche*, in other words, the churchyard of the *tūn*.

Medieval records make frequent mention of some sort of moot called specifically the halimote.<sup>3</sup> Legal writers of the seventeenth-eighteenth centuries understood this to represent *halig-mote*, 'holy-moot,' but the *New English Dictionary* declares this view to be erroneous, and prefers the explanation of earlier writers by whom it was identified with the *aula (curia) domini*, the 'hall-moot' of the lord of the manor.<sup>4</sup> If this were the correct view, one

<sup>1</sup> In 1700, the Burgery of Sheffield began to erect a town-hall in the south-east corner of the churchyard, and the Duke of Norfolk, Lord of the Manor, contributed £100 towards the cost, on condition that he might be allowed to hold his manorial courts there; Addy, *Church and Manor*, p. 263. So the men of Sheffield were using, some 500 years later, just such a place of meeting as was by charter reserved to the men of Leicester; and the lord of the manor had no rights within the *toune-cherche*.

<sup>2</sup> Why does *D.B.* think it worth while to mention in the case of Acton, Cheshire, that the manor 'holds its court in the hall of the lord (*habet suum placitum in aula domini sui*)', if such cases were not the exception rather than the rule? This was the view of Prof. Maitland, albeit on different grounds (*Domesday and Beyond*, p. 91), for he identified the halimote with the *curia domini*.

<sup>3</sup> This, and not Hallimote, is the spelling in the *Laws of Henry I*, in which it seems to be first mentioned (c. 1101). It does not seem to occur in purely Anglo-Saxon writings, which, however, does not prove that 'the word was unknown in Anglo-Saxon times' (Addy). The form of it, indeed, proves the contrary. The form *alimot* ('of Leivesham and Grenwic') occurs circa 1161-8 (*Calendar of Documents Preserved in France*, Rolls Office, p. 505).

<sup>4</sup> See *N.E.D.* s.v. HALLMOOT, where the various writers are cited. The derivation advanced in *N.E.D.* is Mid.-Engl. *ball-ymote*, for an old Engl. *beall-xemote*. It is not clear why *balig* should not satisfy the requirements here, as it is admitted to do in such words as *balidom*, *ballimass*, *balikeld*, and *baliverfolk*; or why there should be assumed here a form in *xemote* which has left no trace in the parallel (and contemporary) form *burgomote*.



does not see why the halimote should, in more than one passage of the so-called *Laws* of Henry I, be mentioned as a distinct variety of moot existing side by side with those of the County, the Hundred, the Burgh, and the *Curia Domini* itself; for the latter is unquestionably the court of the lord, the 'hall-moot' of later times. An analysis of the various moots specified will suggest that, while provision is made for the individual at one end of the scale, for the entire county at the other, and for the Burgh and Manor and Hundred between these extremes, there is no provision for the small free non-chartered villages of England, unless the halimote be intended for these.<sup>1</sup> If they are represented at all, the halimote is the only variety of moot which can belong to them; and if this be correct, there can be no doubt at all that the halimote was properly the traditional village-moot of the village churchyard, the 'holy-moot' held at the *locus consecratus*. Churchyards were holy ground, and the evidence of archaeology and of documents alike declares that they were used as moots. And this is precisely what is implied by the term halimote.<sup>2</sup>

Henry I was greatly concerned to curb the powers of the baronage. To this end he sought to strengthen those of the people. One most obvious and easy means thereto would be to recognize and re-habilitate the local halimotes.

It is quite evident from their own language that law-writers of the eighteenth century were conscious of a conflict between the popular identification of halimote with hall-moot and the existing facts of their day. Jacob,<sup>3</sup>

<sup>1</sup> E.g. *Laws*, c. lvii. § 8, where the various moots are to be held *in divisio vel in erthmootis, aliquando super ipsam terram vicine, aliquando in curia domini, aliquando in bundreto vel bundretis, aliquando in comitatu, vel burgomoto, vel halimoto* (Thorpe, *Ancient Laws*). In *Laws* c. v. § 4 we have *omnis causa terminetur vel bundreto vel comitatu vel halimoto socam habentium vel dominorum curiis*.

The holding of moots *in divisio vel in erthmootis* is illustrated by the following excerpt from Jones' 'Answers,' in Toland's *Hist. of the Druids*, p. 94: 'When an assembly met together for the title of lands, the king or his deputy came upon the land, and with the contending party and their friends, and a champion for each side, viewed the contested lands; then caused a

mound to be cast up, and upon the same was the judgment-seat placed. . . . Some of these mounds were square, some round, and some sorts bore the name of *corseddwyddadle*, "mount of pleading." Here, therefore, is another example of the Saxons' practising a specifically Celtic method of procedure.

<sup>2</sup> S. O. Addy (*Evolution of the English House*, p. 187) finds a parallel in North-West Spain, where 'the local council was summoned by the church-bell on Sundays, and seems to have been held in the church.' This he regards as 'an accidental survival of what was once the universal practice in Western Europe.' It seems to be a fact that the halimote, when heard of at all, is commonly in *ecclesiastical* manors.

<sup>3</sup> *Law Dictionary* (1739).

indeed, was driven to assert that there were two sorts of halimote, one the holy-moot and the other the hall-moot, and to justify his position he adopts different spellings. Thus he writes :—

‘*Halymote* is properly a Holy or Ecclesiastical Court ; but there is a Court in London, formerly held on the Sunday next before St. Thomas’ Day, called the Halymote or Holy Court (*Curia Sanctimotus*), for regulating the bakers of the city, etc.’

The facts that this court met on Sunday, and that the particular Sunday was determined by the incidence of St. Thomas’ Day, are of importance, equally with the explicit admission that *halymote* meant simply the Holy Moot (*sanctimotus*). Jacob continues :—

‘*Hallmote* or *Halimote* (Saxon *heall*, i.e. *aula*, and *gemote*, *conventus*) was that court among the Saxons which we now call the Court Baron ; and the etymology is from the meeting of the tenants of one Hall or Manor. . . . It hath been sometimes taken for a convention of citizens in their public Hall, where they held their courts, which was also called Folkmote and Halmote ; but the word Halimote is rather the Lord’s Court held within the Manor, in which the differences between the tenants were determined.’ Follows the citation from *Laws of Henry I* (i, c. 10) above given, and another from the Records of Hereford, *temp.* Henry VI.<sup>1</sup>

What is of interest here is the express admission that the halimote was a Saxon institution in existence before the arrival of Norman feudalism.

The *ecclesia* is expressly named in the *Laws of Henry I*, side by side with the market, county court, and Hundred-court, as the proper scene of the legal act of manumitting a slave ; and in the same chapter it is laid down that the purchase of a slave, to be valid, must take place *in halimoto vel hundreto vel vicinio*.<sup>2</sup> So in the *Laws of Edward the Confessor*, where the question is that of trial by ordeal :

<sup>1</sup> It is more than possible that the term ‘hall-mote’ is itself due to a false etymology, which confused *balig(mote)* with *aula*. The entries in *D.B.* suggest that at that date it was very unusual for the *Curia* to be held in any *aula*, and in a general way that was the case with all moots for two or

three centuries more. It might be perfectly legitimate to argue that the term *balimote* cannot mean ‘a moot held in the hall,’ because it belongs to a time when halls were not used for moots.

<sup>2</sup> *Laws of Henry I*, c. lxxviii, § 2. Cf. above, ch. xxvi, on Bodmin.

*si barones sint qui iudicia non habeant in hundreto ubi placitum fuerit, ad propinquiorem ecclesiam ubi iudicium regis erit, determinandum est.*<sup>1</sup> Trial by ordeal indeed was usually made in 'churches' only, and the form of procedure laid down by the Laws of Athelstan (925) for the ordeal by fire belongs to a time when 'church' still meant '(church-)yard.' If this be borne in mind a good many of the difficulties disappear from narratives like that of the famous ordeal of Queen Emma (1043), the Confessor's mother, as related in the *Annals of Winchester* (pp. 20-25). In another of the laws of the Confessor, 'church' still has this meaning, namely, where it is enacted that stray animals shall be brought 'to the church,' and the priest shall enquire into their ownership.<sup>2</sup> This again brings us back to the churchyard as a court of justice, the *haligmot*. A grant made in the thirteenth century to the Abbey of Beauchief allowed the grantees to answer any summons for delinquency, not in the grantor's *curiae* of Norton and of Alfreton, but 'at the churches' of those places only. The term *halimote* is not used, but the thing intended must be this, the traditional moot of the free village within its *ciric*.<sup>3</sup> Herein, too, may be found the explanation of seeming anomalies in connexion with now inconsiderable places such as Little Hucklow,<sup>4</sup> in Derbyshire, 'where there has never been a church.' Doubtless Little Hucklow never attained to the pride of a *mynstre*, but as doubtless it had its own *ciric*—the very name of it (Huck-hlaw) says as much—and therefore naturally its own *halimote*.

Amongst the witnesses to an agreement between the monks of the Priory of St. Pancras, Lewes, and one Walter de Hertefeld, respecting certain land in Cudnor (*i.e.* Westham, Sussex), in the early part of the thirteenth

<sup>1</sup> Thorpe, *Laws of Ed. Confessor*, c. ix.

<sup>2</sup> Thorpe, *Ancient Laws*, p. 452. Cp. above, ch. xiii, on the bringing of animals into 'churches.' The Confessor's law explains the intimate connexion between the village church and the village pound. It is quite usual to find the pound, like the stocks, immediately beside the church, as at Eglwys Newydd, in Cardiganshire (Eyre Evans, *Cardiganshire*, p. 46), and at Llanstephan (*Inventory, Radnorshire*, no. 446, 'a few yards away' from the church). At Llanbadarn Fawr, in the same county, the site

of the pound is still traceable across the road and immediately opposite to the gate of the churchyard. At Southover, Lewes, Sussex, the pound still stands almost opposite to the twelfth century church of St. John.

<sup>3</sup> The Latin of the Charter (printed in facsimile in Addy's *Beauchief Abbey*, 1878) reads *apud ecclesiam*, not *in ecclesia*; not 'within' the structural church, but beside it in the churchyard.

<sup>4</sup> Webb, *English Local Government (The Parish and the County)*, p. 178.

century, occurs the 'Hallemote of Langneya'<sup>1</sup> (Langney in the parish of Westham), in other words the freemen of Langney assembled in their traditional village moot. Langney had a chapel as early as 1121,<sup>2</sup> and there is some evidence that it had a *ciric* or burial-ground; and this would be the place of assembly of its 'Holy Moot.'<sup>3</sup>

It is certain that no moot of whatever degree was *ab initio* held under a roof. The halimote was no exception; it met *sub divo*, and probably it long continued so to meet even when the *ciric* had come to boast a structural church of some dignity. The convenient church-porch would offer the intermediate stage. But the traditional feeling that the moot ought to be held under the roof of heaven survived until quite recently, if it be not still alive. The old moot-hall of Godmanchester, Hunts., was standing as late as the eighteenth century. It was a rectangular hall of timber, opening upon a fenced yard of the same plan and area. The moot-men met, weather permitting, in the open yard; but if the weather was bad, they used the roofed hall.<sup>4</sup>

As they successively came to be included in manors the small free villages would for the most part lose the freedom of their halimotes, though occasionally this might be reserved to them in part by the special grace of the lord, as occurred in the case of Beauchief, or might be permitted on sufferance, as seems to have happened in the case of the late monastic manor of Langney.<sup>5</sup> Either way,

<sup>1</sup> *Lewes Cartulary* (Cotton MSS., Vesp. F. xv, fol. 69d.)

<sup>2</sup> '... *pellas* [?] *capellas* de Horsteda et de Langeneia,' in a charter of bishop Ralph of Chichester (1121) confirming to St. Pancras' Priory the grants of various churches, etc., printed in *Sussex Arch. Coll.* xxxv, 193.

<sup>3</sup> Positive proof of the existence of a *ciric* in Langney in the thirteenth century is not yet forthcoming. There is, however, a 'Burgh Acre,' a field close to the highest point of ground in the parish, where is a mound which has much the appearance of a barrow. 'Burgh Acre' seems to represent an earlier name written Berghlond, so that it must be referred to *beorb*, but whether in the sense of 'hill' or 'grave-hill' is not certain. There is some evidence to show that a Roman road from Anderida (Pevensey) ran through Langney to the Downs by Willingdon, to which latter manor Burgh

Acre or Berghlond belonged. This information I owe to Rev. W. Budgen.

<sup>4</sup> *Proc. Cambridge Antiq. Soc.*, xlv (1909), where is an illustration from a contemporary drawing. Godmanchester was an important Roman station, and is to this day a chartered borough, whose freemen claim the franchise in virtue of their having been born in one or other of certain specific houses, all situated within the limits of the old *castra*. Its moot hall is of further interest, for there is some reason to think that it stood actually within the *circus* of the Roman town, at the junction of the Roman roads to London and to Sandy. The church, which stands within the old *castra*, has a garth still partially circular.

<sup>5</sup> See Seebohm, *Village Community*, p. 270, on the continuity of 'thousands of *villae*' under Frankish rule 'upon the widely extended ecclesiastical estates,' citing Roth, *Geschichte des Beneficialwesens*, p. 81.

the facts suggest that the issue between the halimote and the *curia domini* was not merely the issue between freedom and villeinage, but also that between the lay power and the power of Holy Church. The latter was bound to stickle for the old privilege of the churchyard court as against would-be lay impropiators, and herself to safeguard it when she came into the position of landlord.<sup>1</sup>

Such a case as that of the three Essex villages of Kirby-le-Soken,<sup>2</sup> Thorpe-le-Soken, and Walton-le-Soken (now Walton-on-the-Naze), points the same way. The name of Kirby proves that there was a *ciric* here from very early times, the dedication (St. Michael) is one of the oldest, and this particular village seems to have taken priority of the others in virtue of its having its own *ciric*, that is, its own machinery of government.<sup>3</sup> With this machinery in some way the manorial lord seems to have made common cause, and by so doing to have secured for himself and for his tenants undisputed powers of *sac* and *soc*, which survived the expropriation of the manors by Henry VIII, were still absolute when Camden wrote, and are not altogether extinct at this day.<sup>4</sup>

Under the new name of *Libera Curia*, the Free Court, the older Saxon moot survived especially in the county of Durham, and the explanation of the fact is simple: from pre-Conquest times the land betwixt Tyne and Tees was 'Patrimony of St. Cuthbert,'<sup>5</sup> and so remained until the nineteenth century, never passing into lay ownership. Here then, if anywhere on English soil, one would expect to find survivals of the social system of pre-Conquest times. Here, in fact, the machinery of Anglo-Saxon village-

<sup>1</sup> In *D.B.*, and specifically in Norfolk, it is a common thing to find a holding by freemen described as *in commendatione* to some lord; which would naturally result in the lord's gradually acquiring full lordship.

The court of the manor (Eadwulfness) was annually held 'in the church of Kirby-le-Soken' as early as the year 1181. Addy, *Church and Manor*, pp. 184, 202, from *Domesday of St. Paul's*, p. 111. With Kirby-le-Soken cp. the Icelandic (Danish) *ting-soken*, *ch. v.*

<sup>3</sup> Similarly, the name of Kirkham in *Lancs.* points to the fact that it was 'once the ecclesiastical head of the district,'

extending to as many as 14 townships. (*V.C.H. Lancs.* vii, 143).

<sup>4</sup> Gibson's *Camden*, i, 358; 'the Bailiff (of the Liberty) executeth all matters, as if he had Viscountile authority,' but only 'with the consent of the lord first obtained.' The lord of the Soke still appoints his own coroner.

<sup>5</sup> The *Patrimonium Cuthberti* took its rise from a grant by Egfrid of Northumbria (685), who gave to the Saint large parts of what are now Northumberland and Durham. This grant was greatly enlarged by Bishop Egred of Lindisfarne, circa 830, who added further parts of the county of Durham. See Rev. H. Gee, D.D., in *V.C.H. Durham*, ii, 5.



government went on uninterruptedly side by side with the seignorial *dominium* of the Bishop and Prior of Durham. And if, as is also the fact, we find the *Curia Libera* most frequently and most persistently within the *Terra Cuthberti*,<sup>1</sup> it is a legitimate inference that it represents a form of local government once much more general and very ancient. But by a curious chance the rightful name of the older Court had come to be usurped by that of the lord Prior: thrice a year he or his officers held courts for the various manors of the Priory, and while such court is consistently spoken of as *Curia domini Prioris*, the court-roll is uniformly headed *Halmota*. But side by side with these existed the Free Court (*Curia Libera*), and the court-rolls constantly mention the summoning of one or another person to answer for an offence before the *Curia Libera*. Over the *Curia Libera* the Prior had no control, and even when the offence is trespass on the Prior's land, neglect of hedges and mere-stones, or even encroachment, if the offender be a free man, the Prior has no redress except by process in the Free Court; and the court-rolls suggest that this was not always satisfactory. Of the Free Court itself we have no details, save that it seems commonly to have met on Sundays.<sup>2</sup>

The *Domesday Book* makes constant mention of 'free-men'—*liberi homines, socmanni*—and frequently in localities where it is not easy to account for their presence. Ellis

<sup>1</sup> See *Durham Halmote Rolls, passim*.

<sup>2</sup> See APPENDIX C. Such a confusion as is here suggested would arise the more naturally as the Prior represented the most holy St. Cuthbert and his church in Durham. His was necessarily, therefore, a Holy Court. When there arose the need of distinguishing between this and the older halmotes of the free *tuns*, as necessarily the Prior would insist that the name of Holy Court belonged peculiarly to his own Court, and there would be coined for use in documents the new name of *Curia Libera* for the old and rightful *halmote* of the *tun*. But the term *Curia Libera* may be assumed to have been justified by the facts, in which case the halmote may very well have been known even to the Saxons as the Free Moot. At any rate the Latin name remained a technicality of lawyers, while such terms as 'Free Court' and 'Free Town' held their ground stubbornly. When Shakespeare (*Romeo and Juliet* I, i, 109) makes the

Prince of Verona summon both Montagu and Capulet

'To old Free-town, our common judgment-place,'

he was reading his knowledge of English ways into his Italian original, where *Villa Franca* is the name of either the castle or the pleasure-villa of the Capulets. He rendered *Villa Franca* by 'Free-town' legitimately enough, but that he did not do so without purpose is shown by his adding the explanatory phrase 'our common judgment-place.'

It is curious to read that the site of the A.-S. cemetery at Long Wittenham, Berks., was 'a plot of ground called the Free Acre, formerly known as Town Furlong.' The name of an analogous institution is preserved in that of the *Palais du Franc* in Bruges, where the modern tribunal still stands upon the same site and fulfils the same purpose. Cp. also Miss R. R. Reid in *Eng. Hist. Review*, April, 1920, p. 199.



estimated their total number at not less than 35,000, and such a figure, no insignificant part of the whole population of the time, must represent a very appreciable number of separate communities. Professor Maitland's conclusion was that there were, at the time of the Survey, a number of independent villages, the lands of which were worked in common by a body of freemen<sup>1</sup>; and most authorities admit that, by whatever means, there did actually survive, until the Conquest and after, a limited but considerable number of free Saxon peasants enjoying the privileges of *sac* and *soc*. The testimony of place-names is to the same effect, says Professor Stenton.<sup>2</sup> It is not after all a very difficult matter to imagine how such extra-manorial communities might grow up even to the dignity of *tuns* possessing each its own *ciric*, and might automatically develop that national form of self-government which seems to have been the Saxon's birthright, undefined perhaps, but only because it was indefeasible.<sup>3</sup> Antiquaries are fond of dwelling upon the decay and disappearance of communities; that communities also grew and multiplied, then as now, is perhaps a fact not sufficiently remembered. New communities must have been in constant process of formation, each must necessarily have its place of burial, and the majority would in course of time come to have their own 'churches'; and each would automatically produce its own machinery of government as instinctively as a bird learns to fly. Save for minor accidents of detail, the machinery would be essentially the same; it would be

<sup>1</sup> *Domesday and Beyond* (Camb. Press, 1897), p. 140. They seem to have been collected chiefly in the Danelagh. As free communities they would frame their own by-laws, i.e. laws of the *by* (= *tun*), and their officials were sometimes known as By-lawmen. The name and office survived in Yorkshire until the time of Charles I. Palgrave, *Commonwealth*; Stubbs, *Const. History*, i, 103. F. M. Stenton in *Eng. Hist. Review*, July 1918, p. 344, cites from *D.B.* striking figures to show the preponderance of sokemen over villeins and bordars in the neighbourhood of Blankney, Lincs., the total of 9 villages (11 manors) showing 244 sokemen to 43 villeins and 52 bordars. In the same article is printed from the *Cartulary of Haverholme Priory* a charter (c. 1139-41), whereby Walter Deincourt gives

to the Priory 265 acres of the waste of certain villages *concessione Oliveri filii mei et concessione socamans praedictarum villarum quorum praedicta terra fuit*. One of the villages, it may be remarked, was a Kirkby (Kirkby Green).

<sup>2</sup> *Introd. to Survey of Eng. Place-Names*, p. 42.

<sup>3</sup> See for example the Will of Siflaed in *Diplomatorium*, p. 592. She held Mardingford in Suffolk (anno 1060), and by her will declares that 'my church' and 'my men' shall be free; whereby the non-free community presumably became a *tun* with its *tunkirk*. The testatrix unfortunately appointed St. Edmund 'protector of the free-shot,' which gave excuse to the monastery of Bury to seize a large portion of the property (*ibid.* p. 593).

that of the halimote assembling in the *ciric*. In a very literal sense the *ciric* made the community, and there was, therefore, a certain fitness in the event of Holy Church presently stepping in to claim for herself, and in some measure to safeguard, that which the lay lord had inadvertently overlooked.<sup>1</sup>

There is clear proof of the existence of a village moot—the *Libera Curia* of the *Terra Cuthberti*, the halimote of other parts of England—composed of the freeholders. These freeholders have *sac*, *i.e.* the right to deal with certain kinds of offences, and *soc*, *i.e.* a definite area over which such jurisdiction extended, co-extensive with the lands of the said freeholders. It would seem to follow that *sac* and *soc* were not so much incidents of lordship as the necessary privilege of the Saxon freeholder, not to be alienated except by express act of the Crown.<sup>2</sup> They might be, they inevitably were, constantly usurped by the encroachments of the lord in post-Conquest times, but they showed a vitality only to be explained by some indefeasible foundation in pre-Conquest freedom, and an elasticity which not only revived them, if moribund, but spontaneously called them into being where they had never before been exercised, upon the failure of the force which had prevented their normal development or had usurped them.<sup>3</sup>

William de Warrenne, who in 1077 founded the priory afterwards famous as that of St. Pancras in Lewes, gave to it before his death the whole of the tongue of land—he calls it *insula*—between the streams of Winterbourne, Cockshut, and Ouse, land which had heretofore been part of the wide parish of Iford, but had apparently had no community resident within it.<sup>4</sup> About the priory grew up a community which came to be known as Southover<sup>5</sup>;

<sup>1</sup> For *sac* and *soc*, see Stubbs, *Const. History* (1880), i, 213. The names, as he remarked, prove the things to be pre-feudal. For the utterances of other and earlier authorities on the matter, see Larking, *Domesday of Kent* (1869), App. vi. He concludes: 'All the authorities then after all confirm the statement . . . that the term *saca* signifies the privilege of holding pleas, and that *soca* was the territory within which the privilege was exercised. . . . It seems as though this tenure by free and common socage had remained a relic of Saxon liberty after the Conquest had established feudal tenures.'

<sup>2</sup> 'The tenants of manors were originally no serfs under a lord, but co-equal partners in a social group to which the lord himself belonged' (Gomme, *The Village Community*, p. 262).

<sup>3</sup> Cp. Niebuhr, *Hist. Rome* (1838), i, 353, of a similar phenomenon in ancient Latium.

<sup>4</sup> When de Warrenne made his gift its only inhabitant, excepting the 12 monks of the Priory and the household of the lord himself, was one person named Lewinus.

<sup>5</sup> This name first appears in the twelfth century.

and for the needs of this community the priory built the church of St. John in Southover. After the dissolution of the monasteries Southover continued to manage its own affairs, ecclesiastical, communal and others, by means of the customary vestry, though there is no reason whatever to suppose that this form of government was in any way thrust upon it. It was the national way, and therefore the natural way; and so soon as the community was left to look after itself, it spontaneously developed the needful machinery, and this nearly 500 years after the Conquest, and in a village which had no existence until about a century after the loss of Saxon freedom.<sup>1</sup>

The presidents of such free village-moots would naturally be the village-priests, and there is evidence that it was so. In some Anglo-Saxon writings the priest is called *thingere*, i.e. 'thing-man,' or *ciric thingere*, 'church-thing-man'<sup>2</sup>; and in Aelfric's *Glossary* the Anglo-Saxon equivalent of 'senator' and 'preacher' indifferently is given as *gemot-man*. One of the priest's duties was to attend with the reeve and six *villani* at the Hundred Court.<sup>3</sup> He was in fact *advocatus* of the village which he represented, and from this duty comes the modern word advowson (*advocationem*), albeit the meaning has now wholly altered. The Saxon *Laws* show the priest acting as president of the moot when he holds enquiry 'in the church' as to the ownership of stray cattle (p. 140). It has been remarked<sup>4</sup> that in early documents, whenever the priest is mentioned, 'the sacerdotal idea is almost always in the background,' the administrative always in the foreground. He is less priest (*sacerdos*) than prefect (*qui plebi praeest*) or rector (*qui plebem regit*), and on resigning office he is said *ab ordine et titulo et regimine plebis se exuere*.<sup>5</sup> The use of the term *persona* to mean the rector of the parish (not the vicar or any other priest) likewise arises rather from his temporal than from his spiritual importance.

Professor Maitland maintained that the now defunct

<sup>1</sup> For the evidence in this case, see the writer's article in *Arch. Journal*, lxxiv (1917), pp. 36-78.

<sup>2</sup> Addy, *Church and Manor*, p. 180.

<sup>3</sup> Round, *Feudal England*, pp. 118-120.

<sup>4</sup> Smith, *Dict. Christian Antiq.*, s.v. PARISH; Addy, *loc. cit.*

<sup>5</sup> So in Iceland (pre-Christian) the priest was rector of his own *thingmen* and controlled all matters of law, administration, etc. See Dasent's *Intro. to Story of Burnt Njal*, pp. xlvii sqq.

parish vestries were the heirs to the functions of the manorial courts,<sup>1</sup> a view very justifiably questioned by other authorities. It is a truer view that the manorial courts had themselves usurped some or all of the powers of the halimotes or 'town-meetings,'<sup>2</sup> and that, with their decay, these usurped powers reverted very largely to the original owners, the freemen of the *tūn* in their halimote assembled, albeit the *name* of the halimote had in most cases disappeared through long desuetude.<sup>3</sup> The simple fact which affects the present discussion is that the 'old parish-meetings, like the modern vestry, were held within the walls of the church.'<sup>4</sup> If we take 'church' in its original sense of churchyard, this sentence needs no alteration. Here is the sufficient explanation of the historical fact that courts were throughout the centuries held in the churchyards and the churches, and of all the other miscellaneous uses of the same for purposes administrative and judicial. Here, too, is the answer to the question raised by Fergusson,<sup>5</sup> why there should be found in the England of the Middle Ages so few municipal buildings. The customary municipal building of an English *tūn* was its church, and before it had a church, its churchyard. When in the fourteenth century the merchant-city of Southampton, fired doubtless by the example of the great towns of Flanders and the Lowlands, proceeded to build a town-hall, the site selected was the actual spot upon which stood the town-church of Holy Rood: the existing church was pulled down and rebuilt further back, 'that the hall might stand on the exact site' of the older church.<sup>6</sup> There could scarcely be found a more exact illustration of the peculiar sentiment which had led the men of Megara, some 2,000 years before, to include within their council-chamber the very graves of the dead forbears.<sup>7</sup> Such was the old way of the Celt, and the Greek and the Saxon followed it also. Inter-

<sup>1</sup> *Law Quarterly Review*, ix (1893), 227.

<sup>2</sup> Webb, *Eng. Local Government* (Parish and County), p. 38.

<sup>3</sup> They possibly passed under the general name of 'Courts Christian,' together with other ecclesiastical courts of higher status. In law the meeting of the vestry was public, and any member of the parish might attend it. The rector was *de iure* chairman.

<sup>4</sup> W. Johnson, *Byways*, p. 143.

<sup>5</sup> *Hist. Architecture* (3rd edit.) ii, pp. 199, 413.

<sup>6</sup> Mrs. J. R. Green, *Town Life in the Fifteenth Century*, p. 156. When the ancient corporation of Pevensey was suppressed in 1885, the *insignia* were placed in the parish church, where they still remain, an apt illustration of the abiding folk-memory which identified the church with the privileges of self-government.

<sup>7</sup> Pausanias ii, 43, 2.

mediate between the older and the newer ways is such a case as that of Cirencester, where the scene of all public meetings was for many years the magnificent three-storied south porch of the church.

Circular villages are to be met with in many parts of Europe north of the Danube. They are very numerous in Mecklenburg and in Bohemia, particularly about Marienbad. In Bohemia it is usually said that they were thus planned for purposes of defence in the Seven Years' War; another view has regarded them as Slavonic; a third maintains that they reflect the *wagenburg*—the ring of wagons drawn up circle-wise as a protection to the encampment—of the still nomadic tribes. As the central feature of the plan is commonly the church, it is possible that a truer explanation is to be found in the centralizing force of the church; and the possibility is increased when one reads that, in regard to Mecklenburg, the central feature is 'either the church or the town-hall.'<sup>1</sup>

Working upon entirely different evidence and wholly ignoring the *halimote* as a factor, Sir Paul Vinogradoff arrived at the emphatic conclusion that the elaborate system of Norman manorial courts was grafted upon a 'communal organization and representative institutions' which were in full and acknowledged existence amongst the Saxons long before the Conquest of 1066.<sup>2</sup> The social and economic unit, he points out, was the township; and a township, we know, was a community possessing its own *ciric*. He further raises the question whether the Saxon *tūn* may not have owed a great deal to a yet earlier Celtic organization. The present enquiry would seem to adduce something to confirm his surmise.

The late Professor Freeman<sup>3</sup> has been scoffed at as one who 'saw all things through a mist of moots and witans,' and one of the latest writers<sup>4</sup> on the matter declares that modern thought rejects such a view. But is it so certain that Freeman was wrong? This moot-system

<sup>1</sup> See A. Meitzen, *Siedelung und Agrarwesen der Westgermanen*, etc., i. 170.

<sup>2</sup> *Growth of the Manor* (Oxford, 1905). The cardinal weakness of this otherwise admirable volume is its entire disregard of religion as a factor in early social organization. It may not have been quite so important a factor as the present writer believes,

but assuredly it was a factor to be taken into account. Yet as a fact the *balimote* is mentioned once only in the volume (p. 365) and that without discussion or explication.

<sup>3</sup> See e.g. his *Origin of the English Constitution* (1872), pp. 20 sqq.

<sup>4</sup> C. H. Haskins, *Normans in European History* (1916).



—‘the primordial cell of Anglo-Saxon liberties,’ as it has been called<sup>1</sup>—was assuredly not taught to the Anglo-Saxon by the Normans who for a couple of centuries tried their utmost to enslave him. That it was to some extent existent here before the Conquest almost all authorities admit, but no one seems to have recognized it in the halimote, the universal and obvious, and for that very reason undescribed, moot of every Saxon *tun*. It was upon this that the Norman seized as the ready means of riveting upon the conquered people his own feudal system.<sup>2</sup>

There being manors in England before the Norman Conquest, it is not impossible that the very name, usually regarded as indubitably Norman (*manoir*) and derived from a Low Latin *manerium*, may itself be of Celtic origin. In Wales the *maenawr* (*maenawl*, *maenol*, *maynawl*) was an ancient territorial division containing 4 *treffs*, or 1024 *erws*; and it has not seldom survived to this day in the form of a parish, a manor, or both at once.<sup>3</sup> As Grenier has shown,<sup>4</sup> the French medieval *manoir* was frequently identical with an earlier Gallo-Roman estate. Such estates must have had their own native appellation, and this may very well have been something very like *maenawr*, which some would derive from *maen*, ‘lord,’ and regard as the equivalent of *dominium* or ‘lordship.’<sup>5</sup> With the decay of Celtic speech there would come a natural tendency to connect the word with *manere*, and when the Norman brought *manoir* into

<sup>1</sup> J. K. Hosmer, *Hist. of Anglo-Saxon Liberty*.

<sup>2</sup> Cf. Gomme, *Village Community* (1890), p. 143: ‘... a suggestion I am strongly inclined to make, that manors are the form in which the central government in England, in the eleventh and perhaps the late tenth century, clothed the then existing village communities.’ *Ibid.* p. 260: ‘The identification of manor-courts with the old township assemblies, and hence with the assembly of the primitive village community, cannot reasonably be denied.’

Little seems to be known of the organization of the people whom the Normans found and conquered in Normandy some 150 years before the conquest of England, but it may be that in point of composition and evolution there was little to choose between those and the Anglo-Saxons. In each country was an originally Celtic people, first Romanized and thereafter Teutonized.

<sup>3</sup> As also in England. For the *maenol* see Seebohm, *Eng. Village Community* pp. 203-4. *Maenor* is the South Welsh, *maenol* the North Welsh form. The word is a constituent of place-names of very great antiquity: thus Manorbier (Pemb.) is the Maenor Pyr of the *Life of St. Teilo* (twelfth century). So Prof. Ed. Owen tells me.

<sup>4</sup> *Habitations Gauloises*. The evidence of place-names leads Prof. F. M. Stenton to admit that in England also ‘it is at least possible that some of the great estates of the early Middle Ages ... descend, in fact, from the time of the [Saxon] migration and the movements which followed it’ (*Introd. to Survey of Eng. Place-Names*, p. 41).

<sup>5</sup> T. Lewis, *Glossary of Medieval Welsh Law*, p. 213. The more popular derivation is from *maen* ‘stone,’ with reference to the boundary-stones used to demarcate the *maenawr*.



Wales he would have no knowledge that his dog-Latin *manerium* was actually the Welsh *maenawr* in disguise. The Norman lawyers habitually used *mansio* in *Domesday* for a 'messuage,' but in classical Latin the word signified nothing more residential than an 'inn' or 'posting-house,' and there is little evidence for the use of *manere* to denote residence, let alone ownership of an estate.<sup>1</sup>

There are archaeologists of high standing who assert that, in the case of genuinely old manors, every English manor-house represents the *villa* of an earlier owner in Romano-British times, if it does not actually stand upon the *villa's* site. In the south of England, at any rate, the position of such ancient manor-houses is an important clue to the course of Roman roads, the houses frequently standing upon the lines of such roads.

But even the *haligsmote* was possibly itself borrowed from the Celt, just as was perhaps most of the elaborate system of moots upward to that of the *burh*<sup>2</sup> and that of the Hundred (ch. xxi), and 'it may appear after all that we owe to the Britons more than we have usually awarded to them of the blessings of our constitution.'<sup>3</sup> This pronouncement belongs to an age which is to-day esteemed uncritical, but its author was a man of decided originality and of independent judgment, with some knowledge of Welsh speech and Welsh antiquities. Sir Paul Vinogradoff is very justly regarded as a leader in modern critical research. That these two thinkers should arrive from data so different at conclusions so very similar, and with an interval of fifty years between them, is a fact of some significance.

Bearing upon the same conclusion is the suggestive fact that in so many cases the meetings of the English courts, manorial and others, were held either twice a year, at Easter and Michaelmas, *i.e.* on dates closely approximating to the equinoxes, or thrice a year, on dates nearly

<sup>1</sup> But *manentes* occurs in the sense of 'tenants,' e.g. in a charter of 714 (*Cart. Sax.* 132). According to *N.E.D.* the original significance of *manor* was '(manor) house.' What is here said of the origin of the term has nothing whatever to do with its peculiar connotation in Anglo-Norman law.

<sup>2</sup> Cp. on *burhgeatsetl*, above, ch. ix.

<sup>3</sup> Thos. Barnes, *Notes on Ancient Britain and the Britons* (1858), p. 37; Cp. *ibid.*

pp. 34-5. Compare also the express assertion of Geoffrey of Monmouth (above, ch. xi) that the Molmutine Laws (concerning moots and carmotes) had been translated into Latin by Gildas and into English by Alfred, and were 'famous amongst the English' in his own day (1147). He may have been mistaken about Gildas and even about Alfred; he cannot have been mistaken about the rest of his assertion.

coinciding with the equinoxes and the summer solstice.<sup>1</sup> The courts of the manor of Brighthelmston were held at Easter and at Michaelmas; the three *turni* of the Durham halmotes were respectively in the summer, in the autumn, and in the spring; by the laws of Cnut and Edgar the burghmote was held thrice a year<sup>2</sup>; and in the Bishop of Winchester's manor of Taunton, a markedly Celtic area, there were annually three courts which all his men must attend 'without summons.'<sup>3</sup> If there was no summons, the dates must have been astronomically fixed, and that, too, in some very elementary fashion. It is possible that we have here a direct inheritance from Celtic practice as indicated by the solstitio-equinocial 'pointers' which accompany some of the moot-circles; and the likelihood is not lessened when one recalls that the same arbitrary division of the year is still followed by the Church, the Law, and the Universities.

No small part of the business of an Irish *Aenach* was that of match-making. So it was at the Icelandic *Althing*, and at the annual Scottish revel at 'Chrystis' Kirk on the Green.' Before churches came to be used for the purpose, 'publication of the banns' was made in such assemblies *coram populo*, as it is to-day made in the church. Those young people who until lately plighted their troth at the Stone of Thor by the Ring of Stenness were merely doing, without the same excuse, just as their remote forbears had done at the same spot. Their forbears of a later generation 'went to church' to be married, but not until the sixteenth century was it ruled that the ceremony must take place within the building.<sup>4</sup> It had anciently been performed in the churchyard, that is, at and on the Christian barrow, as previously it had been performed at and on the pagan barrow on the occasion of revels and *Aenachs*. When a structural church was at last built, its porch came to be the convenient scene

<sup>1</sup> A frequently recurring date is St. Thomas' Day (Dec. 21), the winter solstice. Others are on or about St. Gregory's Day (Mar. 12th) and about July 1st. One of the annual folc-moots of the Anglo-Saxons is said to have been held on the summer solstice, while in Scandinavia the great moots took place at midsummer, mid-winter, and in the spring; see the *Sagas*, *Story of the Tnglings*, cc. 38, 42; *Story of*

*Olaf Tryggvesson*, c. 72. The Manx Tynwald meeting is always on the eleventh day after midsummer day (July 1st), and the *boltings* of Holland were held on St. Peter's Day (June 29th).

<sup>2</sup> Maitland, *Domesday and Beyond*, p. 184.

<sup>3</sup> *Ter in anno placita Episcopi sine ammonitione*; D.B. Somerset, i, 87b.

<sup>4</sup> By the rubric in the *First Prayer Book* of Edward VI.

of the ceremony: 'Husbondes at chirche-door she had had fyve,' wrote Chaucer of his Wife of Bath.

From their birth to their death the churchyard, the *ciric*, was the focus of all and every happening in the lives of English folk after they had abjured paganism.

If those writers<sup>1</sup> are correct who assert that the name of Druids continued, for some years after the introduction of Christianity, to be applied to the Christian priests, one may see an easy explanation of the error which attributes to Druidism, and therefore by implication to paganism, so many anhistoric circular precincts. In reference to a circle at Auchincorthie, Aberdeenshire, it is recorded that 'the people that live near by . . . have a tradition that the pagan priests of old dwelt in that place, and there are yet to be seen, at a little distance from the monuments standing there, the foundations of an old house which is said to have been the Teind Barn. They report likewise that the priests caused earth to be brought from other adjacent places upon peoples' backs to Auchincorthie, for making the soil thereof deeper, which is given for the reason why this parcel of land, though surrounded with heath and moss on all sides, is better and more fertile than any other places thereabouts.'<sup>2</sup> This may be a vague folk-memory of a practice like that described in Plutarch's assertion that each comer cast into the *mundus* a handful of the soil of his own land, and in the Manx tradition that the Tynwald Hill was built up of soil brought from every parish in the island,<sup>3</sup> though it has apparently been confused with the customary method of raising a burial-mound. The passage seems also to preserve a memory of the fact that priests were attached

<sup>1</sup> E.g. Malkin, *Scenery of South Wales* (Ed. London, 1807), ii, 103; Williams, *Eccles. Antiqs. of the Cymry* (1844), pp. 61, 69, 71. The fact that St. Columba explicitly speaks of Christ as 'my Druid' certainly suggests something of the kind. Had the word in his time conveyed any necessary connotation of paganism and devil-worship, it is scarcely conceivable that it could have been so used by any Christian, least of all by one in Columba's position, at a period when paganism was still very much alive. *Dry-craeft* (i.e. Druids' Craft) was the familiar A.-S. term for 'sorcery' so late as Alfred (*Orosius*). Jamieson (*Hist. Culdees*, p. 29) mentions an old man who invariably

addressed God in his prayers as 'Arch-druid or Coifi.' See further on possible traces of a fusion of Druidism with Christianity, A. L. Lewis in *Journal Anthropol. Inst.* xii (1883), pp. 184-6. According to Mackay, *Dict. of Lowland Scotch* (1888) the term *coifi* still survives in the cant gipsy 'Queer Cuffin,' meaning a Justice of the Peace (the Archdruid in his *cor* or choir).

<sup>2</sup> *Archæologia*, i, 339.

<sup>3</sup> A similar practice is suggested by the peculiar construction of the moots of Church Barrow and Buckland Bank (ch. ix). In each case it is difficult otherwise to explain the extraordinary depth of pure brown mould and its peculiar disposition.

to the early Christian *cirics* before any churches were erected.

The evidence suggests that the earliest Christians in these islands buried their dead with precisely the same external forms as paganism had employed—cromlech, menhir and dolmen. For reasons which need no explanation Holy Church, so soon as it was feasible, set her face against such forms: cromlech, menhir and dolmen were declared to be symbolical of paganism, and hence arose the persistent tradition that all such monuments are actually pagan. The outstanding figure in paganism being that of the Druid, the name of Druidism supplanted that of paganism, abetted by the possible fact that for many years even Christian priests were styled Druids. In other words Druidism in this connexion originally signified early Christianity, and not paganism at all.

There has been much discussion and speculation upon the questions, Who built the first churches? and Who were the owners of them? So long as the precise meaning of 'church' remained undefined, there could be no convincing answer forthcoming. Now that it is possible to put a precise meaning to the term, there may be some hope of a better result.

Taking 'church' in its original sense, the builders of the first English churches were those who built the first Christian barrows; and the vast majority of these were certainly not built before the time of Archbishop Cuthbert (c.750). But there were Christian 'churches' for more than a century before that date, in the sense of places where Christians were buried and Christian prayers were said. According to the Welsh *Laws*, the owners of the 'church' were the community and their priest,<sup>1</sup> and in default of any evidence to the contrary one may believe that the same held good among the Saxons. The *ciric* was, and still is, the common burial-place of a community, knowing no distinctions of rank and degree. It is still the property of those who form its congregation and of their priest conjointly; all the parishioners are entitled to burial within it, and no one that is not a parishioner may be buried

<sup>1</sup> It was so also in the twelfth century, when the Welsh 'churches have almost as many parsons and sharers as there are

principal men in the parish.' Girald. Camb., *Description of Wales*, ii, 6.

there except by courtesy. Even the lord of the manor has no right of property therein. The very words of the burial service, and the ritual of scattering the handful of earth over the dead, point to the fact that the original *ciric*, like any other barrow, was built by the combined efforts of all the community (ch. xxv). So does the practice which made the parish jointly and individually responsible for the proper fencing of the churchyard, and the fact that the sittings in parish churches customarily devolved with the several messuages of the parish. To this day the ancient seats in the parish church of Shermanbury, Sussex, still bear the names of the different farms to which they belonged. Bettws-y-Crwyn in Shropshire provides another example of the practice, which was probably general at one period. A case is cited so late as 1902 of the public advertisement of the sale of a sitting in the parish church of Chertsey, which carried with it a parliamentary vote for the county of Surrey.<sup>1</sup> The fact sounds strange, but it is only the converse of what is, or was, once perfectly familiar: ownership of a seat in the communal church was a proof of the holder's full rights as a freeman of the community, just as much as ownership of land in the parish was a title to a sitting in the parish church.

Doubtless from the beginning of time there have been such things as individual *mausolea*, and the great houses of paganism had their own barrows exactly as those of to-day have their mortuary chapels and their family vaults. Individualism probably went very much further in pagan times than now it does. A characteristic of the Christian burial-ground is its democratic quality.

When Archbishop Cuthbert took the momentous step of authorising the making of cemeteries within the *túns*, most of the communities of Saxon England were certainly still free in the fullest sense, but others had as certainly passed into the *dominium* of the thane. The fact would make no immediate difference: the thane might, if he so pleased, build for himself a private *bedehus*, but he could not make and own a communal burial-ground. If in the course of time circumstances demanded that such a private chapel should be raised to

<sup>1</sup> Addy, *Church and Manor*, p. 420.

the dignity of a church, the necessary ground around it was consecrated by a bishop and thereby passed into the ownership of the new parish or the village which it served (ch. xxv).

The question at what date the first structural churches were erected depends entirely upon the further question when the original *bedehus* came to be thought of as more important than the burial-ground. It is not needful to repeat the evidence bearing upon this point: the sum of it is that, while there seems reason to think that some sort of *bedehus* might be constructed almost as early as the *ciric* containing it, this was certainly not necessary; and on the other hand there is no reason to think that a structural church as we understand it, was anything but the rarest exception even in a Saxon monastery before the eighth century, and for perhaps 200 years later in the towns and villages. Not until the twelfth century can it be said that the church had finally taken precedence of the *ciric*.

The builders of the first *bedehus* were probably the builders of the *ciric* itself, *i.e.* the community. Such is assuredly the commonsense view, and it is borne out by the little evidence forthcoming.

Professor Baldwin Brown,<sup>1</sup> endorsing Albert Hauck's suggestion<sup>2</sup> that this was so, and that the 'church' was as much the property of the community as was the village mill, says that 'it is *a priori* likely,' but complains that 'it is most difficult to find direct documentary evidence for it.' It would be strange if it were otherwise, and it is, therefore, the more fortunate that there is forthcoming at least one indisputable document to prove it. The instance comes from Bavaria and belongs to the year 778, and, therefore, represents what may well have occurred in England at any time as far back as a century earlier. In that year 'Lautperht the priest hands over to the episcopal church at Freising the oratory in the vill which is called Assling; and in their piety the neighbouring inhabitants have together determined that the church should pass into the possession of the see, and this by resolve of the inhabitants themselves, who were the founders of the same

<sup>1</sup> *Arts*, i, pp. 286-7.

<sup>2</sup> In *Kirchengeschichte Deutsch.*



house of God (*firmantibus ipsis vicinis, qui hanc ipsam condiderunt domum Dei*).<sup>1</sup>

Nothing more explicit is likely to be forthcoming of a date so early, and though one could wish that the case had been English rather than Bavarian, there is no reason at all to doubt that the procedure in both countries was the same. It will be noticed that the men of Assling not merely claim to have built their own oratory, but they exercise also the right to dispose of it as they choose. They debate and decide the matter, one may suppose, in something exactly similar to the English halimote, and their priest acts as representative (*advocatus, thingere, gemot-man*) of the vill. This voluntary surrender by the people of Assling of themselves and their oratory to the see of Freising suggests another and probably not unusual way whereby the Church acquired so many of its possessions. It is quite easy to understand how a free village might be drawn to seek the protection of some powerful religious house, and how such a course might be taken expressly to escape from the threatened alternative of incorporation in some feudal manor. In so doing, the village might hope, conceivably might even stipulate, that it should keep its communal form of government by halimote, a privilege which it could scarcely hope to make good against the encroachments of a grasping lay lord.

In old Irish law the possession of a 'church' is the first of the three essentials to a free community: 'It is no *tuath* without three free *neimhedh*, or dignitaries—the *Eclais* or church, the *Flaith* or lord, and the *File* or poet.'<sup>2</sup> Again, according to the Welsh laws, the building of a church by a non-free community, subject to the permission of the lord, made the community free.<sup>3</sup> From these statements it would appear to follow that any community having its own church was therefore free, *i.e.* self-governing; and if the church was the sign visible of such freedom, there is apparent another reason why the moot of such a community should be at its church. Inasmuch as the Saxon

<sup>1</sup> *Arts, loc. cit.* The document is printed in Meichelbeck, *Historia Frisingensis* (1724), i, p. 61. The event occurred in the time of Duke Tassilo, 'a period of great activity in church-building in the newly Christianized territory.' The expression 'church-build-

ing' must, however, be construed in the light of archaeology.

<sup>2</sup> Quoted by Skene (*Celtic Scotland*, ii, 72) from *Cotton MS., Brit. Mus., Nero A vii.*

<sup>3</sup> *Ancient Laws of Wales*, i, 445; ii, 873.

learnt his Christianity from the Celt, something very similar may have prevailed in England, and certain other facts point in this direction. It was Saxon law at least from the time of Athelstan that any churl who had become possessed of 5 hides of land, a chapel, a kitchen, a hall, and a bell, should become not merely a freeman, but a thane.<sup>1</sup> It seems to be a logical inference that every manor must have its own place of worship, and there is a good deal of evidence to show that this was so with any community. In *Domesday* are mentioned here and there incidentally churches endowed by a number of 'free men' in co-partnership: thus a group of 15 free men hold the moiety of the church at Braiseworth in Suffolk, each with one acre of land; the church at Stonham was endowed with 20 acres by 9 freemen; and that of Helmingham was held by 3 persons, one of whom had a half-share of 3 acres, while the other two held each a quarter-share of  $1\frac{1}{2}$  acres.<sup>2</sup> Thus, exactly as in Achean Greece every free community must have its own *ἐκκλησία κύκλος*, and in classical Italy each must have its own *circus*, so in the England of the tenth century every free community must have its own church. The term *curia* is equivalent both to the Latin *circus* and to the English *church*; and, things which are equal to the same thing being also equal to one another, it follows that *circus* and *church* are identical. That they were identical in function has been demonstrated. In the next chapter it remains to be shown that they are also etymologically identical.

Doubtless in the first instance the community erected the original *bedehus* or oratory, which was at once the dwelling-place and the 'church' of their elected officer the priest; but in the course of time was bound to grow up the idea that this building was the private property of the priest for the time being, and when many years later the parishioners aspired to have a roof of their own for worship, and enlarged the building for that end, the priest's portion of it remained as the chancel, while that of the people became the nave. Throughout the centuries, in England as in Wales, runs this pronounced distinction between the two, and moreover, as the term 'church'

<sup>1</sup> Hume and Smollett, *Hist. of England* (1854), i, 163.

<sup>2</sup> Addy, *Church and Manor*, p. 437, citing V. B. Redstone.

came more and more into use to denote the structure, it was habitually used to denote only that part of the structure (the nave, etc.) which did not in quite the same sense belong to the priest. Just as in Wales *cagell ac egluis*<sup>1</sup> together denote the whole building, so in English the expression 'church and chancel,' or something of the like kind. The same distinction is in Scotland reflected in the proverbial utterance 'he rives the kirk to thatch the choir.' Occasionally the tower is mentioned<sup>2</sup> as a third element in the whole, and sometimes the separate ownership of the chancel is emphasized by styling it *rectoria*.<sup>3</sup>

Herein is to be found explanation of the fact, peculiar to the Anglican Church, that while the entire structure is the parson's freehold, the responsibility for the upkeep of the chancel and of the nave is divided. For the repair of the chancel the priest is answerable, for that of the rest of the fabric—chapels in private ownership excepted—the parishioners must answer<sup>4</sup>; and the same evolution will explain the peculiar legal position of the churchyard, which is the priest's freehold indeed, but subject to the control of the parishioners through their churchwarden; and while the parish is liable for the proper upkeep of its fences, the priest may not cut down a tree thereof without the consent of the parishioners.<sup>5</sup>

Every one recalls the peculiar virtues attaching in magic and folklore to the symbol of the circle. Large part of

<sup>1</sup> Archaic Welsh for *cagell ac eglwys*.

<sup>2</sup> So an epitaph (circa 1404) in the Church of Holm, Norfolk:—

'Henry Nottingham and hys wyffe lync here,  
That maden this church, stepul, and  
quere.'

Pettigrew, *Chronicles of the Tombs*.

Cf. Jacobs, *Law Dictionary* (London, 1739): 'A church in general consists of three principal parts, a belfry or steeple, the body of the church with the isles (*sic*), and the chancel.'

<sup>3</sup> *ad reparationem cancelli seu rectoriae* (Yorks. Wills, iii, 29).

<sup>4</sup> This suggestion has been made before. Thus Howard and Crossley in *English Church Woodwork* (London, N.D.), p. 214: 'It has been suggested that the earliest Christian buildings in these islands were sanctuaries built by the efforts of the first missionaries, and that the nave was probably added at the cost of the converts. This tradition has never died out, for even at the

present day the rector is responsible for the upkeep of the chancel, while the duty of repairing the nave rests with the parishioners, and the screen, the property of the parish, forms the boundary between their respective domains.'

S. O. Addy has attempted to explain this divided ownership by the theory that the church has developed from the lord's house, remarking that 'at all events no other explanation will bear examination' (*Church and Manor*, p. 426).

<sup>5</sup> Disputes about the churchyard were, says S. O. Addy (*op. cit.*, p. 427), more serious than those about the church itself, which was the inevitable consequence of so mixed an ownership, itself the result of the total disappearance of all memory of the real origin of church and churchyard alike. Seeing that the lawyers, like the clergy, used *ecclesia* indifferently for both, the wonder is rather that disputes were not more frequent.

such ideas must be derived from the ritual circle of Celtic paganism, that is, from the circular hut of the living and the circular barrow of the dead. 'The house that is favoured of God'<sup>1</sup> is the round Celtic hut of wattles. 'Whoso lives in a house that is built over a fairy-ring shall wondrously prosper,'<sup>2</sup> and the pretty fancy that the 'Little People' fashion these fungoid circles, what time they

'dance their ringlets to the whistling winds' must go back to the same dim memory.<sup>3</sup> Whoso would 'call up spirits from the vasty deep,' and 'command them when called,' must mark about him on the floor a circle, across which could reach no evil influence to harm him. 'You must make a circle if you would conjure.'<sup>4</sup> The dead were buried within the circle because they had lived within a circle, but when that fashion of dwelling was forgotten, there was invented the reason that the circle prevented the dead man's ghost from passing out to vex the living. Conversely, therefore, the necromancer stood within a circle that the Devil might not reach him, for within the circle he felt himself 'sure against all ye deuils in hel.'<sup>5</sup> Moreover, the Devil lurks in corners, and a circle provides no corners for his accommodation. The more the circles, the greater the security: 'Weave a circle round him thrice, and close your eyes with holy dread.'<sup>6</sup> The sunwise turn is itself symbolical of the same belief, and to reverse it, to make the turn 'widdershins,' was as potent for evil as the other for good, like the repetition of the Lord's Prayer backwards or the utterance of any palindromical doggerel. The very pebbles which, according as they were used,

<sup>1</sup> Sullivan in O'Curry's *Manners and Customs*, iii, p. 33.

<sup>2</sup> *Atibeman Oracle*, i, 397.

<sup>3</sup> In Irish folklore rabbits and fairies are frequently associated; the fairies are believed to take the shape of rabbits on occasion. This fancy may be in part due to the fact that rabbits actually form rings in their romps, as anyone may see for himself where the turf is of suitable quality, e.g. on the Downs behind Eastbourne. These rabbit-rings are moreover remarkable for the fact that they are frequently penannular, there being left a definite gap in the circle, where is to be found no slightest trace of the animals such as cover the rest of it.

<sup>4</sup> Shakespeare, *Henry V*, v. ii, 281.

<sup>5</sup> More, *Dialogue of Heresies*. The Saxon term for astrology was *circol-craeft*. Chaucer's Poor Parson mentions (*Parson's Tale*, §37) the magic circle amongst other matters pertinent to necromancy. But there was originally no necessary association with black magic; witness the legend of St. Cuthman's safeguarding his father's flock by means of a magic circle which nothing could overstep or break.

<sup>6</sup> That the magic circle had ultimately this sepulchral origin is shown by the almost invariable association of a skull with the circle in old representations of it.

brought blessings or curses, were themselves also round, and doubtless, some part of the symbolism of the finger-ring has its origin in the same notion that the sign of the circle was a prophylactery.<sup>1</sup>

<sup>1</sup> In the East the circle is the symbol of eternity, and *ergo* of divinity, but it is not clear that either of these meanings belongs to the circle in the West, except in so far as it was adopted in Christian times under

Latin or Eastern influence. Obviously, however, the Western value of the symbol as the token of the presence of Death lent itself readily to confusion with either of the Oriental meanings.