TOWN, TOWNSHIP AND TITHING.

BY PROF. WM. F. ALLEN.

The town is in many respects the most characteristic institution of the political system of the northern states of the American Union, and of the primitive constitution of the English people. It may be defined as a territorial district, the inhabitants of which compose a body politic, small enough to allow the immediate participation of all its citizens in the government of its local concerns, and forming an organic part of the structure of the state. Its powers of local self-government are not original and inherent, but derived from the larger body of which it forms a part; they are nevertheless substantial and permanent, in this respect differing from those of the school districts or wards into which the town or city is divided. The City under our system is only a larger and specially organized Town; the Incorporated Village of New York and the West is a peculiar addition to the Town system, not forming structurally a part of it.

The Town, as thus defined, is peculiar to England and the United States, and, in its complete development, to the New England States. In all the other Germanic countries the territorial division corresponding to the Town stopped short of an independent political life, being, from the point of view of the State, nothing but a private corporation for economical purposes, with only inchoate functions as a body politic. In all these countries the Hundred was the smallest district of a public character; just as in our southern states the County is the agent of local self-government. But the County and the Hundred are too large to allow the immediate participation of all the citizens in the transaction of public business. The communities in which these large districts are the only agent of local self-government are necessarily aristocratic in their political character. It was the growth of Feudalism, or the establishment of centralized monarchies, in the Germanic countries of the continent, that checked the development of an institution corresponding to the English Town. In England the growth of a landed aristocracy and of a centralized monarchical power were not early or rapid enough to kill the germs of local self-government, although they seriously interfered with its development.

The political functions of the English towns were so largely obscured during the middle ages by the manorial or feudal organizations to which they were subjected, that there have arisen some doubts as to their extent, and even their existence. Bishop Stubbs, in his "Constitutional History of
England” (Vol. i, p. 83), asserts that (in Anglo-Saxon times) “the unit of the constitutional machinery is the township, the villata or vicea.” This is the view which I have already presented; but a review of Stubbs’ work in the North American Review (July, 1874), understood to be by the then editor of the Review, Prof. Henry Adams, takes exception to the assertion, saying that the township has no constitutional functions “of any kind, sort or description;” that the unit of the constitutional machinery in England, as on the continent, was the Hundred. “The one permanent Germanic institution,” he says, “was the Hundred. The one code of Germanic law was Hundred law, much of which is now the common law of England. The Hundred and its law survived all the storms which wrecked dynasties and Witan. It was the foundation of the judicial constitution under the conqueror as it had been under Cnut and Alfred.” The same view is repeated in Prof. Adams’ “Essays on Anglo-Saxon Law,” p. 32.

That the hundred was the lowest political division in Germany, as Prof. Adams asserts, admits of no doubt. This fundamental fact, together with the non-political character of the lower territorial divisions, is perhaps best formulated by Sohm,¹ who points out that the local governments in Germany were merely private corporations, having no public character or functions. But it does not follow that what was true of Germany was necessarily true of England. England, although a Germanic country, received in many respects a different development from Germany; and it is the essence of Bishop Stubbs’ position that this was the case with the territorial organization below the Hundred. As the word “town” (tun, tunscip) is peculiar to England, so, it may be, is the thing designated by it. This distinction is supported by Von Maurer, the writer of highest authority upon the genesis of local institutions, who, in his Einleitung zur Geschichte der Mark, Hof, Dorf und Stadtverfassung (§ 145, p. 332), asserts that the English institutions differed fundamentally from the German in this respect. When, therefore, Prof. Adams says that such an institution as the one in question “would be quite at variance with all that we know of German law,” he appears to stretch the argument from analogy further than is warranted. The very question at issue is whether the development of English institutions did not upon this point depart from German analogy.

I shall speak first of the territorial character of the English towns, and then of their political character; and shall try to show that we are to seek

¹ The following passage expresses Sohm’s theory with great fulness: Zum grossen Nachtheil der Gesammtaufassung nicht bloß der Verhaltnisse des fränkischen Reiches, sondern der gesamten mittel-alterlichen Entwicklung wird die Thatsache in der Regel übersehen, dass, der Reichsverfassung der fränkischen wie der deutschen, eine Ortsgemeindeverfassung unbekannt ist. Die Reichsverfassung konnte keine weiteren Zwecke ausser denjenigen, deren Realisierung in Gau und Handertschaft vor sich geht... Die Ortsgemeindeverfassung ist aus keinem anderen Grade local für jede Ortsgemeinde verschieden, als weil die Ortsgemeindeverfassung aus der autonomen Entwicklung der einzelnen Gemeinden hervorgegangen ist. Die Ortsgemeindeverfassung ist Verfassung nur kraft Corporationsrechts, nicht kraft Reichsrechts. Sohm, Altdeutsche Reiche und Gerichtsverfassung, I, p. 230).
for analogies with them, not so much in the institutions of Germany, from which those of England were in a sense derived, as in those of New England, which are simply a continuation of those of England.

That the towns in England formed a complete territorial system as subdivisions of the hundreds, needs no argument, as it is amply attested by mediaeval writers and documents. It is a familiar fact that they were regularly represented in the courts of the hundred and the shire. I will also cite the authority of Chief Justice Fortescue, in his De Laudibus Legum Angliae, who says that the Shires or Counties were divided into Hundreds, and the Hundreds into Towns or Vills (ch. xxiv). *Hundrede vero dividuntur per villas.* This language indicates clearly that "towns" were in the middle of the fifteenth century territorial divisions of the hundreds; that is, that the entire area of the hundred, and therefore of the county, was divided up into the areas of the several towns composing the hundred. And this is still further shown by his going on to say that under the appellation of towns, "the cities and boroughs are included. For the boundaries of these vills are not ascertained by walls, buildings or streets, but by a compass of fields, large districts of land, some hamlets, and divers other limits, as rivers, water-courses, woodlands and wastes of commons." It is evidently the intention of the writer in these words to contrast the English towns with some other towns, the bounds of which are determined not by natural objects, but by artificial ones; and this object of comparison can be only the walled towns and cities of the continent, especially of France, the country with which Fortescue constantly compares England. Attention is here drawn to the important fact that, whereas upon the continent the municipal system was sporadic, the open country having no institutions of local self-government proper, the English municipal system was continuous, embracing the entire territory of the country. The borough was, as Bishop Subbs says (vol. i, p. 92), "simply a more strictly organized form of the township;" and the city a bishop's seat, with borough organization. And both borough and city made, as Chief Justice Fortescue says, a part of the town system.

This town system was brought over to this country by our ancestors, and put in operation in all the northern colonies. The town system of New England, as a system of territorial areas, is the town system of mediaval England; and when the people of New England had outgrown the town system in its primitive form, they developed a new form of organization on precisely the same lines as the English. The New England "city" (and so the Pennsylvania "borough"), is simply a specially organized town, and forms a part of the town system, just as is the case with the boroughs and cities of Chief Justice Fortescue's definition. A city is territorially a town. And here, as in the case of so many so-called Americanisms, we have preserved the old English usage, which has disappeared in England itself. The town, in its ecclesiastical organization, was a "parish," and in the sixteenth century the parish organization began to supersede the co-
ordinate town organization for purposes of local self-government. It would seem that in the seventeenth century, when this country was settled, this process had not been completed. The colonists brought with them both institutions, and—as all New Englanders know—the parish and the town were, as a rule, identical in New England as in Old England. But while in New England the ecclesiastical organization became quite secondary, and has now practically disappeared, in Old England the reverse was the case. The parish organization has crowded out that of the town. As an English correspondent writes me: "With us town=market town"—a specially privileged, and I suppose specially organized, class of towns. The towns of the open country are known as parishes, and the functions of local self-government, so far as they continue to be kept up, are administered by the vestry, or parish assembly. Still even now we find a survival of the old usage. The same correspondent writes: "I am talking with the squire; the church bell sounds, and I ask him if he knows why: he replies 'for a parish meeting, I suppose.' Again, in a conversation with a laborer, to the same question he will reply: 'for a town meeting, I suppose, sir.'" Here the primitive term has lingered among the peasantry, while it has been dropped by the aristocracy.

The transition from town to parish, and the equivalency of the terms, as well as the fact of local self-government, to be considered further on, are illustrated by local documents. For example: in the reign of Edward VI., under the influence, I suppose, of the radical reformation of the church favored by that monarch, we have a record of a large amount of church plate and other property sold in the eastern counties, by the authority, as it is stated, sometimes of the town, and sometimes of the parish, showing that the two terms are employed as identical. For example: "Barkinge. Certificat of Church wardens there. We present that we have sold by the consent of thole paryshe a crosse parcell gyte, etc. . . . to Robert Knappe and Roger Hylle of the same towe." "Becoles . . . solde anno primo Edwardi sexti Regis etc, by the Townshyre and Churchwardens so much plate as amounteth to the some of xll." East Anglian, May, 1885. "Churchwardens of Martillesham. . . . goods sold by the said churche Revies and other the hoole Inhabitants of the said towne." id., March, 1887. This last instance appears to show an identity of the church-wardens with the mediaeval reeve. At a later date we find the village of Exning (Suffolk), which at the close of the sixteenth century "appears" says the correspondent who mentions it, "to have been dignified with the title of 'Town', viz.,

1590.

"Item. pd the xx daye of Apryll for a quarter of wyne for the TOWN xij. d. etc." id., March, 1888.

1 See G neoist's History of the English Constitution, Vol. ii, p. 198. As this great writer is wont to depreciate the popular elements in the English constitution, it is not surprising that he does not recognize the town, villata, as a regular part of the machinery of government in the middle ages.
It will be noticed that in these extracts the words "town" and "township" are used interchangeably. This was the case also in the early history of New England. For example: in the Massachusetts Body of Liberties (1641) we find "town" in Articles 16, 50, 51, 57, 63 and 83; "township" in Articles 66, 68 and 84, used with no apparent distinction of meaning. Article 74 couples them together: "the freemen of every town or township." We can perhaps trace a disposition to use the word "town" when speaking of the corporate body, and "township" for territory, e.g., Article 78, where it is forbidden to expend "any town treasure but by the freemen of that township." At present I believe the word "township" is not in use in New England, except occasionally to designate the town from the point of view of the territorial area; never as a body politic. Curiously enough, it is this word, fastened upon by De Tocqueville, that is regularly used by foreign writers to describe the New England town system. The term "township system" is properly used in this country only for the six-mile square divisions of the public lands, laid out by the government surveys. The states erected out of these public lands have a town system of their own, parallel with the national township system, and generally coinciding with it in respect to division lines, but not always. For example, the town of Trempealeau, Wis., contains the whole of Township 19, N., Range 9, W., and parts of Townships 17 and 18, Range 9, and 18 and 19, Range 10. In the primitive Anglo-Saxon usage the word "township," tunecip, appears to have been regularly used to designate the town as a municipality while "town," tun, was the settled portion — what in New England is called the "village" or the "middle of the town.”

This distinction is quite in accordance with the etymology of the word. It is well known that "town," tun, is the same word with the German zanin, hedge or fence. But while the Germans never used the word zanin to designate the enclosed (fenced-in) area; the Anglo-Saxons, on the other hand, never used the word tun except to designate this enclosed area; the primitive meaning of enclosing body having been entirely lost. Now the thing fenced in was the village, or group of houses, which was accordingly the tun; and the tunecip, or township, was the area of land which belonged with the village as a municipal organization. As a consequence, the word tun was popularly applied to any place of collective residence; as where the Saxon Chronicle (Land Ms. An., 584), says: Cæwlin manige tunas genam—"Cæwlin took many towns.” In the course of time the word town appears to have crowded out the more strictly correct word township, in the sense of designating the territorial area as a municipality; and in this sense the word was brought to New England by the colonists of the seventeenth century. In this country the meaning of the word is precisely that of Fortescue’s time. In England, on the other hand, the modern use appears to be a survival of the loose and popular early usage, as applying to any place of collective residence; being limited in England at the present day to large places.
In limiting the signification of the word *tun*, to designate not the object which encloses (its primitive meaning), but the space enclosed, the Anglo-Saxon agrees with the Scandinavian language, as is the case with so many words and institutions of the early Anglo-Saxon period. The definition of the Icelandic *tun*, as given by Vigfussen, is: "a hedged or fenced plot, enclosure within which a house is built; then the farm-house with its buildings; the homestead." This is precisely the meaning which the word has in the earliest Anglo-Saxon laws, those of Aethelbiht of Kent; it will be re-collected that the settlers of Kent were Jutes, that is Scandinavians, rather than Saxons, like the rest of the migratory tribes. In these laws we read of a king's *tun* (Ch. 5), an earl's *tun* (Ch. 13), and a "*mannes tun*" (Ch. 17) in all which cases *tun* is clearly the hedged enclosure, the homestead.¹ From the fenced enclosure of an individual homestead or field to that of a village, as in the later laws, is an easy step; or rather the two uses are alike easy transitions from the original signification of the enclosing fence or hedge.

This further extension of the word, however, does not appear to have been made by the Scandinavians of the continent any more than by the Germans. None of the Teutonic nations of the continent appear to have had any territorial subdivision of the hundred, of a substantial, individual, public character. With them the hundred was the unit of the constitutional machinery; and any lesser subdivisions stood to the hundred very much as our school districts or wards do to our towns or cities—as mere shifting administrative districts, having no substantial powers, and not forming a body politic. Scholars are now agreed, as I have already said, that the Dorfschaft was a division of a purely secondary character, for agricultural and economical purposes. Nevertheless it corresponded closely in its origin to the English *township*; and might, except for the early feudalization of Germany, have attained an equal degree of independence. *Dorf*, village, is the exact equivalent in meaning (not in etymology) of the English *tun*, and the affix *schaft* is the English *ship*; so that "*township*" is in meaning precisely the German *Dorfschaft*.²

From the territorial character of the English township, we pass to the consideration of its political character, as "the unit of the constitutional machinery." Direct evidence for this is not very abundant, but seems to be entirely sufficient. I have already spoken of Chief Justice Fortescue’s mention of town (*villa*) as an integral part of the hundred, just as the hundred was an integral part of the shire. It is important also to note the well-known fact that the town (*villata*) was throughout the mediæval

¹This signification appears to have survived in Scotland; as, in Scott’s Redgauntlet, Letter XL, where Darsie Latimer expresses a doubt whether he ought to go to Redgauntlet’s "*town*" in disguise, the context showing that it is only his house that is meant.

²The German city of the middle ages was created not like the English borough, by giving higher powers to an already existing organism, but by cutting out a section of territory and bestowing upon it public functions of a municipal character. See articles by v. Below, *Historische Zeitschrift*, 1888.
period the unit of representation\(^1\)—and that not as a mere representative district, but as a body politic; for at this period representation was never of artificial divisions, but of corporate bodies. This is clearly a political or constitutional function. Such phrases as "by the consent of the saide Township," and "with the consent of the hole Towne," in the sales of church property mentioned above, imply organized and collective action—an assembly or "town meeting" of some sort.

That the township lacked the higher judicial powers is admitted by Bishop Stubbs, who says (p. 90): "their assemblies are rather gamots or meetings, than proper courts; for any contentious proceedings amongst men so closely connected and so few in number, must have been carried immediately to the hundred court." That the township did have a gamot or meeting, is proved by the mention of a tunscipesmot in a charter of Richard I., and that this meeting had certain definite powers of self-government, apart from its function as a unit of representation, is shown, for example, by the Costomary of Tettenhall Regis (English Gilds, p. 432), a body of regulations or "bye-laws" made by the tenants of the manor at their Leet or Law-day. This Costomary is a complete body of laws for the government of the community; and in the body of these laws the word "town" is twice used to designate the manor in its public relations.

"Art. 19. No man shall make yates or gapes in the common field, upon the corne or grasse of his neighbors, but by the consent of [the] comonty; and if he do, he shall give to the lord 2s., and to the comonty of the towne 2s."

"Art. 21. No man of oure towne shall enter upon the stubble of any other towne while the corne is upon the ground, except it is upon his own land, and by the good will of all his neighbors, under payne of iijs. to the lord."

In the passages just cited we have "town" used as equivalent to "manor," just as in those previously cited, it was used as equivalent to "parish." The manor was the feudalized township, that is, the township converted into a fief, as the parish was the township regarded as an ecclesiastical organization. And just as, in the sixteenth century, the parish, or ecclesiastical organization, superseded the township; so in the middle ages the manorial or feudal organization superseded, or at any rate obscured, the township, the original municipal division. This process of feudalization, or converting a free township into a seigniorial estate, began very early in the Anglo-Saxon period. Indeed, even on the assumption that England was colonized by free peasants, organizing in free townships, we must at the same time admit the probability of a considerable proportion of seigniorial townships, or manorial estates, side by side with the free communities, and intermixed with them. And whatever may have been the original status, it is certain that long before the Norman conquest,

\(^1\) Per quatuor legatiores homines de qualibet villata (Assize of Clarendon, 1.)
there remained very few self-governing townships, composed of free peasants.\(^1\) I do not consider the king's, earl's and man's tun of Aethelbriht's Laws, to have been feudalized townships, at least not always or necessarily; they appear rather to have been farmsteads. But fifty years later the charters of the Codex Diplomaticus afford ample evidence of towns which were the private property of the King or powerful noblemen, the peasants or ceorls being their tenants and fast becoming their serfs, as I showed in my paper of last year.

The two-fold process here described, of converting the free townships into manorial estates, and the free peasants into servile tenants upon those estates, was consummated in the complete feudalization of England which followed the Norman conquest. Nevertheless the town organization was not obliterated, but only obscured. We have seen that it continued to serve as a basis for representation, and we have frequent mention of the town, villa, as the equivalent of the manor. The word villa is used about a dozen times Domesday Book, at least three of these times as equivalent to manor. E. g. (f. 199 b.) "Wluuin the thane held this manor. In the same town Reginald holds half a hide of Alberic." [So ii., 31 and 31 b.] The Exeter Domesday and the Ely Inquest, documents which appear to be the rough draft from which the great record was made up, often use the word villa where the Exchequer Domesday says manerium, "manor."\(^1\) But the two words are not used as equivalent, but rather as describing the same territorial area from different points of view. There might have been two manors in the same vill, or lands in the vill while were independent of the manor. Indeed it would naturally be the case that the manor would often vary from the town in respect to metes and bounds, while the parish or ecclesiastical organization would, like the town itself, be an unchangeable district. The manor, being a piece of private property, would be subject to the laws of private property, and would be divided, added to or diminished, through the processes of purchase, sale, inheritance and inter-marriage. So greatly have these processes changed the boundaries of manors, that it is stated that in East Kent there is only one manor co-extensive with the parish. (Academy, No. 167). We find, however, instances of this identification of manor and town as late as the sixteenth and seventeenth centuries. In the "Certificates of Church Goods in Suffolk," in the reign of Edward VI., is mentioned: "Mr. Sakford, lorde and patron of the Towne," evidently lord of the manor. In the time of the Civil Wars (1648), the Memoirs of Col. Hutchinson speak of Cromwell having "a design, by insinuating himself into Colonel Saunders, to flatter him into the sale of a town of his called Iretan." (ii., 137.)

When the town was feudalized and became a manor, its gemot, or meeting, seems to have become that branch of the manorial court known

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\(^1\) For examples, see paper upon "Village communities and serfdom in England."

\(^2\) The Ely Inquest rests upon the evidence, among others, of sex villani uniusvijstiqve villae.
as the Court Leet. The Court Leet, found also in the Hundred and the Borough, was, as is shown by the example given above, an assembly for the passing of bye-laws and administering the affairs of the town, the precise prototype of the New England town meeting. It also had a limited police jurisdiction, held to be derived from that of the Sheriff's Tourn or Leet of the Hundred. It was not a necessary part of the feudal or manorial organization, but, "was created by special grants from the crown to certain lords of manor in order that they might administer justice to their tenants at home." Quoted by Elton, "Custom and Tenant Right (1889)," p. 89. It was a thoroughly democratic institution, "being regarded as the court of the residents within the district; not of the tenants of the manor;" and "so far is this carried that a stranger passing by may be compelled to serve on the leet jury. The fact of his being found within the district is deemed sufficient evidence." Digby, Int. to the Law of Real Property, p. 45. The Leet, as a popular court, is also found in Iceland during the middle ages. The antiquity and primitive character of this court is attested by Elton, who says (on Copyholds, p. 240) it "is in all probability older than the manorial system itself;" and by Ritson, "The Jurisdiction of the Court Leet," who says (p. 6): "The Leet is the most ancient court in the land." This court elected the constable, and, in some boroughs, the mayor (id. p. x.).

It is not surprising, considering their early and almost universal conversion into manorial estates, that we find so few traces of free townships in England. From their absence, Mr. Seebohm has attempted to establish the thesis that the townships of England were regularly manorial estates, and the peasants serfs, from the earliest settlement of the Anglo-Saxons in the country. "The evidence of the earliest Saxon and Jutish laws" he says, "thus leaves us with a strong presumption, if not actual certainty, that the Saxon ham or tun was the estate of a lord, and not of a free village community." (English Village Communities, p. 175.) I attempted in my paper, read a year ago to show that, with regard to the peasantry, his evidence was inadequate, and that we have good ground for affirming the existence of a large class of free peasants in the earliest time. My object in the present paper has been to continue the argument, and show that there is good reason to believe that there were free townships as well as a free peasantry in the earliest English period. In arguing, however, that the township was a body politic, and "the unit of the constitutional machinery," I would not be understood to claim for it original and self-existent autonomy, even in the period of the earliest evolution of institutions. Assuming that the Germanic peoples passed from a community of occupation based upon kinship to one based upon territorial relations; it was the Hundred, not the township, that formed the earliest territorial community or markgenossenschaft. The township, or Dorfschaft, is shown by Thudichum to have been formed out of the hundred by a process of sub-division; and in this process the German district thus formed succeeded to no integral share of the powers of the original organization, but stood to it as
ward to a city. The English district corresponding to it, on the other hand, became an autonomous community, with substantial and important, if not original powers.

The English town has therefore no counterpart in any other Germanic nation; for in all the other Germanic nations the unit of the constitutional machinery is the Hundred, a district too large to allow of this immediate and detailed exercise of local self-government which we find in the New England towns, and, as has been made to appear, in those of England. Much less has it any counterpart in the Celtic and Slavonic nations, which never advanced unassisted to the territorial principle of government; nor in the Romance nations, whose government, derived from that of the later Roman empire, was wholly summary and authoritative. On the other hand, the ancient Greeks and Italians—the only branches of the Aryan race which possessed an equally strong political sense with the Germanic—developed a territorial system which has a strong analogy with the English.

The City (civitas, πόλις), is the political type of the Greeks and Italians, as the Town is of the English: and while the two institutions diverged greatly in their development, they were essentially identical in their origin and structure. The Greeks, Italians and Germans alike passed from the social stage of institutions, based upon personal relations, to the political, based upon territory, at a very early period. In all of these we find the territory divided up into autonomous districts, small enough in extent to permit the direct participation of all the citizens in the work of government. The Greek City was thus identical with the German Hundred. But the development of all the Germanic nations, except the English, was arrested by the creation of great centralized monarchies. Even in England the more perfectly organized district, the Town, was shortly checked in its development by the establishment of the manorial system; and even where a higher municipal type was developed, in the boroughs, it was sporadic and thus incomplete.

The Greeks and Italians, on the other hand, concentrated and intensified their political life by what is known as Synoikismos,—the establishment in the middle of the territory of each city, of an oppidum or urbs, a place of collective residence, surrounded by walls, in which were erected their public buildings, and where they transacted all public and private business. This higher organization was applied to all cities, not merely to some here and there, like the English boroughs. These nations became urban in their life, while the English remained rural. But, in becoming urban, in building a city surrounded with walls for residence, trade, worship and social life, they did not shift the basis of their political organization. The city continued, as it had always done, to comprise the rural districts as well as the walled town; citizenship indeed was based upon ownership of land outside the walls equally with residence or property within the walls; the distinction between rus and urbs was purely social, in no sense political. Now the oppidum, inclosed within its walls, is very much the same thing as
the tun, enclosed with a hedge—a higher development upon the same general lines. But there was one point of contrast of vital moment. The Greek or Italian city, even if of no greater extent and population than an English town, was a sovereign state; the English town, however large and populous, was only a municipality, a part of a larger organism.

The word that is used in the Latin documents of the middle ages as meaning "town" is villa (or villata)—a word that has had a curious and interesting history. In classical Latin it means a country house—whether a farm-house, villa rustica, or a gentleman's country seat, villa urbana, in which sense it corresponds precisely to our modern word, villa. From meaning "house" it came by a not long or difficult transition, to mean the "estate" surrounding the house; and in this sense we find the word used in the later Roman empire. This was a period of great landed properties; but these properties, at least in Gaul, were not "plantations," latifundia, or vast and indefinite stretches of land, like the Dalrymple farm. Each great property was made up of a number of villas, not necessarily contiguous, each of these villas being a compact, organized estate of a moderate size. The small peasants' estates had for the most part disappeared, and Gaul at this epoch may be described as divided up into seignorial or domanial estates, corresponding roughly to the communes, or smallest territorial divisions of modern France. These villas agreed in many important particulars with the English manors, being perhaps of about the same extent, and being ruled autocratically by their owners.

The important fact to be noted here is the change in the significance of the word villa. From meaning a gentleman's country house, it has come to mean the estate depending upon that house; that is to say, it has acquired the meaning of a territorial district. And although the district thus designated in Gaul is a seignorial estate, it is easy, when the word has once become associated with the idea of an area of land, to extend its use to other districts of similar extent and grade. Thus we find it applied even on the continent to the Dorfschaft or village mark, and in England it is used to designate the township, whether free or seignorial. But that it is the township that is thus designated, as a territorial area, and not the seignorial estate into which the township has been converted, is proved by the important fact, already noticed, that the manor and the township (villa) are not always identical. No argument, therefore, for the originally servile character of the English tun can be drawn from the fact that tun is in Latin villa; for although in Gaul a villa was a seignorial estate, in England it was not the estate as such, but an area of land, often identical with the manor, but often containing two or more manors, or parts of manors, or isolated pieces of land.

Thus the word villa, having acquired the signification of a territorial area, was used in England as the Latin equivalent of Tunscip. And as villa

*Van der Kindere, Notice sur l'origine des magistrats communaux.
was "town" — whether free or seignorial — so the cognate word villanus was "townsman" — whether free or serf. It is used regularly as the Latin equivalent of "ceorl," the free peasant of the early period, the semi-serf-like peasant of the later period, and the villein of the feudal period. When the ceorls lost their ownership of land, and their free status, their name sinking from the designation of a free yeoman to the opprobrious term "churl," so the equivalent word villanus sank likewise, until it too, from meaning a free townsman, a member of the body politic, came to mean one who lived upon the land of another man, who was his master, paying for 't by obligatory labor. And as "ceorl" has sunk to "churl," so the honorable term villanus has sunk to the opprobrious term villain.

A few words in conclusion, upon a subject more obscure in itself, and of more purely antiquarian interest — the connection of tithing and township. The word tithing is used as equivalent to township in some of the southern counties of England at the present day, and it has been a matter of some controversy what is the origin of this territorial signification of the word, and how far back in time it dates. For the discussion of this question I will refer to Prof. H. B. Adams' excellent paper in the Johns Hopkins Studies, Vol. I, No. 4. It is admitted that there is no positive evidence of any but the numerical use of the word tithing in Anglo-Saxon times, as designating a group of ten men — tenmannes tale (Edv. Conf. xx) — formed for the purpose of enforcing mutual responsibility, as the fundamental principle of the system of the time for the preservation of the peace. The groups would seem at this period to have been strictly organized by tens. But after the Norman Conquest, under the more efficient frithiorg system then established, the numerical value appears to have become a secondary consideration, and we very soon find a tendency towards localizing the term. Of course the original tithings were in a sense local; that is, each voluntary group of ten must have been composed of neighbors, and each township would naturally contain a number of such groups, none of them extending their membership beyond the bounds of the township. But in the thirteenth century (1284) we find, in the Liber Niger of the Monastery of Peterborough, a list of townships, each of which consists of a fixed number of tithings, varying, no doubt, according to the population. Of the town of Barton we read (p. 109): tota villata debebat presentari per sex capitales decennarios — the capitales decennarii being the "headboroughs" or "tithingmen." Other towns range from six of these officers to one, and we see the local character of the office in the fact that they are the regular representatives of the town in the great court of the Hundred: (p. 113) omnes libere tenentes et omnes capitales decennarii de predictis villis et foedis a tempore cuius non estat memoria, sc. ante tempus Willemi Regis Conqueritoris ... solent venire bis in anno ad duas magnas curias quae appellantur Turna vicecomitis, etc. Now, it is evident that in the small townships which had only one tithing, it would be very natural and easy to identify the two terms, and

1 Stubbs, Const. Hist. 1, 85.
thus localize the word *tithing*. Of this we see further evidence in the
Cartulary of the monastery of Gloucester. Vol. iii. No. 966, gives the items
in the view of frankpledge in the Court Leet of the manor; among which we
read: *de his qui sunt xii annorum, et non sunt in toethinga*. From this
passage the tithing might appear to be a purely numerical group: but in
No. 1,011 we read: *sunt tenentes in tethyma de Chicheshdona*, where the
word tithing seems to have a clearly local value.

The passage from the numerical to the territorial signification is an easy
one, and is illustrated by these passages. We see from the passage above
cited that all boys of twelve were enrolled, not merely heads of families,
as is sometimes assumed; and the same rule was observed in Anglo-Saxon
times, as is shown by the law of Canute (ii., 20 *ofer xii wintra*). With the
growth and order of good government, so large a number of groups as this
came to be no longer necessary. Two centuries after the Conquest, we find
small towns containing but one tithing, and the largest only six, which may
perhaps have been divisions of its territory into wards or districts. From
this condition of things the purely territorial meaning of the word in some
parts of the country may easily have been derived.

My object in this paper has been partly to trace the origin and powers of
the English town; partly to help to an understanding of its connection with
the New England town. New England being colonized at just about the
time that the parish organization was superseding that of the town in the
mother country, it would seem, as I have already said, that the colonists,
breaking away from the English ecclesiastical system, held to the town or-
ganization, making the parish purely secondary. The powers of the New
England towns do not differ very widely from those of the English towns.
We find, for example, in Russhemer, the “Implyments” of the money ob-
tained by the sale of church goods to have been enumerated as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Towards the reparacioning of our church</td>
<td>x1 s.</td>
</tr>
<tr>
<td>Further to makynge of a pulpett &amp; a lectern</td>
<td>xxiiij s. iij d.</td>
</tr>
<tr>
<td>Also to the makynge of a grett chest with locks</td>
<td>iij s. iij d.</td>
</tr>
<tr>
<td>Item to the pore peele of the paryshe</td>
<td>xx s.</td>
</tr>
<tr>
<td>Also to the mending of the high wayes</td>
<td>xxiiij s. iij d.</td>
</tr>
</tbody>
</table>

East Angler, July, 1887.

In other cases we find: “for ssyendyng fforthe of v Souledeors to the
Kyngs, Majesties warrs;” “in the wallyng of their marssh, in costs &
charges upon the havyn, And upon ther bulwerks of Gunynys. powder, &
shotte for the defense & safegard of the town.” : “to mainteyne a free
scoole,” etc.

These examples are taken from what I suppose to be small country vil-
lages, the prototypes of the New England towns. It may reasonably be
supposed, however, that the boroughs, or higher class of towns, would give
the example for the larger powers exercised by our more independent
towns; and I find in the East Anglian (1886-8) a series of extracts from the
records of the important town of Ipswich, as late as the time of the Com-
monwealth, which remind one, by the variety and minuteness of their functions, of those of the New England towns: for example, the hiring of preachers and teachers, as well as the care of roads, the supervision of markets, etc. The "Great Court" of Ipswich, consisting of "all the freemen, Portmen, Aldermen and Bailiffs," corresponds very closely to the New England town-meeting. The most characteristic feature of the New England town-meeting is, however, wanting—the requirement that the magistrates assume no control of the assembly, but retire into a private station, as it were, for the occasion; the meeting electing its own chairman, and exercising authority as a self-governing democracy. In most popular assemblies the magistrates are the presiding officers: in the English "vestry" or parish-meeting it is the parson, in the Great Court of Ipswich, one of the bailiffs. This feature of the New England town meeting, which, with others, it shares with the higher parliamentary bodies, may perhaps be claimed as another instance of the survival in America of usages or institutions which have become extinct in the mother country. Gneist says (p. 203): "The meeting was summoned by the churchwardens; the chair was regularly taken by the parson, as the landlord of the vestry, and the first member of the ecclesiastical parish, as a matter of courtesy, but a positive right of presiding could be established neither by precedent nor by analogy. In analogy with the tax-granting commoners, the meeting was rather regarded as its own master, in respect to the appointment of a chairman, as well as in respect to its adjournment. The voting was conducted with equal rights for each individual, after the manner of the old courts leet, the parliamentary elections, and the parliamentary resolutions. The mode of giving the vote was, as a rule, by show of hands, but in difficult and doubtful cases, by a poll."

My thesis, that the English towns of the middle ages were an integral part of the constitutional machinery; and not mere corporations, like the corresponding bodies of Germany, I have attempted to prove by showing: first, their territorial character, as conterminous areas of land, embracing the entire country; secondly, their practice of self-government in local concerns, and their organic relation to the larger representative bodies. We have seen that in the sixteenth century, at which time the parish became the organ of local self-government, the terms town and parish were used indifferently for the same institutions; and that in the seventeenth century, when the American colonies were planted, the colonists carried with them a town-system essentially the same as the parish-system which continued in England. The analogy with German institutions is misleading. The English people developed the institution of the "town" upon their own soil; and it is to be compared, not with the imperfect creation of the continental Germans, from which it was perhaps derived, but with the matured institution of New England, to which it gave birth.