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Helen M. Cam
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ESSAYS

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I

TOWNSHIP AND BOROUGH¹

LECTURE I

On 20 January 1803, Mr Justice Lawrence and a jury of merchants were sitting at the Gildhall in London to try an issue between the Mayor, Bailiffs and Burgesses of the Borough of Cambridge and the Warden, Fellows and Scholars of Merton College in the University of Oxford.

The value of the matter directly in dispute was not very high; but the question that was opened was large. A lordship over some 1200 acres, or about two square miles of land, went a-begging. There were five claimants. There was the municipal corporation of Cambridge; there was Merton College, Oxford; there were two Cambridge colleges, Jesus and St John's; there was Sir Charles Cotton, the squire of a village called Madingley.

This debatable tract of 1200 acres lay, we moderns should say, immediately outside the town of Cambridge. Our ancestors would have said that it was a part and a great part, more than a third, of the town (*villa*) of Cambridge, though it lay outside the defensible and house-covered area.

What had happened was this: An Act of Parliament had directed the inclosure of vast 'open and commonable' fields, arable fields, in which the strips of divers owners lay intermixed. Ring-fenced plots were to be awarded to these owners in lieu of their scattered strips. Allotments were also to be made to those who, though they had owned no strips, had been exercising rights of pasture. Allotments were also to be made to the owners of the tithe. But dispersed among the arable strips there were many small pieces of waste land; there were the balks of green sward, the odds and ends. Who owned them? Who could claim an allotment in their stead?

That someone owned them was generally assumed. Suppose

¹ [The first of the six Ford lectures delivered at Oxford in the October term of 1897. Published Cambridge, 1898. For the most recent scholarly accounts of the boroughs of Oxford and Cambridge, see H. E. Salter, *Medieval Oxford*, 1986; *V.C.H. Cambridge*, vol. iv (in the press).]

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that you are inclosing the open field of an ordinary village. Allotments must be made to the owners of the strips, to commoners, to the owners of the tithe; but an allotment should also be made in respect of 'the soil of the waste'. In general you will easily find an owner for it. There will be some obvious manorial lord. But here this ownership goes a-begging. A municipal corporation claims it; three learned corporations claim it; the squire of a neighbouring village claims it. An Act of Parliament directs them to try their claims one against the other. Some one should be lord of this field. *Nulle terre sans seigneur*.

To finish the tale, the municipal corporation was successful. It obtained a verdict, and in consequence it received an allotment of somewhat less than five acres out of the 1200 that were distributed.

At this time on the other side of the town of Cambridge there lay another wide expanse of open arable field. An Act of 1807 provided for its inclosure. Here also the ownership of the waste was in dispute. It was claimed by the municipal corporation; it was also claimed by those who represented the Prior of Barnwell; but the Prior's successors did not go to trial, and out of the 1100 acres that were inclosed nine acres were given to the incorporate Town as an equivalent for its manorial rights.

Thus was decided a question, or one part of a question, that had been simmering for centuries. Briefly we may put it thus: What did King John mean, or rather what did King John really do, when he granted to the burgesses of Cambridge the town of Cambridge with all its appurtenances, to have and to hold it for ever of him and his heirs to them and their heirs at a rent of £40 blanch and £20 by tale? What did he mean, or rather what did he really do, when he commanded that the burgesses and their heirs should have and hold the said town with all its appurtenances well and peaceably, in meadows and pastures, mills, pools and waters with all their liberties and free customs?¹ Were the burgesses collectively or corporatively lords of the town in such sense that they intervened in the feudal scale of land-tenure between the king and any man who held a house within the ditch or an acre-strip without the ditch? Were the burgesses collectively or corporatively the 'tenants in demesne', or, as we should now say,

¹ Cooper, *Annals*, vol. 1. p. 33. This charter is closely similar in form to the Oxford charter of 1199: Ogle, *Royal Letters addressed to Oxford*, p. 5.

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the owners, of whatever land within the ambit of the town was not held in severalty: of the wide pastures, of the balks and odds and ends of sward that lay among the arable strips, of the ditches, of the king's ditch, of the streets and lanes and market places? It was a big question. Happily it was faced in what I may call prehistoric times: I mean in 1803. A jury of merchants at the Gildhall, untroubled by 'the village community' or 'the origin of the borough', made short work of it.

Will you think me ill bred if I talk of the town in which I live? What else have you left me to talk of? What fields has not Oxford made her own?

But Cambridge had fields. I am not telling you that outside what we should call the town of Cambridge, that is, the house-covered space, there were pieces of land which we should call fields and that some of these lay within the boundary of the municipal and parliamentary borough of Cambridge. I am using the words in their medieval sense. Cambridge had fields (*campos*) as the neighbouring villages had fields: vast, hedgeless, fenceless tracts of arable land, in which the strips of divers owners lay interspersed 'hide-meal and acre-meal'. Cambridge had fields which were 'open and commonable': fields such as are depicted on those beautiful maps that Mr Mowat published. Cambridge had fields as Lower Heyford had fields.

David Loggan the engraver drew pictures of Oxford and of Cambridge also. In his general views of Cambridge we see in the background the houses, the colleges and churches, the castle-mound and the remains of the dismantled castle: in the foreground lies the open field, and I do not know that better pictures of an open field were ever drawn.

Celebrated thus by art, our Cambridge field has been celebrated by poetry also, at least if that excellent individualist Thomas Tusser was a poet. In the Cambridge field, if we borrow his eyes, we may see at their worst the evils of the old champion (or, as we say, champion) husbandry: the husbandry, that is, of open and commonable *campi*.

By Cambridge, a town I do know,
Where many good husbands do dwell,
Where losses by lossels do shew
More here than is needfull to tell,
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The champion robbeth by night,
And prowleth and filcheth by day,
Himself and his beast out of sight
Both spoileth and maketh away
Not only thy grass but thy corn
Both after and ere it be shorn.¹

Art and poetry left something for modern science. When Mr Seebohm was restoring the open field of the English Village Community, it was I believe a terrier of this Cambridge field that taught him to teach us what butts and gores were like.²

Besides fields, Cambridge had meadows or leys which during a part of every year were commonable. Also it had pasture-land which was never inclosed or enjoyed in severalty, 'the green commons of the town'; for the more part they are green and open still. But further, so late as the reign of James I, Cambridge, its fields and its green commons, can upon occasion be treated as an agrarian whole. In 1624 the Vice-Chancellor of the University and the Mayor of the Borough issued an ordinance touching the commons of the town. Every occupier of an ancient tenement having of old time broad gates may turn out two head of cattle. Every occupier of other tenements and cottages may turn out one. Every person having six score acres of land in Cambridge field may turn out six, and so in proportion for any greater or less quantity of land.³

Observe what this reverend Vice-Chancellor and this worshipful Mayor are doing. They seem to be legislating for an agrarian commonwealth. They are decreeing that the pasture of the town must still subserve the arable of the town. And what is the unit of arable that gives the normal share of pasture-right? It is six score acres, a long hundred of acres, a hide.

Thus through the crust of academic learning, through the crust of trade and craft, of municipality and urbanity, the rustic basis of Cambridge is displayed. These hereditary enemies, these representatives of Town and Gown, have for once laid their heads together in order that they may stint the common of a community that ploughs.

A curious community it had become. The principal share-

¹ Tusser, 'A Comparison between Champion Country and Severall', stanzas 12–13, in *Five Hundred Points*, ed. Mavor (1812), p. 207.

² Seebohm, *English Village Community*, 3rd ed., p. 19.

³ Cooper, *Annals*, vol. III, p. 164. For the houses 'with broad gates', see also *ibid.*, vol. II, p. 333.

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holders in the arable were not 'natural persons', but chartered corporations. There are various Cambridge colleges, and this is what brings the Vice-Chancellor into the business. There is Jesus College which represents the Nuns of St Radegund; there is St John's College which represents an ancient Hospital; there is the College of Corpus Christi which ever since its foundation has owned many strips; there is Caius College with a title derived from the Mortimers of Attleburgh. Then there is Merton College, which was endowed by its founder, by Walter of Merton himself, with strips that he had purchased, for reasons that I dare not guess,¹ in the open and commonable fields of Cambridge. The Vice-Chancellor and the Mayor are agreeing in 1624 that he who occupies a hide of such strips may keep six horses or bullocks on the commons of the town. They are also ordaining that every occupier of an ancient tenement in Cambridge 'having of old time broad gates', that is, gates receptive of cattle, may turn out two beasts.

It is a curious case because the strip-owners are for the more part colleges. But does not its curiosity end here? In other words, is it not right and proper that a borough should have fields, arable fields, 'open and commonable fields?' I speak not of the smaller or of the newer boroughs, of the enfranchised manors. I speak of the great, old boroughs, those shire-boroughs, those *civitates*, which already in Domesday Book are sharply separated from the ordinary villages. I see that when Henry VIII sold the spoils of Godstow and Rewley to Dr George Owen, the conveyance spoke of arable land in Oxfordfield.²

Might we not aim yet higher? In the twelfth century when William FitzStephen sings the praises of London, he does not say that somewhere near it lie fertile arable fields; he says that the arable fields of the town of London are fertile.³

¹ Rashdall, *Universities*, [1895] vol. II, p. 483 [new ed. (1936), vol. III, p. 194]: 'no doubt in view of the possibility of a migration'.

² *Royal Letters*, ed. Ogle, p. 153: 'Ac totum illud messuagium nostrum ac omnes terras arrabiles nostras in Oxfordfylde ac omnia prata pascuas pasturas et pecias terrae in Burge mede et prope Charwell eidem messuagio pertinentia modo vel nuper in tenura Roberti Colyer aut assignatorum suorum scituata iacentia et existencia in parochia S. Egidii iuxta portam borioalem ville Oxonie dicto nuper monasterio de Regali loco alias dicto Rewley dudum spectantia et pertinentia.'

³ *Munimenta Gildhallae*, vol. II, p. 4: 'Agri urbis sationales non sunt ieiunae glareae, sed pingues Asiae campi, qui faciunt laetas segetes, et suorum cultorum repleant horrea Cerealis mergite culmi.'

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Historians of our universities will not let us forget that Erasmus accused the Cambridge townsmen of a pre-eminence in boorishness. ‘Vulgus Cantabrigiense inhospitales Britannos antecedit, qui cum summa rusticitate summam malitiam coniunxere.’¹ We should distort his words if we took them to mean that there were, in Tusser’s phrase, ‘many good husbands’ in Cambridge, though husband and boor have a common origin. But was the plan, the map, of this ancient borough exceptionally rustic? I shall not admit it until many Inclosure Awards have been studied.

Time was when we in England had a respectably neat system of legal geography, and when we seldom spoke of parishes, except when we were speaking of ecclesiastical affairs. The whole country (this was the theory, if not precisely the fact) was cut up into villis or towns. The law assumed that every acre of land lay in some town, some *villa*. If in a court of law you claimed an acre of land, you were bound to name the *villa* in which it lay. A mistake about this matter would be fatal; your writ would be quashed. Now every borough is a *villa*, a town. Indeed, in course of time we allow the urban places to appropriate to their exclusive use this good old word, and then we awkwardly distinguish the towns from the townships or borrow ‘villages’ from the French. However, the borough is a *villa*, and if you look at the English boroughs as they stood on the eve of their reformation, as they stood when in 1833 they were visited by the royal commissioners, you will often find that their boundaries have provided wide enough room for fields and meadows and pastures. You will read that ‘the local limits of the Borough of Derby contain 1660 statute acres’,² that the limits of Northampton comprise 1520 acres and include ‘a considerable quantity of agricultural land’,³ that ‘the Borough of Bedford includes the whole town [that is, the whole house-covered area] which lies nearly in its centre encircled by a broad belt of land; its area being 2164 statute acres’,⁴ and, to take one last example, that ‘the ancient borough’ of Nottingham covered no less than 9610 acres and ‘included a considerable quantity of forest, meadow and common land without the walls of the town’.⁵ On the other hand, the fortified space was never very large. I learn

¹ Rashdall, *Universities*, vol. II, p. 553; Mullinger, *Hist. Univ. Camb.*, vol. I, p. 504.

² App. to *Munic. Corp. Rep.* (1835), vol. III, p. 1849.

³ *Ibid.* III, 1965.

⁴ *Ibid.* IV, 2103.

⁵ *Ibid.* III, 1985.

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from Mr Boase that intra-mural Oxford contained little more than 80 acres.¹

In a legal record of 1426 we may read that there is a highway lying in the town, the *villa*, of Oxford in a certain place called Greenditch within the parish of St Giles outside the North Gate of the town of Oxford, which highway the township (*villata*) of Oxford is bound to repair. Whatever else Oxford may be, it is a *villa*, a town; and, whatever else the community of Oxford may be, it is a *villata*, a township.² A township should no more mean a little town than a fellowship should mean a little fellow.

I have been endeavouring to suggest to you that those who would study the early history of our towns (and I now use that word in its modern sense) have fields and pastures on their hands. Perhaps the suggestion is needless. The relationship of the town community, the nascent civic corporation, to the village community, the relationship of the town community to the town lands, the relationship of the oldest *burgenses* to arable strips and green commons, these have been a focus of that vigorous German controversy which we are watching with interest. But it is unnecessary, though it may be profitable, to look abroad. The Bishop of Oxford has taught us that 'the *burh* of the Anglo-Saxon period was simply a more strictly organised form of the township'.³ If that be so, we must not leave out of view nine-tenths of the borough's territory. After what Mrs Green has written and Mr Stevenson has edited, it is plain that the early history of one ancient shire-borough, I mean Nottingham, cannot be the history of a small house-covered space.⁴

Possibly therefore I may turn your thoughts towards a luminous

¹ Boase, *Oxford*, p. 55: 'The wallenclosed a small rectangular space, measuring about half a mile from east to west, and a little more than a quarter of a mile from north to south.'

² *Royal Letters*, ed. Ogle, pp. 339, 340 (A.D. 1426): 'quedam alta via domini Regis iacens in villa Oxonie in quodam loco vocato Grenedyche infra parochiam S. Egidii extra portam borialem ville Oxonie... quam quidem altam viam... villata Oxonie... reparare debet.' For Greenditch, see Wood's *City of Oxford*, ed. Clark, p. 345 [and *Place-Names of Oxfordshire* (1953), p. 21]. In the view of those who endeavoured to make the township of Oxford liable for the repair of this road, the town of Oxford extended far beyond the northern wall.

³ Stubbs, *Const. Hist.* vol. I, §44.

⁴ So of Colchester, Mr Round has written in the *Antiquary*, vol. VI, p. 255: 'Perhaps the most salient feature revealed... is the stamp of a primitive rural community imprinted on a walled and populous town, a former Roman *colonia*.'

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point if I try to interest you in the story of this lordship, this ownership, that went a-begging at Cambridge. For a long time past there had been an intermittent dispute. In 1616 the University declared that of the soil of Cambridge 'no certain lord was known'; also that King John's grant of 'the vill of Cambridge' to the burgesses and their heirs was not a grant of 'the soil'.¹ Even in 1826, when the fields had been inclosed, a quarrel among the inhabitants about a toll brought the old documents once more before the courts, and the lawyers were wrangling over the question whether Cambridge was or was not on the ancient demesne of the crown.

All this interests me. Long before I knew of these debates affecting the ground on which I daily walk, certain general considerations had led me to believe, first, that the soil of a truly ancient borough, a shire-borough recognised as such by Domesday Book, would very possibly have no obvious lord, and secondly, that if a king of the twelfth or thirteenth century took upon himself to grant such a borough to its burgesses, he might be sowing the seeds of a pretty law-suit.² A certain uncertainty about lordship and ownership, or about somewhat that is neither exactly lordship nor exactly ownership, may, so I think, be a leading thread in the early history of our oldest boroughs. Look at Oxford or look at Cambridge in Domesday Book. Why does the clerk write *Terra Regis* below and not above the account of the borough? Perhaps because there is 'no certain lord', or no certain owner, of the soil.

But I have another and a more general purpose in view when I ask your attention to this disputation. A student of our towns and villages must come to close quarters with some legal ideas, and the task of unravelling their history is not going to be so easy as it looked a while ago. That is a warning which comes to us from many quarters. We may see it in Mr Baden-Powell's book on the Indian Village, and in Dr Gierke's book on the German Community. We may see it everywhere. We shall have to think away distinctions which seem to us as clear as the sunshine; we must think ourselves back into a twilight. This we must do, not in a haphazard fashion, but of set purpose, knowing what we are doing.

Did it not seem to some of us, at all events in the examination room, that the question about the origin of property in land was straightforward? On the one hand, we had something to give

¹ Cooper, *Annals*, vol. III, pp. 110–11.

² *Hist. Eng. Law* (1st ed.), vol. I, p. 635, [2nd ed., p. 650].

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away, 'property' or 'ownership'; on the other, there were various claimants: the tribe, the clan, the village, the family, the individual. We were to give this article, this commodity, to one claimant, and then it was to be passed from hand to hand. The only difficulty lay in the order of succession. Where do you put your family? Before or after the village community?

To be serious, we know now, even if we did not always know, that this is much too simple. Before we have gone far back in our own history, the 'belongs' (if I may so say) of private law begins to blend with the 'belongs' of public law; ownership blends with lordship, rulership, sovereignty in the vague medieval *dominium*, and the vague medieval *communitas* seems to swallow up both the corporation and the group of co-owners. We know or are beginning to know this; but a particular example may bring it sharply before our minds. When King John granted the vill of Cambridge to the burgesses and their heirs, did he mean to confer an ownership of the soil upon a municipal corporation? One point seems certain. Neither John nor his chancellor would have understood the terms of our question. Both the right that is given and the person or persons to whom it is given are hazily and feebly conceived.

You know why I say 'person or persons'. I think that the historian of our towns will have to face that difficulty. Also I fancy that in this country lawyers have done something to deter historians from fairly facing it, by concealing from them its moral and economic interest. The invention of 'fictitious personality', as it is sometimes called, is put before us as a feat of skill, an ingenious artifice of jurisprudence. The inference is readily drawn that it concerns only lawyers. But is that true? Can I in the few minutes that are left to me persuade you that, however meanly you may think of legal technicalities, there is a problem here which deserves patient and sympathetic investigation?

In 1833 Cambridge, like other boroughs, was visited by royal commissioners. Of Cambridge, as of most other boroughs, they reported some evil tidings. In Cambridge, however, they found what was rare, a member of the corporation who courageously defended what they regarded as a bad abuse: namely, the sale of some pieces of the corporation's land to corporators at small prices. 'He thought' we are told 'that the property [of the corporation] belonged *bona fide* to the corporation and that they had a right to do what they pleased with their own.' 'Such', the commissioners