

# PRIMITIVE FOLK-MOOTS;

OR,

OPEN-AIR ASSEMBLIES IN BRITAIN.

BY

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TO  
WILLIAM JOHN THOMS, ESQ., F.S.A.,

THE FOUNDER OF "NOTES AND QUERIES,"

AND

THE TOILER AT MANY GOOD WORKS,

*This Book is Dedicated*

BY THE AUTHOR,

IN SINCERE ADMIRATION OF A LITERARY LIFE,

WHICH INSPIRES IN ALL THE DEEPEST FEELINGS OF

RESPECT AND ESTEEM.

## PREFACE.



BEFORE a work is laid before the public, the author should be quite satisfied of its *raison d'être*: he should know exactly upon which shelf and by the side of what existing works in the national library it ought to be placed; he should, in fact, be always sure of the gap in literature that he proposes to fill up. Of course, he may not eventually be able to fill it up worthily, but the student will not be altogether unthankful or unappreciative if the desideratum be fairly attained. Speaking now of the present work, I would point out that chronologically it holds a place prior to any existing works on English Constitutional History, because it treats of a period of history prior to any that has been yet undertaken. Mr. Kemble and Mr. Freeman go far enough back to be enabled to look upon the borderland of my subject; but, then, in so doing, the one steps on to Swiss ground, and the other on to German. Canon Stubbs commences his great work at a period when all primitive institutions were developing into historical institutions. Mr. Coote passes over the primitive period by one magnificent bridge of Roman civilization. I can only hope, therefore, that the pride of place which the subject is

entitled to may not be materially damaged by my treatment of it.

I am quite aware that, according to the highest canons of historical writing, this book possesses many drawbacks. The author of any work dealing with archæological monuments should doubtless have visited and examined for himself each object, or at all events a majority of objects—a representative majority. But I cannot profess to have done this in respect of any of the great archæological remains that I venture to treat of. My sources of knowledge are entirely literary; that is to say, I am dependent for the descriptions of the places mentioned upon the published accounts scattered throughout English literature, or upon the accounts kindly furnished by friends. My work is therefore in this respect an historical compilation merely.

Again, when an historical subject is treated for the first time, I hold it to be superlatively necessary to make the record of the facts as clear as possible; not to destroy the completeness of any item of fact for the purpose of making it fit in with any historical theory.

Now, from the long series of instances of open-air assemblies in Britain, I have built up an historical theory concerning the Primitive Folk-moots of Britain. This theory is based, I believe, upon the strongest possible foundation; it is an induction drawn from a very wide circle of facts. But in every instance I have sought to keep my facts as complete as possible—topographically, historically, and politically. My first care has not been the proof of my historical induction, but the collection of all the known or possible instances of the open-air assembly in Great Britain which I could

come upon during a long period of research. And if, with these fragments of antiquity, I have endeavoured to build a fabric which, as I submit, gives us an important picture of primitive times; if my argument throughout is that these open-air assemblies are survivals of primitive open-air assemblies, I am dependent for proofs of this argument upon the evidence given by the collected examples as they stand in English history or tradition at this present day, instead of the more strictly scientific data afforded by an archæological arrangement of the primitive features only of each example.

If, therefore, my conclusions be not so scientifically arranged as they might be, let me plead my adherence to the necessity of placing on record, very clearly, the facts by which the subject may hereafter be more fully worked up, and which, more than anything else, are essential to a first study.

And if the use to which I have ventured to put these fragments of olden times be not acceptable to the purely antiquarian scholar, let him remember that the fragments themselves are quite visible to him, and are uninjured.

Thus, therefore, I trust that the student of primitive culture and the antiquary may both be able to see some merit in my work as a useful contribution of materials rightly and scientifically placed for future use.

I find that a few typographical errors have crept into the text, which I have noted in a table of errata; and perhaps in mitigation, not in excuse, of this default, I may plead that my work has been done after the busy day of official life is over.

I must acknowledge with sincere gratitude the great

assistance I have had from many kind friends, which I have always acknowledged in the text of the book. But I must be invidious enough to specially allude to Dr. Alexander Laing, Mr. James Hardy of Oldcambus, Mr. John Fenton, and Mr. T. Fairman Ordish, who have assisted me by something more than the ordinary means of literary assistance. Mr. Edward Peacock, F.S.A., has also sent me many useful references, which I have not been able to acknowledge in the text. I must also be permitted to express my obligations to the editors of the *Athenæum* and *Notes and Queries*, for their kindness in publishing my wants from time to time. And, lastly, to one kind and learned antiquary I owe so much, that I have ventured to still further increase the debt by placing his name on my book in a somewhat more prominent position than at the end of the preface.

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# PRIMITIVE FOLK-MOOTS.

## CHAPTER I.

### INTRODUCTION.

#### ERRATA.

Page 9, line 32, *for* "Lavelaye" *read* "Laveleye."  
,, 66, line 29, *for* "Skene's" *read* "Innes's."  
,, 82, line 10, and page 83, line 7, *for* "Doomsday" *read* "Domesday."  
,, 97, line 30, *for* "Landesgemeind" *read* "Landesgemeinde."  
,, 219, the derivation of Malmesbury from *Mallum berg* is, unfortunately, not correct. The Rev. A. L. Mayhew kindly writes to me that "in two MSS. the name is written 'Ealdelmesburh.' Thorpe thinks the initial 'M' may be due to the preposition 'Im.' It was very common to prefix the preposition to names of monasteries: see Indexes to Beda." This is one illustration of the necessity for a *Dictionary of Place-Names*, for which I have pleaded in *Notes and Queries* (6th Series, i. 433).

Present State of Early English History—Primitive Institutions still traceable from Indigenous Sources—The Place occupied by the Folk-moot—General Characteristics of the Primitive Assembly—Its Development in English History—The Particular Value of the Evidence of Open-air Meetings—Their Connection with other Primitive Features—The Arrangement of the Examples to be investigated.

No branch of English history has been remodelled so entirely upon a new basis as the early period, before the existence of English records. Comparative Philology, Comparative Politics, and Comparative Jurisprudence have united in producing a philosophy of history which enables us to understand the political life and institutions of this early period, almost as satisfactorily as if our knowledge had been derived from the evidence of written records. One has only to compare, for instance, the authorities used by Kemble and Stubbs with those used by Hume, and even Hallam, to at once perceive the full significance of this. The latter are almost entirely English—early chronicles and other historical docu-

ments of that class; the former appeal to the comparative method, and call in the evidence of foreign early history as evidence of early English history; nay, take English history itself back to a foreign home for its origin.

Yet, curious and complete as we must admit this new historical picture to be, now and again we come across a hurried generalization, or perhaps even a missing link in the chain of evidence.\* It is not always made clear by the followers of the comparative method of historical study, why the chief authorities for early English institutions should be German, and why a particular institution existing in Germany should be looked upon as the parent of a similar institution existing in England. But the truth is, no systematic attempt has yet been made to trace out the early history of Britain from the archaic remains that still exist in the land. The materials for early English history are assumed to be lost from that point where literature ceases to give evidence, and all information anterior to this is obtained from the continental home whence we departed from our Teutonic kinsmen.

But, irrespective of the weighty arguments which an early Celtic occupation and a Roman conquest bring to bear upon the question of an exclusive Teutonic origin of English institutions, it appears to

\* Mr. Freeman says, "When positive evidence within our own land fails us, we must go for illustration and explanation, not to the facts, the theories, the controversies, of modern politics, but to the kindred institutions of kindred nations on the Continent. Our Parliament is the true and lawful representative, by true and lawful succession, of the ancient Meeting of the Wise; but, if we would search out the origin and constitution of that Meeting of the Wise, we must go to the *Marzfeld* of the Frankish kings, to the *Landesgemeinden* of *Uri* and *Unterwalden*." —*Norm. Cong.* i. 75, 76.

me not only that traces of primitive institutions are by no means lost to the student of our island antiquities, but that it is worth while spending some time and labour in working out the proposition as to how much of the primitive history of Britain may be restored to knowledge. It is perfectly true that, at the very threshold of such an inquiry, we meet with a difficulty that may perhaps militate against its value as an historical inquiry concerning Britain and her inhabitants. I mean the difficulty of deciding whether any given primitive institution may be of Celtic or Teutonic origin. For of course it is necessary to work upon the comparative method: to ascertain first what are the usages of primitive mankind, and to work back upon this basis from the evidence to be adduced from British sources. And the usages of primitive man are not only Celtic, or only Teutonic, or indeed only Aryan; they are to a great extent common to nearly all the races into which external circumstances have separated the people of the earth. But if this difficulty be admitted—and, so far as the present inquiry is concerned, it is fully and completely admitted—there is a considerable counterbalancing gain. By establishing some clear evidence of primitive political institutions in Britain, we at once clear the ground of the theory of the exclusive Roman origin of English history, because Roman influences on Britain were civilizing, not primitive; and, with reference to Rome, the question then becomes—and this is really an important question—how far did Roman influence bring the primitive institutions of the land within its enormous power, and so develop them that they are practically the outcome of the Romano-barbaric world? But, having established this historical ques-

tion, it is no part of the present inquiry to *answer* it. It simply demonstrates the historical basis of Roman influence in Britain to rest upon the proposition contained in this main question, instead of leaving it to rest upon the other proposition as to how much of English history is really Roman history continued to modern times; and it leaves the answer to students who have specially studied the matter. And a still further gain to be obtained from an inquiry into the primitive history of Britain is the establishment of an historical position for the many archaic customs, the many archæological remains, the many remnants of antiquity which have been collected in our museums or enshrined in our antiquarian literature. These, at present, do not represent much in the acquired knowledge of mankind; they are curiosities admired by the few who take an interest in them, because they are peculiar and belong to a past age. But when once labelled as portions of the evidence of man's historical development from brute to civilization, they assume a scientific value which the philosophers of a future age will know how to acknowledge.

Now the materials of this primitive history of Britain are at last being gradually unfolded; not upon any elaborate plan, or by any definite set of workers, but by different students and in detached and accidental groups, so to speak. Each worker hitherto has arranged his studies according to his own requirements, and not with reference to their bearing upon the primitive history of Britain. Still many notes can be collected showing that this latter subject is advancing. Something has been made known of the primitive mythology—the village gods and the

village faiths and beliefs—from the researches of folklorists. Some portions of the domestic life have been elucidated by our archæologists. The agricultural life—which leads the way to the whole social and political life, for agriculture is the foundation of the primitive community—has been investigated with the clearest results. And thus we have materials for the religious, domestic, and economical phases of primitive British history all more or less at the disposal of the historian. But to crown all this, to make the materials for the primitive history of Britain appear reasonably complete, there is still wanting some research into the politics of that epoch. Primitive politics is a comprehensive subject in the history of early mankind. It has been worked out with success from the evidence of some of the nations of antiquity and of modern barbarism; and some of its phases, at all events, may still be worked out from the primitive history of Britain.

Thus, it will be gathered that I venture to place the primitive assembly in a very foremost position among the institutions of our forefathers. As one of the chief elements of primitive politics, it stands almost at the apex of that group of studies on the early history of mankind which has just been indicated. Indeed, it represents all that primitive man had to fall back upon in his struggles for right and justice, in his connection with men of his own tribe or village, and perhaps with those of foreign tribes or villages. It figures out the solidity of the foundation upon which it was based, namely, the patriarchal community; and it adds one more to those common features in the sociology of the human race which modern science has succeeded in establishing.

Comparative Jurisprudence has made known some of the general characteristics of the primitive assembly. They have been picked out from the remnants of early Aryan history which remain to the modern student, and they are of the utmost value to the right understanding of early juridical thought. They supply, so to speak, the general conceptions with which this branch of the study of primitive politics ought to be approached. But we do not thus obtain definite groups of historical examples; we do not have before us graphic and individual illustrations—there is simply the general induction which the comparative method of historical inquiry has perfected.

This general induction may be stated in general terms to be as follows:—In the first place, there is no definition of the functions of the primitive assembly—no clear division between legislating and judging. “In the infancy of society,” says Sir Henry Maine, “many conceptions are found blended together which are now distinct, and many associations which are now inseparable from particular processes or institutions are not found coupled with them; there is abundant proof that legislative and judicial power are not distinguished in primitive thought” (*Early History of Institutions*, p. 26). Again, in its most primitive form, the assembly was essentially democratic. Its legislation in Aryan countries consisted of the apportionment of the agricultural tenements and the duties incident to an agricultural community; its judgments consisted of the settlement of village wrongs, and occasionally the trial of a village criminal. “Licet apud concilium accusare quoque, et discrimen capitis intenderc” (Tacitus, *Germ.* xii.). This primitive council gave birth to the Athenian Ekklesia, to

the Roman Comitia, to our own Witan and Parliament. But when it first comes to the notice of the historian, it is fluctuating amidst a whole cluster of influences, which, as development proceeds, almost eclipses the original form. It is seen in history sometimes owning a responsibility to the entire body of freemen, sometimes disclaiming it, sometimes overshadowed by the authority of an hereditary chief (*Early History of Institutions*, p. 388).

Turning from these varying functions and characteristics of the primitive assembly—the sometimes wholly legislative and sometimes wholly judicial, the sometimes democratic in form and the sometimes autocratic—there is the further question to consider: To what social unit or aggregation is it incident?

Most clearly it is not the assembly of a State, as we understand the term State now. As just now pointed out, it gives birth to the assembly of the State; and this is because the State, as a rule, is a vast federation of communities bound together by some external tie. As the primitive community, sovereign within its own bounds, becomes aggregated with other communities, it gives up just so much of its own sovereign power as will serve to create the new sovereign power of the new State. Thus, the shires of England were once sovereign communities; and they amalgamated into the new kingdom of the West Saxons. And as a natural consequence the old shire-moots became the local branches of the new Witenagemot: they lent their aid to the formation of the new Witan; they established the first rules of its formation by the old rules which had long governed them; they established its democratic character—the right of every freeman to attend and take part in its proceedings; the right

of every shire-man to be a Witan-man. We can only just perceive these influences of the old primitive assemblies of the local communities upon the national assembly of early Saxon times; they crop up upon great state occasions, in spite of the enormous influence which Roman sovereignty was working, in spite of the new kingship which Roman ceremony had fostered, in spite of the new nobility and new Court associations which Roman power had developed. But all these Roman influences upon the central governing authority—upon the Teutonic-founded Witan and upon the new kingship and the new ceremonial—left the local communities to do almost as they would have done in old times, and to develop almost as they would have done if no Roman power had swept over them. Nowhere can Roman influence be traced in more powerful form, than in the development of the national sovereignty. It drew the national sovereignty away, so to speak, from the local sovereignties, which would otherwise have shared some of its power. It clothed the new national sovereignty with its own civilized ceremonial; and by the dazzling power, as well as the ordinary sociological influences, of this ceremonial, the national sovereignty took upon itself the guidance of the nation, received upon itself the changes which national progress, and subsequently foreign conquest, always bring about.

In this wise the old local communities retained much of the primitive influence and many of the primitive forms. The old shire-moot was called upon to take part in the State government at a comparatively early date; and accordingly we lose sight of many of its primitive characteristics at an early stage in its history. But still its primitive characteristics are discoverable. The

hundred-moot, the manor courts, the forest courts, the courts of the liberties and franchises, and the courts of some municipalities, however, carry on the primitive associations to within the memory, or at all events the knowledge, of the modern student.

We shall find that many of these courts are occupied now, as they were occupied in primitive times, in carrying out the legislation and the judicial trials of agricultural communities. Almost everywhere in Aryan lands there are most remarkable reminiscences of the primitive agricultural community. England, it is well known, is not behindhand in the evidence she gives of this primitive institution. Sir Henry Maine and Professor Nasse, of Bonn, have only laid the foundation of, and shown the path to, a still further extension of evidence. It is everywhere forthcoming that England at one time in its history was entirely divided, as it is now even partially so, into groups of self-governing, almost self-supporting, agricultural communities. Certain modes of cultivation, particular divisions of cultivated lands, are the characteristics which have, up to the present time, formed the sole basis of evidence in England. These village rules of cultivation survive now as fixed unalterable customs, incident to certain manors or other jurisdictions. There is not one word of an assembly of the cultivators which met to decide the course of cultivation, the division of the lands, and the rights of the individual villagers. Yet such an assembly is an undoubted element of the primitive village community. In Russia the assembly of inhabitants of the commune determines the time of sowing and harvest (*Lavclaye's Primitive Property*, p. 14). In Switzerland all the commoners above the age of eighteen assemble, of absolute right, every

year in April, to receive the report of accounts and to regulate current affairs (*Ibid.* p. 94). In Germany the inhabitants assembled to deliberate on all that concerned the cultivation, and to determine the order and time of the various agricultural operations (*Ibid.* p. 111). In Holland the partners in the work met once a year, on St. Peter's Day, in a general assembly, or *holting*. They appeared in arms; and no one could absent himself, under pain of a fine. This assembly directed all the details as to the enjoyment of the common property; appointed the works to be executed; imposed pecuniary penalties for the violation of rules, and nominated the officers charged with the executive power. The mound where the *holting* met (*Malenpol*) is still visible in Heldermaalenveld, and at Spoolderberg, near Zwolle (*Ibid.* pp. 283, 284).

Here, then, we have evidence of the legislative duties of the old village assembly. Its judicial duties do not want any particularization—they exist at every court leet of a manor, at every criminal jurisdiction of modern local courts. I do not mean to say that it is possible, or even necessary as a logical position, to gather together all the groups of cultivating communities, and all local courts having civil and criminal jurisdiction, either in existence at the present time, or as recorded in literary archives, and restore to each group substantial evidence of its primitive original, by placing alongside of the evidence of primitive mode of agriculture, evidence of primitive courts of justice. But what I want to establish is, that in these modern local courts we have survivals of the *primitive* assembly which was incident to every initial group of men banded together into a cultivating community, to every extended amalgamation of smaller communities into

larger communities, to every original sovereign State in its primitive development; and, finally, that, if not incident to, it is traceable in the collected influences which at first formed the Witenagemot of England.

It now becomes necessary to answer a very important question which meets us at this stage of the subject, and which, indeed, modifies the whole form of our subsequent researches: By what means is the primitive assembly, or, as we may now call it, primitive folk-moot, to be recognized in modern Britain, or, from the historical records of modern Britain?

It is clear, in the first place, that we cannot trace it out by means of those general characteristics which have been noticed above.\* They are too indefinite, and have entered too much into the composition of the modern assembly. We have lords of the manor exercising judicial functions, and assemblies of the people, in select or popular bodies, exercising legislative functions, all over the kingdom. That these are remnants of the primitive folk-moots there cannot be any doubt; but, then, they are surrounded with machinery of quite modern date, and cannot, therefore, be applied to the requirements needed in the present research.

It is necessary, then, to appeal to some other distinctive feature, or features, of the primitive assembly, in order to trace out its existence in Britain. And this, I think, will be found in the open-air meeting. In the instance quoted above from Holland, as to the cultivating community being governed by its own

\* "As to the constitution of these great councils," says Mr. Freeman, "our information is of the vaguest kind" (*Norm. Conq.*, i. 111). And this remark applies equally well to the local assemblies of early English history.

assembly, it will be remembered that the place of meeting is particularly mentioned as still existing. It is a great mound of earth, in the open air, under the light of heaven. In this particular feature of the primitive assembly can be identified a means by which examples may be traced out in Britain on tolerably sure and very extensive grounds. It is not necessary to associate every example of open-air meetings with other known primitive characteristics of the assembly. For it is only possible now to regain from the memorials of the past, fragmentary evidence of primitive institutions. In some few cases we shall have something more than fragmentary evidence. But, in an extensive research, to attempt to look for anything else would be to put one's self in opposition to the whole historical development of English institutions, and, in fact, to shoot above the mark. And we cannot expect to meet with examples identical in every particular with the originals from which they have started. Some portions of their outline will have been altered, some portions also of their internal construction. Sometimes it will be the legislative functions that are the most prominent, sometimes the judicial functions; sometimes, again, it will be that the popular assembly is the most prominent form, and sometimes the chief, or lord of the manor. And these important considerations form an additional reason why the search should be limited to some unmistakable feature of the primitive assembly.

In taking the open-air meeting as the key-note of the evidence, there is an undoubted gain in the precision and accuracy of our researches. As we shall presently see, this feature of the primitive

assembly is found in many social groups which lie at present outside the field of Comparative Jurisprudence; and it will certainly enable the student to make a more elaborate comparison of the assemblies of Aryan countries. Mr. Freeman, it is well known, has worked out this comparison as a chapter of Comparative Politics, but then his researches with regard to Britain, for instance, are less comprehensive and less satisfactory than those with regard to Teutonic countries, and to Greece and Rome. But the thoroughly distinctive feature of an open-air meeting is very easily traced, and very easily grouped into archæological sections. We can show that Britain sends forth to the study of primitive politics a contribution scarcely second in value to that received from any other civilized nation; and, further than this, that in the open-air meeting we have hit upon an element of primitive political life, which may perhaps carry the study of Comparative Jurisprudence beyond its hitherto restricted boundary of Aryan history.

It will not serve any good purpose, therefore, to delay considering the evidence of the primitive folk-moot in Britain until some other significant features can be associated with every example of the open-air meeting. The disturbance of primitive institutions, or rather their development, has been too great to allow of much use being made of a whole group of survivals, instead of one particular survival. As Sir Henry Maine observes, no institution of the primitive world is likely to have been preserved to our day, unless it has acquired an elasticity foreign to its original nature through some vivifying legal fiction (*Ancient Law*, p. 264). And, accordingly, the open-air court, as it is still found in Britain, becomes a very signifi-

cant factor among British institutions, and a very important relic of primitive times. It is in its nature as a survival from primitive times that it becomes of the greatest prominence here. In some few instances to be brought forward, other relics of the primitive assembly will be found clustering round this first-found basis, and further researches will make it clear that the open-air meetings of modern times possess other important features, which have been borne along by the same historical breeze that has preserved the primitive form and place of meeting. On the very threshold of our inquiry, indeed, it is possible to see connected with the open-air meeting another very important characteristic of the primitive assembly, namely, the right of the whole body of freemen to attend and take part in the proceedings. These two elements are, indeed, so much a part of each other, that it is difficult to say when the one separates from the other. An open-air assembly, with no restricted space, no secret meeting, must have originally been identical with the primary popular assembly. And we have evidence of their connection in a peculiar capitulary of Charlemagne, which Sir Francis Palgrave quotes in illustration of the very portion of the subject with which I am now dealing. This capitulary directs that a roofed building shall be constructed, wherein the *mallum* shall be held. Sir Francis Palgrave then adds that a sober and plausible reason is assigned for the regulation, and the missus may have expatiated on the paternal care of the sovereign, anxious to protect the suitors from the inclemencies of the weather, from the burning rays of the sun, and the piercing blasts of the wind. But it may be doubted whether this enactment, which is contemporaneous

with another dispensing all freemen from attendance, excepting only the "Vassi" of the Count, and the Scabini, proceeded merely from a wish to consult the convenience of the people. Legislators often follow the maxim, that it is politic to have one reason to offer and another to conceal; and, without being too astute in the wiles of policy, it will not be considered as a very extravagant conjecture that Charlemagne may have been willing to disperse the theory which hitherto had attended these courts, by substituting the solemn session within the walls of the Stadthaus, in the place of the council mustered in the field. Whether intended or not, this effect was produced. The popular assemblies, from being the conventions of the people, became mere courts of justice; and the nation, instead of joining the priests and nobles who deliberated in the Champ de Mars, only heard of the resolutions which had been adopted by the peers in the presence of the sovereign (*History of English Commonwealth*, i. pp. 138, 139).

This places very clearly before us a most important and remarkable stage in the history of the continental primitive assembly. The right of every freeman to attend the assembly and the open-air meeting are concomitant; and abrogating the latter was the first step to destroying the former. In England, however, we do not even meet with these two disturbing agencies in the history of the primitive assembly. Mr. Freeman cannot discover anything to show that the right of the common freeman to take his place in the general assembly of the nation was ever formally taken away in our own country (*Comparative Politics*, p. 219). And the same remark might be applied to the local assemblies. We know perfectly well that the

general assembly of the people—whether we understand the hundred-moot, the shire-moot, or the Witenagemot—has in course of time shrunk up into a representative body, and we know that this is only following a law which is shown to belong to the general development of national institutions; but it has never been formally abolished, and in point of fact exists down to modern times, at all events in historical theory, every time an open-air meeting is held. When we have evidence of an open-air meeting, therefore, we practically obtain evidence also of the survival of the primitive popular assembly. I shall, in addition, be able to point out some remarkable instances, where, under extraordinary circumstances, the old primary assembly was actually resorted to after it had been disused for years, and I shall be able to describe one or two survivals of the primitive assembly, complete in almost every matter of detail; but still, for all practical purposes, the fact of the open-air meeting is the main, and very often the only, link by which we can now trace reminiscences of the primitive folk-moots of Britain.

But it should be remembered that the primitive popular assembly, and what might be understood now of a popular assembly, are two totally different things. The “people” then were not what the people are now. It cannot be too often impressed upon the consideration of those dealing with primitive history, that the unit of society was not the individual, as at present, but the family. Every family then possessed rights and political status, just as now every individual possesses them. And this corporate unit of the State did not represent itself on state occasions by the whole group of persons composing it; that is, by the chief of the

household, together with his children and grandchildren, his attendants and his slaves. These often counted up to a considerable number, according to the power and wealth of the household chief. But, for State purposes, all but the chief were mere ciphers in the community. He was lord, sometimes no doubt listening to the wishes or counsel of his house community, but more often exercising his *patria potestas* despotically and powerfully. He was answerable to the State for their conduct; to him was relegated their punishment or reward; and he alone, therefore, attended the State assembly—the council of his village, his tribe, or his nation. Thus, then, though in theory essentially a democratic institution, admitting *all the members* of the community to its deliberations, the primitive popular assembly was not democratic as we now understand the term. All who had no right to attend did not, in the eye of ancient law, exist; the law of the State did not comprehend them *within its bounds*. And, of course, from this starting-point many varying developments have taken place. In some instances the household chiefs have retained the power in their own hands, even after the legal definition of “the people” had been transferred from them exclusively to every individual. In some cases, again, “the people” have grown in power at a rate parallel to the extension of their legal recognition, until we see them finally meeting by representation, because their numbers will not permit them to meet popularly, although, as in the case of many parish vestries, the right of every man to attend the village council is still extant. It will now, perhaps, be better understood by this rough outline of one of the most important features of primitive society that the primitive assembly in

Great Britain will appear, in its modern survival, not by any common form of meeting, but by the simple relic of the place of meeting still being in the open air.

Thus, then, I have limited the object of research to the primitive *open-air* assembly; and, accepting the modification implied by this title, I think we shall find a very instructive chapter in the study of primitive politics.

Now, I find that the examples I have collected of the primitive open-air assembly in Britain fall into three distinctive groups, namely, examples from early records before the primitive influences had given way, revivals, and survivals. This division, though perfectly arbitrary, so far as the archæology of the subject is concerned—for one group is just as archaic as either of the others—will be found to give an argumentative relationship to the several stages of the inquiry. We first of all gather together one or two definite examples of the open-air assembly, belonging to a time when it might be supposed that it had not ceased to be an ordinary institution of the land; we then find that, on certain special occasions, for great objects or to meet the requirements of men who had not forgotten the old state of things, assemblies which had met for years under cover, and in diminished numbers, once more resumed their old form. From the stage represented by these two groups of evidence to that represented by the survival, it is an easy step. It will first of all have been shown that the assemblies belonging to the nation and to various local jurisdictions in England *did* meet in the open-air by certain well-known spots, or did gather the whole body of freemen in one general meeting; and, armed with these facts, we can then proceed throughout the length and

breadth of the land to see in what manner this primitive institution has survived. We find the survivals, again, divided into two great sections—the historical, and the traditional and philological. In the group of historical survivals are included many examples of open-air meetings of various legal assemblies—some great franchises, the forest courts, manor courts, and others which represent in uninterrupted succession the primitive institutions of Celtic and Anglo-Saxon Britain. And in the group of traditional and philological survivals are included many old customs that only now receive their correct interpretation, and many significant derivations of topographical nomenclature. By this means it becomes possible to obtain some idea of the widespread custom of open-air assemblies, and to put on record a primitive phase of British history, instead of a series of peculiar instances of British antiquities. Our information would be singularly wanting in comprehensive value, if we had to rely upon tradition or place names only, and would, perhaps, only amount to a conjecture after all; and it would be quite impossible to trace the custom as a general one, belonging to the primitive history of Britain, if we had simply to rely upon one or two isolated examples and an extensive argumentative groundwork. Thus, though as a matter of historical arrangement I keep the three divisions asunder, as a question of historical evidence they form part of one important period, and lend their aid to its illustration.

## CHAPTER II.

## EXAMPLES FROM OTHER LANDS.

Necessity of obtaining non-British Evidence of the Open-air Meetings—*From Modern Savage Life*: Iroquois, Araucanians, African tribes, Negritto races—*The Great Nations of Antiquity*: Hebrews, Hindoos—*Early European History*: Northern Nations, Iceland, Denmark, Saxony, Germany, France—Summary.

IN endeavouring to ascertain what portions of civilized life are relics of a bygone age, it is not possible to be content with general appearances or theoretical probabilities. We must have some historical evidence upon the subject. And although, in the present research, the evidence of very early records will be brought to bear upon this question, in no place do they tell us sufficient of the assemblies and councils of the time to enable us to say at once that the meeting in the open air was one of their most distinctive features. And, moreover, the records of these open-air meetings are very meagre, containing not one word about the form or the ceremonies of the assembly. It is better, therefore, to go outside British antiquities, and see what evidence there is of open-air assemblies associated with primitive communities in other lands and among other peoples; and the result can then be clearly applied to what is found to exist in Britain. It is, of course, only now that the primitive history of man-

kind is being elucidated, that it becomes possible to ascertain what contribution to this primitive history can be obtained from Britain. Old records and strange customs that have no meaning when judged from the usages of modern times, are seen in altogether a different light when the student has placed himself, as it were, in ages long before the events chronicled in the old records or the strange customs had passed away from ordinary life. He is then looking down the stream of time, not back upon it, with a vision dulled by the influences of civilized history and present surroundings. And the knowledge thus gained of primitive life can be applied to the facts of our own national history in all stages of its development, and with the result that customs and institutions which have been laid on one side as not illustrative of British history, are found to be illustrative of the history of early mankind—to be, in fact, a contribution of knowledge from primitive Britain to primitive man. For Mr. Spencer has proved that no true conception of the higher types of family in their relations to the higher social types, can be obtained without previous study of the lower types of family in relation to the lower social types. In this case, as in many others, error results when conclusions are drawn from the more complex products of evolution, in ignorance of the simpler products from which they have been derived; misinterpretation is caused by analysis of phenomena from above downwards, instead of synthesis of them from below upwards (*Principles of Sociology*, i. 711-713).

It is, then, necessary to give some consideration, even if it be rapid, to some of the authorities who have dealt with the assemblies of primitive societies.

These group themselves into three divisions, namely, (a) those relating to modern savage life, (b) some great nations of antiquity, and (c) early European history. The examples to be mentioned are typical rather than exhaustive, and will reflect upon the examples in Britain many of the features they specially portray.

(a.) The traditional origin of the government of the Iroquois North American Indians is peculiarly interesting in connection with the present subject. The tribes were at one time separate and hostile bands, although of generic origin, and were drawn together in council to deliberate upon the plan of a League, which a wise man of the Onondaga nation had projected. Tradition has preserved the name of Da-ga-no-we-da as the founder of the League, and the first lawgiver of the Ho-de-no-san-nec. It likewise points to the northern shore of the Onondaga Lake as the place where the first council-fire was kindled, around which the chiefs and wise men of the several nations were gathered, and where its establishment was effected. The influence of the first council place was never afterwards destroyed. Although the place of meeting was not always confined to Onondaga, the custody of the "Council Brand," and also of the "Wampum" into which the laws of the League "had been talked," was given by an hereditary grant to the Onondagas. The council-fire in the Onondaga Valley, situate in the most central position, became in effect the seat of government for the League. At stated periods, usually in the autumn of the year, and upon exigencies of a public or domestic character, the sachems of the League assembled in council at Onondaga to legislate for the common welfare (see Authorities quoted in Spencer's *Descriptive Sociology*).

Among the Araucanians, again, the triple power that constitutes the sovereign authority is vested in the great body of the nobility, who decide every important question in the manner of the ancient Germans or modern Poles, in a general diet which is called the great council. This assembly is usually held in some large plain, where they combine the pleasures of the table with their public deliberations. Their code of laws, which is traditionary, is in reality nothing more than primordial usages or tacit conventions that have been established among them (*Ibid.*).

Among the African tribes, the Hottentots have a national court, composed of village chiefs, and presided over by the national chief; and village courts, composed of the men of the village, and presided over by the village chief. They assemble at the residence of the chief. The Bechuanas have Pitshos, or parliaments, convened for the transaction of important business in an inclosed area, which is always set apart for the public assemblies. It is from five and twenty to thirty yards across, and surrounded by either a hedge of branches or a rough, irregular palisade. The Kaffir tribes have a head chief, councillors, and subordinate chiefs, chosen by the people, forming the legislative, judicial, and executive authorities of the tribe; and their meetings, for transacting public business, are held in a cattle-fold. Among the Congo people, the village chief and the members of his family form the legislative and judicial council, which meets under the boughs of a tree—the *Ficus religiosa* (Spencer's *Descriptive Sociology*). But one of the very best examples is given in Lieutenant Cameron's *Across Africa*. The village of Manyúema is shown in a plate in the first volume (p. 352); and it is an

almost perfect drawing of what one might imagine the primitive Aryan village to have been. The enclosure is bounded by palisades; the huts are all ranged in long streets, sometimes parallel, and at others radiating from a large central space; and in the centre are, what most interest us now, the palaver huts and palm trees.

And proceeding to the lowest types of mankind, among whom little or no political organization exists for any long period together, we find that the forum of the Tannese, a tribe of the Negritto race, is an open circular space in every village, where the chief assembles for business, under the shades of a great banyan tree (Spencer's authorities in *Descriptive Sociology*).

(b.) The great nations of antiquity I define to be those nations which have left a history and a literature for modern times. The great Assyrian kingdoms, the Egyptians, the Hebrews, the Hindoos, Greece, and Rome are, of course, the most familiar types. In order to be as concise as possible, it is, perhaps, not necessary to draw illustrations from all these sources, although I have no doubt that such could be done if occasion called for it.

However, let us begin with the example of the Hebrews. The researches of modern Hebraists incontestably prove that Hebrew history has developed along lines very nearly parallel to those of other histories.\* But perhaps more than other history it has

\* I ought to mention some studies contributed by my friend Mr. John Fenton to the *Theological Review*, as my evidence of this fact. Pursuing the track marked out by Ewald, Mr. Fenton, writing on *The Primitive Hebrew Land Tenure* and on *The Gool*, has used all the researches and all the methods of the sociologist in elucidating the fact that primitive Hebrew life is parallel to primitive life in general.

retained among its records archaisms which have not been swept away by the growth of later institutions. Thus, when "Joshua gathered all the tribes of Israel to Shechem, and called for the elders of Israel, and for their heads, and for their judges, and for their officers," he summoned in the primitive form an assembly of the people. They met to decide a most important question—their adherence to their national religion. And "Joshua made a covenant with the people that day, and set them a statute and an ordinance in Shechem. And Joshua wrote these words in the book of the law of God, and took a great stone, and set it up there under an oak, that was by the sanctuary of the Lord" (Joshua xxiv. 1, 25, 26). And this oak at Shechem was subsequently used as a meeting-place; for "all the men of Shechem gathered together, and all the house of Millo, and went, and made Abimelech king, by the oak of the pillar that was in Shechem" (Judges ix. 6). The oak is again mentioned in conjunction with a solemn meeting-place, when the angel of the Lord came to Gideon, the son of Joash, "and sat under an oak which was in Ophrah" (vi. 11). Deborah gave judgment under a palm tree: "And she dwelt under the palm tree of Deborah, between Ramah and Bethel in Mount Ephraim: and the children of Israel came up to her for judgment" (iv. 5).

Without going more elaborately into the evidence from the Bible—and there is much more than can be mentioned now—it will be necessary to state the following references to assemblies near large stones. We shall meet again with the assembly meeting in the vicinity, or within the circle, of large stones; and it is well, therefore, to notice the archæological

value of the Biblical evidence. The story of Adonijah usurping the crown commences with the legal ceremony of summoning the assembly: "And Adonijah slew sheep and oxen and fat cattle by the stone of Zoheleth, which is by En-rogel, and called all his brethren the king's sons, and all the men of Judah the king's servants" (1 Kings i. 9). The crowning of Joash is minutely described—"the king stood by the pillar, as the manner was, and the princes and the trumpeters by the king, and all the people of the land rejoiced, and blew with trumpets" (2 Kings xi. 14). And, again, King Josiah "stood by a pillar" to make a covenant, "and all the people stood to the covenant" (xxiii. 3).

In connection with pillars of stone as the places of assembly, there is also some evidence relative to ancient pavements as seats of judgment: "And they saw the God of Israel: and there was under his feet as it were a paved work of a sapphire stone, and as it were the body of heaven in his clearness" (Exod. xxiv. 10). In the New Testament also we read, "When Pilate therefore heard that saying, he brought Jesus forth, and sat down in the judgment seat in a place that is called the Pavement, but in the Hebrew, Gabbatha" (St. John xix. 13); and Dr. Adam Clarke's commentary on the latter passage thoroughly identifies this as the open-air court of justice.

Turning next to Aryan lands, it will no doubt be expected that India would supply some significant evidence. The general conception is obtained from two instances of a kind of proverbial saying, which I shall quote. In the *Nāradyā Dharma-śāstra*, translated by Dr. Jolly, it is said that "cases decided by women, at night, abroad, *in the inside of a house*, and

by enemies, shall be reversed" (p. 8); and from the *Yajñavalkya's Law-book*, translated into German by Dr. Stenzler, a parallel passage is given as follows:—"Cases which have been decided by violence or fraud, the king shall declare null; as also such as have been decided by women, at night, *inside a house*, outside the place of justice, or by enemies" (p. 51). Here it will be clearly seen that one of the distinctive features of legal assemblies is the meeting under the light of heaven. And that legal assemblies did so meet there is ample evidence, I think, without travelling very far into the extensive literature of Hindoo archæology. Lassen mentions the fact that "the people met in assembly in the cowshed of the village" (*Indische Alterthumskunde*, i. 808), and here we have a curious parallel to the previous instance of such a place of assembly being used among the Kaffir tribes. One of the most general of the Hindoo tribunals is the panchayet. It is practically the village council, and decides all disputes relating to the village. It is, writes the Rev. J. Long in his pamphlet on *Village Communities in India and Russia*, still used by the Hindoos in investigating offences against caste, and the members, whose number is not limited by any rule, may be seen sitting on a mat under a tree, by the roadside or in the market-place, administering justice. Sir John Malcolm says of the Bhils (Hill tribes of India) that in all quarrels or disputes, great or trifling, they have recourse to the panchayet, which often consists of several hundred members, as every person connected with the plaintiff or defendant has a right to attend; these assemblies meet under the shade of a tree (*Central India*, i. 577). The *Smṛiti Chundrika*, a celebrated work on Hindu law, gives a list of *sabhās*

or courts of different classes, composed of foresters, merchants, military, chosen by the parties themselves; and these simple courts were like those of arbitration—settling matters in a cheap and simple way under a tree (note to Rev. J. Long's pamphlet, as above, p. 29).

(c.) The third division comprises early European history. The archæology of most of the nations of northern and western Europe has been sufficiently investigated to bring it within the definition of being evidence of primitive man; for there exists either a traditional literature, or an accumulation of archæological remains which leaves no doubt that primitive history may be traced therefrom.

According to the Edda given in Mallet's *Northern Antiquities*, the Allfather in the beginning established governors; and ordered them to decide whatever differences should arise among men, and to regulate the government of the celestial city. The assembly of these judges was held in the plain called Ida, which is in the middle of the divine abode. Their first work was to build a hall, wherein are twelve seats for themselves, besides the throne which is occupied by the Allfather (English Translation of Mallet, ii. 41). Again, in another chapter, it is said that the capital of the gods is under the ash Ygdrasil, where the gods assemble every day and administer justice (ii. 49). In this, as in other matters, the gods are made to conform themselves to the manners of men, and it is quite as much to our purpose that these particulars of judicial assemblies are supposed to relate to heavenly beings, as if they had been related of mankind.

A great Thing was held in the Island of Guley,

where there was a hill, exactly resembling the Tynwald Hill of Man, on which the court was held in the open air. This sacred place was paled off by staves stuck in the ground and cords run through the staves. These cords were called vebond (the sacred cord), and the pales vestengr (holy poles); the place within was called Langretta (Train's *History of the Isle of Man*, ii. 189, note).

A circle of stones in the village of Oye, near Flekkefjord, adjoining the Naze of Norway, was, according to oral tradition, used by the people of that village for judicial proceedings (*Arch. Journ.* i. 249).

Iceland presents to the student of primitive political institutions a picture which is as grand as it is perfect. And nowhere is this picture so carefully placed before the English student as in Sir George Dasent's *Introduction to the Story of Burnt Njal*. Accordingly, I take from this source the following particulars of the Icelandic assembly.

By the end of the period of the first occupation of Iceland, a number of little kingdoms had been formed all round the coast, ruled by the priests, who, at stated times, convened their adherents and retainers to meetings for the settlement of matters which concerned any or all of them. These were called "Things"—meetings, *i.e.* Mot-things. Each was independent of the other, and quarrels between the members of two separate Things could only be settled as the quarrels of nations are settled, by treaty or war. But the time soon arrived when the progress of political thought began to work upon this disjointed constitution; and then amalgamation of local Things into an Althing, of local jurisdiction into a commonwealth jurisdiction, was the historical result. The common-

wealth of Iceland grew into existence just the same as the commonwealth of England, and, indeed, the same as the commonwealth of almost all Aryan nations—by amalgamation, not by a newly formed organization.

Thus, then, we have the Althing and the local Things; and it is expressly understood that the Althing was in all essential matters a faithful representation of the local Thing. Premising that each had its Thingbrekka, or Hill of Laws, let me at once, therefore, proceed to speak of those features of the Althing which more specially appertain to the present inquiry.

At the institution of the Althing, the most knotty part of the whole question was—where the great Thing, where the common place of meeting, should be. A man named Grim-goatshoe—a name probably taken from his skill as a cragsman—was set to do what may be called the footwork of the scheme. He walked throughout the whole island to seek a fitting spot for the commonwealth to meet. He found it southwest of the fells, where the broad lands of a freeman, which had just been confiscated for murder, gave ample space for the annual gathering of some thousands of souls, and where there was an abundance of wood and water, as well as forage for their horses. Some consideration was also felt for the fact that it lay in the Thing of the priesthood founded by Ingolf, the first settler, the priest of which thus became what may be termed the high-priest of the island, inasmuch as the legal capital of the country was within his jurisdiction; and in this we have a curious parallel, if not an important one, to the Iroquois place of meeting already noticed.

All the judicial meetings of the Icelanders were in close connection with their religious rites, as Church

and State were, in fact, identical. In its legal capacity, the Althing was both a deliberative and executive assembly—both Parliament and High Court of Justice in one.

Every freeman was bound to be present at the local Things, and even at the Althing. It was therefore considered a right and proper thing to ride to the Althing, if for no other reason than that of seeing the world. Besides law matters, much else was done there in the way of business between man and man. Pleasure was not excluded. There were feasts and biddings to feasts; and, as we know in Hrut's and Gunnar's cases, marriages might be made there, for a man went thither often with his wife and daughters.

The Thingvalla, or Thing-field itself, was a vast sunken plain of lava, about four miles broad and rather more than four miles deep, lying with a dip or slope from north-east to south-west, between two great lips or furrows. A stream called Öxará (Axe-water) cuts off a rocky portion of the plain, so as almost to form an island. This is the famous Hill of Laws, or Lögberg, which was the heart of the Icelandic body politic. Here, on the highest peak of the rock, formal notices of trials and proclamations on matters of public interest were uttered by word of mouth, and here, too, on the more level portion of it was the Court of Laws (Lögretta—the supreme court and deliberative assembly, or parliament, of the commonwealth). The entrance to it was by a neck of land, so narrow that three bold men might hold it against a host. Crossing the river and standing on its eastern bank was the spot where the old Quarter Courts sat.

The booths of the freemen and others who flocked to the Althing were placed along the banks of the

Axewater. With regard to their position, it seems certain that the chiefs and Thing-men from the same quarter all established themselves on the same part of the Thing-field.

Having thus noticed the salient points of the topography of the Thing-field, we may turn to some of the ceremonies incident to the Court of Law. It is not necessary to follow Sir George Dasent through his masterly description of the formalities of an Icelandic trial; these details can all be obtained by reference to his work. But for our present purpose it is useful, I think, to add one or two additional quotations on the formation of the court. It is here, indeed, that for the first time we are able to look beyond the open-air meeting to some other features of the primitive assembly, and so hereafter to gather together a wider consensus of evidence from British antiquities.

Thus, before the Court solemnly sat, it was girt round with hallowed cords (*vèbond*) running from stake to stake. At the same time a crowd of men stood round, without the verge of the sacred ring, and expressed by a deep hum of praise, and sometimes even by loud shouts of applause, their sympathy with one side or the other, and their sense of the skill displayed in the conduct of the case. No judge or usher then interfered to stifle those outbreaks of popular feelings which are part of the Northman's free and open nature. One thing more to tell of this Icelandic legal assembly and its important evidence to the present study will be completed. After judgment was given against the defendant, he was termed "*sekr*"—"guilty" or "convicted"—and the plaintiff then went on to make his adversary an outlaw, if the offence was such as to call down that punishment.

This was done by formal notice at the Hill of Laws, but the sentence was not complete, so long as the Court of Execution (*Fèránsdómr*) had not been held. This court was to be held at the outlaw's own abode, within fourteen days after the last day of the Althing. If the outlaw had property enough to pay his debts, his wife's dower, the fines to which he had been sentenced, and the priests' fee and bail, he had three places of asylum granted to him for three years, till he could get a passage to foreign parts, to fulfil the three years' exile which was the sentence of the court in cases punishable by the lesser outlawry. No man could touch him on his way to or from the places of refuge, or to or from the ship; nor might any shipmaster refuse him a passage, under peril of falling into outlawry himself.

This example of the Icelandic Thing is the most perfect that is known to history. Scandinavia, rich in its evidence of primitive institutions, is perhaps richest in its example of the primitive assembly. But, not to dwell too closely upon this just now, let me turn to Denmark for another phase of the subject. The election of a king of Denmark, in ancient times, was commonly had in this solemn manner. As many of the nobles as were senators, and had power to give their votes, agreed upon some convenient place in the fields, where, seating themselves in a circle, upon so many great stones, they gave their votes. This done, they placed their newly elected monarch upon a stone higher than the rest, either in the middle of the circle, or at some small distance at one side, and saluted him king.\* We learn also from Dr. Hibbert that in each

\* Hutchinson's *History of Cumberland*, i. 227; see also Plot's *Natural History of Oxfordshire*, pp. 339, 340.

of the three kingdoms anciently included in Denmark, namely, at Lunden in Scania, at Leyra in Zealand, and at Wiburg in Jutland, a stone circle was to be seen, where, according to tradition, a Ting was held whenever, upon the death of a sovereign or leader, an election of his successor took place (*Archæologia Scotica*, iii. 197).

A place of judicature such as was used in old times in the Northern nations, is described by Wormius as taking up no less than six and forty great stones of stupendous magnitude within a circle (*Olai Wormii Mon. Danic.* lib. i. cap. 10), and a stone in the middle for the judges to sit on. These places of judicature seem always to have had their muniments of stone, of a quadrangular, oval figure, and only to be entered at two sides, as that at Dithing mentioned by Wormius. They were placed upon a rising ground for the advantage of prospect, in order that the common people, assembled to confirm the suffrages or votes of the electors by their universal applause and congratulatory acclamations, might see and witness the solemn manner of election. Now, that the Northern nations usually erected such circles of rude stones for the election of their kings is fully testified by Olaus Wormius: "Reperiuntur inquit in his oris loca quædam in quibus Reges olim solenni creabantur pompâ, quæ cincta adhuc grandibus saxis, ut plurimum duodecim, conspiciuntur, in medio grandiore quodam prominente, cui omnium suffragiis Electum Regem imponebant, magnoque applausu excipiebant. Hic et comitia ccelebrabant, et de Regni negotiis consultabant. Regem vero designaturi electores Saxis insistebant forum cingentibus, decreti firmitudinem pronunciantes."\*

\* *Olai Wormii Mon. Dan.* lib. i. cap. 12, quoted by Dr. Charleton

The states of East Friesland, even so late as the thirteenth century, assembled under three large oaks which grew near Aurich; and it is not more than three centuries ago that most of the German princes held their conferences under trees (Mallet's *Northern Antiquities*, Eng. Trans., ii. 53).

In Saxony there existed a singular jurisdiction, which claimed a direct descent from the pagan polity and mystic ritual of the earliest Teutons. There were also tribunals in many parts of Saxony, not retaining so many mystical ceremonies, yet still betraying their common origin; and the Vehmlic tribunals of Westphalia followed a custom which we shall see is incident to these Saxon courts, namely, to hold the courts beneath "the eye of light."

The curious and almost unique jurisdiction of this Free Court of Corbey, as it was styled, is described by Sir Francis Palgrave in the second volume of his *History of the English Commonwealth*, which contains the proofs and illustrations to the first volume (see pages cxliv.-cxlviii.). I do not think any objection will be raised against transcribing this account here; for although the work of Sir Francis Palgrave is very well known to students, it is not always accessible, and the account of the Free Court of Corbey is very illustrative of much that I shall have to state hereafter.

We learn from the historians of Saxony that the "Frey Feldgericht" of Corbey was, in pagan times, under the supremacy of the priests of the Eresburgh. The court was composed of sixteen persons, who held their offices for life. The senior member presided as the "Gerefa" or "Graff;" the junior performed the

in *Stonehenge restored to the Danes*; Plot's *Natural History of Oxfordshire*, pp. 339, 340.

humbler duties of "Frohner," or summoner; the remaining fourteen acted as the "Echevins," and by them all judgments were pronounced or declared.

The seat of judgment—the king's seat, or "Konigstuhl"—was always established on the greensward; and the tribunal was also raised or appointed in the common fields of the Gau, for the purpose of deciding disputes relating to the land within its precincts. Such a "king's seat" was a plot sixteen feet in length, and sixteen feet in breadth; and when the ground was first consecrated, the Frohner dug a grave in the centre, in which each of the free Echevins threw a handful of ashes, a coal, and a tile. If any doubt arose whether a place of judgment had been duly hallowed, the judges sought for the tokens. If they were not found, then all the judgments which had been given became null and void. It was also of the very essence that it should be held beneath the sky, and by the light of the sun.

When a criminal was to be judged, or a cause to be decided, the Graff and the free Echevins assembled round the Konigstuhl; and the Frohner, having proclaimed silence, opened the proceedings by reciting the following rhymes:—

"Sir Graff, with permission,  
I beg you to say,  
According to law, and without delay,  
If I, your knave,  
Who judgment crave,  
With your good grace,  
Upon the king's seat, this seat may place."

To this address the Graff replied—

"While the sun shines with even light  
Upon masters and knaves, I shall declare

The law of might, according to right.  
Place the king's seat true and square;  
Let even measure, for justice sake,  
Be given in sight of God and man,  
That the plaintiff his complaint may make,  
And the defendant answer—if he can."

In conformity to this permission, the Frohner placed the seat of judgment in the middle of the plot, and then he spake for the second time:—

"Sir Graff, master brave,  
I remind you of your honour, here,  
And, moreover, that I am your knave;  
Tell me, therefore, for law sincere,  
If these mete-wands are even and sure,  
Fit for the rich and fit for the poor,  
Both to measure land and condition;  
Tell me as you would eschew perdition."

And, so speaking, he laid the mete-wand on the ground. The Graff then began to try the measure, by placing his right foot against the wand, and he was followed by the other free Echevins in rank and order, according to seniority. The length of the mete-wand being thus proved, the Frohner spake for the third time:—

"Sir Graff, I ask by permission  
If I, with your mete-wand, may mete  
Openly, and without displeasure,  
Here the king's free judgment seat."

And the Graff replied—

"I permit right,  
And I forbid wrong,  
Under the pains and penalties  
That to the old known laws belong."

Now was the time of measuring the mystic plot;

it was measured by the mete-wand along and athwart, and when the dimensions were found to be true, the Graff placed himself in the seat of judgment, and gave the charge to the assembled free Echevins, warning them to pronounce judgment, according to right and justice :—

“On this day, with common consent,  
And under the clear firmament,  
A free field court is established here,  
In the open eye of day,  
Enter soberly, ye who may ;  
The seat in its place is pight,  
The mete-wand is found to be right ;  
Declare your judgments without delay ;  
And let the doom be truly given,  
Whilst yet the sun shines bright in heaven.”

Judgment was given by the free Echevins according to plurality of votes. The jurisdiction of the court extended to all crimes committed in the open air— thefts of cattle or agricultural implements, trespasses, and even murder. But unless the eye of light saw the deed, the free court, assembled beneath the sky, could not judge the offender.

The free judges also appear to have possessed originally a territorial jurisdiction. A free tenant could not sell his land to a villain, but only to another free tenant. A surrender of the tenement was made in court ; and as soon as the free tenant was divested of his land, he became “dienstbar”—a vassal or villain.

This full account of the Free Court of Corbey is but the preface to a great collection from Germany. Grimm, it is well known, in his *Deutsche Rechtsalterthümer*, has devoted a chapter to the meeting-places of the court of justice. From this chapter it is neces-

sary to gather some of the most distinctive landmarks of our subject. This is all the more necessary, because from the completeness of Grimm’s collection of examples, and from the advantages of his mode of arrangement, it will be found that many of the collections of examples relating to Britain in the following pages are grouped upon the basis adopted by him.

An ancient court of justice was never held otherwise than in the open \*—under the open heaven, in a forest, under broad-shaded trees, on a little hill, beside a fountain. Narrow buildings would not have contained the assembled multitude ; and the idea of heathendom required sacred places for the holding of a court of justice, in which sacrifices could be brought and divine oracles could be obtained. These sacrifices the Christian faith destroyed, but it left the old places of justice undisturbed. We are therefore able, even in later times, to reckon up a number of places which custom and prestige retained for holding courts of justice. Nevertheless, their meaning mostly escapes us, and we remain in the dark as to *why* here on the mountain, there under the tree, here in the street, there beside the water, the law should have been pronounced.

After this general opening of the subject, Grimm proceeds to set forth the examples he had collected relative to the place of meeting of the primitive assembly. There was the court of justice in the forest, which was held in the middle of the forest, and where most of the *mark* and forest matters were

\* At Athens most of the courts of justice were covered, excepting those in which murder was judged, and probably also the Heliæa, etc. Perhaps the idea was also held by our forefathers that judge and criminal should not be together under one roof (Grimm).

settled. Then there were the courts held under special trees. Under the oak several instances are given from different parts of Germany, and such instances as the "Landgericht ad septem quercus," "villa parochialis septem quercuum," lead to the conclusion that towns known by the names of "Dreieich" and "Sibenaich"—Threecoaks and Seven-oaks—were probably at one time old court-places. Courts held under limes are even more frequent. They group themselves into meetings simply under the tree, before the house under the limes, before the church under the limes, in open lanes in the middle of the village under a lime, by the mountains under the limes. These two trees, the oak and the lime, very nearly monopolize the custom, though there are isolated instances of courts being held under other trees—thus, under a fir tree at Lostorf, under the nut trees at Rudesheim, by the elder tree *in loco prope* Ludenghusen, and before the hawthorn.

We next come to meetings of the assembly upon large and open meadows in the neighbourhood of a river. Of these Grimm gives several examples, which it will not be necessary to enumerate here, as they do not possess any distinctive feature. In the neighbourhood of rivers and streams also are several instances of meetings of civil tribunals; they assembled *juxta fluvium, super fluvium, in littori lacu* Turicini, *juxta littus aquæ* in Gensungen, *super vadum amnis*.

Then there are open-air courts before the mill, at the well, in the courtyard of the monastery between the house and the well. Several instances are mentioned of meetings before bridges—at Wurzburg, at Steinheim, at Hirsaw; and mention is made also of the custom of meeting at great burial-places.

Perhaps the largest group of instances falls under that of mountains and hills. The name "Mallberg"—*mallo bergus*—is borne by many places in Germany; and Grimm collects many examples of court-hills which it would be needless to repeat.

Of courts held by great stones, Grimm confesses a want of documentary evidence, but points out that the later proofs which he brings forward contain some very ancient customs. In these proofs we do not get any description of the stones, beyond such examples as "in campo apud longum lapidem, quod *landding* dicitur," and the court held under the free heavens "upon a great flat stone." It is, however, clearly brought out that some of these stones were not so much used as the "judgment seat," or the "Königstuhl," as for the purpose of executing criminals—of exercising that corporal punishment which, for the first time from these remains of the primitive legal tribunal, we ascertain was incident to them.

We have next a very familiar meeting-place of the legal tribunals of antiquity, namely, before the gate of the city. In the Middle Ages, Grimm says, stone steps were placed at the town gates, which were used for mounting or alighting from horseback. These steps were termed *perron* in French poems of the thirteenth century, but upon such a *perron* the lord of justice or his representative was wont to sit. Many instances are then set forth in detail of meeting-places before the gate of the city and in the streets.

There were also many councils before church doors, or in the churchyard; and Grimm asks the significant question, Did some survival here operate of the old heathen religion which bound together sacrifice and judgment?

This concludes Grimm's splendid collection of examples of the primitive assembly meeting under the light of heaven. His pages give in detail all that we can desire relative to German antiquity, and, to some extent, they give much more. They are, in point of fact, the first attempt to collect evidence of this important subject, and therefore the first recognition of its historical value.

Again, from France there seems ample evidence of the open-air assembly, instances of which have been collected by Michelet in his *Origines du Droit Français* (liv. iv. cap. ii.), following upon the line that Grimm had already worked out. Giving some typical examples of this collection, we have the following account :—

“Trials often take place under trees :—1. Aux trois chênes, Aux cinq chênes. There are more often still instances of the lime tree. Thus : Le lieu des sept tilleuls. 2. Trial under the fir tree by the great Imperial way (A.D. 1324)—under the birch tree (A.D. 1189)—under the walnut tree—under the elder tree—before the hawthorn under the blue heavens—the seat of the free under the pear tree—on the rising ground at the place called Le Hêtre de Fer, where a free judge ought to sit (A.D. 1490). There are some trials under the elm ; for example, in a village in the bailiwick of Remiremont. At Paris, the vassals came to pay their services at the elm of Saint Gervais. ‘Attendez-moi sous l'orme,’ says a French proverb.

“The ancient assemblies in the Champ de Mars et Mai were held probably in the fields, near rivers. One finds also some examples of trials held by rivers, by a bridge, or a boat. The Lake de Grand-lieu had high, low, and middle justice. The tribunal was seated in a boat at two hundred paces from the bank : when the judge pronounced sentence, it was necessary for his right foot to touch the water of the lake. In Brittany the lakes were and are still held in great veneration ; they carry thither on a certain day some butter and bread. Trials are held sometimes in caves and near tombs ; but more often they

gave judgments on the hill. The Salic law speaks often of the Mallberg, or hill of assembly—It was decided, for the well-being and common utility of the country, that the assizes of France, which were held near Gisors, should be transferred, until the king decides otherwise, near to Chaumont (*calvum montem*), where it was the custom to hold them anciently.

“A hill is called *puî* in the Romance language : it is under the *puîs* that the Redercker of Flanders and Picardy held their assemblies. *Puî* is rendered in the Latin of the Middle Ages by *podium*, *pogium* ; in Provençal, *puég*, *puçi*, *puoi*, *puç* ; in Italian, *pog*, *poggio*—for example, the *Poggio* imperial, near Florence.

“Trials often took place in a circle of stones : ‘And heralds restrained the crowds ; then the elders ranged themselves in a sacred circle on the polished stones’ (*Iliad*, xviii. 505). The circles of Druidical stones continued to serve as tribunals wherever Christianity had not destroyed them. Ranged in a certain order, the stones marked the field of battle. In France, in La Bresse, the juge-mage de Bourg was seated before the market-place, until the fifteenth century. We call the “siège de la pierre hardie” the jurisdiction of the chapter of Saint-Dié on the Meurthe. There is at Bourges and other places “la pierre de la cric.” We find something analogous among the Romans : ‘Thou art there, standing by the stone where the crier cries the sales (*præco prædicat*).’ See, in Laurière, Bretesches, a pulpit of stone where they make proclamations.

“In certain places, the chief sits on the steps before a house, to administer justice. Joinville held often, by order of the king, pleas of the gate—*plaiids de la port*. It is, without doubt, the sense of the *stapulus regis* (the stair of the king) in the Riparian laws.”

It now only remains to shortly summarize the result of this collection of examples from other lands, and to see how it may be applied to the evidence forthcoming from our own country.

It is not necessary to arrange in other than the present geographical groups the collection of places where the assemblies of other lands used to meet, in

order to obtain some general conclusions from them. Objects of nature—trees, streams, plains, hills, etc.—are the favourite meeting-places; the first advance upon artificial constructions would be such as the cattle-fold of the Kaffirs and the cowshed of the Hindoos; and it is only when arriving at a comparatively later social development that stone pillars or stone circles become the fashion. Among the Hebrews and the Greeks, perhaps, of the nations of antiquity, and among the Danish and the French, to some extent, of modern civilized countries, we see the strongest tendencies to use stones or other artificial monuments. It is remarkable that among the Germans no trace can be found of such usages. The explanation of these various usages does not seem to rest upon very definite historical grounds. Stones and the stone age are relics of man in one of his earliest stages of development, and we seem to penetrate to absolutely prehistoric times in coming upon the grassy seats of the Corbey Court, and the other objects of nature connected with the meeting-places of the primitive assembly.\* To summarize, then, the places where the primitive assembly can be shown to have met—besides the forest, under special trees, in meadows, on mountains and hills, at burial-places, mills, wells, bridges, church doors, in the court-yard of the monastery, at the gates of the city, all definitely arranged by Grimm in his early Teutonic section—we have enclosed village areas, as among the Bechuanas and the tribe mentioned by Cameron; the cattle-fold and cowshed, as among the Kaffirs and Hindoos; the chief's residence, as among the Hottentots; by large

\* In Exodus xx. 24, 25, the transition from the "altar of earth" to an "altar of stone" unhewn, is plainly discernible.

artificial stones, as among the Hebrews, and in Denmark.

But besides the importance of noting carefully the places of the meeting, there are the *forms* and some of the associations of the meetings to be noted. The magnificent examples of Iceland and the Free Court of Corbey give other features than the place of meeting alone, by which to trace out the survival of the primitive folk-moot in Britain. In Iceland every freeman must attend—the primary assembly of the people; at Corbey the primary assembly has shrunk to a representative assembly of "sixteen." Then we have the fencing of the court, the position of the tribunal in the common lands, the old rhymes used at the opening ceremony, the land jurisdiction of the court—all of which make the picture much more definite and tangible than the bare record of an open-air meeting; and help to rekindle life into the primitive antiquities of Britain, which have lain dormant for so long under the weight of unscientific treatment and unscholarly neglect. We know by these great examples of the primitive assembly, that the open-air meeting is not a mere unmeaning relic of old times; we know that by the continuity of this one special feature we have an important link with all, or nearly all, the principal features of the primitive assembly; and, finally, that from such materials we can now write something like a reliable chapter of primitive politics.

Having obtained this knowledge of the distinctive features of the primitive assembly or court of justice, it now becomes possible to inquire about some of the traces of its existence in Great Britain. To begin with, it is perfectly well known that the early inhabi-

tants of Britain were in a primitive stage of society. But between the Celts, the first primitive inhabitants, and the Saxons, the second primitive inhabitants, comes the all-abiding influence of the Roman conquerors. At the time the Romans conquered Britain, Rome was not a primitive nation. Her people had advanced along the line of civilization to a considerable extent; and for the purposes of comparative politics, therefore, Roman institutions stand on a level with some stages of modern European institutions. Her *civilizing* influences not only varied the primitive institutions of the Celtic Britons, who preceded her, but also the primitive institutions of the Anglo-Saxons, who followed after her. Although, therefore, we know perfectly well that the sources of primitive history in Britain are derived from two branches of the Aryan family, the Celtic and Teutonic, who occupied her territory, yet the superstructure of Imperial Rome has always made our knowledge of some points of this primitive history extremely difficult to establish. As long as we do not allow our researches to rest at the stage of Roman influence, it generally becomes possible to trace back the original primitive institution, but, as before stated, only in a fragmentary condition. Still, it is there, in our own land, among our own native institutions; and it is well worth preserving.

At the commencement of this chapter, I pointed out that it was necessary to appeal to the evidence of other lands before dealing with the evidence of our own land, because sociological science requires a sociological medium, through which to observe the institutions of civilized countries in their primitive condition. And it is in this light that Mr. Freeman's well-known examples from Switzerland should be

viewed. At present they usurp the place which ought to be occupied by English examples. These Swiss cantons, it will be found hereafter, simply reflect what is going on in our midst, though it may well be in diminished forms and in less national importance: they do not supply all that is known of the earliest growth of the English constitution, but they help to perfect the scientific medium by which the English constitution may be traced from English evidence alone. As Mr. Freeman places the picture before us, its reality and vividness is very instructive. We read that from the market-place of Altdorf, the little capital of the canton of Uri, the procession makes its way to the place of meeting at Bozlingen. First marches the little army of the canton; overhead floats the banner, the bull's head of Uri; and before them all, on the shoulders of men clad in a garb of ages past, are borne the famous horns, the spoils of the wild bull of ancient days. Then, with their lictors before them, come the magistrates of the commonwealth on horseback, the chief magistrate, the Landammann, with his sword by his side. The people follow the chiefs whom they have chosen, to the place of meeting, a circle in a green meadow. The multitude of freemen take their seats around the chief ruler of the commonwealth, whose term of office comes that day to an end. The assembly opens; a short space is first given to prayer, and then comes the business of the day. In Appenzell we miss the solemn procession, the mounted magistrates, the military pomp of Uri; but we find in their stead an immemorial custom, which breathes, perhaps more than any other, the spirit of the days when freedom was not a thing of course, but a thing for which men

had to give their toil, and, if need be, their blood. Each man who makes his way to the Landesgemeinde of Trogen, bears at his side the sword which the law compels him to carry and forbids him to draw (Freeman's *Growth of the English Constitution*, pp. 3-7). The transfer of these examples from their pride of place in English Constitutional History to their own proper niche in the political institutions of early mankind, will be, I venture to think, the proper answer to Mr. Freeman's own question—"Why have I begun a discourse on the constitution of England with a picture of the doings of two small commonwealths whose political and social state is widely different from our own?"

### CHAPTER III.

#### THE EVIDENCE OF EARLY ENGLISH RECORDS.

Historical Value of this Evidence—Evidence of Popular Gatherings—Beda—Anglo-Saxon Chronicle—Mr. Kemble's Examples—Council on the Banks of the River Nodder—On the Banks of the Nidd—On the Humber—Other Meetings—King Edgar's Charter to Ely—Welsh Examples—Cuckamsley Hill—Bridge at Grantebrugge—Infra cimiterium Eliensis—On the Tyne.

EXAMPLES of the open-air assembly collected from the earliest documentary history that has come down to modern times, must essentially be considered as examples belonging to times when primitive institutions had not entirely passed away from a current existence—in other words, as the earliest possible "survivals." We have no view of early English history so primitive as to exhibit the open-air assembly in its full force, and with all its contemporary surroundings. It had begun to shrink into a narrower form than when it is first of all pictured in the pages of Tacitus; and it had begun to meet elsewhere than under the light of heaven. We never, in point of fact, see its primitive form as the one prevailing form; or, indeed, the appeal to outside history would have been needless.

But although this is so perfectly true, there is another phase of the history of the primitive folk-moot

in Britain which is almost equally valuable as a record from an English Tacitus would have been—I mean the phase which shows the transition from primitive to more civilized institutions. Thus, the documents which give the evidence of early English assemblies sometimes tell us of the popular gathering, sometimes of the open-air meeting. On the other hand, a large proportion of these documents do not give any clue whatever to the nature and form of the meeting. But there is good reason for this. For, of course, as the folk-moot is nowhere described in any of the codes of laws, or in any of the early chronicles, the open-air meeting was not a feature to be any more specially noted and recorded, than any other primitive features which belonged to it. It was no more to these early historians or legal scribes to see a great meeting upon a plain or a hill, or by the banks of a famous stream, than it is to modern historians to see and hear of our great meetings, in Parliament and elsewhere, under the roofs of halls specially built for the purpose. It is not, therefore, a matter of surprise that we meet with so few records of open-air assemblies in the very early times of our history; and it falls in with this general view of the case to observe that special mention is made of such a meeting as that in the upper floor of a house at Calne (*Chron. Sax.*, an. 978).

But, irrespective of the records of open-air meetings in early chronicles and charters, there is ample evidence of the right of popular attendance and of this right being often exercised. The expression so often met with in legal documents, “all the men of the shire,” “all the men of the hundred,” must have been literal in meaning during its earliest usage. No doubt, in course of time it came to mean a small

majority of men who could have met in a roofed building—a hall or a lord’s house; but originally this could not have been so. The same expression is made use of in the earliest charters and in Domesday; and the shire, the riding, the hundred, and the “village” are all associated with this legal formula. Every legal formula has an origin from actual fact, and these great gatherings of freemen must have been actual during a considerable period of early English history. They must have met, then, in the open air and in the open lands of their respective jurisdictions; for no buildings of that time, at all events, could have been erected to meet the requirements of such assemblies.

This is the general proposition with which it is necessary to approach the consideration of the evidence to be derived from early legal documents. I shall proceed now to give a few examples in illustration, but the reader must go a great way beyond these examples. He must bear in mind that they are typical only of many hundreds of such examples, and he must carry the force of their numbers along with him to the next stage of the evidence. In one charter of Æðelstán, A.D. 931, the act is said to have been confirmed “*tota plebis generalitate ovante*” (*Cod. Dip.*, No. 1103); and the act of another meeting at Winchester in 934, which was attended by ninety-two persons, is described to have been executed “*tota populi generalitate*” (*Ibid.*, No. 364). The deposition of Sigeberht is stated to have taken place in an assembly of *proccres* and *populus*, the princes and people of the whole realm (*Hcn. Hunt.*, lib. iv.). A doubtful charter of Ini, A.D. 725, is said to be consented to “*cum præsentia populationis*” (*Cod. Dip.*,







































































































































































































































































