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# THE DANEGELD AND ITS EFFECT ON THE DEVELOPMENT OF PROPERTY LAW

BY BRUCE PETERSON\*

Thomas Hobbes' postulate that the life of man in his natural state is solitary, poor, nasty, brutish and short is not subscribed to by many today as solely restricted to man in his natural state; but also as including man in a *status socialis* where the sovereign exacts large sums in the form of taxation. Two eminent authorities in the federal taxing field have stated in the preface to their textbook that "the history of Federal taxation mirrors the history of the nation."<sup>1</sup> Taxation as we know it today is more than a mere method of financing the operations of government, but is, in the hands of government, an instrument of economic control and moral reform.

It can hardly be denied that since the advent of the sixteenth amendment significant changes have been wrought in the fabric of our society. Distribution of wealth, property concepts and economic philosophies have been demonstrably altered by taxation and the form it has taken. The late Randolph E. Paul has stated: "No part of American history has so deeply affected the ordinary daily living of most Americans."<sup>2</sup> Looking back through history, it is not difficult to find examples of where taxation has profoundly altered the course of the law in its development. One of these is in the imposition of the Danegeld<sup>3</sup> by the Anglo-Saxon kings. Lacking written records in any detail regarding the system of land ownership that existed prior to the Norman Conquest, there is nonetheless convincing evidence that substantial amounts of land were held allodially under the customary law.<sup>4</sup>

Adam Smith gives us a convenient division of the expenses of the sovereign into the expenses of defense, justice, public works and, lastly, the dignity of the sovereign.<sup>5</sup> The first three of these expenses were met by the Germanic tribes on the continent through the performance of services, termed *trimoda necessitas*, which were personal in nature and not dependent on any particular land holding. However, early in the settlement of England it became apparent that some provision for the expenses of the king was

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1. SURREY AND WARREN, FEDERAL INCOME TAXATION 1 (1955).

2. PAUL, TAXATION IN THE UNITED STATES 768 (1954).

3. A general land tax or tribute used to buy off the viking raiders of the English coastal regions. The term "Danegeld" distinguished it from other public burdens. During the reign of Cnut it is referred to by some writers as heregeld or army-tax, as it was used to maintain the public defenses.

4. 8 VINOGRADOFF, FOLK-LAND IN ENGLISH HISTORY 1-17 (1893).

5. SMITH, ESSAY IN ANGLO-SAXON LAW 61 (1876).

necessary. During the eighth and ninth centuries there evolved a system of food-rents which supported kings and their ministers. The king's *feorm*, or food-rent, in its primitive form consisted of a quantity of provisions sufficient to maintain a king and his retinue for twenty-four hours. This evidently evolved from an even more archaic system by which the king was entertained by his subjects as he passed over the country.

The king's *feorm* was due once a year from a particular group of villages, based on the number of hides under cultivation. History during this period is, at best, elusive; however, nowhere does it appear that a general land tax was levied either by the king or the witenagemote prior to the reign of Aethelred the Unready.<sup>6</sup> Aethelred assumed the throne of England after the treacherous murder of his brother, Edward the Martyr, and an uneasy crown rested on his head from 978 to 1016. At the time Aethelred assumed the throne, to the north the Danish King Harold had consolidated the Danish peoples into a single kingdom. There is no indication that Harold had any designs on invading England, for his interests lay in the Baltic. Nonetheless, by 980, small companies of vikings descended on the coast of England to ravage and plunder the coastal towns. There appears to be little evidence that these early raids had any appreciable effect on the general well-being of the land. However, in 991 they ceased being mere excursions of small companies when a large body of raiders appeared off the coast of England. This was a substantially larger force than had ever appeared before, and it took on the complexion of an organized army. London was attacked, and much of Sussex, Kent and Hampshire ravaged. The success of the expedition did much to alter the course of English history, for the English government was forced to buy peace from these viking raiders, led by Olaf Tryggvason.

A treaty was entered into between the English government and the vikings that provided for the payment of 22,000 pounds of gold and silver for the price of peace. To raise these sums a tax was levied against the people that was known as the Danegeld. Up until this time neither the king nor his witan had attempted to assume the power to levy a tax of this magnitude among the people. The fact that the people submitted to it can more than likely be attributed to the havoc created by the invaders rather than to any historic precedent for such an assumption of power by the king and witan.<sup>7</sup>

Olaf and Swein (the latter being the son of Harold, King of Denmark) reappeared off the coast of England in 994 with some ninety-four ships and

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6. 1 STUBBS, CONSTITUTIONAL HISTORY OF ENGLAND 133 (4th ed. 1897).

7. 2 STEPHENSON AND MARPLES, LAW IN THE LIGHT OF HISTORY 53 (1940).

more than 2,000 fighting men. Aethelred's government tottered when some of the English noblemen were prepared to accept Swein as king,<sup>8</sup> but the alliance between Olaf and Swein fell apart and peace was purchased for a sum of 16,000 pounds. Following the payment, in 994, a number of Danes came into the service of the English king; however, their services were short-lived for they joined a group of vikings who made successful landings in Devonshire in 1001. Aethelred swore vengeance on these mercenaries, and on St. Brice's day, November 13, the entire force of mercenaries was surprised and massacred. According to well-documented history, one of the victims was Gunnhild, sister of King Swein of Denmark. Gunnhild was then living in England as a hostage. This retribution exacted by Aethelred proved to be a costly one, for it is highly probable that Swein's principal motive for his invasion in the following year was that of revenge.

In 1002 Aethelred had turned over 24,000 pounds to the Danes. However, before Aethelred could stop the current depredations he was forced to pay what must have been a staggering sum for the day, 30,000 Saxon pounds in 1007. This is the last recorded levy of the Danegeld during Aethelred's reign, although in 1010 the sum of 48,000 pounds was demanded and when payment was delayed Canterbury was raided.

Upon the succession of Cnut<sup>9</sup> to the throne of England, full use of the Danegeld was instituted, but instead of wasting the Danegeld, which the Anglo-Saxons had by this time come to regard as a necessary evil, Cnut used the funds for the purpose of maintaining an armed force to defend the coasts. Under Cnut it became the largest single source of revenue of the crown and amounted to about 71,000 Saxon pounds.<sup>10</sup> At what intervals the Danegeld was levied has been lost in antiquity, but substantial evidence indicates that its exaction extended into the reign of Edward the Confessor before its abolition in 1051.<sup>11</sup>

It was for Cnut, however, to implement and sow the seeds of the

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8. On the treason of Aethelric of Bocking, implicated in a plot to receive Swein in Essex, see WHITELOCK, *ANGLO-SAXON WILLS* 44, 148-49 (1930).

9. Cnut, sometimes spelled Canute, Knut or Knud, invaded England in 1014, returned to Denmark and reappeared in 1015. Following the death of Aethelred in 1016, he defeated Edmund Ironside at Ashingdon. After Edmund's death he became king of all England, later inheriting the throne of Denmark from his father. Cnut resided primarily in England, proving himself an able sovereign.

10. MAITLAND, *DOMESDAY BOOK AND BEYOND* 3 (1897).

11. Edward was crowned king in 1043 following the death of Harthacnut. The first few years of his reign were most precarious, as Magnus of Norway, by virtue of an agreement with Harthacnut, also claimed the throne of England. Magnus, after subduing Denmark in 1046, mounted an armada to invade England in 1047, but his death in the fall of that year caused the invasion plans to be put aside. With the death of Magnus, and thus the unlikelihood of an invasion from the north, plus the severe drain on the economy caused by the Danegeld, Edward abolished it in 1051.

manorial system in his reign through the collection of the Danegeld. Cnut was a distant predecessor of Mr. Beardsley Ruml, who instituted our own "pay-as-you-go withholding plan for income taxes." Cnut made the intermediate lords the employers, and the collectors of his Danegeld. It was to these lords that the king looked for the collection of the tax. This was advantageous to the lords also, for they were in need of periodical rents and services. With the promise for the performance of these rents and services, the lord often paid the tax levied against a small landowner. The laws of Cnut were so strict that only four days of grace were given for payment of the Danegeld. If not paid within this time, the person who paid the tax could take the land. Thus, it is not surprising that the small landowners would gladly purchase, even at the expense of long-term rents and promises, some assurance that the tax collector be stayed from their door.<sup>12</sup>

On the eve of the Battle of Hastings this process had so stratified the tillers of the soil into classes that three distinct divisions emerge. First is the man who has a house at which he is charged with geld. Second is that of the villein; the geld apportioned to the land he occupies is demanded from his lord. How the lord recoups for himself this payment is his concern, for he alone is responsible for payment to the king, not as guarantor, but as principal debtor. Lastly is the free man, or sokeman, who is personally charged with the geld, but geld at his lord's hall, who in turn was bound in some way to exact the payment.<sup>13</sup> The Danegeld thus inserted the lord between the free man and the king and transformed the lord into a landlord. These foundations for Norman feudalism paved the way for an easy transition, for it must have seemed to the Normans that often only the name needed to be changed. Norman concepts of tenure were more sharply defined, as well they needed to be, for their bases of feudalism were founded on more distinct notions and consequences of tenure.

From its very inception, the Danegeld had been levied on a unit of measurement called a hide. Originally the term "hide" was used as a measure of area, varying in many instances from 30 to 120 acres. Upon imposition of the Danegeld, hides were allocated to the shires and hundreds for tax purposes. This allocation was not based on any factual count, but rather on pleasantly convenient assumptions about the capacities of provinces and districts.<sup>14</sup> With the Danegeld springs up this second meaning of the term

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12. I ROUND, *DOMESDAY STUDIES* 109 (1895).

13. MAITLAND, *op. cit. supra* note 10, at 121-28.

14. As early as the first part of the eighth century in the laws of Ine (70 Ine § 1) there are references to the king's *feorm* being levied on the basis of hides. By the close of the tenth century the duty of maintaining burghs is tied to the possession of hides. It is apparent that the attempt to correlate the fiscal hide with the area hide caused greater disparity.

“hide,” that is, a fiscal term denoting a very artificial and unwieldy unit in what, by today’s standards, must be categorized as a most primitive system of taxation. This duality between the hide as a unit of measure and as a unit of assessment precludes any precise definition.

The Danegeld, having fallen into disuse and, finally, abolition under Edward, lay dormant from 1051 to 1068. With the conquest England gained a strong line of capable kings with, among other things, a genius for organization. When Duke William became king of the English, he found (so he might well have thought) among the most valuable of his newly acquired regalia, a right to levy a land-tax under the name of geld or Danegeld.<sup>15</sup>

If, in fact, the Danegeld was the most precious jewel in the English crown, perhaps the best evidence of this was that hardly had the English crown come to rest upon the head of William than “he laid on men a geld exceeding stiff.” The year following “he set a mickle geld on the people.”<sup>16</sup> During the winter of 1083-1084, William levied a geld of six shillings on each hide of land. This was three times the normal levy, but there is no evidence that this was without precedent. Concomitant with such a heavy tax came the problems of collection, and it appears as if the sums derived fell far short of expectations.

Resistance to William did not cease immediately after the Battle of Hastings. Sporadic resistance continued for several years. Those landowners who had fought with Harold, and those who continued to resist, forfeited their lands to the crown. In all, about two-fifths of England changed hands during this period. The new Norman barons, having succeeded to the shoes of their Anglo-Saxon predecessors, were able to exact pretty much what they pleased in the way of taxation under the geld system. This proved disastrous to the poorer classes especially.<sup>17</sup>

The Danegeld, since its inception under Aethelred, had suffered serious inroads on its base. Just as today we find writers complaining about the “income tax base” and the “loopholes” that have been carved by special interests and pressure groups who seek special treatment, the church and powerful lords had obtained enormous remissions from the payment of the Danegeld, while on the smaller landholders and their tenants fell an inordinate share. After the geld of 1083-1084, William turned his order-loving Norman mind to the correction of the collection and assessment of the Danegeld. The solution to the problem of assessing all the land in the kingdom more equally

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15. WEBB, A SHORT ACCOUNT OF DANEGELD 25-30 (1756).

16. 4 DOMESDAY BOOK 26, 489 (1051).

17. 1 POLLOCK AND MAITLAND, THE HISTORY OF ENGLISH LAW 92 (1899).

and fairly, and thus increasing the amount, came in the form of the "great inquiry."<sup>18</sup>

In 1085, so the *Anglo-Saxon Chronicles* relate, the king met at Gloucester with his ministers. This meeting evidently included almost all the nobility of any note, as well as the clergy. From this council, which is said to have lasted five days, the king sent his commissioners into every shire, how much land the king held, and the numbers of cattle thereon. This information was to be compiled within a year and written returns were to be sent to the king at Winchester. These reports were in turn re-checked by a second set of commissioners, and from these raw materials came forth the *Domesday Book* itself.<sup>19</sup> The information sought by William in the survey ran, with a few local variations, like this: how is each manor called; who held it at the time of Edward; who holds it now; how many hides; how many plow teams are in the demesne; how many belong to the tenants; how many villeins, cotarii, servi, free men, sokemen; how much wood, meadow, and pasture; how much has been added or taken away; how much all is worth together; and how much each free man had or has. Each question was answered as of three times—at the time of King Edward, when King William gave it, and at the time of the survey.<sup>20</sup>

The *Domesday Book* itself has been variously named; in the record itself it is referred to as *Liber de Wintonia*; however, the term most probably referred to the great survey rather than to the compilation itself. The *Dialogus de Scaccario* states that it was so called by the people because it reminded them of the Day of Judgment, so terrible and searching was the inquiry. The survey is contained in two volumes, one of which deals with only three counties, the other with the remainder of England. Actually, not all of England was covered. Three counties in the north—Northumberland, Cumberland and Westmorland—were omitted, as was the County of Durham. Durham was more than likely excluded by virtue of the extensive immunities it enjoyed.<sup>21</sup>

There seems little doubt that huge sums of money had been raised through the imposition of the Danegeld, and more important, within the memory of many who were still living. Thus it may well be true that William

18. *Ibid.*

19. 2 HOLDSWORTH, HISTORY OF ENGLISH LAW 159 (1927).

20. *Id.* at 160.

21. Also missing are some of the towns, namely London and Winchester. As between the two volumes, the first, containing the eastern counties, contains a great deal of detail enumeration, such as the number of livestock, that is missing in the second volume. Evidently it was discovered that it was impossible to complete the tabulation on the scale at first undertaken. See BALLARD, THE DOMESDAY INQUEST (1906) for an excellent presentation of the compilation.

placed great value on this right to levy a general land tax. To secure its punctual payment was worth the gigantic effort that he undertook in penning the *Domesday Book*. This undertaking, unprecedented since the days of the Roman Empire, served as a precedent that was to be followed by his successors and other great landowners.<sup>22</sup>

A collateral result of the survey is found in the assumption by the commissioners and compilers that all land was held of a lord, not merely under a lord. This was neither novel, nor even the exception, but it did have the effect of causing the older Anglo-Saxon forms of ownership to disappear. As this occurred, people were forced to fit themselves into one of the convenient categories of feudal terminology. The concept of holding of a lord in turn weakened the older associations of township, hundred, and shire, and gave greater impetus to the manorial system.<sup>23</sup> Thus, with the levying of the Danegeld on the land at the rates William imposed, it was a force that depressed and displaced whole classes of men. Just as today we appear to be a "tax-motivated" society, the Danegeld in 1086 must have made itself felt throughout all of England, and any distinction as to its incidence will also be felt in the development of the law.<sup>24</sup>

With William's endeavor to tax England in a just and uniform way we find that the assessment and collection of the geld creates definitions and distinctions which seem to have little bearing on fiscal affairs. The use of the term "manor" is an example of this. By 1086 England was mapped into counties, hundreds, and vills. However, throughout the *Domesday Book* the term *manerium* appears. The term *manerium*, while a Norman word, must have been used as an accurate legal term having some English equivalent.

The assumption appears in the *Domesday Book* that every holding either is a manor, or forms a part of a manor. Likewise each piece of geldable land is attached in some loose way with some manor at which it gelds. It more or less naturally follows that the only way the commissioners can tie up a bundle of strips lying in various fields scattered about is to connect them up with a particular manor. Perhaps this seems too glib an explanation, but no better explanation presents itself as to the precise meaning of the word *manerium*. With the use of the term *manerium* in the *Domesday Book* it must have a technical meaning relative to the assessment and collection of the Danegeld; of this there seems little doubt, although any refinement beyond this rationalization is indeed risky. The *manerium*, or manor, in the course of history takes

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22. MAITLAND, *op. cit. supra* note 10, at 4.

23. VINOGRADOFF, ENGLISH SOCIETY 224 (1901); ROUND, FEUDAL ENGLAND 236 (1895).

24. ROUND, *op. cit. supra* note 23, at 332-38; see also MAITLAND, *op. cit. supra* note 10, at 25.

on new meaning as the Danegeld gives way to other forms of taxation, and the term "manor" becomes associated with the manorial court.<sup>25</sup>

William and his successors realized that sound finances were the foundation of stable government. The treasury was located at Winchester, and it was the very center of the administration of the Court. By the year 1118 the title of Exchequer appears, and it is thus the earliest department of state to have a separate organization. Roger, Bishop of Salisbury, founded the Exchequer, and the administration of it remained in his family, except during the reign of Stephen, for an entire century.

The *Dialogus de Scaccario* discloses that the Danegeld never became a regular part of the annual revenue under William, but rather was reserved for occasions of exceptional emergency. However, in the reign of Henry I the Danegeld was reduced to a fixed and annual charge, reportedly bringing in about thirty-five hundred pounds per annum.<sup>26</sup> While the geld remained at two shillings per hide, no sums closely approaching this amount were collected. It is theorized that substantially low amounts were required from the sheriff, and that the sheriffs collected as well as they could the Danegeld, keeping the difference between the amount collected and the amount paid in. However, that it remained until the twentieth year of the reign of Henry II is beyond dispute. It had always been an odious tax to the English, and by its very nature repressed any attempts at improvement because of its impact on the cultivated lands of the country.

It is certain that the abolition or permanent disuse of the Danegeld may be attributed to Henry II. The *Pipe Rolls* reveal that the geld was collected in the second year of his reign, but that from the third to the seventh year no attempts at collection were made. Again in the eighth year collection was resumed. No other use of the Danegeld as a tax is recorded, although in the twentieth year of the reign of Henry the Second, summonses were issued for its collection; but there is not one shred of evidence to prove a shilling was paid.

What motivations caused the Danegeld to pass from the tax scene would involve the purest type of conjecture. By this time it was a most odious tax, a small portion of which ever reached the treasury. Thus, being both unpopular and unprofitable, it is of little wonder that it was abandoned for more appropriate types of taxation that included all of the classes. There is some evidence, slight though it may be, that the Danegeld

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25. VINOGRADOFF, *ENGLISH SOCIETY IN THE ELEVENTH CENTURY* 340 (1908). Originally the term "hall" or "manor" meant house or home, but in reference to a system of taxation the term "manor" takes a more technical definition. It is the source of some speculation that the use of the word "manerium" by the Normans was a compromise between older, more settled forms and that of Norman feudal service.

26. STUBBS, *HISTORICAL INTRODUCTION TO THE ROLLS SERIES* 148 (1902).

was resorted to in an effort to raise the ransom for Richard the Lion-Hearted. Thus, after more than two centuries the Danegeld was laid to rest, but its rate-book, the *Domesday Book*, remained a vital, living force in the lives of Englishmen for many centuries.<sup>27</sup>

As early as 1108 there is a reference to the *Domesday Book* in litigation. The *Chronicle of Abingdon* states that the abbot proved his case "per librum de theasuro." This rate, or geld, book has been resorted to down through the centuries in almost every conceivable type of litigation. Even though its original purpose had long since ceased, its mere dictum has resolved the rights of the crown, franchises of the nobility, and emoluments of the church, to name but a few.<sup>28</sup>

This tribute to the vikings, raised through the imposition of a land tax, profoundly altered the course and development of the law in Anglo-Saxon England. The seeds of the manorial system were sown as early as the reign of Cnut. William was to find an England prepared, at least in part, for the Norman concepts of feudalism. What the course of the law and the form it took would have been absent the Danegeld is impossible to divine. Yet it is interesting to look back and see the channels it cut for the law to follow.

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27. In 1194 the tax for Richard's ransom seems, at least in some counties, to have been distributed in the main according to the assessment that prevailed for the Danegeld in 1084. I ROLLS OF THE KING'S COURT 24 (Pipe Roll Soc'y).

28. 2 ROUND, *op. cit. supra* note 12, at 535; VINOGRADOFF, VILLEINAGE 89-110 (1892).

