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0521349184 - Domesday Book and Beyond: Three Essays in the Early History of England

Frederic William Maitland

Excerpt

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ESSAY I.

DOMESDAY BOOK.

AT midwinter in the year 1085 William the Conqueror wore his crown at Gloucester and there he had deep speech with his wise men. The outcome of that speech was the mission throughout all England of 'barons,' 'legates' or 'justices' charged with the duty of collecting from the verdicts of the shires, the hundreds and the vills a *descriptio* of his new realm. The outcome of that mission was the *descriptio* preserved for us in two manuscript volumes, which within a century after their making had already acquired the name of Domesday Book. The second of those volumes, sometimes known as Little Domesday, deals with but three counties, namely Essex, Norfolk and Suffolk, while the first volume comprehends the rest of England. Along with these we must place certain other documents that are closely connected with the grand inquest. We have in the so-called *Inquisitio Comitatus Cantabrigiae*, a copy, an imperfect copy, of the verdicts delivered by the Cambridgeshire jurors, and this, as we shall hereafter see, is a document of the highest value, even though in some details it is not always very trustworthy¹. We have in the so-called *Inquisitio Eliensis* an account of the estates of the Abbey of Ely in Cambridgeshire, Suffolk and other counties, an account which has as its ultimate source the verdicts of the juries and which contains some

Domesday
Book and
its satel-
lites.

¹ *Inquisitio Comitatus Cantabrigiae*, ed. N. E. Hamilton. When, as sometimes happens, the figures in this record differ from those given in Domesday Book, the latter seem to be in general the more correct, for the arithmetic is better. Also it seems plain that the compilers of Domesday had, even for districts comprised in the *Inquisitio*, other materials besides those that the *Inquisitio* contains. For example, that document says nothing of some of the royal manors. [Since this note was written, Mr Round, *Feudal England*, pp. 10 ff. has published the same result after an elaborate investigation.]

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particulars which were omitted from Domesday Book¹. We have in the so-called Exon Domesday an account of Cornwall and Devonshire and of certain lands in Somerset, Dorset and Wiltshire; this also seems to have been constructed directly or indirectly out of the verdicts delivered in those counties, and it contains certain particulars about the amount of stock upon the various estates which are omitted from what, for distinction's sake, is sometimes called the Exchequer Domesday². At the beginning of this Exon Domesday we have certain accounts relating to the payment of a great geld, seemingly the geld of six shillings on the hide that William levied in the winter of 1083-4, two years before the deep speech at Gloucester³. Lastly, in the Northamptonshire Geld Roll⁴ we have some precious information about fiscal affairs as they stood some few years before the survey⁵.

Domesday
and legal
history.

Such in brief are the documents out of which, with some small help from the Anglo-Saxon dooms and land-books, from the charters of Norman kings and from the so-called Leges of the Conqueror, the Confessor and Henry I., some future historian may be able to reconstruct the land-law which obtained in the conquered England of 1086, and (for our records frequently speak of the *tempus Regis Edwardi*) the unconquered England of 1065. The reflection that but for the deep speech at Gloucester, but for the lucky survival of two or three manuscripts, he would have known next to nothing of that law, will make him modest and cautious. At the present moment, though much has been done towards forcing Domesday Book to yield its meaning, some of the legal problems that are raised by it, especially those which concern the time of King Edward, have hardly been stated, much less solved. It is with some hope of stating, with little hope of solving them that we begin this essay. If only we can ask the right questions we shall

¹ This is printed in D. B. vol. iv. and given by Hamilton at the end of his *Inq. Com. Cantab.* As to the manner in which it was compiled see Round, *Feudal England*, 133 ff.

² The Exon Domesday is printed in D. B. vol. iv.

³ Round, *Domesday Studies*, i. 91: 'I am tempted to believe that these geld rolls in the form in which we now have them were compiled at Winchester after the close of Easter 1084, by the body which was the germ of the future Exchequer.'

⁴ Printed by Ellis, *Introduction to Domesday*, i. 184.

⁵ Round, *Feudal England*, 147.

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have done something for a good end. If English history is to be understood, the law of Domesday Book must be mastered. We have here an absolutely unique account of feudalism in two different stages of its growth, the more trustworthy, though the more puzzling, because it gives us particulars and not generalities.

Puzzling enough it certainly is, and this for many reasons. Our task may be the easier if we state some of those reasons at the outset.

To say that Domesday Book is no collection of laws or treatise on law would be needless. Very seldom does it state any rule in general terms, and when it does so we shall usually find cause for believing that this rule is itself an exception, a local custom, a provincial privilege. Thus, if we are to come by general rules, we must obtain them inductively by a comparison of many thousand particular instances. But further, Domesday Book is no register of title, no register of all those rights and facts which constitute the system of land-holdership. One great purpose seems to mould both its form and its substance; it is a geld-book.

When Duke William became king of the English, he found Danegeld. (so he might well think) among the most valuable of his newly acquired regalia, a right to levy a land-tax under the name of geld or danegeld. A detailed history of that tax cannot be written. It is under the year 991 that our English chronicle first mentions a tribute paid to the Danes¹; £10,000 was then paid to them. In 994 the yet larger sum of £16,000² was levied. In 1002 the tribute had risen to £24,000³, in 1007 to £30,000⁴, in 1009 East Kent paid £3,000⁵; £21,000 was raised in 1014⁶; in 1018 Cnut when newly crowned took £72,000 besides £11,000 paid by the Londoners⁷; in 1040 Harthacnut took £21,099 besides a sum of £11,048 that was paid for thirty-two ships⁸. With a Dane upon the throne, this tribute seems to have become an occasional war-tax. How often it was levied we cannot tell; but that it was levied more than once by the Confessor is not doubtful⁹. We are told that he abolished it

¹ Earle, *Two Chronicles*, 130–1.² *Ibid.* 132–3.³ *Ibid.* 137.⁴ *Ibid.* 141.⁵ *Ibid.* 142.⁶ *Ibid.* 151.⁷ *Ibid.* 160–1.⁸ *Ibid.* 167.⁹ There is a valuable paper on this subject, *A Short Account of Danegeld* [by P. C. Webb] published in 1756.

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in or about the year 1051, some eight or nine years after his accession, some fifteen before his death. No sooner was William crowned than 'he laid on men a geld exceeding stiff.' In the next year 'he set a mickle geld' on the people. In the winter of 1083-4 he raised a geld of 72 pence (6 Norman shillings) upon the hide. That this tax was enormously heavy is plain. Taking one case with another, it would seem that the hide was frequently supposed to be worth about £1 a year and there were many hides in England that were worth far less. But grievous as was the tax which immediately preceded the making of the survey, we are not entitled to infer that it was of unprecedented severity. It brought William but £415 or thereabouts from Dorset and £510 or thereabouts from Somerset¹. Worcestershire was deemed to contain about 1200 hides and therefore, even if none of its hides had been exempted, it would have contributed but £360. If the huge sums mentioned by the chronicler had really been exacted, and that too within the memory of men who were yet living, William might well regard the right to levy a geld as the most precious jewel in his English crown. To secure a due and punctual payment of it was worth a gigantic effort, a survey such as had never been made and a record such as had never been penned since the grandest days of the old Roman empire. But further, the assessment of the geld sadly needed reform. Owing to one cause and another, owing to privileges and immunities that had been capriciously granted, owing also, so we think, to a radically vicious method of computing the geldable areas of counties and hundreds, the old assessment was full of anomalies and iniquities. Some estates were over-rated, others were scandalously under-rated. That William intended to correct the old assessment, or rather to sweep it away and put a new assessment in its stead, seems highly probable, though it has not been proved that either he or his sons accomplished this feat². For this purpose, however, materials were to be collected which would enable the royal officers to decide what changes were necessary in order that all England might be taxed in accordance with a just and uniform plan. Concerning each estate they were to know the

¹ D. B. iv. 26, 489.

² In 1194 the tax for Richard's ransom seems, at least in Wiltshire, to have been distributed in the main according to the assessment that prevailed in 1084; Rolls of the King's Court (Pipe Roll Soc.) i. Introduction, p. xxiv.

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number of geldable units ('hides' or 'carucates') for which it had answered in King Edward's day, they were to know the number of plough oxen that there were upon it, they were to know its true annual value, they were to know whether that value had been rising or falling during the past twenty years. Domesday Book has well been called a rate book, and the task of spelling out a land law from the particulars that it states is not unlike the task that would lie before any one who endeavoured to construct our modern law of real property out of rate books, income tax returns and similar materials. All the lands, all the land-holders of England may be brought before us, but we are told only of such facts, such rights, such legal relationships as bear on the actual or potential payment of geld. True, that some minor purposes may be achieved by the king's commissioners, though the quest for geld is their one main object. About the rents and renders due from his own demesne manors the king may thus obtain some valuable information. Also he may learn, as it were by the way, whether any of his barons or other men have presumed to occupy, to 'invade,' lands which he has reserved for himself. Again, if several persons are in dispute about a tract of ground, the contest may be appeased by the testimony of shire and hundred, or may be reserved for the king's audience; at any rate the existence of an outstanding claim may be recorded by the royal commissioners. Here and there the peculiar customs of a shire or a borough will be stated, and incidentally the services that certain tenants owe to their lords may be noticed. But all this is done sporadically and unsystematically. Our record is no register of title, it is no feodary, it is no custumal, it is no rent roll; it is a tax book, a geld book.

We say this, not by way of vain complaint against its meagreness, but because in our belief a care for geld and for all that concerns the assessment and payment of geld colours far more deeply than commentators have usually supposed the information that is given to us about other matters. We should not be surprised if definitions and distinctions which at first sight have little enough to do with fiscal arrangements, for example the definition of a manor and the distinction between a villein and a 'free man,' involved references to the apportionment and the levy of the land-tax. Often enough it happens that legal ideas of a very general kind are defined by fiscal

The survey
and the
geld sys-
tem.

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rules; for example, our modern English idea of 'occupation' has become so much part and parcel of a system of assessment that lawyers are always ready to argue that a certain man must be an 'occupier' because such men as he are rated to the relief of the poor. It seems then a fair supposition that any line that Domesday Book draws systematically and sharply, whether it be between various classes of men or between various classes of tenements, is somehow or another connected with the main theme of that book—geldability, actual or potential.

Weight of
the dane-
geld.

Since we have mentioned the stories told by the chronicler about the tribute paid to the Danes, we may make a comment upon them which will become of importance hereafter. Those stories look true, and they seem to be accepted by modern historians. Had we been told just once that some large number of pounds, for example £60,000, was levied, or had the same round sum been repeated in year after year, we might well have said that such figures deserved no attention, and that by £60,000 our annalist merely meant a big sum of money. But, as will have been seen, he varies his figures from year to year and is not always content with a round number; he speaks of £21,099 and of £11,048¹. We can hardly therefore treat his statements as mere loose talk and are reluctantly driven to suppose that they are true or near the truth. If this be so, then, unless some discovery has yet to be made in the history of money, no word but 'appalling' will adequately describe the taxation of which he speaks. We know pretty accurately the amount of money that became due when Henry I. or Henry II. imposed a danegeld of two shillings on the hide. The following table constructed from the pipe rolls will show the sum charged against each county. We arrange the shires in the order of their indebtedness, for a few of the many caprices of the allotment will thus be visible, and our table may be of use to us in other contexts².

¹ The statement in Æthelred, II. 7 (Schmid, p. 209) as to a payment of £22,000 is in a general way corroborative of the chronicler's large figures.

² The figures will be given more accurately on a later page.

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APPROXIMATE CHARGE OF A DANEGELD OF TWO SHILLINGS ON THE
HIDE IN THE MIDDLE OF THE TWELFTH CENTURY.

	£		£
Wiltshire	389	Cambridge	114
Norfolk	330	Derby and Nottingham	110
Somerset	278	Hertford	110
Lincoln	266	Bedford	110
Dorset	248	Kent	105
Oxford	242	Devon	104
Essex	236	Worcester	101
Suffolk	235	Leicester	100
Sussex	210	Hereford	94
Bucks	205	Middlesex	85
Berks	202	Huntingdon	71
Gloucester	190	Stafford	44
S. Hants	180	Cornwall	23
Surrey	177	Rutland	12
York	160	Northumberland	100
Warwick	129	Cheshire ¹	0
N. Hants	120		
Salop	118	Total	5198

Now be it understood that these figures do not show the amount of money that Henry I. and Henry II. could obtain by a danegeld. They had to take much less. When it was last levied, the tax was not bringing in £3500, so many were the churches and great folk who had obtained temporary or permanent exemptions from it. We will cite Leicestershire for example. The total of the geld charged upon it was almost exactly or quite exactly £100. On the second roll of Henry II.'s reign we find that £25. 7s. 6d. have been paid into the treasury, that £22. 8s. 3d. have been 'pardoned' to magnates and templars, that £51. 8s. 2d. are written off in respect of waste, and that 16s. 0d. are still due. On the eighth roll the account shows that £62. 12s. 7d. have been paid and that £37. 6s. 9d. have been 'pardoned.' No, what our table displays is the amount that would be raised if all exemptions were disregarded and no penny forborne. And now let us turn back to the chronicle and (not to take an extreme example) read of £30,000 being raised. Unless we are prepared to bring

¹ Cheshire pays no geld to the king. This loss is compensated by a sum which is sometimes exacted from Northumberland.

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against the fathers of English history a charge of repeated, wanton and circumstantial lying, we shall think of the danegeld of Æthelred's reign and of Cnut's as of an impost so heavy that it was fully capable of transmuting a whole nation. Therefore the lines that are drawn by the incidence of this tribute will be deep and permanent; but still we must remember that primarily they will be fiscal lines.

Unstable
terminology of the
survey.

Then again, we ought not to look to Domesday Book for a settled and stable scheme of technical terms. Such a scheme could not be established in a brief twenty years. About one half of the technical terms that meet us, about one half of the terms which, as we think, ought to be precisely defined, are, we may say, English terms. They are ancient English words, or they are words brought hither by the Danes, or they are Latin words which have long been in use in England and have acquired special meanings in relation to English affairs. On the other hand, about half the technical terms are French. Some of them are old Latin words which have acquired special meanings in France, some are Romance words newly coined in France, some are Teutonic words which tell of the Frankish conquest of Gaul. In the one great class we place *scira*, *hundredum*, *wapentac*, *hida*, *berewica*, *inland*, *haga*, *soka*, *saku*, *geldum*, *gablum*, *scotum*, *heregeat*, *gersuma*, *thegnus*, *sochemannus*, *burus*, *coscet*; in the other *comitatus*, *carucata*, *virgata*, *bovata*, *arpentum*, *manerium*, *feudum*, *alodium*, *homagium*, *relevium*, *baro*, *vicecomes*, *vavassor*, *villanus*, *bordarius*, *colibertus*, *hospes*. It is not in twenty years that a settled and stable scheme can be formed out of such elements as these. And often enough it is very difficult for us to give just the right meaning to some simple Latin word. If we translate *miles* by *soldier* or *warrior*, this may be too indefinite; if we translate it by *knight*, this may be too definite, and yet leave open the question whether we are comparing the *miles* of 1086 with the *cnicht* of unconquered England or with the knight of the thirteenth century. If we render *vicecomes* by *sheriff* we are making our sheriff too little of a *vicomte*. When *comes* is before us we have to choose between giving Brittany an *earl*, giving Chester a *count*, or offending some of our *comites* by invidious distinctions. Time will show what these words shall mean. Some will perish in the struggle for existence; others have long and adventurous careers before them. At present two sets of terms are rudely

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intermixed; the time when they will grow into an organic whole is but beginning.

To this we must add that, unless we have mistaken the general drift of legal history, the law implied in Domesday Book ought to be for us very difficult law, far more difficult than the law of the thirteenth century, for the thirteenth century is nearer to us than is the eleventh. The grown man will find it easier to think the thoughts of the school-boy than to think the thoughts of the baby. And yet the doctrine that our remote forefathers being simple folk had simple law dies hard. Too often we allow ourselves to suppose that, could we but get back to the beginning, we should find that all was intelligible and should then be able to watch the process whereby simple ideas were smothered under subtleties and technicalities. But it is not so. Simplicity is the outcome of technical subtlety; it is the goal not the starting point. As we go backwards the familiar outlines become blurred; the ideas become fluid, and instead of the simple we find the indefinite. But difficult though our task may be, we must turn to it.

Legal ideas
of cent. xi.§ 1. *Plan of the Survey.*

England was already mapped out into counties, hundreds or wapentakes and vills. Trithings or ridings appear in Yorkshire and Lincolnshire, lathes in Kent, rapes in Sussex, while leets appear, at least sporadically, in Norfolk¹. These provincial peculiarities we must pass by, nor will we pause to comment at any length on the changes in the boundaries of counties and of hundreds that have taken place since the date of the survey. Though these changes have been many and some few of them have been large², we may still say that as a general rule the political geography of England was already stereotyped. And we see that already there are many curious anomalies, 'detached portions' of counties, discrete hundreds, places that are extra-hundredal³, places that for one purpose are in one county

The geo-
graphical
basis.

¹ D. B. ii. 109 b: 'Hundret de Grenehou 14 letis.' Ib. 212 b: 'Hundret et Dim. de Clakelosa de 10 leitiss.' Round, *Feudal England*, 101.

² Some of them are mentioned by Ellis, *Introduction*, i. 34-9.

³ D. B. i. 184 b: 'Haec terra non geldat nec consuetudinem dat nec in aliquo hundredo iacet'; i. 157 'Haec terra nunquam geldavit nec alicui

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and for another purpose in another county¹. We see also that proprietary rights have already been making sport of arrangements which in our eyes should be fixed by public law. Earls, sheriffs and others have enjoyed a marvellous power of taking a tract of land out of one district and placing it, or 'making it lie' in another district². Land is constantly spoken of as though it were the most portable of things; it can easily be taken from one vill or hundred and be added to or placed in or caused to lie in another vill or hundred. This 'notional movability' of land, if we may use such a term, will become of importance to us when we are studying the formation of manors.

The vill as
the geographical
unit.

For the present, however, we are concerned with the general truth that England is divided into counties, hundreds or wapentakes and vills. This is the geographical basis of the survey. That basis, however, is hidden from us by the form of our record. The plan adopted by those who fashioned Domesday Book out of the returns provided for them by the king's commissioners is a curious, compromising plan. We may say that in part it is geographical, while in part it is feudal or proprietary. It takes each county separately and thus far it is geographical; but within the boundaries of each county it arranges the lands under the names of the tenants in chief who hold them. Thus all the lands in Cambridgeshire of which Count Alan is tenant in chief are brought together, no matter that they lie scattered about in various hundreds. Therefore it is necessary for us to understand that the original returns reported by the surveyors did not reach the royal treasury in this form. At least as regards the county of Cambridge, we can be certain of this. The hundreds were taken one by one; they were taken in a geographical order, and not until the

hundredo pertinet nec pertinuit'; i. 357 b 'Hae duae carucatae non sunt in numero alicuius hundredi neque habent pares in Lincolnescyra.'

¹ D. B. i. 207 b: 'Jacet in Bedefordscira set geldum dat in Hunte-donscira'; i. 61 b 'Jacet et appreciata est in Gratentun quod est in Oxenefordscira et tamen dat scotum in Berchescira'; i. 132 b, the manor of Weston 'lies in' Hitchin which is in Hertfordshire, but its *wara* 'lies in' Bedfordshire, i.e. it pays geld, it 'defends itself' in the latter county; i. 189 b, the *wara* of a certain hide 'lies in' Hinxton which is in Cambridgeshire, but the land belongs to the manor of Chesterford and therefore is valued in Essex. D. B. i. 178: five hides 'geld and plead' in Worcestershire, but pay their farm in Herefordshire.

² D. B. i. 157 b: 'Has [terras in Oxenefordscira] coniunxit terrae suae in Glowecestrescira'; i. 209 b 'foris misit de hundredo ubi se defendebat T. R. E.'; i. 50 'et misit foras comitatum et misit in Wiltesire.' See also Ellis, i. 36.