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## A Plague of Beggars in Merrie England

In the 11th century the royal revenue consisted of the sums brought into the exchequer by the sheriffs in rents and profits from the forests and royal demesne lands, the feudal dues and incidents of tenure from other lands, the receipts from justice, and the tolls, and tribute from the towns. These provided the funds to support central government in peacetime. The King lived 'of his own'. Local government was carried on by lesser landholders at different levels, always supported by the services or produce of the land due to them - what we should today call 'rent' from their sub-tenants. The unit of land division was the tenement of a normal peasant, the holding which supported a ceorl and his household. A large house in the district formed a centre to which rents and taxes in kind or money were brought; hence 'the manor'. "Responsibility for payment of the King's *feorm*, for service in the *fyrð*, and all other public burdens was distributed over the country in terms of these peasant tenements."<sup>73</sup>

Taxation was considered necessary only for special expenditure, as in war, or rebellion. The important tax was Danegeld, a general land tax based on the hide of land.

This was a state of affairs where every free man provided by his labour and/or his wealth for the requirements of a homogeneous society. The requirements were simple: Defence, Justice, and Administration by officers of the Crown. Defence was provided by thegns and knights who held their land in return for military service, and by all other able-bodied freemen because their landholding obliged them to serve in the *fyrð* when called upon. In Norman times the call-out of the *fyrð* was fast becoming obsolete, and knight service as a feudal due from military tenure was in the twelfth century being replaced by payment of scutage almost as if it were a tax. It was of course a commuted feudal due. In the thirteenth century the 'general levy' and the feudal levy existed simultaneously. Henry VII won the Battle of Stoke (1487) with a levy of Northerners - the royal host arrayed in three customary 'battles'. In the 16th century they became the 'trained bands', and in the 17th the 'militia'. But the customary period of two months' service in the year, and only within the realm, had long since compelled the kings to employ professional soldiers. For a time, which was remarkably short, these were paid for by scutage rendered in lieu of service by the knights. However, scutage had fallen into disuse long before its formal abolition in 1660. It had simply become useless in the changing circumstances of inflation, rising costs, and greater sophistication of warfare, and wars in far-off lands.

Taxation and borrowing then became the expedients to which the king was driven in order to pay for the defence of the realm. The injustice of it lay in the now 'redundant' military tenants continuing to receive their rents while

passing little or nothing on to the Crown in place of their former service. The public rents of monastic lands too passed into private hands in Henry VIII's reign. It was the unwillingness of the feudal lords to relinquish any part of their land revenue after they had been released from their corresponding duties to the Crown which compelled the King to tax and to borrow. The barons were too strong for him, and the people had no say in the matter.

Justice in the 11th century was provided centrally or on circuit by the king in person and locally in manor court, court leet, court baron, or court customary, by the lord from whom land in the locality was held. The sanctions were economic, and to hold a jurisdiction was a lucrative business. A mirror of the structure of central government was thus repeated at lower levels to provide local government and its financial support.

Administration was supported, as indicated earlier, by money or service from landholders. Local taxes were few. But with the growth of professionals, both military and civil, who had to be paid salaries, the king was forced to rely on taxes (in origin 'aids'), and if parliament refused these, on borrowing. Because of his weakness in the face of the barons there was no other way that he could replace the revenue he formerly obtained through them from his people as tenants or sub-tenants of land.

Over the next 900 years the first notable change was the transfer of power to the central government. Judges were sent out on circuit in the King's name, and they gradually took over civil and criminal litigation from the local courts. They were preferred for their greater efficiency and their greater impartiality. Armed forces were now

hired as mercenaries by the King, and in consequence the barons, quit of their feudal dues, and less bound to the king, became fractious. In the reigns of kings such as Stephen, John, Edward II, Richard II, and during nearly a century of rivalry between claimants to the throne after 1399 and in the Wars of the Roses of the 15th century, they raised local armies of their own and fought local wars. They were strong enough during this time to protect their lands from any updating of scutage. They forced John to grant Magna Carta, clause 16 of which (in one of the versions) precluded extraordinary scutage or aids being imposed unless by common consent of Council - in effect the barons themselves. 'Extraordinary' meant beyond what had always been charged, and completely ignored changing values and changing needs.

It was this that enabled them to take advantage of Henry III's minority to prescribe on behalf of "all people of the realm" a fifteenth of the movables, of all the people as an aid to the King on a special occasion. They thus made the general populace responsible for the revenue they themselves should have been providing. From that time onwards the barons only bore the burden of feudal incidents (not dues) in return for their land. The burden was heavy, especially because the King abused their use, as far as he dared, to raise money. Henry VII was a master of the art. But they were no substitute for the lost feudal dues. The chief incidents of tenure were not abolished until the Statute of Tenures 1660, which also converted knight service into socage.

The tax on movables, stabilised at fifteenths and tenths together with an 'aid' from the clergy, soon became a

fairly regular means of taxing, which replaced the obsolete, Danegeld. Fifteenths and tenths in their turn became obsolete, and were replaced by the Tudor 'aids' called subsidies, which taxed incomes. If the incomes were not fixed ascertainable sums, they were to be calculated from an assessment of either the subject's personal property or his land. Each of these three expedients to raise tax became obsolete because reassessment ceased to be carried out. In so far as they were based on discovering the value of a man's personal property, which in the Tudor subsidies included plate, merchandise and household goods, assessment was soon discontinued. Opportunities to disguise or hide personal property were too many. The land being impossible to hide, its assessment continued for longer, and in some cases was the only part of the tax to survive. When based in part on ascertainable fixed incomes the unfairness of the subsidies was manifest. Since there was no accurate machinery for ascertaining fluctuating incomes, it was fixed incomes that substantially paid the tax.

The so-called Land Tax of 1692 went the same way as the subsidies: "as had happened so often, difficulties of taxing personal incomes were again too great and the tax became little more than a tax on the rent from land".<sup>74</sup> It was forgotten that the Acts were aimed at income and contained the above-mentioned provisions to assess it. "The fact that the tax became popularly known as a land tax was a confession of failure by the state to make personal property and incomes, as opposed to realty, pay their share."<sup>75</sup>

But social and economic changes always make

continuing re-assessments essential. Villages decayed through plague or dearth or emigration. Population increased in some parts, and decreased in other parts. Yet Danegeld was still being levied in the thirteenth century on assessments which were ancient at the time of the Conquest. The tenths and fifteenths on movables, the Tudor subsidies which replaced them, the 'Aid' which came to be called 'Land Tax', all degenerated into stereotyped sums of money allocated between districts, which the local officials had to raise as best they could; and they did not, perhaps could not, do so without succumbing to pressure, financial inducement, and favouritism.

The result was that the Crown was always short of money especially in wartime. The struggle which developed between King and Parliament, resulting ultimately in civil war in the 17th century, was largely fuelled by the pressing financial needs of the Crown and the unwillingness of Parliament to concede taxes. Parliaments were dominated by landowners who were willing only to grand aids or subsidies which fell upon all the people. Land was sacrosanct. That these policies drove large numbers into poverty because they had no land, had to be dealt with by Poor Relief. This gave a somewhat grudging assistance, which did not develop into a reasonable level of assistance until the 20th century.

Having lost the dues payable by the barons, and having insufficient Aids from parliament, the Crown was saved from insolvency chiefly by the revenue obtained from the customs. Their origin is obscure; but they came into prominence when Edward I returned from a foreign war in desperate need of money. In 1275 Parliament granted

him the great and small customs. Edward III was able to add the subsidies of tannage and poundage, and of wool, wool fells and leather. Henceforward these customs along with many later additions became the mainstay of Government revenue, and remained so until overtaken by the hated excise instituted during the Commonwealth. When customs and excise were consolidated by an Act of 1787, there were no less than 3,000 dutiable articles, with the receipts from excise slightly exceeding those from customs.<sup>76</sup>

Whenever money was not available the Kings had to resort to borrowing, and from at least the twelfth century borrowing continually increased until debt became a mainstay of public expenditure, and the Bank of England was founded to take it over.

As another shift to raise more money, the Crown resorted to selling Crown lands. The later Tudors reduced not only much of their demesne land, but sold off most of the confiscated monastic lands. The high prices realised were a short-lived blessing. Speculators in those inflationary times were soon re-selling at much higher prices, and of course the rents were permanently lost as revenue to the Crown.

Land prices, whilst continually fluctuating, have over the long term always steadily risen ever since. Relieved of their duties in service or rent, head-tenants were increasingly able to use their land as a means of making money, buying and selling it just as goods and chattels were sold. This was because during all this time the Courts, aided from time to time by Parliament, were making the alienation of land easier. A tenant of land owed

his lord feudal incidents and dues. He could not, therefore, alienate his land without his lord's licence. A tenant also had a duty to his heirs, and if he did alienate his land it could only be for his own lifetime. This latter rule only lasted until early in the thirteenth century; but for the protection of heirs it remained the rule that devises of land by Will were not permitted. These rules were more important and lasted longer in the case of tenants in chief of the King. "Such dignified persons as earls, barons, or tenants by grand serjeanty, were expected to fill very public positions and to perform very onerous duties."<sup>77</sup> Mesne tenants, however, following the statute Quia Emptores (1290), were allowed to alienate their land so long as the purchaser held the lands thereafter from the seller's lord on the same conditions as the seller had done. As already explained this gradually brought more and more tenants into direct relationship with the Crown as their intermediate overlord.

It is not difficult to see that the restrictions on alienating land brought stability to families and to society as a whole. But, as in our own day, stability did not suit the restless commercial thrusting of later centuries. Law usually follows public opinion, although its conservatism ensures that it does so only slowly. So the common law "came to regard the principle of freedom of alienation as a fundamental principle based upon public policy."<sup>78</sup> This certainly suited the commercial adventurers of late medieval England. It enabled them to enrich themselves by selling or renting out land freed from the duties to provide public revenue to the Crown formerly attached to it. Later still the economic and social revolution in



Elizabeth's reign prompted one historian to entitle it 'the Worship of Mammon'.<sup>79</sup>

(p. 261) Undoubtedly there was a landhunger in Elizabethan England. Not only were capitalists dabbling in real estate: the law courts were busy from one end of the country to the other with claims arising out of land, or disputed succession to manors. Men flew to the law on the slightest provocation if they thought they could establish an advantage over their neighbours.

The result in terms of the dispossessed has been quoted already from the same source in Part I (pp. 35-36): "the great floating population of vagabonds that slept in haylofts, sheepcotes, or on doorsteps, spreading terror in the country and diseases in the towns", and forming part of "this merrie England".

Behind all these developments there runs, from Saxon times onwards, a thread of consistent thinking that the King must 'live of his own' except for aid from the nation in time of war. The King was of course the government, and remained so for many centuries. This thread runs through the continuing struggle between King and Parliament from the thirteenth century onwards. It was enshrined in English tradition almost as a doctrine. Two examples of its being publicly stated in the fifteenth century have already been given. In addition, Professor Dietz quotes Sir John Fortescue (Lord Chief Justice 1442) that only when there fell "a case overmuch exorbitant" for the suppression of rebellion, the defence of the realm to repel invasion and the safeguarding of the seas, was it thought right and necessary that the people should be

taxed.<sup>80</sup> He points out that the 19th century historian Lord Acton would have us seek the baser motives, the special self-interest of the richer freeholders and gentry of the country and the burgesses of the towns who were precisely the persons who paid the fifteenths and tenths. In any case the tradition underlies the history of the struggle between the Kings and their barons until the Wars of the Roses so weakened the barons both politically and financially that the Tudor Kings were able to achieve royal supremacy. In the Tudor-Stuart period, Professor Dietz discerns the compulsion of “the traditions of fiscal policy, that the king must live of his own except for aid from the nation in time of war” (Introduction to Vol. I ix). It was echoed in the invariable preambles to William III’s mis-named ‘Land Tax’. They were ‘Aids’ declared to be “for the purpose of carrying on a vigorous war against France”.

In England traditions often die hard, and this idea was probably only erased from public consciousness by the dire necessities of the First World War. It may, however, still underlie the modern legal principle that “the subject is entitled so to arrange his affairs as not to attract taxes so far as he legitimately can do”. This is the bane of the Inland Revenue, and has led to a system that “is administered by an army of government servants and monitored on behalf of the taxpayer by a parallel number of legal and accountancy experts.<sup>81</sup> In 1993 it was estimated that the untaxed ‘black economy’ was worth between £36 and £48 billions.

### **Render unto Caesar...**

Sir William Holdsworth<sup>82</sup> remarks that

all through its history, the importance of the land law has caused it to be influenced by all those social, political, and economic ideas which make up the public opinion of any given period ... and consequently, the rules relating to it are derived from many different periods in its history, and have been evolved under the influence of ideas which come from all those different periods.

Public opinion is subject to change. In the formative years of our law, the reciprocal rights and obligations of landlord and tenant were very much influenced by the dire need of security in troublous times. The tenant needed protection, the lord needed support so that he could govern, remain equipped and ready to fight, and fight whenever the necessity arose. Loyalty was essential, and was enshrined in tenants doing homage and fealty to their lord and rendering him service or money. Mesne tenants in chivalry paid escuage to their lord. Head tenants paid scutage to their lord the King. These were the tests of tenure by knight's service.<sup>83</sup> Unfortunately the head tenants (barons) were only too often in breach of these duties, not least when they openly rebelled, but for the most part in refusing to allow any change in the rate of scutage into which their service had been commuted. The remarkable thing is that their under-tenants remained so loyal, over the centuries of baronial infidelity to the monarch, in rendering service or payment to barons who did not render to Caesar the things that are Caesars.

It was not until the 20th century that the obligation to pay rent was seriously challenged by the lower degrees of tenant. Public opinion turned against landlords. The Rent

Restriction Acts, the Landlord and Tenant Acts, the Agricultural Holdings Acts, all put a curb on the rent which landlords of housing, shops, and farms, could demand. These Acts were a gift to lawyers, and had other undesirable side-effects in the troubles they were intended to cure. In particular they caused a shortage of houses, flats, shops and farms to let. Houses particularly had to be bought instead of rented. Leasehold enfranchisement created a new class of freeholders who were to pay no rent for their land after discharging the initial consideration for which they acquired the freehold. Recently a boom in house prices ended in disaster for borrowers on mortgage who were not content simply to buy a home, but who tried in addition to make money out of it. Public opinion had failed to appreciate that land-rent should not be bought and sold like chattels in order to make money.

Of the early English period Sir William says:

In the primitive agricultural communities, which made up the Anglo-Saxon kingdoms, the land and the land law are so important, that almost all questions of Anglo-Saxon law and history seem ultimately to depend upon the original condition and gradual evolution of modes of cultivation, land measurement, and landowning.<sup>84</sup>

The difficulty we face today is that so much of our land has disappeared into oblivion under buildings where the more sophisticated modes of production - industrial, trading, commercial, and financial - have made the land more richly productive of wealth than any agricultural community could achieve. The value of such land has been immensely enhanced. Moreover the very word "land"

tends to be taken as referring only to rural land and unused or waste urban land. Consequently in everyday thinking it is overlooked that an acre of waste land in the centre of a city is worth millions, or rather tens or even hundreds of millions of pounds, as compared with rural land worth a few thousand at most, or with rural waste land which has little or no value.

Economists from Adam Smith onwards have pointed out theoretically that, from the point of view of both the public and the individual, the optimum system of public finance is one that draws revenue from the rent of land. The history of the land law confirms this, and suggests that public revenue ultimately does come, however indirectly, out of the revenue of land. If it is not taken directly, then its collection by means of taxation causes all sorts of moral, social, and political difficulties amounting overall to injustice. Moreover the difficulties are compounded by attempts to rectify the injustice: for example, by returning as subsidies to industries on poor land such as farming, fishing, mining etc. some of the excessive tax collected from them; by paying relief to the poor who are unable to meet the taxation hidden in the price of the things they have to buy; and by maintaining at public expense those unable to find work. The yield of taxation then proving inadequate, the deficit has to be made up by borrowing at interest from those on richer land who have been undertaxed.

That direct taxation of the rental value of land, both rural and urban, is not at present contemplated amongst politicians seems to be the most remarkable defect in thinking shown up by any survey of our fiscal history. It

is implied in the structure of the land law of today, and yet seems to go unnoticed, that ownership of the land of England is in the Crown, and that the users of the land are tenants, who in the course of history have been able to shed the duties of a tenant in respect of the owner (the Crown), whilst retaining the right to take rent from their under-tenants as if they were the owners. They have also with the acquiescence of parliament and the courts gradually acquired the legal right to sell their landholding without regard to their duties, and free of those duties. This occurred, and could only occur, before the establishment of fully representative government in the 19th and early 20th centuries. Few people prior to that time realised what was happening, even though they suffered the consequences. Those who did understand had no political power to protest effectively. "It was landowners who elected landowners to represent them in the House of Commons".<sup>85</sup> The Reform Acts of the 19th century enfranchised the landless, giving them power without responsibility. They remained landless whilst having the right to vote. What they needed was the opportunity to possess land which would qualify them to vote. By this time, however, any amount of land could be held without having to pay anything for the privilege beyond the initial consideration for acquiring it. That once paid, whether eight centuries before in Norman times or at any time since, there was nothing to lose by holding land under-used or indeed altogether idle for no matter how long. Taxation on production and consumption was replacing much of the Crown's lost rent. Under the burden of taxation, only the most enterprising - the entrepreneurs -

could contrive to buy their way into the land monopoly.

Taxation is an evil which should so far as possible be abolished except when the nation is faced with disaster such as war or rebellion. In normal times "the King should live of his own", which in present-day terms means Parliament taking the rent of land for public purposes and confining its expenditure to what the rent yields. Borrowing for necessary public works - roads, bridges, tunnels, airports etc. - would then be resorted to not so as to make up deficient ordinary revenue, but in order to profit from the rise in rent which the works create. The State in this way would receive revenue from any beneficial improvements it finances. Sensible public expenditure would be a public investment.

There are many lessons to be drawn from the history of the English land law and the public revenue. Some of the more relevant are:

- (1) Payments to the Crown expressed as a fixed sum must be periodically updated to take account of the changing value of money. Scutage is an example. When the King belatedly tried to revise the rate of scutage, "the additional amount was simply not paid and the arrears [were] carried forward on the rolls".<sup>86</sup>
- (2) Where tax is based on an assessment, there should be frequent re-assessments to take account of social and economic changes. The Rating system was abolished in 1989 because reassessment had been left too long, and had by that time become politically impossible
- (3) The only assessments for taxation which were

successful were those based on land, but, again, only insofar as they were kept up to date.

- (4) Almost every kind of tax except customs and excise enacted by parliament after the thirteenth century was at least in part based on personal property including wealth, and/or incomes. In each case evasion was rife, and the fluctuation in the yield of these taxes proclaims their dependence on the popularity or otherwise of the purpose for which they were raised. The opportunities for concealing money or personal effects are legion. They are to a certain extent always voluntary taxes.
- (5) Taxes on incomes are never satisfactory because of the difficulty of making any accurate assessment, and because the opportunities for avoidance and evasion cannot satisfactorily be contained.
- (6) Taxes on income are unfair in compelling those with a fixed, ascertainable, wage or salary to pay in full, so subsidising those who pay in part or not at-all. Today's PAYE is an example.
- (7) The expense of assessing taxes on income or expenditure is wasteful to both government and taxpayer, and where industry is the payer, raises the costs of production. The modern income taxes, VAT, and 'payroll taxes' are current examples.

So little is land now regarded as the basis of life, that the language of taxation is also misleading. Taxes on people, in order to assess their income or wealth are called direct taxes. But wealth does not come from people directly. It comes from human industry applied to natural



resources by people who live and work on land in village, town, or city; and who take advantage of the co-operation of the whole community, to the extent that it is available at their place of work. The wealth produced, or its proceeds when sold, is then distributed to all who have a claim to it. A direct tax would be one which falls upon the proceeds of production before they are distributed. Once distribution has taken place, any attempt to trace the recipients and tax them on their share is indirect taxation. History demonstrates that this kind of indirect taxation is bound to fail at least in part. Land is the nodal point where the factors of production meet. It is the proper point for the incidence of taxation. Freehold tenants of the Crown are loosely called 'owners'. What they own of course, is an estate in land of which they are freehold tenants, from whom no rent is collected. If they paid ground-rent, the whole community would to that extent be freed from taxation.

The feeling for land as the basis of life, if it has been overlooked by politicians, has not faded in popular estimation. It is a feeling soundly based on biological and territorial imperatives. Men and women all the world over are still prepared to die for their land - 'fatherland' or 'motherland' - or just "to gain a little patch of ground ... even for an eggshell" (Hamlet IV 4).

Breathes there the man with soul so dead  
Who never to himself hath said  
This is my own, my native land?  
(Walter Scott)

The astonishing thing is that this spirit should have

## STEALING OUR LAND

survived in the landless pressed men who fought at Trafalgar, and the common soldiers and sailors of the two World Wars, few of whom were in a position to echo Pope's praise of self-sufficiency:

Happy the man whose wish and care  
A few paternal acres bound,  
Content to breathe his native air,  
In his own ground.  
(Pope)

Self-sufficiency was the victim sacrificed by taxation when the Crown lost its rents.