

Railways and the mid-Victorian income tax

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In October 1857 the South Yorkshire Railway Company was the subject of a damning report by the Government Surveyor of Taxes at Sheffield.¹ As a joint stock company it was under a legal obligation to perform certain duties in the collection of taxes. It was required to deduct income tax from the rents which it paid, and from the dividends and debenture interest which it paid to its shareholders and mortgagees, and to account for this to the Board of Inland Revenue.² Although it had, for many years, regularly deducted this tax, much of it had been retained and used for the company's own purposes. The Surveyor considered that the revenue had been 'grossly defrauded, not in ignorance, but with deliberate intention'.³ He estimated that the company had been underassessed for 1857 by £30,000.⁴ Two years later, his successor calculated that, in addition to this, assessments had been deficient by almost £300,000 in the previous decade.⁵

The Acts which governed joint stock companies and railway companies present a complex picture that includes assorted interventionist and regulatory elements, both in the free incorporation Act itself and in the complementary railway legislation.⁶ These, together with the income tax Acts, were steps in the direction of further regulation and intervention by the State that was growing in the mid-nineteenth century. Tax regulations relating to the deduction of tax at source had been in force since the beginning of the century but they assumed greater significance with the emergence and rapid expansion of the railways.⁷ As Alborn has observed in the context of railways and the mechanisation of joint stock politics, despite their largely regional conception, the logic of rail transport and an integrated national network imbued the railways with a deep sense of national scope and led them to seek capital from a broad investing public.⁸ Indeed, many railways presented themselves as national institutions in order to attract funds that were unavailable in their immediate districts.⁹ The diffusion of ownership through shareholdings, the need to raise capital from the public through debentures, and the consequent stewardship of large amounts of money received from investors, invited government intervention and regulation – not only to give protection to investors and creditors, but also to safeguard its own interests by ensuring that substantial amounts of income tax were properly accounted for both by the company and by its members and mortgagees.

The railways' vision of national identity, however, quickly outpaced the administrative framework of taxation, which was still rooted essentially in the parish. How was the government to cope with these large multi-parish corporate forms, which grew rapidly in the nineteenth century, using local apparatuses which had changed little since the seventeenth? Though regulatory elements may be evident in the taxing statutes, their realisation was often impeded by the imperatives of local politics. It was thought that the regular dissemination of information to shareholders about the state of a company's finances, through its balance sheet, would act as a check on fraud and malpractice; and that the deduction of tax at source, which would effectively satisfy the tax liabilities of thousands of investors, would act as a check on tax evasion. Whilst theoretically straightforward, rules such as these posed immediate problems, since they presupposed a high degree of compliance and raised several questions. How and by whom were national laws to be enforced at a local level? Who was to police their application? How were infringements to be detected and penalised? At its simplest, the legal framework envisaged a system in which local, lay commissioners would administer the income tax, with subordinate supervision by government officials, termed Surveyors of Taxes. Although a degree of surveillance and information gathering was essential in order to monitor compliance, the law made inadequate provision for it and the task was undertaken, in the main, by the Surveyor through an often serendipitous collection of information from local sources, the use of informers and his own initiatives. The Board of Inland Revenue (hereafter called simply 'the Board') would have liked a greater degree of intervention in, and control over, the process of assessment but the income tax relied for its survival on the continuing supremacy of the local commissioners in its administration. The tensions and stresses which emerged between these two poles, particularly in relation to the assessment of railway companies, created an area of potential conflict.

An Act of 1860 which transferred the assessment of railway companies from local commissioners to government officials was a step towards centralisation.¹⁰ The dichotomy of centralisation and localism seems, therefore, to provide *ad liminem* a principal axis along which a discussion of the South Yorkshire Railway Company might proceed. In the mid-nineteenth century the relationship between central bureaucracies and local authorities was changing. Until recently histories of this transformation were written around the theme of centralisation, which was offered as a process around which arguments could be constructed. Whether growing centralisation was stressed, or the continuing importance of local power and autonomy, central–local relations were theorised in terms of a separation between central and local State apparatuses. Ogborn, however, has argued that a simple equation which conceives power as a zero sum game between central and local authorities, involving an approach which takes degrees of centralisation or localism as the key explanatory factor, misses the ways in which power relations undergo qualitative transformations.¹¹ By rethinking the relation between nineteenth-century central and local State apparatuses in terms of the historical geography of administrative power, he

replaced the question of whether or not, and the degree to which, centralisation occurred with a more nuanced analysis of configurations of power/knowledge and the strategic negotiations and actions that shaped them.¹²

The South Yorkshire Railway case, which involves a series of events of the kind which led to the centralisation of the assessment of railway companies, offers an opportunity to explore the crucial notion of such strategy, to understand the changing nature of central–local relations, and to see the ways in which State power was often organised and exercised within the arena of taxation. There are many issues which radiate from this central theme and have a resonance, not just beyond the geographical boundaries of the South Yorkshire Railway, which contributes to an understanding of the geographies of policy formulation and implementation.

The strategic negotiations that were part of the changing nature of central–local relations were open-ended and shaped by several variable elements which operated at different intensities at different times. In his recent work on the professionalisation of the English inquest and the expropriation of health from the public sphere and its relocation in an exclusive professional domain, Burney¹³ has termed the forces by which these elements were driven as ‘highly permeable oppositions’ which operated ‘not so much in pristine relationships of mutual exclusivity as in ongoing processes of interactive (and provisional) historical definition in which neither of the ostensible poles is in itself stable or complete’.¹⁴

It is with such ‘oppositions’ that this study is largely concerned. These forces will be explored through the materials which the case offers – the problems associated with tax compliance and evasion and who should have the power, and means, to police the tax locally had to be balanced against actions which might be perceived as ‘intrusion by an over-mighty executive’.¹⁵ The emerging divergence between the rule of law and actual practice which arose from the esotericism of the autonomous districts over which the commissioners presided needed to be rectified by the adoption of national sets of common minimum standards in order to bring uniformity to the process of assessment. The possibility that the collection and organisation of information might lead to an ordering mechanism through which comparative statistics might inform and direct the process of assessment had to be developed in parallel with the drawing together of a cohesive bureaucracy and the redeployment of manpower and resources. The comparative lack of legal principles in mid-nineteenth-century revenue law necessitated extra-statutory practices and informal understandings between what might loosely be described as the revenue authorities, the commercial world and the accountants and lawyers who advised the railway companies; in the absence of statutory guidance, workable definitions, especially of terms such as ‘profits’ and ‘income’, were forged by progressive expropriation of the task of mediation from local, lay commissioners to specialists, whether accountants, lawyers or trained government Surveyors. And, finally, the conceptual and practical rationale for a new knowledge-based form of governance needed to be established in place of institutions legitimated essentially by historical pedigree. The very diversity of

these elements and the multi-faceted responses which they invoked, which it is the purpose of this article to examine, demonstrate at once that an approach which structures the debate purely in terms of whether or not centralisation occurred would be inappropriate. Moreover, all these issues had to be resolved in a period which Albert Venn Dicey marked out as one of individualism during which the power of the central State was severely restricted.¹⁶ The elements which shaped the changing relationship between the State (represented by the Board and the Surveyor) and civil society (represented by the commissioners, lawyers and the railway company) will be examined through the material which is provided by a collection of correspondence covering the years from 1857 to 1860 between the representatives of the Board and the railways in the South Yorkshire Railway case.

While domestic taxation has contributed to works on the history of railways and their financial structures, little has been said about national taxation. For many reasons this is understandable. Income tax is usually regarded as a subject which has to be studied in relative isolation within the confines of its own particular specialisation. The income tax laws of the nineteenth century are complex and no tribute to the legislative draftsman. But perhaps the greatest obstacle to research in this field is caused by the sparsity of archive material. This scarcity is a consequence of the nature of the (particularly local) records, which were created for the specific managerial function of assessment and collection, and once the tax had been paid they were destroyed.¹⁷ Even the survival of central records is the rare exception, and they seldom amount to more than fragments of peripheral correspondence.¹⁸ It is unavoidable that this study, too, is restricted, owing to the methodological difficulties caused by the limited archival resources. But since the dimension of the income tax has, hitherto, been overlooked by railway historians, the record of the South Yorkshire Railway case provides a useful medium through which to explore new avenues of enquiry in this sphere. It is acknowledged that it would be better if more examples could be located, especially as this is relatively uncharted territory. Although some reference will be made to other railway companies, typicality is always a problem where reliance is placed on one specific example or locality. Nevertheless, some of the points that emerge have a wider resonance. The role played by the solicitor who acted for the company, Robert Baxter, of the firm of Baxter Rose & Norton, who in the words of Kostal¹⁹ was 'a railway insider'²⁰ and 'by far the best-connected, most sought-after, and most feared solicitor in the railway industry',²¹ helps to broaden the perspective through his influence with many other lines. Just as the railways trespassed on historical local boundaries geographically, what was happening in relation to their tax affairs allowed a broadening of the perspective of central government in the control of the revenue, which eroded the local boundaries of taxation. It necessitated the increasing drive towards national concern with the response to tax laws. Of course, it would be wrong to assert that this one example was itself instrumental in effecting a directional change in attitude. This was not a unilinear transition but rather a protracted and nuanced process. But the

circumstances which epitomise this case arguably illustrate one of the defining moments which marked a noticeable shift from one set of beliefs to another. What was happening at the workplace of taxation, therefore, merits closer scrutiny.

The income tax administration

First, it is necessary to outline some of the characteristics of the income tax, because they are central to the facts presented in this discussion. Throughout the mid-Victorian period the income tax was a temporary measure, reintroduced triennially and then annually to finance some unique national purpose. For much of the 1850s it had a terminable existence expressly defined, destined to expire in 1860. It was essentially more of a broad contribution by each taxpayer to fund some specific emergency than the refined system recognisable to the modern world. To get his tax through Parliament, Peel appealed to the constitutional pedigree of its proposed administrative framework, that is, that its assessment should be entrusted to local parties on the principle that its collection should not depend upon the will of government.²² Its day-to-day workings were placed in the hands of the traditional local, and usually landed, administrative hegemony – the representatives of politics, law and Church, those who were Justices of the Peace, Street or Improvement Commissioners, Poor Law Guardians and Members of Parliament. Arguably, the acceptance of the income tax by Parliament was largely dependent on the continuing supremacy of this elitist oligarchy, because it gave them the ability to dispense patronage and influence by controlling assessments. But it must also be acknowledged that one of the marks of landed society in the early or mid-nineteenth century was the acceptance and discharge of authority and responsibility which the absence of any apparatus of centralised administration made necessary.²³

As Daunton has recently observed, the limits of local autonomy and central oversight, of a degree of evasion in return for consent, had to be carefully negotiated through a discourse of English ‘liberties’ and constitutional proprieties.²⁴ This was a common theme in mid-Victorian Britain, with the desire of government officials to inspect and control in collision with the pressure to preserve the autonomy of local action and the participation of citizens.²⁵ The Inland Revenue was another dimension of this urge for intervention in local administration. The execution of the income tax was intensely localised and almost autonomous, in which local personalities dominated the assessment process. At the pinnacle of this local administration were seven ‘commissioners for the general purposes’ of the Act (or General Commissioners, as they were colloquially known).²⁶ They were selected by the Land Tax Commissioners for each district from among their own number in each of the 693 geographical units which were adopted for the purpose of the income tax.²⁷ The General Commissioners were men not only of intelligence and vigour but also of substance and

station. As such, many would have been personally associated with the railways, either through their promotion and directorships or as men of wealth, through their share and debenture holdings. In Birmingham, for example, Constantine Richard Moorsom, one of the first General Commissioners for the borough,²⁸ together with his brother, William Scarth Moorsom, had assisted in the establishment of the London & Birmingham Railway, and was its Secretary. He was also a director of the London & North Western Railway.²⁹ Another commissioner for Birmingham, Joseph Frederick Ledsam, had been a promoter of both the London and Liverpool factions of the London & Birmingham Railway.³⁰ These were the kind of men who made the final assessments on railway companies. Much of the executive work was carried out by the Clerk to the Commissioners, invariably a local solicitor of influence and standing, and a large retinue of assessors and collectors who were also appointed by the General Commissioners. The clerks were also usually involved in some way with the railways: for instance, in the City of London in 1860, Richard Till was a director of the Norfolk Railway, the East Kent Railway and allegedly of the East Suffolk Railway.³¹

In order to protect the interests of the Crown, there were 140 government officials, termed Surveyors of Taxes, who monitored the timely procedure of assessment and collection.³² They were permitted to inspect the assessments and to object to those which they considered insufficient.³³ But certainly during the 1840s and most of the 1850s, in order to sustain the essential features of local independence on which the income tax relied for its survival, they were discouraged from challenging the assessments made by the General Commissioners. Their intervention was patchy, and in south Yorkshire, until the late 1850s, the Surveyor appears to have raised no objection to the assessments on the South Yorkshire Railway Company. The success of the tax was very much a matter of honesty by the taxpayer. There was no requirement for any taxpayer, including a railway company, to produce information, such as accounts, to support a return of income, nor indeed any power granted to either the commissioners or the Surveyor to call as a matter of course for such information. If the commissioners were dissatisfied with the sufficiency of a return of income, or the Surveyor applied for a surcharge to be made, their response was usually in the form of an assessment based on an arbitrary estimate, against which the taxpayer could appeal. It was the task of the appellant to adduce such evidence as the commissioners thought fit before the estimate would be displaced. The evidence was focused on displacing the estimate as opposed to supporting an accurate assessment in the first instance. Estimates which were lower than the actual income of the taxpayer were not appealed against. This was really the blunt instrument of tackling perceived tax evasion. It may have been suitable for a tax system which was essentially temporary, in which each person was required to make some contribution, but it did little to control compliance and evasion in the long term.³⁴

Income tax and the railways

The income tax was a tax on the annual value of an asset, or the income arising from it, for one year. In the case of a railway company this ought to have been the profits produced by the exploitation of its assets. This may seem self-evident, but the wording of the taxing statute was not quite so straightforward. Income for tax purposes was divided into discrete categories, termed schedules, under each of which income was estimated in a slightly different way. Assessments on trading concerns were normally made under Schedule D but railway companies were assessable under Schedule A, which related broadly to income arising from the ownership or occupation of land.³⁵ This schedule had been conceived long before the advent of the railways, and when the income tax was revived in 1842, after lying dormant for some twenty-five years, only minor adjustments were made to take account of innovations in transport technology. Since the income of railway companies appeared to be derived from the land over which their lines were operated, they were grouped together with those ventures associated with land which had been allocated to Schedule A at an earlier date, such as mines, canals, tolls and gasworks. The main distinction between the two schedules lay in the method of quantifying the assessable annual value. Under Schedule D the quantum was, at its simplest, gross trading income less the expenses of trade, but under Schedule A the general rule was to estimate the annual value by reference to the rack rent at which the land could be let. Railways were exempt from this broad rule by means of a provision which deemed a company's profits for the preceding year to be the annual value.³⁶ But, other than prohibiting certain deductions, the Acts contained no definition of the term 'profits'. Words in mid-nineteenth-century taxing statutes were used indiscriminately, often having different meanings in different sections of the same Act: the use of words such as 'profits', 'income' and 'annual value' was uncertain and invited some licence in interpretation. As a result some railway companies chose to return for tax purposes, not their trading profits, but a sum equivalent to the annual rental value of the land over which their tracks extended.

Ambiguities in revenue law came under no scrutiny by the courts until after 1874, because until then there was no right of appeal from a determination of the General Commissioners. Their decisions were final. As Cocks³⁷ in his work on Victorian barristers, judges and taxation has observed, with little statutory guidance lawyers appear to have had almost unqualified discretion in construing words in complex revenue laws.³⁸ When faced with innovations they simply debated the issues partly in terms of the words used in the statutes, partly in terms of established legal concepts, partly in everyday economic terms and, above all, in the light of what they took to be common sense.³⁹ They were prepared to use a variety of tests. The usual approach was to look for other areas of the law that were in some way analogous to the case in hand.⁴⁰ One important aspect of this related to the juxtaposition of national and domestic taxation and the anomalies which it exposed.

The Poor Rate was a parochial rate raised for the relief of the poor. It was an area of the law closely associated with the income tax regulations – for example, the assessment to the Poor Rate, in many instances, was the quantum assessed to the income tax under Schedule A. Surveyors were given the power to call for and inspect the Poor Rate books in judging the sufficiency of the income tax assessment, and the General Commissioners were empowered to summon the Overseers of the Poor when making assessments.⁴¹ The parochial rating system was the subject of such protracted litigation by railway companies in the courts in the 1840s and 1850s that no attempt to measure attitudes to the income tax would be complete without reference to these contemporary events. This is especially so since there were parallel issues. Railway companies, as occupiers of land, were rated to the Poor Rate on the annual value of the land on which the railways operated, equivalent to the rent which could be expected to be received for one year within each parish. But the question which exercised the minds of the parochial officers who assessed the railways was, how was the rent value to be ascertained?

As Kostal has discussed in some detail in his work on railways, law and capitalism, the fact that railways were monopolies had an undeniable influence on the value of the railway occupation.⁴² No accurate calculation of the rent value could be made without accounting for the net profit generated from their exclusive control over the carriage of goods and passengers. But there were logistical problems in implementing this principle. The parochial principle of rating was the value based on income received for the segment of the line situated in the parish. But, as multi-parish commercial enterprises, railways created tax conundrums for the parish overseers – how could this value be ascertained where the income arose not just from the line running through the parish but extending for miles over many parishes? The practical difficulties of implementation were circumvented by the mileage principle. By adopting a legal fiction, the total profit of each integrated entity was allocated in proportion to the amount of line passing through the parish. The proliferation of branch lines, many of which were commercially unviable in themselves and were built to increase the traffic and profitability of a company's trunk railway, had the potential to elevate the contribution to parochial rates through the mileage principle. Large numbers of rural parishes began to increase both the size and the proportion of parochial taxes payable by the railways in their jurisdictions. The conflict between the parish overseers and the railways was the subject of much unsuccessful litigation by the railway companies in the 1840s and 1850s when the courts legitimised the profit of trade assessment on railways and ultimately the mileage principle.⁴³ But at the same time it cannot be overlooked that a valuable concession for railway companies was wrought in that the courts also legitimised certain working expenses as good deductions from trading profits in arriving at the assessable amount,⁴⁴ perhaps recognising some of the realities of the commercial world.

As Cocks has commented, lawyers and judges tried to introduce what they saw as economic criteria to their analysis of the revenue problems which confronted them. In some instances they regarded economic ideas and trading

experience as being relevant.⁴⁵ When considering the word 'profit', Kelly LCB was happy to talk about what he saw as being economic realities at considerable length. Baron Pollock was content to place reliance upon the opinions of informed outsiders, as when he had to consider the significance of depreciation in a company's balance sheet, whilst being aware that this approach could cause many problems.⁴⁶ Railway companies had expended vast sums of capital on rails, sleepers, stocks and chairs. Provision for their depreciation over the long term was a commercially prudent reserve in railway accounts. The deduction was, according to the understanding of Robert Baxter, the solicitor acting for the South Yorkshire Railway Company, now recognised by the courts, at least in relation to profit of trade assessments under the Poor Rate. Such deductions, however, were not permitted under the income tax laws. The probable reason for this was, first, the recognition that the capital of a joint stock company should be kept intact and, second, that the income tax was based on the assumption that it was temporary, so that profits were assessed over the short rather than the long term.⁴⁷

Arguably, national taxation ran contrary to local taxation, and if there was room for a liberal interpretation of the words in the taxing statute it was a natural consequence that lawyers acting as advisers to railway companies should construe the law in the way most favourable to their clients. Why should they deny themselves the prize of a legal principle relating to the assessment of profits under the analogous Poor Rate which had been achieved at such cost? There was such a nexus between the profit of trade and rent value under the Poor Rate that it would have been almost perverse to ignore any concessionary relief granted by the courts which reduced assessable profits in respect of that rate. This was an area where lawyers could exercise their discretion in construing revenue laws and one which nurtured the conditions for a liberal application of the words of the statutes, and where commercial realities could take precedence over the letter of the law.

The South Yorkshire Railway Company

Having discussed the general outline of the income tax as it applied to railways, the details of the South Yorkshire Railway & River Dun Company, which forms the nucleus of this study, can be examined. The company was incorporated in 1847 by Act of Parliament as the South Yorkshire Doncaster & Goole Company.⁴⁸ In 1850⁴⁹ the Dun Navigation and Dearne & Dove Canal Companies were transferred to the railway company, which embraced the Stainforth & Keadby Canal and the Sheffield Canal.⁵⁰ The railway owed its expansion to the support of the landed proprietors and coal owners on the line. It was intended to extend the railway to open up the Worsbrough collieries and up Dodworth valley to the Silkstone pits, to develop the coalfields on the estates of the Earl Fitzwilliam and Lord Wharnccliffe, who were directors of the company and who alternately presided over it for much of the 1850s.⁵¹

Integration of the network of canals which linked Sheffield to the Humber, through Doncaster and Goole, with the rapidly increasing railway system

accelerated the trade potential of the mining industries surrounding the Barnsley coalfields. Between 1855 and 1858 the quantity of coal transported out of the district by the company had risen from 421,755 tons to 1,310,020 tons. It accounted for 43 per cent of the company's productive train mileage.⁵² By 1857 the South Yorkshire engines alone had a productive train mileage of 371,364 miles, of which 122,061 related to passenger miles, 160,760 to coal and 88,543 to goods.⁵³ Arrangements were being made for the outlet of steam coal via Grimsby and, on the opening of the Barnsley branch, negotiations with the Manchester, Sheffield and Lincolnshire railways were under way for sending coal to Liverpool for export.⁵⁴ By the end of 1857 its rolling stock consisted of sixteen engines, twenty-three passenger carriages, twelve vans, eighty-two goods and ballast trucks, forty coke and 931 coal wagons.⁵⁵ Despite the depression of prices in the coal market in the mid-1850s, the published accounts portray a vigorous and rapidly expanding company throughout the whole of the decade, and particularly so during its second half. Prior to the amalgamation with the railway, the canal companies alone had been assessed to income tax, either separately or jointly, at an aggregate of about £28,000 a year. The railway venture came into profit in December 1849,⁵⁶ when trains began running between Doncaster and Sheffield, and by the early 1850s the net annual profits of the amalgamated companies were about £37,000,⁵⁷ rising sharply to about £65,000 in 1854 and 1855, and £74,000 and £84,000 in 1856 and 1857 respectively.⁵⁸

From 1848 to 1856 the company was assessed to the income tax at roughly the same amount which the canal companies alone made before amalgamation with the railway. In both 1853 and 1854 the company made a return of its income for tax purposes of, and the General Commissioners assessed, £27,714, rising to £28,174 for 1855 and 1856. The acceptance by the commissioners of an assessment at much the same level year after year was not uncommon. The Shrewsbury & Chester Railway Company, for example, was assessed at £21,464 for 1848, 1849 and 1850 and at £22,285 for 1851 and 1852.⁵⁹ On one construction of the taxing statute the company ought to have been assessed on its annual trading profits; on another, on the basis of the annual value adopted for the purpose of the Poor Rate. The South Yorkshire Railway Company had, according to Baxter, returned the value assessed to the Poor Rate. But, whatever basis was used to fix the quantum of the assessment, an assessment made under Schedule A appears to have been subject to another, anomalous, overriding principle. The Income Tax Act of 1842, perhaps recognising that the tax was only temporary and reintroduced for a triennial period, provided that, once made, an assessment under this schedule was to remain in force for three years, so that the same figure was repeated year after year.⁶⁰ As the tax continued to be reintroduced, it became the practice to make revaluations of the annual value only every three years. In 1863 the Chancellor of the Exchequer confirmed that the rule had been to reassess under Schedule A only every three years and he would not recommend a departure from that rule.⁶¹ How far this extended to the assessment of railways is difficult to ascertain, and no doubt certain railway companies

did make a return of their actual profits. But, given Baxter's willingness to defend the company on general principles, it seems probable that it was not alone in its approach to the income tax. Indeed, a careful reading of the annual reports of the Commissioners of Inland Revenue which began in 1857 suggests that the generality of this provision was applied to railway companies; certainly railways are not excluded from the statistics which are part of the commentary on the practice, and the experience of the assessments made on the South Yorkshire Railway Company reinforces this possibility.⁶² This may have been procedurally acceptable when dealing with rent values which were not subject to rapid change, but it seemed to contradict the exception of railways from the general rule of estimation under Schedule A. But even if revisions were made only periodically, and assessments were then made on the basis of an annual value equivalent to the profits for the preceding year, they ought, statutorily, to have been brought in line with the then current profits at least in the year of revaluation. It is clear, however, that the assessments on the South Yorkshire Railway Company remained more or less constant for ten years.

The challenge to local assessing authority

During the mid-1850s the revelation of widespread under-assessment which then gathered momentum throughout England and Wales, often involving some of the most reputable names in manufacturing and commerce, enabled the Board to depart somewhat from its observance of the social disciplines of assessment.⁶³ The prerogatives of local administrators in the execution of national fiscal policy may have been appropriate to a temporary imposition but as the tax became a more permanent feature there was a new stir among Surveyors in their willingness to question the supremacy of the commissioners in the process of assessment.⁶⁴ Although there was a statutory power for the Surveyor to influence the quantum of the assessment, by attending the meeting at which the commissioners considered the returns,⁶⁵ or by an application for a surcharge where he believed there to be an underassessment,⁶⁶ Peel had inculcated forbearance so as not to be seen as usurping the commissioners' function. It had been important to avoid any sense of despotic behaviour by the State. Now Surveyors were beginning to adopt a more assertive approach to assessment.⁶⁷ In Sheffield the newly appointed Surveyor, William Chadwick, having seen details of the half-yearly reports of the South Yorkshire Railway Company for 1857, considered that the assessment for the year was substantially deficient.⁶⁸ More important, he noted that rents, dividends and debenture interest payments far exceeded the assessments on the company. Tax had been deducted from these amounts at the time of payment, so satisfying the tax liability of the recipients, and should have been accounted for to the Board by paying tax on the profits out of which the payments were made. But because of the shortfall in the profits assessed, the company had itself profited from the tax system over a period of several years.⁶⁹ The practical consequences of the interaction between the

various rules of Schedule A and the concessions obtained under the Poor Rate decisions are demonstrated in Table 1, the figures for which were compiled from the Surveyor's own calculations.

Table 1 Income tax assessment of the South Yorkshire Railway Company (£)

	<i>Tax year</i>			
	<i>1854/55</i>	<i>1855/56</i>	<i>1856/57</i>	<i>1857/58</i>
Amount of assessment made by General Commissioners	27,174	28,174	28,174	35,043
Surcharged by Surveyor and confirmed by General Commissioners				65,043
Amount of profit identified by surveyor from printed accounts	65,725	64,736	74,386	83,930
Unassessed profits as computed by Surveyor	38,551	36,562	46,212	18,887
Rate of income tax expressed as pence in the £	<i>14d</i>	<i>16d</i>	<i>16d</i>	<i>7d</i>
Amount of duty chargeable on shortfall as computed by Surveyor	2,248	2,437	3,080	550

Note It was estimated that unassessed profits for the period 1848/49 to 1853/54 were not less than £150,000, on which the amount of duty was £4,375.

Source Report by Surveyor of Taxes, William Columban M'Kenna.

By adopting a combination of Schedule A and Poor Rate concepts, tax of a substantial amount could be sidestepped. But, more important, the correlation between the profits chargeable to tax and the rewards paid to investors, which was central to the success of the system of deducting tax at source, was eroded. Alerted by the Surveyor's curiosity, the company made a return for 1857 in the slightly increased figure of £35,043, which, although some £30,000 below the figure which Chadwick considered appropriate, was accepted by the General Commissioners. Chadwick applied for a surcharge of £30,000 to be made for the current year, on the grounds that the assessment ought to be equivalent to the amount of rents, dividends and debenture interest from which the company had deducted tax. The appeal by the company against the surcharge is impressive in that the grounds put forward by Baxter concerned exclusively the basis of assessment of railway companies. He contended that the correct basis for tax purposes was the valuation for the Poor Rate, which permitted deductions for depreciation of stock, rails, chairs and sleepers in arriving at the profit of trade assessment. Although he argued the point for almost two hours, no figures were produced to support the returns that had been made. Perhaps, as Cocks remarked about Victorian barristers who dealt with revenue laws,⁷⁰ Baxter may not have seen these issues with the same clarity as modern lawyers. He seems not to have

addressed, or chose to ignore, the nexus between the profits assessed and the tax retained from rents, dividends and debenture interest. On the other hand, he tested the obvious divergence between the Poor Rate law and revenue law concerning the deductibility of depreciation. Chadwick, reciting the provisions of the taxing statutes, reiterated his opinion that such deductions were prohibited under income tax laws and that the assessment should be at a figure which recouped the tax retained from rents, dividends and debenture interest. The General Commissioners confirmed the surcharge following Chadwick's argument but Baxter's defence was sufficient to absolve the company from any allegation of fraud. Chadwick was advised by the Board to take no further action.

In June 1859 his successor, William Columban M'Kenna, was transferred to Sheffield from Stoke on Trent. M'Kenna, born in mid-Atlantic on a voyage to America, had been sent to England by Daniel O'Connell to seek his fortune; O'Connell had patronage of various kinds and had obtained his nomination for a position in the Board of Stamps and Taxes, a position which was ill suited to M'Kenna's impulsive and restless character and his inherent antagonism to authority.⁷¹ But Surveyors had to be audacious if they were to question the returns of the influential and powerful, and if anyone could take up the cudgels it was the impetuous iconoclast from County Monaghan. M'Kenna inspected the accounts printed for distribution to shareholders and considered the assessments for the years 1854/55 to 1857/58 to be 'notoriously deficient'.⁷² His construction of the statute allowed no ambiguity in the rules of Schedule A, and he contended that assessments should be made annually, taking into account the changing level of profitability. It is from his report that the figures in Table 1 were reproduced. The total shortfall in assessment for that period was £140,212 and for the period 1848–53 not less than £150,000. He computed the duty unassessed for the most recent years at £8,315 and for the earlier years at £4,375.⁷³

M'Kenna proposed to the Board that he would 'by personal application to one or more of the directors of the company to avoid the necessity of litigation . . . obtain for the Crown the duty which has been so improperly withheld' and wished to do so in a way that would admit of no doubt that it was the Board's intention to enforce the just claims of the Revenue.⁷⁴ The Surveyor's powers, however, were fettered by periods of limitation. Often the information came too late. His powers of surcharge had to be exercised either within the time allowed for the commissioners' jurisdiction or within twelve months of the end of the relevant year of assessment,⁷⁵ and although he alluded to litigation, the Board's power to prosecute for default in making a true and correct return was similarly restricted. It had to be exercised within two years of the end of the relevant year of assessment.⁷⁶ By April 1859 past years of high underassessment were statutorily beyond the reach of the Crown. The Board, tending towards M'Kenna's statutory construction, played with the idea of obtaining the company's consent to a voluntary assessment for the years of underassessment, stressing that the returns had been 'most erroneous' and that tax deducted from rents, dividends and debenture interest payments had been

pocketed. But the Board had no power to enforce any measure for the years for which the greatest underassessment had occurred. In the face of resistance offered by the South Yorkshire Railway Company to any suggestion of a voluntary restitution of income tax, the Board was powerless to recover the substantial amounts of duty which had been lost.

The case gives the impression that rules were not always adhered to by Surveyors, who were prepared to sidestep the law and, like M'Kenna, in the words of Burn, 'used a mixture of legal, moral and social authority; they bluffed and bullied and cajoled'⁷⁷ in order to reach what they saw as its fair conclusion. Perhaps this had to be so because the legal sanctions for evasion were virtually impotent in instances of substantial tax loss extending over many years. The Board's power to prosecute in the Court of Exchequer was rarely used – not only because of the restrictions imposed by the period of limitation, but because of the problems of obtaining the necessary evidence and because the penalty provisions were hedged about with all manner of reasonable excuse defences. Ambiguities in the language of the statute also made success uncertain. M'Kenna, like his predecessor, was advised by the Board to take no further action. But what would the outcome have been if a successful prosecution had been mounted? What fiscal sanctions could have been inflicted on the railway company? The maximum penalty for default in making a true and correct return was £50 for each year of default, but as proceedings had to be instituted within two years of the relevant year of assessment the total penalty exigible could never be more than £100. Years prior to 1857 were statute-barred by April 1859. A penalty of £100, compared with tax 'lost' of over £12,000, was neither deterrent nor punishment.

It may, however, be simplistic to suppose that the Board was reluctant to prosecute because it was fettered by an impotent law. As Emsley⁷⁸ has argued, 'the nineteenth-century state, dependent on a new economic order involving a new level of capitalist investment, a burgeoning factory system and a massive exploitation of coal and iron, would not act against financiers, owners and employers in this new order except when compelled to by the most flagrant abuses'.⁷⁹

What was 'flagrant' was a matter of the discretion of either the Board or the General Commissioners, and that discretion tended to be exercised in favour of the wealthy entrepreneurial elite.⁸⁰ Where there was a pause in action, as witnessed in the Board's instructions to both Chadwick and M'Kenna to take no further action, it may have been intended in order that the period of limitation for the earlier year could expire. When it could still legally have instituted proceedings for some of the earlier years, there is a noticeable reluctance on its part to move beyond the current year. The correspondence exhibits a Fabian quality which is the antithesis of the urgency so apparent in cases of individual and smaller taxpayers.⁸¹ Was this simply tactical, in the sense that while the possibility of some substantial restitution of duty remained, that would far exceed any potential penalty, the Board was prepared to abrogate its capacity to prosecute? Or was it symptomatic of a more complex attitude to persons of standing and substance, when

they came into conflict with the Board, by which they were treated with special courtesy and regard?⁸² Did those who exercised the discretion of the Board deal in a special way with the entrepreneurial elite who played such a critical role in the expansion of a transport system that would benefit trade both at home and for export?

Such personal prejudices are almost impossible to ascertain with certainty, but it is probable that, beyond the formal relationship between the railway company and the Surveyor, there were other layers of communication, where agreements were reached and informal arrangements made, and which took place outside the official arena of assessment and appeal. The Surveyor at the front rank of tax assessment may have been outgeneralled by a small but active body of higher civil servants and interested industrialists. Certainly in the South Yorkshire Railway case the directors and Secretary of the company had meetings with the Revenue solicitor at which it was informally agreed that the Board would not pursue the matter of underassessment beyond the current year, though the reasons were not recorded.⁸³

Surveillance and information gathering

One of the most important factors which the case emphasises is the divergence between the theory and experience of the law. In order for the system of deduction of tax at source to work properly, there had to be a correlation between the quantum of the assessment and the company's profits for the year, as opposed to an annual value, if only to account for the tax which had been retained out of payments of rent, dividends and debenture interest at the time of payment. The General Commissioners had accepted the returns of the company without question for ten years. It was only on a challenge by the newly appointed Surveyor that the underassessment was exposed. Baxter may have dignified the matter as a question of statutory interpretation but it is clear that the issue went much further than mere technicality. A way was needed to secure an increasing level of local compliance with national regulations. This entailed the need to collect information from railway company balance sheets and profit and loss accounts and to compare it with the tax returns which the companies made. Information powers which might produce such documents were vested in the General Commissioners but were originated only on an appeal by the taxpayer against an estimated assessment.⁸⁴ The commissioners could not initiate a request for information outside the parameters of the appeal mechanism. The production of evidence was linked with displacing an estimated assessment as opposed to producing information which the administrative personnel might wish to procure *proprio motu*. The Surveyor had no such powers and had to rely on newspaper reports, the use of informers or his own personal surveys to furnish information.⁸⁵

But it is evident from the appeal hearing of the South Yorkshire Railway that the relationship between the Surveyor and the commissioners was altering. The role of the Surveyor was changing from one where he largely monitored the timely assessment and collection of the tax to one where he acted as an

expert on tax law and accountancy, on whom the commissioners relied. This was not simply a shift of power between locality and centre: the nature of power was emerging in different forms for different purposes within the tax administration. Although Baxter was prepared to argue the case for the company in the Court of Exchequer, at this time no right of appeal against the General Commissioners' determination lay to the courts. Their assessment was final and conclusive.⁸⁶ The power to give legal effect to an assessment was firmly vested in the local commissioners and sustained the constitutional principle that the tax should be assessed by local parties. The power to make an accurate assessment, however, was gradually passing, extra-statutorily, into the Surveyor's hands with the growing practice of inspecting company accounts and balance sheets, which would lead to refinement of the quantum of the assessment. In the mid-nineteenth century the State embarked on the creation of a system of information gathering and inspection to monitor and enforce local administration of laws and standards. The Surveyor was part of this bureaucratic machinery of information gathering. One of the necessary conditions of a State's administrative capacity is the accumulation of information and the exercise of direct supervision within systems of control. This has been termed 'surveillance' by Dandeker, following others.⁸⁷ It has been described as a territorially based process of administration designed to regulate the conduct of human beings.⁸⁸ The capacity for surveillance is partly determined by the amount and quality of information held, the centralisation of that information and the facility with which it can be gathered and used.⁸⁹ Information gathering and surveillance may also be said to be mutually reinforcing as supervisory disciplines. According to Giddens, they require not just the collection and storage of information but also the routine monitoring of conduct and compliance.⁹⁰ By 1860 this capacity was emerging with the Surveyor's practice of gathering information from which to corroborate the accuracy and completeness of tax returns and by applying to that information a technical knowledge of revenue law. But if one measure of the State's administrative capacity was the effective use of the information, once gathered it was deficient in the sense that, often, it could be only partially realised. It was sometimes limited by laws which lagged behind the development of these emerging practices. If information gathering led to detection of underassessment, often there was little the Surveyor could do to rectify the omission in respect of past years. The information came too late. Action needed to be taken before, rather than after, the making of the assessment.

The immediate solution to the problem was both legislative and organisational. In March 1860, close on the heels of the South Yorkshire Railway case, a short Bill was introduced in Parliament, ostensibly to continue the income tax for another year.⁹¹ This came at a time which Gladstone had proposed for the expiration of the tax, but now he intended not to abolish it but to continue it at an increased rate. The debates in the House of Commons concerned this central issue and whether a select committee should be set up to enquire into the workings of the tax if it were to be prolonged. But included in the Bill was a short clause transferring the assessment of railway companies and

their employees from the General Commissioners to the Special Commissioners,⁹² who were centrally remunerated officers of the Crown. This clearly had the hallmarks of centralisation. So focused were the debates on the issue of the prolongation of the tax that the clause slipped through without comment. The Act of 1860, however, was simply the legal expression that the power of assessment should be conferred on central bureaucrats. The nature of the mechanism involved in implementing the Act was the product of a strategic deployment of the forces available to the Revenue Department, and how best it could use its resources and manpower.

The 140 Surveyors (possibly more by 1860) who were distributed throughout the major towns and cities of England and Wales had access, by various means, to local information and were in a position to collect and transmit it to a central source. Joint stock companies were required by law to produce printed balance sheets and, later, profit and loss accounts for shareholders, and a specific requirement to this effect was also incorporated in the Railway Act of 1844.⁹³ The usefulness of these documents was not limited to company members. They could also be used by the Tax Office for comparison with the returns of the railway companies, although until the late 1850s this does not seem to have been considered by Surveyors universally. But it is clear that no preparations had been made to give effect to the provisions of the new Act and it was left to the Revenue Department to work out how best it could put it into operation. The Special Commissioners' office comprised three salaried commissioners, but the daily executive tasks were performed by a chief clerk and three junior clerks.⁹⁴ They dealt with the income tax on dividends and annuities paid out of the public revenue, the Irish income tax and certain appeals against Schedule D assessments. They were ill equipped to deal with the additional work of making assessments on some 100 railway companies and their many employees.⁹⁵ The clerks' duties were as yet uncertain, and initially two temporary clerks were transferred from the Office of Excise to assist.⁹⁶ Previously, elementary compliance checks had been dependent on the initiative of the Surveyor and not co-ordinated from a central source. And the intensity of his desire to uncover underassessment was motivated as much by his drive for pecuniary reward as by his commitment to perfect the operation of the law. Despite public utterances to the contrary, Surveyors who were successful in detecting underassessment leading to either prosecution or voluntary restitution of duty received substantial awards, often exceeding a year's salary, and their chances of promotion were enhanced.⁹⁷ Now the exercise was to assume a more structured aspect in which central co-ordination and information gathering were the cornerstone. Within a month of the new Act the Board circularised all Surveyors instructing them to procure copies of the half-yearly accounts of each railway company which were printed for shareholders for 1859, to be forwarded with the returns and assessment papers to the office of the Special Commissioners.⁹⁸ It was intended that assessments should be made centrally on the actual profits of each company. The chief clerk, C. F. Leith, undertook the examination of railway accounts, which he accomplished only by working in the evenings and forgoing

holidays throughout the summer and autumn of 1860 and, as he complained, 'to his pecuniary loss and detriment of health'.⁹⁹ This is the growing manifestation of an emerging and organised bureaucracy, involving an increasing degree of surveillance and information gathering.

Railways were among the first business entities to be brought within central supervision for tax purposes. Perhaps the most striking feature of this aspect of the centralisation of railway company assessments was the use of information to fix the quantum of the assessment before the assessment was made, as opposed to checking its sufficiency after it had been made. This was a step which transgressed the fundamental principle of the dominance of local lay administrators in the income tax and which moved on a stage further the growing intrusion of the State into the assessment process.

Railways and accountancy practices

Although the transfer of assessing power enshrined in the Bill of 1860 passed without debate in the House of Commons, previous (and later) attempts to augment the powers of government officials in taxation met with vehement opposition in Parliament, often so strong that it threatened to bring an end to the tax altogether.¹⁰⁰ So focused were the debates on the question of continuing the tax that the clause relating to the transfer of assessment was seemingly overlooked. It was not unusual for controversial clauses to be inserted as subsidiary provisions in Bills whose primary objective was the main focus of debate. But this is not a compelling reason for the unhindered progress of this Bill, given the fact that it comprised only a few uncomplicated clauses. It seems likely that there was an informal agreement to the transfer by those who represented the railway interest. If it was inevitable that annual profits would form the universal basis of railway assessments and that existing anomalies under Schedule A would be removed, there was a need to negotiate a workable definition of the term 'profits'. There were, for example, many expenses of the management of railway companies for which no allowance for tax was authorised by statute but which were deducted in their accounts. Even certain capital items, such as parliamentary expenses incurred with a view to extending or amalgamating existing lines, or in opposing new schemes that would be prejudicial to the interests of an established company, were included as expenses against income.¹⁰¹ Depreciation of plant and equipment, too, was regarded as a prudent deduction in trading accounts.¹⁰² It was generally recognised in the commercial world that the Special Commissioners concurred with certain deductions which the Taxes Acts prohibited.

The choice of whether to be assessed by the General Commissioners or the Special Commissioners was open to a taxpayer under Schedule D but railways, being assessable under Schedule A, lay outside their jurisdiction.¹⁰³ The Special Commissioners were an autonomous group who came under little direct guidance from the Treasury. They admitted, with some reticence, before the Select Committee on the Property and Income Tax of 1851/52, that they executed the Act with a wide discretion, that they did not refer to

any existing legal decisions under previous Taxes Acts, and that they allowed deductions for depreciation which were judged to be just and fair in consultation with the appellant.¹⁰⁴ It was later conceded that they were also willing to accept the expenses of management of railway companies and parliamentary expenses as good deductions against profits.¹⁰⁵ As the Board commented, they began to 'modify the provisions of the Income Tax Acts' so as to 'conform rather to the spirit than to the letter of the law'¹⁰⁶ and adopted a liberal approach to construction which took into account some of the realities of the commercial world. A transfer of assessing powers from the General Commissioners to the Special Commissioners would bring railway companies within their more accommodating policies without disturbing the general schedular framework. More important, it may have been more the initiative of the railway companies than of the government: the convergence of revenue law and commercial practice with the consent of the companies affected was part of the process of legitimising the income tax. The involvement of the Special Commissioners was part of the process.

It was, however, a fractured, open-ended and continuing negotiation which at one moment favoured the railways and at another the State. The programme of information gathering and the collection of copies of the printed accounts of the companies promised an ordering mechanism through which individual railway companies' results could take on universal significance, becoming units of comparative data. It was now possible to make comparisons of the accounts of one railway company with those of another which, when information was collected and used on a purely local level by Surveyors, had been fragmented. It became evident from this comparison that there was little uniformity or consistency in the accounting concepts on which accounts were drawn up. Accounting practice recognised as acceptable treatment more than one basis of reflecting a specified transaction and, at worst, accounts were often drawn up on an *ad hoc* basis to deal with the expediencies of a passing moment.

It was a point that is echoed in the report of the Royal Commission on Railways of 1867, which concluded that there were no adequate means by which a comparison of the financial affairs of two railway companies could be made, or even the accounts of the same railway from year to year. There was no uniform system of accounting, each company being at liberty to adopt the form it considered most convenient and to vary it, without explanation, from time to time.¹⁰⁷ Although laws relating to companies such as gasworks, for example, contained special provisions detailing the exact amounts of profit that could be taken and how it should be calculated,¹⁰⁸ most Acts imposed only minimal requirements. They were vague and spoke in terms of income and expenditure accounts, receipts and expenditure accounts or profit and loss accounts, all of which, in accountancy terms, were quite different concepts and produced a variety of results. Because profit and loss accounts, and their equivalents, were relegated to a position subsidiary to that of balance sheets, company law paid them little attention apart from continually reiterating the invocation that 'no dividend shall be paid except out of the profits'

of a company.¹⁰⁹ Both company and tax legislation abstained from defining what constituted profits.

It may be unfair to criticise the legislators responsible for drafting company and revenue laws for the lack of useful guidance in the drawing up of financial statements. Perhaps they were unable to devise satisfactory formulas, or hoped that directors and auditors would produce accurate or meaningful statements, or considered that it was a matter which should be left to those who understood commercial practices. Legislating generally to cover all business entities was impracticable and in any event would have been possible only when a coherent body of accounting theory was developed. Difficulties could be resolved by resorting to *ad hoc* concessions, or reaching informal agreements with particular companies as the need arose. It was left to the courts slowly to build up a formidable volume of case law on the subject which, with hindsight, perhaps vindicates the reluctance of legislators to tackle the problem.

The work undertaken by the Special Commissioners in relation to the railways highlighted the need for conformity in accounting practices and the necessity for some regulatory supervision of and consistency in the application of accounting standards and policies, if accounts were to have any integrity. In practical terms, such matters of accountancy were left to those who were familiar with the conventions of its practitioners, not simply because the issues were intensely complex and dependent on an understanding of commercial terminology, but because, as Daunton has remarked, the British State was reliant on the delegation of powers. The registration and control of the medical and legal professions, for example, were in the hands of the General Medical Council and the Law Society rather than government agencies.¹¹⁰ The combination of the notion that the ideal form of law guaranteed freedom and liberty, and the emergence (in the eighteenth century) of the form of clubs or voluntary hospitals or paving commissioners which constituted civil society, meant that the State was careful not to interfere with the professions; though some interventionist measures were taken to strengthen the position of its practitioners – the Railway Companies Act of 1867,¹¹¹ for example, abolished the shareholding qualification of auditors in the companies which they audited and conferred a greater degree of independence on them. The need for rules and standards in the practice of accountancy was part of the process of legitimising the delegation of audit (and its theoretical check on compliance with company and revenue law) to professional accountants. Their services had been drawn upon in the investigations following the financial problems of the railways in the late 1840s and ‘did more than anything else to first place professional [a]ccountancy on a solid and substantial basis’.¹¹² These professional advisers, as Daunton has observed, and the revenue authorities had a relationship of mutual support: the advisers needed a degree of confidence in the competence of the authorities in interpreting rules; the authorities needed a degree of confidence in the integrity of the professionals.¹¹³ They were mutually reinforcing.

Conclusion

Local, lay control over the income tax was essential in gaining its acceptance during the nineteenth century, but a degree of evasion in return for consent was an inevitable consequence. The ritual of assessment and appeal over which the General Commissioners presided could not adequately monitor compliance. It could be attained only within a system of surveillance and information gathering, for which the commissioners were neither intended nor equipped. The problems of how government could cope with the enforcement of revenue laws in respect of large corporate forms like the railways necessitated, and perhaps made possible, a reappraisal of the relationship between local and central authorities. One of the earliest tangible products of this rethinking was the centralisation of the tax assessment of railway companies. The transfer of assessing power to the Special Commissioners represented a significant advance in the infrastructural powers of the central State. Yet, as the analysis in this article has shown, it was an interactive process in which the notion of strategy was crucial. It was one in which both the Revenue Department and the railways gained some advantage at various stages. As Driver, following Ogborn and Mann, has remarked, the extension of administrative power is always a project, never a certainty; there is always a gap between central policies and local realities. Thus, while the territory of the modern State is frequently projected as even and homogeneous, it often appears in more concrete terms to be fractured and contested.¹¹⁴ The features which gradually took shape in this process were, first, the erosion of the 'constitutional principle' that the assessment should be made by parties independent of government and, second, that the quantum was refined before, rather than after, the assessment was made. Mediation by trained professionals acting for railway companies, whether lawyers or auditors, in a process of consultation and agreement in order to arrive at the figure to be assessed, helped to legitimate the transfer of assessing power to central government officials. This was in sharp contrast to the confrontational aspect of the old mechanism of assessment and appeal and marks the beginnings of the bureaucratisation of the workings of the income tax. The need to bring standardisation to the assessment of large national concerns like the railway companies not only freed the income tax from local variation but helped to erode an older structure which saw its administration as an essentially parochial concern.¹¹⁵

Notes

- 1 PRO IR40/804, Attorney General *v.* South Yorkshire Railway Company.
- 2 5 and 6 Vict., c. 35, ss. 60, 88, 93.
- 3 PRO IR40/804, correspondence, Chadwick to Keogh, 26 October 1857.
- 4 *Ibid.*, Chadwick to Keogh, 5 November 1857.
- 5 *Ibid.*, M'Kenna to Keogh, 14 June 1859.
- 6 R. Harris, *Industrializing English Law: entrepreneurship and business organization, 1720–1844* (Cambridge, 2000), p. 286.
- 7 B. E. V. Sabine, *A History of Income Tax* (1966), p. 37.
- 8 T. L. Alborn, *Conceiving Companies: joint stock politics in Victorian England* (1998).

- 9 *Ibid.*, pp. 173, 176.
- 10 23 Vict., c. 14.
- 11 M. Ogborn, 'Local power and State regulation in nineteenth-century Britain', *Transactions of the Institute of British Geographers* 17 (1992), pp. 215–26.
- 12 *Ibid.*, particularly at pp. 216, 223.
- 13 I. A. Burney, *Bodies of Evidence: medicine and the politics of the English inquest, 1830–1926* (Baltimore MD, 2000).
- 14 *Ibid.*, p. 2.
- 15 M. J. Daunton, *Trusting Leviathan: the politics of taxation in England, 1799–1914* (Cambridge, 2001), p. 203.
- 16 It is interesting to speculate that Dicey formulated some of his ideas concerning the rule of law from his experience in working for the Inland Revenue. He was one of the junior counsel to the Department of Inland Revenue and specifically designated to be employed on work on the Taxes Management Act of 1880. (*Twenty-fourth Report of the Commissioners of Inland Revenue*, House of Commons, Parliamentary Papers (hereafter P.P.), 1881, XXIX, pp. 181, 250.)
- 17 43 Geo. III, c. 99, s. 67; 5 and 6 Vict., c. 35, s. 59. See also the writer's article 'Destroy'd by Time's Devouring Hand? Mid-Victorian income tax records: a question of survival', *Archives* 102, XXV (2000), pp. 74–87.
- 18 PRO Class File IR40, essentially clustering around the years 1843, 1860 and 1880.
- 19 R. W. Kostal, *Law and English Railway Capitalism, 1825–1875* (1994).
- 20 *Ibid.*, p. 333.
- 21 *Ibid.*, p. 325.
- 22 Hansard, *H.C. Debs.*, 3rd ser., 61, col. 911, 18 March 1842.
- 23 F. M. L. Thompson, *English Landed Society in the Nineteenth Century* (1963), p. 8.
- 24 Daunton, *Trusting Leviathan*, p. 194.
- 25 *Ibid.*
- 26 The first use of the shortened title is noted by Dr A. Farnsworth in a side-note to an amending Act, 39 Geo. III, c. 22, s. 14, in his article 'The Income Tax Commissioners', *Law Quarterly Review*, 64 (1948), pp. 372–88, at p. 373.
- 27 5 and 6 Vict., c. 35, s. 4; 4 and 5 Will. IV, c. 60, s. 1; the number of divisions is confirmed in P.P. (1871) XXXVII, p. 242.
- 28 *Birmingham Journal*, 16 July 1842.
- 29 *Dictionary of National Biography*, p. 387; C. Gill, *History of Birmingham I* (1952), p. 285.
- 30 Gill, *History of Birmingham*, pp. 284–5. There is an interesting parallel with the railways and their association with 'Old Corruption', discussed in Alborn, *Conceiving Companies*, p. 174.
- 31 *Report from the Select Committee on the Inland Revenue and Customs Establishments*, P.P. (1862) XII, p. 131, qq. 2404, 2405, 2408; P.P. (1863) VI, p. 1, q. 812.
- 32 Number compiled from a return by each Surveyor of Taxes to the Select Committee on the Income and Property Tax of 1851/52 (hereafter Hume Committee), P.P. (1852) IX, pp. 905–9.
- 33 Minutes of Evidence taken before the Hume Committee, P.P. (1852) IX, qq. 1517–19.
- 34 Lowe recognised the income tax as, at the best, a great misery, but that '[e]verybody should contribute, however small his contribution, to the revenue'. A. Patchett-Martin, *Life and Letters of the Rt Hon. Robert Lowe, Viscount Sherbrooke II* (1893), pp. 367, 481.
- 35 5 and 6 Vict., c. 35, s. 60.
- 36 *Ibid.*, r. 3.
- 37 This approach owes much to the work of R. Cocks, 'Victorian barristers, judges and taxation: a study in the expansion of legal work', in D. Sugarman and G. R. Rubin, *Law, Economy and Society: essays in the history of English law, 1750–1914* (Abingdon, 1984), pp. 445–69.
- 38 *Ibid.*, pp. 445–6.
- 39 *Ibid.*, p. 461.
- 40 *Ibid.*, p. 455.
- 41 5 and 6 Vict., c. 35, ss. 64 (r. 11), 75, 76.
- 42 This approach owes much to Kostal, *Law and English Railway Capitalism*, chapter 6, 'Localism and capitalism'.
- 43 *R. v. London & South Western Railway* (1842), 1 Q.B. 558; *R. v. Great Western Railway* (1851), 15 Q.B. 379; (1852) 15 Q.B. 1085.
- 44 *Ibid.*, at pp. 1090–1. The final decision on deductions and the rates assessment was referred to arbitration. (*Ibid.*, p. 1095.)

- 45 Cocks, *Victorian Barristers*, p. 456.
- 46 *Ibid.*, p. 457.
- 47 Daunton, *Trusting Leviathan*, p. 208.
- 48 10 and 11 Vict., cap. ccxc.
- 49 13 and 14 Vict., cap. lvii.
- 50 *Times*, 10 April 1848; C. Hadfield, *British Canals: an illustrated history* (1959), p. 236.
- 51 The influence of the land proprietors can be seen in the following extract from D. Joy, *A Regional History of the Railways of Great Britain, VIII South and West Yorkshire* (Newton Abbot, 1975), p. 192. 'Although a single line from Mexborough to Elsecar, crossing the Dearne and Dove Canal by a lifting bridge, was brought into use for mineral traffic in 1850, the Elsecar branch achieved its greatest prominence through being the nearest rail-head to the Wentworth Woodhouse seat of earl Fitzwilliam. He had a covered platform within his Elsecar ironworks close to the branch terminus and a special train was put on to take his house party to Doncaster races'. (*Times*, 28 February 1850.) The projected cost was £90,000. (J. T. Ward, 'West Riding landowners and the railways', *Journal of Transport History*, 4, 4, 1960, pp. 242–51, at p. 248.)
- 52 PRO IR40/804. Figures extracted from the accounts (with comparative figures for the previous half-year) for the half-years ended 30 June and 31 December 1856 and 1857.
- 53 *Ibid.* These statistics have been compiled from tables showing mileage achieved, which are included in the printed reports of the company.
- 54 *Ibid.* Half-yearly report for the period ended 31 December 1857.
- 55 *Ibid.*
- 56 *Times*, 28 February 1850, half-year ended 31 December 1849.
- 57 *The Times* reports the results on a variety of bases: for example, *Times*, 1 September 1851, reports for the half-year to 30 June 1851 a combined profit from the railway and canal companies as £20,234; in *Times*, 1 March 1852, for the half-year to 31 December 1851, the profits are shown separately as £7,072 railway profits and £9,671 canal profits. The profits for 1852 are declared as, for the half-year to 30 June 1852, £10,284 railway profits, £8,314 canal profits (*Times*, 23 February, 1852).
- 58 PRO IR40/804, correspondence, Chadwick to Keogh, 26 October 1857.
- 59 *Chester Chronicle*, 12 August 1854; S. Matthews, 'A Chester scandal of 1854: a study in administrative failure', [2000] *British Tax Review*, pp. 154–68, at p. 160.
- 60 5 and 6 Vict., c. 35, s. 87.
- 61 Hansard, *H.C. Debs.*, 3rd. ser., 170, col. 1547, 11 May 1863.
- 62 In particular *Tenth Report of the Commissioners of Inland Revenue*, P.P. (1866) XXVI, pp. 131, 167, 173.
- 63 This awareness began, more or less, with the enquiry of Edward Welsh, Surveyor of Taxes for the City of London, into the compensation claims made by traders following the improvement of Cannon Street (*Report of the Select Committee on Income Tax*, P.P., 1861, VI, q. 2174) and from the claims following the abolition of offices under the Court of Probate Act and the Matrimonial Clauses Act of 1857 (Hansard, *H.C. Debs.*, 3rd ser., 157, col. 1203); see also *Eighth Report of the Commissioners of Inland Revenue*, P.P. (1864) XXX, p. 423, *re* compensation claims upon public companies. The evasion of income tax was the subject matter of the writer's (unpublished) PhD thesis, 'The Clown's Mistress. Income Tax Evasion: Ideal and Reality in mid-Victorian Britain', University of Wales (Aberystwyth, 1998).
- 64 *Spectator*, 22 September 1855; P.P. (1854) XXXIX, p. 463, at p. 464. Fifty-nine additional staff had been appointed as a consequence of the Act of 1853.
- 65 Minutes of evidence taken before the Hume Committee, P.P. (1852) IX, qq. 1517–19.
- 66 48 Geo. III, c. 141; 50 Geo. III, c. 105.
- 67 In Gloucester, for example, between 700 and 800 businessmen complained that the new Surveyor had 'commenced his career by a reckless and unscrupulous surcharge upon all classes' and on appeal had influenced the General Commissioners to issue precepts for particulars 'more detailed than any previously demanded'. (*Liverpool Daily Post*, 26 November 1856.)
- 68 PRO IR40/804, correspondence, Chadwick to Keogh, 24 November 1857.
- 69 *Ibid.*
- 70 Cocks, *Victorian Barristers*, p. 462.
- 71 William Columban M'Kenna, b. 1819, son of Michael M'Kenna of Dublin (and brother of Joseph Neale M'Kenna of Youghal, barrister and MP, knighted in 1867). (C. E. Swezey, *The Mackennas of Truagh*, 1993, p. 98.) Appointed supernumerary Surveyor of Taxes,

- 1845 (P.P., 1845, XXVIII, p. 406), Surveyor of Taxes in Kings Lynn, Norfolk, in 1848/49 (P.P., 1852, IX, p. 907; National Register of Births), at Bristol in 1852/53 (*Scammell & Co's City of Bristol and South Wales Directory 1852*, p. 167; National Register of Births), at Stoke upon Trent in 1857 (P.P., 1857, Sess. I, VIII, p. 77). (S. McKenna, *Reginald McKenna, 1863–1943: a memoir*, 1948, pp. 27–8, 36–7.) His grandfather had lived for some years in Philadelphia. Having renounced Catholicism, his creed was that individuals should be free to work out their own salvation, to shape their own destiny and 'preeminently, not to remain in any station to which it might please God to call them'. He was later to discover a mission to fight for the Bulgarian victims of Turkish atrocities and to raise a fighting fund for Charles Bradlaugh against the tyranny of oaths imposed on avowed atheists.
- 72 PRO IR40/804, correspondence, M'Kenna to Keogh, 14 June 1859.
- 73 *Ibid.*, 14 June 1859.
- 74 *Ibid.*, 17 September 1859.
- 75 50 Geo. III, c. 105, r. 2.
- 76 43 Geo. III, c. 99, s. 63; 5 and 6 Vict., c. 35, s. 55; 31 Eliz., c. 5, s. 5; W. S. Holdsworth, *A History of English Law IV* (1938), pp. 356–7, 525; Attorney General *v.* Bradburn (1859), PRO IR40/799, correspondence, Timm and Messrs Tyndall Son & Johnson, 13 May 1859.
- 77 W. L. Burn, *The Age of Equipoise: a study of the mid-Victorian generation* (1964), p. 224.
- 78 C. Emsley, *Crime and Society in England, 1750–1900* (1987).
- 79 *Ibid.*, p. 7.
- 80 Ideally, prosecution was to be initiated before the General Commissioners, who could impose a penalty of treble duty, but the period of limitation here was only twelve months from the expiry of the notice period of the tax return or the date of signing the return, if earlier (5 and 6 Vict., c. 35, s. 55; Attorney General *v.* Perry, 1858, PRO IR40/799); in any event, there was a pervasive and 'almost invincible repugnance' on the part of the General Commissioners to the treble duty penalty except in cases of fraud (*Thirteenth Report of the Commissioners of Inland Revenue*, P.P., 1870, XX, pp. 193, 337, regarding 5 and 6 Vict., c. 35, ss. 127, 162).
- 81 See, for example, the case of Attorney General *v.* Spittle (1859), PRO IR40/799.
- 82 J. H. Langbein, 'Albion's fatal flaw', *Past and Present* 98 (1983), pp. 96–120, at p. 120, in respect of the law generally and persons of standing 'in this stratified society'.
- 83 PRO IR40/804, correspondence, Thirl to M'Kenna, 16 September 1859.
- 84 5 and 6 Vict., c. 35, s. 120.
- 85 For the Surveyor as government spy and his covert surveillance of the public see the writer's article 'Mid-Victorian employees and the taxman: a study in information gathering by the State in 1860', (2001) 21 *Oxford Journal of Legal Studies*, pp. 593–608.
- 86 Allen *v.* Sharp (1848), 2.
- 87 C. Dandeker, *Surveillance, Power and Modernity: bureaucracy and discipline from 1700 to the present day* (1990), pp. 37–8; A. Giddens, *A Contemporary Critique of Historical Materialism*, I *Power, Property and the State* (1981), II *The Nation State and Violence* (1985).
- 88 F. Driver, *Power and Pauperism: the workhouse system, 1834–1884* (Cambridge, 1993), p. 9.
- 89 Dandeker, *Surveillance*, p. 38.
- 90 Driver, *Power and Pauperism*, p. 9.
- 91 23 Vict., c. 14.
- 92 *Ibid.*, ss. 5, 6.
- 93 7 and 8 Vict., c. 85.
- 94 PRO IR40/949, 23 March 1862.
- 95 *Ibid.*, pencil note, 2 July 1860; correspondence, Leith to Special Commissioners, 9 June 1860; correspondence, Leith to Sargent, 17 April 1861.
- 96 *Ibid.*, 11 July 1860; swearing note, 5 July 1860.
- 97 PRO IR/74/232. For example, T. M. Jeans, Surveyor at Chippenham, having increased the assessment of Messrs C. Harries & Co., of Calne, from £6,000 to £10,934 and recovered duty of £536, was awarded £100 with the order 'to acquaint the Surveyor that the Board are well pleased with the vigilance and judgement evinced by him on this occasion' (*ibid.*, 1875/76, fol. 17) and within two years he had been transferred to Somerset House (*ibid.*, 1877/78, fol. 145). See the writer's article 'The Arabian bird: a study of income tax evasion in mid-Victorian Britain', [2001] *British Tax Review*, p. 207–21.

- 98 Henzell Collection, No.158, 4 May 1860, Chester Record Office, D6148.
- 99 PRO IR40/949, correspondence, Leith to Special Commissioners, 19 February, 17 April 1861.
- 100 P.P. (1871) XXXVII, pp. 235, 242, commentary by F. B. Garnett, Assistant Secretary to the Board of Inland Revenue.
- 101 *Eighth Report of the Commissioners of Inland Revenue*, P.P. (1864) XXX, pp. 423, 449.
- 102 R. P. Brief, 'Nineteenth-century accounting error', *Journal of Accounting Research* 3, 1 (1965), pp. 12–31, at pp. 16–17.
- 103 5 and 6 Vict., c. 35, ss. 130, 131.
- 104 Hume Committee evidence, qq. 1276–8, 1272–5, 1280, 1282–3, 1285.
- 105 *Eighth Report of the Commissioners of Inland Revenue*, p. 449.
- 106 *Ibid.*
- 107 *Report of the Royal Commission on Railways*, P.P. (1867) XXXVIII, Part I, para. 45, p. 35; see also the evidence of S. Teulon, former director of the South Eastern Railway, q. 16491.
- 108 10 and 11 Vict., c. 15.
- 109 S. Marriner, 'Company financial statements as source material for business historians', *Business History*, 22 (1980), pp. 203–35.
- 110 Daunton, *Trusting Leviathan*, p. 203.
- 111 30 and 31 Vict., c. 127. The shareholding qualification had been imposed by 8 and 9 Vict., c. 16.
- 112 B. Worthington, *Professional Accountants* (1895), p. 47.
- 113 Daunton, *Trusting Leviathan*, p. 201.
- 114 Driver, *Power and Pauperism*, p. 9.
- 115 There are interesting parallels in the shift from one paradigm to another, and the changes in professional commitment, in T. S. Kuhn, *The Structure of Scientific Revolutions* (1962), in particular the introduction, 'A role for history'. See also R. W. Ireland, 'An increasing mass of heathens in the bosom of a Christian land: the railway and crime in the nineteenth century', *Continuity and Change*, 12, 1 (1997), pp. 55–78, at p. 70.

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