

An Effective Model of Institutional Taxation: Lunatic Asylums in Nineteenth Century England¹

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ABSTRACT

The compulsory establishment of large public lunatic asylums under Act of Parliament in the nineteenth century to address the enormous increase in the number of the insane raised legal and practical challenges in relation to their status within the law of tax. As a result of their therapeutic and custodial objectives, these novel institutions required extensive landed property and very specific systems of governance, the fiscal consequences of which potentially undermined those very objectives. This article examines and analyses the nature and legal process of the application of the tax regime to these asylums, concluding that it constituted a rare and effective model of institutional taxation.

INTRODUCTION

One of the most striking aspects of the social and medical history of the nineteenth century was the rapid and increasing establishment of institutions for the care of the mentally ill. Private and charitable bodies for the care or confinement of lunatics, to use the contemporary legal, official and popular nomenclature,² were already in existence, but the adoption of large scale institutionalisation in the public sphere as the most effective regime was a feature of the second half of the nineteenth century. Government policy favoured the state's intervention to address the perceived

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² Legally, lunatics were those individuals who had become insane, but whose insanity was possibly temporary and for whom there was the possibility of recovery: Anthony Highmore, *A Treatise on the Law of Idiocy and Lunacy*, London, 1807, repr. New York, 1979, 1-14. The term 'lunatic asylum' was replaced by 'mental hospital' by the Mental Treatment Act 1930.

growing problem of lunacy and promoted care and control in specialist statutory lunatic asylums financed out of the public funds. These new bodies, entirely novel both in their quasi-public nature and in the scale of their operations, had, like any new social institution, to establish their place and status in the national tax regime.

Government policy for the institutionalised care of the insane resulted in public lunatic asylums having very specific and non-economic requirements, formed by contemporary managerial and medical imperatives, and unequivocally based in the ownership, management and occupation of property. However, the fiscal landscape in the mid nineteenth century was still dominated by the taxation of land, as the relative ease of assessing real property continued to make it the primary object of taxation. The land tax was charged on the annual value of land and levied on counties and districts according to a fixed quota, though in many cases it had been redeemed;³ the assessed taxes were charged on a number of items⁴ including a progressive and comprehensive charge on every dwelling house and its associated buildings according to the number of windows,⁵ a charge which was replaced by an inhabited house duty in 1851 with the annual value substituted as the basis of charge.⁶ From 1842 occupiers had to pay income tax under Schedule A on 'lands, tenements, hereditaments, or heritages' capable of actual occupation according to their annual value⁷ and under Schedule B the same property was to be subject to tax on its occupation.⁸ And finally occupiers of premises had to pay the poor rate.⁹ In accordance with the nineteenth century norms of fiscal policy, the contemporary tax

³ The Royal Devon and Exeter Hospital, for example, redeemed its land tax in 1799: Delpratt Harris, *The Royal Devon and Exeter Hospital*, Exeter, 1922, 74.

⁴ The principal Act, consolidating earlier assessed taxes legislation, was 48 Geo. III c.55 (1808). Schedule A imposed a charge on windows and lights, and Schedule B on inhabited houses. The other items of charge were male servants (Schedule C), carriages (Schedule D), horses (Schedules E and F), dogs (Schedule G), horse dealers (Schedule H), hair powder, armorial bearings (Schedules I and K).

⁵ Houses with not more than six windows were charged 6s 6d, and houses with 180 windows were charged £93 2s 6d. Each window above 180 was charged 3s.

⁶ 14 & 15 Vict. c.36, preamble; s. 1. The window tax was thereby repealed.

⁷ 5 & 6 Vict. c.35 s.60 Rule 1 and s.68 Rule 9; 16 & 17 Vict. c. 34 (1853).

⁸ *Ibid.*, s.113.

⁹ 43 Eliz c.2.

system had as its principal objective the raising of revenue or, at most, the regulation of economic policy, rather than to effect any kind of social policy.¹⁰ Tax legislation was drafted solely with revenue raising objectives, and non fiscal considerations had no place in its interpretation or administration. Within such a fiscal framework, asylums faced a major legal challenge: to ensure that the achievement of their medical and social objectives was not undermined by excessive, burdensome or inappropriate taxation of the land they necessarily employed.

The challenge of the necessary incorporation of the new public asylums into the fiscal framework is explored through the examination of a number of issues. It considers the extent to which the legal regime met the requirements of the institutions themselves: whether the fiscal model applicable to asylums was sufficiently flexible to take cognisance of the asylums' needs so as to enable them to avail themselves of exemptions or allowances to relieve their tax burden, and if any relieving provisions were sufficiently clear to those institutions that sought to benefit from them. It also examines whether the asylums articulated their special needs so as to provoke a response from the central fiscal authorities and the judiciary and establish themselves as recipients of extraordinary treatment in tax law. And finally it investigates whether the increased centralised promotion of institutions for the care of the mentally ill was reflected in a corresponding recognition of their particular needs by the tax authorities, both central and local.

Having assessed the nature of the fiscal model applicable to asylums, the paper has two specific aims. First, to establish whether the model was deliberately and consciously conceived in order to achieve predetermined policy outcomes through the tax code, or, at the other extreme, whether it was the result of a straightforward fiscal imperative which was blind to the subject matter of its charge. And secondly, whether the legal model of taxation applicable to the new public asylums of the nineteenth century was an effective one. An effective model was a balanced model: one which brought into charge those items of property legitimately subjected to tax by the fisc, and yet equally recognised the special practical requirements of the new political and social constructs of institutionalised care of the insane so as to further a clear and overt social policy of contemporary governments whose direction was understood by the politicians and public of the nineteenth

¹⁰ Joseph A. Schumpeter, *History of Economic Analysis*, (ed. Elizabeth Boody Schumpeter), London, 1954, p.402.

century. The paper ascertains whether, if such a balance was achieved, it was in a context of confrontation or compromise, intransigence or understanding.

THE CARE OF THE INSANE

The nineteenth century saw a growth in mental health affliction in the general populace due to an increasing life expectancy, and the environmental and social problems associated with the Industrial Revolution. As the state became involved in the regulation of mental illness, there was a significant increase in the number of individuals officially recognised as insane. In 1845 the number stood at 25,000, a figure which rose to 77,000 in 1883 and nearly 124,000 in 1907.¹¹ Philanthropic, humanitarian and public order motives combined to ensure the problem of insanity and the appalling conditions in which some patients were kept were addressed. Private and charitable institutions for the care of the insane had existed since the medieval period and had increased in number in the eighteenth century, but the nineteenth century saw the introduction of the statutory public asylum. These were asylums created under general public Acts to cater for pauper lunatics in the counties and were financed out of the county rate and sometimes by voluntary donations as well. They were first established by legislation in 1808¹² whereby the Justices of the Peace at Quarter Sessions were permitted to authorise the building of a lunatic asylum in their county, and the Lunacy Act 1845, 'the Magna Charta of the insane poor',¹³ made their establishment compulsory. By 1880 there were sixty statutory, or county, asylums in England covering the whole country and several in urban concentrations, and as late as 1899 at least sixteen were being planned.¹⁴ In

¹¹ Report of the Royal Commission on the Care and Control of the Feeble-Minded, *House of Commons Parliamentary Papers* 1908 (4202) xxix 159.

¹² 48 Geo. III, c.96 .

¹³ C. Lockhart Robertson, 'Lunacy in England', 7 *Journal of Psychological Medicine and Mental Pathology* (1880), 6.

¹⁴ Minutes of Evidence before the Royal Commission on Local Taxation, *House of Commons Parliamentary Papers* 1900 (201) xxxvi 329, q. 22,618. The Metropolitan Asylums Board, created in 1867, administered lunatic asylums in London.

1907 there were ninety-one.¹⁵ The returns for 1898 show they cared for some 67,759 pauper lunatics.¹⁶ Notable among these institutions were the two Middlesex asylums, namely the famous and pioneering Hanwell asylum and the large establishment at Colney Hatch. A small proportion of pauper lunatics and many lunatics with some private means were cared for in charitable hospitals which were registered institutions created by endowment, voluntary donation and subscriptions for the public benefit and admitting patients of all classes and means. Among the most prominent were the ancient Bethlem Hospital, St Luke's Hospital, the York Lunatic Hospital, the Friends' Retreat at York, the Coppice in Nottingham, Coton Hill in Stafford and Barnwood House in Gloucester. Private patients were also cared for in private licensed establishments, and finally the remainder were 'single lunatics', often wealthy, treated by their family or friends in private homes.¹⁷

The nature of the care of the insane in the nineteenth century was formed by contemporary opinions as to the nature of insanity and the dynamics of the complex social, religious and moral ideologies of the Victorian age.¹⁸ The issue had two facets: the needs of the individuals affected by mental illness, and the demands of public order and social coherence. The original perception of the insane as incapable of reason and accordingly a threat to public order encouraged the custodial character of asylums. A pervasive theme of the development of the care of the mentally ill was the interaction between this custodial nature and a growing awareness and enlightenment in relation to insanity as an illness which could respond to therapeutic attention. Indeed, the founders of the St Thomas' Hospital for Lunatics in Exeter 'regarded it as an hospital for the cure of insanity, rather than an asylum for the mere

¹⁵ 61st Report of the Commissioners in Lunacy, *House of Commons Parliamentary Papers* 1907 (225) xxx 1, 48.

¹⁶ Minutes of Evidence before the Royal Commission on Local Taxation, *House of Commons Parliamentary Papers* 1900 (201) xxxvi 329, 618. See the figures for 1880 in Lockhart Robertson, 'Lunacy in England', 1-4.

¹⁷ See generally Joan Lane, *A Social History of Medicine*, London, 2001, 96-113.

¹⁸ See generally Andrew T. Scull, *Museums of Madness*, London, 1979; Leonard D. Smith, *Cure, Comfort and Safe Custody*, London and New York, 1999; Leonard Smith, *Lunatic Hospitals in Georgian England 1750-1830*, New York and London, 2007; William Ll. Parry-Jones, *The Trade in Lunacy*, London, 1971; D.J. Mellett, *The Prerogative of Asylums*, New York and London, 1982.

retention of lunatics'.¹⁹ The tension between the therapeutic functions of lunatic asylums and their custodial functions has been the subject of considerable discussion among medical historians, and the changing emphases on cure or constraint have been identified both thematically and in relation to individual asylums.²⁰

The two principal objectives of lunatic asylums, namely the treatment of insanity as a disease and the confinement of patients in the interests of public safety, were reflected in the location, design and governance of asylums. The public asylums were huge self-contained establishments, many admitting between 500 and 1000 patients at any one time.²¹ This required extensive accommodation for the residence of the patients, in terms of dormitories and day rooms. It also required the necessary facilities for the care of such a large community. Facilities for cooking and washing, for the conducting of the asylum's formal affairs such as board meetings, for the reception of visitors and the examination of patients all had to be provided. Workshops, farm buildings, gas works, offices and facilities for religious worship²² were all common features of these large establishments. Furthermore, the medical superintendent, steward, matron, attendants and servants lived in the asylum itself, while the head gardener and porters often lived in lodges on the estate.

In accordance with current views on the treatment of mental illness, most asylums were located away from major conurbations in order to promote their therapeutic purposes. They were situated in rural settings to ensure the peace, tranquillity and pastoral views that were regarded as essential in the treatment of insanity. To promote this, the new asylums of the Victorian period adopted the country house model, whereby features such as parks, lawns, small farms, gardens, pleasure grounds and lodges were adopted in the asylum design.²³ Asylums owned land for the provision of 'airings', areas where the patients could benefit from

¹⁹ *Statutes and Constitution of the St Thomas' Hospital for Lunatics*, 5th ed., Exeter, 1845, 4.

²⁰ See for example Anne Digby, 'Changes in the Asylum: The Case of York, 1777-1815', 36 *Economic History Review* NS (1983), 218-239 and the authorities there cited.

²¹ The Hanwell asylum, for example, had 500 patients when it opened in 1831 and sixty years later it had more than three times that number.

²² See for example the Cambridgeshire, Isle of Ely and Borough of Cambridge pauper lunatic asylum described in *The Queen v The Overseers of Fulbourn* (1865) 6 B & S 451 at 453.

²³ See Sarah Rutherford, 'Landscapers for the Mind: English Asylum Designers, 1845-1914', 33 *Garden History* (2005), 61-86.

regular exercise and recreation. Some were gardens and some covered spaces. Land was also acquired for the cultivation of fruit and vegetables to provide fresh produce for the use of the asylum and a source of income by the sale of any surplus. The North and East Ridings of Yorkshire asylum cultivated nearly ninety acres of productive and valuable land, supplying the asylum with milk, butter, vegetables and meat fattened in its own farm, as well as making a 'considerable profit' from supplying the market at York with fresh vegetables and fruit.²⁴ More importantly, however, it provided an opportunity for the patients to undertake constructive work in the open air, for orthodox medical opinion regarded gardening and farming as having powerful curative properties.²⁵ The provision of such outdoor work was recognised judicially, with Cockburn CJ observing in 1865 that the practice was a matter of common knowledge.²⁶ Furthermore the Lunacy Acts Amendment Act 1862 empowered statutory asylums to lease any lands or buildings for the occupation or employment of the patients.²⁷ Almost without exception, the annual reports of the asylums describe their efforts to ensure their patients could work in the open air both for its therapeutic benefits and the financial contribution to the asylum.²⁸ All these facilities were required by the Commissioners in Lunacy in their rules for the selection of a site for lunatic asylums, and in their Report for 1847, they fixed the minimum quantity of land which it was desirable that every county lunatic asylum should have, at the rate of one acre to every ten patients.²⁹ The Cambridgeshire, Isle

²⁴ This was described in the annual report of the Devon County Lunatic Asylum's medical superintendent, as he made a case for purchasing more land: *Report of the Committee of Visitors and Medical Superintendent of the Devon County Lunatic Asylum 1854*, Exeter, 1854, 14. He was successful, and in the following year the asylum purchased a further twenty-five acres, to make a total landholding of forty-nine acres.

²⁵ See John Conolly, *The Construction and Government of Lunatic Asylums*, first published London, 1847, repr. with introduction by Richard Hunter and Ida Macalpine, London, 1968, 49-54, 79.

²⁶ *The Queen v The Overseers of Fulbourn* (1865) 6 B & S 451 at 463 per Cockburn CJ.

²⁷ 25 & 26 Vict. c.111 s.11.

²⁸ See for example the *Report of the Directors of the Montrose Lunatic Asylum for 1846*, Montrose, 1846, 14, 16.

²⁹ Further Report of the Commissioners in Lunacy to the Lord Chancellor, *House of Commons Parliamentary Papers 1847-8* (858) xxxii 371, Appx E.

of Ely and Borough of Cambridge lunatic asylum, for example comprised just under sixty acres, including a thirty acre farm and twenty acres of garden.³⁰ And as the numbers of the mentally ill continued to grow, so asylums were constantly seeking to expand.

The constant availability of medical attention was regarded as essential to the management and cure of insanity, and accordingly at least a proportion of the medical officers and the attendants, known as keepers, were required to be resident. The rules of charitable asylums generally required the medical superintendent be resident in the asylum, and those of the statutory lunatic asylums invariably did so.³¹ Asylums therefore provided dedicated staff accommodation. The official returns³² show that private apartments or rooms in hospitals and asylums were provided for various kinds of officers and servants, namely the governor or medical superintendent, other medical officers, doctors, surgeons, the matron, porters, nurses, cooks and general servants. For example, the Devon county asylum provided residential accommodation for over fifty staff,³³ and the Chester county asylum built a new residence for its medical superintendent, comprising a detached house with a kitchen, scullery, laundry, cellar, library, dining room, drawing room, four bedrooms, a dressing room, two servants' bedrooms, store rooms and the usual domestic offices as well as a kitchen and flower garden.³⁴ The occupation formed part of his emoluments.³⁵

Despite the gradual recognition that insanity was a medical condition to be treated appropriately, and the rejection of a dominant custodial ethos, the latter was necessarily retained to some degree. It was essential that patients who were dangerously and violently insane and were potentially a threat to society should be restrained both for their own good and for the public safety. Many of the features directed to the medical treatment of the patients equally served the custodial

³⁰ *The Queen v The Overseers of Fulbourn* (1865) 6 B & S 451 at 453.

³¹ 16 & 17 Vict. c.97 s.55 (1853).

³² Returns of window duty charged on hospitals in England in 1840, *House of Commons Parliamentary Papers* 1841, sess. 1 (198) xiii, 609.

³³ *Report of the Committee of Visitors and Medical Superintendent of the Devon County Lunatic Asylum for 1861*, Exeter, 1861, 17.

³⁴ *Congreve v The Overseers of Upton* (1864) 4 B & S 857 at 862.

³⁵ *Ibid.*, 863.

function. An isolated rural location, well away from towns and cities, and rendered secure by surrounding enclosures, was regarded as essential for the safety of the public at large. The required residence of the medical superintendent, staff and keepers was as much for the purposes of control and security as for the care of the patients. Similarly, facilities for the restraint of violent patients had to be provided, and individual cells were present in addition to the normal wards. Thus although the new public asylums eschewed the old austere prison architecture of the previous century and, indeed were modelled in external appearance on grand and comfortable country houses, they were, nevertheless, at least partly designed with a custodial objective.

THE CHARGE TO TAX

Under the scheme of fiscal legislation, at the core of which were the land tax, the assessed taxes, the income tax and the poor rate, lunatic asylums were prima facie liable to the full range of taxes on their property and accordingly vulnerable to a heavy tax burden. The size and opulence of their principal buildings gave rise to a potentially high assessment to the window tax and the asylums were undoubtedly inhabited houses and within the general provision; the traditional conglomeration of buildings comprising an asylum estate and the residential requirements of the staff, as well as the echelon plan of asylum design, whereby the wards, offices and other accommodation were arranged so as to be connected with each other by corridors, had implications for the window and house duties, since it made the distinction between different elements of the asylum unclear and problematic in terms of claiming exemptions; while the occupation of all these buildings and land would suggest a clear liability to income tax and the local rates.

The economic context of the management of public lunatic asylums was challenging,³⁶ and it is clear that the asylums needed to clarify their place within the tax regime. Whether their tax treatment was favourable to their objectives or not was dictated by the nature of the statutory provisions, their interpretation by the judges and their application by the taxing authorities. Negotiation, informal lobbying by the institutions themselves, and above all formal confrontation in the courts would reveal whether the legislative provisions were inherently either supportive of or undermining of the asylums' objectives. This activity took place in the context of the fiscal, administrative and political imperatives of the tax authorities and the established principles of judicial interpretation of the legislative provisions. The negotiation of private arrangements was only possible in relation to local rates and not central taxation,³⁷ and informal lobbying was relatively undeveloped. The medical community followed tax issues closely and its professional organs publicised relevant tax rulings and engaged in close discussion of them.³⁸ The same degree of collective action in relation to tax liability that was found in the general medical profession was not seen within the nascent specialist profession of mental health care in the nineteenth century. Despite the senior staff of lunatic asylums being a small and highly specialised group regularly moving between asylums, there was little informal united action in tax matters. The profession's engagement with itself, with the wider public and with government departments concentrated almost exclusively on theories of medical care of the insane, the substance of official regulation and, increasingly, the organisation and efficiency of the asylum

³⁶ See Smith, *Cure, Comfort and Safe Custody*, 73-78; Leonard D. Smith, 'The County Asylum in the Mixed Economy of Care, 1808-1845' in Joseph Melling and Bill Forsythe eds., *Insanity, Institutions and Society, 1800-1914*, London and New York, 1999, 33-47.

³⁷ It has been shown that the Salop Infirmary, for example, avoided parochial rates by conferring on the churchwardens the right to nominate two in-patients a year: W.B. Howie, 'Finance and Supply in an Eighteenth Century Hospital 1747-1830', *7 Medical History* (1963), 126-46 at 140.

³⁸ For example, in relation to the window tax, see 'Window-Tax on Hospitals', *The Lancet*, 27 Feb. 1841, 796-797 (vol.35). See too *ibid.*, 14 August 1841, 735 (vol.36); *ibid.*, 10 Sept. 1842, 822-824 (vol. 38); *Association Medical Journal* 6 May 1853, 406-7.

establishment as such.³⁹ The Lunacy Commissioners were a potential uniting force, but the energies and attention of this formal bureaucratic organ were fully occupied in developing and carrying out effective procedures to ensure the official overview and regulation of the care of the insane.

The lunatic asylums made full use of the formal appeals permitted by law in order to test the limits of the legal charge to tax. The law permitted appeals to the appropriate local body of tax commissioners, namely those for the land tax, the assessed taxes, and the income tax. And though in the case of the land tax no further appeal was allowed, in the case of the assessed taxes appeals were allowed to the regular courts of law. If the parties regarded the decision of the local commissioners as 'contrary to the true intent and meaning' of the Act, an appeal lay to one of the judges of the Courts of King's Bench, Common Pleas or Exchequer by way of case stated.⁴⁰ Similar appeals, by then to the Exchequer Division of the High Court, were permitted in relation to the income tax only after 1874.⁴¹ The legal process for challenging the poor rate was somewhat different, appeal lying to the Justices of the Peace in Quarter Session and then to the regular courts of law. The evidence shows that asylums were litigious in tax matters, and appealed against tax assessments to a greater degree than other public institutions of a similar nature. They regularly appealed to the local commissioners, and since the taxes were all legislatively and fiscally closely-related, though not identical, they frequently appealed against more than one tax assessment at a time: it was common for individual appeals to comprise challenges to the window tax, the inhabited house duty and Schedule A income tax. Legal advice and representation, even where permitted, were rarely regarded as either appropriate or necessary in appearances before the local commissioners hearing appeals against tax assessments, but both were indispensable, and extremely costly, if an appeal were to be taken to the regular courts of law. Nevertheless, the evidence shows that where the asylums perceived a charge to tax to be excessive, unjust within the legislation, or unjust in practice in that it undermined their essential purposes, they appealed not only at the local level to district tax

³⁹ Akihito Suzuki, 'The Politics and Ideology of Non-Restraint: the Case of the Hanwell Asylum' 39 *Medical History* (1995), 1-17 at 17.

⁴⁰ 43 Geo. III c.161, s.73 (1803).

⁴¹ 37 Vict. c.16 ss. 8-10. In 1878 a further appeal to the Court of Appeal and then the House of Lords was given: 41 & 42 Vict. c. 15 s. 15.

commissioners against the direct taxes and to the Justices of the Peace against the poor rate, but were prepared to take their case to the regular courts of law, with all the expense and uncertainty that entailed. They consulted the central tax authorities directly⁴² and bore the expense of seeking counsel's opinion.

Lunatic asylums had only two possible means of formally challenging the incidence of taxation: either they could show that they were outside the charge entirely, or they could show that they were within the terms of an exemption.

DENYING THE CHARGE

An evident prerequisite to liability was to come within the charge to tax itself, and exceptionally an asylum could prove that it did not come within the charge as laid down in the legislation. Asylums were not here arguing that they were exempted from the charge, but that they were outside it. This was possible where liability to tax depended on occupation, and occupation of a particular nature, namely in the case of the poor rate, the income tax under Schedule A,⁴³ the inhabited house duty and, in certain circumstances,⁴⁴ the window tax. It was undoubtedly problematic to decide, in the case of an institution such as a lunatic asylum, who the occupier was for the purposes of both local and national taxation.

Asylums could, and did, claim that their establishments were not occupied within the meaning of the charging legislation, or that there was no one who could be identified as the occupier. In the case of the poor rate, the Poor Relief Act laid down that the person to be rated was the occupier,⁴⁵ and inherent in that term was the notion of a beneficial occupation, namely an occupation of value.⁴⁶ Originally it

⁴² See for example *Case 2437, County of Hants, Division of Fareham* (1856) Assessed Taxes Cases, The National Archives (TNA) IR 12/3 where the surveyor wrote to the Board as to an asylum's liability to inhabited house duty.

⁴³ 5 & 6 Vict. c.35 s.60, Schedule A rule 1.

⁴⁴ In relation to officers' residences within the exception to the exemption: see below.

⁴⁵ 43 Eliz. c.2 s.1.

⁴⁶ *Mersey Docks and Harbour Board v Cameron* (1865) 11 HLC 443 at 462 *per* Blackburn J; at 483-484 *per* Byles J; at 507 *per* Lord Cranworth. Under the Parochial Assessments Act 1836 s.1 (6 & 7 Will. IV c.96), annual value for rating was determined by reference to a hypothetical

was thought that this meant an occupation from which the occupier derived a pecuniary profit or some personal benefit. It could be argued that in an establishment such as a lunatic asylum, occupied for charitable purposes for the benefit of the public, there was no such occupier at all, and that as there was no one to be rated, the rate would be quashed. The case law on the meaning of occupier for the purposes of rating drew fine distinctions, and the area was notoriously complex. In 1760 the occupiers of St Luke's Hospital, Middlesex, a charitable lunatic asylum, challenged a rate made on them by that name. Lord Mansfield CJ observed that the only possible occupiers were the lessees, the servants or the lunatics themselves and concluded that none could properly be rated: the lessees were mere nominal trustees, 'mere instruments of the conveyance';⁴⁷ the steward was simply a servant, and he had no separate distinct apartment in the asylum which could be considered his dwelling house and rated accordingly; and it would simply be 'too gross' to rate the 'poor miserable wretches who are the unhappy objects of this charity'.⁴⁸ With no person who could properly be rated, no rate could be made. The decision reflected the accepted doctrine that where an establishment was occupied entirely for public charitable purposes, and no profit was made from that occupation, it had no rateable occupier. There was no beneficial occupier except the public, and so no rate. This was followed in the case of the Bethlem Hospital, where an institution which admitted indigent and criminal lunatics, paid for by charitable funds and the families of the patients, and the government, respectively, was held not rateable.⁴⁹ The Corporation of London, as governors of the hospital, occupied for public purposes only.

Where the charity was of a private nature, however, it was liable to be rated. The charitable lunatic asylum in York lost its appeal against an assessment to the poor rate in 1832 on this point, for though it was established by voluntary contributions for the care of pauper lunatics, it was partly funded by admitting a

tenancy, namely the rent at which the hereditament might reasonably be expected to be let from year to year.

⁴⁷ *R v Occupiers of St Luke's Hospital* (1760) 2 Burr 1053 at 1064. In 1750 the City of London had demised land to five lessees in order to build a hospital for lunatics. The lease would become void if the land were applied to other purposes. Their interest in the premises was accordingly limited to this special purpose.

⁴⁸ *Ibid.*

⁴⁹ *R v St George, Southwark, Case of Bethlem Hospital* (1847) 10 QB 852.

small number of wealthier patients who paid fees and the asylum thereby made a profit. Though no individual derived any kind of personal benefit or profit from the establishment and all the funds were applied to the charitable purposes,⁵⁰ a profit was nevertheless made, and this constituted occupation for the purposes of rating. As Lord Mansfield had in the *St Luke's Hospital* case, Lord Tenterden CJ looked to identify the occupier to rate: the servants were not occupiers, neither were 'the unhappy lunatics', but the trustees, as the legal owners in receipt of the profits, were the proper persons to rate.⁵¹

Though largely accepted, the law was far from clear. Its application was inconsistent and its basis uncertain. The meaning of beneficial ownership for the purposes of the poor rate was not settled, and the absence of chargeable occupation by charitable bodies had become confused with principles of exemption, notably that of Crown occupation. While some asylums were held to fall outside the charge, others were clearly held liable to pay.⁵² By the mid nineteenth century this accepted doctrine was questioned, both on principle and because of the totally irreconcilable nature of the decisions establishing it. The seminal case of *Mersey Docks* in 1865⁵³ settled the law on the liability to the poor rate for public institutions, partly by confirming a wide meaning of beneficial occupation and thereby ensuring that the charge could not be denied on those grounds.

But it was in relation to the major question of asylum officers' residences that a charge to tax could be denied by maintaining an absence of occupation within the meaning of the taxing legislation. This was a fiscal issue of considerable practical importance to the asylums in the nineteenth century and a fruitful cause of litigation, primarily because it was a major expression of the governance policy of such institutions. The residence of key officers was regarded as essential for the effective management of an asylum and the rules of individual institutions almost invariably provided for the compulsory residence of its principal officers.⁵⁴ Whether these residences were chargeable to tax and rates was a question of some moment. Although asylums were advised that it would be 'prudent' for them to pay the duty

⁵⁰ *R v Inhabitants of St Giles, York* (1832) 3 B & Ad 573 at 576-7.

⁵¹ *Ibid.*, at 579.

⁵² See the complaints of the Warneford Hospital in *Jackson's Oxford Journal* 27 February 1847.

⁵³ *The Mersey Docks and Harbour Board Trustees v Cameron* (1865) 11 HLC 443.

⁵⁴ See for example, *Statutes of St Thomas' Hospital for Lunatics*, 24; 16 & 17 Vict. c.97 s.55.

on their officers' apartments,⁵⁵ they were aware that while their officers used the premises as a residence, this did not automatically give rise to a liability in respect of them. Neither the poor rate nor the inhabited house duty imposed a charge expressly on officers' residences, but liability depended on some kind of individual occupation of distinct premises. The window tax and the income tax under Schedule A both, in effect, imposed an express charge on officers' residences that could rarely be denied.⁵⁶ But in those cases too, occupation as an officer of distinct apartments was necessary. So if officers could argue that they did not occupy their residence as an individual but did so for the purposes of the asylum, or if they could argue that they did not occupy distinct apartments within the asylum, they would be found to be outside the charge. The residences would then be charged as part of the asylum itself. Whether they occupied a distinct residence for the purposes of the asylum or as private individual was a question of fact.

To deny the charge to the window tax, house duty, income tax under Schedule A and the poor rate, the resident officers had to show that they did not reside in the accommodation provided for them as private individuals, but instead lived there for the purposes of the asylum, which made the accommodation part of the asylum for tax purposes. Whether the residence was regarded as part of the asylum through physical connection or necessity was not clear. Both approaches were taken in litigation, sometimes kept distinct, and occasionally combined. What is clear is that a number of factors were relevant and weighed up by the courts in arriving at their decision. In early cases the physical arrangement and construction of the asylum buildings dominated the issue. As lunatic asylums were almost invariably composed of a collection of outbuildings surrounding a principal block, the court would minutely examine the degree to which the residence was physically part of the main asylum.⁵⁷ This was a line of argument that gave rise to close debate over the architectural design of buildings and to the publication of detailed plans in

⁵⁵ As counsel advised in *Case 504, County of York Fulford District (1831) Assessed Taxes Cases*, TNA IR 12/1.

⁵⁶ They were both exceptions to exemptions: see n. 115.

⁵⁷ See the Crown's argument that premises were not detached from a dwelling house because they were connected to it by a high wall: *Case 1310, County of Norfolk Division of Loddon and Clavering (1838) Assessed Taxes Cases*, TNA IR 12/2.

the law reports. Connecting passages, whether covered or open to the elements;⁵⁸ perimeter walls; access and position with respect to the public road; entrances: all were all relevant, though not invariably material, issues raised in the course of litigation. The residence of the medical superintendent of the county lunatic asylum in Dorset⁵⁹ was deemed part of the asylum because it was connected to the rest of the asylum by a passage, as was that of the steward of Colney Hatch lunatic asylum.⁶⁰ In the appeal by the medical superintendent of Chester asylum against the rating of his residence, the fact that it was detached from the main asylum block was not material because it could be said it was reasonably within the asylum.⁶¹

A more profound argument was that the officers' residences, even if physically detached, were part of the asylum itself through necessity. This could mean necessity through a residential requirement in the asylum's governing statute or rules, or necessity through the nature of the employment, though of course the former was a consequence of the latter. If the officer lived in the residence as part of his employment, and in his capacity as an officer, and the nature of his employment required that he should live there rather than in his own separate residence, he was not regarded as an occupier for tax purposes.⁶² The officer would be in the nature of a servant, living in the premises for the purposes of the asylum. As early as 1788 the treasurer of Guy's Hospital had avoided a charge to the land tax on his residence on the basis that the building was occupied by a 'necessary officer'.⁶³ The degree of personal or official use to which the apartments were put;⁶⁴ the degree of control exercised over the officer; whether the apartments were furnished by the asylum

⁵⁸ *Case 1364, Borough of Lancaster in County of Lancaster, (1840) Assessed Taxes Cases, TNA IR 12/2.*

⁵⁹ *Case 2720, County of Dorset Division of Dorchester (1866) Assessed Taxes Cases (author's copy).*

⁶⁰ *Case 2635, Middlesex Finsbury Division (1864) Assessed Taxes Cases (author's copy).*

⁶¹ *Congreve v The Overseers of Upton (1864) 4 B & S 857 at 871 per Blackburn J.*

⁶² *Bent v Roberts (1877) LR 3 Ex D 66. See too Case 2828, County of Southampton Division of Basingstoke (1871) Assessed Taxes Cases, (author's copy).*

⁶³ *Harrison v Bulcock (1788) 1 H Bl 68 at 72 per Lord Loughborough.*

⁶⁴ See for example *Case 1412, Hundred of Greytree County of Hereford (1840) Assessed Taxes Cases, TNA IR 12/2; Case 402, Cornwall Hundred of Trigg (1830) Assessed Taxes Cases, TNA IR 12/1.*

authorities; and whether their occupation formed part of the officer's emoluments, or rent was required to be paid, ⁶⁵ were all factors to be taken into account in deciding this.

In *Jepson v Gribble* in 1875⁶⁶ the resident medical superintendent of the City of London county lunatic asylum⁶⁷ appealed against an assessment to the inhabited house duty on his official residence. As the medical superintendent was, for the performance of his duties, required by the asylum's governing Act to reside in the asylum,⁶⁸ he was provided with a detached house in the asylum grounds. Whether the house was to be deemed part of the asylum for tax purposes should, said Kelly CB, be looked at 'with the eye of common sense',⁶⁹ which here dictated that the house, being within the walls of the asylum and allowing almost instantaneous communication with the patients, was part of the premises. It was, he said, 'substantially speaking, part and parcel' of the asylum.⁷⁰ Huddleston B agreed, adding that 'in the modern view taken as to the care of lunatics', gardens were just as essential as the dormitories or infirmaries.⁷¹ Amphlett B, taking judicial guidance from a case which had addressed the issue in relation to the poor rate,⁷² held that the need for the superintendent to be resident meant that whether his house was within the main asylum building or merely near it, 'it is a necessary adjunct'⁷³ and, as such, part of the asylum itself. If his residence was in the grounds of the asylum 'so as to be reasonably within it', that sufficed.⁷⁴ Thereafter, necessity was the material issue.⁷⁵

⁶⁵ *Case 1364, Borough of Lancaster in County of Lancaster*, (1840) Assessed Taxes Cases, TNA IR 12/2.

⁶⁶ *Jepson v Gribble* (1875) 1 TC 78.

⁶⁷ Near Dartford, Kent

⁶⁸ 16 & 17 Vict. c.97 s.55.

⁶⁹ *Jepson v Gribble* (1875) 1 TC 78 at 80 *per* Kelly CB.

⁷⁰ *Ibid.*, 81.

⁷¹ *Ibid.*, 82.

⁷² *Congreve v The Overseers of Upton* (1864) 4 B & S 85.

⁷³ *Jepson v Gribble* (1875) 1 TC 78 at 81.

⁷⁴ *Ibid.*

⁷⁵ It was the clear basis of the decision in *Wilson v Fasson* (1883) 1 TC 526, concerning the Royal Infirmary in Edinburgh.

In some instances the officers could not deny their occupation and were held to be occupiers of their residences in the asylum as individuals, on their own account and as such liable to both local and national taxation.⁷⁶ Again, the degree of physical connection could be material, as when the chaplain of Colney Hatch lunatic asylum appealed unsuccessfully against the house duty because his house was distinct and separate from the asylum, and he could only reach it by the public road.⁷⁷ Similarly the residence of the medical superintendent of a county asylum in Wales, appealing against the house duty, was found not to be part of the asylum because it was of later construction, and was separated from the asylum by a public road.⁷⁸ The necessity argument was always significant. So where an officer was not required to be resident by the governing rules or statute of the asylum, that suggested a private occupation, as it was in the case of the chaplain of the Chester asylum, appealing against the poor rate.⁷⁹ Although it was not unreasonable to purchase a house for an asylum chaplain, it was only collaterally and not directly used for the purposes of the asylum.⁸⁰ As Lord Deas observed in 1883, '[t]he duties of the chaplain relate to the next world; the duties of the Medical Superintendent relate to this world; and apart altogether from questions of importance the one is certainly much more immediate than the other'.⁸¹

If the officers were able to demonstrate that their residences formed part of the asylum, the question would then arise whether the asylum authorities themselves would have to pay tax on their entire premises.⁸²

⁷⁶ In the case of the Broadmoor Asylum for the Criminally Insane, the asylum authorities paid the rates on behalf of their staff, in the interests of staff recruitment and retention: TNA T1/6547A.

⁷⁷ Case 2348, *Middlesex Finsbury Division* (1854) Assessed Taxes Cases, TNA IR 12/3.

⁷⁸ Case 2807, *County of Monmouth Division of Abergavenny* (1869) Assessed Taxes Cases, (author's copy).

⁷⁹ *Congreve v The Overseers of Upton* (1864) 4 B & S 857

⁸⁰ *Ibid.*, 870-1.

⁸¹ *Wilson v Fasson* (1883) 1 TC 526 at 530.

⁸² See *Bray v Justices of Lancashire* (1889) 2 TC 426; SC 22 QBD 484 where in the Court of Appeal, to the judges' intense irritation, counsel for the asylum unfortunately insisted on concentrating entirely on the name in which the assessment was to be made rather than the proper issue of the liability of the apartments in question to Schedule A income tax. Counsel

THE EXEMPTIONS TO TAX

To argue that its premises did not come within the charge to tax at all was a possibility any asylum would first explore. The substantial or technical grounds on which an asylum could do so, however, were very limited, and by far the more usual argument was to maintain that its premises, including its officers' residences where they were part of those premises,⁸³ came within the wording of a statutory exemption to tax. Taxation was not an entirely blunt instrument, and in order to achieve an equitable and publicly acceptable fiscal balance, provision had always been made for the preferential treatment of certain philanthropic and public bodies, giving exemptions from certain taxes or groups of taxes. An exemption from tax at Common Law did exist, but was very limited in its application. Tax being a creature of statute, exemptions from it were principally statutory, and were of two kinds. They were found either in the legislation establishing the asylum, or they were found in the taxing Acts.

1. The common law exemption

The principal exemption that lunatic asylums could attempt to claim at Common Law was based on the prerogative of the Crown. It was an established principle that

did so in an attempt to win on a technicality in the Court of Appeal and avoid costs, having lost on the substantive point in the Divisional Court. The judges described the tactic as 'miserable', 'contemptible', 'monstrous', and a complete waste of their time. They refused to give a decision on that point. See too *Hue v Visitors of the Lunatic Asylum for the Counties of Salop and Montgomery and Borough of Wenlock* (1895) in 39th Annual Report of the Commissioners of Inland Revenue, *House of Commons Parliamentary Papers* 1896 (8226) xxv 329.

⁸³ The Board of Inland Revenue confirmed this was so in response to a surveyor's enquiry about liability to the house duty in 1856: *Case 2437, County of Hants Division of Fareham* (1856) Assessed Taxes Cases, TNA IR 12/3.

the Crown was not bound by statute unless it was expressly named in the statute or there was a clear intention to impose the tax on the Crown or its property. The application of this principle had been raised frequently in the courts in relation to the poor rate, but the law in this respect was, as Palles CB observed in 1898, 'a mass of chaotic confusion'.⁸⁴ The case of *Mersey Docks* in 1865,⁸⁵ one of the most important decisions on the law of rating in the nineteenth century, clarified the law considerably, but many of the decisions remained impossible to reconcile and the law was complex and obscure. Prior to *Mersey Docks*, the cases suggested that whenever property was occupied for public purposes, it was exempt from the poor rate under this prerogative. Blackburn J, as he then was, held that that principle was too widely stated. It was clear that the Crown, not being named in the Poor Relief Act, could not be rated on lands which it, or its servants, occupied.⁸⁶ Under this principle, the premises of departments of state such as the Post Office, the Horse Guards and Admiralty were properly exempt; they were clearly occupied by Crown servants, and the purpose for which they occupied the property was immaterial.⁸⁷ Their occupation amounted to the occupation of the Crown. However, other establishments had also been held exempt under the principle, notably police stations, prisons,⁸⁸ reformatory schools,⁸⁹ assize and county courts and judges' lodgings,⁹⁰ on the ground that they were occupied for public purposes. Blackburn J said that the occupants of these were not strictly servants of the Crown so as to make the occupation that of the Crown, but if they occupied the premises for public purposes which, by the constitution, 'fall within the province of government, and are committed to the Sovereign', the occupiers would be considered *in consimili casu* and therefore exempt.⁹¹ Property occupied for public purposes which did not satisfy this test was not exempt. He thus affirmed the principle of Crown exemption and explained its proper limits, and his test was taken as the correct and authoritative

⁸⁴ *Harte v Holmes* [1898] IR 2 QBD 656 at 669.

⁸⁵ *The Mersey Docks and Harbour Board Trustees v Cameron* (1865) 11 HLC 443.

⁸⁶ *R v Cook* (1790) 3 TR 519.

⁸⁷ *Harte v Holmes* [1898] IR 2 QBD 656 at 676 *per* Palles CB.

⁸⁸ *The Queen v Shepherd* (1841) 1 Q B 170; *Gambier v Overseers of Lydford* (1854) 3 El & Bl 345.

⁸⁹ *Sheppard v Overseers of Bradford* (1864) 16 CB NS 369.

⁹⁰ *Mersey Docks v Cameron* (1865) 11 HLC 443.

⁹¹ *Ibid.*, at 465.

statement of the law. The implied exemption on the ground of the prerogative which applied to the poor rate was held to apply equally to income tax.⁹² The administration of justice and the preservation of law and order were clear functions of government and, by the constitution, belonged to the Crown.⁹³

As institutions which still had a custodial function, lunatic asylums could legitimately argue that an analogy could be drawn with prisons⁹⁴ to claim exemption, but in 1889 it was held that they were not exempt from Schedule A income tax because the premises did not satisfy the *Mersey Docks* test. Pollock B observed that the building and management of the statutory Lancashire asylum was 'no doubt, a matter of public interest, and it may be, essential to the public welfare', but it was not a function of the Crown or the government of the country.⁹⁵ In England the Crown had not taken on the general custody and maintenance of the insane because public lunatic asylums were controlled by the local authorities. This was in contrast to Ireland, where the district asylums were held to be in the nature of government institutions, directly controlled, administered and occupied by servants of the Crown, and as such, exempt from rates.⁹⁶ Certainly, too, Irish statutory lunatic asylums were more akin to prisons than English ones, and this was one factor contributing to their status as institutions established for public purposes. They had a more pronounced custodial objective and, as O'Brien J observed, 'the abridgment of liberty...marks off the province of the State and assimilates the present case to police barracks, court-houses, and other such premises'.⁹⁷

This significantly narrower definition of public purposes laid down in *Mersey Docks* had serious consequences in law for all lunatic asylums, particularly non-statutory ones who could not claim any fiscal concessions under any parent asylums

⁹² *Coomber v Justices of Berkshire* (1883) 9 App Cas 61 at 71 *per* Lord Blackburn; at 76 *per* Lord Watson.

⁹³ *Ibid.*, at 67 *per* Lord Blackburn. See too *Coomber v Justices of Berkshire* (1882) LR 9 QBD 17; *Coomber v Justices of Berkshire* (1882) LR 10 QBD 267.

⁹⁴ *The Queen v Shepherd* (1841) 1 Q B 170; *Gambier v Overseers of Lydford* (1854) 3 El & Bl 345.

⁹⁵ *Bray v Justices of Lancashire* (1889) 22 QBD 484 at 491.

⁹⁶ *Harte v Holmes* [1898] IR 2 QBD 656 at 665 *per* Sir P O'Brien LCJ. The Board of Control and the Lord Lieutenant's responsibility for the management of district asylums in Ireland were abolished shortly after.

⁹⁷ *Ibid.*, at 680.

legislation, and particularly in relation to rates, where the exemption had frequently been claimed. Thereafter they were not properly entitled to be excepted from the poor rate and were thus in principle, like hospitals,⁹⁸ liable for substantial rates. They were not, as with many other charitable bodies, thereafter exempted from rates by specific statutory enactment, and had to rely, as did all hospitals, on sympathetic extra-statutory treatment by the taxing authorities in the form of under-valuation.⁹⁹ The public statutory asylums, however, while not entitled to exemption at Common Law, could look to relief under the asylum legislation.

2. *The asylum legislation*

The lunatic asylums founded by statute for the public provision of the care of the insane could potentially turn to a general statutory exemption from taxation commonly found in the public or local Acts under which they were established. The parent Acts of these asylums almost invariably included a provision that granted them either a limited liability to taxation or a complete exemption from it. This was not peculiar to lunatic asylums,¹⁰⁰ for it was a device widely used in the eighteenth century to encourage enterprises which were of public benefit but would yield an uncertain return.¹⁰¹ It was used notably in relation to canals, waterworks, poor houses¹⁰² and prisons.¹⁰³ The County Asylums Act 1808 provided that where land was purchased for the building of an asylum for the parish under the Act, the land was not to be taxed at a higher value than when purchased, nor should any building

⁹⁸ *Governors of St Thomas' Hospital v Stratton* (1875) LR 7 HL 477.

⁹⁹ Report of the Committee on the Rating of Charities and Kindred Bodies, *House of Commons Parliamentary Papers* 1958-59 (831) xix 1 at 11 and Appendix II.

¹⁰⁰ It was, for example, the model for the similar provision in the Burials Act 1855 (18 & 19 Vict. c.128) s.15.

¹⁰¹ See Frederick Clifford, *A History of Private Bill Legislation* 2 vols., 1st ed., London, 1887, new imp. London, 1968, vol. 2, 555-558.

¹⁰² For example, the Act establishing the Manchester poor house: *Case 104, County of Lancaster District of Manchester* (1825) Assessed Taxes Cases, TNA IR 12/1.

¹⁰³ For example the local Act of Parliament establishing the convict gaol in Springfield: *Case 1301, County of Essex Division of Chelmsford* (1839) Assessed Taxes Cases, TNA IR 12/2.

erected under the Act be assessed to the house duty or window tax.¹⁰⁴ The provision was re-enacted in 1828¹⁰⁵ and again in 1845,¹⁰⁶ but as the house duty had been repealed in 1834,¹⁰⁷ the 1845 provision included only rates and the window tax. When the provision was included in the Lunatic Asylums Act 1853¹⁰⁸ it addressed only the local rates, and made no reference to national taxation despite the reintroduction two years before of the house duty. Although asylums claimed that the general exemption nevertheless applied as the house duty had been reintroduced in lieu of the window tax, the argument was not sustained by the courts.¹⁰⁹

So widely worded was this exemption that it appeared to give statutory lunatic asylums a significant tax advantage over private and charitable asylums, but while it seemed comprehensive, its scope was unclear. The Crown argued that it did not apply to statutory asylums that admitted private patients, on the basis that the legislation was directed to the relief of pauper lunatics, and the common practice of taking in paying patients from more affluent classes when space permitted resulted in the asylums losing their essential character as establishments caring for pauper lunatics and, in consequence, the benefit of the provision. In 1840, however, this argument was rejected and the court allowed the Lancashire lunatic asylum to claim the benefit of the provision so as to avoid a charge to the window tax on its officers' residences, even though the asylum was not exclusive devoted to the reception of pauper lunatics.¹¹⁰ The admittance of a small proportion of fee paying patients was held not to be material, as it was expressly permitted by the governing Act of Parliament.¹¹¹

The general exempting clause was also consistently effective to limit the asylums' liability to the poor rate. In 1864 the medical superintendent of the Chester

¹⁰⁴ 48 Geo. III c.96 s. 26.

¹⁰⁵ 9 Geo. IV c.40 s.29.

¹⁰⁶ 8 & 9 Vict. c.126 s.25.

¹⁰⁷ 4 & 5 Will. IV c.19.

¹⁰⁸ 16 & 17 Vict. c.97 s.35.

¹⁰⁹ *Case 2348, Middlesex Finsbury Division (1854) Assessed Taxes Cases, TNA IR 12/3; Case 2437, County of Hants Division of Fareham (1856) Assessed Taxes Cases, TNA IR 12/3.*

¹¹⁰ *Case 1364, Borough of Lancaster in County of Lancaster, (1840) Assessed Taxes Cases, TNA IR 12/2.*

¹¹¹ 9 Geo. IV c.40 s.51. Out of the 500 patients, some 25 were non-paupers.

county lunatic asylum, who had successfully argued that his accommodation was occupied for the purposes of the asylum, succeeded in claiming the benefit of the clause. His residence was to be rated at its original, and not its improved, value.¹¹² Similarly in the following year the Cambridgeshire, Isle of Ely and Borough of Cambridge lunatic asylum successfully challenged an assessment of its entire premises and lands to the poor rate,¹¹³ claiming a modification of its liability under the general clause. The court accepted that the lands used for farming and gardening were, in the light of current medical theories on the care of the insane, and clear statutory authority, used for the purposes of the asylum within the provision. It confirmed that the admission of fee paying patients and pauper lunatics from outside the county did not change the character of a statutory lunatic asylum to that of a private lunatic asylum so as to deny the benefit of the relieving clause.

3. *The tax legislation*

Whereas the exemption in the asylum legislation applied only to the statutory county asylums created under its authority, all asylums, statutory and charitable, could attempt to claim exemption under the legislation imposing the various taxes. This was the only course open to non-statutory asylums, and even statutory ones had recourse to it when a limited construction was placed on the general exemption in the asylum legislation. Exemptions were numerous in the individual taxes Acts. The Land Tax Act 1797 exempted 'any hospital' from its provisions in respect of its site,¹¹⁴ though the exemption applied only to those institutions in existence at the time when the tax was made perpetual.¹¹⁵ The Assessed Taxes Act 1808 included a number of exemptions to the window tax and the house duty, and the exemption for 'any

¹¹² *Congreve v The Overseers of Upton* (1864) 4 B & S 857.

¹¹³ *The Queen v The Overseers of Fulbourn* (1865) 6 B & S 451. In 1863 the asylum was assessed at a rateable value of £1003 5s.

¹¹⁴ 38 Geo. III c.5 s.25. For the long history of the exemption, see counsel's argument in *Harrison v Bulcock* (1788) 1 H Bl. 68 at 69-70.

¹¹⁵ 38 Geo. III c.60 s.1. See *Lord Colchester v Kewney* (1866) LR 1 Exch 368, affd *Lord Colchester v Kewney* (1867) LR 2 Exch 253, where an educational institution founded in 1857 was held not to be exempt.

hospital, charity school, or house provided for the reception and relief of poor persons¹¹⁶ was potentially relevant to lunatic asylums.¹¹⁷ In the case of the income tax, the governing legislation granted a number of allowances¹¹⁸ under Schedule A, taken from the land tax legislation, notably to 'any hospital, public school, or almshouse'.¹¹⁹ In contrast to the exemptions to the window tax and inhabited house duty, the statutory provision did not qualify the term 'hospital' by reference to provision for the poor.

In order to benefit from these exemptions, the public lunatic asylums had to prove they came within these express categories. Other than functional distinctions, they differed from almshouses in that not all their inmates were paupers, and from schools in that they were public statutory bodies. Neither was their legal categorisation as hospitals evident. They were distinct from traditional hospitals in terms of their size, their public funding, their statutory nature and their objectives, which were not merely therapeutic, but custodial as well. They were, furthermore, public institutions that formed part of the government policy of state intervention that was such a major feature of the nineteenth century. With central government playing such a large part in their establishment and control, and being the instruments of a clear policy of state supervision of the mentally ill, the public lunatic asylums inevitably possessed a political dimension that traditional hospitals did not share. However, the meaning of 'hospital' was not necessarily clear, for it had a strict

¹¹⁶ 48 Geo III c.55, Schedule A, Exemptions, Case 2; Schedule B, Exemptions, Case 4.

¹¹⁷ Note that the exemption of hospitals from the window tax contained an express exception: the statute exempted any hospital for the reception and relief of the poor 'except such apartments therein as are or may be occupied by the officers or servants thereof which shall severally be assessed, and be subject to the said duties as entire dwelling houses': 48 Geo. III c.55, Schedule A, Exemptions, Case 2. The exemption of hospitals from the house duty was not so qualified: 48 Geo. III c. 55, Schedule B, Exemptions Case IV.

¹¹⁸ A remission of the tax charged on the buildings in question.

¹¹⁹ 5 & 6 Vict. c.35 s.61 no. 6 para. 2. Note that the allowance extended only to hospital buildings which were not occupied by any individual officer whose whole income amounted to £150 per annum. The meaning of charitable purposes in the income tax legislation was finally settled by the House of Lords in *Special Commissioners v Pemsel* (1891) 3 TC 53. See John Avery Jones, 'The Special Commissioners from Trafalgar to Waterloo', *British Tax Review* (2005), 40-79.

legal meaning¹²⁰ and a wider popular one. It had been the subject of judicial debate whether the term comprised a place for the relief of the sick, or the poor, or the sick poor, and whether it embraced educational purposes.¹²¹ Despite their clear if only partial custodial nature, lunatic asylums were popularly accepted as hospitals, and increasingly so as insanity was recognised as an illness of the mind which could respond to treatment, as a physical illness could. In the tax legislation of the nineteenth century the courts held the word 'hospital' was used in its wider popular sense, namely an institution for the relief of the sick or aged.¹²² Lunatic asylums were, therefore, judicially recognised as hospitals.

In tax law, however, that did not suffice, as the exemptions to the window and house duties expressly provided that the hospitals were to be for the reception and relief of poor persons. That raised the whole issue of the type of patient admitted, and the question of the payment of fees. Many asylums were keen to attract more paying patients, especially in the financially difficult period in the late eighteenth and early nineteenth centuries.¹²³ The statutory asylums were expressly permitted by their parent Acts to admit fee paying patients when there was spare capacity in the asylum.¹²⁴ Charitable asylums, supported by subscriptions, donations and legacies, would often admit some patients on a fee paying basis in order to subsidise the poorer patients, though almost invariably on a scale in accordance with their means. Private lunatic asylums, catering primarily for the middle classes, by their very nature admitted fee paying patients. The question before the courts in the nineteenth century was, therefore, whether institutions which accepted both poor patients and fee paying patients were within the exemptions in the taxes legislation.

¹²⁰See *Mary Clarke Home v Anderson* [1904] 2 QB 645 at 653 *per* Channell J. The interpretation section of 8 & 9 Vict. c.100 defined 'asylum' as a statutory county asylum and 'hospital' as a charitable lunatic asylum.

¹²¹ See the arguments of counsel in *Lord Colchester v Kewney* (1866) LR 1 Exch 368 at 373-374.

¹²² *Ibid.*, at 377 *per* Channell B, in relation to the land tax.

¹²³ It has been found that some asylums falsified their medical records to suggest lower death rates and higher recovery rates in order to do so, and falsified their accounts to conceal the extent of remuneration of the asylums' officers: Digby, 'Changes in the Asylum' at 232-234. See too Smith, *Cure, Comfort and Safe Custody*, 73-78.

¹²⁴ 9 Geo. IV c. 40 s. 51 (1828).

What was clear was that any growth in the balance between pauper and paying patients was dangerous in its tax implications because the tax authorities argued that it undermined the asylums' status as hospitals for the reception and relief of the poor and thus denied them the right to the valuable tax exemptions under the fiscal legislation. In many instances the fee-paying patients admitted by the statutory lunatic asylums were very few in number and usually relatively poor individuals paying small sums towards their lodging and who could not afford private asylum care. The managers of the statutory county asylum in Hampshire observed that they could not imagine 'that the Legislature ever contemplated or intended...that an asylum, erected and conducted upon these charitable conditions, should not be included in the Schedule of Exemptions'.¹²⁵ There was nothing to suggest that the term 'poor' in the tax legislation should be restricted to paupers legally defined, namely a person in receipt of parish relief under the poor laws. Certainly, to adopt such a restrictive construction of the exemption would render it largely otiose, as the great majority of hospitals, including asylums, and indeed the other subjects of the exemption, were open to persons other than legal paupers. This lenient and pragmatic argument was accepted in 1864 in relation to the Coppice in Nottingham which was held exempt from the inhabited house duty, despite the fact that all the patients made some financial contribution to their care. They were not legal paupers, but were undoubtedly poor in the accepted popular sense of the word.¹²⁶ Similarly, the fact that the county statutory asylum in Charminster, Dorset, admitted paying patients when there was spare capacity was not regarded as material and a claim to exemption from the house duty was allowed.¹²⁷

In the case of the allowance to hospitals under Schedule A income tax, there was no qualification as to the nature of the patients treated and no mention of any poverty requirement. This permitted the court more latitude in granting the allowance and it was more likely that an asylum which charged fees could claim its benefit. Accordingly the charging of fees for the services of the institutions expressly mentioned in the provision was not fatal to the granting of the allowance, though it was a matter of degree in the context of the funding of the institution. In holding that

¹²⁵ *Case 2437, County of Hants Division of Fareham (1856) Assessed Taxes Cases, TNA IR 12/3.*

¹²⁶ *Case 2636, County of Notts Town of Nottingham (1864) Assessed Taxes Cases, (author's copy).*

¹²⁷ *Case 2720, County of Dorset Division of Dorchester (1866) Assessed Taxes Cases (author's copy).*

a fee-paying school for the education of the sons of the respectable commercial and professional classes was exempt from income tax under Schedule A, Denman J observed that the colleges and halls expressly mentioned in the provision were undoubtedly not wholly supported by charity, and so the allowance would apply to a school maintained partly by charitable endowments and partly by fees charged for instruction and which was open to a sufficiently large section of the public.¹²⁸ He expressed the opinion that a hospital would not be the less entitled to the exemption because certain fees were taken from rich persons who chose to take the benefit of the hospital,¹²⁹ and this view was reiterated by Pollock B in a successful appeal against an assessment to income tax under Schedule A by the Coppice, Nottingham, in 1891.¹³⁰ He interpreted the term 'hospital' in the light of the whole clause, arguing that it intended to exempt 'anything that is practically of the character of a hospital being of an eleemosynary character'.¹³¹ The exemption was granted because despite the asylum having made a surplus over its expenditure from its patients' fees and its farming operations, it was still supported, partly but substantially, by a charitable endowment, even if in a particular year it did not need to call upon it. It had thereby retained its 'original eleemosynary character'.¹³² Only where that character was 'blotted out'¹³³ would the exemption be denied.¹³⁴

There was clearly a point beyond which the courts would not go. Certainly, the tax authorities and the courts had always been restrictive in their interpretation of the exemptions in relation to private and charitable lunatic asylums which could call on no protection in any founding Act and where the exemptions in question included an express poverty qualification. Private asylums admitting only fee paying

¹²⁸ *Blake v Mayor and Citizens of the City of London* (1887) 18 QBD 437, affd (1887)19 QBD 79. The Court of Appeal reasoned in terms familiar to modern charity law, holding the school was not carried on for profit but for the benefit of a sufficiently large section of the public and maintained partly by a charitable endowment. The point was that the allowance was not limited to schools maintained solely by charity.

¹²⁹ *Blake v City of London* (1887) 18 QBD 437 at 445.

¹³⁰ *Cause v Committee of the Lunatic Hospital, Nottingham* (1891) 3 TC 39.

¹³¹ *Ibid.*, at 42.

¹³² *Ibid.*, at 43.

¹³³ *Ibid.*

¹³⁴ As in *Governors of Charterhouse School v Lamarque* (1890) 25 QBD 121.

patients of the middle classes had always been held ineligible to the exemptions to the window and house duties, and had to pay the taxes on their entire establishments, including the wards and rooms in which the patients resided. More controversially, establishments founded by voluntary subscriptions and donations, and promoting themselves as charitable bodies, were held to be outside the exemption and, therefore, within the charge, if they admitted any fee paying patients. Indeed charitable asylums admitting private patients of modest means pressed to be put on the same footing as county lunatic asylums in respect to exemptions from both local and national taxes.¹³⁵ The Retreat, which was the Quaker asylum at York,¹³⁶ failed in its appeal against a substantial charge to the window tax and house duty on its entire property in 1831. This was despite a sliding scale of charges depending on the patient's means, and an element of subsidy of poor patients. It was also contrary to counsel's opinion, which had advised the asylum that it was 'substantially' a hospital and that it came within the exemption. The court's decision was followed in subsequent cases, notably that of the Manchester Royal Lunatic Asylum which was held liable to the window tax on the 370 windows in the asylum because all the patients paid fees for their care according to their means and so were not 'poor persons' within the meaning of the statutory exemption,¹³⁷ and again in relation to a claim for exemption from inhabited house duty by the county lunatic asylum in Hampshire in 1856.¹³⁸ Similarly, the Coton Hill lunatic asylum was held liable to inhabited house duty.¹³⁹ That asylum had been founded expressly for persons who were in 'the middle rank of life', who could not afford care in a private lunatic asylum and yet who should not be degraded to the rank of pauper. All the patients contributed to the costs of their care according to their means, though the contribution of over half the patients was paid by the charitable fund. As the majority could not be regarded as poor persons within the taxing legislation, the exemption from inhabited house duty was denied. As the

¹³⁵ For example, the Warneford Hospital petitioned Parliament to this effect: *Jackson's Oxford Journal* 27 February 1847.

¹³⁶ See generally, Anne Digby, *Madness, Morality and Medicine: a Study of the York Retreat, 1796-1914*, Cambridge, 1985.

¹³⁷ *Case 2168 (1851) Assessed Taxes Cases*, TNA IR 12/3.

¹³⁸ *Case 2437, County of Hants Division of Fareham (1856) Assessed Taxes Cases*, TNA IR 12/3.

¹³⁹ *Case 2637, County of Stafford Town of Stone (1864) Assessed Taxes Cases* (author's copy).

Commissioners of Inland Revenue observed in 1885, lunatic asylums could claim for relief from the inhabited house duty only when they were 'of a strictly charitable character'.¹⁴⁰

Even the Schedule A income tax allowance, which did not include a poverty qualification and which had been held to apply to institutions charging fees for their services, was ultimately held to be of limited effectiveness. In 1888 the medical superintendent of the Barnwood House Institution for the treatment of mental disease near Gloucester appealed against an assessment to inhabited house duty and to Schedule A income tax on the hospital, fifteen acres of gardens and certain outbuildings, all of which were used for the purposes of the hospital.¹⁴¹ The hospital argued it had been established by charitable donations with a charitable object, that it was permitted by its rules to admit paying patients, and that the wealthy patients subsidised the poorer ones. The court denied the allowance, holding that while fees could be charged, it was necessary that there should be some financial support of a charitable nature. Here there was none at all because it was now maintained entirely from the patients' fees, and as a self supporting institution¹⁴² it did not come within the exemption to Schedule A income tax. So while the Barnwood House Institution was popularly understood to be a hospital receiving and treating the sick, and in legal terms it came within the definition of a hospital as opposed to a profit-making licensed house in the Lunacy Regulation Act,¹⁴³ nevertheless, the court held it was not a hospital within the meaning of the income tax exempting provision.¹⁴⁴ That

¹⁴⁰ 28th Report of the Commissioners of Inland Revenue, *House of Commons Parliamentary Papers* 1884-5 (4474) xxii 43 at 129.

¹⁴¹ *Needham v Bowers* (1888) 2 TC 360. He also appealed against an assessment to Schedule D income tax on the profits of the asylum.

¹⁴² *Ibid.*, at 366.

¹⁴³ 8 & 9 Vict. c.100 s.114, namely 'any hospital or part of an hospital or other house or institution (not being an asylum) wherein lunatics are received, and supported wholly or in part by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients'.

¹⁴⁴ *Needham v Bowers* (1888) 2 TC 360 at 367. The court thus adopted a narrow interpretation of 'hospital' for income tax purposes, importing it from the inhabited house duty: see counsel's argument reported at (1888) 21 QBD 436 at 440. The court also refused to allow the exemption

decision was strictly applicable only to cases where an institution was not supported by charitable funds at all, but the test became even more stringent when it was held that tax exemption would be denied if the institution was mainly self supporting. The extent of the necessary charitable support was explored in 1895 when the Dundee Royal Lunatic Asylum claimed exemption from the inhabited house duty on the ground that it was a hospital within the meaning of the exemption in the 1808 Act.¹⁴⁵ It made a profit of over £1,500 in each of three consecutive years, had no formal charitable endowment, but was founded by voluntary contributions and admitted mainly pauper patients¹⁴⁶ of whom two were maintained from its own funds. The case before the Court of Session was regarded as a representative case of considerable importance to a large number of institutions which were established for public purposes and were not entirely self supporting.¹⁴⁷ Lord McLaren did not think it necessary that the asylum be exclusively appropriated to the relief of the poor, but that it certainly should be substantially so.¹⁴⁸ As all but two of the patients were maintained out of public taxation and not from the funds of the asylum itself, there was 'no element of charity in the transaction'.¹⁴⁹ The asylum was not a hospital within the provision and was not entitled to the exemption.¹⁵⁰

PROCEDURAL OBSTACLES

In testing the boundaries of the tax regime and formulating their relationship with the tax authorities, the lunatic asylums could not escape the difficulties faced by all taxpayers in the nineteenth century, namely the obstacles that were inherent in the

to Schedule D income tax on the hospital's profits, following the case of *St Andrew's Hospital v Shearsmith* (1887) 19 QBD 624.

¹⁴⁵ *Musgrave v Dundee Royal Lunatic Asylum* (1895) 3 TC 363. Until then the asylum had been assessed to the tax only on that portion of the asylum occupied by private patients.

¹⁴⁶ The proportion of pauper patients to private patients was 289 to sixty-six.

¹⁴⁷ *Musgrave v Dundee Royal Lunatic Asylum* (1895) 3 TC 363 at 369-70.

¹⁴⁸ *Ibid.*, at 370.

¹⁴⁹ *Ibid.*, at 373 *per* Lord Adam.

¹⁵⁰ The meaning of charitable purposes in the income tax legislation was finally settled by the House of Lords in *Special Commissioners v Pemsel* (1891) 3 TC 53. See the close discussion in Avery Jones, 'Special Commissioners' 40-79.

wider legal and tax processes. The asylums were heavily reliant on an understanding of the legislative provisions available to them and of their interpretative case law, on high standards of argument and adjudication in the tribunals before which they appeared, and on an accurate informative dissemination of the substance of the decisions. It has been seen that in determining their tax liability fine distinctions were drawn, rulings were often inconsistent, the interaction of the various exemptions was obscure, and on occasion the law was incorrectly applied. For this the process itself was responsible. For all taxpayers the tax legislation was notoriously obscure. It was voluminous, complex, archaic and superimposed by an inaccessible code of revenue practice. Furthermore, other than in rating cases which were always heard by the regular courts, the quality of argument, reasoning and decision making in the preliminary stages of the formal resolution of tax disputes was not robust. The details of asylum governance which affected the tax liability were raised before the local commissioners in arguing the application of an exemption or an absence of the basis of a charge to tax. They were questions of fact, which local commissioners were deemed well qualified to decide. Their application demanded the interpretation of the taxing and asylum legislation, and in this the lay and part time amateur commissioners were in general not sufficiently equipped in either time or knowledge. Appeals to the local commissioners which progressed no further through the judicial hierarchy were never formally reported: extant minute books reveal no more than the name of the parties and whether the assessment was confirmed or discharged. And although an appeal to the regular courts was permitted in relation to the window and house duties throughout the eighteenth and nineteenth centuries, this was of limited assistance. These appeals were reported and the reports were relatively accessible, but their nature was such that they provided limited guidance to asylums as to how to proceed in their tax affairs. The reports were prepared by the central tax authorities, and reveal a frequent absence of informed, rigorous reasoning and full analysis of legal principle. This is partly because the reasoning of the judges themselves was not recorded, as they only ruled whether the commissioners' decision had been right or wrong. Since the parties invariably put forward several alternative arguments, the exact grounds of many of the decisions could not be discerned. For example, where statutory asylums admitting fee paying patients were successful in claiming the benefit of the exemption for hospitals for the poor, there were three possible grounds: a generous

interpretation of the poverty qualification; the application of a general tax exemption in founding legislation; or the express statutory authority to admit fee paying patients in certain circumstances.¹⁵¹

Lunatic asylums seeking guidance in these reports, therefore, found an inconsistent and limited use of both case law and legislative authority, a number of possible grounds for a ruling, and apparently conflicting or even erroneous decisions. These shortcomings did not go unnoticed by the medical community. In 1841 a hospital governor complained to *The Lancet* about discrepancies in the charging of the window tax on hospitals.¹⁵² Specifically, he raised a concern that officers' apartments in workhouses were given preferable treatment. The windows in workhouses were held exempt from the window tax as a house for the reception and relief of poor persons. According to the legislation, officers' apartments were to be assessed as entire dwelling houses, and so were not liable if they had seven or fewer windows.¹⁵³ This was confirmed by the Board of Stamps and Taxes in response to a written enquiry in 1840 by the Secretary to the Poor Law Guardians of the Tonbridge Union¹⁵⁴ following the assessment of the guardians' and clerks' rooms, the governor's apartments, those of the school master and mistress, and the porter's room in the workhouse, each of which had fewer than eight windows.¹⁵⁵ This was not, however, consistently applied to hospitals and lunatic asylums, as evidenced by the official return of the window tax charged on such institutions in 1840,¹⁵⁶ and a decision of the court in 1836 where the secretary to the Westminster Hospital was

¹⁵¹ *Case 2437, County of Hants Division of Fareham (1856) Assessed Taxes Cases, TNA IR 12/3.*

¹⁵² 'Window-Tax on Hospitals', *The Lancet*, 27 Feb. 1841, 796-797 (vol.35). See too *ibid.*, 14 August 1841, 735 (vol.36); *ibid.*, 10 Sept. 1842, 822-824 (vol. 38).

¹⁵³ 6 Geo. IV c.7 s. 1. The apartments had to be worth a rent of less than £5 p.a. to come within this exemption.

¹⁵⁴ Returns of window duty charged on hospitals in England in 1840, *House of Commons Parliamentary Papers* 1841 sess. 1 (198) xiii 609.

¹⁵⁵ Window-Tax on Hospitals', *The Lancet*, 27 Feb. 1841, 796-797 (vol. 35).

¹⁵⁶ Returns of window duty charged on hospitals in England in 1840, *House of Commons Parliamentary Papers* 1841 sess. 1 (198) xiii 609.

held liable to the window tax on his apartments even though he occupied two rooms with only three windows.¹⁵⁷

The inadequacy of the assessed taxes reports was recognised by Huddleston B in 1875 when he protested against their citation in litigation by the Attorney General. He dismissed them as 'unreported'¹⁵⁸ and therefore not conclusive in the case before him. The refusal by the judges of the regular courts to accept these reports as precedents compounded the problem by encouraging inconsistencies and making a clear line of authority unlikely, if not impossible. Litigants had to wait until 1874 for a level and quality of analysis and adjudication comparable to other branches of law and supported by the doctrine of judicial precedent. In that year the Customs and Inland Revenue Act, a statute of seminal importance in the development of tax law, allowed for the first time an appeal to the regular courts by way of case stated on a point of law in income tax.¹⁵⁹ It also extended this right of appeal to decisions on the inhabited house duty. The procedure laid down in this Act permitted legal argument and raised an expectation that reasons would be given for the final decision, and in this sense it differed from the earlier procedure laid down for appeals in relation to the assessed taxes. In 1878 a further appeal to the Court of Appeal and then the House of Lords was given,¹⁶⁰ and from then the litigation of tax law issues, both in income tax and the inhabited house duty, was potentially of the highest quality. It was therefore only in the last quarter of the nineteenth century that cases on the taxation of lunatic asylums came before the regular courts of law and were subject to rigorous standards of argument, reasoning and evidence, and of judicial consideration and reporting.

The tax litigation process inherently favoured the Crown representative, the surveyor, primarily due to his superior understanding of tax law and his unrivalled knowledge of inland revenue and excise practice. And from this position he naturally promoted the interests and policy of the central revenue boards. The Crown's primary objective in taxation was to raise revenue and as a result its policy was invariably to prefer the strictest construction of the statutory charging

¹⁵⁷ *Case 1154, County of Middlesex District of St Margaret and St John the Evangelist, Westminster* (1836) Assessed Taxes Cases, TNA IR 12/2.

¹⁵⁸ *Jepson v Gribble* (1875) 1 TC 78 at 82.

¹⁵⁹ 37 Vict. c. 16 ss. 8-10.

¹⁶⁰ 41 & 42 Vict. c. 15 s. 15.

provisions. The evidence shows that this uncompromising approach was equally applied to lunatic asylums and that the central tax authorities were active in promoting a uniform policy in relation to the taxation of these institutions, providing the local tax authorities with guidance as to the assessment of asylums within their districts.¹⁶¹ Furthermore, it is clear that the Crown regularly tried to extend the charge to tax by pleading the spirit of a taxing statute. In the case of a private lunatic asylum in 1838, the surveyor argued that although a detached surgery was not within the statutory list of detached buildings expressly brought into charge to the window tax, it was within the spirit and meaning of the Act and should be liable.¹⁶² Such an approach went against the fundamental constitutional principle that a charge to tax could only be imposed by clear words in an Act of Parliament. It was certainly the view of the asylums themselves that the central tax authorities construed the charging legislation beyond its proper scope. The Visiting Justices of the county asylum in Hampshire complained to the local surveyor that the inhabited house duty legislation 'has been unfairly, if not illegally, strained, in order to bring the asylum within its taxing clauses'.¹⁶³ The strict construction promoted by the central tax authorities was preferred by the judiciary, in line with the courts' orthodox approach to the interpretation of all taxing statutes maintained throughout the nineteenth century and beyond. The courts restricted the scope of both charging and exempting provisions to the very letter of the legislation and were prepared to go even further. Charles J, for example, admitted in a judgment in 1888 that he was not even adopting a literal interpretation of the term 'hospital', for if he had, the asylum in the case before would have come within a statutory exemption.¹⁶⁴

CONCLUSION

The lunatic asylums of the nineteenth century were clearly directly affected by the tax legislation and its interpretation by the courts of law and its implementation by

¹⁶¹ *Case 504, County of York Fulford District (1831) Assessed Taxes Cases, TNA IR 12/1.*

¹⁶² *Case 1310, County of Norfolk Division of Loddon and Clavering (1838) Assessed Taxes Cases, TNA IR 12/2.*

¹⁶³ *Case 2437, County of Hant, Division of Fareham (1856) Assessed Taxes Cases, TNA IR 12/3.*

¹⁶⁴ *Needham v Bowers (1888) 2 TC 360 at 366.*

the tax authorities. It is clear that the asylums' fundamental requirement of extensive lands and buildings and the way these were employed had obvious fiscal consequences in that it exposed them to a potentially heavy liability to taxation in a period where tax was still predominantly land based. It is also evident that the necessary features of their governance had a direct bearing on their tax liability and that they could not amend their behaviour in order to lessen their tax burden. Their status as statutory, voluntary or private institutions; their admittance of private patients; the proportion of charitable endowment in their overall financial profile; the official perception of their purposes as public only in the most general sense; the authority for the residence of their key officers, as well as the financial and physical arrangements for such residence, were all material factors in determining the extent of their liability.

In the nineteenth century tax law was essentially a reactive body of legislation. It provided for national emergencies, adjusted to economic and social development, and was limited in its potential to innovate by political constraints. It was also constantly being added to in order to meet the persistent challenge of a taxpaying public determined to avoid payment as far as possible. Furthermore, while some taxes were administered by the central revenue boards, others were implemented by lay bodies of commissioners. As a result the legal framework grew piecemeal, and a robust, coherent, consistent and uniform structure was largely impossible and rarely if ever achieved even within individual taxes. The evidence shows that, against this background, the legal rules, judicial interpretation and policy considerations which together made up the tax regime applicable to lunatic asylums in the nineteenth century, constituted a highly effective model of institutional taxation. The orthodox theoretical measure of an effective tax was the monetary sum it raised for the public revenue, but in practice the measure of effectiveness was more complex. Certainly the monetary sum raised was a factor, but one to be balanced against non-financial considerations: all property that Parliament intended to bring into charge should so be brought in; the administrative costs of collection should not outweigh the sum raised; and the charge to tax should not be the subject of widespread avoidance or of conflict. It was also arguable that any tax law should not undermine government policy in other spheres, and indeed should promote it. Whether government policy in other spheres should make its own legislative provision for the tax consequences deemed desirable, or whether it could rely on the

tax legislation being sufficiently well drafted to accommodate and promote new policies, was neither evident nor expressly addressed. In short, an effective tax enjoyed a degree of mutual satisfaction on the part of the Crown and the taxpayer.

Judged by these criteria, notably the revenue raised and the degree of real acquiescence by the asylums, the taxation regime applicable to the new lunatic asylums of the nineteenth century was strikingly effective. Both parties - the tax authorities and the asylums - were largely content with the legal regime and how it was interpreted and implemented, and felt that it satisfied their respective needs. The tax authorities were content because they were not subjected to constant opposition and demands for extra statutory concessions from the asylum sector, they did not regard the law as being unduly stretched or abused in meeting the needs of the lunatic asylums, and their demands were generally met. The overall compliance of the lunatic asylums was undoubtedly largely due to the relatively low rates of the taxes, but this was combined with the effective working of the charging provisions and the exemptions in accommodating the requirements of the asylums, to produce a tax burden that was generally light. In 1840, for example, the Liverpool lunatic asylum was charged £4 6s 4d window duty, and the Stafford asylum £4 4s 8d,¹⁶⁵ while from the mid 1860s to the mid 1870s the Devon county asylum paid an average of some £50 a year in 'rates, taxes and tithes'.¹⁶⁶ The Middlesex county lunatic asylum paid on average £270 pa in rates, taxes and insurance in the early 1870s.¹⁶⁷ The building and repairs fund accounts for the pauper lunatic asylums belonging to the City of London show that the Visiting Committees' expenditure included just £472 for rates, taxes, insurance and rent out of a total expenditure of £228,789.¹⁶⁸ Such sums reflected the normal burden, and accordingly there was overall little complaint as to the amount of tax charged. Where the asylums did complain as to the quantum,

¹⁶⁵ Returns of window duty charged on hospitals in England in 1840, *House of Commons Parliamentary Papers* 1841 sess. 1 (198) xiii 609.

¹⁶⁶ See the *Reports of the Committee of Visitors and Medical Superintendent of the Devon County Lunatic Asylum for 1866, 1871, 1872, 1874*, Exeter. In 1862 the St Thomas' Hospital for Lunatics in Exeter paid £37 11s 3d, and this sum rose steadily through the century: 62nd Annual Statement in *Statutes of St Thomas' Hospital for Lunatics*.

¹⁶⁷ London Metropolitan Archives MR/U/TJ/011.

¹⁶⁸ Local Taxation Returns (England) for 1889-90, *House of Commons Parliamentary Papers* 1890-91 (368-II) lxvii 579.

either internally or through popular or professional organs, it was relatively slight and usually mild. In 1847, for example, the Warneford lunatic hospital recorded its complaint of the 'increased pressure' on its charity fund by the demand of £45 3s 6d for window tax.¹⁶⁹ Where the assessment was significantly higher, it was challenged through the formal appellate procedures. So, for instance, appeals were made where in 1831 the county asylum at York was assessed at over £400 for inhabited house duty, the window tax on 314 windows and the duty on servants, while the Retreat at York was assessed to £250 inhabited house duty and just under £100 for 243 windows and servants.¹⁷⁰

As the nineteenth century public asylums were immense organisations with an important custodial function, financial and administrative expertise was essential to their management.¹⁷¹ With such management, the asylums watched tax issues carefully through the medical press, and yet tax was neither a major nor a constant issue for their astute managers to address. The records of the general and financial committees of the public asylums, and their formal annual reports, mention tax issues only very rarely and suggest that they did not form a significant part of the daily management of asylum business. Even when it is known from legal records that individual asylums were engaged in litigation on a tax matter, the degree of internal discussion, insofar as it is formally reported, is negligible. The charge to the poor rate on St Luke's Hospital in 1760 was recorded as a matter for reference to the General Committee,¹⁷² and subsequently the authority for the secretary to appeal against it and the ultimate success of that appeal were briefly recorded in the asylum's General Committee book.¹⁷³ Only when an asylum was involved in major litigation, as that of the City of London asylum in *Jepson v Gribble* in the High Court,

¹⁶⁹ In its Annual General Meeting the Warneford Hospital recorded its complaint of the 'increased pressure' on its charity fund by the demand of £45 3s 6d for window tax: *Jackson's Oxford Journal* 27 February 1847.

¹⁷⁰ *Case 504, County of York Fulford District (1831) Assessed Taxes Cases, TNA IR 12/1.*

¹⁷¹ The governance of statutory lunatic asylums was formally in the hands of Visiting Committees of Justices of the Peace, who made regulations for the management of the asylum and the resident medical superintendent: 9 Geo. IV c. 40 s. 30 (1828).

¹⁷² London Metropolitan Archives H64/A/01/001.

¹⁷³ *Ibid.*, H/64/A/03/001, 7 Dec. 1757 and 4 Feb. 1761.

were the events recorded at any length.¹⁷⁴ This level of engagement with tax matters was partly the result of a generally low rate of tax, certainly in the modern context, but that was not the determining factor since many taxes were strongly objected to for non financial reasons. The income tax, for example, was objected to on the grounds of its invasion of privacy and the excise was resented for its detrimental effect on the carrying out of trade and industrial enterprise. The main reason why tax did not form a major element in the governance of lunatic asylums lay in the nature of the tax regime itself. It was effective, appropriate to the asylums, and the asylums were confident in the system and in their ability to challenge any element they regarded as unjust or inappropriate. The statutory exemptions were recognised as being interpreted by both the tax and the judicial authorities in a pragmatic and just way.

This apparently equitable and relatively benign relationship between the tax authorities and the lunatic asylums was not the result of a dominant fisc and a submissive taxpayer. It has been seen that the lunatic asylums, primarily because of their limited influence as a new and relatively undeveloped sector of medical care, sought to establish themselves to their satisfaction within the tax regime primarily through the formal tax appellate process. In doing so they were far from passive. They were active in terms of numbers of appeals, and both forceful and imaginative in their arguments. They challenged excessive assessments, and were alert to any the flaws or ambiguities in the system which could be exploited by the revenue boards.¹⁷⁵ They were also tenacious. Where, for example, the Lancaster asylum was charged to tax on the seventy-five windows in the apartments of the medical superintendent, the matron and nurses, as well as in the cookhouse, washhouse and brewery, it fought the charge strongly, and ultimately successfully, requiring the local tax commissioners to meet three times before they could arrive at a determination.¹⁷⁶ The asylums were thus visible within the corpus of case law, and were able to secure an appropriate and robust place in the fiscal system.

¹⁷⁴ *Ibid.*, CLA/001/A/01/002;CLA/001/A/03/002.

¹⁷⁵ For example, as in *Case 2437, County of Hant, Division of Fareham (1856) Assessed Taxes Cases*, TNA IR 12/3

¹⁷⁶ *Case 1364, Borough of Lancaster in County of Lancaster (1840) Assessed Taxes Cases*, TNA IR 12/2.

First, although the tax legislation made no express provision for them, the asylums succeeded in establishing themselves as hospitals within the exemptions in the tax legislation by promoting their nature as institutions established with philanthropic motives, implementing a moral, religious or social obligation to care for the unfortunate, ill or disabled in society. Secondly, the statutory asylums successfully claimed a capping of their liability to rates and some success in overall tax exemption under the special and generous provisions in their parent legislation. Indeed, that exemption was less restrictively construed than the general charitable exemptions, largely because it was by its nature more self contained and less likely to give rise to precedents of a wider application than the tax authorities were prepared to accept. Thirdly, they achieved some concessions from the central tax authorities. Surveyors were instructed not to assess profits made by county lunatic asylums from private patients if there was a loss on the working of the asylum as a whole;¹⁷⁷ to treat the asylums of the Metropolitan Asylums Board as workhouses, and hold the whole building, including officers' residences, exempt from income tax under Schedule A income tax;¹⁷⁸ and not to assess land cultivated in an asylum for the benefit of the inmates to income tax under Schedule B.¹⁷⁹ Furthermore, charitable lunatic asylums received favourable extra statutory relief from the poor rate on the basis that they, and indeed all hospitals, performed essential work for the country, and that they would suffer financially if they had to pay full rates. In the middle of the twentieth century, this was 'the almost universal practice' in relation to voluntary hospitals.¹⁸⁰

Inevitably on occasion fiscal imperatives prevailed. The courts inclined towards importing the charity test into the concessionary provisions applicable to the statutory lunatic asylums, and the generic tax relief provided for charitable bodies was restrictively interpreted so as to limit its availability with respect to lunatic asylums admitting private patients. Similarly, the law was intransigent on the question of the liability to tax of officers' residences in relation to the window tax and

¹⁷⁷ *General Instructions to Surveyors of Taxes*, London, 1901, para 342: TNA IR 78/75

¹⁷⁸ *Ibid.*, para 191.

¹⁷⁹ *General Instructions to Surveyors of Taxes*, London, 1911, para 280: TNA IR 78/9. See too TNA IR 83/242.

¹⁸⁰ Report of the Committee on the Rating of Charities and Kindred Bodies' *House of Commons Parliamentary Papers* 1958-59 (831) xix 1 Appendix II 55.

inhabited house duty, and the asylums had to challenge it robustly, and were not consistently successful. Furthermore, the asylums' character as institutions established for the protection of the public did not go so far as to bring them into the category of institutions established for public purposes so as to relieve them from liability to the poor rate at Common Law.

The inherent drawbacks in the nature and processes of the tax system, and the explicit and precise nature of tax law caused by its nature and constitutional provenance, meant that the fiscal landscape was rarely able to accommodate new institutions and activities to the satisfaction of both the Crown and the taxpayer with ease. In the case of the public lunatic asylums the legal regime of taxation applicable to them was both appropriate and satisfactory. It gave the asylums the status and the reliefs they needed to meet their special requirements, and ensured that their therapeutic objectives were not undermined by the tax burden. Though the asylums were politically and socially weak, and correspondingly forceful in their use of formal appellate processes and thereby tested the limits of the law to establish their rightful and appropriate position, they had no need to be overly confrontational. The general principles of both the tax and asylum legislation proved to be well conceived and appropriate and though they were strictly applied as all tax provisions were, the rigour was tempered by pragmatism. This was a notable success of the tax law in particular, for it was conceived and drafted prior to the introduction of the new asylums, and yet proved inherently flexible enough to accommodate these new institutions and did so without losing its integrity or clarity.