

THE DETERMINANTS OF THE FORMS OF INCOME TAX LEGISLATION
1907-65: THEIR ASCERTAINMENT AND IMPORTANCE

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(Signature) John H N Pearce

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

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ABSTRACT

In 1907, income tax was unequivocally declared permanent; and, in 1965, the introduction of corporation tax affected the scope of that tax. This thesis investigates the forms of income tax legislation between those dates with the aim of ascertaining the determinants of those forms and assessing their importance. The forms of income tax legislation are divided into primary and subordinate legislation; and (within primary legislation) into Finance Acts, programme Acts, Consolidation Acts and Codification Acts.

The government had insufficient parliamentary time to enact all the primary legislation that it wished; and some forms of primary legislation were better placed for enactment than others. The result was that the United Kingdom polity (an expression used to denote the state considered as a political entity) operated with a default setting under which the government's legislation was enacted only in part, and with the different forms of primary legislation being used to a very unequal extent. This default setting was overridden only rarely; and only in part could subordinate legislation make good the shortfall in primary legislation.

It is concluded that the business that the United Kingdom polity could usefully transact exceeded its capacity to transact that business. Business was likely to be favoured if it was easy to implement, urgent, or had important champions; and decisions to be taken for short-term reasons. These conclusions explain the lopsided manner in which income tax was enacted and other features of the law and practice relating to income tax. The conclusions may also hold good

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

for other areas of government activity where there was much legislation; and are consistent with the view that the two world wars were of major importance for the development of the United Kingdom polity during this period.

LIST OF CONTENTS

TABLE OF STATUTES	7
TABLE OF SUBORDINATE LEGISLATION	12
TABLE OF CASES.....	15
LIST OF ABBREVIATIONS.....	16
LIST OF FIGURES	16
CHAPTER 1: INTRODUCTION	17
CHAPTER 2: THE CONSTRAINT OF INSUFFICIENT PARLIAMENTARY TIME	60
CHAPTER 3: DETERMINANTS WITHIN GOVERNMENT: THE INLAND REVENUE	100
CHAPTER 4: DETERMINANTS WITHIN GOVERNMENT: THE OFFICE OF THE PARLIAMENTARY COUNSEL.....	147
CHAPTER 5: THE ROLE OF THE TEMPORARY DIRECTING ELEMENT: POLITICAL MINISTERS.....	201
CHAPTER 6: THE ROLE PLAYED BY DETERMINANTS FORMING PART OF AMERY'S 'NATION'	250
CHAPTER 7: THE LIMITED AND UNEVEN ROLE PLAYED BY SUBORDINATE LEGISLATION	299
CHAPTER 8: CONCLUSION.....	358
APPENDIX 1: PRIMARY LEGISLATION RELATING TO INCOME TAX	382
APPENDIX 2: NUMBER OF STATUTORY RULES & ORDERS (1895-1947) NUMBER OF STATUTORY INSTRUMENTS (1948 ONWARDS)	387
APPENDIX 3: SUBORDINATE LEGISLATION RELATING TO INCOME TAX AND NOT INVOLVING ANY FOREIGN ELEMENT.....	392

BIBLIOGRAPHY397

TABLE OF STATUTES

1689	Bill of Rights (1 Will & M Sess 2 c 2)	51
1842	Income Tax Act 1842 (5 & 6 Vict c 35)	17, 30, 102, 369
1849	Inland Revenue Board Act 1849 (12 & 13 Vict c 46)	100
1853	Income Tax Act 1853 (16 & 17 Vict c 34)	102
1870	Irish Land Act 1870 (33 & 34 Vict c 46)	206
1870	Stamp Act 1870 (33 & 34 Vict c 97)	159
1870	Stamp Duties Management Act 1870 (54 & 55 Vict c 98)	159
1876	Customs Consolidation Act 1876 (39 & 40 Vict c 36)	159
1880	Taxes Management Act 1880 (43 & 44 Vict c 19)	159
1882	Bills of Exchange Act 1882 (45 & 46 Vict c 61)	206-7
1883	Bankruptcy Act 1883 (46 & 47 Vict c 52)	207
1890	Inland Revenue Regulation Act 1890 (53 & 54 c 21)	103, 159
1890	Partnership Act 1890 (53 & 54 Vict c 39)	206-7
1891	Stamp Duties Management Act 1870 (54 & 55 Vict c 38)	159
1891	Stamp Act 1891 (54 & 55 Vict c 39)	159
1892	Short Titles Act 1892 (55 & 56 Vict c 10)	159
1893	Rules Publication Act 1893 (56 & 57 Vict c 66)	299, 300
1893	Sale of Goods Act 1893 (56 & 57 Vict c 71)	206-7
1896	Short Titles Act 1896 (59 & 60 Vict c 14)	159

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

1906	Marine Insurance Act 1906 (6 Edw 7 c 41)	206-7
1907	Finance Act 1907 (7 Edw 7 c 13)	22
1908	Finance Act 1908 (8 Edw 7 c 16)	100
1909	Revenue Act 1909 (9 Edw 7 c 43)	79
1910	Finance (1909-10) Act 1910 (10 Edw 7 c 8)	22, 116, 221
1910	Finance Act 1910 (10 Edw 7 & 1 Geo 5 c 35)	79
1911	Revenue Act 1911 (1 & 2 Geo 5 c 2)	79, 80
1911	Perjury Act 1911 (1 & 2 Geo 5 c 6)	90
1911	Parliament Act 1911 (1 & 2 Geo 5 c 13)	71, 73, 79
1913	Provisional Collection of Taxes Act (3 & 4 Geo 5 c 3)	72, 81, 84, 223
1913	Forgery Act 1913 (3 & 4 Geo 5 c 27)	90
1913	Finance Act 1913 (3 & 4 Geo 5 c 30)	80
1914	Finance Act 1914 (4 & 5 Geo 5 c 10)	81, 223
1914	Defence of the Realm Act 1914 (4 & 5 Geo 5 c 29)	309
1915	Finance (No 2) Act 1915 (5 & 6 Geo 5 c 89)	317, 347-8
1916	Larceny Act 1916 (6 & 7 Geo 5 c 50)	90
1918	Income Tax Act 1918 (8 & 9 Geo 5 c 40) 21, 30, 92, 93, 94, 102, 103, 109, 138, 160, 184, 277, 330, 366, 368, 369	
1920	Finance Act 1920 (10 & 11 Geo 5 c 18)	22
1920	Government of Ireland Act 1920 (10 & 11 Geo 5 c 67)	329
1922	Finance Act 1922 (12 & 13 Geo 5 c 17)	374

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

1922	Irish Free State (Consequential Provisions) Act 1922 (13 Geo 5 sess 2 c 2)	329
1926	Finance Act 1926 (16 & 17 Geo 5 c 22)	330
1927	Finance Act 1927 (17 & 18 Geo 5 c 10)	243, 330, 374
1928	Finance Act 1928 (18 & 19 Geo 5 c 17)	316
1931	Abnormal Importations (Customs Duties) Act 1931 (22 & 23 Geo 5 c 1)	304
1932	Import Duties Act 1932 (22 & 23 Geo 5 c 8)	304, 305
1933	Local Government Act 1933 (23 & 24 Geo 5 c 51)	96
1936	Public Health Act 1936 (26 Geo 5 & 1 Edw 8 c 49)	96
1939	Emergency Powers (Defence) Act 1939 (2 & 3 Geo 6 c 62)	304, 309
1939	Income Tax Procedure (Emergency Provisions) Act 1939 (2 & 3 Geo 6 c 99)	78, 84, 318, 329
1940	Emergency Powers (Defence) Act 1940 (3 & 4 Geo 6 c 20)	308
1940	Finance (No 2) Act 1940 (3 & 4 Geo 6 c 48)	282, 319, 338, 350
1943	Finance Act 1943 (6 & 7 Geo 6 c 28)	85
1943	Income Tax (Employment) Act 1943 (6 & 7 Geo 6 c 45)	78, 84, 85, 231, 294, 343, 351, 353-4, 378
1944	Income Tax (Offices and Employments) Act 1944 (7 & 8 Geo 6 c 12)	78, 84, 231, 343, 351, 354, 378
1944	Finance Act 1944 (7 & 8 Geo 6 c 23)	86
1944	Education Act 1944 (7 & 8 Geo 6 c 31)	64
1945	Income Tax Act 1945 (8 & 9 Geo 6 c 32)	78, 84, 85, 272, 274, 275, 282

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

1946	Statutory Instruments Act 1946 (9 & 10 Geo 6 c 36)	300
1946	Finance Act 1946 (9 & 10 Geo 6 c 64)	281
1947	Town and Country Planning Act 1947 (10 & 11 Geo 6 c 51)	148, 376
1949	Consolidation of Enactments (Procedure) Act 1949 (12, 13 & 14 Geo 6 c 33)	27, 179, 180
1950	Statute Law Revision Act 1950 (14 Geo 6 c 6)	319
1952	The Income Tax Act 1952 (15 & 16 Geo 6 & 1 Eliz 2 c 10) 21, 22, 30, 92, 102, 113, 114, 192, 193, 194, 368, 369	
1952	Customs and Excise Act 1952 (15 & 16 Geo 6 & 1 Eliz 2 c 44)	96
1958	Import Duties Act 1958 (6 & 7 Eliz 2 c 6)	305
1959	Income Tax (Repayment of Post-War Credits) Act 1959 (7 & 8 Eliz 2 c 28)	78, 84, 294, 296
1960	Finance Act 1960 (8 & 9 Eliz 2 c 44)	75, 136
1961	Finance Act 1961 (9 & 10 Eliz 2 c 36)	305
1964	Income Tax Management Act 1964 (1964 c 37) 48, 78, 84, 85, 86-7, 113, 145, 191, 230-1, 234-7, 281, 367	
1964	Finance Act 1964 (1964 c 49)	305
1965	Finance Act 1965 (1965 c 25)	19
1967	Finance Act 1967 (1967 c 54)	93
1968	Capital Allowances Act 1968 (1968 c 3)	22, 93
1970	Taxes Management Act 1970 (1970 c 9)	22, 93
1970	Income and Corporation Taxes Act 1970 (1970 c 10)	22, 93
1978	Interpretation Act 1978 (1978 c 30)	25

TABLE OF SUBORDINATE LEGISLATION

SR & O	STATUTORY RULES AND ORDERS	
1909/197	Excise Transfer Order 1909	100
1914/1863	[1914-15] [No provision for citation]	330
1916/202	[Weekly wage-earners] [No provision for citation]	348
1916/887	[Weekly wage-earners] [No provision for citation]	348
1920/1991	[Weekly wage-earners] [No provision for citation]	348
1922/80	Government of Ireland (Adaptation of the Taxing Acts) Order 1922]	329
1923/405	Irish Free State (Consequential Adaptation of Enactments) Order 1923	329
1923/453	Irish Free State (Consequential Adaptation of Enactments) Order 1923]	329
1925/702	[Weekly wage-earners] [No provision for citation]	348
1927/81	Income Tax (Schedule V Amendment) Order 1927	330
1928/582	[Weekly wage-earners] [No provision for citation]	348
1931/827	[Weekly wage-earners] [No provision for citation]	348
1940/1520	[Weekly wage-earners] [No provision for citation]	348
1940/1776	Deduction of Income Tax (Schedule E) Regulations 1940	348, 350
1941/1378	Deduction of Income Tax (Schedule E) (Amendment) Regulations 1941	350
1941/1379	[Weekly wage-earners] [No provision for citation]	350

*The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance*

1941/1667	Deduction of Income Tax (Schedule E) (Amendment No 2) Regulations 1941	350
1942/1324	Deduction of Income Tax (Schedule E) (Amendment No 3) Regulations 1942	350
1942/1970	Seasonal Employments (Income Tax) Regulations 1942	348
1943/397	Deduction of Income Tax (Schedule E) (Amendment No 4) Regulations 1943	350
1943/1024	Deduction of Income Tax (Schedule E) (Amendment No 5) Regulations 1943	350
1943/1310	Deduction of Income Tax (Schedule E) (Merchant Navy) Regulations 1943	350
1943/1669	Deduction of Income Tax (Schedule E) (Amendment No 6) Regulations 1943	352
1944/251	Income Tax (Employments) Regulations 1944 301, 331, 343, 355	
1944/1015	Income Tax (Employments) (No 2) Regulations 1944	355
1945/365	Income Tax (Employments) (No 3) Regulations 1945	355
1946/163	Income Tax Procedure (Emergency Provisions) Act (Expiry) Order 1946	329
1946/458	Income Tax (Employments) (No 4) Regulations 1946	355
1947/582	Income Tax (Employments) (No 5) Regulations 1947	355
1947/1295	Income Tax (Employments) (No 6) Regulations 1947	355

SI

STATUTORY INSTRUMENTS

1948/3	Statutory Instruments Act, 1946 (Commencement) Order	300
1948/464	Income Tax (Employments) (No 7) Regulations 1948	355

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

1948/1519	Income Tax (Employments) (No 8) Regulations 1948	355
1948/1819	Income Tax (Employments) (No 9) Regulations 1948	355
1950/453	Income Tax (Employments) Regulations 1950	355
1951/836	Income Tax (Employments) (No 2) Regulations 1951	355
1952/1004	Income Tax (Employments) (No 3) Regulations 1952	355
1952/1758	Income Tax (Employments) (No 4) Regulations 1952	355
1954/1577	Income Tax (Employments) (No 5) Regulations 1954	355
1955/835	Income Tax (Employments) (No 6) Regulations 1955	355
1956/1230	Income Tax (Purchased Life Annuities) Regulations 1956	330
1958/1166	Income Tax (Employments) (No 7) Regulations 1958	355
1960/2308	Income Tax (Purchased Life Annuities) (Amendment) Regulations 1960	330
1961/591	Income Tax (Employments) (No 8) Regulations 1961	355
1961/1596	Income Tax (Employments) (No 9) Regulations 1961	355
1962/1003	Income Tax (Employments) Regulations 1962	355
1963/1082	Income Tax (Employments) (No 2) Regulations 1963	355
1965/516	Income Tax (Employments) Regulations 1965	355

TABLE OF CASES

Absalom v Talbot (HM Inspector of Taxes) [1943] 1 All ER 589; (1943) 26 TC 166 (CA)	373
A-G v De Keyser's Royal Hotel Ltd [1920] AC 508 (HL)	311
A-G v Wilts United Dairies Ltd (1921) 37 TLR 884 (CA); (1922) 38 TLR 781 (HL)	52-3, 303, 305
A-G for Canada v Hallet & Carey Ltd [1952] AC 427 (PC)	303-4
Bowles v Bank of England [1913] 1 Ch 57; (1912) 6 TC 136 (Ch)	84, 183, 267
Farrell v Alexander [1977] AC 59 (HL)	27
Great Western Railway Co v Bater [1922] 2 AC 1; (1922) 8 TC 231 (HL)	94
IRC v Frere [1965] AC 402; (1964) 42 TC 125 (HL)	373
IRC v Hinchy [1960] AC 748; (1960) 38 TC 625 (HL)	136
IRC v Sneath (1932) 17 TC 149 (CA)	23
Lionel Sutcliffe Ltd v IRC (1928) 14 TC 171 (KB)	374
R v Special Commissioners of Income Tax (ex p Elmhirst) [1936] 1 KB 487; (1935) 20 TC 381 (CA)	23
Ronnfeldt v Phillips (1918) 35 TLR 46 (CA)	308
Slaney (HM Inspector of Taxes) v Kean [1970] Ch 243; (1969) 45 TC 415 (Ch)	24
Wicker v Fraser (HM Inspector of Taxes) (1982) 55 TC 641 (Ch)	24

LIST OF ABBREVIATIONS

1918 Act	The Income Tax Act 1918 (8 & 9 Geo 5 c 40)
1952 Act	The Income Tax Act 1952 (15 & 16 Geo 6 & 1 Eliz 2 c 10)
TNA	The National Archives, Kew

LIST OF FIGURES

Figure 1:	The standard rate of income tax: 1842-43 to 1964-65	20
Figure 2:	Expenditure of public authorities as a percentage of the national income: 1880-1954	36

CHAPTER 1: INTRODUCTION

‘The chaotic condition of the Statute Book has been the subject of complaint for at least five hundred years, and it must be acknowledged that the long history of the intermittent attempts made to improve its form and arrangement is, in the main, a story of failure’.¹

1. The income tax background

Income tax was proposed by the younger Pitt and introduced in 1799.² The tax was abolished in 1802 during a temporary cessation of hostilities in the Napoleonic Wars; but the United Kingdom was soon at war with France again – and income tax was reintroduced in 1803. On its reintroduction, the tax had significantly different characteristics and was more effective operationally;³ but, following the conclusion of the Napoleonic wars, income tax was again abolished in 1816. Then, in 1842, income tax was reintroduced by Peel,⁴ with a view to its helping to eliminate a deficit in the public finances; and income tax has been in continuous existence ever since. It was, however, the official view of Peel, and then of Gladstone, that income tax was temporary only.⁵ It followed, on this view, that any major investigations into the principles of the tax, and any major amendments of it, were matters that had no entitlement to priority so far as government was concerned. Indeed, it could be argued that any such actions might be harmful: for these might imply that the merely

¹ TNA (The National Archives, Kew) file T 162/911 (E 17496/1). ‘Statute Law Reform’. Memorandum by the Parliamentary Counsel to the Treasury (Sir Granville Ram), 30 January 1946, para 1 (opening sentence).

² The standard general history of income tax remains BEV Sabine, *A History of Income Tax* (London, George Allen & Unwin, 1966).

³ These matters are argued convincingly in A Farnsworth, *Addington: Author of the Modern Income Tax* (London, Stevens, 1951).

⁴ In the Income Tax Act 1842 (5 & 6 Vict c 35).

⁵ In 1853, Gladstone said of income tax that ‘it is not adapted for a permanent portion of your fiscal system, unless you can by reconstruction remove its inequalities’. (HC Deb 18 April 1853, vol 125, col 1364).

temporary was in reality permanent. The obvious course of action (or, rather, inaction) was to leave the tax in the state in which it currently existed. In a memorandum providing a brief history of income tax, which the Inland Revenue (the government department responsible for the administration of income tax) provided to the Royal Commission on the Income Tax appointed in 1919, the department took the view that, from 1880 to 1905, 'the history of the tax offers no very striking features'.⁶

The opening date of 1907 for the investigation carried out in this thesis has been chosen by reference to an event in the history of income tax – the public and unequivocal abandonment of the view that income tax was temporary only.⁷ In that year, the Chancellor of the Exchequer (Asquith), in his Budget speech, started from the proposition 'and a most important proposition it is' that income tax 'must now be regarded as an integral and permanent part of our financial system'.⁸ Once that proposition was enunciated and admitted, Asquith thought, it became impossible to justify the incidence of income tax as it stood at that time.⁹ The way was accordingly open for major legislative changes – and these began to be undertaken. It was the Inland Revenue's view, towards the end of the first world war, that developments since 1907 had had the overall result of 'transforming the old and comparatively simple structure into a financial instrument of extraordinary complexity, subtlety and power'.¹⁰ The Royal Commission on the Income Tax, which reported in 1920, took the same view:

⁶ Royal Commission on the Income Tax, *Appendices and Index to the Minutes of Evidence* (1920) Appendix 1, para 14.

⁷ Sir John Clapham commented that '[a] foreigner might have admired the swift English resolve to make permanent a tax which had existed continuously for sixty-five years'. JH Clapham, *An Economic History of Modern Britain: Machines and National Rivalries (1887-1914) with an Epilogue (1914-1929)* (CUP 1938) 404.

⁸ HC Deb 18 April 1907, vol 172, col 1199.

⁹ *ibid.*

¹⁰ TNA file IR 75/89, fos 1-9, 'Brief History of the Income Tax'. This document was produced in 1917 or 1918.

for it considered that '[i]t is from 1907 that the modern Income Tax counts the years of its life'.¹¹

The closing date of 1965 has also been chosen by reference to an event in the history of income tax: for the Finance Act 1965 provided for corporation tax to be charged in place of income tax on the profits of companies – and so effected a major change in the scope of the tax.

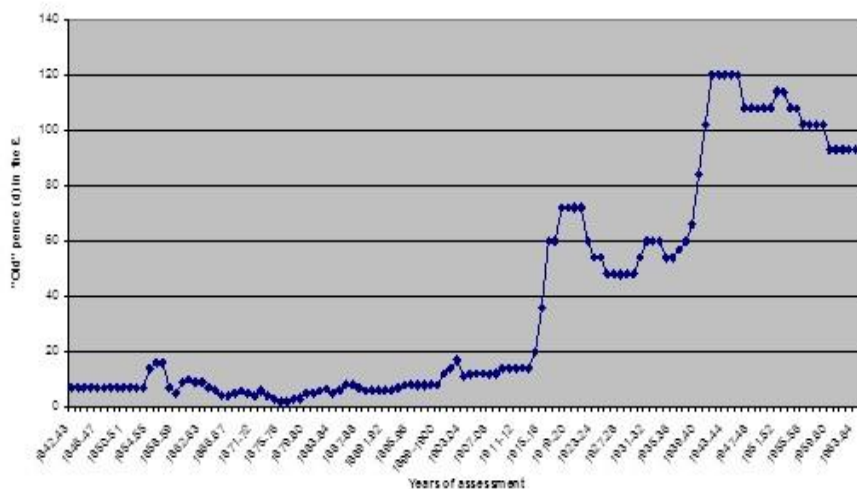
The period from 1907 to 1965 was one of very great importance in the history of income tax. During this period, the government's finances came to be carried out on a greatly increased scale; and income tax played a major role in that expansion. In the financial year 1907-08, central government revenue amounted to some £156 million. In the financial year 1964-65, that revenue amounted to £7,727 million (nearly a fiftyfold increase).¹² Even when inflation is taken into account, that expansion was very great indeed. Receipts from income tax in 1907-08 amounted to £32.4 million: in 1964-65, receipts from income tax and surtax amounted to £3,272.0 million (more than a hundredfold increase). An income tax required to produce vastly increased receipts also had higher rates of charge. In 1907-08, the standard rate of income tax was one shilling in the pound (5%). In 1964-65, the standard rate of income tax was seven shillings and nine pence in the pound (38.75%); and the highest rate at which surtax could be charged was ten shillings in the pound (50% – making a cumulative total of 88.75%). Figure 1 shows the standard rate of income tax from 1842-43 to 1964-65; and there can be no doubt about the overall rise in the standard rate at which income tax was charged.

¹¹ Royal Commission on the Income Tax, *Report* (Cmd 615, 1920) 2, para 9.

¹² Statistics relating to the public finances may conveniently be found in BR Mitchell, *British Historical Statistics* (CUP 1988) 581-6.

Figure 1

The standard rate of income tax: 1842-43 to 1964-65



Increased receipts from income tax also led to a large increase in the number of taxpayers. At no time was there ever any official counting of those who paid income tax: but, in the years between 1900 and the first world war, it was officially estimated that the number of individuals chargeable to income tax increased from slightly fewer than one million to slightly more than that number (about 2.5% of the population).¹³ For 1962-63, it was officially estimated that there were slightly more than 20 million such individuals (about 37.8% of the population).¹⁴ It was during this period that income tax ceased to be a 'class tax' and became a 'mass tax'.¹⁵

¹³ During March 1914, the estimates provided, in replies to parliamentary questions, were 950,000 payers of income tax in 1903-04; 1,150,000 in 1912-13; and 1,150,000 in 1913-14. See HC Deb 3 and 4 March 1914, vol 59, cols 225 and 434.

¹⁴ Inland Revenue, *Report of the Commissioners of Her Majesty's Inland Revenue for the year ended 31st March 1964: Hundred and Seventh Report* (Cmnd 2572, 1965) 42.

¹⁵ For this terminology see CC Jones, 'Bonds, Voluntarism and Taxation' in J Tiley (ed), *Studies in the History of Tax Law: Volume 2* (Oxford, Hart, 2007) 428.

Income tax also assumed greater importance relative to other government imposts. The various taxes levied by central government were not equally capable of responding to the challenge of producing increased receipts. If the economy was characterised both by economic growth and by inflation – and this was the case for the majority of the time – the relative percentage of central government tax revenue attributable to income tax could be expected to rise. Income tax was more responsive to economic growth than estate duty; it was more responsive to inflation than customs duties and excise duties. In the absence of action to counteract this disequilibrium, it could be expected that the relative importance of income tax would grow – and so it did.¹⁶ In 1907-08, income tax raised £32.4 million for central government: this was 24.9% of tax revenue – slightly less than the contributions made both by customs duties and by excise duties. In 1964-65, income tax and surtax raised £3,272 million for central government: this was 44% of tax revenue – well ahead of the 27% raised by customs duties – the next largest contributor.

During the period from 1907 to 1965 also, the leading features of income tax changed greatly. Following the abandonment of the view that the existence of income tax was temporary only, the quantity of legislation in existence grew more rapidly – and reached a point where that quantity was very great indeed. In the annual volumes published of Public General Acts, the Income Tax Act 1918¹⁷ (a consolidation Act) took up 180 pages. The Income Tax Act 1952¹⁸ (the next consolidation Act) took up 508 pages; and was, at that time, the

¹⁶ On these matters see R Rose and T Karran, *Taxation by Political Inertia: Financing the Growth of Government in Britain* (London, Allen & Unwin, 1987).

¹⁷ 8 & 9 Geo 5 c 40.

¹⁸ 15 & 16 Geo 6 & 1 Eliz 2 c 10.

longest statute ever to have been enacted.¹⁹ The next group of consolidation statutes, the Capital Allowances Act 1968, the Taxes Management Act 1970 and the Income and Corporation Taxes Act 1970, took up a total of 877 pages. Although some provisions in these statutes were not relevant for income tax, there can be no doubt that the quantity of income tax legislation had increased – and was continuing to increase. ‘What is most wrong with the Income Tax Acts’, the drafter of the 1952 Act, Sir John Rowlatt, observed on one occasion, ‘is that there is more of them than anybody can possibly absorb, and this is quite certain to get worse every year’.²⁰

The structure of the income tax also underwent a fundamental transformation during the first half of the twentieth century. At the beginning of 1907, income tax was essentially a flat rate tax – although an individual with a small income could claim exemption or an abatement in appropriate circumstances.²¹ The Finance Act 1907²² introduced differentiation in favour of earned incomes; and the Finance (1909-10) Act 1910²³ introduced graduation.²⁴ The Finance Act 1920²⁵ then made provision for income tax to be computed in a new manner, with deductions from assessable income being given to taxpayers for the various personal reliefs to which they were entitled. The overall result of these

¹⁹ When the Consolidation Bill enacted as the Income Tax Act 1952 was in committee, its drafter, Sir John Rowlatt, was asked ‘[i]s it true that this is the longest Bill there has ever been?’ The answer given was ‘I know of no longer one’. (Joint Select Committee on Consolidation Bills, *First Report* [on the Income Tax Bill] (1951-52, HL 17, HC 62) 44 (question 214).)

²⁰ TNA file IR 40/14566. Letter, Rowlatt to Bridges, 11 January [1952]. (In the letter itself, the year is specified as ‘1951’, but that is clearly an error, with ‘1952’ being intended.)

²¹ The matters referred to in this paragraph are considered in more detail in JHN Pearce, ‘The Rise and Development of the Concept of “Total Income” in United Kingdom Income Tax Law: 1842-1952’ in J Tiley (ed), *Studies in the History of Tax Law: Volume 2* (Oxford, Hart, 2007).

²² 7 Edw 7 c 13.

²³ 10 Edw 7 c 8.

²⁴ Following the definitions adopted by the Royal Commission on the Income Tax appointed in 1919, in this thesis ‘differentiation’ means ‘the principle of distinguishing between one kind of income and another by means of different rates of tax’; and ‘graduation’ means ‘the principle of increasing the rate of the tax as the income increases’. (Royal Commission on the Income Tax, *Report* (Cmd 615, 1920) 24, para 105.)

²⁵ 10 & 11 Geo 5 c 18.

developments was that income tax could no longer be considered to be essentially a flat rate tax. 'The history of income tax in this country', the Royal Commission on the Taxation of Profits and Income declared in its Second Report, in 1954, 'is the history of a change from what was virtually a flat rate tax charged uniformly on all incomes to a progressive tax charged at increasing rates as income increases'.²⁶

The administration of income tax was also transformed during the first half of the twentieth century. On the re-introduction of income tax in 1842, the process for determining liability to the tax in England and Wales depended (as it had done earlier during the Napoleonic period) upon the Commissioners for the general purposes of the income tax (the 'General Commissioners').²⁷ As part of that overall process, the General Commissioners heard and determined appeals against assessments to income tax. They accordingly exercised a function of a judicial nature, but for an administrative purpose;²⁸ and there is judicial authority, dating from the first half of the twentieth century, that, in doing so, they were acting administratively rather than judicially.²⁹ During the period between 1907 and 1965, however, the process for determining liability to income tax in England and Wales was transferred to central government.³⁰ As one official put the matter in 1941 '[t]he modern aim is, I think, to leave the

²⁶ Royal Commission on the Taxation of Profits and Income, *Second Report* (Cmd 9105, 1954) 42, para 137.

²⁷ On the General Commissioners see also generally C Stebbings, 'The General Commissioners of Income Tax: Assessors or Adjudicators' [1993] *British Tax Review* 52; and JF Avery Jones, 'The Special Commissioners after 1842: from administrative to Judicial Tribunal' [2005] *British Tax Review* 80.

²⁸ C Stebbings, "'A Natural Safeguard": The General Commissioners of Income Tax' [1992] *British Tax Review* 400.

²⁹ *IRC v Sneath* (1932) 17 TC 149, 164 and 168 (CA) and *R v Special Commissioners of Income Tax (ex p Elmhirst)* [1936] 1 KB 487, 493; (1935) 20 TC 381, 387 (CA).

³⁰ The stages of this transfer are traced in JHN Pearce, 'The Role of Central Government in the Process of Determining Liability to Income Tax in England and Wales: 1842-1970' in J Tiley (ed), *Studies in the History of Tax Law: Volume 3* (Oxford, Hart, 2009).

Commissioners with only the very important job of hearing appeals against assessments';³¹ and there is judicial authority, dating from the years after 1965, that the functions of the General Commissioners should now be considered to be judicial and not administrative.³² The period from 1907 to 1965, therefore, began with the General Commissioners exercising an overall administrative function, which included a judicial function within it; the period ended with the General Commissioners still exercising the judicial function, but with the Inland Revenue now exercising the overall administrative function.

During the period from 1907 to 1965, therefore, receipts from income tax rose – and so did the rates at which the tax was charged. At the beginning of this period, income tax was a flat-rate, class tax with an essentially local administration; at its end, income tax was a graduated, mass tax and was administered centrally. The overall result of these developments was that income tax moved from being one tax among a number of taxes in a state where central government was conducted on a small scale to being the government's flagship tax in a state where government was conducted on a large scale. The happening of all these developments within the same half century has enabled the opinion to be advanced that it is, perhaps, the first half of the twentieth century that is the crucial half century in the modern history of income tax in the United Kingdom.³³

2. The forms of income tax legislation and determinants of them

This thesis investigates one aspect of income tax law during the important period from 1907 to 1965: the determinants of the forms of income tax

³¹ TNA file IR 76/43. Note dated 15 December 1941. (Underlining in original.)

³² *Slaney (HM Inspector of Taxes) v Kean* [1970] Ch 243 251; (1969) 45 TC 415, 420 (Ch) and *Wicker v Fraser (HM Inspector of Taxes)* (1982) 55 TC 641, 649 (Ch).

³³ Pearce (n 30) 357.

legislation during that period. It is necessary, therefore, to specify the forms of income tax legislation that will be investigated; and the meaning to be given to the word 'determinant'.

The forms of income tax legislation that will be investigated may be classified in two different ways. The first classification distinguishes between primary legislation and subordinate legislation. During the first half of the twentieth century, the primary legislation relating to income tax consisted of Acts of the United Kingdom Parliament. The expression 'subordinate legislation' will be used in accordance with the definition given in section 21(1) of the Interpretation Act 1978, where it is defined to mean 'Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act'. Taking its lead from this provision, the expression 'subordinate legislation' will be used in this thesis, as opposed to the expressions 'secondary legislation' and 'delegated legislation'.

The second classification relates to the various types of primary legislation relating to income tax that existed during the twentieth century.³⁴ At any particular time there was always a principal Act: that is to say, an Act dealing comprehensively with this area of the law. During this period, there were also amending Acts, which merely altered an area of the law without dealing with that area comprehensively. Amending Acts relating to income tax, in their turn, may be divided into two categories: Finance Acts and programme Acts.

Finance Acts resulted from the enactment of Finance Bills:³⁵ and Finance Bills

³⁴ The types of legislation mentioned are specified in the terms which the expressions in question have at the present day. The detailed wording of this paragraph has been influenced by O Jones (ed), *Bennion on Statutory Interpretation; A Code* (6th edn, London, LexisNexis, 2014) 156.

³⁵ This specification of Finance Bills follows that given in the pamphlet entitled *The Preparation of Bills*, dated March 1948, para 37. There is a copy of this pamphlet in TNA file CAB 21/4693.

were required, by a long-standing practice of the House of Commons, to originate, wholly or mainly, with resolutions of the Committee of Ways and Means. Bills that had to originate in this manner (known colloquially as 'Ways and Means Bills') were Bills whose main object was to provide money for the public service – an object which included the imposition of taxation.³⁶ Most Ways and Means Bills (including Finance Bills) might be recognised by an enacting formula which had a preface beginning with the words 'Most Gracious Sovereign'. It was also the case that many Finance Bills came into existence in accordance with a well-known and well-established sequence of events, which included the Budget speech and the passing of the government's Budget resolutions.³⁷ Having regard to this specification of Finance Acts, the specification of the other type of amending Act that will be considered – programme Acts – necessarily has a residuary character: for it consists of all amending Acts other than Finance Acts. The expression 'programme Act' is accordingly used in this thesis in a special and technical sense, which is not co-extensive with an Act of Parliament coming into existence as part of the government's legislative programme for a particular parliamentary session.³⁸

A principal Act may be replaced in any one of three ways. The first way is by the enactment of a new principal Act containing different provisions (to a greater

The pamphlet was written by Sir Granville Ram, who had recently retired as First Parliamentary Counsel.

³⁶ Other categories of Ways and Means Bills included Consolidated Fund Bills and Appropriation Bills.

³⁷ It was perfectly possible for there to be more than one Finance Act in any one particular year. In particular, this could happen if there was a general election or a financial crisis.

³⁸ In 1911, the distinction between the Revenue Bill then presented to Parliament (a programme Bill on this classification) and a Finance Bill was explained by saying that 'This Bill is called a Revenue Bill and not a Finance Bill ... as ... it contains clauses which deal with general amendments of financial law, and not with the financial arrangements of the year. The provisions absolutely necessary for the financial arrangements of the year, namely, those imposing the tax on tea for the year, and income tax for the year, became law last November'. (TNA file AM 2/103, fo 400. Notes on Revenue Bill with backsheets dated 21 February 1911.)

or lesser extent). The second way is by the enactment of a codification Act. An Act of this type restates the whole of the law on a particular topic, whether that law consists of statute law, case law or the common law. A codification Act may also deal with custom, prerogative and practice.³⁹ The third way is by the enactment of a consolidation Act: that is to say, an Act restating provisions contained in various earlier Acts dealing with the same subject matter.

Consolidation is accordingly a less ambitious undertaking than codification: for consolidation is concerned only with existing statute law. Consolidation Acts, in their turn, may be divided into two types. 'Pure' consolidation consists of reproduction of the original wording without significant change: all other consolidation consists of consolidation with amendments. At the beginning of the twentieth century, pure consolidation was the only type of consolidation permitted: but consolidation with amendments came to be permitted under the Consolidation of Enactments (Procedure) Act 1949;⁴⁰ and, after 1965, the scope for this type of consolidation was extended by a further procedure under which amendments were proposed by the Law Commission.⁴¹

The term 'determinants' is used, in this thesis, in accordance with dictionary definitions – a determinant is 'that which serves to determine'; 'a defining element'.⁴² Determinants, accordingly, may vary greatly in their characteristics. The nature of parliamentary procedure; initiatives undertaken by particular individuals; the United Kingdom's participation in the two world wars; a state of

³⁹ Jones (n 34) 558.

⁴⁰ 12, 13 & 14 Geo 6 c 33.

⁴¹ Jones (n 34) 554-7. 'There are three sorts of consolidation Act: (1) "pure" consolidation (i.e., re-enactment); (2) consolidation under the Consolidation of Enactments (Procedure) Act 1949, which allows consolidation with "corrections and minor improvements" ... ; (3) consolidation "with Law Commission amendments" under a procedure adopted by Parliament in 1967'. *Farrell v Alexander* [1977] AC 59 (HL) 82 (Lord Simon of Glaisdale).

⁴² These definitions are in accordance with the word's Latin derivation, which points towards the meaning 'methodically to set bounds to'.

affairs in which the United Kingdom's government had more business to transact than time in which to transact that business – all are capable of being determinants of the United Kingdom's income tax legislation during the first half of the twentieth century.

This thesis investigates the determinants of the forms of income tax legislation between 1907 and 1965: and, in general, it is a statute or an item of subordinate legislation (such as a statutory instrument) that is studied. The enactment in question is studied as a whole. This general statement, however, is subject to two significant qualifications. The first qualification is that much may also be learned about the determinants of the forms of income tax legislation by investigating legislation that was prepared but not enacted. As a matter of logic, this draft legislation suffered from one or more defects which prevented its enactment; and the ascertainment of those defects is capable of providing much information for ascertaining the determinants of the form of the income tax legislation. This draft legislation, therefore, has also been investigated.⁴³ The second qualification relates to the distinction between primary and subordinate legislation. It was possible for provisions that enabled subordinate legislation to be made to be expanded or contracted during the period beginning with discussion of the proposed primary legislation and ending with its enactment.⁴⁴ In such a case it is relevant to investigate why changes to the detailed content of the primary legislation were made: for the ambit of the subordinate legislation relating to income tax was affected.

⁴³ Two important items of draft legislation which were prepared but were not enacted were the Revenue Bill of 1921 and the draft Bill prepared by the Income Tax Codification Committee and published in 1936. Both are investigated in the body of the thesis – and particularly in chapter 6 below.

⁴⁴ One area in which this happened is investigated in chapter 7, section 3, below.

3. Research aim and research questions

The aim of this thesis is to ascertain the determinants of the forms of income tax legislation during the period from 1907 to 1965 and to assess their importance. To achieve this aim six specific research questions will be addressed in the body of the thesis. The first five research questions investigate the role played by different elements in the United Kingdom polity in determining the form of that legislation during that period. The word 'polity' is used in this thesis to denote a state as a political entity. The elements investigated follow on from an analysis of the United Kingdom polity; and that analysis is set out later in this chapter.⁴⁵

The first research question addressed is whether the need to enact primary legislation in Parliament relating to income tax affected the form of the income tax legislation. The second research question addressed is the role played by the Inland Revenue (the government department responsible for administering income tax) in determining the form of the income tax legislation; and the third research question addressed is the role played by the Office of the Parliamentary Counsel (the office responsible for drafting government primary legislation). The fourth research question addressed is the role played by government ministers; and the fifth the role played by elements outside the government. The sixth and final research question addressed is the role played by subordinate legislation: for the relationship between the primary legislation and the subordinate legislation relating to income tax was not straightforward. During the first half of the twentieth century, the United Kingdom witnessed a great expansion in the use of subordinate legislation; but, in the case of income

⁴⁵ See section 6 of this chapter below.

tax, comparatively little subordinate legislation was made: and the reasons for this limited use are investigated. On the other hand (and sounding in a different key), an appreciable amount of subordinate legislation (some of it of great operational importance) came into existence: and the reasons why this appreciable amount of subordinate legislation was made are also investigated.

The determinants of the forms of income tax legislation, when ascertained, should explain why the primary legislation enacted was distributed very unequally amongst the forms of legislation distinguished. That primary legislation is listed in Appendix 1 to this thesis. There were 68 Finance Acts, but only eight programme Acts. There were two Consolidation Acts.⁴⁶ A draft Income Tax Codification Bill was published in 1936⁴⁷ – but no Codification Act and no new principal Act relating to income tax was enacted.

The primary legislation relating to income tax enacted between 1907 and 1965 may also be described as producing an overall outcome which was ambiguous and indecisive. In 1907, the principal Act was still the Income Tax Act 1842,⁴⁸ supplemented by Finance Acts and by programme Acts. In 1918, the 1842 Act and primary legislation supplementing it were replaced by the Income Tax Act 1918⁴⁹ (a Consolidation Act). In 1952, the 1918 Act, in its turn, was replaced by the Income Tax Act 1952⁵⁰ (another Consolidation Act); and the 1952 Act also consolidated provisions of Finance Acts and programme Acts which supplemented the 1918 Act. In 1965, the principal Act was still the Income Tax

⁴⁶ These two Acts were the Income Tax Act 1918 (8 & 9 Geo 5 c 40) (referred to as 'the 1918 Act' in this thesis) and the Income Tax Act 1952 (15 & 16 Geo 6 & 1 Eliz 2 c 10) (referred to as 'the 1952 Act' in this thesis).

⁴⁷ Income Tax Codification Committee, *Report: Volume II: Draft of an Income Tax Bill* (Cmd 5132, 1936).

⁴⁸ 5 & 6 Vict c 35.

⁴⁹ 8 & 9 Geo 5 c 40.

⁵⁰ 15 & 16 Geo 6 & 1 Eliz 2 c 10.

Act 1952, supplemented by Finance Acts and by programme Acts. There had certainly been activity: but, to adapt language associated with di Lampedusa's novel *The Leopard*, it was possible to take the view that everything had changed, but that everything was still the same.⁵¹ The determinants of the forms of income tax legislation produced inertia as well as change; and those determinants, when ascertained, should explain this ambiguous and indecisive overall outcome.

The assessment of the importance of the determinants of the forms of the income tax legislation will be undertaken by considering the importance of those determinants when placed in wider contexts: and three contexts will be considered. The first context is the law and practice of income tax in the United Kingdom during the period from 1907 to 1965; and the second context is that of the general workings of the United Kingdom polity during that same period.

So far as these two contexts are concerned, one hypothesis that may be formulated is that, in this period, a contrast may be drawn between the particular decisions that were taken and the overall result of those decisions. Kay and King, in their study of the United Kingdom tax system, referred to '[t]he mess into which the present British tax system has drifted'.⁵² Anyone who came to that system for the first time, they thought, would regard it with some incredulity. There was a maze of taxes on different kinds of income, each tax with its own rules for determining taxable income and liability. The interaction between those taxes was difficult to comprehend, and, accordingly, was rarely brought out into the open when tax changes were discussed. 'No one would

⁵¹ '... all will be the same though all will be changed'. G di Lampedusa, *The Leopard* (A Colquhoun, tr, London, Collins, 1960) 35.

⁵² JA Kay and MA King, *The British Tax System* (OUP 1978) 246.

design such a system on purpose and nobody did'. Only a historical explanation of how it came about, the authors thought, could be offered as a justification – and that was 'not a justification, but a demonstration of how seemingly rational decisions can have absurd effects in aggregate'.⁵³ The contrast between the particular and the aggregate also impressed Rose and Karran: for they wrote that '[a]nyone who has ever contemplated the national tax system as a whole is immediately struck by how *unsystematic* it is'.⁵⁴ Different taxes appeared to have been introduced for different reasons at different times, and each to have grown without plan or direction, more or less reflecting forms of political inertia. Rose and Karran then went on to make a point of great importance for the investigation carried out in this thesis: '[t]he more that critics of a tax system attack the alleged faults, the more it is made apparent that the forces accounting for this "unsystematic" system must be strong and only imperfectly understood'.⁵⁵ The ascertainment of the determinants of the forms of income tax legislation may enable a contribution to be made towards understanding not only the law and practice of income tax in the United Kingdom, but also the general workings of the United Kingdom polity. The third context considered is that of understanding major developments in the history of the United Kingdom during the period from 1907 to 1965 – and three major developments are now considered.⁵⁶

⁵³ *ibid.*

⁵⁴ Rose and Karran (n 16) vii. (*Italics in original.*)

⁵⁵ *ibid.*

⁵⁶ It is possible, of course, to enumerate other major developments in twentieth century British history. In a recent history of Britain since 1900, Skidelsky referred to the collapse of Britain's 'hard' power; the increase in the prosperity of the British people; the stuttering economy; the unbroken preservation of the constitution; and the end of empire. R Skidelsky, *Britain Since 1900: A Success Story?* (London, Vintage Books, 2014) 2-3.

During the first half of the twentieth century, there was a major expansion of the activities carried on by central government.⁵⁷ The night-watchman state of the nineteenth century was replaced by the welfare state of the twentieth century. (In this thesis the working definition of the welfare state offered by Marwick will be adopted. The state which emerged in the 1940s was 'one in which full community responsibility is assumed for four major sectors of social well-being: social security, which means provision against interruption of earnings through sickness, injury, old age, or unemployment; health; housing; and education'.)⁵⁸ A welfare state implied more government expenditure – and with a higher percentage of that expenditure being referable to social expenditure – than did a night-watchman state. Such was the case. In 1910, government expenditure on the social services was £89.1 millions (32.8% of total government expenditure). In 1955, the corresponding figures were £2,739.0 millions and 44.6%.⁵⁹ It has been calculated that 3.1% of the gross domestic product was spent on social services in 1907, but 16.5% in 1964.⁶⁰

Explanations of the expansion of the activities carried on by central government have, as their foundation text, the study by Dicey entitled *Lectures on the relation between Law and Public Opinion in England during the Nineteenth Century* first published in 1905.⁶¹ It was Dicey's view that 'the beliefs or

⁵⁷ One work on social history from 1914 to 1945 opens its concluding chapter with the words 'What then were the most significant features of British society in the years between 1914 and 1945? One which certainly stands out is the widening role of government which, like some "new Leviathan", was playing a greater part both in the running of the economy and the provision of social services'. J Stevenson, *British Society 1914-45* (originally published 1984, London, Penguin Group, 1990) 462.

⁵⁸ Quoted in Stevenson (n 57) 296.

⁵⁹ AT Peacock and J Wiseman, *The Growth of Public Expenditure in the United Kingdom* (OUP 1961) 82 and 86.

⁶⁰ R Middleton, *Government versus the Market: The growth of the public sector, economic management and British economic performance, c.1890-1979* (Cheltenham, Edward Elgar, 1996) 91.

⁶¹ AV Dicey, *Lectures on the relation between Law and Public Opinion in England during the Nineteenth Century* (London, Macmillan, 1905). The passage quoted directly is at 9.

sentiments which, during the nineteenth century, have governed the development of the law have ... been public opinion'. Dicey was also clear that, from at least 1830, if not before, the relationship between law and public opinion was very close. If, therefore, there was legislation relevant for the growth of the state (and there was), Dicey's views had the consequence that there must have been some current of public opinion favourable to that growth. Dicey called that current of opinion 'collectivism'; and mentioned the year 1865 as an opening date for what he called the period of collectivism.

For many years Dicey's explanation has been compared and contrasted with that of MacDonagh. In an article published in 1958, MacDonagh put forward a five stage 'model' of what he described as a 'legislative-cum-administrative process'.⁶² This model postulated that 'internal dynamism' played a crucial role in the growth of central government. For example, the fourth stage of the process, as MacDonagh viewed it, witnessed the substitution of a dynamic, as opposed to a static concept of administration on the part of administrators, with improvement being seen 'as a slow, uncertain process of closing loopholes and tightening the screw, ring by ring, in the light of continuing experience and experiment'. In the fifth and final stage of the process, executive officers 'now demanded, and to some extent secured, legislation which awarded them discretions not merely in the application of its clauses but even in imposing penalties and framing regulations'. MacDonagh's model implied that, once there had been legislation on a particular subject, there would be more legislation – and that, during this process, the powers of central government

⁶² O MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 *Historical Journal*, 52. MacDonagh's five stage model is set out at 58-61.

would grow. 'The momentum of government itself' could be used to explain the process of government growth.

A second major development in the history of the United Kingdom during the twentieth century was the growth of public expenditure. Government expenditure at current prices increased from £272.0 millions in 1910 to £6,143.0 millions in 1955 (and from £263.6 millions to £1,390.0 millions at 1900 prices).⁶³ It has been calculated that total public expenditure amounted to 10.9% of the gross domestic product in 1907, but 38.9% in 1964.⁶⁴ This growth of public expenditure, however, did not take place at a steady and uniform rate. Figure 2, which shows the expenditure of public authorities as a percentage of the national income during the period from 1880 to 1954,⁶⁵ indicates that, during each world war, public expenditure increased very rapidly, only to fall back after the war was over (although not to its pre-war level).⁶⁶

⁶³ Peacock and Wiseman (n 59) 42.

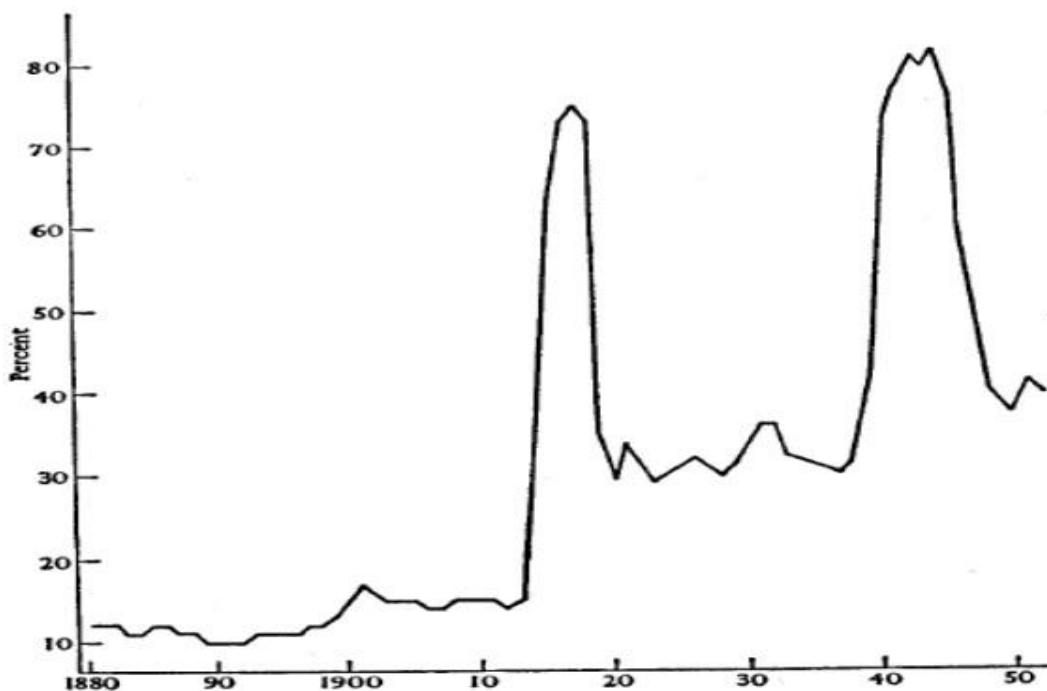
⁶⁴ Middleton (n 60) 91.

⁶⁵ This graph has been copied from AJP Taylor, *English History 1914-1945* (OUP 1965) xxvii. The underlying figures are those in UK Hicks, *British Public Finances: Their Structure and Development 1880-1952* (OUP 1954) 11.

⁶⁶ For a graph showing total public expenditure as a percentage of domestic product from 1900 to 1979 (with a pattern similar to that shown in Figure 2) see Middleton (n 60) 89.

Figure 2

**Expenditure of public authorities as a percentage of the national
income:1880-1954**



Explanations of this growth of public expenditure have, as their foundation text, the study by Peacock and Wiseman entitled *The Growth of Public Expenditure in the United Kingdom*, which was published in 1961.⁶⁷ In that work, the authors propounded the view that the two world wars had had what they called a 'displacement effect'. Each world war caused government expenditure on a scale that was quite unprecedented. After each war ended, government expenditure fell, but not to its pre-war level. In the result, therefore, government expenditure was higher during the inter-war period than it had been in the years preceding the first world war, and was higher in the 1950s than it had been

⁶⁷ Peacock and Wiseman (n 59).

during the inter-war period. On this approach, therefore, the United Kingdom's participation in the two world wars was of central importance for the growth of central government expenditure. Figure 2 also shows quite clearly that public expenditure before the first world war was lower than during the inter-war period, which, in its turn, was lower than after the second world war.

A third development in the history of the United Kingdom during the first half of the twentieth century was that the country participated in the two world wars.

AJP Taylor commented that '[t]he British were the only people who went through both world wars from beginning to end'.⁶⁸ That participation was costly. Government expenditure during the six years beginning with the outbreak of the first world war exceeded government expenditure during the period from the revolution of 1688 until that war's outbreak.⁶⁹ The extent of government expenditure during the two world wars may also be seen in Figure 2, where the impact of those two wars is exceedingly obvious.

Participation in the total wars of the twentieth century had an impact not only upon the United Kingdom's economy,⁷⁰ but upon its government. The contrast between wartime and peacetime was stressed by Sir Donald Fergusson, a senior civil servant, in a memorandum dating from 1950 with the title 'The Essential Functions of Government in the Economic Field' – an unexpectedly

⁶⁸ Taylor (n 65) 600. At 600 n 1, Taylor makes the necessary minor qualifications to his general statement.

⁶⁹ Sir J Stamp, *The Financial Aftermath of War* (London, Ernest Benn, 1932) 41. 'It has been pointed out by one well-known American authority that our expenditure in six years exceeded the aggregate of our expenditure in the previous 226 years, which included eight major wars'. (Stamp did not name the 'well-known American authority'.)

⁷⁰ As far as the economy was concerned, Robbins argued, shortly after the second world war, that, in the circumstances of total war, private consumption, which was normally an end in itself so far as economics was concerned, was a matter of importance for operational reasons only. 'If the people are not in good health and good heart, the conduct of the war may be endangered. But beyond that point, in this calculus of hell-fire and desperation, the value of additional private welfare is zero; direct operations claim everything'. L Robbins, *The Economic Problem in Peace and War* (London, Macmillan, 1947) 47-8.

general title for a civil service memorandum. In that memorandum, Fergusson stated that '[t]he position in peace is ... totally different from that which existed during the war'. In the war, he went on, there had been one main objective of government policy, namely, to win it: the country's parliamentary constitution had been in abeyance; the national government had been given all possible powers for the sake of saving the country and winning the war; the War Cabinet had accepted full responsibility for all policies to that end, and departmental ministers had been merely executants doing what was regarded as necessary in their sphere for achieving or facilitating the main objective. In peace, however, the situation was entirely different. There was no one main objective of government policy. Even in the sphere concerned with, or affected by, economic policies, there were many objectives – often conflicting objectives – and many different ideas about which were the main objectives. The position of Parliament had been restored and the country was back to party government.⁷¹

Although the proposition that war brought rapid change in government may only have been implicit in Fergusson's memorandum, that proposition was explicitly accepted by others. Seebohm Rowntree, writing in 1918, thought that, as a result of the first world war, people had completely revised their notions as to what was possible or impossible. They had seen accomplished, within a few

⁷¹ TNA file T 273/188. Memorandum by Fergusson, 'The Essential Functions of Government in the Economic Field', 27 June 1950. Whether accidentally or not, Fergusson's argument has some similarities with points made earlier by Robbins: '[i]n total war there is only one prime object of policy, the achievement of total victory. To that object all other aims are subordinate, by that criterion all special operations must be judged. Whatever may be the outcome of victory, whether it be a positive gain or a position perceptibly worse than that from which you started, if the alternative is annihilation, then, while the will to survive persists at all, no sacrifice seems too great. What is to come after does not matter; if there is no victory there is no future. The nice calculations of the advantages and disadvantages of alternative compromise positions, characteristic of the wars of other times, are inappropriate here. Total war is a matter of death or victory. It is the nature of the case that there is no intermediate position'. Robbins (n 70) 47. According to Albert Speer, speaking of the second world war, '[y]ou won because you made total war and we did not'. Quoted in WH Greenleaf, *The British Political Tradition: Volume 1: The Rise of Collectivism* (London, Methuen, 1983) 63.

brief months or years, reforms to which they should previously have assigned, not decades, but generations.⁷² Beveridge, in a lecture delivered in 1919, believed that '[t]he work to be done by the Civil Service was entirely transformed during the war by the wide extension in the scope of government action'. Government departments had not merely done more things of the same general class as before the war; they had been required to take the initiative in finance and trading. 'We have, indeed, under the stress of war made practical discoveries in the art of government almost comparable to the immense discoveries made at the same time in the art of flying'.⁷³

The United Kingdom's participation in the two world wars accordingly prompts consideration of the functions and priorities of government; and, on this matter, an article by Rose was published in 1976.⁷⁴ Rose began by asking what activities were, by definition, necessary if a modern state was to be said to exist. Once this question had been dealt with, it was then possible to ask what else states actually did besides ensuring their own existence. Rose answered his own first question by saying that three clusters of activity were necessary by definition for the existence of a state: (first) defence of territorial integrity, whether by diplomacy or armed force; (secondly) the maintenance of internal order; and (thirdly) the mobilising of finance (including, obviously, taxation) – for a state needed to have resources to take action. Rose then went on to propose a simple model of the evolution of the modern European state, with three stages of development. In the first stage, the state sought to secure its own existence

⁷² J Stevenson, 'Planners' moon? The Second World War and the planning movement' in HL Smith (ed), *War and Social Change: British Society in the Second World War* (Manchester UP, 1986) 60. Rowntree then added that 'I do not believe for a moment that in the future we shall allow millions of our fellow-countrymen, through no fault of their own, to pass through life ill-housed, ill-clothed, ill-fed, ill-educated'. (ibid.)

⁷³ Sir W Beveridge, *The Public Service in War & in Peace* (London, Constable, 1920) 4-5.

⁷⁴ R Rose, 'On the Priorities of Government: A Developmental Analysis of Public Policies' (1976) 4 *European Journal of Political Research* 247.

through the creation of institutions of government that could defend its territorial integrity, maintain internal order, and manage its finances. Once this had been done, it was open to the state to engage in other activities; and in Rose's second stage, the state was concerned with resource mobilisation. The state was well-placed to engage in activities such as building canals, roads and railways, or creating a postal and telegraphic service. In Rose's third stage, a state began to emphasize activities intended to provide social benefits for the sake of its citizens. This shift from a producer orientation to a consumer orientation, concerned with the well-being of citizens, might follow from the achievement of greatly increased political influence by the mass of the population following extensions of the franchise. As citizens acquired the right to vote, and voiced demands for government action, they might be expected to use their influence to press politicians to use the resources that could now be mobilised to benefit them – by providing social benefits, free education, health care and full employment (a welfare state). At this stage, politics ceased to be concerned with the survival of the state or its glorification, but rather with the distribution and redistribution of benefits to citizens through the powerful institutions of the state.

4. State of scholarship

'Statute law is now the predominant feature of law in all parts of the United Kingdom', Lord Hailsham wrote on one occasion, 'and any critical examination of the form, as well as of the contents, of statutes can only assist both legislators and users and ultimately the administration of justice'.⁷⁵ The period from 1907 to 1965 was a most important period in the history of the income tax

⁷⁵ Lord Hailsham, 'A Message' [1985] *Statute Law Review* 1. It has also been said that '[l]egislation constitutes the single most important source of law in our society'. DR Miers and AC Page, *Legislation* (London, Sweet & Maxwell, 1982) vii.

– but the history of income tax during that period has been studied only to a limited extent.⁷⁶ The enactment of different forms of legislation is also a subject that has been little studied. This thesis accordingly investigates a little-studied question in the context of an important subject during an important period of its history.

Works relating to taxation do not deal directly with the matter investigated in this thesis. The one and only history of income tax was written by Sabine fifty years ago;⁷⁷ and that history covers the whole of the period from the introduction of the tax until what was then the present. It may be conjectured that the later chapters, dealing with the twentieth century, were written more hurriedly than the earlier chapters; and that the author, then a serving member of the Inland Revenue, skated over inconvenient matters – in particular the failure to enact the Revenue Bill of 1921 and the failure to deal with the report of the Income Tax Codification Committee in 1936. The two volumes by Daunton are fundamental.⁷⁸ The focus in those volumes, however, is not the same as in this thesis. The subtitles of Daunton's two volumes, 'The Politics of Taxation in Britain', indicate the scope of those works: the focus is on taxation as a whole (and not just income tax) and upon the politics of taxation (and not on the form taken by legislation on the subject). There are also, following on from the work of Buxton,⁷⁹ four volumes on British Budgets, first by Mallet and George, and then, later and separately, by Sabine:⁸⁰ but it is only rarely that these works

⁷⁶ The current state of scholarship on this topic is considered in the next paragraph of this introduction.

⁷⁷ BEV Sabine, *A History of Income Tax* (London, George Allen & Unwin, 1966).

⁷⁸ M Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799-1914* (CUP 2001); *Just Taxes: The Politics of Taxation in Britain, 1914-1979* (CUP 2002).

⁷⁹ SC Buxton, *Finance and Politics: An Historical Study, 1783-1885*, 2 vols (London, John Murray, 1888).

⁸⁰ B Mallet, *British Budgets, 1887-88 to 1912-13* (London, Macmillan, 1913); B Mallet and CO George, *British Budgets, Second Series, 1913-14 to 1920-21* (London, Macmillan, 1929); B

contain any remarks going beyond an account of the Budget and Finance Bill cycle for each financial year reviewed. Stebbings's work on the Victorian taxpayer contains valuable material on the early part of the twentieth century⁸¹ and Sayers has provided a valuable account of the introduction of the PAYE system:⁸² but otherwise there are few studies dealing with the history of taxation which contain material relevant for the investigation carried out in this thesis.

Studies of aspects of the law contain material of great value for two of the topics investigated. The Office of the Parliamentary Counsel is a subject that is (perhaps surprisingly) well covered: for at various times during the twentieth century, a considerable number of the Parliamentary Counsel either wrote books or delivered addresses which were subsequently printed. There is material from Ilbert,⁸³ Graham-Harrison,⁸⁴ Ram,⁸⁵ and Hutton.⁸⁶ This published material is of very great value for the composition of this office; for the office's approach to its work; and for the general condition of the statute book. (The expression 'statute book' is used in this thesis to denote the statute law enacted at any one particular time.)⁸⁷ On the other hand, this published material has no particular concern with the legislation relating to income tax or why one form of

Mallet and CO George, *British Budgets, Third Series, 1921-22 to 1932-33* (London, Macmillan, 1929); BEV Sabine, *British Budgets in Peace and War, 1932-1945* (London, George Allen & Unwin, 1970). Mallet's volumes, in particular, contain much useful statistical information relating to the national finances.

⁸¹ C Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (CUP 2009).

⁸² RS Sayers, *Financial Policy 1939-45: History of the Second World War: United Kingdom Civil Series* (London, HMSO and Longmans, Green and Co, 1956) 99-111. Among other matters, this account contains an illuminating discussion of the implications of the introduction of the PAYE system for the national finances.

⁸³ Sir CP Ilbert, *Legislative Methods and Forms* (OUP 1901); *Methods of Legislation* (London, University of London Press, 1912); *The Mechanics of Law Making* (New York, Columbia Press, 1914) (based on lectures delivered at Columbia University during October 1913).

⁸⁴ Sir WM Graham-Harrison, 'An examination of the main criticisms of the statute book and of the possibility of improvement' [1935] *Journal of the Society of Public Teachers of Law* 9.

⁸⁵ Sir G Ram, 'The Improvement of the Statute Book' [1951] *Journal of the Society of Public Teachers of Law* 442.

⁸⁶ Sir N Hutton, 'Mechanics of Law Reform' (1961) 24 *Modern Law Review* 18.

⁸⁷ The expression 'statute book' has been stated to be '[a]n inexact term for the whole body of statute law'. DM Walker, *The Oxford Companion to Law* (OUP 1980) 1183.

that legislation might be preferred to another. The topic of subordinate legislation has also been the subject of considerable scholarship. The history of the use of this form (and of the controversy relating to its use) has been very fully charted by Greenleaf and Taggart.⁸⁸ There are also detailed monographs on aspects of this subject.⁸⁹ However, subordinate legislation is only one of the forms of legislation investigated in this thesis; and none of these works has any particular concern with subordinate legislation relating to income tax.

More general works relating to legal history, however, have been found less helpful. The work most directly relevant for the matters investigated in this thesis is that by Hughes entitled *The British Statute Book*, which appeared in 1957.⁹⁰ This work has information on the various different forms of legislation, but nothing systematic on the forces that might cause some forms to be used to a greater extent than others. Hughes, in his turn, began with the statement that there was only one recent work on this subject: Ilbert's work *Legislative Methods and Forms* – and that had appeared more than half a century earlier. The substance of Ilbert's book, Hughes also noted, had been embodied, in an altered form, in one of the volumes of Holdsworth's *History of English Law*.⁹¹ Plucknett's *Concise History of the Common Law* contains the statement that '[f]ew topics in legal history are more interesting than the rise and progress of legislation'; but the chapter in that work devoted to legislation does not mention

⁸⁸ WH Greenleaf, *The British Political Tradition: Volume 3: A Much Governed Nation: Part 2* (London, Methuen, 1987) 529-97; M Taggart, 'From "parliamentary powers" to privatization: The chequered history of delegated legislation in the twentieth century' (2005) 55 *University of Toronto Law Journal* 575.

⁸⁹ See J Willis, *The Parliamentary Powers of English Government Departments* (Cambridge (Mass), Harvard UP, 1933); Chih-Mai Chen, *Parliamentary Opinion of Delegated Legislation* (New York, Columbia UP, 1933); J Eaves, *Emergency Powers and the Parliamentary Watchdog: Parliament and the Executive in Great Britain, 1939-1951* (London, Hansard Society, 1957); JE Kersell, *Parliamentary Supervision of Delegated Legislation* (London, Stevens, 1960).

⁹⁰ CJ Hughes, *The British Statute Book* (London, Hutchinson, 1957). The material referred to in the text is at 7. For the work by Ilbert see n 83 above.

⁹¹ Sir W Holdsworth, *A History of English Law*, vol 11 (London, Methuen, 1938) 382-6.

any date later than 1823.⁹² It has been said that ‘quite simply, English legal history scholarship has tended to run out by the end of the nineteenth century’.⁹³ Manchester’s work on legal history contains hardly any material on statute law in the twentieth century and none on statute law relating to income tax.⁹⁴ The work by Cornish and Clark on law and society in England from 1750 to 1950 is described by its authors (in one place) as dealing with ‘the history of substantive law and legal practice’ and (in another place) as dealing with ‘the history of legal institutions and doctrines within the economy and society which generated them’⁹⁵ – and was also found to contain nothing directly relevant. The same was also found to hold true for the volumes of the *Oxford History of the Laws of England* dealing with the period ending in 1914.⁹⁶

Works relating to the history of the United Kingdom during the twentieth century were also found to have little material that was directly relevant. Works on broad themes have many other matters to consider of course; but, even so, little material was found that was capable of being directly used. This was found to hold good for general histories, such as Taylor’s classic volume;⁹⁷ for general works on economic history, such as another work by Daunton;⁹⁸ for general histories of the civil service, such as the recent major work by Lowe;⁹⁹ for works

⁹² TFT Plucknett, *A Concise History of the Common Law* (5th edn, London, Butterworths, 1956). The chapter on legislation is at 315-41; and the passage quoted directly is at 315.

⁹³ P Mitchell, *A History of Tort Law 1900-1950* (OUP 2015) 1.

⁹⁴ AH Manchester, *A Modern Legal History of England and Wales 1750-1950* (London, Butterworths, 1980) 32-49.

⁹⁵ WR Cornish, and G de N Clark, *Law and Society in England 1750-1950* (London, Sweet & Maxwell, 1989) v and 1.

⁹⁶ W Cornish and others, *The Oxford History of the Laws of England, vol xi: 1820-1914: English Legal System; vol xii: 1820-1914: Private Law; vol xiii: 1820-1914: Fields of Development* (OUP 2010).

⁹⁷ AJP Taylor, *English History 1914-1945* (OUP 1965).

⁹⁸ M Daunton, *Wealth and Welfare: an Economic and Social History of Britain 1851-1951* (OUP 2007).

⁹⁹ R Lowe, *The Official History of the British Civil Service: Reforming the Civil Service: Volume 1: The Fulton years, 1966-81* (London, Routledge, 2011).

on the coming of the welfare state, such as that by Thane;¹⁰⁰ and for works on the growth of the public sector, such as that by Middleton.¹⁰¹ Another work which promises much, but unfortunately delivers little, is Cronin's work on the politics of state expansion.¹⁰² Cronin wrote that the expansion of the state was one of the grand themes of twentieth-century British history, but that the process of expansion had for the most part escaped serious analysis; and described the purpose of his own work as being to focus directly on this transformation and to see what forces and interests shaped it, propelled it forward, delayed, deflected or occasionally reversed it.¹⁰³ Cronin clearly held the view that the United Kingdom's participation in the two world wars was of great importance when considering the expansion of the state;¹⁰⁴ but, beyond this point, it cannot be said that he had any real success in accomplishing his own overall purpose. It is often difficult to relate specific matters discussed to the overall purpose of the work; and the narrative framework adopted for the book may well have been unsuited for directing attention to the forces and interests accomplishing the transformation.

5. Methodology

The investigation undertaken was principally carried out by research in the National Archives, although printed primary material and printed secondary material were also used extensively. The value of relying on the public records has, however, been questioned. In an article appearing in 1979, Booth and

¹⁰⁰ P Thane, *Foundations of the Welfare State* (2nd edn, New York, Longmans, 1996).

¹⁰¹ R Middleton, *Government versus the Market: The growth of the public sector, economic management and British economic performance, c.1890-1979* (Cheltenham, Edward Elgar, 1996). Middleton's chapter 'Government and the Economy, 1860-1939' in R Floud, and P Johnson (eds), *The Cambridge Economic History of Modern Britain: Volume 2: Economic Maturity, 1860-1939* (CUP 2004) was also found not to be illuminating.

¹⁰² JE Cronin, *The Politics of State Expansion: War, State and Society in Twentieth-Century Britain* (London, Routledge, 1991).

¹⁰³ *ibid* ix.

¹⁰⁴ *ibid* 131-2.

Glynn were critical of the value of the public records as a source for historians.¹⁰⁵ The authors pointed out that the public records were incomplete; and that, as a source, they were not neutral. Others, however, notably Roper,¹⁰⁶ Cox,¹⁰⁷ McDonald¹⁰⁸ and Lowe,¹⁰⁹ have been prepared to reach a more positive overall verdict. It must be accepted, however, that the use of official records is not without its problems: and, following Lowe, it is useful to draw a distinction between problems of size and problems of judgment.

The size of the documentation in existence gives rise to a fundamental problem for historians – ‘the oceans of evidence threatening to engulf them’.¹¹⁰ During the 1980s it was estimated that, at that time, the Public Record Office received a little less than one mile of paper each year from the government.¹¹¹ This immense amount of material was nevertheless only a small fraction of the material once existing. During the 1980s it was also estimated that, at that time, the British government produced about 100 miles of paper each year: so, on that basis, less than 1% of what was being produced was being retained.¹¹²

The possibility that there are documents dealing with a particular point in material that no longer exists must accordingly be kept in mind. It is sometimes possible to infer the existence of such material. It may be inferred, for example, that, following the publication, in 1936, of the report produced by the Income

¹⁰⁵ A Booth and S Glynn, ‘The Public Records and Recent British Economic Historiography’ (1979) 32 *Economic History Review* 303.

¹⁰⁶ M Roper, ‘Public Records and the Policy Process in the Twentieth Century’ (1977) 55 *Public Administration* 253.

¹⁰⁷ N Cox, ‘Public Records’ in A Seldon (ed), *Contemporary History: Practice and Method* (Oxford, Basil Blackwell, 1988).

¹⁰⁸ A McDonald, ‘Public Records and the Modern Historian’ (1990) 1 *Twentieth Century British History* 341.

¹⁰⁹ R Lowe, ‘Plumbing New Depths: Contemporary Historians and the Public Record Office’ (1997) 8 *Twentieth Century British History* 239.

¹¹⁰ *ibid* 245.

¹¹¹ Cox (n 107) 82.

¹¹² *ibid*.

Tax Codification Committee,¹¹³ the Inland Revenue created files for the comments made on that report by various bodies – but there is now no trace of files with the references specified.¹¹⁴

Very occasionally, the disappearance or survival of material is particularly noted: and, if this happens, a point which is far from obvious may be brought into focus. An Inland Revenue file relating to the legislation enacted in connection with the introduction of the PAYE scheme has a prefatory page stating that '[t]he greater part of the papers dealing with the development of the P.A.Y.E. scheme could not be found after the 1944 air attacks'.¹¹⁵ From one point of view, this remark may be considered baffling: for there is a very considerable amount of useful material relating to the development of the PAYE scheme in the National Archives. The working hypothesis reached was that the missing material consisted of the working files of Paul Chambers, the Inland Revenue official principally responsible for dealing with the operational aspects of the proposed PAYE scheme. If that is so, however, it must be borne in mind that Chambers's activities may well have been more important than the surviving records disclose. A different collection of Inland Revenue files, relating to the preparation of the Income Tax Management Act 1964, includes a typed note at the top of one part of this collection recording that this part had been supplied by the Office of the Financial Secretary to the Treasury, and formed one complete set of all the papers relating to the Income Tax Management Bill which the Financial Secretary to the Treasury (Alan Green)

¹¹³ Income Tax Codification Committee, *Report: Volume 1: Report and Appendices* (Cmd 5131, 1936) and *Report: Volume 2: Draft of an Income Tax Bill* (Cmd 5132, 1936).

¹¹⁴ See TNA file IR 40/14566, where there are cross-references to other files including three which have the annotation 'Comments on the report by various bodies'.

¹¹⁵ TNA file IR 63/163.

had received.¹¹⁶ It was thought that there was some point in keeping those papers together, and placing them with the department's own records, even though this entailed overlapping in the documents retained. These further papers reveal that Green played a major role in the series of events that caused the Income Tax Management Bill to be included in the government's legislative programme – and so to be enacted. The extent of Green's role might not otherwise be capable of being known.¹¹⁷

Some matters of interest may never have been committed to writing. While he was Prime Minister, Attlee commissioned Bridges and Plowden to sound out various cabinet ministers on their choice for the post of Chancellor of the Exchequer if Cripps had to stand down. When the discussions had been completed, Bridges said to Plowden that the kind of talks they had been having with ministers in the last few days were an example of why no civil servant should ever keep a diary. 'The temptation to publish eventually would be too great and the result, the destruction of trust between civil servants and ministers'.¹¹⁸

Problems of judgment arise because a particular document (a paper presented to the Cabinet for example) may reflect the contributions of several different government departments and negotiations among those departments. A document with a single author, by contrast, may reflect the view of the relevant government minister, the relevant department or the official in question – or any combination of the three. It should also be remembered that the surviving documents may not give a complete account of the circumstances in which they

¹¹⁶ TNA file IR 40/13351, Part 4. Typed note dated 7 September 1964.

¹¹⁷ Further details are given in chapter 5, section 3(2), below.

¹¹⁸ E Plowden, *An Industrialist in the Treasury: The Post-War Years* (London, Andre Deutsch, 1989) 105.

came into existence. One civil servant, at work during the inter-war period, recorded that little business of difficulty or importance was settled by official letters from one department to another: the real work of government and administration was done by word of mouth – sometimes by telephone, more often by interview. Official letters, sometimes lengthy ones, were in fact written; but in most cases they were written as a matter of record, and merely set down in black and white for the benefit of future generations what had already been settled by oral discussion. ‘The idea that Government Offices do their business by long official letters to one another is now completely wrong, if it ever was right’.¹¹⁹

Problems of size and judgment certainly exist. However, bearing in mind that the subject studied in this thesis was one where the primacy of government not only existed but was exceptionally pronounced, the view taken is that the existence of these problems does not displace – indeed cannot displace – the value of studying the subject from the original working papers of government as it conducted its business. In McDonald’s opinion, the doubts of Booth and Glynn should be measured against the work of scholars who had shown that the exploration of departmental archives could yield enlightening accounts of the development of policy.¹²⁰ The quality of those departmental records was uneven, but many provided a wealth of evidence on the preparation of policies, their discussion within and across departmental boundaries, their submission to ministers and their presentation to Cabinet. McDonald went on to add that opportunities for the study of policy formulation through research on departmental records were continually expanding; and gave as an example the

¹¹⁹ HE Dale, *The Higher Civil Service of Great Britain* (OUP 1941) 162-3.

¹²⁰ McDonald (n 108) 344.

fact that, between 1977 and 1990, both the Board of Inland Revenue's Budget papers from 1869 to 1959¹²¹ and nearly 8,500 files of the Board of Inland Revenue's Stamps and Taxes Division¹²² had been transferred to the National Archives. His conclusion was that '[u]sed critically and in conjunction with non-governmental sources, these records hold out the prospect of an improved understanding of British taxation policy'.¹²³ McDonald also recorded that the papers of Sir Edward Bridges constituted 'an indispensable source for research on the conduct of high policy in the Cabinet Office and the Treasury from 1939 to 1956'; and that those papers were also now available to be consulted in the National Archives.¹²⁴ It may now be added that the papers of the Office of the Parliamentary Counsel have recently been transferred to the National Archives where many of them are now available – with the consequence that it has become much easier to study the role played by that office.¹²⁵ The ascertainment of the determinants of the forms of income tax legislation from the original working papers of government may indeed be a task that presents problems – but it is also a task that presents opportunities.

6. An analysis of the United Kingdom polity

It was stated earlier¹²⁶ that the elements of the United Kingdom polity investigated in the body of this thesis followed on from an analysis of the polity;

¹²¹ These papers form part of the IR 63 series. This series of papers has been consulted extensively for the purposes of this thesis.

¹²² These papers form part of the IR 40 series (from TNA file IR 40/5688 to TNA file IR 40/14126). This series of papers has also been consulted extensively for the purposes of this thesis.

¹²³ McDonald (n 108) 344.

¹²⁴ *ibid* 350. These papers constitute the T 273 series and have also been consulted extensively for the purposes of this thesis.

¹²⁵ Papers from the Office of the Parliamentary Counsel were transferred to the National Archives during 2013 and the early months of 2014. They have been given the overall reference AM; and papers up to the year 1945 are now available. These papers have also been consulted extensively for the purposes of this thesis.

¹²⁶ See section 3 above, text before n 45.

and that analysis is now presented. The imposition of taxation is considered; and then the role played by different elements in the United Kingdom polity.

During the period from 1907 to 1965, the imposition of taxation, a matter of fundamental constitutional importance, took place in accordance with matters that were very firmly settled. Following the constitutional conflicts of the seventeenth century, a first matter that had become very firmly settled, well before the twentieth century, was that the legal basis of the right to tax and the liability to pay was Parliamentary authority. The right to tax could not be imposed on any other basis. The Bill of Rights 1689 had declared that 'levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal'.¹²⁷ A second matter that had become very firmly settled, well before the twentieth century, was that, within Parliament, the primary role in the imposition of taxation was that taken by the House of Commons. 'The most important power vested in any branch of the legislature', Erskine May wrote in his treatise on Parliament, 'is the right of imposing taxes upon the people, and of voting money for the exigencies of the public service'.¹²⁸ A later edition of this treatise then went on to note that the exercise of this right by the Commons might be said 'to give to the Commons the chief authority in the state'. 'In all countries the public purse is one of the chief instruments of political power'; but in England 'the power of giving or withholding the supplies at pleasure is one of

¹²⁷ 1 Will & M Sess 2 c 2.

¹²⁸ Quoted from Sir TE May, *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (7th edn, London, 1873) by V Cromwell, 'The Losing of the Initiative by the House of Commons, 1780-1914' (1968) 18 *Transactions of the Royal Historical Society* 1, 20, and 20 n 1.

absolute supremacy'.¹²⁹ A proposal affecting public finance had to be introduced in the House of Commons – this was part of the custom of Parliament, and one of the privileges of the Commons.¹³⁰ A third matter that had become very firmly settled, well before the twentieth century, was that, within the House of Commons, the initiative in financial matters rested with the Crown. Any proposal for a 'charge' could not be taken into consideration unless demanded by the Crown or recommended by the Crown. This rule, first embodied in a standing order of the House of Commons in 1713,¹³¹ preserved to Ministers of the Crown a virtual monopoly of the parliamentary initiative in proposing increases in taxation or in public expenditure. 'On common subjects', wrote Bagehot, 'any member can propose anything, but not on money – the Minister alone can propose to tax the people'.¹³² The imposition of taxation, it may be noted, although taking place in accordance with very firmly settled principles, did not depend upon law alone. The subject of the financial control exercised by the House of Commons, according to Jennings, was 'a realm where law, parliamentary privilege, and parliamentary custom are almost inextricably intertwined'.¹³³

The process by which taxation was imposed was referred to in the judgment of Atkin LJ in *A-G v Wilts United Dairies Ltd*.¹³⁴ After quoting the relevant passage from the Bill of Rights, Atkin LJ went on to say that:

¹²⁹ Lord Campion (ed), *Sir Thomas Erskine May's Treatise on the Law, Privileges Proceedings and Usage of Parliament* (15th edn, London, Butterworth & Co, 1950), 39. The passage quoted from the 7th edn (n 128) also appears on this same page.

¹³⁰ In the monarch's speech on the opening, prorogation or dissolution of Parliament, the Commons were separately addressed when estimates or supply were mentioned.

¹³¹ There is an account of this rule in G Reid, *The Politics of Financial Control* (London, Hutchinson, 1966) 36-41.

¹³² W Bagehot, *The English Constitution* (London, Chapman and Hall, 1867) 170.

¹³³ WJ Jennings, *Parliament* (CUP 1939) 282.

¹³⁴ *A-G v Wilts United Dairies Ltd* (1921) 37 TLR 884 (CA). The passage quoted directly is at 886.

Though the attention of our ancestors was directed especially to abuses of the prerogative, there can be no doubt that this statute declares the law that no money shall be levied for or to the use of the Crown except by grant of Parliament. We know how strictly Parliament has maintained this right – and, in particular, how jealously the House of Commons has asserted its predominance in the power of raising money. An elaborate custom of Parliament has prevailed by which money for the service of the Crown is only granted at the request of the Crown made by a responsible minister and assented to by a resolution of the House in Committee.

The imposition of taxation, therefore, was a process in which a number of different elements within the United Kingdom polity played different roles. It was also a process that involved the enactment of legislation – necessarily taking one of the forms distinguished earlier.¹³⁵ The investigation of the determinants of the forms of income tax legislation carried out in the body of this thesis has accordingly been conducted by reference to different elements within the United Kingdom polity.

The elements that will be investigated are consequent upon an analysis of the constitution of the United Kingdom as it operated during the first half of the twentieth century. The analysis follows that made by Amery¹³⁶ in his lectures, published in 1947, with the title *Thoughts on the Constitution*.¹³⁷ In King's later book on *The British Constitution*, Amery was one of the six writers described as 'the Canonical Sextet'.¹³⁸

¹³⁵ See section 2 above.

¹³⁶ LS Amery (1873-1955) was an MP from 1911 to 1945. He was First Lord of the Admiralty from 1922 to 1924, Colonial Secretary from 1924 to 1929 and Secretary of State for India from 1940 to 1945.

¹³⁷ LS Amery, *Thoughts on the Constitution* (OUP 1947). Amery's book consists of four lectures; but it is the first lecture which is of particular relevance for the purposes of this thesis. 'I take this opportunity of acknowledging my debt to this brilliant analysis' JAG Griffith, 'The Constitutional Significance of Delegated Legislation in England' (1950) 48 *Michigan Law Review* 1079, 1081 n 5.

¹³⁸ A King, *The British Constitution* (OUP 2007) ch 2, and especially 28-31. (The other members of 'the Canonical Sextet' were Walter Bagehot, AV Dicey, Sidney Low, Harold Laski and Ivor Jennings.)

The proposition at the core of Amery's analysis was that the United Kingdom's constitutional arrangements should be understood in terms of a dialogue, taking place in Parliament, between the 'government' and the 'nation':

Our constitution is still, at bottom, based on a continuous parley or conference in Parliament between the Crown, i.e. the Government as the directing and energizing element, and the representatives of the Nation whose assent and acquiescence are essential and are only to be secured by full discussion. ... The combination of responsible leadership by government with responsible criticism in Parliament is the essence of our Constitution.¹³⁹

Amery believed that the key to the United Kingdom's constitutional evolution was to be found in the interaction between the Crown (the central governing, directing, and initiating element in the national life) and the nation in its various 'estates' (its classes and communities) as the guardian of its written and unwritten laws and customs.¹⁴⁰ In Amery's view, however, government and Parliament, although closely intertwined, were still separate and independent entities, fulfilling two distinct functions: leadership, direction and command on the part of government; and critical discussion and examination on the part of Parliament.¹⁴¹ According to Sir Edward Boyle, a Cabinet Minister during the early 1960s, 'the most important distinction in our whole national political system is the distinction between the Government and the non-Government'.¹⁴² More recently, Tomkins has argued that 'far from being based on a separation of powers between legislature, executive, and judiciary, to the extent that there is a separation of powers in English public law it is a separation between the Crown on the one hand, and Parliament on the other'.¹⁴³

¹³⁹ Amery (n 137) 10 and 32.

¹⁴⁰ *ibid* 10. This proposition was quoted with approval in Lord Boothby, *My Yesterday, Your Tomorrow* (London, Hutchinson, 1962) 16.

¹⁴¹ Amery (n 137) 10 and 28.

¹⁴² Sir E Boyle, 'Who are the Policy Makers?' (1965) 43 *Public Administration* 251, 255.

¹⁴³ A Tomkins, *Public Law* (OUP 2003) 44.

It was Amery's view that, of the two elements he had distinguished, the 'government' was more important than the 'nation': for he considered that the starting-point and mainspring of action had always been the government. It was the government which, in the name of the Crown, made appointments and conferred honours without consulting Parliament; and it was the government which, in the name of the Crown, summoned Parliament. 'Our whole political life, in fact, turns round the issue of government'.¹⁴⁴ This view had implications for the legislative process: for Amery considered that the function of legislation, while shared between 'King, Lords and Commons in Parliament assembled', had always been predominantly exercised by government. It was the government that settled the programme of parliamentary business and directed Parliament with a view to ensuring that the programme was secured. Government, indeed, 'has never allowed Parliament as such to take any initiative in one of its most important fields, that of finance'.¹⁴⁵ The working hypothesis arising, therefore, is that, in the case of the form of the income tax legislation, the primacy of 'government' over 'nation' was particularly pronounced.

A primacy of 'government' over 'nation' did not go unnoticed by others. In 1901, it was the opinion of Sir Courtenay Ilbert, that '[t]he Executive Government of the United Kingdom exercises greater control over legislation than probably the Executive Government of any other country with representative institutions'.¹⁴⁶

In a work first published in 1938, Keir believed that 'an extended executive, able to make, enforce, and interpret law, has come into being, under imperfect

¹⁴⁴ Amery (n 137) 15 and 16.

¹⁴⁵ *ibid* 12.

¹⁴⁶ Sir C Ilbert, *Legislative Methods and Forms* (n 83) 209. Ilbert was First Parliamentary Counsel from 1899 to 1902.

parliamentary and judicial control'.¹⁴⁷ Yardley, writing some 30 years later, and having noted that the 'most striking peculiarity' of the English system of government, when compared with a Presidential system (in a country such as the United States of America), was 'that Parliament and the Executive are inter-dependent', went on to say that 'the overall picture is one of a genuine primacy of the Executive in England'.¹⁴⁸ More recently, Hennessy considered that the twentieth century 'has belonged to the executive, not the legislature. Ours is very much the executive's Constitution'. He took the view that 'the central feature', in relation to the role played by Parliament within the British Constitution since 1902 (when Balfour consolidated the reforms made to the procedure of the House of Commons during the late nineteenth century), 'is that the century has belonged to the executive. Everything else is overshadowed by that fact'.¹⁴⁹

It was also Amery's view that government, in its turn, should be understood in terms of two components: a permanent administrative element (the civil service) and a temporary directing element (political ministers). Immediately after reaching the point that government and Parliament were still separate and independent entities fulfilling distinct functions, Amery went on to consider the continuity of government. This was maintained in substance by the fact that the vast majority of the servants of the Crown carried on their duties permanently. A change of government (so called) was, in fact, 'only a change in that small, if

¹⁴⁷ DL Keir, *The Constitutional History of Modern Britain 1485-1937* (London, Adam and Charles Black, 1938) 520.

¹⁴⁸ DCM Yardley, 'The Primacy of the Executive in England' (1967-68) 21 *Parliamentary Affairs* 155, 155 and 157.

¹⁴⁹ P Hennessy, *The Hidden Wiring: Unearthing the British Constitution* (London, Victor Gollancz, 1995) 142 and 146.

important, element which is required to direct the general policy, while securing for it parliamentary and public support or at least acquiescence'.¹⁵⁰

Amery also made the point that the 'permanent' element in government – the civil service – might be compared with a fleet of ships, with an individual department being regarded as one such separate ship. After quoting another author,¹⁵¹ who had stated that a change of government meant that the 'vessel of state' was entrusted to other hands and proceeded on a different course, but that it was essential to the success of the operation both that the crew should be skilled in their work and that they should render due obedience to their commander for the time being, whoever he might be, Amery went on, in a striking passage which throws much light on the working of government, to say that:

The parallel perhaps, suggests a much greater freedom than does in fact exist to change the ship's course – or, rather, the course of a fleet composed of a number of separate ships. Each of our great departments of State has its own tradition and policy, founded on long experience. Its crew has an accumulated knowledge ... by which a new captain is inevitably guided. It has its own private cargoes and destinations¹⁵² which a new captain soon tends to make his own and to advocate with vigour and conviction at the captains' conference. It may have projects for which the last captain could not secure that conference's assent and may return to the charge with better hope. In any case, by far the greater part of the field of administration, and even of policy, is governed by factors which cannot be changed by party theories or prepossessions¹⁵³

¹⁵⁰ Amery (n 137) 28-9. For a seminal article on the civil service during the inter-war period see M Beloff, 'The Whitehall Factor: The Role of the Higher Civil Service 1919-1939' in G Peele and C Cook (eds), *The Politics of Reappraisal* (London, Macmillan, 1975).

¹⁵¹ At this point Amery identifies this other author only as 'Hearn'; but it may be inferred from other references provided in the first chapter of Amery's work that the work in question was WE Hearn, *The Government of England* (London, Longmans, 1867).

¹⁵² The 'private cargoes and destinations' of the Inland Revenue and of the Office of the Parliamentary Counsel appear below, in chapters 3 and 4 respectively.

¹⁵³ Amery (n 137) 28-9. Lord Salter, writing of the period before the first world war, made a different comparison. Civil Service departments were such that the service, as a whole, 'was like a University with separate Colleges as in Oxford or Cambridge, as distinct from an integrated University like Manchester – without even the measure of unity that is given in the

On Amery's analysis, therefore, the constitution of the United Kingdom depended upon a continuous conference in Parliament between 'government' and 'nation'. In this conference 'government' was the more important element; and government, in its turn, also had two components: political ministers and the civil service.

The structure of this thesis follows this analysis. Chapter 2 has the continuous conference in Parliament as its background; and investigates whether the need to enact primary legislation relating to income tax in Parliament affected the form of the income tax legislation. The next three chapters deal with three of the elements within 'government' as determinants of the form of income tax legislation. Chapter 3 is concerned with the Inland Revenue: the department with the responsibility for administering income tax. Chapter 4 is concerned with the Office of the Parliamentary Counsel: the office responsible for drafting government primary legislation in general, and primary legislation relating to income tax in particular. Chapter 5 is concerned with government ministers. In each case, in order to show the extent to which each of these elements determined the form of income tax legislation, the same three questions are addressed: the extent to which that element was capable of determining the form of income tax legislation; the extent to which that element wished to determine that form; and the extent to which that element succeeded in accomplishing such aims as it may have had. Chapter 6 turns from the 'government' to the 'nation' and investigates determinants of the form of the income tax legislation that existed outside government. Chapter 7 then investigates the limited, but appreciable, role played by subordinate legislation.

former case by University Professors and institutions'. Lord Salter, *Memoirs of a Public Servant* (London, Faber and Faber, 1961) 37.

Chapter 8, the final Chapter, then draws conclusions from the evidence presented in the body of the thesis to demonstrate how the research aim has been achieved.

CHAPTER 2: THE CONSTRAINT OF INSUFFICIENT PARLIAMENTARY TIME

‘Legislation may not be the only function of Parliament, but only in Parliament can legislation be enacted’.¹⁵⁴

Introduction

Amery took the view that the essence of the United Kingdom’s constitution was based on the balance and adjustment between the two elements of government and nation.¹⁵⁵ The arena in which the two conducted their continuous parley or conference was Parliament; and, in particular, in the House of Commons ‘the central and predominant element in the parliamentary system, the point of junction between the Government and a politically organized nation, the pivot of our system of responsible government’.¹⁵⁶ The government of the day carried on its work of administration and legislation in Parliament subject to the advice and criticism of the nation’s representatives.¹⁵⁷

The aim of this chapter is to ascertain whether the need to enact primary legislation relating to income tax in Parliament affected the form of the income tax legislation. In order to achieve this aim, two questions will be addressed: whether all the primary legislation relating to income tax that the government wished to see enacted could be enacted; and whether, when decisions had to be taken about the enactment of legislation, some forms of income tax legislation were better placed for use than others.

1. The overall constraint of insufficient parliamentary time

¹⁵⁴ Viscount Blakenham speaking in the House of Lords during January 1964. (HL Deb 15 January 1964, vol 254, col 693.)

¹⁵⁵ LS Amery, *Thoughts on the Constitution* (OUP 1947) 33.

¹⁵⁶ *ibid* 68.

¹⁵⁷ *ibid* 33.

All primary legislation had to be enacted in Parliament; and Parliament had its own procedure by which primary legislation had to be enacted.¹⁵⁸ Compliance with the requirements of parliamentary procedure, therefore, constituted an all-important sufficient condition before primary legislation on any subject (including income tax) could be enacted. The expression 'parliamentary procedure' will be used to mean the rules regulating the conduct of business in the two Houses of Parliament.¹⁵⁹

Parliamentary procedure was of great antiquity. A major work on the procedure of the House of Commons, written over a century ago, stated in its opening sentence that '[n]o writer upon the historic procedure of the House of Commons can fail to point out its most striking feature – the great antiquity of the forms and rules on which it is based'.¹⁶⁰ The procedure on a Bill, for example, with its three 'readings', was already in existence before 1547, when the House of Commons began to record its proceedings in its Journals;¹⁶¹ and the practice of three readings for a Bill, with no debate on the first reading, and the committee and report stages taking place after second reading, has been said to be 'more or less established' by the end of the reign of Elizabeth I.¹⁶² 'The Parliament at

¹⁵⁸ On the subject of parliamentary procedure see generally Sir Thomas Erskine May: *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (various editions since 1844); Lord Campion, 'Parliamentary procedure, old and new' in Lord Campion (ed), *Parliament: A Survey* (London, George Allen & Unwin, 1952); and P Norton, 'Parliamentary Procedure: The Hidden Power?' in D Butler, V Bogdanor and R Summers (eds), *The Law, Politics and the Constitution: Essays in Honour of Geoffrey Marshall* (OUP 1999).

¹⁵⁹ This is the opening statement made in DM Walker, *The Oxford Companion to Law* (OUP 1980) 1002 (entry for 'Procedure, parliamentary'). A Clerk of the House of Commons stated (parenthetically) that the procedure of that House consisted of 'the methods and machinery by which the House carries out its functions'. (Campion (n 158) 141.) (Sir Gilbert Campion was Clerk of the House of Commons from 1937 to 1948. He subsequently became Lord Campion.) It has also been said that procedures 'comprise those rules and mechanisms that the House [of Commons] utilizes to process its business'. (Norton (n 158) 161.)

¹⁶⁰ J Redlich, *The Procedure of the House of Commons* (London, Constable, 1908) vol 1, 3.

¹⁶¹ Campion (n 158) 142.

¹⁶² JE Neale, *The Elizabethan House of Commons* (London, Jonathan Cape, 1949) 369.

Westminster is not only a busy workshop; it is a museum of antiquities' Sir Courtenay Ilbert wrote near the beginning of the twentieth century.¹⁶³

Since parliamentary procedure was of great antiquity, it was also deeply entrenched and difficult to change. This was the case for parliamentary procedure in general; it was also the case for the financial procedures of the House of Commons in particular.¹⁶⁴ The two committees of the whole House of Commons dealing with financial matters were both established by the early seventeenth century;¹⁶⁵ and, in that House, the three standing orders with the longest histories all found their first expression early in the eighteenth century. All three related to finance. All other standing orders (and there were 114 other standing orders in the mid 1960s) had an origin later than 1832.¹⁶⁶ In 1960, in the context of a standing order in force since 1707 and relating to financial procedures, the leader of the House of Commons (Butler) warned that 'if we were to depart unduly from these guardrails and these sorts of guides ... which have guided and looked after the liberties of our ancestors, we should be making a mistake'.¹⁶⁷

The great antiquity of parliamentary procedure also reflected the history of Parliament itself. The formative period of parliamentary practice, it has been said, was the first half of the seventeenth century, when the majority of the House of Commons had been in chronic opposition to Charles I.¹⁶⁸

¹⁶³ In his preface to Redlich (n 160) vol 1, vi.

¹⁶⁴ On the subject of parliamentary procedure relevant for financial legislation see generally G Reid, *The Politics of Financial Control* (London, Hutchinson, 1966) and M Ryle, 'Supply and other financial procedures' in SA Walkland (ed), *The House of Commons in the Twentieth Century* (OUP 1979).

¹⁶⁵ *Campion* (n 158) 142. The two committees were the Committee of Ways and Means and the Committee of Supply.

¹⁶⁶ Reid (n 164) 20.

¹⁶⁷ HC Deb 8 February 1960, vol 617, col 44.

¹⁶⁸ *Campion* (n 158) 142.

Parliamentary procedure, during that period, had acquired the characteristics of 'the procedure of the opposition'; and those characteristics had been permanently retained. The traditional procedure was leisurely, ceremonious and cumbersome; it was individualistic, giving wide scope to the initiative of MPs; and it was designed to protect the rights of minorities in debate and to encourage opposition to the executive.¹⁶⁹ In terms of the basic distinction drawn by Amery between government and nation, parliamentary procedure, historically, had been designed to protect the interests of the nation and not those of the government. 'The primary function of Parliament', it was stated in an edition of a student's textbook published in 1946, 'is the control of the executive'.¹⁷⁰ As late as 1957, one parliamentarian's comment on the proposition that it was the business of Parliament to make laws, was that '[s]o far as any generalization about Parliament can be accepted it would be more correct to say that it is the business of Parliament to prevent laws being made'.¹⁷¹

One consequence of a parliamentary procedure with these characteristics – a consequence in evidence well before 1900 – was that the government had insufficient time to enact its legislation.¹⁷² In 1860, Lord John Russell lamented that the government, which had three-quarters of the whole legislative business of Parliament in its hands, had only one-quarter of Parliamentary time at its

¹⁶⁹ *ibid.*

¹⁷⁰ Quoted from the 1946 edition of ECS Wade and GG Phillips, *Constitutional Law* by Lord Nolan in Lord Nolan and Sir S Sedley, *The Making and Remaking of the British Constitution* (London, Blackstone Press, 1997) 6.

¹⁷¹ Foreword, by S King-Hall, to J Eaves, *Emergency Powers and the Parliamentary Watchdog: Parliament and the Executive in Great Britain, 1939-1951* (London, Hansard Society, 1957) 1. Stephen King-Hall was an MP during the second world war. In 1944, he founded the Hansard Society for Parliamentary Government, holding major posts in that society until 1963.

¹⁷² For nineteenth century developments see generally P Fraser, 'The Growth of Ministerial Control in the Nineteenth-Century House of Commons' (1960) 75 *English Historical Review* 444 and V Cromwell, 'The Losing of the Initiative by the House of Commons, 1780-1914' (1968) 18 *Transactions of the Royal Historical Society* 1.

disposal;¹⁷³ and, at the end of 1880, Gladstone found himself confronting 'the heavy inconvenience of prolonged and manifold legislative arrear'.¹⁷⁴

Throughout the first half of the twentieth century, in peacetime,¹⁷⁵ the legislation that the United Kingdom government wished to enact on all subjects (including income tax) exceeded the legislation that could be enacted in the time available.

The United States political scientist, AL Lowell, writing in 1908, had no doubt 'that the legislative capacity of Parliament is limited, and the limit would appear to be well-nigh reached, unless private Members are to lose their remnant of time, or debate is to be still further restricted'.¹⁷⁶

This state of affairs continued during the inter-war period. One writer pointed out that Parliament was subject to its own conventional requirements. Three readings of a Bill in both Houses was a procedure which necessarily took time. If the opposition of political opponents and the great pressure of competing business were also both taken into account, it was not difficult to understand that there were very real limits to the practical legislative activity of Parliament; and those limits were yearly becoming more stringent. Legislation was

¹⁷³ HC Deb 2 April 1860, vol 157, cols 1731-2.

¹⁷⁴ Quoted in E Hughes, 'The Changes in Parliamentary Procedure, 1880-1882' in R Pares and AJP Taylor (eds), *Essays Presented to Sir Lewis Namier* (London, Macmillan, 1956) 295.

¹⁷⁵ The position is likely to have been different in wartime. For example, there is evidence that, during some periods of the second world war, there was ample time to deal with the legislation proposed for enactment. In 1943, James Chuter Ede, the Labour Minister at the Board of Education, who was heavily involved in the measure enacted as the Education Act 1944 (7 & 8 Geo 6 c 31), recorded that the government Chief Whip had told Butler, the President of the Board of Education, that '[h]e would expect us to have the major legislative place in the King's Speech & he was relying on us to provide business for the House in the next Session'. Later in 1943, Ede reported that the Chief Whip had told Butler 'that no one else had a Bill anything like ready. For that reason he will take the Committee stage on the floor of the House'. K Jeffreys (ed), *Labour and the Wartime Coalition: from the Diary of James Chuter Ede, 1941-1945* (London, the Historians' Press, 1987) 146 and 152 (entries for 6 September and 18 November 1943). See also on this, P Addison, *The Road to 1945: British Politics and the Second World War* (London, Jonathan Cape, 1975) 238. It has been stated that, during the second world war, there was normally a three-day parliamentary week. K Theakston, *Winston Churchill and the British Constitution* (London, Politico's, 2004) 150.

¹⁷⁶ Quoted in SA Walkland, 'Government Legislation in the House of Commons' in SA Walkland (ed), *The House of Commons in the Twentieth Century* (OUP 1979) 247, 254.

necessarily a cumbrous business, and in the modern extension of state activity, even important measures agreed upon by all parties might have to be postponed indefinitely, so great was the pressure on the legislative machine.¹⁷⁷ The same writer had earlier written that there was a 'very real restriction of time for legislative measures'; and that 'legislative processes are too slow and unwieldy to be lightly undertaken in these days of congestion'.¹⁷⁸ The 'commonest official excuse in sidetracking some proposal', it was said shortly after the beginning of the second world war, was that it would require legislation for which no parliamentary time was available.¹⁷⁹

After the second world war, the position continued to be the same. In 1949, one of the Parliamentary Counsel recorded that 'parliamentary time is in "short supply" and ministerial competitors for an allocation numerous';¹⁸⁰ and, in 1961, the First Parliamentary Counsel, Sir Noel Hutton, recorded that '[t]here is always hot competition for places in the [government's legislative] programme for any session' and that '[t]he number of days available for legislation in a session is strictly limited, and these must on no account be wasted'.¹⁸¹ Finally, during September 1963, in an article with the headline 'Many Bills compete for priority in next parliamentary session', the *Times* commented that 'the difficulty does not lie in scraping together enough legislation to keep the two houses occupied but in making choices between Bills competing hotly for priority'.¹⁸²

Some action was taken to deal with this difficulty, both within Parliament and within the government – but the action taken did not solve the underlying

¹⁷⁷ FJ Port, *Administrative Law* (London, Longmans, Green and Co, 1929) 97-8.

¹⁷⁸ *ibid* 78.

¹⁷⁹ CT Carr, *Concerning English Administrative Law* (New York, Columbia UP, 1941) 35.

¹⁸⁰ 'One of the Parliamentary Counsel to the Treasury', 'The Making and Form of Bills' (1949) 2 *Parliamentary Affairs* 175, 178.

¹⁸¹ Sir N Hutton, 'Mechanics of Law Reform' (1961) 24 *Modern Law Review* 18, 19 and 20.

¹⁸² *Times*, (London, 19 September 1963) 5, cols a-c.

problem. So far as Parliament was concerned, the House of Commons, during the nineteenth and twentieth centuries, underwent procedural changes designed to facilitate the production of more, and speedier, legislation. Champion described the three reducing processes involved as the 'slimming process', the 'squeezing process' and the 'purging process'.¹⁸³ The 'slimming process' consisted of the elimination of superfluous stages during the progress of a Bill; and the 'squeezing process' was effected by 'allocation of time' orders (generically nicknamed the 'guillotine'). The 'purging process' consisted of the relieving of the House of Commons itself of business that could be done by smaller bodies. Until 1882, the committee stage of nearly every Bill had been taken in a committee of the whole House; but the use of committees then grew over the decades that followed. Champion made use of a 'rough-and-ready method' to compare the relative speed of the legislative process at two different periods. By dividing the number of pages in the statutes passed during a session by the number of days spent in the House of Commons on the consideration of Bills, it was possible to find the average number of pages disposed of on each 'legislative day'. On this basis, the speed of legislation increased from an average of five pages per legislative day during the period from 1906 to 1913 to an average of 16 pages per legislative day in the 1945-46 Session.¹⁸⁴ Another calculation produced the results that, comparing the period from 1906 to 1913 with that from 1929-30 to 1937-38, the number of statutes enacted annually rose from 50 to 57, the number of pages from 335 to 995, and the average length of a statute from 7 to 17 pages.¹⁸⁵ 'The procedural reforms have much eased the situation' Jennings commented in 1941. Three or four

¹⁸³ Champion (n 158) 156-8.

¹⁸⁴ *ibid* 159.

¹⁸⁵ JAG Griffith, 'The Constitutional Significance of Delegated Legislation in England' (1950) 48 *Michigan Law Review* 1079, 1100.

Bills were passed every Session, each of which would have required a whole Session under the rules in force while Lord Salisbury was Prime Minister.

‘Nevertheless, there is always a shortage of time’.¹⁸⁶

The government, for its part, was at a particular disadvantage, during the first part of the twentieth century: for insufficient attempts were made to plan the parliamentary Session by relating the production of government Bills to the time at which Parliament was likely to be able to deal with them. The consequence was that many Bills were drafted (or partly drafted) which never saw the light of day. The time in the session at which a Bill was introduced depended chiefly on when the Parliamentary Counsel could get the Bill ready – and that, in turn, depended partly upon chance and partly upon the ability of the Office of the Parliamentary Counsel to make reasonably good guesses about what the government would want.¹⁸⁷ The abandonment, at the end of the parliamentary session, of the measures which the government despaired of being able to enact was known as the ‘massacre of the innocents’.¹⁸⁸

Under the Labour Government in power from 1945, the planning of the parliamentary session by relating the production and introduction of government Bills to the time available for their enactment received systematic attention.

Herbert Morrison, Lord President of the Council and Leader of the House of Commons, was very active in this area.¹⁸⁹ Having discovered, late in 1945, that

¹⁸⁶ WI Jennings, *Parliament must be reformed: a programme for democratic government* (London, Kegan Paul, 1941) 41.

¹⁸⁷ TNA file CAB 21/2140. Letter, Ram to Murrie, 13 June 1946.

¹⁸⁸ Sir C Ilbert, *Legislative Methods and Forms* (OUP 1901) 98-9.

¹⁸⁹ On this matter see generally B Donoghue and GW Jones, *Herbert Morrison: Portrait of a Politician* (London, Weidenfeld and Nicolson, 1973) 356-8, and H Morrison, *Government and Parliament: a Survey from the Inside* (2nd edn, OUP 1959) ch XI, ‘The Legislative Programme’ 221-44. It was said of Morrison that he ‘had that rare gift of being interested in the efficiency of the administrative machine. This made him a delight to work for as a civil servant’. See P Hennessy, *Never Again: Britain 1945-51* (London, Jonathan Cape, 1992) 198.

only one of the major Bills in the government programme was ready for introduction at the beginning of the 1945-46 Session, Morrison wrote to the Prime Minister, Attlee, urging that the planning of the next parliamentary Session should be put in hand: for 'it is only by planning ahead in this way that we shall make the best use of the time of Ministers, officials and draftsmen, and be ready with an adequate number of major Bills at the beginning of [the] next Session'.¹⁹⁰ Attlee thought this suggestion 'admirable'; and the Future Legislation Committee was set up.¹⁹¹

A proof of the proposition that the government had more legislation to enact than time in which to enact it was then provided. Comparisons were made, during the early months of 1946, between the time thought likely to be required for the enactment of the government's legislative programme and the parliamentary time likely to be available for its enactment. The result, set out in a memorandum sent to Morrison by the Chief Whip (Whiteley) was that the time available for government legislation was 73 days, but that the government's legislative programme would take 90 days to enact 'or 17 days more than is available'. Morrison's annotation on this document was that '[t]his is a shock and I don't want to believe it!'¹⁹²

The arrangements made under the Labour government were continued by the Conservative governments in power from 1951 to 1964 – and the shortage of time to enact government legislation also continued. A circular, dating from April 1957 and prepared on behalf of the Cabinet Committee on Future

¹⁹⁰ TNA file PREM 8/72. Note, Morrison to Prime Minister [Attlee], 'Legislative Programme for the 1946-47 Session', 7 December 1945.

¹⁹¹ TNA file PREM 8/72. Notes, Morrison to Prime Minister [Attlee], 'Legislative Programme for the 1946-47 Session', 7 December 1945; and Attlee to Lord President of the Council [Morrison], 10 December 1945.

¹⁹² TNA file CAB 124/561. Memorandum, Major Bills for Session 1946-47 (C.P. (46) 143) (top secret) with manuscript annotation by Morrison, 12 April [1946].

Legislation, placed Bills proposed for inclusion in the legislative programme for the next parliamentary Session in five Lists. List A consisted of 'Bills known to be essential'; List A.1 consisted of 'Bills which may become essential in particular circumstances'; List B consisted of 'Bills with very strong claims to inclusion in the programme'; List C consisted of 'Other Bills with claims to inclusion in the programme, from which some might be selected if Parliamentary time permits'; and List D consisted of 'Bills which will probably have to be deferred for a later Session'. The circular also commented that as was usually the case, more Bills had been put forward than could be handled in the time likely to be available. The Bills in List A and List B, together with those from List A.1 which might become essential, would probably suffice by themselves, with the consequence that Bills from Lists C and D could not be promoted to higher lists without corresponding relegations.¹⁹³

There was, accordingly, insufficient parliamentary time to enact all the legislation that the government wished to see enacted. There were more government Bills potentially available to be called than could be chosen.

Viscount Blakenham, speaking in the House of Lords in 1964, considered that, although, so far as the enactment of statutes was concerned, 'at the end of every Session of Parliament we manage to chalk up an impressive score', there was nevertheless no reason for complacency. 'At the end of every Session there remains a number of useful non-controversial Bills which lie neglected for want of Parliamentary time'.¹⁹⁴ One of the 'permanent features of the

¹⁹³ TNA file IR 40/13351 (Part 1). Circular headed 'Committee on Future Legislation; Legislative Programme – 1957/8 Session', April 1957. One historian's verdict on the Parliament of 1951-55 was that '[t]hrough pressure on Parliamentary time, the Government was prevented from introducing as much legislation as it would have liked'. A Seldon, *Churchill's Indian Summer: The Conservative Government, 1951-55* (London, Hodder and Stoughton, 1981) 430.

¹⁹⁴ HL Deb, 15 January 1964, vol 254, col 693.

constitutional process', according to Hailsham, writing at the end of the twentieth century, was 'the chronic shortage of parliamentary time which results in the indefinite postponement of measures crying out for action to meet the immediate legislative needs of a modern industrial society'.¹⁹⁵

2. The differential operation of the overall constraint

In the context of the insufficiency of parliamentary time in which to enact all the legislation which the government wished to see enacted, parliamentary procedure operated in a manner in which some forms of legislation were more likely to be utilised than others. The differential operation of the constraint of insufficient parliamentary time on Finance Bills, programme Bills, Consolidation Bills and Codification Bills is accordingly now analysed. In each case, three questions are addressed: how likely it was that such a Bill would be introduced into Parliament; how likely it was that such a Bill would be enacted; and how much such a Bill could accomplish.

(1) Finance Bills

The first type of primary legislation consisted of Finance Acts. The Finance Bills from which these Acts derived were Bills making provision for the nation's finances; and these Bills had their own parliamentary procedure, which was highly distinct.

It was practically certain that a Finance Bill would be introduced into Parliament each year.¹⁹⁶ From the point of view of the public finances, income tax, throughout the twentieth century, was charged for the current financial year only: so a Finance Bill would be needed, among other reasons, for the charge

¹⁹⁵ Lord Hailsham, *On the Constitution* (London, HarperCollinsPublishers, 1992) 5.

¹⁹⁶ In 1967, the First Parliamentary Counsel described Finance Bills as 'the most difficult, the most important, and the most urgent of the annual intake'. Sir N Hutton, 'Preparation of Acts of Parliament' (1967) 64 *Law Society's Gazette* 294.

to income tax to be imposed for that year. From the point of view of the working of the United Kingdom polity, it was well understood that, each year, the Chancellor of the Exchequer would make his financial statement (the Budget speech) and that the debate on the financial statement would be concluded with the passing of the last of the financial resolutions brought forward at the time of the Budget. In accordance with that last resolution, the House of Commons would then order a Bill to be brought in founded on those financial resolutions; and, somewhat later, the Finance Bill would be presented. After the second world war, in the lists prepared on behalf of the Cabinet Committee on Future Legislation, Finance Bills were always placed in List A ('Bills known to be essential').¹⁹⁷

It was also practically certain that a Finance Bill, once introduced into Parliament, would be enacted (especially after the enactment of the Parliament Act 1911).¹⁹⁸ Twentieth century governments had ministers drawn from the political party (or parties) that could command a majority in the House of Commons; and, in a period of strong party discipline, governments could rely upon the enactment of a measure that was essential for the government's own continued existence. 'The Finance Bill, however long, has got to pass' wrote the Financial Secretary to the Treasury (Powell) in 1957.¹⁹⁹ It followed that if provisions relating to revenue law generally, and to the law of income tax in particular, were to be enacted, Finance Bills were the ideal vehicles for their enactment.

¹⁹⁷ See, for example, TNA file IR 40/13351 (Part 1). Circular headed 'Committee on Future Legislation; Legislative Programme – 1957/8 Session', April 1957.

¹⁹⁸ 1 & 2 Geo 5 c 13.

¹⁹⁹ TNA file IR 40/13351 (Part 1). Note, Powell to Chancellor of the Exchequer [Thorneycroft], 7 August 1957.

The time available for the enactment of a Finance Bill, however, was severely limited. Following the enactment of the Provisional Collection of Taxes Act 1913,²⁰⁰ the government had the benefit of the limited legal authority conferred on House of Commons resolutions: but that authority expired during the summer. So, having regard to the annual financial cycle, legislation making fiscal changes was likely to be enacted, from start to finish, in the few months authorised by that statute. The ‘practical effect’, of the 1913 Act, it was noted in April of that year, was to compel a Chancellor of the Exchequer ‘to get the Royal Assent giving effect to his Budget before the summer prorogation of Parliament’.²⁰¹ In the period immediately after the second world war, it was considered that the House of Commons devoted about 15 days a year to taxation matters – about 10% of the session;²⁰² and, in the 1970s, it was calculated that Parliament had about 18 days a year, on average, in which to deal with all fiscal changes.²⁰³ The limited time available, furthermore, could not necessarily be used particularly efficiently: for Finance Bills had been subjected to the three reducing processes specified by Campion to a much lesser extent than other government Bills.²⁰⁴ A Finance Bill still originated in Budget resolutions which were discussed in a committee of the whole House for most of a week; the Finance Bill was considered in a committee of the whole House; progress on the Bill was not interrupted at the normal hour for the conclusion of business; and Finance Bills were rarely subjected to a guillotine.²⁰⁵

²⁰⁰ 3 & 4 Geo 5 c 3.

²⁰¹ TNA file AM 1/42, fo 43, ‘Provisional Collection of Taxes Bill: General Note’ (backsheet dated 4 April 1913).

²⁰² Griffith (n 185) 1100.

²⁰³ Sir G Howe, ‘Reform of Taxation Machinery’ [1977] *British Tax Review* 97, 98.

²⁰⁴ See text following n 183 above.

²⁰⁵ Campion (n 158) 160-1. Campion noted that only the Lloyd George Finance Bills of 1909-10 and the Finance Bills of the crisis years 1914 and 1931 had been guillotined (ibid 161 n 1).

The answer to the question how much Finance Bills could achieve, therefore, was much less satisfactory from the government's point of view: for, given the constraint of insufficient parliamentary time, Finance Bills reproduced, on a smaller scale, the general problem faced by government when determining its legislative programme. There was a shortage of parliamentary time: and this had the consequence that not all the provisions the government wished to place in Finance Bills could be included. 'We cannot have the Finance Bill overloaded' Churchill remarked in 1926.²⁰⁶ There was accordingly a shortfall; and a constant tension between the wish to include material in a Finance Bill and the constraints that applied to the enactment of a Finance Act. The greater the amount of material that was included in the Finance Bill, the more the Finance Act could accomplish: but the inclusion of additional material might imperil the status of the Finance Bill as a Money Bill within the meaning of the Parliament Act 1911,²⁰⁷ and might make the Finance Bill liable to exceed the far from generous time limits relevant for its enactment.

There is abundant evidence of the excess of candidate items for enactment. Early in 1959, for example, and '[f]ollowing the custom of the last few years', the Inland Revenue provided a note 'designed to give the Chancellor a preliminary view of the possible Inland Revenue items for the Finance Bill'. The note then grouped these items in five categories: items on which legislation had been promised or was of high priority; matters brought forward from the previous year; other matters on which recent representations had been made; minor

²⁰⁶ TNA file AM 6/17, fo 2349. Churchill to Hopkins, 25 March 1926. Early in 1956, in a submission from the Inland Revenue to the Chancellor (Macmillan), a reference to 'the probable size of the [Finance] Bill' attracted the marginal comment 'Not too big, I beg'. (TNA file IR 63/205, fo 200. Submission, Hancock to Chancellor of the Exchequer (Macmillan), 25 January 1956, with Macmillan's marginal comment.)

²⁰⁷ 1 & 2 Geo 5 c 13.

matters; and other matters under review.²⁰⁸ It was implicit in this classification that some items might not give rise to legislation in the next Finance Act – and that was the case.²⁰⁹

It is possible to demonstrate this same point in a different way by showing that a particular candidate item might only be enacted after a significant period as an unsuccessful candidate: and one example is the ultimate enactment of an income tax relief in favour of visiting forces from NATO countries. The Inland Revenue reported, early in 1956, that the department had been giving these reliefs, which were due under international agreement, for a number of years; and the necessary legislation had already been postponed several times. The department wished to obtain statutory sanction for its practice as soon as possible.²¹⁰ In 1956, however, it was decided that this item should be postponed again.²¹¹ Early in 1959, when considering the possibility that the revenue departments might be displaying insufficient zeal in enacting extra-statutory concessions, a Treasury official noted that those departments tended to defend themselves against this charge by reference to the difficulty of securing a place for minor and not strictly essential items in the Finance Bill – and that there was force in this. In the previous year, for example, the Chancellor of the Exchequer had been under heavy pressure to shorten the Finance Bill; and, in the process, the Inland Revenue proposal to give statutory

²⁰⁸ TNA file T 171/499. Note, [Evans] to Bell, 30 January 1959, and 'Inland Revenue Note on Possible Items'.

²⁰⁹ For example, one note, dated 2 March 1959, ended by specifying two matters on which the Chancellor (Amory) had decided that he did not wish to proceed. (TNA file T 171/497. Note [by Bridgeman], 2 March 1959, together with list.)

²¹⁰ TNA file IR 63/203, fo 205. Appendix I to Submission from Hancock to Chancellor of the Exchequer [Macmillan], 25 January 1956.

²¹¹ TNA file IR 63/203, fo 225. 'Budget – Inland Revenue items'. Note of meeting held in the Chancellor's room on 24 February 1956.

cover to a concession in favour of visiting foreign forces had been dropped.²¹²

The legislation envisaged was finally enacted in 1960.²¹³

Despite the virtual certainty, therefore, that Finance Bills would be introduced and enacted, the evidence demonstrates that Finance Bills could not deal, to the extent that the government wished, with revenue legislation in general and with income tax legislation in particular. Sir Geoffrey Howe, writing in the 1970s, took the view that the 'archaic ritual' by which Parliament dealt with financial matters was 'about as appropriate to a modern industrial democracy as tally sticks to the international money market'.²¹⁴ Inland Revenue officials, the Parliamentary Counsel and political ministers all had to operate in a context in which only part of what was wanted could be obtained.

(2) Programme Bills

The second type of primary legislation consisted of programme Acts. The Bills from which these Acts derived amended the law in particular respects, but were not Finance Bills.

The question how likely it was that a programme Bill would be introduced into Parliament must be answered by making chronological distinctions. The period from 1907 to 1965 needs to be divided into three unequal parts: a first part consisting of the years from 1907 to 1912; a second of the years 1913 and 1914; and a third consisting of the remainder of the period.

²¹² TNA file T 233/1596. Note, [Maude] to Armstrong, 12 February 1959.

²¹³ Finance Act 1960 (8 & 9 Eliz 2 c 44), s 73.

²¹⁴ Howe (n 203) 97.

The years from 1907 to 1912 were the final years of a longer period beginning in 1861.²¹⁵ During these years, it was envisaged that, every year, there should be one Bill that contained the government's proposals that were essential for the national finances. From 1894 onwards, the title of this Bill was the Finance Bill. It was also recognised, however, that various minor amendments of the Revenue Acts were also required: and so, from time to time, a Revenue Act was enacted. During these years, also, the distinction between the Finance Bill and the Revenue Bill was the distinction between the senior partner and the junior partner. If the government could not carry its essential programme for the national finances, embodied in the Finance Bill, it could expect to fall. If, on the other hand, the government failed to make minor amendments of revenue law, there was no particular reason to expect major adverse consequences. An operational corollary of this state of affairs was that a Finance Bill could be expected to be introduced fairly soon after the Budget speech – and to be enacted. A Revenue Bill, on the other hand, could only expect to be introduced much later on in the parliamentary Session – and very possibly near the Session's end.

Against this background, it followed that it was not particularly likely that a Revenue Bill would be introduced into Parliament during these years. A Bill of this type was unlikely to receive any great priority in the government's legislative programme. It also followed that any Revenue Bill, if it was to be enacted, could usefully be drafted with a view to consuming as little parliamentary time as possible – and, accordingly, should be drafted to be as uncontroversial as possible. Events that took place in 1909 demonstrate this. On 3 February

²¹⁵ For developments during the period from 1861 to 1912 see JHN Pearce, 'The Rise of the Finance Act: 1853-1922' in P Harris and D de Cogan (eds), *Studies in the History of Tax Law: Volume 7* (Oxford, Hart, 2015) 86-93.

1909, a Treasury official wrote to the First Parliamentary Counsel (Arthur Thring) to say that the Financial Secretary to the Treasury (Hobhouse) was anxious, if he could, to take the Revenue Bill through the House of Commons during the early part of the session when he thought that there might be a good chance of getting it through quickly. 'But the success of this manoeuvre will he thinks depend almost entirely on the amount of opposition which its several Clauses will be likely to arouse'. Thring, accordingly, was asked not only to consider a number of specific points but also to give his opinion 'on any other matter which may seem to you to be of doubtful value in the Bill or likely to lead to controversy'.²¹⁶ 'Mr. Hobhouse is no doubt right in his view', commented the Chairman of the Board of Customs and Excise.²¹⁷ 'It is practically impossible now-a-days to pass any proposal in a Revenue Bill to which there is serious opposition'.²¹⁸ Revenue Bills were introduced in 1909 and 1911.²¹⁹

The years 1913 and 1914 saw a government initiative relating to the enactment of financial legislation which made it practically certain that, in these years, a programme Bill would be introduced. The initiative was introduced by Lloyd George in his 1913 Budget speech. The Chancellor stated that amendments moved to the Finance Bill had increased in recent years,²²⁰ and that the Provisional Collection of Taxes Bill (then before Parliament) imposed what was practically a timetable for taxation Bills. It was quite impossible, in Lloyd George's opinion, for any government in the future to carry through its taxation

²¹⁶ TNA file AM 2/98, fos 164-5. Letter, 3 February 1909, Behrens to Thring.

²¹⁷ TNA file AM 2/98, fos 175-8. Typed note, dated 5 February 1909, with the initials 'L.M.G.' (ie Laurence M Guillemard).

²¹⁸ *Ibid.* When the Revenue Bill reached the House of Lords, the government spokesman said of it that 'this is one of those minor Treasury Bills that generally reach the House at a rather late period of the session. There is nothing of a contentious character, I believe, contained in the Bill. It is merely to set right a few anomalies at present existing in the law relating to Customs and Inland Revenue ...' HL Deb 26 November 1909, vol 4, col 1132.

²¹⁹ For further details relating to these Bills, see text around ns 224-30 below.

²²⁰ For further details on this point see Pearce (n 215) 91-2.

proposals, and to give facilities for a full discussion of every revenue proposal in the middle of the session, without dislocating all other business. 'It would have the effect of strangling the business of every Government'. The government had therefore decided 'to recur to a practice ... of having two Bills'. It proposed to confine the Finance Bill 'to the renewal of temporary taxes and to introduce a Revenue Bill on the basis of a Resolution for the general amendment of the law'.²²¹ The initiative, therefore, consisted of an explicitly formulated intention on the part of the government to aim at enacting both a Finance Act and a Revenue Act in each parliamentary Session; and, in 1913 and 1914, a Revenue Bill was introduced. However, Lloyd George's initiative failed. Neither Revenue Bill was enacted;²²² the first world war then intervened; and, after that war, no attempt was made to revive the initiative. The government's taxation proposals were placed in the Finance Bill.

After the first world war, the question how likely it was that a programme Bill relating to income tax would be introduced into Parliament was one aspect of the government's possession of insufficient time in which to enact all the legislation it wished. During these years, it was not particularly likely that a programme Bill would be introduced. A programme Bill relating to income tax was necessarily in competition with Bills on all other subjects on which the government wished to legislate – and only six programme Acts relating to income tax were enacted during this part of the period.²²³

²²¹ HC Deb 22 April 1913, vol 52, cols 279-80.

²²² For further details relating to the failure to enact these Bills, see text around ns 230-41 below.

²²³ The Bills in question were those enacted as the Income Tax Procedure (Emergency Provisions) Act 1939 (2 & 3 Geo 6 c 99); the Income Tax (Employment) Act 1943 (6 & 7 Geo 6 c 45); the Income Tax (Offices and Employments) Act 1944 (7 & 8 Geo 6 c 12); the Income Tax Act 1945 (8 & 9 Geo 6 c 32); the Income Tax (Repayment of Post-War Credits) Act 1959 (7 & 8 Eliz 2 c 28); and the Income Tax Management Act 1964 (1964 c 37).

The answer to the question how likely it was that a programme Bill, once introduced into Parliament, would be enacted, must also be answered by making a distinction. Programme Bills whose scope was general must be distinguished from those whose scope was specific.

The evidence is that, during the first half of the twentieth century, programme Bills relating to revenue matters whose scope was general might well not be enacted. Five such Bills were presented to Parliament. The first two Bills were enacted as the Revenue Acts of 1909²²⁴ and 1911.²²⁵ The Revenue Bill of 1909 was viewed at all times by government ministers as a Bill whose successful enactment depended upon its being uncontroversial; and was drafted with this consideration very much in mind.²²⁶ At a later stage, the Liberal government had informal discussions with the Conservative opposition about the contents of the Bill. The opposition took exception to three clauses; and these were 'at once' withdrawn 'in order that nothing of a controversial character should be present'.²²⁷ The statute finally enacted was short. It had 12 sections only; took up less than four printed pages; and did not deal with income tax. The Revenue Act 1911 reached the statute book during the period of the constitutional crisis that ended with the enactment of the Parliament Act 1911;²²⁸ and must be viewed within that context. At the time the Liberal government decided on the holding of the general election of December 1910, the Finance Bill following on from the 1910 Budget speech had not been enacted. That Bill was then split into two. Some provisions were enacted as the Finance Act 1910²²⁹ before

²²⁴ 9 Edw 7 c 43.

²²⁵ 1 Geo 5 c 2.

²²⁶ See text around n 216 above.

²²⁷ HC Deb 28 September 1909, vol 11, cols 1226-7.

²²⁸ 1 & 2 Geo 5 c 13.

²²⁹ 10 Edw 7 & 1 Geo 5 c 35.

Parliament was dissolved; the remainder were enacted as the Revenue Act 1911 in the next Parliament.²³⁰

The three later Bills – the Revenue Bills of 1913, 1914 and 1921 – were not enacted and had to be withdrawn. The Revenue Bills of 1913 and 1914 formed part of the initiative announced by Lloyd George in 1913. The extent to which the failure to enact these Bills may be traced to Lloyd George himself is considered later.²³¹ From the parliamentary point of view, however, the Revenue Bill of 1913 failed because it was given serious attention too late in the parliamentary Session (when there was insufficient time to ensure its enactment); and because it was insufficiently uncontroversial. Lloyd George's Budget speech, in which he announced the government initiative, was made on 22 April; but it was not until the second half of July that the text of the Bill was available for MPs to study.²³² The Prime Minister (Asquith) and Lloyd George both hoped that the Bill could go through as an agreed measure.²³³ Lloyd George also made the point that the government could not give the Bill very much time 'and looking at the amendments carefully it would be quite impossible if they were discussed at any length, to find time to get the Bill through'.²³⁴ However, no agreement could be reached; and, on 12 August 1913, the Bill was withdrawn.²³⁵

²³⁰ B Mallet, *British Budgets 1887-88 to 1912-13* (London, Macmillan, 1913) 320-1.

²³¹ See chapter 5, section 3(1), below.

²³² Remarks by Lloyd George on 16 July 1913 indicated that the Bill was still unavailable for MPs to study (HC Deb 16 July 1913, vol 55, col 1398).

²³³ For Asquith's statement see HC Deb 22 July 1913, vol 55, col 1878. For Lloyd George's statement see HC Deb 1 August 1913, vol 56, cols 939-40.

²³⁴ HC Deb 1 August 1913, vol 56, cols 939-40.

²³⁵ HC Deb 12 August 1913, vol 56, cols 2419-24. By the time the Bill came to be withdrawn, at least 51 new clauses had been proposed. (See TNA file T 171/48.) In 1913, the only financial legislation consequential upon the Budget that was actually enacted was the Finance Act 1913 (3 & 4 Geo 5 c 30). That Act had four sections only. Section 1 continued the duty on tea; section 2 provided for income tax to be charged for the 1913-14 year of assessment; section 3, which had been added in committee, (see HC Deb 11 August 1913, vol 56, cols 2145-50)

In 1914, also, the Revenue Bill also had to be withdrawn because there was insufficient parliamentary time in which to enact it.²³⁶ Lloyd George delivered his Budget speech on 4 May 1914; but it was only on 18 June 1914 that the text of the Revenue Bill became available for MPs to study.²³⁷ The government had parliamentary difficulties with its financial proposals; changed its plans; and, in doing so, altered the balance of the material to be placed in the Finance and Revenue Bills. By early June it had been decided that the vital Finance Bill would be given priority; the Revenue Bill would have to be lightened and possibly postponed. The government's parliamentary difficulties continued; and, among other matters, the members of the Cabinet came to realise that, among other matters, they had misunderstood the timetable for which the Provisional Collection of Taxes Act 1913²³⁸ provided. The Finance Bill had to be enacted by 5 August and not 5 September (as had been believed). It was impossible, Asquith wrote to a correspondent, to enact both the Finance Bill and the Revenue Bill by the earlier date.²³⁹ The Finance Bill was enacted,²⁴⁰ but, on 17 July, Asquith told the House of Commons that the Revenue Bill would be dropped.²⁴¹ So in 1914, as in 1913, Lloyd George's initiative failed to produce a Revenue Bill that was actually enacted.

provided for deductions in respect of the expenses involved in earning salaries; and section 4 was the short title. The government's new initiative had resulted in the most meagre of legislative harvests.

²³⁶ On the events surrounding the Budget of 1914, see BB Gilbert, 'David Lloyd George: the reform of British landholding and the budget of 1914' (1978) 21 *Historical Journal* 117; BK Murray, "'Battered and Shattered": Lloyd George and the 1914 Budget Fiasco' (1991) 23 *Albion* 483; I Packer, 'The Liberal Cave and the 1914 Budget' (1996) 111 *English Historical Review* 620; Pearce (n 215) 95-9.

²³⁷ TNA file AM 1/44, fos 232-249.

²³⁸ 3 & 4 Geo 5 c 3.

²³⁹ Packer (n 236) 625-6. Packer's overall conclusion on this whole sequence of events was that '[i]n this situation, the Cabinet had to admit that Lloyd George's ingenious plan to combine immediate new grants with major reforms of rating and grant allocation was impossible. There was simply not enough parliamentary time to allow the scheme to succeed'. (ibid 626.)

²⁴⁰ The Finance Act 1914 (4 & 5 Geo 5 c 10) received the Royal Assent on 31 July 1914.

²⁴¹ HC Deb 17 July 1914, vol 64, col 2295.

In 1921, a final Revenue Bill of a general nature was presented to the House of Commons – with the primary purpose of giving effect to some of the recommendations of the Royal Commission on the Income Tax, which had reported in 1920.²⁴² The Royal Commission's report had been signed shortly before the Chancellor of the Exchequer (Austen Chamberlain) delivered his Budget speech, in which he said that it was quite clear that he could not deal with all the report's recommendations in the Finance Bill; and that he had therefore decided that the general reform of income tax was a matter calling for a separate Bill – to be introduced as soon as possible.²⁴³ Progress on the drafting of this Bill was nevertheless slow. On 22 February 1921, the Revenue Bill was still due to appear; and Chamberlain was asked whether it would be taken on the floor of the House of Commons. He replied 'No. I shall ask the House to send it upstairs. That is the only hope of passing it. If the House treats it as a contentious measure it will not be proceeded with'.²⁴⁴ He also added, a little later, that 'the House must understand that if it is to be treated as a contentious measure I cannot possibly hope to make progress with it this Session'.²⁴⁵ When eventually presented to Parliament on 6 April 1921,²⁴⁶ the Revenue Bill became the subject of hostile criticism and a campaign in the Press.²⁴⁷ It also became known that the Bill's Second Reading was likely to be opposed.²⁴⁸ The Revenue Bill, therefore, was due to be treated as a

²⁴² Royal Commission on the Income Tax, *Report* (Cmd 615, 1920). The Report was signed on 11 March 1920 (ibid 141).

²⁴³ HC Deb 19 April 1920, vol 128, col 92.

²⁴⁴ HC Deb 22 February 1921, vol 138, col 760. The extent to which the failure to enact the Revenue Bill of 1921 may be traced to Chamberlain is considered further in chapter 5, section 3(1), below.

²⁴⁵ HC Deb 22 February 1921, vol 138, col 761.

²⁴⁶ HC Deb 6 April 1921, vol 140, cols 279-80.

²⁴⁷ See chapter 6, sections 3 and 4, below.

²⁴⁸ For further details on the contents of the Revenue Bill 1921 and on its fate see JHN Pearce, 'The Role of Central Government in the Process of determining liability to Income Tax in

contentious measure – the state of affairs likely to be fatal for its enactment – and the government withdrew it.²⁴⁹ Once again, therefore, there was insufficient parliamentary time to enact a Revenue Bill – and, once again, a Revenue Bill was abandoned.

It was stated in a later work that the Revenue Bill of 1921 was dropped owing to the opposition aroused; and that this was the last occasion on which the practice of introducing a separate Revenue Bill was followed.²⁵⁰ Such a Bill had been a great convenience for dealing with administrative matters, but difficulty had always been experienced in finding the necessary time for its progress, and for that reason the Treasury had, since that time, adopted the practice of covering all necessary measures in one Bill – the Finance Bill.²⁵¹ It is not known whether the authors of this work were in possession of any special information when writing this passage; but the proposition advanced was certainly true. The Revenue Bill of 1921 was the last Bill presented to Parliament whose provisions ranged generally over revenue law, but which was not a Finance Bill. ‘There is one great difference between a Revenue Bill and a Finance Bill’ said one MP in 1927. ‘A Revenue Bill need not be passed in any year; a Finance Bill must be’.²⁵²

Programme Bills whose scope was specific, however, enjoyed more success than those whose scope was general. Seven such Bills were introduced; and

England and Wales: 1842-1970’ in J Tiley (ed), *Studies in the History of Tax Law: Volume 3*, (Oxford, Hart, 2009) 341-3.

²⁴⁹ HC Deb 4 May 1921, vol 141, cols 1045 and 1188.

²⁵⁰ B Mallet and CO George, *British Budgets: Second Series: 1913-14 to 1920-21* (London, Macmillan, 1929) 245-6.

²⁵¹ *ibid.*

²⁵² HC Deb 19 July 1927, vol 209, col 367. A similar remark had been made in 1921: ‘whereas a Revenue Bill can be dropped a Finance Bill must be passed’. (HC Deb 21 June 1921, vol 143, col 1259).

all were enacted.²⁵³ The specific scope of such a Bill improved its parliamentary prospects (for the ability to move amendments was much diminished) and government officials and ministers were well aware that this was the case. On the day following the judgment in *Bowles v Bank of England*,²⁵⁴ two of the Commissioners of Inland Revenue attended upon the Parliamentary Counsel 'to talk over with him the Bill rendered necessary by the previous day's judgment'. One of the points discussed was that it would be advisable that the Bill should only deal with the specific point for which it was introduced, as the Chancellor desired to avoid other revenue matters being brought up for discussion in connection with it. On this point Parliamentary Counsel 'thought that the Bill now proposed should not be a Revenue Bill. This would preclude amendments being put down which had nothing to do with the result of the Gibson Bowles case'.²⁵⁵ It was on this specific basis that the Provisional Collection of Taxes Bill was prepared – and enacted.

The seven programme Bills that were specific in their scope may be divided into two categories. Five of those Acts (the Provisional Collection of Taxes Act 1913, the Income Tax Procedure (Emergency Provisions) Act 1939, the Income Tax (Employments) Act 1943, the Income Tax (Offices and Employments) Act 1944 and the Income Tax (Repayment of Post-War Credits) Act 1959) were enacted because the government was willing to give them the necessary

²⁵³ The Bills in question were those enacted as the Provisional Collection of Taxes Act 1913 (3 & 4 Geo 5 c 3); the Income Tax Procedure (Emergency Provisions) Act 1939 (2 & 3 Geo 6 c 99); the Income Tax (Employment) Act 1943 (6 & 7 Geo 6 c 45); the Income Tax (Offices and Employments) Act 1944 (7 & 8 Geo 6 c 12); the Income Tax Act 1945 (8 & 9 Geo 6 c 32); the Income Tax (Repayment of Post-War Credits) Act 1959 (7 & 8 Eliz 2 c 28); and the Income Tax Management Act 1964 (1964 c 37).

²⁵⁴ [1913] 1 Ch 57; (1912) 6 TC 136 (Ch).

²⁵⁵ TNA file IR 63/18. Note by Sir Matthew Nathan, 'Memorandum of Interview', 6 November 1911.

political priority. The other two programme Acts (the Income Tax Act 1945²⁵⁶ and the Income Tax Management Act 1964) were enacted because they were politically uncontroversial, and because their enactment could be accommodated within the government's other priorities. One statute, taken from each category, will now be considered in order to show the forces determining whether a particular item of proposed legislation received priority or was enacted for other reasons.

The Income Tax (Employments) Act 1943, containing provisions enabling the PAYE Regulations to be made, falls into the first category.²⁵⁷ By 1943, the Inland Revenue was under pressure to devise a scheme for deducting income tax from the current earnings of employees; and it was against that background that the Inland Revenue came forward with such a scheme in a departmental report dated 21 May 1943.²⁵⁸ The most suitable day for the introduction of a scheme utilising the current year basis was 6 April (the beginning of the income tax year) – and this implied a commencement date of 6 April 1944. On this basis, it was quite clear that much work needed to be done quickly: and, among other matters, legislation would be needed to deal with various points raised by the scheme.²⁵⁹ Once this point was reached, however, it was clear that the Finance Act 1943²⁶⁰ would be enacted too early. The scheme devised still needed to be considered by others; and it was only on 29 July 1943, one week after the Finance Act 1943 had received the Royal Assent, that the Chancellor

²⁵⁶ Details of the parliamentary proceedings on the Bill enacted as the Income Tax Act 1945 are given in chapter 6, section 2(2), below.

²⁵⁷ This Act enabled subordinate legislation to be made in connection with the deduction of income tax from the earnings of employees and is further considered in chapter 7, section 3 below.

²⁵⁸ TNA file IR 63/163, fos 1-35. Report of the Committee appointed to examine the possibility of introducing a system of deducting income tax on wages on the current earnings basis, 21 May 1943.

²⁵⁹ TNA file IR 63/163, fo 19. Appendix II to the Report.

²⁶⁰ 6 & 7 Geo 6 c 28. Royal Assent was given to this Act on 22 July 1943.

of the Exchequer explained the proposed PAYE scheme to the War Cabinet.²⁶¹ It was equally clear, however, that the Finance Act 1944²⁶² would be enacted too late. It followed, accordingly, that if the PAYE scheme was to become operative on 6 April 1944, a programme Act was a necessity: and the departmental report accordingly stated that if, as was envisaged, the scheme was to come into force on 6 April 1944 'legislation before that date is absolutely essential and acceptance of the scheme would involve the introduction, at a very early date, of a special Bill, all the stages of which would have to go through within the next three or four months'.²⁶³ The matter proceeded accordingly.

The Income Tax Management Act 1964, by contrast, falls into the second category. The proposition that income tax administration could usefully receive legislative attention was not contested; and the principal matter dealt with in the Act – that assessments to income tax should be made by inspectors of taxes – had been recommended in the Final Report of the Royal Commission on the Taxation of Profits and Income in 1955.²⁶⁴ An initial proposal to codify the administrative provisions relating to income tax was received well in the Treasury. 'The only trouble, of course, is that if the Parliamentary timetable is crowded it may not be easy to convince the Legislation Committee – and the Whips – that this sort of legislation deserves a place'.²⁶⁵ Nothing was accomplished at that time; but, in 1959, a Treasury Official considered a suggestion that it might be useful to introduce a tax administration Bill later that

²⁶¹ TNA file T 171/366, item 8. W M (43) 107th, Conclusions, 29 July 1943.

²⁶² 7 & 8 Geo 6 c 23. Royal Assent was given to this Act on 13 July 1944.

²⁶³ TNA file IR 63/163, fo 3 (para 6 of the Report).

²⁶⁴ Royal Commission on the Taxation of Profits and Income, *Final Report* (Cmd 9474, 1955) 282 and 339, paras 943 and 1090(60).

²⁶⁵ TNA file T 233/1081. Treasury Minute, 18 August 1955.

year; and had the ‘feeling’ that if the next Parliamentary session were to start with a great lack of legislation, there were probably useful, if quite unspectacular, things to be done in this field, ‘but that if there were other more interesting proposals this would inevitably get crowded out – and it would not be possible for us to say that it was more than a pity’.²⁶⁶ In the various lists prepared for the Cabinet Committee on Future Legislation, the Income Tax Management Bill never appeared in a list higher than List C (‘Other Bills with claims to inclusion from which some might be selected if Parliamentary time permits’).²⁶⁷ The introduction of a programme Bill (not a Codification Bill) into the House of Commons in February 1964 may be attributed to the zeal and skill with which the Bill was championed by Inland Revenue officials and by Alan Green, the Financial Secretary to the Treasury.²⁶⁸

The evidence, therefore, is that programme Bills could not be used to accomplish a great deal. During nearly all of the first half of the twentieth century, it was not particularly likely that a programme Bill would be introduced. Even if introduced, a programme Bill of a general nature was unlikely to be enacted. The programme Acts relevant for income tax which reached the statute book were nearly all specific in scope – and dealt with matters on which the government was keen to legislate, or which could be dealt with in the interstices of the parliamentary timetable.

²⁶⁶ TNA file T 233/1596. Annotation, dated 13 February [1959], by an unidentified author on note, [Maude] to Armstrong, 12 February 1959.

²⁶⁷ TNA file IR 40/13351 (Part 1). Circular headed Committee on Future Legislation; Legislative Programme – 1957/8 Session, April 1957.

²⁶⁸ TNA file IR 40/13351 contains the relevant material. For the actions of the Inland Revenue officials see chapter 3, section 3(2) below; and, for the actions of Green, see chapter 5, section 3(2) below.

(3) Consolidation Bills

The third type of primary legislation consisted of Consolidation Acts. The Consolidation Bills from which these Acts derived were Bills to restate the existing legislation on a particular subject without changing that legislation.

Consolidation Bills were unlikely to be introduced into Parliament: for there was a shortage of champions, both for consolidation statutes in general and for a statute consolidating the income tax legislation in particular. This absence of enthusiasm may be observed both outside and inside government.

Birkenhead's view was that '[t]o facilitate the work of consolidation, it is highly desirable that public opinion should be stimulated in its favour'. He then had to admit, however, that '[a]t present, the work excites no enthusiasm'.²⁶⁹ If the electorate was indifferent, MPs could be expected to be indifferent too.²⁷⁰ So far as those inside government were concerned, Birkenhead also believed that consolidation, although not actively opposed, had to encounter 'passive resistance' from those skilled in the administration of the branch of the law to be consolidated. This was 'not unnatural, for such persons are thoroughly conversant with the existing Acts, however confused they may be, and shrink from the trouble of having to learn their way about a new Act'.²⁷¹ Writing somewhat later, Carr agreed, saying that consolidation had a number of 'natural enemies'. One of these was a shortage of drafters. Another was the departmental preoccupation with day-to-day administration. Departments might

²⁶⁹ Viscount Birkenhead, *Points of View* (London, Hodder and Stoughton, no date but around 1922) 176.

²⁷⁰ A rare occasion when Parliament intervened was in the House of Lords in 1928. A Bill to amend company law was only given its Third Reading on the government undertaking to consolidate the law; and this was done in 1929. TNA file T 162/911 (E 17496(1)). 'Statute Law Reform: Memorandum by the Parliamentary Counsel to the Treasury' [i.e. Sir Granville Ram], 30 January 1946 (subsequently cited in this chapter as 'Ram's Statute Law Reform Memorandum'), app I, para 27.

²⁷¹ Birkenhead (n 269) 176.

be reluctant to provide the personnel to give the necessary technical support in the case of major Consolidation Bills – such as the Bill that became the 1952 Act.²⁷² Political ministers, in their turn, were most unlikely to make consolidation one of the matters to which they gave significant attention. It was the experience of Sir Granville Ram, the First Parliamentary Counsel from 1937 to 1947, that, bearing in mind that parliamentary time was limited, it was unsafe to introduce Bills which contained both consolidating and amending provisions; and Ram's own experience was that ministers would not introduce Consolidation Bills on subjects of little political importance unless they could be fully assured that all debate (except on the one point – 'to be or not to be') was definitely out of order on the floor of the House. 'It is for this reason especially that the Statute book is in the deplorably untidy condition which at present disgraces a civilized country!'²⁷³

Consolidation Bills were also unlikely to be introduced into Parliament for another reason: for, at the end of the nineteenth century and again in the years following the first world war, the parliamentary process for enacting consolidation legislation produced difficulties. At the end of the nineteenth century, the Joint Select Committee, which considered Consolidation Bills, took the view that it had greater liberty to amend the law than would be allowed at later times. The Joint Committee might report that a particular Consolidation Bill 'reproduces the existing enactments, with such alterations only as are required for uniformity of expression and adaptation to existing law and practice, and does not embody any substantial amendment of the law'.²⁷⁴ In 1897, however, a Post Office Consolidation Bill, which had been reported in

²⁷² Sir C Carr, 'The Mechanics of Law-Making' (1951) 4 *Current Legal Problems* 122, 135.

²⁷³ TNA file LCO 2/4603. Letter, Ram to Simon, 12 March 1949.

²⁷⁴ Ram's Statute Law Reform Memorandum (n 270), app I, para 23.

these terms, met with strong opposition from Gibson Bowles in the House of Commons.²⁷⁵ Although many of Bowles's criticisms could be contested, there were seven cases where the Post Office Consolidation Bill made minor amendments of the law. The government were not prepared to put on the whips; and the Bill was lost.²⁷⁶ Those (such as the drafter, the First Parliamentary Counsel, Sir Henry Jenkyns) who considered that the functions of the Joint Select Committee, when dealing with Consolidation Bills, properly included the making of minor amendments of the law, had lost to those such as Bowles, who considered that the Committee should not act in this way. It was recorded, many years later, that, after this failure, the Lord Chancellor (Halsbury) was said to have sworn that he would have nothing more to do with consolidation.²⁷⁷ The result, as Ilbert noted in 1901, was that 'the work of consolidation has, for the time being, come to a standstill. This is far from satisfactory'. However, there was 'no doubt that it ought to be resumed and carried on in a systematic manner'.²⁷⁸ It was the case, however, that no Consolidation Bill was introduced for 12 years after 1897.²⁷⁹

In the years following the first world war, by contrast, a proposed Consolidation Bill failed not because it was not conservative enough, but because it was too conservative. Lord Loreburn, when Lord Chancellor, set up a project, carried out separately from the normal government machinery, which resulted in the

²⁷⁵ For a biography of Bowles see LE Naylor, *The Irrepressible Victorian* (London, Macdonald, 1965).

²⁷⁶ Ram's Statute Law Reform Memorandum (n 270) app I, para 24.

²⁷⁷ TNA file AM 4/252. Letter, Carr to Ram, 30 January 1946.

²⁷⁸ Ilbert (n 188) 95 and 111.

²⁷⁹ Lord Simon of Glaisdale and JVD Webb, 'Consolidation and Statute Law Revision' [1975] *Public Law* 285, 292.

enactment of a number of statutes restating areas of the criminal law.²⁸⁰ The project nevertheless came to an unhappy end. A Bill to consolidate and simplify the enactments relating to fraud, falsification and kindred offences was introduced in the House of Lords in 1922. The Bill was referred to the Joint Committee on Consolidation Bills, which criticised it severely, and reported, in effect, that it was useless to proceed with it. The main line of criticism was that the drafter, instead of stating the law in a generalised form, had merely cut out snippets from the existing Acts and pasted them together. The Joint Committee invited the Lord Chancellor to substitute another Bill, drafted on different lines, but nothing further was done.²⁸¹

For the vast majority of the twentieth century, however, the prospects for the enactment of any Consolidation Bill actually introduced into Parliament were good. During the early part of the nineteenth century there had been no special procedure for the enactment of Consolidation Bills; but, during the second half of that century, the work of consolidation began, for the first time, to be held up by lack of Parliamentary time; and by 1890, at the latest, it was realised that Consolidation Bills would not pass if they were subjected to the same procedure as other Bills.²⁸² In 1894, the Joint Committee of the two Houses of Parliament which considered Statute Law Revision Bills began to consider Consolidation Bills as well,²⁸³ and the convention became established that a Consolidation Bill

²⁸⁰ The statutes enacted consisted of the Perjury Act 1911 (1 & 2 Geo 5 c 6); the Forgery Act 1913 (3 & 4 Geo 5 c 27) and the Larceny Act 1916 (6 & 7 Geo 5 c 50). Information about Loreburn's Committee is also given in Birkenhead (n 269) 180-3.

²⁸¹ Ram's Statute Law Reform Memorandum (n 270) app I, para 26.

²⁸² *ibid*, app I, para 23.

²⁸³ Simon and Webb (n 279) 292.

recommended by this Joint Committee should pass without debate at subsequent stages.²⁸⁴

These developments had an important result. The all-important time-consuming technical question (whether or not the proposed consolidating statute stated the existing legislation without changing it) was removed from the floor of the two Houses of Parliament and transferred to the Joint Committee.²⁸⁵ It followed that Consolidation Bills absorbed very little time on the floor of either House of Parliament. 'Consolidation', said the Lord Chancellor (Jowitt) in 1949 'is a most desirable thing because it involves little or no parliamentary time'.²⁸⁶ It followed, accordingly, that a Consolidation Bill actually presented to Parliament had excellent prospects of being enacted. In the case of the consolidation of the income tax legislation, therefore, parliamentary procedure did not constitute a formidable obstacle to the enactment of any Consolidation Bill that was actually prepared: and statutes consolidating the Income Tax Acts were passed in 1918 and 1952.

In the context of income tax, the evidence is that the Joint Committee did not rubber-stamp the text of draft Bills placed before it.²⁸⁷ In the case of the Bill enacted as the 1918 Act, the Committee required a substantial re-arrangement of the contents. The lawyer in charge of the preparation of the Bill later wrote that it might be considered unusual to find that the first section of the Act

²⁸⁴ Ram's Statute Law Reform Memorandum (n 270) app I, para 23.

²⁸⁵ In 1948, when the House of Lords was dealing with the Companies Bill, the Lord Chancellor (Jowitt) stated that 'We are here discussing a Consolidation Bill. We refer these Bills to a Committee, who go through them with great care. The function of that Committee is to see that they reproduce exactly the existing law with all its blemishes and imperfections'. HL Deb 27 May 1948, vol 155, col 1172.

²⁸⁶ HL Deb 16 February 1949, vol 160, col 898.

²⁸⁷ In the case of the draft legislation enacted as the 1952 Act, the Lord Chancellor (Jowitt) was anxious that Lord Radcliffe should be the chairman of the Joint Committee on the grounds that he alone had the right qualifications for considering the Bill. 'I think it quite essential to get him for this job for I can think of no-one else suitable'. (TNA file LCO 2/3818. Letter, Jowitt to Napier, 7 July 1951.)

promptly referred the reader to a schedule in order to find matters with which he was most vitally concerned, and which were without doubt the most important provisions in the Act. However, for reasons derived from the earlier Acts themselves, the Joint Committee had decided to transfer these very important provisions to the first Schedule. It was thought inadvisable to discard the old familiar titles of Schedule A, Schedule B, Schedule C, Schedule D and Schedule E. Strictly speaking these were not schedules, but categories or classes of property or profits on which the tax was levied in the manner described under each head. If, however, the name 'Schedule' was to be retained, the committee had considered, after much discussion, that the proper place for those provisions was in a schedule and not in the body of the Act, in spite of the fact that very important provisions were being dealt with.²⁸⁸ Very considerably later, in 1967, the Joint Committee reported that the Capital Allowances Bill was not pure consolidation, and ought not to proceed as a Consolidation Bill. That Bill was dropped. The law was then amended in the Finance Act 1967,²⁸⁹ and the amendments made disposed of the difficulties which had prevented the Joint Committee from certifying the Bill as a Consolidation Bill. A similar Bill was then introduced in the next session; and this later Consolidation Bill was enacted as the Capital Allowances Act 1968.²⁹⁰ Two years later, two further consolidating statutes dealing with income tax law were enacted: the Taxes Management Act 1970 and the Income and Corporation Taxes Act 1970.

²⁸⁸ HB Cox, 'Origin and Growth of Income Tax' (1919) 1 *Journal of the Society of Comparative Legislation and International Law* 42, 51-2.

²⁸⁹ Finance Act 1967, s 21(4).

²⁹⁰ Simon and Webb (n 279) 298.

Consolidation Acts could accomplish a certain amount only, and not more: for they consisted of the restatement of the existing legislation – and nothing else. Jowitt, in 1949, after praising consolidation for its modest consumption of parliamentary time, went on to say that the process was ‘simply putting together into one Statute what is already in a series of Statutes, so as to make it a matter of convenience for everybody to refer to’.²⁹¹ During the course of the preparation of the 1918 Act, Cox, the Solicitor of Inland Revenue, had to consider the suggestion that amendments should be made to the existing law. Cox would have none of it. ‘If we ... started making sensible amendments the bill would cease to be a consolidation bill & would never have a chance of getting through’.²⁹² Consolidation might indeed have real advantages for setting out the existing legislation relating to income tax – but any change to that legislation could only be made by some other means.

The proposition that the enactment of a Consolidation Act did not provide an opportunity to make major improvements to the existing legislation was emphasised by Lord Wrenbury in his speech in *Great Western Railway Co v Bater*.²⁹³ Lord Wrenbury referred to his presence on the Joint Committee which had considered the Bill enacted as the Income Tax Act 1918. He had striven to find some way ‘in which we could deal with the language of confusion and unintelligibility of the Acts to be consolidated’. That, however, had proved to be impossible. The Committee could only consolidate ‘and could not substitute plain words to express a plain meaning without going beyond the limits of consolidation. The Act of 1918 therefore reproduces the old language with all its faults and has done little more than improve matters a little by some

²⁹¹ HL Deb 16 February 1949, vol 160, col 898.

²⁹² TNA file IR 75/91. Letter, Cox to London, 5 November 1917.

²⁹³ [1922] 2 AC 1; (1922) 8 TC 231 (HL).

rearrangement'.²⁹⁴ Lord Wrenbury went on to say that the law of income tax, 'which now so vitally affects the subjects of the Realm, ought as speedily as possible to be expressed in a new Statute which should bear and express an intelligible meaning'. There was, however, a vital precondition: '[i]f Parliament had the time, which it has not'.²⁹⁵

(4) Codification Bills

The fourth type of primary legislation consisted of Codification Acts. The Codification Bills from which these Acts derived were Bills to restate the existing law on a particular subject without changing that law. Codification Bills, however, had a wider ambit than Consolidation Bills (which dealt with legislation only), for Codification Bills dealt with additional material – notably case law.

Codification Bills were unlikely to be introduced into Parliament. The absence of interest shown to Consolidation Bills by the public, MPs, senior civil servants and government ministers was also shown to Codification Bills. There were also additional problems. Birkenhead mentioned 'an acute divergence of opinion as to the expediency of converting unwritten into written law' and 'the great practical difficulty of making sure that the written code correctly reproduces the existing law'.²⁹⁶ Codification Bills, furthermore (unlike Consolidation Bills), did not have the benefit of the special procedure that resulted in a great shortening of the time taken on the floor of the two Houses of Parliament. A Codification Bill, therefore, had to be introduced and enacted as part of the government's general legislative programme; and, given a general insufficiency of parliamentary time, any Codification Bill in existence was an

²⁹⁴ [1922] 2 AC 1, 31; (1922) 8 TC 231, 255.

²⁹⁵ *ibid.*

²⁹⁶ Birkenhead (n 269) 177-8.

obvious candidate for sacrifice.²⁹⁷ Hailsham, in the 1980s, believed that, in the case of codification legislation, 'the real enemy of progress is the consumption of Parliamentary time involved'.²⁹⁸ A Codification Bill dealing with income tax law was certain to be large. It would include many matters capable of being discussed; and it was completely foreseeable that it would absorb a large amount of scarce parliamentary time. In a note prepared in connection with the Finance Bill of 1913, the Inland Revenue recorded that contentious and protracted discussion in Parliament would undoubtedly attend any effort to amend or codify the Income Tax Acts. Taxpayers generally were full of fictitious and fanciful grievances against the existing law, and many would eagerly take the opportunity of pressing their own schemes and amendments, however impractical, to the front. 'A whole session of Parliament might hardly suffice for the passage of any important measure on the subject into law'.²⁹⁹ The parliamentary prospects for the introduction of a Bill which was without champions, and which (in the case of income tax) was certain to be long and likely to absorb a large amount of parliamentary time were poor in the extreme.

The obvious inference arising is that the prospects for the enactment of any Codification Bill actually introduced into Parliament were also poor in the extreme. Three statutes constituting major restatements of the relevant area of

²⁹⁷ This consideration was already causing difficulties well before the twentieth century. In February 1885, the Lord Chancellor (Selborne) told a delegation interested in the codification of the mercantile law that even if such a code were drafted it would never get through Parliament, which would wish to scrutinise every provision. The wiser course, Selborne thought, was to concentrate on codifying suitable branches of commercial law. A Rodger, 'The Codification of Commercial Law in Victorian Britain' (1992) 108 *Law Quarterly Review* 570, 580-1. The Office of the Parliamentary Counsel held the same opinion, believing that 'Parliament will not entertain large schemes of general codification, but is disposed to give a favourable consideration to measures for codification of special branches of the commercial law, if carefully prepared, and effectively supported by mercantile opinion'. TNA file AM 3/50, fo 48. Memorandum 'Codification of Commercial Law' by H Jenkyns and CP Ilbert, 18 June 1897.

²⁹⁸ Lord Hailsham, 'Addressing the Statute Law' [1985] *Statute Law Review* 4, 8.

²⁹⁹ TNA file IR 63/18. 'Memoranda Relative to Questions of Income Tax, 19, Law and Practice' (1913). The memorandum is also in TNA file T 171/37, which enables the link to be made with the Finance Bill of 1913.

law were, however, enacted between 1933 and 1952: the Local Government Act 1933,³⁰⁰ the Public Health Act 1936³⁰¹ and the Customs and Excise Act 1952.³⁰² In the case of all three statutes, however, the Bill presented to Parliament was one that had already received detailed scrutiny from those concerned with the practical working of the legislation in question – both inside and outside central government. In 1953, it was the view of the First Parliamentary Counsel (Ellis) that experience showed that an essential stage in the process was that, before introduction of the Bill, a draft should be considered in detail and approved by an expert Committee which included representatives of the organised interests concerned, and was constituted so as to command the respect of MPs and of the public. If this were done, the Bill introduced into Parliament could be represented as having an authoritative status, entitling it to be enacted.³⁰³ In these circumstances, the government had a defence against criticisms of the Bill as introduced, and against proposals for amendment; and, in the events that happened, the enactment of each of these three statutes did not involve significantly more time than the enactment of a Consolidation Bill. If, therefore, the Bill presented to Parliament already had the approval of all significant interests operating in the relevant area of the law, the enactment of a codification statute was not an unreasonable dream.

No such codification statute relating to income tax was enacted. On the other hand, a committee to codify the law of income tax was set up in 1927; and, in

³⁰⁰ 23 & 24 Geo 5 c 51.

³⁰¹ 26 Geo 5 & 1 Edw 8 c 49.

³⁰² 15 & 16 Geo 6 & 1 Eliz 2 c 44.

³⁰³ TNA file T 273/269. Draft of Memorandum to be placed before the Statute Law Committee, accompanying letter from Ellis to Bridges dated 5 November 1953 (also in TNA file T 273/269).

1936, that committee produced a draft codification Bill.³⁰⁴ The work of the Codification Committee and the reasons why its draft Bill was not enacted are considered later.³⁰⁵ The Codification Committee's draft Bill, however, did not have the approval of organised interests generally: and no Bill deriving from the committee's work was introduced into Parliament – let alone enacted.

Codification, like consolidation, was a process that could accomplish only a certain amount – and not more. A Codification Act could produce a better statement of the existing law on a particular topic; but, here too, that better statement constituted only a limited gain. As in the case of consolidation, if the change wanted was the incorporation of new material, that change could only be made by some other means.

Conclusion

The evidence demonstrates that, during the period from 1907 to 1965, the need to enact primary legislation in Parliament had consequences for the form of the income tax legislation that were of the utmost importance. The government had insufficient parliamentary time to enact all the legislation, including legislation relating to income tax, that it wished to enact. It followed that the legislation that the government wished to see enacted would not be enacted in its entirety. There would be casualties. The evidence also demonstrates that, so far as legislation in general and legislation relating to income tax in particular were concerned, some forms of legislation were better placed to be enacted than others. Finance Acts were virtually certain to be enacted, and were used a great deal; programme Acts were used much less frequently and accomplished

³⁰⁴ Income Tax Codification Committee, *Report: Volume II: Draft of an Income Tax Bill* (Cmd 5132, 1936).

³⁰⁵ See chapter 6, section 1, below.

much less. It was possible for Consolidation Bills to be enacted occasionally; but, during the period from 1907 to 1965, no Codification Bill relating to income tax was ever presented to Parliament.

The result – a result of the utmost importance – was that, during the period from 1907 to 1965, the United Kingdom polity operated with a default setting so far as the enactment of primary legislation relating to income tax was concerned. That default setting had two essential characteristics: the primary legislation relating to income tax actually enacted used the different forms of legislation very unequally; and the primary legislation relating to income tax that the government wished to see enacted was enacted only in part. A default setting may nevertheless be overridden. The chapters that follow investigate the capacity, wish and ability of elements of the United Kingdom polity, both inside and outside government, to do this.

CHAPTER 3: DETERMINANTS WITHIN GOVERNMENT: THE INLAND REVENUE

‘... generally speaking we confine ourselves to suggesting appropriate corrections of the anomalies and inequities’.³⁰⁶

Introduction

Income tax, throughout the twentieth century, was administered by the department known as the Inland Revenue. That department was headed by the Commissioners of Inland Revenue, who, collectively, constituted the Board of Inland Revenue. The department had acquired that name in 1849, when the Board of Excise and the Board of Stamps and Taxes were consolidated into the Board of Inland Revenue;³⁰⁷ and the Board of Stamps and Taxes, in its turn, was itself the result of an earlier consolidation, in 1833, of the Board of Stamps and the Board of Taxes. In 1909, the management of excise duties was transferred from the Commissioners of Inland Revenue to the Commissioners of Customs, who were then to be styled the Commissioners of Customs and Excise.³⁰⁸ From this time onwards in the twentieth century, Customs and Excise and the Inland Revenue were the two departments of central government with the responsibility for obtaining the sums that government wished to obtain.

³⁰⁶ TNA file IR 40/14566. Annotation, dated 7 April [1952], by EW Verity, a Commissioner of Inland Revenue, on letter from Rowlatt to Bamford, 2 April 1952. (For the background, see text following n 375 below.)

³⁰⁷ By the Inland Revenue Board Act 1849 (12 & 13 Vict c 1). On these matters see generally W Griffith, *A Hundred Years: The Board of Inland Revenue 1849-1949* (London, Inland Revenue, 1949) 2-6 and C Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (CUP 2009) 48-9.

³⁰⁸ This was accomplished by the Excise Transfer Order 1909 (SR & O 1909/197) made under Finance Act 1908 (8 Edw 7 c 16), s 4.

It might be conjectured that the departmental Treasury³⁰⁹ might also wish to determine the form of the income tax legislation: but the evidence is that this was not the case. It has been said of the Conservative government from 1951 to 1955 that it was the Treasury (and, more specifically, the Chancellor of the Exchequer (Butler)) who decided how much taxation should be imposed, and of what kind, leaving Customs and Excise and the Inland Revenue to provide the technique;³¹⁰ and, in 1958, the departmental Treasury took the view that '[t]he administration and policies of each Revenue Department in their respective fields of direct and indirect taxation are very largely self-contained'.³¹¹ One year later, a Treasury Official considered a suggestion from the Financial and Economic Secretaries to the Treasury that it might be useful to introduce a tax administration Bill later that year. 'In general, I think that we must look to the Revenue Departments ... to advise Ministers on this question'.³¹²

The aim of this chapter is to ascertain the role played by the Inland Revenue in determining the form of the income tax legislation. The department undoubtedly had the capacity to act as such a determinant. It was not forbidden to consider that form; and, at all times, the department had quite sufficient staff to deal with the subject. There were 9,750 staff in 1914; 22,850 in 1935; 51,565 in 1956; and 58,022 in 1964³¹³ – an expansion that formed part of the general expansion of central government. A capacity to act, however, was by no means the same

³⁰⁹ On the Treasury during this period see generally GC Peden, *The Treasury and British Public Policy, 1906-1959* (OUP 2000).

³¹⁰ A Seldon, *Churchill's Indian Summer: The Conservative Government, 1951-55* (London, Hodder and Stoughton, 1955) 166.

³¹¹ TNA file T 199/631. Submission, Maude to Brook, 31 July 1958.

³¹² TNA file T 233/1596. Note, [Maude] to Armstrong, 12 February 1959, with annotation, dated 13 February [1959], by an unidentified author.

³¹³ The figures for 1914, 1935 and 1956 have been taken from DN Chester (ed), *The Organization of British Central Government 1914-1956* (London, George Allen & Unwin, 1957) 52. The figure for 1964 has been taken from Inland Revenue, *Report of the Commissioners of Her Majesty's Inland Revenue for the year ended 31st March 1964: Hundred and Seventh Report* (Cmnd 2572, 1965) 9.

thing as a wish to act – or success in taking action. The two questions that will be addressed in this chapter in order to ascertain the role of the Inland Revenue in determining the form of the income tax legislation are, accordingly, how far the Inland Revenue wished to be a determinant of that form; and the extent to which it achieved success in pursuing its wishes.

1. The department's wish to act as a determinant

As no senior Inland Revenue official is known to have provided an extended analysis of the department's general approach to the exercise of its functions during the first half of the twentieth century,³¹⁴ the question how far the department wished to determine the form of the income tax legislation cannot be approached by means of some document prepared within the department.³¹⁵

The department's wishes must be ascertained from other material, beginning with its functions as specified in legislation.

Enactments, consolidated in 1918 and 1952, provided for income tax to be under the 'care and management' of the Commissioners of Inland Revenue, who were entitled to 'do all such acts as may be deemed necessary and expedient for raising, collecting, receiving and accounting for the tax'.³¹⁶ Similar

³¹⁴ For one account of Inland Revenue policy work, written many years later by a Commissioner of Inland Revenue, see AJG Isaac, 'Policy Guide'. The date 'February 1993' appears on the back cover of this work. There is a copy at TNA file IR 142/1 (an open file). On another occasion Isaac wrote that '[f]or me, the interest – and challenge – of tax policy has been to reconcile the politics (what Ministers want to achieve), the economics (the realities of the market place, ruled over by the law of unintended consequences), the practicalities (what can reasonably be expected of highly skilled professionals, and what of very large numbers of the rest of us) and the legalities (drafting the rules in such a way that the courts will interpret them consistently with their intention)'. J Isaac, 'Development of Tax Policy Formulation and Presentation: a Retrospect' [2006] *British Tax Review* 222.

³¹⁵ A work on the department, written in the 1960s by Sir Alexander Johnston, then the Chairman of the Board of Inland Revenue, was concerned to describe the department's organisation and functions as they stood at the beginning of 1965. See A Johnston, *The Inland Revenue* (London, George Allen & Unwin, 1965) 7. Johnston was Chairman of the Board of Inland Revenue from 1958 to 1968.

³¹⁶ Income Tax Act 1952 (15 & 16 Geo 6 & 1 Eliz 2 c 10), s 5(1) and (2), the successor to the Income Tax Act 1918 (8 & 9 Geo 5 c 40), s 57(1) and (2), the Income Tax Act 1853 (16 & 17 Vict c 34), s 4 and the Income Tax Act 1842 (5 & 6 Vict c 35), s 3.

wording could also be found in another Act in force throughout the twentieth century – the Inland Revenue Regulation Act 1890.³¹⁷ That statute provided for the appointment of ‘persons to be Commissioners for the collection and management of inland revenue’; and the Commissioners, in their turn, were under a duty to appoint officers ‘for collecting, receiving, managing, and accounting for inland revenue’. ‘Inland revenue’, in its turn, was defined to mean ‘the revenue of the United Kingdom collected or imposed as stamp duties, taxes, and duties of excise, and placed under the care and management of the Commissioners’³¹⁸ – a definition that included income tax.

The statutory duties imposed upon the department formed the natural starting point for the Inland Revenue’s approach to the exercise of its functions. In 1919, Sir Thomas Collins, the Chief Inspector of Taxes, when giving evidence to the Royal Commission on the Income Tax, read a statement which referred to the statutory provisions relating to the department’s functions; and went on to state that the Board of Inland Revenue ensured ‘the continuous and consistent application of the machinery of administration’ provided by the Income Tax Act 1918.³¹⁹ In 1948, an internal document stated that ‘[t]he primary function of the Board of Inland Revenue is the management and collection of the direct taxes’;³²⁰ and, in the 1960s, Sir Alexander Johnston’s work, *The Inland Revenue* began with the statement that ‘[t]he Inland Revenue is responsible for

³¹⁷ 53 & 54 Vict c 21. The Inland Revenue Regulation Act 1890 was repealed by the Commissioners for Revenue and Customs Act 2005, sch 5.

³¹⁸ Inland Revenue Regulation Act 1890, ss 1(1), 4(1) and 39.

³¹⁹ Royal Commission on the Income Tax, *Minutes of Evidence* (London, HMSO, 1919-20) 14-15 (paras 268-71). Hopkins (the Chairman of the Board of Inland Revenue) and Collins (the Chief Inspector of Taxes) presented their evidence to the Royal Commission in association. *ibid* 1 (para 1).

³²⁰ TNA file T 165/224. Noted headed ‘Inland Revenue’ and dated ‘August 1948’, 2 (para 1). The proposition is repeated with minor variations at 4 (para 19).

the administration of the direct taxes'.³²¹ The work then made the points that the most important and best known of the direct taxes was income tax; and that all direct taxes were imposed by Parliament. 'The Revenue's business is to administer them: that is, to ascertain in each case the amount of tax payable under the law and to secure its payment'.³²² 'It will not be overlooked', the First Parliamentary Counsel (Sir Granville Ram) wrote in 1945, when the future form of the income tax legislation was under discussion, 'that whatever Act is ultimately passed, it will be the Board of Inland Revenue that will have to work it'.³²³

The Inland Revenue's view that it was responsible for the administration of the direct taxes had consequences. It was the opinion of Sir Cornelius Gregg, Chairman of the Board of Inland Revenue from 1942 to 1948, that '[o]ur work ... is generally regulative'.³²⁴ It was also Gregg's view that the nature of the department's work could be related to an internal organisation which he considered unusual: for the day to day executive work of assessment was carried out through branches and not by administrative staff at headquarters. Around 1965 (the time at which Johnston was writing), out of the total staff of nearly 60,000, more than 50,000 were employed in the Valuation Branch, in the Accountant General's Branch, and in the branch headed by the Chief Inspector of Taxes. In addition to these three branches, several smaller Offices also existed, such as the Solicitor's Office, the Estate Duty Office and the Surtax Office. As Johnston described the department's organisation, the executive work was entrusted to a number of 'branches', while policy was handled in a

³²¹ Johnston (n 315) 11.

³²² *ibid.*

³²³ TNA file IR 40/8554. Memorandum by the Parliamentary Counsel (Ram), 'Simplification of Income Tax Law', 1 November 1945, para 4.

³²⁴ TNA file T 273/100. Letter, Gregg to Bridges, 29 October 1947.

small central unit which had no substantial executive functions, but maintained close contact with the heads of the branches and their headquarters staffs.³²⁵

The Inland Revenue, although one of the largest government departments, had one of the smallest staffs at its administrative headquarters.³²⁶

An internal organisation with these characteristics had the consequence that the consideration of tax policy formed part of the official duties of a very small percentage of the department's total workforce. At the centre of the department, the Board of Inland Revenue was supported, in its care and management of income tax, by the Secretaries' Office. In the early 1960s, that Office consisted of some 780 staff and had three Divisions. The Statistics and Intelligence Division produced the statistics and estimates required by the Board; and the Establishment Division dealt with general organisation and efficiency and with matters of personnel. It was the final Division, the Stamps and Taxes Division, which carried out the general administration of the Inland Revenue taxes; and this Division had a total staff of about 120. In that Division, the Inland Revenue taxes were divided up among the Assistant Secretaries. Thus, one Assistant Secretary dealt with all matters arising in connection with Estate Duty and another with stamp duties. Income tax, on the other hand, had to be divided into a number of different subjects, such as PAYE and double taxation relief.³²⁷ If not Commissioners of Inland Revenue themselves, it was overwhelmingly probable that the officials with responsibility for advising on tax policy would be located in the Stamps and Taxes Division of the Secretaries' Office and would work directly to the Commissioners.

³²⁵ Johnston (n 315) 12, 25-7 and 196.

³²⁶ TNA file T 273/100. Note, Bridges to Chancellor of the Exchequer [Cripps], 6 January [1949]. The note is dated '6 January 1948', but it is clear from other documents in the piece that the year in question is 1949.

³²⁷ Johnston (n 315) 22, 60, 69 and 196.

The Inland Revenue, therefore, was a department where nearly all the staff was engaged in work in which they did not have to consider the form of income tax legislation at all; and this subject was of relevance only for a small and highly finite number of individuals. Furthermore, even for those individuals, work associated with the form of the income tax legislation was unlikely to be a major preoccupation. The department's administrative staff, according to Gregg, devoted themselves to the consideration of new issues that might arise in the executive branches and to the general surveillance of how the work of the executive branches was being carried out 'together of course with the particular duty of advising the Chancellor on changes in the taxation law'.³²⁸ This formulation carried the implication that work arising in the branches had pride of place, with advice on changes in taxation law following on behind, as necessary.

The overall result, therefore, was that the Inland Revenue was a department that was primarily concerned to administer existing arrangements. It followed that the form of the income tax legislation was not, in itself, of primary concern to it. Another matter that was not of primary concern to the department was the bringing into existence of other, different, arrangements.

The form of the income tax legislation was, accordingly, a peripheral matter so far as the Inland Revenue was concerned – but it did not follow that the form of that legislation was a subject in which the department was uninterested. The department could be expected to take such an interest if its general approach prompted it to do so. There is evidence that the Inland Revenue held the view that the basic structure of the income tax was good; that income tax was well

³²⁸ TNA file T 273/100. Letter, Gregg to Bridges, 29 October 1947.

administered by departmental officials; and that income tax law and practice were large and complicated subjects.

The basic structure of the income tax, according to some speakers and writers in the early years of the twentieth century, was a matter that should be considered as part of an examination of the entire structure of income tax law and practice; and, shortly before the outbreak of the first world war, the government had taken the decision that there should be a major investigation of income tax law.³²⁹ No further action was taken until after the war; but a Royal Commission was appointed in 1919 and reported the following year.³³⁰ On the subject of the basic structure of the income tax, that Report made highly satisfactory reading for the department. The Commission's recommendations, though numerous and far-reaching, did not amount to a suggestion for any fundamental change in the nature of the tax. There was 'no attempt whatever to overturn the whole framework of the tax and set up in its place something else bearing the same name'.³³¹ More than forty years later, it was Johnston's opinion that, whatever the changes in the department's organisation, there seemed to be no reason to expect any change in the basic structure of the taxing process. The Inland Revenue would be responsible for assessing and collecting the direct taxes; and taxpayers would continue to discuss their liabilities with Inland Revenue officers. It was likely that agreement would be reached; but the taxpayer would always have the right of appeal to an independent authority. The arrangements for appeals worked well, and it

³²⁹ For further details see JHN Pearce, 'The Income Tax Law Rewrite Projects: 1907-56' in J Tiley (ed), *Studies in the History of Tax Law: Volume 6* (Oxford, Hart, 2013) 137-8.

³³⁰ Royal Commission on the Income Tax, *Report* (Cmd 615, 1920).

³³¹ *ibid* 3 (para 14).

seemed safe to say that no one, and certainly not the Inland Revenue, would wish to disturb them.³³²

These views were not confined to the Inland Revenue, but were held more widely. They were held, for example, by ERA Seligman,³³³ an academic working in the United States, who published a work on the income tax in 1911. Seligman concluded the part of his work devoted to the United Kingdom by observing that income tax had become a 'mighty fiscal and social engine'. The tax was a signal example of how 'sound theory and admirable administration' might combine to overcome long-continued prejudice and opposition. The United Kingdom's income tax was 'a phenomenal success, because it is recognised by the public as a loyal and well-considered effort to accomplish that which the people desire, and in a way which commands their sympathetic approval'.³³⁴ Seligman's work was known within the Inland Revenue a few years later: for a brief quotation from it appeared in the evidence presented by the department to the 1919 Royal Commission.³³⁵

One aspect of the structure of the income tax was singled out for special attention and praise: the principle of deduction at the source.³³⁶ In 1919, Sir Richard Hopkins, the Chairman of the Board of Inland Revenue, when giving evidence to the Royal Commission, explained that, when it was possible to do so, income tax was usually collected at the source by deducting it before it reached the person to whom it belonged; and this method of deduction at the

³³² Johnston (n 315) 194-5.

³³³ For an article on Seligman see A Mumford, 'ERA Seligman: The Surprising Fiscal Sociologist' in J Tiley (ed), *Studies in the History of Tax Law: Volume 5* (Oxford, Hart, 2012).

³³⁴ ERA Seligman, *The Income Tax, A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad* (New York, Macmillan, 1911) 217-8.

³³⁵ The Royal Commission on the Income Tax, *Appendices and Index to the Minutes of Evidence* (London, HMSO, 1920) 61, Appendix No 7(g), para 1.

³³⁶ The importance of the principle of deduction at the source is argued in A Farnsworth, *Addington: author of the modern income tax* (London, Stevens, 1951) 115-24.

source was applied, with certain exceptions, to every class of income which could be so treated – and no less than 70% of the whole of the income tax was so secured. He had ‘no hesitation in saying that it is this feature of the Income Tax which constitutes its peculiar distinction and has been responsible for the success which has attended the collection of the tax throughout its history’. It was a subject ‘vital to the success of the Income Tax as a practical vehicle of taxation’.³³⁷ At that same time, another Inland Revenue official described the principle of deduction at the source as one ‘which has been of incalculable benefit to the revenue of this country, and which in spite of some modern encroachments remains the great buttress of Income Tax stability and efficiency’.³³⁸ The Royal Commission also agreed, stating that ‘[t]axation by deduction at the source is of paramount importance lying as it does at the very root of our Income Tax system’.³³⁹ A good many years later, in 1940, when asked to comment on suggestions originating from Keynes,³⁴⁰ it was to the centrality of the principle of deduction at the source that Hopkins referred. Most countries, according to Hopkins, ‘raise their income taxes in a primitive way by direct assessment’. In the United Kingdom, however, income tax was collected at the source. ‘This fact completely transforms the technical picture. I cannot believe Keynes would have had the audacity to represent his proposal as a

³³⁷ Royal Commission on the Income Tax, *Minutes of Evidence* (n 319) 2 and 3, paras 14 and 37. It was Seligman’s statement that taxation at the source was ‘perhaps the chief cause of the great success of the English income tax’ which was quoted in the evidence which the Department had earlier presented to the Royal Commission.

³³⁸ HB Cox, ‘Origin and Growth of Income Tax’ (1919) 1 *Journal of the Society of Comparative Legislation and International Law* 42, 43. Cox was the Solicitor of Inland Revenue and played a role of fundamental importance in the preparation and enactment of the 1918 Act. (See text around ns 417-23 below.)

³³⁹ Royal Commission on the Income Tax, *Report* (n 330) 36 (para 154).

³⁴⁰ Those suggestions are described in n 370 below.

perfectly simple and straightforward operation if this fact had been properly present in his mind'.³⁴¹

Support for the principle of deduction at the source gave rise to a departmental aim. The evidence is that, over a period of many years, the Inland Revenue favoured compulsory income tax deductions from the earnings of employees – the extension of the principle of deduction at the source to an exceedingly important category of income. In 1916, for example, when the department had to consider an amendment tabled to that year's Finance Bill imposing a compulsory deduction from employees' earnings, it noted that, from a revenue and administrative point of view, the proposal would no doubt be advantageous; but probably all that could be done at that time was to encourage and facilitate voluntary arrangements between employers and employees which might, in the course of time, lead to some general acquiescence in a system of deduction from wages – either in the first instance or the last resort.³⁴² Then, shortly after the first world war, the Royal Commission received evidence from ER Harrison, an Assistant Secretary with the department. Harrison's written evidence was that, from the department's point of view, 'the suggestion that tax should be deducted at the source from wages would, if practicable, have many advantages'. His oral evidence was that '[s]peaking purely from a Revenue point of view, anything which assisted in the deduction of Income Tax at the source would be helpful to us as a principle'. The recent history of this subject, however, did not encourage the department at that time.³⁴³ During the years between the wars, both employers and employees continued to be uninterested

³⁴¹ TNA file IR 40/6602. Note headed 'Note on some technical aspects of the Keynes Plan' (12 March 1940).

³⁴² TNA file AM 6/2, fo 501. 'Notes on Amendments and New Clauses relating to income tax'.

³⁴³ Royal Commission on the Income Tax, *Minutes of Evidence* (n 319) 1235 and 1240, paras 25,090 and 25,109.

in the compulsory deduction of income tax from earnings.³⁴⁴ The Inland Revenue's aim of extending the principle of deduction of income tax at the source to payments of employment income nevertheless remained – and was one of the most important of the department's 'private cargoes and destinations' to which Amery referred.³⁴⁵ In 1940, the department was able to make progress in obtaining its wish.³⁴⁶

The Inland Revenue also held the view that income tax was well administered by departmental officials; and this view was also supported by the Royal Commission that reported in 1920: for it took the view that 'the practical administration of the Income Tax is in a highly efficient state'.³⁴⁷ The witnesses who had appeared before the Commission had testified to the general excellence of the Board of Inland Revenue's administration. The financial position of over six million people was brought under review annually for the purpose of determining the income tax they should pay: and the main direction and control of the great machine necessary to accomplish this end devolved upon the Board. If any considerable amount of dissatisfaction existed with the administration of the tax, the Commission believed that it would have been alerted to that point; but the absence of adverse criticism, and, still more, the opinion the Commission had been able to form during its inquiry, compelled it to endorse the testimony of witnesses as to the general efficiency of the work carried out by the Board and by the officials for whom they were directly responsible. The growth and development of the tax in the years before the

³⁴⁴ As the matter was put in 1931, '[t]he deduction by employers of Income Tax from wages has been considered on various occasions in the past, but it has never been found practicable'. HC Deb 24 November 1931, vol 260, col 209. The passage quoted is from the reply given by the Chancellor of the Exchequer (Neville Chamberlain) to an oral Parliamentary Question.

³⁴⁵ See chapter 1 above, text around n 152.

³⁴⁶ See chapter 7, section 3, below.

³⁴⁷ Royal Commission on the Income Tax, *Report* (n 330) 73, para 330.

Commission was set up, and especially during the first world war, had thrown great burdens upon the administration, but the system had shown no sign of giving way under the strain. The growth in the yield and pressure of the tax had not been accompanied by any serious complaint against the administration.³⁴⁸ 'In short, the Income Tax is successfully administered'.³⁴⁹ 'I hold no special brief for the bureaucracy', Lord Macmillan wrote in his autobiography, 'but I think I should record my very high opinion of the fairness and competence of the Inland Revenue Department, after these years of close consultations with its officials. No other department is in such intimate contact with the affairs of every one of us, yet how seldom do we hear any complaints of their administration!'³⁵⁰

The administration of income tax also gave rise to a departmental aim. The report of the Royal Commission, in 1920,³⁵¹ made many recommendations for changes in the manner in which income tax was administered; and those recommendations would have increased the powers of departmental officials at the expense of the General Commissioners of Income tax. The Revenue Bill of 1921, which provided for such changes to be made, was, however, withdrawn.³⁵² The department would nevertheless have welcomed the enactment of those provisions; and a wish to increase the department's powers (with the department taking the principal role, in law as well as fact, in the administration of the tax) was another of the important 'private cargoes and destinations' which the department wished to see accomplished. In 1964, the

³⁴⁸ *ibid* 74, para 335.

³⁴⁹ *ibid* 73, para 330.

³⁵⁰ Lord Macmillan, *A Man of Law's Tale* (London, Macmillan, 1953) 201.

³⁵¹ Royal Commission on the Income Tax, *Report* (Cmd 615, 1920).

³⁵² For further details on the contents of the Revenue Bill of 1921 and on its withdrawal see JHN Pearce, 'The Role of Central Government in the Process of determining liability to Income Tax in England and Wales: 1842-1970' in J Tiley (ed), *Studies in the History of Tax Law: Volume 3* (Oxford, Hart, 2009) 341-3. See also chapter 6, sections 2, 3 and 4, below.

department achieved success in obtaining its wish when the Income Tax Management Act 1964 reached the statute book.

The Inland Revenue also held the view that income tax law and practice were large and complicated subjects. The evidence presented by Sir Thomas Collins, the Chief Inspector of Taxes, to the 1919 Royal Commission was that income tax had reached such a point, both in importance and complexity, that many parts of the work of its administration could only be carried out by highly trained officials who devoted their whole time and energy to the task. Long and special training resulting in an intimate acquaintance with the law and practice relating to the tax was essential to the efficient performance of many of the daily operations connected with the work of assessment.³⁵³ At that same time, the Solicitor of Inland Revenue expressed the view that few individuals, except those who had 'to administer the law of income tax all day and every day of their lives could walk with any certainty through the tangled jungle of confused provisions, and even they were occasionally caught tripping by the Courts'.³⁵⁴ 'The growing volume and complexity of the tax law will make increasing demands on the knowledge and ability of the staff, and particularly of inspectors of taxes' Johnston noted in 1965.³⁵⁵

The department's work on the preparation of the Income Tax Act 1952³⁵⁶ provides evidence that income tax law and practice were large and complicated subjects and that income tax was well administered. Experienced officials were well placed to play a valuable role in the preparation of a large and complex Consolidation Bill; and Sir John Rowlatt, one of the Parliamentary Counsel and

³⁵³ The Royal Commission on the Income Tax, *Appendices and Index to the Minutes of Evidence* (n 335) 27, Appendix No 4, para 8.

³⁵⁴ Cox (n 338) 47-8.

³⁵⁵ Johnston (n 315) 193.

³⁵⁶ 15 & 16 Geo 6 & 1 Eliz 2 c 10.

the drafter of the Bill, praised the Inland Revenue's technical expertise in a handwritten letter to the Chairman of the Board of Inland Revenue.³⁵⁷ Rowlatt thought it 'only decent that I should put on record the exceedingly high view I formed of the Revenue performance' in preparing the Bill and assisting in its enactment by Parliament. The members of a committee that had worked with him over the detail of the clauses of the Bill were singled out for particular praise. 'They were ideally placed to gum the whole thing up, and nothing would have been easier than to do so'. The committee members, however, had kept their heads and their tempers – and Rowlatt did not believe that much had been missed. 'Whether the thing will work or be an improvement on the existing chaos remains to be seen, but if it doesn't, or isn't, it isn't the Revenue's fault. Indeed, with any other Department, I don't believe the thing would have stood a chance of getting on its feet at all'. That last sentence may be noted particularly. There is no need to discount these compliments on the basis that such politeness lubricated the inner workings of government. There was no necessity for Rowlatt to have sent his handwritten letter; and the detailed contents of that letter may be taken to express views that he genuinely held. There is no reason to dispute Rowlatt's view that departmental officials played a major role in the successful preparation of the 1952 Act – and were essential for its successful enactment.

When attention is turned from the department's general approach to the department's approach to change, the implications of the general approach may be observed. There was a tension between the view that income tax law and practice were large and intricate subjects (with the implication that legislative

³⁵⁷ TNA file IR 40/9687. Letter, Rowlatt to Bamford, 10 December 1951. The author is grateful to Philip Ridd for his comments on how this letter may be viewed.

changes were capable of bringing simplification and improvement – and should accordingly be supported) and the views that the structure of the tax was good and that the tax was well administered (with the implication that legislative changes were capable of giving rise to operational inefficiencies – and should accordingly be opposed). According to Johnston, who described the dilemma in the early 1960s, the department found ‘no joy in an elaborate and complicated code’.³⁵⁸ The department’s interest lay in adherence to first principles and in simplification. These might make for ease of administration, for ease in staff training and for a better tax yield to be expected from a generally understood and widely accepted scheme of taxation. ‘But the road to simplification is a hard one and many factors operate in the other direction’.³⁵⁹ So, on the one hand, the department alleged that it was entirely willing to consider major changes in income tax law and practice – and, accordingly, in the form of income tax legislation as well. That was the theory. On the other hand, however, the department was capable of finding that any particular change actually proposed had more operational disadvantages than advantages. That was the practice.

The evidence is that the Inland Revenue was suspicious of major change in general – and, accordingly, of major changes to the income tax legislation in particular. In the life of Sir Richard Hopkins³⁶⁰ he wrote for the *Dictionary of National Biography*, Sir Wilfrid Eady, a leading Treasury Official, stated that Hopkins’s work at the Inland Revenue ‘had taught him that taxation was not a fantasy but a practical affair and he knew the two great secrets of his old

³⁵⁸ Johnston (n 315) 193.

³⁵⁹ *ibid.*

³⁶⁰ Hopkins was a Commissioner of Inland Revenue from 1916 to 1922 and Chairman of the Board of Inland Revenue from 1922 to 1927. In that year he moved to the Treasury, where he became second secretary in 1932 and permanent secretary from 1942 to 1945.

department: what could be managed, and how far the taxpayers could be pushed'.³⁶¹ No other statement is known to the effect that these two matters were 'the two great secrets' of the Inland Revenue during the first half of the twentieth century; but there is much evidence that these two matters were present in the minds of senior Inland Revenue officials, who could, and did, view them as constraints when new policies were put forward – with the consequence that changes in the form of income tax legislation were not favoured. The two matters, however, were perfectly capable of being discussed in the same document – and so, rather than discussing the two matters in turn, the existence of 'the two great secrets' will be demonstrated by considering a number of official documents produced by the department.

In 1919, the Inland Revenue produced a long memorandum on the subject of the land values duties imposed by the Finance (1909-10) Act 1910³⁶² – a memorandum that pointed to their abolition.³⁶³ According to the department, those duties were complex. Taxpayers were highly unlikely to be able to estimate their own liability or to understand the computations when received; and there was an organised opposition which had extended to the assessment and collection of the duties. Three of those duties had resulted in a negligible yield of revenue; had been received with widespread hostility by the public; and had been found extremely difficult and laborious to work – even in a partial manner. They were either wholly or partially in suspense. 'The smooth administration of taxation must to a great extent depend upon the consent of the

³⁶¹ ET Williams and HM Palmer (eds), *Dictionary of National Biography 1951-1960* (OUP 1971) 500, partly quoted in M Daunton, *Just Taxes: The Politics of Taxation in Britain, 1914-1979*, (CUP 2002) 108n.

³⁶² 10 Edw 7 c 8.

³⁶³ TNA file IR 63/86, fos 114-143. Note by the Board of Inland Revenue, 13 February 1919, 'Land Values Duties and the Valuation under Part I of the Finance (1909-10) Act, 1910'. The memorandum was submitted by NF Warren Fisher and HP Hamilton (*ibid* fo 113).

public to bear the taxes imposed upon it';³⁶⁴ and, in the case of the land values duties, such consent had never been apparent on the part of the bulk of the taxpayers affected. The Inland Revenue was also concerned that its difficulties with the land value duties might adversely affect the attitude of taxpayers towards the other taxes that it managed: the department was responsible for raising an enormous revenue from taxpayers who, following the end of the first world war, were, as a body, becoming more critical and less disposed to pay.³⁶⁵

Sir Percy Thompson,³⁶⁶ the Deputy Chairman of the Board, voiced similar concerns when considering the direct taxation of the wealthy during the financial crisis of 1931. If direct taxation were to be increased further, there would be more avoidance and evasion. Those consequences could only be counteracted by an increase in the department's staff, endowed with wider powers of inquiry and of coercion of the taxpayer. 'It is almost certain that in the effort to enforce efficiently the collection of increased taxation we should lose that willing co-operation of the great majority of taxpayers on which the success of the tax machine depends, with disastrous results to the yield of revenue'.³⁶⁷

The 'two great secrets' may also be observed to be present in the mind of Sir Gerald Canny,³⁶⁸ the Chairman of the Board of Inland Revenue at the beginning of the second world war – a time when he was asked to consider possible new taxes. In dealing with the possibility of a levy on war wealth, Canny considered whether such a tax could be successfully administered. 'The answer to this is "yes", subject to two main points which it is necessary strongly to emphasise'.

³⁶⁴ *ibid*, fo 119, para 11.

³⁶⁵ *ibid*, fos 119 and 124, paras 11, 24 and 25.

³⁶⁶ Thompson became a Commissioner of Inland Revenue in 1916. He was Deputy Chairman from 1919 to 1935.

³⁶⁷ TNA file IR 64/83. Letter, [Thompson] to Hopkins, 10 August 1931.

³⁶⁸ Canny joined the civil service in 1904. He was a Commissioner of Inland Revenue, and then Deputy Chairman of the Board before becoming Chairman from 1938 to 1942.

The first point was that no tax could be successfully administered which did not commend itself as a fair and reasonable proposition (although a regrettable necessity) to the bulk of the taxpayers who were subjected to it. A levy on increases of capital wealth was a novelty in the United Kingdom's taxation system and its burden would be one of peculiar severity: it was essential that the proposals should carry with them, if not whole-hearted approbation, then at least a recognition of the necessity for their imposition and of general principles of equity underlying them. The second point was that there must be adequate trained staff available to administer the levy. The public was accustomed to expect a high standard of efficiency in tax administration. This would especially be required in the administration of a novel and heavy levy; 'and it would be little short of disastrous if the assessment and collection were inefficiently and unfairly carried out'.³⁶⁹

Two months later, Canny was also required to consider income tax suggestions originating with Keynes;³⁷⁰ and those suggestions, Canny believed, 'would introduce complications into the income tax assessment which we simply could not deal with'. 'The practicability of these suggestions has to be considered in relation to assessment and collection';³⁷¹ and here Canny could see operational problems. It was not a good thing (he alleged) to use the income tax for any purpose other than that for which it was intended: that of raising from every individual his fair contribution towards the national expenditure. It would be dangerous to use it for any other purpose if that use involved tampering with the

³⁶⁹ TNA file IR 63/151. Canny to Chancellor of the Exchequer [Simon], 15 December 1939. Submission, 'Levy on Increases of the Capital Wealth of Individuals during the War'.

³⁷⁰ The suggestions were described as 'suggestions for increasing the Income Tax charge and treating the increases in the amount of tax payable as a forced loan which would normally not be repayable until the end of the war'. TNA file IR 63/151. Letter, Canny to Hopkins, 13 February 1940.

³⁷¹ TNA file IR 63/151. Letter, Canny to Hopkins, 13 February 1940. (Underlining in original.)

characteristics of the income tax (graduation and differentiation) which made it, above all other taxes, the tax which represented a scientific measurement of the taxpayer's ability to pay. 'The successful administration of the Income Tax depends upon the willingness to pay of the taxpayer'; and, unless the new use of the income tax could command the taxpayer's willingness to pay, income tax administration would be prejudiced.³⁷²

The department's suspicion of major change was also noted by Samuel Brittan, a journalist writing in the early 1960s. Brittan's view was that the Inland Revenue opposed many reforms – a state of affairs he attributed to the department's 'rather limited notion of equity. Tax collection, in its view depends on general acceptance of the system as a fair one' (Europe being littered with the ruins of tax systems, undermined through lack of popular consent). Behind a great deal of the department's talk of equity, however, Brittan thought, was the unchallenged assumption that the status quo was 'fair' – and, accordingly, not in need of change. 'Unfortunately "let sleeping dogs lie" proves a very prudent maxim in this country'.³⁷³

The Inland Revenue's general attitude towards legislative changes arose in the context of correspondence dating from 1951 and 1952.³⁷⁴ In April 1952, in a letter to Bamford, the Chairman of the Board of Inland Revenue, Rowlatt (one of the Parliamentary Counsel and the drafter of the 1952 Act) reflected on the

³⁷² *ibid.* These themes made a further appearance in 1945, in discussions of a capital levy. A document prepared by a Committee on which both the Treasury and the Inland Revenue were represented stated that 'the successful administration of the income tax depends in great measure on the co-operation of the taxpayer – on his willingness to pay. It need hardly be said that if taxpayers as a whole resented the levy as an unfair or arbitrary imposition and were determined to raise not only all legitimate objections of substance but also points of technical legal detail, the successful administration of a levy would be gravely endangered'. TNA file IR 63/178, fo 27. Memorandum 'The Capital Levy', 15 June 1945.

³⁷³ S Brittan, *The Treasury under the Tories 1951-1964* (Harmondsworth, Penguin, 1964) 120.

³⁷⁴ This material is also considered in chapter 4 below, text around ns 537-41. See also Pearce (n 329) 171-3.

department's general role in the legislative process relating to income tax.

Against the immediate background of a letter critical of Rowlatt's belief that progress in improving the form of income tax legislation was impossible, Rowlatt went on to say that the increasing complexity of the Income Tax Acts was not curable, or capable of significant mitigation, by anything that a drafter could do – it simply reflected the complication of the results which he was instructed to produce. There then followed a most perceptive analysis of the department's approach to legislative change:

The instructions he [i.e. the drafter] gets depend, mostly, on the submissions which you make to the Chancellor of the day. In framing these submissions, you regularly aim at simplicity, in the sense of removal of inequities and anomalies in so far as they give trouble in practice, but, so far as I can see, you couldn't care less about them so far as they don't, and you never make a clean sweep if, by not making a clean sweep, you can avoid controversy on a point which does not matter in practice. This, though it sometimes shortens and simplifies the clause in the particular Finance Bill, inevitably complicates the general picture and the effects are cumulative. Don't think I'm blaming you – you should know what is possible and how far the increasing complication of the Acts matters better than I do – but I do say that nobody but you can do anything effective about it.³⁷⁵

Having marked the first sentence quoted, Bamford sent the letter to another Commissioner, Verity, with the comment 'I suppose ... [this] is not far from the truth?' Verity's endorsed reply was 'That is so. In other words we only make submissions to the Chancellor on points which are of real practical importance, & generally speaking we confine ourselves to suggesting appropriate corrections of the anomalies and inequities'. Verity's endorsed reply, therefore, indicated that the matters which the department considered should receive priority were those of practical importance for the administration of the direct taxes. The form of the income tax legislation was not, in itself, a matter of

³⁷⁵ TNA file IR 40/14566. Letter, Rowlatt to Bamford, 2 April 1952, with annotations by Bamford (3 April [1952]) and Verity (7 April [1952]).

practical importance to the department. It followed that, for the Inland Revenue, a general wish to determine the form of the income tax legislation was not a departmental priority.

2. The extent of the department's success in acting as a determinant

There were, however, a number of contexts in which the Inland Revenue may be seen to be giving direct consideration to the form of the income tax legislation. In some contexts the department acted as a determinant producing inertia, in others as a determinant producing change: and these two categories are now examined in order to assess the extent to which the department achieved success in acting as a determinant of that form.

(1) The department as a determinant producing inertia

The Inland Revenue constituted a determinant producing inertia in the form of the income tax legislation in dealing with the wish of one Chancellor of the Exchequer (Churchill) to simplify the income tax system; in dealing with the proposal that the entirety of income tax law should be codified; and in dealing with the proposal that the law relating to the administration of income tax should be codified.

Churchill was Chancellor of the Exchequer from 1924 to 1929 and wished to simplify the income tax system – an aim that had obvious implications for the form of the income tax legislation. This aim was considered both by the Chairman of the Board of Inland Revenue (Sir Richard Hopkins) and by an Inland Revenue Departmental Committee. On 27 October 1925, Hopkins sent Churchill a memorandum which contained 'some observations as desired by you on the complexity of the Income Tax system and the practicability of

remedial measures',³⁷⁶ and, during the period from 1907 to 1965, this is the memorandum, prepared by an Inland Revenue official, which contains the most sustained analysis known of the complexities of the income tax system and of how those complexities might be dealt with.

The complexity of the income tax system, in Hopkins's view, had three major causes. The first was that the ascertainment of 'income' involved the consideration of many difficult problems: and, with 'the ever-changing methods of the business world', fresh problems were always arising. The second major cause of complexity arose from taxation at the source. A sum from which income tax was deducted at the source was liable to income tax at the time the income was received: and income tax was accordingly levied on current income. In the case of other gains liable to income tax however (trading profits for a particular period for example), those gains could only be ascertained after that period had ended: and income tax was accordingly levied on past income.³⁷⁷ Hopkins's third major cause of complexity was to be found in the law and practice relating to the administration of the tax. An account was then given of the law introduced in 1842; of the manner in which the law did not accord with practice in 1925; and of the failure to enact the Revenue Bill in 1921.

³⁷⁶ TNA file IR 63/114, fos 318-31. Memorandum, with covering note, Hopkins to Churchill, 27 October 1925.

³⁷⁷ The workings of the income tax system, furthermore, required income tax to be deducted at the source at one uniform rate, which might or might not be appropriate in the case of any one particular taxpayer. Given the existence of 'a highly developed system of graduation', adjustments were necessary for taxpayers with small incomes (who were entitled to repayments) or with large incomes (who were also chargeable to super-tax). Hopkins also pointed out that adjustments were also necessary to deal with the various different personal reliefs: but the existence of those reliefs was supported by public opinion 'and no simplification in this respect appears to be within the range of practical politics'.

Hopkins's approach to 'remedial measures', on the other hand, was far less incisive. In the case of administrative matters, the Revenue Bill of 1921 had been withdrawn; and '[it] appears useless even to consider its re-introduction at the present time'. So far as complexities deriving from the system of taxation at the source were concerned, and subject to one qualification,³⁷⁸ 'these matters are not susceptible of remedy except by abolishing the system of taxation at the source, a remedy which undoubtedly would be altogether worse than the disease'. On this matter, therefore, the status quo was not in need of change.

On the question of the complexities arising from the ascertainment of 'income', Hopkins thought that '[the] only question which seems to arise in this connection is whether this mass of rules could be expressed in more logical order or in clearer or more concise form'. The question of the form of the income tax legislation accordingly arose directly. Hopkins then went on to discuss whether a significant advantage would be gained by a re-arrangement and re-expression of the Income Tax Acts. As the problem presented itself at that time, the suggested attempt to re-express the existing legislation still had, no doubt, some attractions. There was, however, practically no public demand for it. If it were taken in hand, it seemed very doubtful whether, at any date in the near future, the large amount of parliamentary time necessary for the revising measure could be found. It also had to be borne in mind that the existing statutes had been so frequently under the review of the Courts that most of their ambiguities (so Hopkins hoped) had now been removed by case law. 'This undertaking would be a work of years rather than of months and one which would call for the best brains of the Department, though they could not easily at

³⁷⁸ The qualification related to income assessed directly: and here Hopkins considered that some rationalisation of the various different existing bases of assessment was possible.

present be spared'. It was, however, a task which could be undertaken should Churchill so wish.

This was advocacy of the most tepid kind. Indeed, the overall impression left by Hopkins's memorandum is that, while he was acutely aware of the complexities inherent in the income tax system, the useful changes he could envisage were few – and these might well not be worth the effort involved in bringing them into existence. On this basis, therefore, Hopkins may be said to have favoured inertia and not change. He was most certainly not exerting himself to bring about change in the form of the income tax legislation. 'I approached this quest at the outset with only modest hopes of success' he wrote to Churchill one year later, when the prospects for a scheme to simplify the income tax system were much improved.³⁷⁹

Churchill's wish to simplify the income tax system was considered not only by Hopkins, but also by an Inland Revenue Departmental Committee; and, during his early years at the Exchequer, Churchill's relations with this committee were poor. A critical report on one of Churchill's proposals, dated 18 December 1925,³⁸⁰ was followed by a minute from Churchill criticising the committee. Churchill, at one point, accused the committee of holding the view that 'a system of taxation so complicated and elaborate that very few tax payers can understand it, the collection of which requires an Inland Revenue Department costing upwards of 6 million sterling a year, is the last word in efficiency and simplicity'.³⁸¹ The departmental reply, given by Hopkins, was that Churchill had 'quite misapprehended the attitude from which the Committee approached this

³⁷⁹ TNA file T 171/255, fo 227. Submission, Hopkins to Churchill, 27 October 1926, para 9.

³⁸⁰ TNA file T 171/255, fos 3-40 (Report) and fos 41-109 (Appendices to the Report).

³⁸¹ TNA file T 171/255, fos 109-14. Minute, Churchill to Hopkins, 27 December 1925.

subject. No body of officials continually in touch with the working of the Income Tax imagines that it has no anomalies or is readily understood and followed by taxpayers as a whole'.³⁸² Hopkins then counter-attacked, pointing out that the problem of finding a superior alternative was an exceedingly perplexing one – and had baffled many enquirers in the past. What the Departmental Committee felt was that the particular proposals which they had under consideration mitigated few, and aggravated many, of the existing troubles. As that was their conclusion, it followed that their report must in the main be directed to indicating the increased difficulties with which they expected the taxpayer would be confronted. In the spring of 1926 the situation was still difficult; and Churchill told the Attorney-General (Hogg) that '[a] Committee of officials ... at Somerset House' had 'up to the present ... not met with the success that I had hoped'.³⁸³ The inference to be drawn is that, during the early period of Churchill's Chancellorship, there was a mismatch between Churchill (who, his critics might allege, had insufficient technical knowledge and an excess of reforming zeal) and Inland Revenue departmental officials (who, their critics might allege, had an excess of technical knowledge and insufficient reforming zeal). The short term consequence was that progress towards income tax simplification was not made.³⁸⁴

The Inland Revenue is also seen to be a determinant producing inertia during a period from 1936 until the early 1950s when the department had to deal with the proposal that the entirety of income tax law should be codified. The department first set out its views in 1936 and the following years, when it had to respond to

³⁸² TNA file T 171/255, fos 115-22. Memorandum, Hopkins to Churchill, 5 January 1926.

³⁸³ TNA file IR 63/114, fos 698-9. Letter, Churchill to Hogg, 31 March 1926.

³⁸⁴ By the end of 1926, however, progress had been made. The later history of Churchill's simplification scheme is considered in chapter 5, section 3(2), below.

the publication of the Report of the Income Tax Codification Committee and of the draft Bill which the committee had produced.³⁸⁵ When the contents of the draft Bill were examined in detail, the department had many observations.³⁸⁶

So far as the contents of the draft Bill were concerned, the Inland Revenue's general view was that the Bill, considered as a whole, would prove of great value – but that the draft Bill also required many alterations. Legislative change was supported as a matter of general principle – but was found to give rise to difficulties in its operational detail. At the end of 1937 the alterations proposed were grouped under a number of broad headings;³⁸⁷ and, in addition, there were three matters where the department considered it necessary to obtain a decision from the Chancellor of the Exchequer about the modifications that would be proposed to the draft Bill. One of those matters was 'the classification of income for the purposes of the actual charging of the tax';³⁸⁸ and this matter was elaborated in a draft memorandum, which was prepared during January 1938, with a view to its being submitted to the Chancellor of the Exchequer (Simon). The draft memorandum explained that the department's detailed examination of the committee's treatment of this topic had forced it to the conclusion that the committee's aim at intelligibility had fallen a long way short of realisation. Far from securing simplicity, the committee had actually

³⁸⁵ Income Tax Codification Committee, *Report: Volume 1: Report and Appendices* (Cmd 5131, 1936) and *Report: Volume 2: Draft of an Income Tax Bill* (Cmd 5132, 1936). For the work of the Codification Committee and the fate of its draft Bill see chapter 6, section 1, below.

³⁸⁶ TNA files IR 40/19419 and IR 40/19420 are two bound volumes in which the Inland Revenue's observations are collected.

³⁸⁷ Those headings were the correction of accidental errors; the modification of some provisions relating to the machinery of administration; the alteration, in details only, of some of the new provisions introduced for the protection of the taxpayer; the amplification of some provisions designed to codify case law and existing practice; the amendment of some provisions involving departures from existing practice; and modification of the provisions relating to penalties.

³⁸⁸ TNA file T 172/1860. Submission, Canny to Chancellor of the Exchequer [Simon], 17 December 1937. The other two matters were the definition of residence and the allowance for wear and tear of machinery and plant.

introduced complexities. Indeed, the anomalies, the circumlocution and the needless complexities were so serious that corrective amendments were absolutely necessary. The actual classification of income was considered to be open to two particular objections: it was cumbrous and circumlocutory; and the kinds of income to which the charge to income tax was in fact to be applied had to be grouped later on in the Bill for the purpose of applying machinery and other provisions. The department's overall verdict on the Codification Committee's classification of income was that it was 'unsuitable to an Income Tax an essential feature of which is taxation at the source'.³⁸⁹ So far as the parliamentary prospects of any Codification Bill actually presented were concerned, however, the department took a remarkably optimistic view. It argued that, although such a Bill would differ at many points from the draft Bill prepared by the Codification Committee, serious opposition was unlikely – either from the members of the former Committee or from MPs.³⁹⁰

These views were contested within government: in particular by the Office of the Parliamentary Counsel. The draft memorandum on classification of income was shown to Stainton, one of the Parliamentary Counsel, who felt 'compelled to attack it ... violently'.³⁹¹ Stainton considered that the Codification Committee's classification had given him a clearer picture of income tax law than he had ever had before; and he agreed with the Committee that it was an improvement on the existing system to which the department wished to revert. The 'gulf' between Stainton and an Inland Revenue Committee which had considered the

³⁸⁹ TNA file IR 40/5274. This piece contains both the draft Memorandum on 'Classification of Income' and a draft covering note. A marginal annotation on the draft covering note 'Memo on Reclassification – sent to Stainton January 1938' establishes the date at which these documents came into existence.

³⁹⁰ TNA file T 172/1860. Submission, Canny to Chancellor of the Exchequer [Simon], 17 December 1937.

³⁹¹ TNA file IR 40/5274. Letter, Stainton to Canny (marked 'Personal'), 5 February 1938.

Codification Committee's draft Bill seemed 'unbridgeable' – mainly, Stainton thought, because the Departmental Committee 'have such a profound understanding of the form in which the existing law is expressed that they cannot appreciate the difficulties it presents to people who have not devoted most of their lives to studying it'. 'I wish to goodness I could convince you of the righteousness of my cause, but I am afraid this seems past hope'.³⁹² So far as the Bill's parliamentary prospects were concerned, the Office of the Parliamentary Counsel took the view that it was completely foreseeable that there might be hostility to an Income Tax Codification Bill that differed substantially from the one prepared by the Codification Committee – both from the members of the former committee and from MPs. In those circumstances, the Bill's parliamentary prospects might be expected to plummet.³⁹³ The view that the Inland Revenue was minimising the parliamentary difficulties involved in enacting the Bill that the department wished to see introduced was also taken by Hopkins, now the Second Permanent Secretary at the Treasury, and by the Chancellor of the Exchequer's Private Secretary, JHE Woods.³⁹⁴ In the events that happened during the first half of 1938, work on preparing a Codification Bill for presentation to Parliament stopped – and was never resumed.³⁹⁵ The result was inertia – and not change.

Several conclusions may be drawn from the Inland Revenue's actions during these events. The department was unquestionably one determinant of the final

³⁹² TNA file IR 40/5274. Letters, Stainton to Canny, 1 February 1938 and 5 February 1938 (twice).

³⁹³ TNA file T 172/1860. Letter, Stainton to Canny, 8 December 1937.

³⁹⁴ TNA file T 172/1860. Memorandum by JHE Woods, dated 10 January 1938; and manuscript note (by Woods). The official papers once in the possession of Sir Richard Hopkins include carbon copies of the major documents submitted to Simon; but no contribution in writing from Hopkins himself (See TNA file T 175/92 (Part 2)). The obvious inference is that Hopkins communicated his views orally.

³⁹⁵ These events are further considered below in chapter 6, section 1. See also Pearce (n 329) 158.

outcome: for it was accepted throughout that any legislation introduced into Parliament must be acceptable to it. The department, however, was not a decisive determinant. Its opposition to the committee's classification of income and its analysis of the parliamentary prospects of any Bill actually presented were both criticised; and the actual outcome did not depend on the department's arguments. In retrospect, furthermore, the department's arguments do not appear impressive. As regards the contents of the Bill, the department's wish to defend the effective administration of the tax was entirely comprehensible – but opposition to a different classification of income may have been unnecessarily conservative. The department's optimistic arguments about the prospects for the enactment of any Bill actually presented to Parliament also look much less convincing than the pessimistic arguments deployed by others.

The Inland Revenue also set out its views on the codification of the entirety of income tax law shortly after the second world war, during a period beginning late in 1945, after Terence Donovan, a newly-elected Labour MP, supported by the Attorney-General (Shawcross), proposed that work on the Codification Committee's draft Bill should be resumed.³⁹⁶ The department was asked to state its opinions.³⁹⁷ (The Chairman of the Board of Inland Revenue, Sir Cornelius Gregg, was quite clear that the Chancellor of the Exchequer (Dalton) should also obtain the views of the First Parliamentary Counsel, Sir Granville Ram: so, when Dalton came to consider the matter for himself, he had before him not only a substantial report from Gregg, but also one from Ram.)³⁹⁸

³⁹⁶ TNA file IR 40/8554. Letter, Shawcross to Attlee, 11 October 1945.

³⁹⁷ TNA file IR 40/8554. Letter, Gregg to Trend, 2 November 1945; and Report, Inland Revenue (Gregg) to Chancellor of the Exchequer (Dalton), 2 November 1945, para 12.

³⁹⁸ For the views expressed by Ram on this occasion see chapter 4 below, text before n 534.

The report from Gregg³⁹⁹ may be described as minimalist. The draft Bill produced in 1936 would require many alterations; there was much new legislation requiring to be incorporated; and, with 'the existing pressure of work', it was difficult for Gregg to see how the department could provide a new committee with the assistance it would require. Taking his cue from Somervell, the Attorney-General during the second world war, Gregg recommended that any future committee should consist primarily of Parliamentary Counsel and of Inland Revenue officials. 'If there is to be a Committee representing the outside world it should come in rather to consider the Bill produced departmentally'. Gregg went on to consider the rival merits of codification and consolidation. Codification was a wider issue; and carried within it the risk of unwelcome amendments being made during the course of parliamentary proceedings. Consolidation would not be contentious, but codification might well be. Gregg's own view was that 'there is a lot to be said for attempting only a consolidation of the Income tax law'. The 1918 Act had gathered together the legislation then in existence; 'and if we had a similar consolidation to embrace all Income Tax law since 1918 we would not have the main complaint as to the difficulty of finding readily the relevant law in the existing multitude of Acts'. In any event, consolidation should precede codification 'if only to provide a working basis upon which codification can proceed'. In dealing, therefore, with a proposal that income tax law should be codified (a proposal involving the possibility that individuals outside government might play a substantial role), Gregg's response was to propose that the income tax legislation should be consolidated (with individuals outside government playing a role which, at its highest, was

³⁹⁹ TNA file IR 40/8554. Report, Inland Revenue (Gregg) to Chancellor of the Exchequer (Dalton), 2 November 1945.

supplementary, and, at its lowest, non-existent). The surviving material, furthermore, permits the comment that even this modest proposal was made only that it might be said that the government had met 'the main complaint'.

The reports submitted by Gregg and Ram did not have a decisive impact. Dalton discounted a good deal written in the two submissions – but admitted that 'we can't spare Parliamentary Counsel just yet'.⁴⁰⁰ The task of updating the Codification Committee's draft Bill was accordingly placed to one side – with the consequence that the rewriting of the Income Tax Acts was postponed. The result was inertia: for the proposal made by Donovan was shelved.

The Inland Revenue's views on the codification of the entirety of income tax law were set out once again in the early 1950s. Under a plan adopted in the late 1940s, consolidation of the income tax legislation was to precede the codification of income tax law;⁴⁰¹ and it was now time to turn from consolidation to codification. The view of the Chairman of the Board of Inland Revenue (now Sir Eric Bamford), however, was that 'codification in one piece is too big a job ever to be carried through in this work-a-day world, so that we can only hope to proceed by stages'.⁴⁰² Bamford still held that same belief one year later. When soundings were taken about the codification of income tax law, he took the view that, with work to be done for the Royal Commission on the Taxation of Profits and Income, and also on Excess Profits Tax, there would be no staff available for any substantial piece of codification. He also felt that, with the prospects of important changes in income tax, both immediately and as a result of recommendations made by the Royal Commission, it would be unwise to start

⁴⁰⁰ TNA file IR 40/8554. Note, Dalton to Trend, 11 November 1945.

⁴⁰¹ For the devising and acceptance of this plan see Pearce (n 329) 162-4.

⁴⁰² TNA file T 273/267. Letter, Bamford to Bridges, 27 February 1951.

even upon such an essential piece of codification as the income tax provisions relating to husband and wife.⁴⁰³ Bamford, therefore, took the view that the codification of the entirety of income tax law was so vast a project as to be quite unrealistic – with the consequence that a suggestion to undertake such a project should be opposed. It followed that codification of a limited area of income tax law was the most that could realistically be attempted. In Bamford's view, however, the codification of even a limited area of income tax law should only be pursued if that work was not crowded out by other constraints – such as a shortage of staff or different work considered to be of greater operational importance. By the mid 1950s, the views held by the Inland Revenue – that the codification of the entirety of income tax law was unrealistic and that codification of particular areas of the subject, as circumstances permitted, was all that could usefully be attempted – were held by all those who considered the future of the entirety of income tax law, taken as a whole; and discussion of this subject faded away.⁴⁰⁴ Inertia and not change had prevailed.

The Inland Revenue may again be observed to be a determinant producing inertia in the form of the income tax legislation during a period from 1955 until the early 1960s when the department had to deal with the proposal that the administrative provisions relating to income tax should be codified. On two occasions the department caused a retreat from the proposal that such a codification should take place. The Final Report of the Royal Commission on the Taxation of Profits and Income, dated 20 May 1955, had concluded by considering the question of codification.⁴⁰⁵ The Commission was not satisfied

⁴⁰³ TNA file T 273/267. Note, Eady to Bridges, 5 February 1952.

⁴⁰⁴ For an account of this development, with additional detail, see Pearce (n 329) 171-3.

⁴⁰⁵ Royal Commission on the Taxation of Profits and Income, *Final Report* (Cmd 9474, 1955) 330-3, ch 34, paras 1076-89. The date on which this Report was signed appears at 344.

that a full codification of income tax law was either feasible, or, if feasible, valuable enough to justify the vast labour involved. It thought, instead, that the best that should be looked forward to was the possibility of some separate branch of the law being codified without any attempt to link it with a general codification. For instance, if some substantial change of law was to be made in new legislation, there was much to be said for trying to make that change the occasion to bring into existence a single comprehensive code which covered the whole branch of the subject, instead of patching or reshaping the existing structure. In 1952, the administrative provisions relating to income tax had been identified as an area where a codification of the law might be carried out; and it was envisaged that such an opportunity might arise if suitable recommendations were made by the Royal Commission.⁴⁰⁶ Those recommendations were made: for the Final Report took the view that the power to make income tax assessments should not remain with General and Special Commissioners, but should be exercised, instead, by officers of the Inland Revenue Department.⁴⁰⁷ The Inland Revenue then proposed a course of action involving change in the form of the income tax legislation. A minute sent to the Chancellor of the Exchequer (Butler) on 9 August 1955 began by indicating the recommendations on the subject of the administration of income tax made by the Royal Commission. These recommendations would bring the law into line with modern conceptions and practice: 'but to graft new legislation on the outworn stock of the Act as it stands would be a difficult and unrewarding process'.⁴⁰⁸ The department thought, therefore, that 'it would be far better to

⁴⁰⁶ TNA file T 273/269. Letter, Ellis to Bridges, 9 May 1952.

⁴⁰⁷ Royal Commission on the Taxation of Profits and Income, *Final Report* (n 405) 282, para 943.

⁴⁰⁸ TNA file IR 40/13351 (Part 1). Minute, Hancock to Chancellor of the Exchequer [Butler], 9 August 1955.

start afresh to disentangle the archaic administrative provisions and rewrite them in a separate Act to accord with modern needs and practice'. The new code would be shorter than the provisions it replaced; and would be in line with the views of the Royal Commission that, if any substantial change in a particular branch of the law were to be projected, the opportunity should, if possible, be taken to codify the surviving parts of the old law.⁴⁰⁹ The codification of a specific part of the income tax legislation (the part relating to the administration of the tax) was therefore explicitly envisaged.

After work had been undertaken on the preparation of a Bill, however, the department changed its approach. By 1957, it wished to abandon a comprehensive Bill and to substitute a more limited (and shorter) Bill making specific administrative reforms:

The Bill we envisaged in 1955 was to be a comprehensive one, which would not merely carry out specific recommendations of the Royal Commission but would generally reform and codify the law governing the assessment, collection and administration of income tax and surtax; and it was to be uncontroversial. Preliminary work on the Bill has, however, revealed a major snag, which is that a comprehensive Bill would have to deal with the question of penalties for income tax offences (failure to make returns, incorrect returns, fraud, etc.), and this question would be controversial. The existing penalty code is untidy, but highly effective for its main purpose – which is to discourage evasion and to enable satisfactory settlements to be made with evaders who are found out. But the maximum penalties are extremely high and the code does not discriminate very markedly between different degrees of offence (the necessary discrimination is achieved administratively by the exercise of the Board's statutory power to mitigate penalties). Both these features are of great importance to our 'back duty' work, and both would come under fire in Parliament. Any weakening, however, might have serious effects on the back duty work and we do not think the risk should be run.

⁴⁰⁹ *ibid.*

In any case the Management Bill is not attractive if it is to be controversial.⁴¹⁰

The passage quoted shows the relative importance attached by the Inland Revenue to features determining the form of income tax legislation. On the one hand, there was the existing legislation. That legislation could admittedly be amended and improved – but it was nevertheless ‘highly effective for its main purpose’. On the other hand, there was the prospect of new legislation providing a general restatement of the law on the topic. If that legislation were to be enacted in the form proposed, the new legislation would be a most useful improvement on the old – but that legislation might not be so enacted. The Bill might be so controversial that it failed to pass; the Bill might be so amended in Parliament that the restatement was not an improvement on the existing law; and, finally, the Bill might be so amended that it jeopardised the highly effective penalty code. It was this last consideration that was decisive in prompting the department to take the view that the risks involved in proceeding with the Bill as originally envisaged should not be run. The restatement of a part of income tax law should not endanger the efficacy of the existing income tax legislation: and if that proposition had, as a corollary, that the possibility of codifying a particular area of income tax law had to be abandoned, then so be it. In such a situation, the determinants producing inertia were to be preferred to those producing change. The Chancellor of the Exchequer decided not to take legislative action in 1958; and the question of a Management Bill lapsed.⁴¹¹

⁴¹⁰ TNA file T 233/1596. Submission, [Hancock] to Chancellor of the Exchequer, 31 July 1957. The paragraph quoted directly is para 15.

⁴¹¹ TNA file IR 40/13351 (Part 3). Inland Revenue note entitled ‘Ministerial consideration of a Taxes Management Bill’, 31 October 1963. TNA file IR 40/13351 (Part 1). Inland Revenue note entitled ‘Income Tax Management Bill’, 12 February 1959, para 4.

Following the decision of the House of Lords in *IRC v Hinchy*,⁴¹² new provisions relating to penalties were enacted in the Finance Act 1960;⁴¹³ and, against the background of those new provisions, the question of an Income Tax Management Bill could be re-examined. A draft of a new Bill began to be prepared; and that draft contained provisions dealing with all aspects of income tax administration.

There was then an intervention at a high level from within the department. On 3 September 1962, the Chairman of the Board of Inland Revenue (Sir Alexander Johnston) wrote to the departmental official in charge of the Bill stating that he had no objection to the draft being sent round for comments on the basis that it was not the Bill as it would be introduced, but a statement of the legislation as it might ultimately look when it had been consolidated. Johnston did not think, however, that the department should put existing statutory provisions into jeopardy by including them in the proposed Bill. There was all the difference in the world between administrative provisions in a Finance Bill, piloted by the Chancellor of the Exchequer on the floor of the House of Commons, and often containing controversial fiscal proposals to which time and attention were primarily directed, and, on the other hand, a Management Bill dealt with in a committee and under the charge of a junior Treasury minister. When it was said that there was no reason to be afraid of what would happen on a particular controversial topic, an official was simply expressing a view (with very little to go on) how an unspecified junior minister would react to pressure in which the party whip was weak and the minister might have no support from other members of the committee. The question the department should ask itself was

⁴¹² [1960] AC 748; 38 TC 625 (HL). This decision was given on 18 February 1960.

⁴¹³ 8 & 9 Eliz 2 c 44. For the penalty provisions in that Act, see pt 3 (ss 44 to 63).

why it needed to run those risks – and Johnston was clear that those risks should not be run. The course to be followed was to proceed with an Amending Bill (a programme Bill), and then to consolidate.⁴¹⁴

The department's official position accordingly became that consideration of a tentative draft of a Codification Bill had led the Board to the view that it would involve unnecessary and prolonged parliamentary discussion of provisions which were quite satisfactory in their present form; and that it might place in jeopardy some existing provisions of advantage to the department and accepted generally through long usage. Those provisions were possibly open to criticism in principle – though not in application. The Bill being prepared would therefore be confined to those parts of the administration code which would enable worthwhile administrative economies to be made or were otherwise in need of early reform. Consolidation of the other administration provisions could await the general consolidation of income tax law.⁴¹⁵

In 1962, therefore, as in 1957, the Chairman of the Board of Inland Revenue took the view that the introduction into Parliament of a Bill codifying the provisions relating to the administration of the income tax might endanger existing legislative provisions (which worked satisfactorily in practice) – and that the risks associated with such a course of action should not be run. It was, accordingly, the Management Bill in its revised form that was introduced and enacted during 1964 – a programme Bill and not a Codification Bill. The determinants producing inertia (as represented by the wish to preserve effective administration) had again prevailed over those producing change (as

⁴¹⁴ TNA file IR 40/14647. Note, Johnston to Smith, 3 September 1962.

⁴¹⁵ TNA file IR 40/13351 (Part 1). Note, Crawley to Caulcott, 29 January 1963.

represented by a wish to carry out a general restatement of one branch of income tax law).

(2) The department as a determinant producing change

The evidence presented has shown the Inland Revenue acting as a determinant producing inertia in the form of the income tax legislation. The department, however, also acted as a determinant producing change in that form. One of the contexts in which the department acted in this way (the sequence of events that ended with the making of the PAYE Regulations) is investigated elsewhere;⁴¹⁶ but two other contexts in which the department acted to produce change in the form of the income tax legislation are now considered further.

The Inland Revenue acted as a determinant producing change in the form of the income tax legislation in the case of the consolidation statute enacted as the Income Tax Act 1918.⁴¹⁷ The manner in which the department acted, however, was unexpected: for, within the Inland Revenue, the Board of Inland Revenue itself was involved neither in the original initiative to produce a draft Bill, nor in the decisive championing of the proposed legislation.

The original initiative for the production of a draft consolidation Bill may be traced, not to the actions of the Board of Inland Revenue, but to those of HB Cox, who had become Solicitor of Inland Revenue in 1911; and this initiative presents a striking example of the actions of a particular individual constituting a determinant of the form of income tax legislation. On becoming Solicitor of Inland Revenue, Cox, according to his own account, was greatly impressed by the urgent necessity for consolidation, and soon began to devote any spare

⁴¹⁶ See chapter 7, section 3, below.

⁴¹⁷ 8 & 9 Geo 5 c 40.

time he could find to preparing a draft Bill.⁴¹⁸ There is no reason to doubt the truth of this account; but it may be permissible to wonder whether it is the whole truth. A Consolidation Act would be of great help to any Committee charged with considering the fundamental structure of income tax; and, during the first world war, there were good grounds for believing that such a Committee would be set up (as Cox was well aware)⁴¹⁹ – although this task was necessarily postponed until after the war had ended. The preparation of such an Act could accordingly reflect credit on those preparing it – including Cox himself. It was also the case that Cox had had little or no contact with revenue law before becoming Solicitor of Inland Revenue. The preparation of a draft Consolidation Bill would be one route to master one area of the law relevant for his new post. It was also the case that the Board of Inland Revenue was not involved in the decisive championing of the proposed Consolidation Bill. Cox mentioned what he was doing to Finlay;⁴²⁰ Finlay mentioned it to Carson (then the Attorney-General); Carson mentioned it to Montagu, the Financial Secretary to the Treasury; and Montagu announced in the House of Commons that consolidation was proceeding. The department was already at work.⁴²¹ As Nott-Bower, the Chairman of the Board of Inland Revenue observed to Montagu a few months later, ‘you surprised the official gallery by your intimate

⁴¹⁸ TNA file IR 75/91. Letter, Cox to Loreburn, 6 March 1916. ‘The original draft was prepared by Mr. Bertram Cox, the Solicitor of Inland Revenue, personally, not under official instructions but as a voluntary piece of work’. Joint Select Committee on Consolidation Bills 1918, *Report on the Income Tax Bill* (1918, HC 95) iii.

⁴¹⁹ TNA file IR 75/91. Cox’s note dated 17 December 1915.

⁴²⁰ The Finlay in question was William Finlay KC, the son of the Lord Finlay who was Lord Chancellor from 1916 to 1918. The younger Finlay had been Junior Counsel to the Treasury from 1905 to 1914; and the material in TNA file IR 75/91 permits the inference that Finlay and Cox were on good terms.

⁴²¹ HC Deb 30 September 1915, vol 74, col 1103.

acquaintance with our Solicitor's activities!⁴²² It was only after Montagu's announcement that the initiative to consolidate the income tax legislation made steady progress. A departmental committee was set up; and that committee recast Cox's original draft Bill. At a crucial moment, however, the progress of one of the most important statutes affecting the form of income tax legislation during the first half of the twentieth century had depended not on intelligent planning by the Board of Inland Revenue, but on casual conversation among members of the establishment.

There is also evidence that the Board of Inland Revenue had no particular wish that the income tax legislation should be consolidated. On 13 November 1917, Cox had an interview with the Lord Chancellor (Finlay), who asked if the Board of Inland Revenue were very anxious for the immediate introduction of the Bill. Cox's record of his reply does not permit easy paraphrase; and is therefore set out in full. Cox replied that:

the Board had prepared and completed a bill the demand for which came not from them, (for their staff thoroughly understood and worked with complete efficiency the existing acts) but from the Judges and the public; that they now left the bill in the hands of ministers who would judge when it was most expedient to pass it [and] consequently the Board had no wishes to express in the matter.⁴²³

If, during the first world war, Cox had applied internally to the Board of Inland Revenue for help in developing his draft Bill with a view to its ultimate enactment, he might have been given the reply (no doubt an entirely truthful reply) that, at a time when a war of unprecedented scale was being waged, the resources of the department were already more than fully committed – so that

⁴²² TNA file IR 75/91. Letter, Nott-Bower to Montagu, 6 March 1916. Nott-Bower's letter is also the source for how information about Cox's preparation of a draft Bill became more generally known.

⁴²³ TNA file IR 75/87. Memorandum by Cox, 14 November 1917.

further action on this initiative would have to be deferred. The conclusion to be drawn is that, in this case, the department acted as a determinant producing change in the form of the income tax legislation not because of its wish to promote change, but because its own preference for inertia was trumped by the actions of others.

The Inland Revenue also acted as a determinant producing change in the form of the income tax legislation at the end of 1963 and the beginning of 1964, when the department exerted itself to deal with others in order to secure the introduction of the Income Tax Management Bill. That Bill did not form part of the government's legislative programme for the 1963-64 Session of Parliament; the Lord Chancellor (Dilhorne) had objections to provisions in the Bill; and Dilhorne also thought it 'most unlikely' that the Bill would be selected if the opportunity to present additional government Bills should arise.⁴²⁴ Against this unpromising background, departmental officials showed energy and resourcefulness – not only in dealing with problems arising on the contents of the Bill, but in helping to ensure that those responsible for the government's legislative programme caused the Bill to be introduced into the Commons. Departmental officials suggested that the Leader of the House of Commons (Selwyn Lloyd – a former Chancellor of the Exchequer) would be well disposed towards the Bill and urged the Chancellor of the Exchequer (Maudling) to deal with him (which Maudling did). The department received information from the Office of Parliamentary Counsel, which, in its turn, passed on information received from the government whips. The Chairman of the Board of Inland Revenue (Johnston), acting on his own initiative, drafted letters for Maudling to

⁴²⁴ TNA file IR 40/13351 (Part 4). Letter, Dilhorne to Green, 6 November 1963.

send to Dilhorne and to Selwyn Lloyd – and those letters were sent.⁴²⁵ The introduction of the Income Tax Management Bill into the House of Commons surprised the press;⁴²⁶ but, for their part, departmental officials were entitled to be pleased with a successful conclusion to a campaign carried out within government. On 13 February 1964, the day following the Second Reading Debate in the House of Commons, Alan Green, the Financial Secretary to the Treasury and the government Minister in charge of the Bill, wrote to the Chairman of the Board of Inland Revenue, to let him know how greatly he appreciated the department's 'careful and prescient' briefing on the Bill. 'It would be difficult for a Minister to ask for more both before and during the Debates'.⁴²⁷

At one level, the Inland Revenue's wish to see the Bill enacted is completely comprehensible: for the Bill would confirm the department's principal role in the administration of income tax in law as well as fact – and so enable the department to accomplish one of its private cargoes and destinations. The question nevertheless arises why the department wished to exert itself to carry on such a campaign at this particular juncture. No evidence directly addressing this topic is known: but it may readily be conjectured that the department took the view that there was a conjuncture of circumstances that made such an effort worthwhile. The Financial Secretary to the Treasury (Green) was keen to promote the Bill.⁴²⁸ A general election was to be held during 1964; and it was completely foreseeable that, after that election, the existing conservative

⁴²⁵ TNA file IR 40/13351 (Part 4). Note, [Corlett] to Mitchell, 19 November 1963; note, Johnston to Mitchell, 5 December 1963; letter, Maudling to Dilhorne, 9 December 1963; note, Johnston to Mitchell, 10 January 1964. TNA file IR 40/13351 (Part 3). Letter, Maudling to Selwyn Lloyd, 13 January 1964.

⁴²⁶ TNA file IR 40/13351 (Part 4). Press cuttings for 5 February 1964.

⁴²⁷ TNA file IR 40/13351 (Part 3). Letter, Green to Johnston, 13 February [1964].

⁴²⁸ For Green's role see chapter 5, section 3(2) below.

administration might be replaced by a labour one (which it was). That incoming administration could be expected to have its own legislative priorities – which would be most unlikely to include the reform of the administrative provisions relating to income tax. At the end of 1963, departmental officials were fully entitled to take the view that there was no time like the present – and to exert themselves accordingly.

Conclusion

The Inland Revenue administered the direct taxes; its essential concern, therefore, was with an existing state of affairs. The department, furthermore, administered those taxes with a general approach, which, whilst accepting that income tax law and practice were large and complicated subjects, also included the views that the basic structure of income tax was good and that the tax was well administered.

This general approach had the consequence that, for operational reasons, the department was unlikely, in practice, to favour initiatives for the making of major changes to the form of the income tax legislation. Faced with the prospect of changes being made to that form, the department might argue that the changes proposed did not constitute a sufficient improvement to justify their adoption as they stood (the approach taken in response to the draft Bill produced by the Codification Committee);⁴²⁹ that the changes involved risks that should not be run (the approach taken to the proposal that the provisions relating to the administration of the tax should be codified);⁴³⁰ that the operational problems involved in making the changes were so severe that the changes should not be

⁴²⁹ See text around ns 385-95 above.

⁴³⁰ See text around ns 405-415 above.

made (the approach to codification taken by Bamford in the early 1950s);⁴³¹ or that the changes to the form of the income tax legislation that should actually be undertaken should be more modest than those proposed (the approach taken by Gregg in 1945).⁴³²

The commendation of the Inland Revenue by the Royal Commission that reported in 1920 may have caused the department to bask in the favourable glow of that commendation for longer than was safe. The possibility that the Inland Revenue might be adapting to changing circumstances to an insufficient extent certainly occurred to some contemporaries. In 1955, Sir Edward Bridges, the Head of the Civil Service, consulted Lord Radcliffe, the Chairman of the Royal Commission on the Taxation of Profits and Income, about the progress which the Commission was making. Bridges 'took the opportunity of getting Lord Radcliffe to say what he felt about the Inland Revenue'. 'As to the shooting match as a whole', Radcliffe said that he was not sure that he had seen the Inland Revenue at their best, as he had generally seen them when they were asked to defend some practice which the Commission did not like. Radcliffe did say, however, that he thought that the department 'showed a lack of adaptability and resilience'. Even when they sent in a five page memorandum in defence of some arrangement and were given a broad hint that the Commission wanted an alternative proposal, the invariable reply was a twenty page memorandum reaffirming their previous views.⁴³³ Bridges had earlier arrived at a similar conclusion for himself, recording in 1951 that '[t]he impression left on my mind was ... that the Revenue are too much wrapped in

⁴³¹ See text around ns 401-3 above.

⁴³² See text around ns 396-400 above.

⁴³³ TNA file T 273/101. Confidential note for record made by Bridges and dated 24 January 1955.

their own affairs'.⁴³⁴ By the end of the 1960s, however, the favourable verdict of 1920 was well in the past; and the civil service, as a whole, was faced instead with the Report of the Fulton Committee in 1968.⁴³⁵

The Inland Revenue's concern to administer an existing state of affairs, however, did not prevent the department from having views about how that administration might be improved. The department had its own private cargoes and destinations – but these related to the administration of the taxes for which it was responsible. In the case of income tax, the department had two major projects. One project was the deduction of income tax at source from the earnings of employees; and this project was accomplished during the second world war in conjunction with an extension of the scope of subordinate legislation.⁴³⁶ The other project consisted of changes so that the department played the leading role in law as well as in fact in the administration of income tax; and, in 1964, the department's objective was secured by the enactment of a programme Act.⁴³⁷ In the events that happened, therefore, both projects involved significant changes in the form of the income tax legislation. The promotion of those changes, however, was grounded, very firmly, in operational priorities. The changes in the form of the income tax legislation were not pursued as ends in themselves: they were by-products of changes that were being pursued to accomplish other, different, operational objectives.

It was shown in chapter 2 that, so far as the enactment of income tax legislation was concerned, the United Kingdom polity operated with a default setting. This

⁴³⁴ TNA file T 273/101. Note for record by Bridges, 31 July 1951.

⁴³⁵ The Civil Service, *Report of the Committee 1966-68* (Cmnd 3638, 1968). For the history of the civil service during the years of the Fulton Report, see generally R Lowe, *The Official History of the British Civil Service: Reforming the Civil Service: Volume 1: The Fulton Years 1966-81* (London, Routledge, 2011).

⁴³⁶ See further on this in chapter 7, section 3, below.

⁴³⁷ The Income Tax Management Act 1964.

chapter has shown that the Inland Revenue had no general wish to override that default setting. For the purpose of achieving its private objectives relating to the administration of income tax (its private cargoes and destinations), the department was willing to promote courses of action that happened also to involve changes in the form of the income tax legislation – but that was all. Subject to the adjustments needing to be made to take account of the securing of those operational objectives, the default setting of the United Kingdom polity remained in place.

CHAPTER 4: DETERMINANTS WITHIN GOVERNMENT: THE OFFICE OF THE PARLIAMENTARY COUNSEL

‘... the drafting of Bills is done by persons called Parliamentary Counsel, who are seldom seen and never heard, and whom ... [most practising members of the legal profession] imagine to be rather queer creatures engaged in molelike activities beneath the surface of the legal world’.⁴³⁸

Introduction

The principal responsibility for drafting government primary legislation, during the period from 1907 to 1965,⁴³⁹ was that of the Office of the Parliamentary Counsel.⁴⁴⁰ This office had been set up in 1869. A Treasury minute stated that it had been deemed expedient to create a department to be called the Office of Parliamentary Counsel for the purpose of providing for the preparation of

⁴³⁸ Sir G Ram, ‘The Improvement of the Statute Book’ [1951] *Journal of the Society of Public Teachers of Law*, 442. Ram was First Parliamentary Counsel from 1937 to 1947.

⁴³⁹ ‘The Parliamentary Counsel Office exists of course primarily for the purpose of drafting Government Bills’. Ram (n 438) 443. The extent to which that responsibility was less than total is specified later in this chapter (text around ns 481-9 below).

⁴⁴⁰ Given its low profile, accounts of the office and of its work may be regarded as unexpectedly plentiful. Members of the office themselves provided a considerable number of substantial accounts. These include the memorandum ‘The Office of the Parliamentary Counsel to the Treasury’, dated 23 November 1898, and with the initials ‘C.P.I.’ [i.e. CP Ilbert] (subsequently cited in this chapter as ‘Ilbert’s 1898 memorandum’) (TNA file T 162/655 (E 4000)); Sir CP Ilbert, *The Mechanics of Law Making* (New York, Columbia Press, 1914) (based on lectures delivered at Columbia University during October 1913 and subsequently cited in this chapter as ‘Ilbert, *Mechanics*’); Sir WM Graham-Harrison, ‘An examination of the main criticisms of the statute book and of the possibility of improvement’ [1935] *Journal of the Society of Public Teachers of Law* 9; Sir HS Kent, *In on the Act: Memoirs of a Lawmaker* (London, Macmillan, 1979); ‘Statute Law Reform: Memorandum by the Parliamentary Counsel to the Treasury’ [ie Sir Granville Ram], dated 30 January 1946, (subsequently cited in this chapter as ‘Ram’s Statute Law Reform Memorandum’) (TNA file T 162/911 (E 17496/1)); and Sir G Ram, ‘The Improvement of the Statute Book’ [1951] *Journal of the Society of Public Teachers of Law* 442 (subsequently cited in this chapter as ‘Ram’). See also generally AG Donaldson, ‘The High Priests of the Mystery: A Note on Two Centuries of Parliamentary Draftsmen’ in F Wilson, CMG Himsworth, and N Walker (eds), *Edinburgh Essays in Public Law* (Edinburgh UP, 1991); Sir G Engle, ‘The Rise of the Parliamentary Counsel’ (1996) 16 *Parliament, Estates & Representation* 193; R Cocks, ‘The Mysterious Origin of the Law for Conservation’ *Journal of Planning and Environment Law* [1998] 203; R Cocks, ‘Ram, Rab and the Civil Servants: A Lawyer and the Making of the “Great Education Act 1944”’ (2001) 21 *Legal Studies* 15; and R Cocks, ‘Enforced Creativity: Noel Hutton and the New Law for Development Control, 1945-47’ (2001) 22 *Journal of Legal History* 21.

government Bills; and Henry Thring (later Lord Thring) became the first head of the new department.⁴⁴¹

The aim of this chapter is to ascertain the role played by the Office of the Parliamentary Counsel in determining the form of the income tax legislation. In order to ascertain that role, three questions will be addressed: how far the office had the capacity to act as a determinant of the form of the income tax legislation; how far the office wished to be a determinant of that form; and the extent to which the office achieved success in pursuing its wishes.

There is evidence to suggest that the office's role might have been a major one. In the early years of the second world war it was said that '[o]ne might fairly say of these draftsmen that they are, in fact and of necessity, the key men of Whitehall, the hardest worked, the most severely tried'.⁴⁴² In another study,⁴⁴³ Cocks expressed the view that if any one individual in particular might be said to have created the modern law of development control, it was Noel Hutton, the drafter of the Town and Country Planning Act 1947;⁴⁴⁴ and Cocks ended that study by stating that 'the experience of producing the legislation of 1947 suggests strongly that legal historians need a full and systematic study of the

⁴⁴¹ This statement is made on the basis of a later printed document, which gives the date of the minute as 12 February 1869. (TNA file T 162/655 (E 4000)). Original material dating from 1869 is in TNA file T 29/614, fos 276-80. There is an account of the arrangements for drafting government Bills in the years before 1869 in H Parris, *Constitutional Bureaucracy* (London, George Allen & Unwin, 1969) 172-8. Information about the early history of the Office of the Parliamentary Counsel is given in G Drewry, 'Lawyers and Statutory Reform in Victorian Government' in R Macleod (ed), *Government and Expertise: Specialists, administrators and professionals, 1860-1919* (CUP 1988) 36-8. The arrangements made in 1869 were made permanent by a later Treasury minute of 31 January 1871 – and were claimed to have resulted in greater economy; in better control over government legislation as respects policy and finance; and to an improvement in the form of statutes. (Ilbert's 1898 memorandum (n 440) paras 4 and 6.)

⁴⁴² CT Carr, *Concerning English Administrative Law* (New York, Columbia UP, 1941) 171.

⁴⁴³ R Cocks, 'Enforced Creativity: Noel Hutton and the New Law for Development Control, 1945-47' (2001) 22 *Journal of Legal History* 21, 48.

⁴⁴⁴ 10 & 11 Geo 6 c 51.

important work and influence of the Parliamentary Counsel Office in the twentieth century'.⁴⁴⁵

1. The office's capacity to determine the form of income tax legislation

The capacity of the Office of the Parliamentary Counsel to determine the form of income tax legislation did not remain static during the period from 1907 to 1965. It increased. New arrangements, which increased the office's effectiveness, were introduced in 1947; and, in the discussion that follows, the earlier part of the period is examined before the later.

During the earlier part of the twentieth century, up until 1947, the office's capacity to determine the form of income tax legislation was very limited. There were three major reasons for this, all of a general nature: the resources of the office were insufficient; there was misdirection of activity within government; and, from time to time, there were difficulties relating to the enactment of consolidation legislation.

As regards the first reason – insufficient resources – the office was at all times small. In 1913, Sir Courtenay Ilbert⁴⁴⁶ stated that the constitution of the office had not undergone any material alteration since its foundation in 1869. The office consisted of the Parliamentary Counsel and his Assistant (now called the First and Second Parliamentary Counsel), three shorthand-writing clerks, an office keeper and an office boy.⁴⁴⁷ Then, during the twentieth century, the office grew – but only slowly. A third Parliamentary Counsel was added in 1917; a

⁴⁴⁵ Cocks (n 443) 49.

⁴⁴⁶ Sir Courtenay Ilbert had been First Parliamentary Counsel from 1899 to 1901.

⁴⁴⁷ Ilbert, *Mechanics* (n 440) 65. Ilbert went on to mention that two barristers usually attended the office regularly as assistants to the two Parliamentary Counsel. However, their attendance was voluntary; they were under no permanent engagement; they were paid by fees in accordance with the work they did; and they had their own chambers and were allowed to take outside work. (ibid.) This type of help was later phased out; and had certainly disappeared by the end of the second world war. (TNA file T 165/425. Treasury and Subordinate Departments, April 1950, paras 127-31.)

fourth in 1929; and a fifth in 1934.⁴⁴⁸ During the inter-war period, established posts at a more junior level were also created for qualified lawyers;⁴⁴⁹ and, in 1945, the legally qualified establishment of the office was fixed at seven Parliamentary Counsel, two Deputy Parliamentary Counsel, three Senior Assistants and three Assistants – making 15 qualified lawyers in all.⁴⁵⁰ In 1946, total staff numbered 47,⁴⁵¹ suggesting slightly more than 30 support staff; and the professional complement of the office seems to have remained at this general level until at least 1965.⁴⁵²

The small size of the office had a completely foreseeable, but very important, consequence: there were insufficient drafters to do all the work that could be done. Several different individuals, all ideally qualified to know, made statements to this effect. According to Ilbert, during the period of Liberal government before the first world war, the time of ‘that overworked official’, the Parliamentary Counsel, ‘has been fully occupied and more than occupied by current legislation, and he has had no leisure to devote to the preparation or supervision of legislative measures not arising out of immediate political necessities’.⁴⁵³ Graham-Harrison, First Parliamentary Counsel from 1928 to

⁴⁴⁸ TNA file T 165/425. Treasury and Subordinate Departments, April 1950, paras. 127 and 129.

⁴⁴⁹ Among those who entered the office during these years was Harold Kent, whose later memoir gives much information about the office and those who worked in it during the 1930s and 1940s. It seems that Kent held an established post only some time after beginning work at the office. See Kent (n 440) 21 and 51-2.

⁴⁵⁰ TNA file T 165/425. Treasury and Subordinate Departments, April 1950, paras 130-1.

⁴⁵¹ TNA file T 165/425. Treasury and Subordinate Departments, subsidiary document, October 1953, Table B.

⁴⁵² In an article published in 1961, Sir Noel Hutton, First Parliamentary Counsel from 1956 to 1968, stated that the office then consisted ‘of some sixteen members of the Bar, working full-time for the Government, with supporting staff’. Sir N Hutton, ‘Mechanics of Law Reform’ (1961) 24 *Modern Law Review* 18, 19.

⁴⁵³ Ilbert, *Mechanics* (n 440) 41. At the end of this period, Sir Edward Playfair recounted that ‘I knew one of the survivors of the team which helped Lloyd George with the Finance Bill of 1909. He told me that the bottleneck at that time was Parliamentary Counsel, who was an old gentleman to whom Lloyd George’s ideas were anathema. He was also an honest man, resolved to serve his new master. The struggle in his heart found a curious outlet: he said it

1933, and speaking of the period of the first world war, commented that those involved in working the system ‘continued, it may be unwisely, but at least with commendable public spirit, to attempt to carry on the task after it had become impossible to do so owing to the staff being too small’.⁴⁵⁴ When he joined the office in 1919, Ram, First Parliamentary Counsel from 1937 to 1947, recalled many years later, it ‘consisted of three members of the Bar, one of whom was then absent on a long period of sick leave and the other two working under tremendous pressure day and night’.⁴⁵⁵ ‘You know what a bottle-neck this Parliamentary Draftsmen Office is proving’ the Lord Chancellor (Jowitt) wrote to the Chancellor of the Exchequer (Dalton) in 1947.⁴⁵⁶

Two First Parliamentary Counsel took the view that one consequence of the office’s insufficient resources was underperformance in the production of consolidation legislation. Graham-Harrison, in the 1930s, considered that understaffing had a great deal to do with the failure to produce a proper amount of legislation of this type,⁴⁵⁷ and, of the years from 1920 to 1945, Ram, the First Parliamentary Counsel from 1937 to 1947, wrote that ‘[t]here is not the faintest doubt that during this period the greatest obstacle to the progress of consolidation has been lack of draftsmen’.⁴⁵⁸ This sentiment was echoed in an

was impossible to cast these ideas into statutory form and, as no-one else could do it, the work was held up for months’. Sir E Playfair, ‘Who are the Policy Makers?’ (1965) 43 *Public Administration* 260, 266. The individual referred to was presumably the then First Parliamentary Counsel, Sir Arthur Thring (1860-1932) – although Thring, at this time, might be regarded as ‘middle aged’ rather than ‘old’. It may be conjectured that this anecdote, as printed in 1965, no longer had any great correspondence with the events of Edwardian times.

⁴⁵⁴ Graham-Harrison (n 440) 41.

⁴⁵⁵ Ram (n 440) 443.

⁴⁵⁶ TNA file LCO 2/3816. Letter, Jowitt to Dalton, 4 March 1947.

⁴⁵⁷ Graham-Harrison (n 440) 42.

⁴⁵⁸ Ram’s Statute Law Reform Memorandum (n 440) app I, para 27. In that same memorandum, Ram also stated that ‘the main obstacle to progress in the work of consolidation has, in recent years, been the difficulty of getting the necessary Bills drawn by Parliamentary Counsel’ (ibid, para 10).

address given by Jowitt in 1951.⁴⁵⁹ 'At the present time', Ram reported in November 1945, 'the arrangements of the office for making progress with consolidation work have had to be suspended by reason of the urgency of the government's programme of current legislation'.⁴⁶⁰ It may be considered strange that the Office of the Parliamentary Counsel continued to be unable to draft Consolidation Bills even though it was increasing in numbers. The explanation, according to Ram, was that each increase in the office's staff was intended to provide a reserve to be employed on consolidation work except during periods of emergency; but 'what has happened is that legislative activity has so developed that the office has been in a continuous state of emergency and no reserve has therefore been available'.⁴⁶¹ 'Pressure from Departments', members of the office had written earlier, 'will always absorb the whole strength of the office in current legislation unless there is some Minister to put his foot down and say that the needs of statute law reform are sacrosanct'.⁴⁶²

The second major reason for the office's limited capacity during the first half of the twentieth century was that the enactment of legislation in general, and of consolidation legislation in particular, suffered from the absence of

⁴⁵⁹ 'There can be no doubt that the slow progress [in consolidation] made during this period [i.e. 1922 to 1947] was mainly due to the lack of Parliamentary draftsmen'. Viscount Jowitt, *Statute Law Revision and Consolidation* (Address to the Holdsworth Club of the University of Birmingham, 1951) 12. TNA file LCO 2/5681 reveals that this address was written by Ram with a few additions by Sir Cecil Carr. After the lecture, Jowitt wrote to Ram that '[i]t is a very shameful thing that I should thus have stolen your property and received the credit for this lecture'. He wrote to Carr that 'I reap all the credit and you and Ram did all the work. It is an unfair division but that is what life is like'. (TNA file LCO 2/5681. Letters, dated 13 March 1951, from Jowitt to Ram and Carr respectively.)

⁴⁶⁰ TNA file IR 40/8554. 'Simplification of income tax law: Memorandum by the Parliamentary Counsel' [Sir Granville Ram], 1 November 1945, para 6.

⁴⁶¹ Ram's Statute Law Reform Memorandum (n 440) para 11.

⁴⁶² TNA file LCO 2/3816. 'Observations by Parliamentary Counsel with respect to a projected memorandum to the Lord Chancellor on the subject of the statute book', 3 November 1941, para 7 (subsequently cited in this chapter as '1941 Observations'). The 1941 Observations may safely be attributed to Ram and Stainton (then the First and Second Parliamentary Counsel) on the strength of a remark to this effect made in a letter by Somervell to Schuster. (See TNA file LCO 2/3816. Letter, Somervell to Schuster, 6 November 1941.)

arrangements for dealing, in an orderly manner, with the preparation of government Bills and with the subsequent introduction of those Bills into Parliament. According to Ram, difficulties constantly arose in regulating the flow of instructions to the Office of the Parliamentary Counsel in such a way as to enable the office to draft the Bills that the government finally decided to introduce at the times at which those Bills were wanted.⁴⁶³ Graham-Harrison, in the mid 1930s, also had strong feelings on this subject. From the time of the first world war, governments had lived from hand to mouth as regards their legislation. There had been emergencies to be met and demands for legislation to deal with the ever-widening sphere of public activities in social matters: but there had been no effective attempt to co-ordinate the demands of different departments for legislation. It had been 'a case of "Pull devil, pull baker,"⁴⁶⁴ with continual pressure upon the Parliamentary Counsel for an output of Bills quite beyond his powers'. Many of those Bills, Graham-Harrison thought, would probably never be introduced into Parliament at all.⁴⁶⁵ The Parliamentary Counsel, he said a little later,⁴⁶⁶ 'has many masters, all crying out simultaneously like the daughters of the horse-leech "More, More!"'.⁴⁶⁷

The absence of arrangements for the orderly preparation of government Bills had implications for the actual production of those Bills. Ram wrote that there was strong pressure on the office from individual government ministers to get their Bills drafted so that they might obtain a place in the session's legislative

⁴⁶³ Ram (n 440) 447, who states that traces of these difficulties appeared as early as 1875.

⁴⁶⁴ One account of this expression is that it is the crux of a folk story in which the baker's wife found her husband in a tug-of-war with the devil. Obviously she wanted her husband to win, but she was also scared to offend the devil so she cried 'pull devil, pull baker'. This account permits the deduction that the general meaning is that the encouragement of one side incurs the hostility of the other – a result that fits the context here.

⁴⁶⁵ Graham-Harrison (n 440) 43-4.

⁴⁶⁶ *ibid* 45.

⁴⁶⁷ 'The horseleach hath two daughters, crying, Give, give'. Proverbs 30:15.

programme for them: for the best way of obtaining such a place was to be able to say that the Bill was ready or nearly ready. The consequence was that many Bills were drafted (or partly drafted) which never saw the light of day at all. The time in the Session at which a Bill was introduced depended chiefly on when the Parliamentary Counsel could get the Bill ready – and that, in turn, depended partly upon chance and partly upon the office's being able to make reasonably good guesses about what the government would want.⁴⁶⁸ In emergencies, Ram admitted, Bills could sometimes be produced with astonishing speed – 'but a tour de force of this kind disturbs the progress of other Bills in the programme, and involves an almost intolerable strain upon all who are called upon to co-operate in producing it'.⁴⁶⁹ The more experienced the minister, however, the more likely it was that the minister 'will have seen Bills spring into being in this way and – well – watching a conjuror produce rabbits out of a hat is not the best training in midwifery'.⁴⁷⁰

This absence of arrangements for an orderly production of government Bills affected the enactment of consolidation legislation in particular. The question of the order in which the various groups of Acts were to be taken in hand, Graham-Harrison thought, was left very much to the whim of the Parliamentary Counsel, who was pulled this way and that by the government departments and any other persons who took an interest in the matter.⁴⁷¹ There was unquestionably a considerable amount of consolidation legislation that was prepared, but was not enacted. According to the figures given in Ram's major memorandum on Statute Law Reform of January 1946, during the period from

⁴⁶⁸ TNA file CAB 21/2140. Letter, Ram to Murrie, 13 June 1946.

⁴⁶⁹ Ram (n 440) 452. (Italics in original.)

⁴⁷⁰ *ibid.*

⁴⁷¹ Graham-Harrison (n 440) 25.

1870 to 1885, 19 Consolidation Acts were passed – but another 20 Consolidation Bills were prepared but not enacted. For the period from 1885 to 1900, the corresponding figures were 30 and 52; and for 1901 to 1915, 30 and 11.⁴⁷² Ram went on to say that, during the period from 1920 to 1945, almost the sole motive power for consolidation had come from government departments. Some, such as the Ministry of Health, had formulated long-term programmes and had sufficient perseverance and importunity to get the Parliamentary Counsel to devote the time required for carrying them out: ‘others, whose law is no less in need of reform, have either been less fortunate or less energetic and have achieved little or nothing’.⁴⁷³ The Inland Revenue could undoubtedly be placed in this latter category during the inter-war period. Indeed, that department could be implicated in the general misapplication of effort. Ram and Stainton (the Second Parliamentary Counsel) stated in 1941 that the ‘abortive Income Tax Bill ... threw away work which occupied almost the whole time of two members of the office for about a year’.⁴⁷⁴ The accomplishments of the office in preparing consolidation legislation, they admitted, fell ‘far short of what is required’. The chief reasons why no more had been achieved were ‘shortage of staff in this office and the constant diversion of its members from half-baked consolidation Bills to current legislation’.⁴⁷⁵ The lack of progress with consolidation, Ram wrote a few years later, was not due to difficulties in getting Consolidation Bills passed by Parliament so much as to ‘the constant pressure of other work, which has made it impossible for the

⁴⁷² Ram’s Statute Law Reform Memorandum (n 440) app I, paras 22, 23 and 25. These same figures also appear in Jowitt (n 459) 9, 10 and 15.

⁴⁷³ Ram’s Statute Law Reform Memorandum (n 440) app I, para 27.

⁴⁷⁴ 1941 Observations (n 462) para 7. The ‘abortive Income Tax Bill’ is considered below, text around ns 589 to 598.

⁴⁷⁵ *ibid.*

Parliamentary Counsel and the Departments to find the necessary time for preparing them'.⁴⁷⁶

The third major reason for the office's limited capacity during the first half of the twentieth century was that the enactment of consolidation legislation sometimes gave rise to difficulties. This matter has already been considered.⁴⁷⁷ By the middle of the twentieth century, however, those difficulties had led to the realisation that the enactment of Consolidation Bills could be handled more productively. It had become clear that Parliament should entrust the production of the detailed text to some outside body (for this was not a task that Parliamentarians could carry out themselves). It was gradually established that the Office of the Parliamentary Counsel should be that outside body; and more is said about this development below.⁴⁷⁸ It had also become clear that the outside body should know how the task entrusted to it should be performed – and here it was possible to learn from experience. The text provided should neither make more changes than were absolutely necessary nor reproduce the existing legislation in an over-faithful manner. 'Consolidation Bills are now drafted on the view that pure consolidation is no use, [and] that there must be re-arrangement of subject-matter, alteration of language and such amendment of errors as does not amount to any substantial alteration of the law' said Graham-Harrison in 1935.⁴⁷⁹ It had also become clear, finally, that Parliament should enact a Bill with little ado if the Bill had been prepared according to these criteria, and approved by the Parliamentary Committee set up to examine it; and this last condition appears to have been met from the early twentieth century

⁴⁷⁶ Ram's Statute Law Reform Memorandum (n 440) para 6.

⁴⁷⁷ Chapter 2, section 2(3), above, text around ns 273-81.

⁴⁷⁸ Text around ns 484-6 below.

⁴⁷⁹ Graham-Harrison (n 440) 22.

onwards. Ram, in 1946, after noting that the difficulty of getting Consolidation Bills passed by Parliament had earlier been one of the main obstacles to progress in the work of consolidation, went on to say that, after receiving a satisfactory report from the Joint Committee, 'both Houses are usually willing to allow the Bill to pass through its remaining stages without debate'.⁴⁸⁰ By the middle of the twentieth century, the problem was not the parliamentary handling of Consolidation Bills: it was the production of Consolidation Bills for Parliament to handle.

In view of the difficulties that the Office of the Parliamentary Counsel encountered as a result of its own insufficient resources, the misdirection of activity within government, and the problems relating to the enactment of consolidation legislation, it is surprising that the role of the office – and with it, accordingly, its capacity to determine the form of the income tax legislation – expanded significantly between 1869 and 1947. There was nevertheless an expansion of that role. There was an increase in the range of the work that the office undertook and in the role of the office in relation to consolidation legislation.

The Treasury minute of 1869⁴⁸¹ provided for two classes of exception to the general rule that government Bills would be drafted in the Office of the Parliamentary Counsel. The first class related to Bills concerning Scottish and Irish matters; and this exception continued.⁴⁸² There was, however, no

⁴⁸⁰ Ram's Statute Law Reform Memorandum (n 440) para 5.

⁴⁸¹ Text around n 441 above.

⁴⁸² Ilbert's 1898 Memorandum (n 440) para 13. A separate Office dealing with Scottish legislation existed in Edinburgh; and a separate Office dealing with Irish legislation in Dublin (and then, later, in Belfast). So far as Irish legislation was concerned, however, there were very important exceptions to the exception: for all the Irish legislation of great political significance during the last third of the nineteenth century was drafted not in Ireland, but by the Office of the Parliamentary Counsel in England.

specifically Scottish or Irish legislation relating to income tax during the twentieth century – and this class of Bills is not considered further. The second class of exception arose out of the final paragraph of the 1869 minute. Where there was a solicitor or other salaried legal officer attached to a department who had been in the habit of preparing parliamentary Bills for the department, the Bills were, as before, to be prepared in the department.⁴⁸³

The revenue departments had been in the habit of preparing their own Bills before 1869; and continued to do so afterwards. A crucial change, however, took place during the first half of the 1890s: for, during these years, the Office of the Parliamentary Counsel replaced the revenue departments in the drafting of the annual statute whose short title, from 1894 onwards, was the Finance Act.⁴⁸⁴ By 1913, Ilbert thought that it might be taken that, under the arrangements then in existence, the Parliamentary Counsel's Office was responsible for the preparation of all government Bills, with a very few exceptions.⁴⁸⁵ In 1928, the Ministry of Health raised the possibility that the terms of the 1869 minute 'would appear to suggest that the Parliamentary Counsel was not to be used where a department had a Solicitor who could himself draft the necessary Bills'; but the reply from the Treasury official dealing with the point was that 'Parliamentary Counsel confirms my understanding that it is not the practice for departmental solicitors now to prepare Parliamentary Bills'.⁴⁸⁶ The expansion in the work undertaken by the Office of the

⁴⁸³ 'It was to be understood that those departments which were in the habit of preparing their own Bills through the medium of the salaried legal officers attached to them were to continue to do so'. Ilbert's 1898 Memorandum (n 440) para 3.

⁴⁸⁴ The evidence for this change is set out in detail in JHN Pearce 'The Rise of the Finance Act: 1853-1922' in P Harris and D de Cogan (eds), *Studies in the History of Tax Law: Volume 7* (Oxford, Hart, 2015) 80-86.

⁴⁸⁵ Ilbert, *Mechanics* (n 440) 67.

⁴⁸⁶ TNA file T 162/655 (E 4000). Letters, Bailey to Parker, 24 April 1928, and Parker to Bailey, 9 May 1928.

Parliamentary Counsel was accordingly confirmed: for the second class of exception specified in the 1869 minute was now considered no longer to exist. Those departments (including the revenue departments) which had been in the habit of preparing their own consolidation legislation before 1869 continued to do so for some years afterwards. During this period, the Office of the Parliamentary Counsel had no monopoly as regards the preparation of Bills of this type. A document prepared in 1898 listed the Consolidation Acts passed during the period from 1870 to 1896 in a manner permitting those in which the Office of the Parliamentary Counsel had been involved to be distinguished from those drawn independently of that office. There were 35 Acts in the first category and 11 in the second.⁴⁸⁷ Of the Acts drawn independently of the office, seven related to revenue matters; and one of those Acts (the Stamp Act 1891) was the most recent Act to fall into this category.⁴⁸⁸ The drafting of consolidation legislation in any location other than the Office of the Parliamentary Counsel, however, then faded away; and, following the failure of the draft Bill relating to fraud in 1922,⁴⁸⁹ no further instance of any such Bill being drafted outside the Office of the Parliamentary Counsel is known.

⁴⁸⁷ Ilbert's 1898 memorandum (n 440) app III. These are figures that need to be treated with considerable caution. In a footnote in that Appendix it is stated that 'It is not always easy to determine what should be treated as a Consolidation Act. Perhaps the best test is to consider whether the main object is to improve the form or the substance of the law'. In the list as printed, the Short Titles Act 1892 (55 & 56 Vict c 10) and the Short Titles Act 1896 (59 & 60 Vict c 14) have been excluded from the totals stated in the text on the ground that those Acts were not Consolidation Acts.

⁴⁸⁸ The statutes in question were the Stamp Act 1870 (33 & 34 Vict c 97), the Stamp Duties Management Act 1870 (33 & 34 Vict c 98), the Customs Consolidation Act 1876 (39 & 40 Vict c 36), the Taxes Management Act 1880 (43 & 44 Vict c 19), the Inland Revenue Regulation Act 1890 (53 & 54 Vict c 21), the Stamp Duties Management Act 1891 (54 & 55 Vict c 38) and the Stamp Act 1891 (54 & 55 Vict c 39). On this point see also TNA file AM 2/54, fos 38-51, 'Duties and Staff of Parliamentary Counsel's Office' (backsheets dated 13 April 1892), sch III, pt I.

⁴⁸⁹ This Bill was considered in chapter 2, text following n 280.

The Consolidation Bill ultimately enacted as the Income Tax Act 1918⁴⁹⁰ was therefore prepared in a manner that was, by that time, already unusual: for the Bill was not prepared within the Office of the Parliamentary Counsel. It derived from an initiative taken by the then Solicitor of Inland Revenue, HB Cox, with the involvement, later on, of an Inland Revenue Departmental Committee.⁴⁹¹ However, once the Bill, so prepared, had been presented to Parliament, members of the Joint Committee which would be examining it wished to have 'expert drafting assistance';⁴⁹² and ensured that the Office of the Parliamentary Counsel was also involved. Loreburn told Cox 'that it was necessary to have some outside authority to give an "imprimatur" to the bill and that he would propose that the draft should be referred to the Parliamentary Counsel for examination and report'.⁴⁹³ Documents were accordingly sent to Liddell at the Office of the Parliamentary Counsel. It would appear, however, that Liddell did not consider the involvement of the office to be absolutely essential: for he told Cox that '[i]t is with the greatest reluctance that I have been dragged into the matter, but we could not very well refuse the L[ord] C[hancellor]'.⁴⁹⁴

In 1935, however, Graham-Harrison stated that the practice of the Joint Parliamentary Committee had lately been not to accept Consolidation Bills drawn outside the Office of the Parliamentary Counsel unless they had been submitted to examination there and pronounced satisfactory;⁴⁹⁵ and, in 1947, Ram was able to go further. For the successful working of the existing

⁴⁹⁰ 8 & 9 Geo 5 c 40.

⁴⁹¹ These matters were considered in chapter 3, section 2(2), above, text around ns 417-22.

⁴⁹² TNA file IR 75/91. Letter, Muir-Mackenzie to Cox, 4 March 1918.

⁴⁹³ TNA file IR 75/87. Note by Cox, 7 March 1918. Cox also told Liddell that 'Lord Loreburn was insistent that the Committee should have the help of your independent criticism & of course from my point of view nothing could have been better'. TNA file IR 75/91. Letter, Cox to Liddell, 9 March 1918.

⁴⁹⁴ TNA file IR 75/91. Letters, Cox to Liddell and Liddell to Cox, both dated 8 March 1918.

⁴⁹⁵ Graham-Harrison (n 440) 22.

procedure relating to the enactment of Consolidation Bills it was 'practically essential that official responsibility for the drafting of Consolidation Bills should rest upon the Parliamentary Counsel ... , and that such Bills should be drafted with the close co-operation of the Government Departments concerned'.⁴⁹⁶ The creation of the separate Consolidation Branch within the Office of the Parliamentary Counsel in 1947⁴⁹⁷ was a recognition that the office had established a monopoly position over the production of Consolidation Bills. A document dating from April 1950 stated that '[t]he Parliamentary Counsel have a special responsibility in regard to Consolidation Bills, for it is only with their assistance that the Joint Committee set up annually by Parliament for the consideration of such Bills is able to satisfy itself that the existing law is being correctly reproduced'.⁴⁹⁸

During the later part of the period from 1907 to 1965 – the period from 1947 to 1965 – the capacity of the Office of the Parliamentary Counsel to determine the form of the income tax legislation increased. This change followed the implementation of two initiatives: Morrison's initiative for the more detailed planning of parliamentary Sessions;⁴⁹⁹ and Ram's initiative for statute law reform.⁵⁰⁰ Both initiatives had been implemented by the summer of 1947. The increased capacity of the office may be gauged by considering the three major reasons that had acted, previously, to ensure that the Office's capacity had been limited.

The resources of the office increased. More drafters were in place after the second world war than before it; and it was Ram's opinion in 1951 that the

⁴⁹⁶ Ram's Statute Law Reform Memorandum (n 440) para 6.

⁴⁹⁷ This matter is considered in more detail below in this chapter in section 2(2).

⁴⁹⁸ TNA file T 165/425. Treasury and Subordinate Departments, April 1950, para 133.

⁴⁹⁹ For Morrison's initiative, see chapter 2, section 1, above, text around ns 189-91.

⁵⁰⁰ For Ram's initiative, see section 2(2), below.

office's 'cadre' was now 'adequate for the work it has to do but no more than adequate'.⁵⁰¹ Even during these years, however, the capacity of the office was barely adequate – if that. In 1951, the First Parliamentary Counsel, Sir Alan Ellis, wrote to the head of the civil service, Sir Edward Bridges, for advice on the extent to which the resources of the office ought to be applied to legislation for war. (The Korean war was then being waged.) The office, Ellis explained, had immediately in prospect more work than it could handle; and 'you will remember that Rowlatt is not available because of the income tax consolidation'.⁵⁰² Later, in 1953, Ellis told the House of Commons Select Committee on Delegated Legislation that, having regard to the strength of the Parliamentary Counsel's Office and to the pressure of legislation upon the Parliamentary Counsel, it was 'not practicable' for members of the office to undertake more than a small part of the drafting of subordinate legislation.⁵⁰³

The misdirection of activity which had previously reduced the government's ability to enact its Bills was largely eliminated. Under the initiative promoted by Morrison, the preparation of the government's legislative programme received more systematic attention than it had done earlier; and, from the office's point of view, these new arrangements were exceedingly useful. In June 1946, Ram wrote that the introduction of the new system had saved the office much abortive work. The office was not now called upon to draft any Bill until it had at least a provisional place in the programme for the Session (or the next Session); and, so far as government Bills were concerned, the government itself controlled the flow and fixed the dates, taking into account the office's estimates

⁵⁰¹ Ram (n 440) 444.

⁵⁰² TNA file T 273/294. Letter, Ellis to Bridges, 9 May 1951.

⁵⁰³ Select Committee on Delegated Legislation, *Report together with the proceedings of the Committee, minutes of evidence and appendices* (1952-53, HC 310-1) 35, para 272.

of what was likely to be practicable. There could be no doubt whatever that the efforts which had been made to regulate the legislative programme and timetable had been of the very greatest assistance to the office, and it was not too much to say that, without them, the office could not have got through the present heavy Session as well as it had, or have any reasonable prospect of getting through the next session without many shipwrecks. Ram wished it was possible to demonstrate this statistically; but, although the transformation was most striking to anyone who had experienced the chaos that used to prevail (as he had), it was very difficult indeed to show exactly how the transformation had been effected. Ram could only pray that the new machinery would continue to work in the future as it had during the present session.⁵⁰⁴ Ram's prayers could be regarded as effectual: for the new arrangements were continued under the Conservative governments in power from 1951 onwards. 'Bills must of course be produced in accordance with the requirements of the Government as worked out for each Parliamentary Session' said Hutton in 1961.⁵⁰⁵ The problem of the misdirection of activity, which had given rise to substantial difficulties previously, was now being much more intelligently managed.

Arrangements for the preparation of Consolidation Bills improved. Under the initiative promoted by Ram, a separate Consolidation Branch within the Office of the Parliamentary Counsel was brought into existence; and, by the spring of 1951, 25 Consolidation Acts had been passed.⁵⁰⁶ Carr, writing a little later, considered that these new arrangements 'in large measure countered' one of the 'natural enemies' of consolidation: 'the shortage of available experts'.⁵⁰⁷ It

⁵⁰⁴ TNA file CAB 21/2140. Letter, Ram to Murrie, 13 June 1946.

⁵⁰⁵ Hutton (n 452) 19.

⁵⁰⁶ Jowitt (n 459) 15.

⁵⁰⁷ Sir C Carr, 'The Mechanics of Law-Making' (1951) 4 *Current Legal Problems* 122, 135.

was later recorded that about 100 Consolidation Acts were passed between 1947 and 1966 (when responsibility for consolidation was assumed by the Law Commissions).⁵⁰⁸

In the case of the form of the income tax legislation, however, the creation of the new Consolidation Branch did not solve a significant problem involving the office's capacity to determine that form. In November 1945, Ram had been clear that only two of the Parliamentary Counsel had sufficient knowledge of income tax law to undertake the drafting work involved in its clarification; and one of these was Sir John Stainton who would soon retire. 'It seems clear, therefore, that the task must devolve upon Mr. Rowlatt' – and it was desirable that it should: for Rowlatt would be drafting the income tax clauses for the annual Finance Bill.⁵⁰⁹ A plan to rewrite the income tax legislation was accordingly liable to give rise to operational difficulties in the Office of the Parliamentary Counsel. The consolidation of the income tax legislation could not be prepared in the office's newly-created Consolidation Branch, but would have to be entrusted to Rowlatt who did Finance Bill work and who worked in the 'main' part of the office. It followed that, if a plan to consolidate the income tax legislation was to be concluded successfully, it might well be necessary for the government to give priority to the Income Tax Consolidation Bill over other new legislation that the government might have in mind. Ellis raised these points with the Cabinet Office;⁵¹⁰ his letter was shown to the Lord President (Morrison);⁵¹¹ and, on 31 January 1949, Morrison wrote to the Lord Chancellor

⁵⁰⁸ Committee appointed by the Lord President of the Council, *The Preparation of Legislation* (Cmnd 6053, 1975) 8, para 2.16.

⁵⁰⁹ TNA file IR 40/8554. 'Simplification of income tax law: Memorandum by the Parliamentary Counsel' [Sir Granville Ram], 1 November 1945, para 6.

⁵¹⁰ TNA file T 273/267. Letter, Ellis to Johnston, 21 January 1949.

⁵¹¹ TNA file T 273/267. Letter, Johnston to Ellis, 24 January 1949.

(Jowitt) asking him what he had in mind about the consolidation and codification of income tax law: for there appeared to be the danger of a clash between the needs of current legislation and those of consolidation.⁵¹² Jowitt's reply stated that '[w]ith regard to the codification of the income tax law, I am afraid that this does mean the whole time services of Sir John Rowlatt'. He was advised that, as a first step, it would be necessary to consolidate the income tax law. The reply then indicated that Jowitt would welcome the opportunity to discuss the matter at a meeting with officials present.⁵¹³ This meeting took place on 16 February 1949; and (in addition to Morrison and Jowitt) Bridges, Ellis, Ram and Rowlatt were also present.⁵¹⁴ Bridges made his own private note of this meeting. After recording that Rowlatt was 'obviously ready to get on with the job', he stated that 'I was merely rude, and said that the present position was a scandal; but if Ministers were not prepared to get started with the job and go ahead with it, they had better say so and leave the existing confusion to stand'. 'In the end' he recorded 'it was decided to get ahead with the business'.⁵¹⁵ At a meeting held on 1 March 1949, the Cabinet Legislation Committee finally approved proposals for the rewriting of the Income Tax Acts;⁵¹⁶ and, accordingly, arrangements to undertake a task with major implications for the form of income tax legislation were made. The making of those arrangements, however, had involved a special meeting, attended by two cabinet ministers and

⁵¹² TNA file T 273/267. Letter, Morrison to Jowitt, 31 January 1949.

⁵¹³ TNA file T 273/267. Letter, Jowitt to Morrison, 1 February 1949.

⁵¹⁴ TNA file T 273/267. Note of a Meeting held in the Lord President's Room, House of Commons on the 16th February, 1949, to consider consolidation of income tax law. This official note of the meeting recorded that it was agreed 'that a paper should be prepared for the Legislation Committee recommending that consolidation should be put in hand immediately with a view to its completion by June 1950 if possible, and that codification should proceed thereafter'. See also TNA file LCO 2/3815. Note to the Lord Chancellor on Income Tax codification, 16 February 1949.

⁵¹⁵ TNA file T 273/269. Note initialled by Bridges. This Note has the date 15 February 1949; but the date 16 February is to be preferred – see the material cited in the previous footnote.

⁵¹⁶ TNA file IR 40/14566. Minutes of the Meeting of the Cabinet's Legislation Committee held on 1 March 1949 (copy of part).

a number of senior civil servants, to decide how the highly finite capacity of the Office of the Parliamentary Counsel should be deployed.

The capacity of the Office of the Parliamentary Counsel to determine the form of legislation in general and of income tax legislation in particular was certainly greater during the period from 1947 to 1965 than it had been earlier. The evidence demonstrates, however, that overall capacity advanced from the inadequate only as far as the barely adequate – if as far as that.

2. The office's wish to determine the form of income tax legislation

The question how far the Office of the Parliamentary Counsel wished to be a determinant of the form of the income tax legislation during the period from 1907 to 1965 is addressed in two different ways. It is addressed, first, by investigating whether the office held views relevant for the form in which legislation should be enacted. The question how far the office wished to be such a determinant is then also addressed by investigating the aims of one of the First Parliamentary Counsel, Sir Granville Ram.

(1) The office's views on forms of legislation

The question whether the Office of the Parliamentary Counsel held views relevant for the form of legislation in general and of income tax legislation in particular is addressed by investigating three matters: the relationship that should exist between primary and subordinate legislation; the desirability of consolidation legislation; and the desirability and feasibility of the codification of income tax law. On the first and second matters, the office may be shown to have had its own consistent viewpoint.

A succession of First Parliamentary Counsel supported the growth of powers to make subordinate legislation – and made statements to that effect. In a

memorandum written in 1870, Thring stated that subordinate legislation was a class of legislation which 'is increasing, and ought to increase, year by year, as it is quite impossible that Parliament can do more than lay down the principles of bills and leave their practical details, if necessary, to be worked out by efficient practical officers'.⁵¹⁷ Later, in 1877, Thring expressed the view that matters of procedure and detail should either be enacted in a schedule to a statute 'or, what is far better, (where possible) be left to be prescribed by a court or department of the Government'.⁵¹⁸ He then went on to set out his views on this subject exceedingly clearly:

The adoption of the system of confining the attention of Parliament to material provisions only and leaving details to be settled departmentally, is probably the only mode in which parliamentary government can, as respects its legislative functions, be satisfactorily carried on. The province of Parliament is to decide material questions affecting the public interest, and the more procedure and subordinate matters can be withdrawn from their cognisance, the greater will be the time afforded for the consideration of the more serious questions involved in legislation.⁵¹⁹

⁵¹⁷ Quoted from Ilbert's 1898 memorandum (n 440) para 28 (and see *ibid* para 20 for the date of the 1870 Memorandum).

⁵¹⁸ Lord Thring, *Practical Legislation: The Composition and Language of Acts of Parliament and Business Documents* (London, John Murray, 1902) 44. (Underlining in original.) This work, as Thring explained in the first chapter, was essentially a reprint of an earlier Memorandum, and the date 10 November 1877 appears at 19. The background to the publication of this Memorandum in book form is also discussed in Ilbert, *Mechanics* (n 440) 100.

⁵¹⁹ *ibid* 44-5. Thring's views on the rise of subordinate legislation may be compared with celebrated comments made by Maitland. 'To a very large extent indeed England is now ruled by means of statutory powers which are not in any sense, not even as strict matters of law, the powers of the King. ... The new wants of a new age have been met in a new manner – by giving statutory powers of all kinds, sometimes to the Queen in Council, sometimes to the Treasury, sometimes to a Secretary of State, sometimes to this Board, sometimes to the other. ... Year by year the subordinate Government of England is becoming more and more important. The new movement set in with the Reform Bill of 1832: it has gone far already and assuredly it will go farther. We are becoming a much governed nation, governed by all manner of councils and boards and officers, central and local, high and low, exercising the powers which have been committed to them by modern statutes'. (FW Maitland, *The Constitutional History of England* (CUP 1908) 415, 417 and 501. Maitland's book prints lectures delivered in 1887 and 1888 (*ibid* v-vii).) It may be observed that, while Thring welcomed the rise of subordinate legislation, Maitland's outlook was much more ambivalent. However, while Maitland is rightly praised for his prescience in discerning this trend as early as 1887 or 1888, his remarks were made at least ten years later than those of Thring.

Ilbert, in his 1898 Memorandum, described subordinate legislation as a class of legislation 'of great and growing importance'.⁵²⁰ He discussed this class of legislation in a work published in 1901;⁵²¹ and repeated the points made in a later work published in 1913.⁵²² The tendency of modern parliamentary legislation in England had been to place a few broad general rules or statements of principles in the body of an Act, and to relegate details either to schedules or to statutory rules. Ilbert believed that MPs scrutinised these matters jealously: so, unless the temper of Parliament changed materially, attempts to confer powers in unduly wide terms would produce a reaction 'which would have a mischievous and embarrassing effect on the form of parliamentary legislation'. If, however, the delegation of legislative powers was kept within due limits and accompanied by due safeguards, it facilitated both discussion and administration. Public opinion was a very powerful safeguard against any serious abuse of statutory powers.⁵²³

Graham-Harrison, in 1931, had 'no doubt ... that the system of delegation must continue, and that for three reasons'. It was necessary to provide for emergencies; it was difficult to enact legislation unless Acts of Parliament could be confined to material provisions; and a system of subordinate legislation could secure an improvement in the form of the law, because more time could be devoted to the preparation of subordinate legislation than to the preparation of statutes.⁵²⁴ Giving evidence to the Committee on Ministers' Powers in 1930, he

⁵²⁰ Ilbert's 1898 Memorandum (n 440) para 28.

⁵²¹ Sir CP Ilbert, *Legislative Methods and Forms* (OUP 1901) 36-42 (ch 3, 'Subordinate Legislation').

⁵²² Ilbert, *Mechanics* (n 440) 144-8.

⁵²³ Ilbert, *Legislative Methods* (n 521) 36-42. The passage quoted directly is at 40.

⁵²⁴ Sir WM Graham-Harrison, *Notes on the Delegation by Parliament of Legislative Power, with a Particular Examination of the Case of the Institute of Patent Agents v. Lockwood and some Considerations with respect to the Future Granting, Exercise and Control of Such Powers* (privately printed, 1931) 118-21.

stated that his 27 years' experience of getting legislation through Parliament had convinced him that it would be impossible to produce the amount and kind of legislation which Parliament desired to pass, and which the people of the United Kingdom were supposed to want, if it became necessary to insert in the Acts of Parliament themselves any considerable portion of what was now left to subordinate legislation.⁵²⁵

No occasion is known where one of the Parliamentary Counsel explicitly argued the case for the making of subordinate legislation during and after the second world war.⁵²⁶ This state of affairs, however, is considered to reflect a general acceptance that subordinate legislation was necessary.⁵²⁷ In his evidence to the House of Commons Select Committee on Delegated Legislation in 1953, Ellis confined himself to dealing with matters where the office could make a particular contribution. He did not argue the general case for the existence of subordinate legislation; and was not asked about this matter in his oral examination.⁵²⁸ The Committee, in its report, accepted that subordinate legislation was necessary; but chose to highlight statements to that effect made by three politicians.⁵²⁹

⁵²⁵ Committee on Ministers' Powers: Volume 2: Minutes of Evidence (London, HMSO, 1932) 35. This Committee (often called 'the Donoughmore Committee') is considered in more detail in chapter 7, section 1, below.

⁵²⁶ It may be borne in mind that the Office's records for the period following the second world war have not yet been made generally available at the National Archives – and that those records may contain such an explicit argument.

⁵²⁷ 'The twentieth century, in relation to delegated legislation, was a century of two halves. In the first half, the battle for the legitimacy of delegating legislative power was fought and won. The second half was dominated by the attempt to enhance parliamentary safeguards against potential and actual "abuses" of these delegated powers'. M Taggart, 'From "parliamentary powers" to privatization: The chequered history of delegated legislation in the twentieth century' (2005) 55 *University of Toronto Law Journal* 575, 624.

⁵²⁸ Select Committee on Delegated Legislation (n 503) 31-9.

⁵²⁹ *ibid* vi (paras 15-17). The politicians were Morrison, Crookshank (then the leader of the House of Commons) and Bevan.

The second matter relevant for the form of legislation on which the Office of the Parliamentary Counsel had a consistent viewpoint was support for the enactment of consolidation legislation. On this matter, too, a succession of First Parliamentary Counsel made statements supporting the enactment of such legislation. In his 1870 Memorandum, Thring stated that one or more Consolidation Bills were then usually brought in each Session; he went on to say that, assuming that any effective reform of the law were to take place, consolidation must be carried on to a much greater extent, with numerous Consolidation Bills being introduced.⁵³⁰ 'Now about the advantages to be derived from the consolidation of statute law, there can be no question', said Ilbert in 1913. He went on to refer to the need to search for the law in a dozen or more statutes scattered over several volumes: 'What is more maddening to the professional lawyer, to the official, and to the ordinary citizen ... ?'⁵³¹ Graham-Harrison, speaking in 1934, and after referring to the legislation relating to insurance and to 'my experience of fifteen years in amending the Income Tax Acts', could 'say with all sincerity that no-one has a greater interest in consolidation than the Parliamentary Counsel who is thereby relieved from the task of drafting amending legislation of this kind'.⁵³² It 'really does seem to me important to keep consolidation going all the time', Rowlatt wrote in 1955, 'it is at the lowest the least unhelpful of the ways of keeping the Statute Book in some sort of order and the machinery for doing it must not ever be allowed to get rusty'.⁵³³

⁵³⁰ This information is taken from Ilbert's 1898 Memorandum (n 440) para 29.

⁵³¹ Ilbert, *Mechanics* (n 440) 37.

⁵³² Graham-Harrison (n 440) 29.

⁵³³ TNA file T 199/671. Letter, Rowlatt to Hankey, 4 November 1955. (Underlining in original.)

The office's general wish that consolidation legislation should be enacted, however, did not lead, automatically, to a particular wish that the income tax legislation should be consolidated. In the official memoranda he wrote shortly after the second world war, Ram was intentionally unspecific as to how a programme for improving the form of the income tax legislation might best be undertaken. In his memorandum on the simplification of income tax law, dated 1 November 1945, he wrote that when work upon the clarification of income tax law was once again put in hand, the first question would be whether codification should be attempted or whether people should be content, in the first instance, with mere consolidation. Codification would almost certainly be preferable if it could be achieved; but it was open to question whether, in the long run, better progress might not be made by consolidating the statute law before attempting a new code. The question should be thoroughly considered by those whose business it was to prepare the new Bill.⁵³⁴ The form of the income tax legislation was also mentioned in Ram's major memorandum on statute law reform, dated 30 January 1946. The two subjects where clarification of the law was then most urgently demanded were probably those dealt with by the Income Tax Acts and by the Rent Restriction Acts. 'Of the first it need only be said that although "pure" consolidation might perhaps be useful as a first step towards a more thorough investigation of the whole subject it could do no more than this'.⁵³⁵ The plan for the rewriting of the income tax legislation that was

⁵³⁴ TNA file IR 40/8554. 'Simplification of Income Tax Law: Memorandum by the Parliamentary Counsel' [Sir Granville Ram], 1 November 1945, para 7. The circumstances in which this memorandum was written are considered below, text around ns 599-601.

⁵³⁵ Ram's Statute Law Reform Memorandum (n 440) para 19.

finally adopted, however, envisaged the consolidation of the income tax legislation as its first major step.⁵³⁶

By contrast, on the third matter relevant for the form of legislation in general and of income tax legislation in particular (the desirability and feasibility of the codification of income tax law), the office did not hold one single view consistently over a long period – although it certainly held views. Ram, in his memoranda written shortly after the end of the second world war, believed that codification was likely to be a desirable ultimate objective.⁵³⁷ On the other hand, a later First Parliamentary Counsel, Sir John Rowlatt, the drafter of the 1952 Act, reached a more pessimistic conclusion: for he came to hold the view that codification of income tax law was simply not feasible. Asked by Bridges to deal with a question that had arisen on the Income Tax Acts, Rowlatt stated that he was converted to the view that ‘wholesale codification is quite impossible’ and that it was simply a waste of time and money to try it on. ‘The necessary Bill would never get finished, if it did get finished it would never get passed, and if it did get passed it could never be brought into operation. If one codifies at all, one must codify in much smaller mouthfuls’.⁵³⁸ Bridges replied, referring to Rowlatt’s remark that ‘wholesale codification is quite impossible’ – and ending with the question ‘[w]here, then, does our hope of progress lie?’⁵³⁹ Rowlatt sent his substantial reply to Bridges on 11 January 1952.⁵⁴⁰ The first paragraph recorded that the question posed in Bridges’s letter had also been discussed with Ellis (the First Parliamentary Counsel), Bamford (the Chairman of the

⁵³⁶ For the forming and adoption of this plan see JHN Pearce, ‘The Income Tax Law Rewrite Projects: 1907-56’ in J Tiley (ed), *Studies in the History of Tax Law: Volume 6* (Oxford, Hart, 2013) 162-4.

⁵³⁷ Text around ns 534-5 above.

⁵³⁸ TNA file IR 40/14566. Letter, Rowlatt to Bridges, 14 November 1951.

⁵³⁹ TNA file IR 40/14566. Letter, Bridges to Rowlatt, 10 December 1951.

⁵⁴⁰ TNA file IR 40/14566. Letter, Rowlatt to Bridges, 11 January (1952). (In the letter itself, the year is specified as ‘1951’, but that is clearly an error, with ‘1952’ being intended.)

Board of Inland Revenue) and Verity (another Commissioner of Inland Revenue). 'I am afraid our conclusions are extremely depressing'. Codification of income tax law 'all in one lump' was dismissed. The possibility of 'piecemeal clearings up of particular subjects', as occasion offered, in Finance Bills, was much nearer sense and reality; but the outlook at that time was unpromising: legislation of this type would require extra space in an annual Finance Bill; and the space in question was simply not there. Legislation outside the Finance Bill also presented difficulties: for programme Bills were likely to take up more time and energy than the government would probably be prepared to agree to spare; and, even if a Bill were to be prepared, it might be so handled in Parliament 'that if it is passed at all (there was a Revenue Bill in 1921 which dropped) the last state of the subject dealt with might easily be worse than the first'. In one of the general observations with which he ended his letter, Rowlatt returned to Bridges's question as to where the hope of progress might lie. 'The only true answer to this question is that there is no question of progress but only, at the best, of delayed regress. What is most wrong with the Income Tax Acts is that there is more of them than anybody can possibly absorb, and this is quite certain to get worse every year'. After a time, it was agreed that the opportunity should be taken to codify areas of income tax law as occasion offered; and discussion of this subject came to an end.⁵⁴¹

Although Rowlatt opposed codification 'all in one lump', he nevertheless continued to support codification 'in much smaller mouthfuls': and, in 1955, he urged the codification of a limited area of the income tax legislation. The final Report of the Royal Commission on the Taxation of Profits and Income had

⁵⁴¹ On this correspondence see Pearce (n 536) 171-3.

made recommendations for the administration of income tax; and, while the Royal Commission was sceptical of the value of a general codification of income tax law, it was favourable to the codification of a particular branch of that law if substantial legislative change was being undertaken for other reasons.⁵⁴² The Inland Revenue considered the possibility of legislation relating to income tax administration during the summer of 1955; and, on 5 July, Rowlatt spoke to Hancock (the Chairman of the Board of Inland Revenue). According to Hancock, Rowlatt said that ‘a propos in particular of the last item in our proposals – assessments by officers of the Inland Revenue Department – he wished to trot out his King Charles’s head for my personal edification’. Rowlatt wished to ask whether the Inland Revenue could cover a comprehensive range of the Commission’s recommendations on administration, believing, as he did, that the department should take advantage of the possibility of an autumn Revenue Bill to carry out a useful codification measure. Rowlatt was ‘prepared to throw in all the necessary resources of Parliamentary Counsel’s Office to help’.⁵⁴³ ‘Parliamentary Counsel, though they usually had no time for speculative drafting, thought it was a special case which they could fit in’.⁵⁴⁴ It was Rowlatt’s view, therefore, that, while the codification of the entirety of income tax law was not feasible, the codification of part of that law (its administrative provisions) could be accomplished. On this matter, therefore, the office was willing to be a determinant of the form of the income tax legislation. In the short term, it may well be that Rowlatt’s advocacy of a codification measure had the effect he wished: for this was what was recommended in the

⁵⁴² Royal Commission on the Taxation of Profits and Income, *Final Report* (Cmd 9474, 1955). See, in particular, 280-303 (ch 31, paras 938-1014) and 330-3 (ch 34, paras 1076-1089).

⁵⁴³ TNA file IR 40/13351 (Part 2). Note, Hancock to Ritson, 5 July 1955.

⁵⁴⁴ TNA file IR 40/13351 (Part 2). Note by Inland Revenue Official, 18 July 1955.

submission made soon afterwards, to the Chancellor of the Exchequer.⁵⁴⁵ In the longer term, however, Rowlatt's advocacy of codification legislation did not produce the result he wished: for the Inland Revenue, for reasons of its own, caused plans for codification legislation to be abandoned.⁵⁴⁶

(2) Sir Granville Ram's programme of statute law reform

The office's willingness to be a determinant of the form of legislation in general and of the form of the income tax legislation in particular may also be demonstrated in a second way. Sir Granville Ram, the First Parliamentary Counsel from 1937 to 1947, had a programme for statute law reform – a programme that was implemented after the second world war. The implementation of this programme, however, depended upon the active assent of a sufficiently powerful political patron: and an examination of Ram's quest for such a patron accordingly precedes an examination of the programme itself.

An opportunity appeared to be arising in 1941. On seeing a draft Memorandum which the Attorney-General (Somervell) proposed to submit to the Lord Chancellor (Simon) on the subject of the statute book, Ram and Stainton sent Somervell substantial 'Observations' on the subject. The observations began with the statement that '[t]he shocking state of the statute book, and the magnitude of the task of reforming it' were well known both to the Attorney-General and to the Parliamentary Counsel. The observations went on to refer to a report dating from 1938 'which stated that the Acts relating to no less than forty-four different subjects were ripe for pure consolidation'.⁵⁴⁷ If there were added to this list subjects such as distress and fraud, which the Statute Law

⁵⁴⁵ TNA file IR 40/13351 (Part 1). Minute, Hancock to Chancellor of the Exchequer, 9 August 1955.

⁵⁴⁶ See chapter 3, section 2(1), above, text around ns 405-15.

⁵⁴⁷ 1941 Observations (n 462) para 1. (Underlining in original.)

Committee had frequently put aside because consolidation without amendment was impossible and any amendment would be controversial, 'it will be apparent that more than half of the statute book requires reconstruction'. The 'Observations' then concluded with a strong statement of the office's wish to be a determinant of the form of statute law:

The more one is familiar with the statute book the more one is conscious of its scandalous condition; and no-one will be more pleased than members of this office to do everything possible to help you to succeed in solving problems which have baffled so many others for so long.⁵⁴⁸

The 'Observations' welcomed Somervell's suggestion that the Lord Chancellor should seek a Cabinet decision that the reform of the statute book was to be regarded as a matter of urgency and given a high place among the projects for post-war reconstruction; but '[h]aving got a Cabinet decision, someone must be made responsible for seeing that it is carried out; otherwise it will be nobody's business'. Ram and Stainton thought that many years would be needed to carry out the far reaching programme of statute law reform which Somervell contemplated. They were also agreed that, in order to carry out this programme, some further expansion of the Office of the Parliamentary Counsel would be necessary. They would be able to put into practice their long cherished plan of having two or more of the members of the office exclusively allotted to statute law reform work.⁵⁴⁹

Ram and Stainton might outline their potential plan of campaign – but there were no significant results. Somervell undoubtedly supported statute law reform in general⁵⁵⁰ and the reform of the income tax legislation in particular. It

⁵⁴⁸ *ibid* paras 1 and 12.

⁵⁴⁹ *Ibid* paras 3-7.

⁵⁵⁰ See, for example, his speech to the House of Commons concluding a debate on statutory rules and orders: HC Deb 26 May 1943, vol 389, cols 1688-9.

was reported that he was strongly of the view that codification or consolidation of the law relating to income tax was one of the most urgent tasks to be undertaken in the post war period; and that he had raised the matter at a ministerial conference during the first half of 1945.⁵⁵¹ To judge from a general absence of evidence, however, Simon cared little for these things; and nothing perceptible was accomplished while he was Lord Chancellor.

A further opportunity to advance Ram's programme of statute law reform arose in 1945 when Jowitt succeeded Simon as Lord Chancellor. Jowitt invited Ram to prepare a comprehensive memorandum on statute law reform, dealing with its history, explaining the present situation, and making recommendations for the future.⁵⁵² The result was the very comprehensive memorandum prepared by Ram, and dated 30 January 1946.⁵⁵³ The memorandum began with the statement that '[t]he chaotic condition of the Statute Book has been the subject of complaint for at least five hundred years', and then acknowledged that the long history of the intermittent attempts made to improve its form and arrangement was mostly a history of failure.⁵⁵⁴ According to Ram, experience had abundantly proved that no great progress in the task of producing a well ordered and concise statute book was to be expected 'until a definite place is made for such work among the duties of Parliament and of the Executive Government' – and he believed that such a definite place should be made.⁵⁵⁵

⁵⁵¹ TNA file IR 40/8554. Report, Inland Revenue (Gregg) to Chancellor of the Exchequer (Dalton), 2 November 1945.

⁵⁵² TNA file CAB 21/2150. Letter, Coldstream to Murrie, 7 March 1946.

⁵⁵³ TNA file T 162/911 (E 17496/1). Statute Law Reform. Memorandum by the Parliamentary Counsel to the Treasury (Granville Ram), 30 January 1946. This is the document cited as 'Ram's Statute Law Reform Memorandum'. There are several copies of this document in different places in the National Archives. TNA files AM 4/252-4 are the working papers relating to the preparation of this memorandum.

⁵⁵⁴ This material was quoted at the beginning of chapter 1 above.

⁵⁵⁵ Ram's Statute Law Reform memorandum (n 440) paras 1 and 2.

Ram was told by an official that Jowitt was 'particularly pleased' with his memorandum; and that he was 'more than anxious to play his full share in this project'.⁵⁵⁶ That same official told another civil servant that Jowitt had, in effect, accepted Ram's recommendations 'lock, stock, and barrel'; and that Jowitt was most anxious to get the proposals approved as soon as possible so that the office could be re-arranged to accommodate the separate branch which would be necessary to do consolidation work.⁵⁵⁷ The interval between Ram's submission of his memorandum (on 30 January 1946) and the announcement of the government's programme (on 30 July 1947) was nevertheless substantial. One of Ram's recommendations was that a strengthened Statute Law Committee should have the general superintendence of consolidation and codification; and a meeting of officials, held on 28 March 1946, took the view that the Statute Law Committee should be reconstituted in the summer of 1947, with a view to the new scheme becoming operative in October 1947. 'The reason for this delay is that the pressure of legislation next year will make it impossible to launch the new scheme effectively before that date'⁵⁵⁸ – a reason that once again demonstrated the office's limited capacity to determine the form of primary legislation.

The summer of 1947, however, saw progress. The Cabinet approved a memorandum by Jowitt which began with the statement that '[t]he present chaotic condition of the Statute Book is a public scandal; it is urgently necessary to set about reducing it to order, by a systematic programme of consolidation

⁵⁵⁶ TNA file AM 4/252. Letter, Coldstream to Ram, 18 May 1946.

⁵⁵⁷ TNA file CAB 21/2150. Letter, Coldstream to Murrie, 7 March 1946.

⁵⁵⁸ TNA file T 162/911 (E 17496/1). Note of discussion, initialled by Bridges, 28 March 1946.

and codification Bills',⁵⁵⁹ and the new arrangements were announced by Jowitt in the House of Lords on 30 July 1947.⁵⁶⁰ A study of the long history of previous endeavours in the field of statute law reform, Jowitt said, showed that no real improvement could be accomplished 'until the business of statute law reform receives a definite place among the duties of Parliament and of the Executive Government of the day. This Government is determined to give it such a place'. Ram's programme for statute law reform, therefore, was going to be implemented.

In the final paragraph of his major memorandum, Ram had made four recommendations for achieving his objective of statute law reform.⁵⁶¹ One recommendation was that a separate Consolidation Branch should be established in the Office of the Parliamentary Counsel. This recommendation was implemented; and Ram, who retired as First Parliamentary Counsel in 1947, became the first head of the new branch. A second recommendation was that legislation should be introduced to facilitate the preparation of Consolidation and Codification Bills by enabling corrections and minor improvements to be made as part of the same overall process: and the Consolidation of Enactments (Procedure) Act 1949⁵⁶² later received the Royal Assent. The provisions of that Act, however, have never been used in the context of income tax legislation – and the provisions and impact of that Act are

⁵⁵⁹ TNA file CAB 21/2150. Cabinet, Statute Law Reform, Memorandum by the Lord Chancellor, 17 July 1947. For the Cabinet's approval see TNA file LCO 2/3816, which contains a copy of the relevant part of the Cabinet Minutes (meeting held on 24 July 1947).

⁵⁶⁰ HL Deb 30 July 1947, vol 151, cols 738-41. The passage quoted directly is at col 738.

⁵⁶¹ Ram's Statute Law Reform memorandum (n 440) para 26. The four recommendations are discussed in the text in an order which differs from the order in which those recommendations are set out in that paragraph of the memorandum.

⁵⁶² 12, 13 & 14 Geo 6 c 33.

not considered further.⁵⁶³ A third recommendation was that a reconstituted Statute Law Committee should have the general superintendence of consolidation and codification (including the preparation and revision of a long-term plan). The Committee was duly reconstituted; and oversaw the programme for consolidation legislation. More specifically, so far as income tax was concerned, in December 1948, this Committee approved a plan which provided for the consolidation and then the codification of the income tax legislation.⁵⁶⁴ The fourth and final recommendation was that, as part of the legislative programme for each session, the government's Legislation Committee should decide what Consolidation or Codification Bills were to be introduced and passed during the Session. This recommendation fitted very well with the initiative promoted by Morrison.⁵⁶⁵ Once the separate Consolidation Branch had been established, it became possible to anticipate the orderly production of Consolidation Bills; and, in the address he delivered in March 1951, Jowitt was able to report that 25 Consolidation Acts had been passed during the previous three years 'some of them of great size and importance'. He was also able to hint that a Bill to consolidate the income tax legislation might be imminent.⁵⁶⁶

The implementation of Ram's programme of statute law reform constituted a significant achievement. By the time that the Attlee government left office in 1951, all four of Ram's recommendations had been implemented: and the cause of statute law reform was advancing. 'It delights me greatly', Ram wrote

⁵⁶³ Carr considered that the enactment of the Consolidation of Enactments (Procedure) Act 1949 might be 'evidence of the confidence now justly reposed in the official draftsmen'. Carr (n 507) 136.

⁵⁶⁴ TNA file LCO 2/3815. Statute Law Committee; Minutes of Meeting held on December 10th, 1948. The sequence of events relating to the formulation and adoption of this plan is set out in Pearce (n 536) 162-4.

⁵⁶⁵ For Morrison's initiative, see chapter 2, section 1, above, text around ns 189-92.

⁵⁶⁶ Jowitt (n 459) 15.

to Jowitt in March 1951, 'that the movement which you inaugurated in 1947 has made such good progress so far'.⁵⁶⁷

The arrangements made were considered and confirmed in 1955, following the submission of a memorandum, in substance the work of Rowlatt, which, in its tone, was exceedingly cool towards the programme of statute law reform.⁵⁶⁸

Jowitt was shown the memorandum and delivered a 'counterblast'. 'The simplification of our Statute Law and the elimination of waste material from it is a great task'.⁵⁶⁹ The Lord Chancellor (Kilmuir) assured Jowitt that he was equally concerned to keep up the pressure which Jowitt had initiated for the modernisation of the statute book; and that he had come to the conclusion that consolidation was of the essence of this business.⁵⁷⁰ A later memorandum, which went out over Kilmuir's name, but which had been drafted by Bridges and had Jowitt in mind as an individual to be placated, started from the point of view 'that nothing more important had been achieved in the whole field of the administration of law in this country' than the reforms set on foot by Jowitt for the consolidation of statute law. Kilmuir regarded it as his duty while Lord Chancellor, to do all that he could to carry on this all-important work and to see that the government did not lose the impetus which Jowitt's reforms had given to the work of cleaning up the statute book and making it more easily intelligible.⁵⁷¹ The Lord Chancellor was committed to seeing that there should

⁵⁶⁷ TNA file LCO 2/5681. Letter, Ram to Jowitt, 14 March 1951.

⁵⁶⁸ TNA file LCO 2/5876. Memorandum by Ellis and Rowlatt, 'Statutory Publications and Statutory Publications Office', 8 February 1955. This memorandum is considered further in the conclusion to this chapter: see text around ns 638-42 below.

⁵⁶⁹ TNA file LCO 2/5876. Paper by Jowitt, 'Statutory Publications and Statutory Publications Office. Observations on Memorandum', 3 March 1955. The word 'counterblast' appears in Jowitt's covering note to Kilmuir, also in that same piece. The note is dated 3 February 1955, but the date 3 March 1955 is to be preferred.

⁵⁷⁰ TNA file LCO 2/5877. Letter, [Kilmuir] to Jowitt, 4 August 1955.

⁵⁷¹ TNA file LCO 2/5877. 'Statute Law Committee: Memorandum by the Lord Chancellor' (Kilmuir), October 1955.

be 'an intensification and not a relaxation of the attempt to improve the form of the Statute Book', Rowlatt wrote in November 1955. 'The Parliamentary Counsel Office generally, and the consolidation branch in particular is therefore expected by him to produce results'.⁵⁷² It was estimated in 1966 that between one-fifth and one-sixth of the total of living statute law was contained in the Consolidation Acts passed during the years since 1947.⁵⁷³ Sir Granville Ram's programme of statute law reform had produced results.

3. The office's ability to determine the form of income tax legislation

The ability of the Office of the Parliamentary Counsel to determine the form of income tax legislation during the period from 1907 to 1965 is addressed by considering policy initiation, policy development and policy implementation. The office's actual ability to determine that form was subject to major constraints.

The ability of the Office of the Parliamentary Counsel to initiate policy was constrained by its limited capacity. During the period from 1907 to 1947, when the office's ability to determine the form of income tax legislation was particularly limited, no evidence is known that the office took any initiatives so far as the form of income tax legislation was concerned. During the period from 1947 to 1965, by contrast, the office may occasionally be seen taking the initiative in making proposals relating to the form of revenue legislation and to the form of income tax legislation in particular. In January 1953, Ellis proposed to Croft, the Chairman of the Board of Customs and Excise, that the legislation relating to purchase tax might be consolidated. As far as Ellis and a colleague (Hutton) could see, there were very few difficulties about it as a technical

⁵⁷² TNA file T 199/671. Letter, Rowlatt to Hankey, 4 November 1955.

⁵⁷³ Committee appointed by the Lord President of the Council, *The Preparation of Legislation* (Cmnd 6053, 1975) 8, para 2.16.

matter. The consolidation of the purchase tax legislation, however, was not pursued.⁵⁷⁴ In the summer of 1955, Rowlatt may be seen taking the initiative in making proposals for the codification of the provisions relating to the administration of income tax.⁵⁷⁵ The codification of those administrative provisions, however, did not take place.

The development of policy might be expected to be an area where the office's ability to play a role increased during the twentieth century. The evidence, however, does not reveal any such trend: but it does disclose that the office might acquire influence if others wished, or were obliged, to consult it.

The office was consulted in November 1912,⁵⁷⁶ on the day following the delivery of the judgment in *Bowles v Bank of England*.⁵⁷⁷ Two of the Commissioners of Inland Revenue consulted the First Parliamentary Counsel (Arthur Thring) about the legislation that had become necessary. One of the points discussed was that 'it would be advisable that the Bill should only deal with the specific point for which it was introduced, as the Chancellor desires to avoid other revenue matters being brought up for discussion in connection with it'. On this point, Parliamentary Counsel 'thought that the Bill now proposed should not be a Revenue Bill. This would preclude amendments being put down which had nothing to do with the result of the Gibson Bowles case'.⁵⁷⁸ It was on this basis that the Provisional Collection of Taxes Bill (a specific programme Bill) was prepared – and enacted. The evidence, therefore, is that, on this occasion, the office's opinion was sought, but did not transform the situation. The course of

⁵⁷⁴ T 273/268. Letter, Ellis to Croft, 5 January 1953. See further at text around n 604 below.

⁵⁷⁵ Section 2(1) above, text around ns 542-6.

⁵⁷⁶ The matter dealt with in this paragraph was also considered in chapter 2, section 2(2), text around ns 253-5.

⁵⁷⁷ [1913] 1 Ch 57; (1912) 6 TC 136 (Ch).

⁵⁷⁸ TNA file IR 63/18. Note by Sir Matthew Nathan, 'Memorandum of Interview', 6 November 1912.

action undertaken was already favoured by the Chancellor of the Exchequer (Lloyd George); and it seems clear that the Inland Revenue, if not actually favouring that course as well, was completely content to accept it. The opinion of the First Parliamentary Counsel cannot itself be said to have determined the decision taken.

The office influenced the making of a decision much more obviously in 1918, while the Bill enacted as the Income Tax Act 1918⁵⁷⁹ was considered in Parliament. That Bill had been prepared by Cox (the Solicitor of Inland Revenue) and an Inland Revenue Departmental Committee; but, after it had been presented to Parliament, members of the Joint Committee who would be examining it ensured that it should also be examined by the Office of the Parliamentary Counsel.⁵⁸⁰ Lord Muir-Mackenzie, one of the members of the Committee, was recorded as saying 'that he rather thought that questions of re-arrangement were likely to be brought forward'; but proposals for re-arrangement were deferred until the Committee had dealt with the contents of the Bill in the form presented.⁵⁸¹ It is clear that Muir-Mackenzie, starting from the fact that the charge to income tax was expressed in the form of a charge under Schedules A to E, believed that the material relating to the charge should be placed in a Schedule to the consolidating statute.⁵⁸² At the eighth meeting of the Joint Committee, on 19 June 1918, the arrangement of the Bill was finally addressed; and the Committee decided 'that the charging sections of the Bill be placed at the end instead of the beginning of the Bill'.⁵⁸³ It was at this meeting,

⁵⁷⁹ 8 & 9 Geo 5 c 40.

⁵⁸⁰ Section 1 above, text around ns 490-4.

⁵⁸¹ TNA file IR 75/91. Note initialled by Cox, 21 March 1918.

⁵⁸² TNA file IR 75/91. Letter, Muir-Mackenzie to Cox, 17 May 1918.

⁵⁸³ Joint Select Committee on Consolidation Bills 1918, *Report on the Income Tax Bill* (1918, HC 95) xii.

therefore, that the decision was taken to abandon the arrangement proposed by the Inland Revenue in favour of the arrangement to be found in the legislation as enacted. It may be assumed that Muir-Mackenzie favoured the 'new' arrangement. Cox favoured the 'old' arrangement.⁵⁸⁴ AM Bremner, a barrister who assisted the Joint Committee and who was also present at the meeting on 19 June 1918, gave evidence to the Royal Commission on the Income Tax that, on the subject of the arrangement of the Bill, 'a long contest arose because the Parliamentary draughtsman thought that you could have a schedule only in a schedule, and it was impossible to persuade him to the contrary'.⁵⁸⁵ Against the background of a major division of opinion, the evidence, such as it is, permits the inference that the influence of Liddell, of the Office of the Parliamentary Counsel, determined the decision reached.⁵⁸⁶

Another major division in opinion arose during the period following the publication of the Report of the Income Tax Codification Committee in 1936.⁵⁸⁷ It was clear that both the Office of the Parliamentary Counsel and the Inland Revenue would be involved in decisions on how the draft Bill produced by the Codification Committee should be handled. It soon also became clear that the text of a Codification Bill that had the support of the Inland Revenue would differ very significantly from the text of the draft Bill prepared by the Codification

⁵⁸⁴ This was Cox's evidence to the Royal Commission on the Income Tax set up in 1919; and he handed in a copy of the Bill as originally presented in general support of his opinion. Royal Commission on the Income Tax, *Minutes of Evidence* (London, HMSO, 1919-20) 1319, para 26,631.

⁵⁸⁵ *ibid* 800, para 16,027. Bremner also said that the arrangement in the Bill as originally presented 'was the same arrangement as I should have made'. (*ibid.*)

⁵⁸⁶ Although Cox gave much information on the process of the enactment of the 1918 Act in his published article, he provided no information on this particular point. See HB Cox, 'Origin and Growth of Income Tax' (1919) 1 *Journal of the Society of Comparative Legislation and International Law* 42.

⁵⁸⁷ The history of the draft Bill produced by the Income Tax Codification Committee after the publication of that draft Bill in 1936 is considered in chapter 6, section 1 below, and Pearce (n 536) 154-9.

Committee. There was potential for a dispute about the rival merits of the draft Bill produced by the Codification Committee and of a later Bill dealing with the additional points raised subsequently by the Inland Revenue. The tensions between the office and the Inland Revenue were discussed at a meeting in July 1937; and it was agreed that, when the Inland Revenue had completed its final review of the draft Bill, the matter should be referred to the Chancellor of the Exchequer (Simon).⁵⁸⁸ Papers were prepared;⁵⁸⁹ and when, early in 1938, Simon considered this matter for himself, he had material contributed by the Office of Parliamentary Counsel, the Inland Revenue and the Departmental Treasury. The Inland Revenue wanted to proceed with the Codification Committee's draft Bill, but in an altered form – and took an optimistic line about the Bill's Parliamentary prospects.⁵⁹⁰

The Office of the Parliamentary Counsel took a very different view.⁵⁹¹ The material contributed by the Office included a letter from Stainton (the Parliamentary Counsel engaged on the draft Bill), written on the basis that he thought it 'essential that Ministers should recognise the Parliamentary difficulties which the Bill is likely to present'.⁵⁹² The Bill was 'not a pure Consolidation Bill, and therefore will not be subject to the convenient procedure which enables such a Bill to be passed without taking up any Parliamentary time'. Stainton

⁵⁸⁸ TNA file IR 40/5274. Note (by Canny) of meeting held on 21 July 1937. The Office of the Parliamentary Counsel viewed the passing of time with disquiet. It was the view of the First Parliamentary Counsel (Gwyer) that 'experience shows that Consolidation Bills put into cold storage deteriorate very rapidly, with the result that a very large amount of work is thrown away'. TNA file IR 40/5274. Letter, Gwyer to Forber (Chairman of the Board of Inland Revenue), 28 May 1937.

⁵⁸⁹ TNA file T 172/1860 is the file presented to the Chancellor of the Exchequer, together with the Chancellor's own memorandum.

⁵⁹⁰ TNA file T 172/1860. Submission, Canny to Chancellor of the Exchequer, 17 December 1937. The Inland Revenue's approach was considered in chapter 3, section 2(1), above, text around ns 386-8.

⁵⁹¹ The Departmental Treasury also thought that the Inland Revenue underestimated the Parliamentary difficulties involved in its preferred course of action. (TNA file T 172/1860. Memorandum by JHE Woods, 10 January 1938.)

⁵⁹² TNA file T 172/1860. Letter, Stainton to Canny, 8 December 1937.

went on to point out that it would be clear that any Bill presented to the Commons differed significantly from the draft Bill produced by the Codification Committee: and thought it virtually certain that the House of Commons would wish to investigate why those differences existed. Proceedings in the Commons could therefore become protracted – and (among other things) involve Ministers in detailed explanations of highly technical matters. The material contributed by the office also included a memorandum by Ram. The first part dealt with the office's drafting resources; and, after referring to the government's ordinary legislative programme and to 'no less than 48 projected Bills' which might be needed at short notice to deal with wartime conditions,⁵⁹³ Ram's conclusion was that consolidation work must be postponed until after the Emergency Bills had been disposed of, and that the carrying out of the Inland Revenue's programme would involve some risk that his office might be unable to meet its obligations either in respect of the Emergency Bills or in respect of the ordinary legislative work of the Session. The second part of Ram's Memorandum expressed his general views on the whole subject. He was in general agreement with Stainton; and thought that the Inland Revenue was too optimistic in its estimate of the Parliamentary difficulties likely to be encountered in the passage of the Bill.⁵⁹⁴

Simon's own Memorandum, dated 18 January 1938, was pessimistic – but indecisive. Simon did not decide that work on the Codification Bill should cease, promising instead to study the main points on which the Inland Revenue felt it necessary to depart from the Codification Committee's

⁵⁹³ Some details of the preparation of this emergency legislation are given in Kent (n 440) 107-11, who mentions the preparation of one main enabling Bill and 42 other emergency Bills (ibid 109).

⁵⁹⁴ TNA file T 172/1860. Memorandum by Ram, 10 January 1938.

recommendations.⁵⁹⁵ In early 1938, therefore, work on the draft Bill continued – and so did the dispute.⁵⁹⁶ However, at the beginning of March 1938,⁵⁹⁷ Ram was able to obtain a decision from Simon that ‘owing to the other demands upon Parliamentary Counsel’s time’, it was not practicable ‘to go full steam ahead with the Codification Bill’; and that its introduction early in the next parliamentary Session was no longer possible. Further work on the Codification Bill was to be downgraded, and Stainton would not work on the Bill in the foreseeable future.⁵⁹⁸ Time passed; and the decision that there should be ‘some postponement’ of the Bill gradually moved towards becoming a decision that the Bill would be abandoned. The second world war broke out; there was no question of work on the Codification Bill being undertaken during the war; and, by 1945, the Office of the Parliamentary Counsel and the Inland Revenue were both quite clear that the draft Codification Bill was a text that was not of practical use.

In this dispute it was the Office of the Parliamentary Counsel that obtained the decision that work on the draft Codification Bill should be put to one side: a state of affairs that led, in practice, to the later abandonment of that Bill – an outcome which the office clearly foresaw. The office may be regarded as having done better in this dispute than the Inland Revenue (which wished to continue to prepare the Bill). The decision reached, however, was not governed by a ministerial decision on the merits of competing Bills to codify income tax

⁵⁹⁵ TNA file T 172/1860. Memorandum by the Chancellor of the Exchequer (Sir John Simon), 18 January 1938. Simon’s memorandum appears to point clearly to the conclusion that the Codification Bill would have to be abandoned, but then to stop short of the implied conclusion.

⁵⁹⁶ For this dispute see chapter 3, text around ns 391-2.

⁵⁹⁷ TNA file IR 40/5274. Letter, Ram to Canny, 1 March 1938. This letter refers to a meeting which had taken place ‘this afternoon’.

⁵⁹⁸ TNA file IR 40/5274. Letter, Canny to Woods, 10 March 1938. The wording of this letter permits the conjecture that – to some extent at least – Ram outmanoeuvred Canny. Kent says of Ram that ‘[w]hen conducting a war against another department, he was full of resource and never lost his nerve, and was a doughty champion of the office’. Kent (n 440) 73.

law: it was governed by a ministerial decision on competing priorities for inadequate drafting resources – for it was unsafe to assume that the Office of the Parliamentary Counsel had the capacity to undertake all the tasks that could ideally be put in hand.

The office was also invited to contribute to the development of policy shortly after the second world war. Towards the end of 1945, Donovan, a Labour MP, supported by the Attorney-General (Shawcross), pressed for work to be resumed on the abandoned Income Tax Codification Bill. The Chancellor of the Exchequer (Dalton) asked the Inland Revenue to state its views: but the Chairman of the Board of Inland Revenue (Gregg) was clear that the Chancellor should also obtain the views of the First Parliamentary Counsel.⁵⁹⁹ When Dalton came to consider the matter for himself, therefore, he had before him substantial contributions from both Ram and Gregg.⁶⁰⁰ Both opposed the proposal that work on the Codification Committee's draft Bill should be resumed.⁶⁰¹

Ram's memorandum stated that the clarification of income tax law was a project upon which much effort had been expended in the past; and the causes which had hitherto led to disappointment were probably more apparent in his office than elsewhere. 'I therefore conceive it to be my duty to mention frankly certain

⁵⁹⁹ TNA file IR 40/8554. Letter, Gregg to Trend, 2 November 1945; and Report, Inland Revenue (Gregg) to Chancellor of the Exchequer (Dalton), 2 November 1945.

⁶⁰⁰ TNA file IR 40/8554. Report, Inland Revenue (Gregg) to Chancellor of the Exchequer (Dalton), 2 November 1945, 'Simplification of Income Tax Law: Memorandum by the Parliamentary Counsel', 1 November 1945. Gregg's memorandum was considered in chapter 3, section 2(1), above, text following n 399.

⁶⁰¹ In a letter to Gregg, Ram stated of his own memorandum that it was outspoken but that the situation required the utmost frankness; and that, in the circumstances, outspokenness on this subject probably came better from his office than from the Inland Revenue. There was no doubt that Gregg and he were in complete agreement over this and it would be well that the two of them should speak with the same voice. TNA file IR 40/8554. Letter, Ram to Gregg, 1 November 1945. "Great Stuff – This Bass!" was Gregg's view of Ram's Memorandum. TNA file IR 40/8554. Letter, Gregg to Ram, 2 November 1945.

mistakes which should be avoided this time in order that success may be attained'. Ram highlighted two mistakes (as he saw them) made by the Codification Committee: the Committee had attempted to undertake the actual drafting of the Bill,⁶⁰² and there had been only occasional consultations with the Inland Revenue. He went on to urge that a draft Bill should be prepared by one of the Parliamentary Counsel on the instructions of the Inland Revenue; and that only when that stage had been completed should the draft Bill be examined by a Committee. It would also be necessary, in due course, to consider the conflicting claims of new legislation (on the one hand) and consolidating and codifying legislation (on the other hand); of the place to be taken by the rewriting of the legislation governing income tax law vis-a-vis the rewriting of the legislation governing other areas of the law; and, in the case of income tax, of the relative merits of the consolidation and codification.

The decision then made did not depend upon the arguments advanced in the documents produced. Dalton stated that he discounted a good deal of the material submitted: '[b]ut we can't spare Parliamentary Counsel just yet'.⁶⁰³ Work on the draft Codification Bill was accordingly not resumed (the outcome that Ram and Gregg wished to see) – but this result did not derive from their advocacy. It was a corollary of a state of affairs in which the entire resources of the Office of the Parliamentary Counsel were being devoted to the Attlee government's current legislative programme. The decision that the form of the income tax legislation should not be changed (for the moment at any rate) had been taken by reference to the limited capacity of the Office of the Parliamentary Counsel.

⁶⁰² 'Same old Song!' was Dalton's marginal comment on this passage.

⁶⁰³ TNA file IR 40/8554. Note, Dalton to Trend, 11 November 1945.

After the coming into operation of the new arrangements for the office in 1947, it might perhaps be expected that its role in policy development would increase: but it is not possible to discern any change from the state of affairs existing earlier. Thus, in 1953, although the office took the initiative in proposing that the legislation relating to purchase tax might be consolidated, both Customs and Excise and the Treasury were clear that the proposal should not be implemented. Consolidation would imply the indefinite continuation of an unpopular tax; and there was also the prospect of legislation modifying the tax's character. The consolidation of the purchase tax legislation was not further pursued.⁶⁰⁴ Similarly, in 1955, although the office had advocated the codification of the administrative provisions relating to income tax, there was no such codification measure. In 1957, the Inland Revenue retreated from the idea of a Codification Bill to that of a programme Bill confined to making the necessary amendments to the law; and, it was a programme Bill of this kind that was ultimately enacted.⁶⁰⁵

Another area where the office made only a limited contribution to policy development after 1947 was in the devising of a new plan for rewriting the income tax legislation. In June 1948, after being told that the Inland Revenue was in favour of consolidation of the income tax legislation,⁶⁰⁶ Ram had to accommodate himself to the situation. He was surprised to learn that the Inland Revenue was now inclined to favour consolidation of the income tax legislation

⁶⁰⁴ TNA file T 273/268. Letter, Ellis to Croft, 5 January 1953; note, [Gilbert] to Bridges, 7 January 1953; letter, Bridges to Ellis, 8 January 1953; letter, Croft to Ellis, 12 January 1953. 'As you know', Bridges wrote to Ellis, 'I am a whole-hogger for consolidation. But in this particular instance, there are, I think, some fairly good reasons why it would be inadvisable to introduce a consolidatory measure in this field at the present moment'. (TNA file T 273/268. Letter, Bridges to Ellis, 8 January 1953.)

⁶⁰⁵ Chapter 3, section 2, above, text around n 410. The statute ultimately enacted was the Income Tax Management Act 1964.

⁶⁰⁶ TNA file T 273/263. Letter, Bridges to Ram, 18 June 1948.

because he had always been led to believe that consolidation would, in itself, effect very little. However, if this were wrong and the truth was that consolidation was a necessary or useful preliminary, his office would have to arrange accordingly; 'but it would be a very big job and I should be loath to undertake it "unadvisedly, lightly, or wantonly" particularly at this moment'.⁶⁰⁷ During June and July 1948, the Treasury, the Inland Revenue and the Office of Parliamentary Counsel co-operated in producing a Joint Memorandum for the Statute Law Committee.⁶⁰⁸ The memorandum proposed that there should be a consolidation of the existing income tax legislation, to be followed by an attempt at codification. This was a programme linked to the preferences of the Inland Revenue rather than those of the Office of the Parliamentary Counsel. It was this programme, however, that was approved by the reconstituted Statute Law Committee and led, eventually, to the 1952 Act.

In addition to policy initiation and policy development, the actual ability of the Office of the Parliamentary Counsel to determine the form of income tax legislation is also addressed by investigating policy implementation. Here the office had a real role to play, even if only in a negative sense – for if it failed to produce the text of a Bill which it was envisaged that it would draft, the initiative in question would obviously not make progress. Although there is one case requiring examination, Bills which the office had been instructed to produce did not have to be abandoned because the office had failed to produce text. There was, admittedly, an indication that the drafting of the Revenue Bill of 1921 was

⁶⁰⁷ TNA file T 273/263. Letter, Ram to Bridges, 21 June 1948.

⁶⁰⁸ TNA file IR 40/14566. Statute Law Committee; Consolidation of Income Tax Acts; Joint Memorandum submitted by the Secretary to the Treasury on behalf of the Treasury, the Board of Inland Revenue and Parliamentary Counsel, 6 July 1948. In a letter written to Bridges during November 1951, Rowlatt referred to this Memorandum as 'your Memorandum'. TNA file IR 40/14566. Letter, Rowlatt to Bridges, 14 November 1951.

delayed, to a certain extent, by the illness of the drafter (Graham-Harrison): but this indication occurs in a letter written by a Commissioner of Inland Revenue and in a context in which it was convenient for the writer to be able to attribute a delay to another government department;⁶⁰⁹ and the failure of the Revenue Bill of 1921 cannot be attributed to drafting delays.

The case requiring examination is that of the legislation ultimately enacted as the Income Tax Act 1952.⁶¹⁰ This legislation may be regarded as exceptional because the drafter, Sir John Rowlatt,⁶¹¹ argued for the abandonment of the earlier decision that legislation consolidating the Income Tax Acts should be prepared; and because the task was of such a size that its successful completion was by no means guaranteed.

Ram, in November 1945, had already expressed the view that the task of drafting must devolve upon Rowlatt – and so it did.⁶¹² At the meeting held on 16 February 1949, to discuss the rewriting of the Income Tax Acts, Bridges had noted that Rowlatt was ‘obviously ready to get on with the job’; and a programme for the rewriting of that legislation was approved on 1 March 1949. Rowlatt, however, was soon unenthusiastic. In the spring of 1949, he expressed the grudging view that a ‘stuffy, almost paste-and-scissors, Consolidation Act would not be very satisfactory, but it might perhaps be reasonable to prepare it and pass it reasonably quickly’. Such a statute ‘might perhaps avoid throwing doubt on most of the existing case law’ and be of ‘some utility to persons who wanted to see, rather more easily than is possible at

⁶⁰⁹ TNA file T 171/195. Letter, Thompson to Gower, 10 February 1921.

⁶¹⁰ 15 & 16 Geo 6 & 1 Eliz 2 c 10.

⁶¹¹ Rowlatt’s role is considered more generally in the conclusion to this chapter, text around ns 637-43 below.

⁶¹² These events were considered above, text around ns 509-15.

present, where the income tax as a whole has got to'.⁶¹³ By November 1949, however, Rowlatt had advanced to outright opposition – and despatched a memorandum arguing at length that 'whatever can or cannot be done about the Income Tax Acts, the idea of consolidating them is misconceived and should be abandoned'. Consolidation was impracticable: and, even if it should be practicable, it was 'worse than useless'.⁶¹⁴ A meeting to discuss the situation was held on 2 December 1949, with Bridges in the chair.⁶¹⁵ Bridges felt strongly that, in view of the previous failure to deal with the subject, 'they would have to have a satisfactory alternative if they were to drop the Consolidation Bill'. It was agreed, however, that it was not practicable to work directly on a Codification Bill; and that the preparation and enactment of a Consolidation Bill was necessary before codification. The decision, therefore (the reverse of the decision that Rowlatt had been seeking), was that the preparation of the Consolidation Bill should continue.

The drafting of the Consolidation Bill was eventually completed: and, to contemporaries, the Bill was remarkable for its size. At the time it received the Royal Assent, it was the longest statute ever to be enacted.⁶¹⁶ To contemporaries, the Bill was also remarkable for its quality. On one occasion Rowlatt allowed himself to say that '[m]iracles apart, it is broadly speaking as

⁶¹³ TNA file IR 40/14566. Letter, Rowlatt to Bamford, 14 April 1949. (Underlining in original.)

⁶¹⁴ Papers in the Office of Parliamentary Counsel on the Income Tax Act 1952, vol 13, fos 1504-8. Income Tax Consolidation; Memorandum by Parliamentary Counsel, 14 November 1949. The author has seen and taken a copy of this document. It is understood that this volume is to be transferred to the National Archives where (it is assumed) it will become available, in due course, in the 'AM' series.

⁶¹⁵ A note of this meeting prepared by Bligh (Bridges's Private Secretary) is on TNA file T 273/267. A note of this meeting prepared by Rowlatt is in the papers in the Office of Parliamentary Counsel on the Income Tax Act 1952, vol 13, fos 1548-9. As regards this latter document, see the comment made in the previous note.

⁶¹⁶ Chapter 1 above, n 19.

good and uncontroversial as any Consolidation Bill is ever going to be',⁶¹⁷ and Coldstream, of the Lord Chancellor's Office, recorded the view that 'most of us think that Rowlatt's work on this Bill is a tour de force.'⁶¹⁸ Coldstream had been told by Ellis, the First Parliamentary Counsel, that the Bill could hardly have been done at all except by Rowlatt; and only then because the Parliamentary Counsel's work in the last two years had been comparatively slack. 'But for the coincidence of Rowlatt's exceptional ability and the slack period I imagine that we should never have got the consolidation done at all'.⁶¹⁹ On 5 February 1952, when the Income Tax Bill completed its passage through the House of Lords, Lord Radcliffe, Lord Schuster and the Lord Chancellor (Simonds) all praised Rowlatt by name. 'The successful preparation of the Bill was an effort such as Hercules might have made'.⁶²⁰ The enactment of the Income Tax Act 1952 changed the form of income tax legislation; but this Act only came into existence at all because one particular member of the Office of the Parliamentary Counsel had the ability, drive, stamina and time to draft it.⁶²¹

Conclusion

The Office of the Parliamentary Counsel wished to be a determinant of the form of legislation in general. The office favoured the use of subordinate legislation and the undertaking of consolidation legislation. One of the Parliamentary Counsel, Sir Granville Ram, had a programme for statute law reform; and that

⁶¹⁷ TNA file LCO 2/3818. Letter, Rowlatt to Bamford, 25 October 1951.

⁶¹⁸ TNA file LCO 2/3818. Letter, Coldstream to Schuster, 1 February 1952. (Underlining in original.)

⁶¹⁹ *ibid.*

⁶²⁰ HL Deb 5 February 1952, vol 174, cols 1060-4. The direct quotation is from the speech of Lord Schuster at col 1063. For Rowlatt's reception of the compliments paid to him, see Kent (n 440) 215-6.

⁶²¹ A later reference by Rowlatt himself was to '... freaks like the Income Tax Act, 1952 (which was a strict consolidation without amendment, almost on paste and scissors lines, of an intolerably bulky and difficult subject-matter)' (TNA file T 199/671. Letter, Rowlatt to Hankey, 4 November 1955.)

programme was implemented. Its implementation led, among other things, to a greater enactment of consolidation legislation; and, as part of that programme the income tax legislation was consolidated in 1952.⁶²²

The evidence nevertheless demonstrates that role played by the Office of the Parliamentary Counsel in determining the form of the income tax legislation was exceedingly limited. The office's role may have been less important than Cocks surmised.⁶²³ There were two major reasons for this limited role: the general requirement for the lawyer to act in accordance with the client's instructions; and the limited capacity of the Office.

The requirement for the lawyer to act in accordance with the client's instructions restricted the office's ability to bring about change. The office could – and did – propose; but the clients (whether in the form of political ministers or government departments) could – and did – dispose. Rowlatt, in 1955, 'wished to trot out his King Charles's head' and proposed the codification of the law relating to income tax administration – but the Inland Revenue later abandoned that proposal.⁶²⁴ Earlier, in 1949, the wish of the clients that work on the consolidation of the income tax legislation should continue had prevailed over Rowlatt's wish that this consolidation work should be abandoned.⁶²⁵ The office had its own private cargoes and destinations⁶²⁶ – but was not well placed to cause its plans to be implemented. Ram, during the second world war, wished

⁶²² Section 2 above.

⁶²³ Text around n 445 above.

⁶²⁴ Text around ns 542-6 above.

⁶²⁵ Text around ns 614-5 above.

⁶²⁶ Amery's expression, quoted in chapter 1 above, text around n 152.

to improve the 'shocking state of the statute book' but could accomplish nothing while Simon was Lord Chancellor.⁶²⁷

The limited capacity of the office had an impact upon the preparation of government legislation in general and upon the preparation of legislation relating to income tax in particular. In 1938, work on the codification of income tax law was put to one side because the office needed to be able to give priority to other work.⁶²⁸ There was no resumption of that codification work, shortly after the second world war, because the office's resources were fully committed to implementing the Attlee government's programme of current legislation.⁶²⁹ In both these cases, the limited capacity of the office had the consequence that plans to change the form of the income tax legislation were postponed – and there was inertia and not change. The limited capacity of the office also had the consequence that major negotiations, featuring two Cabinet ministers, were necessary to ensure that Rowlatt was made available to draft the 1952 Act.⁶³⁰

The limited capacity of the office had a further consequence. Given that the office could have played a larger role within government than its limited capacity enabled it to play, the abilities and personalities of its leading members were capable of being of considerable significance. Different First Parliamentary Counsel concentrated on different tasks – and the concentration on different tasks produced different results. This may be demonstrated by comparing and contrasting the actions and views of two of the First Parliamentary Counsel during the middle third of the twentieth century: Sir Granville Ram and Sir John Rowlatt.

⁶²⁷ Text around ns 547-52 above.

⁶²⁸ Text around ns 593-8 above.

⁶²⁹ Text around n 603 above.

⁶³⁰ Text around ns 510-16 above.

Ram's particular contribution related to administration and not to drafting. Kent's view was that 'Ram was intensely proud of the Office, which was largely his creation'.⁶³¹ He had a programme for statute law reform; and, when Jowitt became Lord Chancellor, he took his opportunity to make progress. In formulating and implementing that programme, the two men were undoubtedly key allies. Ram's letter to Jowitt, written in March 1951, has already been quoted.⁶³² Jowitt, for his part, once referred to 'the work upon which Ram and I embarked with such high hopes'.⁶³³ The credit for the programme was 'almost entirely due to Ram. All I had to do was to give him support and encouragement – How I wish we could see his like again'.⁶³⁴ Ram's programme of statute law reform has obvious points of resemblance with nineteenth century developments studied by MacDonagh:⁶³⁵ an official within central government was advocating the extension of the part of central government in which he himself was operating. Kent's nickname for Ram was 'the Maestro'; his nickname for his successor, Sir Alan Ellis, was 'the Fish'.⁶³⁶ Rowlatt's particular contribution related to drafting and not to administration.⁶³⁷ By the common consent of his contemporaries, Rowlatt was a drafter of outstanding ability; and the role he played as the drafter of the 1952 Act was vital.⁶³⁸ Rowlatt's interest in statute law reform, however, was exceedingly limited. By the end of 1951, he had despaired of the possibility of codifying

⁶³¹ Kent (n 440) 163.

⁶³² TNA file LCO 2/5681. Letter, Ram to Jowitt, 14 March 1951. Text around n 567 above.

⁶³³ TNA file LCO 2/5876. Paper by Jowitt, 'Statutory Publications and Statutory Publications Office. Observations on Memorandum', 3 March 1955. The note is dated 3 February 1955, but the date 3 March 1955 is to be preferred.

⁶³⁴ TNA file LCO 2/5877. Letter, Jowitt to Kilmuir, 7 August 1955.

⁶³⁵ O MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 *Historical Journal* 52. See chapter 1, text around n 62.

⁶³⁶ Kent (n 440) 174.

⁶³⁷ Rowlatt features in Kent (n 440); and see generally R Thomas, 'Sir Sidney and Sir John: The Rowlatts and Tax' [2011] *British Tax Review* 210.

⁶³⁸ See text around ns 618-21 above.

income tax law.⁶³⁹ A later memorandum, dated 8 February 1955, took a very unenthusiastic view of statute law reform in general and consolidation in particular.⁶⁴⁰ The aim of reducing the bulk of the printed volumes of the statutes had 'definitely failed to produce the results which were hoped for when it was adopted'.⁶⁴¹ The subject of consolidation was also dealt with coolly.⁶⁴² Compared with the issue of new editions of the Revised Statutes, 'consolidation is incomparably the better method of improving the form of the law'; consolidation gave practitioners and government departments 'what they really want, which is a new view of any particular aspect of the law'; and so long as there was scope for reasonable progress with a consolidation programme (and on the whole it would appear that there was such scope) 'it is not necessary to give up all idea of improving the form of the statute book'. However, it was 'easy to exaggerate both the possible scope and the utility of consolidation Bills'. They caused a good deal of work; there were areas of the law which were unsuitable for consolidation; and, in dealing with consolidation 'it must be emphasised that there is no prospect whatsoever of spectacular results'. This was a general attitude was attacked by Jowitt, who had the highest regard for Rowlatt's ability and integrity. 'On the other hand, his mind is purely destructive. He will give you a thousand and one reasons against any project of law reform: the one may be good, but the thousand will probably be bad'.⁶⁴³ A great deal of Jowitt's criticism may be accepted – but not all of it. Rowlatt was clearly willing

⁶³⁹ See text around ns 537-41 above.

⁶⁴⁰ TNA file LCO 2/5876. Memorandum by Ellis and Rowlatt, 'Statutory Publications and Statutory Publications Office', 8 February 1955. It was this memorandum that constituted the point of departure for the sequence of events confirming Ram's programme of statute law reform considered in the text around ns 568-71 above.

⁶⁴¹ *ibid* para 23.

⁶⁴² *ibid* para 24.

⁶⁴³ This quotation has been taken from a private letter sent by Jowitt to the Lord Chancellor (Kilmuir) in February 1955. See RFV Heuston, 'Lord Chancellors and Statute Law Reform' [1988] *Statute Law Review* 186, 193-4. Far from surprisingly, this letter is not in TNA file LCO 2/5876, its obvious location should this letter have been placed in a government file.

for consolidation legislation to be enacted; and, in 1955, he may be observed proposing the codification of a limited area of income tax law. Beyond this, however, Rowlatt's views that any improvement in the form of income tax legislation was likely to be hard-won and unspectacular, and that the overall tendency of income tax law was towards regress and not progress, cannot be dismissed as unreasonable. On the contrary: it may be argued that those views were right.

CHAPTER 5: THE ROLE OF THE TEMPORARY DIRECTING ELEMENT: POLITICAL MINISTERS

‘Those of us who have had the honour of holding office for a series of years know how strong are the forces that tend to inaction and how great is the vis inertiae in the Government machine’.⁶⁴⁴

Introduction

It was Amery’s view that government should be understood in terms of two components: a permanent administrative element (the civil service) and a temporary directing element (political ministers).⁶⁴⁵ The last two chapters have investigated the role played by parts of the civil service in determining the form of the income tax legislation: this chapter is concerned with the second of Amery’s components.

The aim of this chapter is to ascertain the role played by government ministers in determining the form of the income tax legislation. Three questions will be addressed in order to achieve this aim: whether ministers had the capacity to determine the form of the income tax legislation; how far (if at all) ministers actually wished to give effect to such capacity as they had in determining that form; and how far (by their acts and omissions) ministers actually determined the form of that legislation.

1. Ministers’ capacity to determine the form of income tax legislation

The question whether ministers had the capacity to determine the form of the income tax legislation reveals a very sharp contrast between theory and

⁶⁴⁴ Herbert Samuel speaking in the House of Commons. HC Deb 4 April 1917, vol 92, col 1370.

⁶⁴⁵ LS Amery, *Thoughts on the Constitution* (OUP 1947) 28-9. See also chapter 1 above, text before n 150.

practice. In theory, it was completely clear that ministers had the capacity to determine that form: for, during the first half of the twentieth century, there was a generally accepted view as to how ministers and civil servants should work together.⁶⁴⁶ Civil servants looked to ministers to take decisions reasonably quickly (the department's business had to be despatched);⁶⁴⁷ to win battles in cabinet; and to defend the department from parliamentary criticism. Ministers looked to civil servants for 'loyal implementation of ministerial or party objectives and programmes in cases in which these have been publicly stated and reasonably clearly specified';⁶⁴⁸ for advice on a range of alternative objectives, priorities and programmes in cases in which firm commitments had not been made in advance of taking office; and for expert advice (advice based on up-to-date specialised knowledge) on the probable and possible problems and consequences of implementing alternative policy programmes. According to Sir Edward Bridges, the Head of the Civil Service from 1945 to 1956, the minister

⁶⁴⁶ The ideal of a partnership was accepted by Amery, who thought that the work of the great departments of state was, indeed, normally a close co-operation between the broader political outlook of Ministers and the technical knowledge of the civil service and the ideas engendered in it by long and intimate experience of the subject matter from within. (Amery (n 645) 102.) Amery went on to state that 'Sir William Harcourt put it cynically when he said that "the value of political heads of departments is to tell the officials what the public will not stand". He might have added that it also lies in the political Minister's greater ability to expound and defend the views and needs of his department in ways which will carry most weight with his colleagues. Lord Kitchener's incapacity to do this was a striking justification of the value of a civilian War Minister'. (ibid.) The ideal of such a partnership was undoubtedly widely accepted. In the early 1960s, one Permanent Secretary referred to 'the normal case ... where ministers and civil servants genuinely work together'. (Sir E Playfair, 'Who are the Policy Makers?' (1965) 43 *Public Administration* 260, 262.)

⁶⁴⁷ The fact that Sir Frank Soskice was 'extremely indecisive' was one component of Jenkins's judgment that 'he was a remarkably bad Home Secretary'. R Jenkins, *A Life at the Centre* (London, Macmillan, 1991) 175.

⁶⁴⁸ These requirements and expectations follow those specified in B Headey, 'Cabinet Ministers and Senior Civil Servants: Mutual Requirements and Expectations' in V Herman and JE Alt (eds), *Cabinet Studies: a Reader* (London, Macmillan, 1975) 121. The passage quoted directly is at 131. Headey analysed the position for the years immediately after 1965; but it appears entirely legitimate to apply that analysis to earlier years. On the relations between government ministers and civil servants during the period from 1907 to 1965 see also generally CH Sisson, *The Spirit of British Administration* (London, Faber and Faber, 1959) and RE Neustadt, 'White House and Whitehall'. Neustadt's paper is reprinted, in abridged form, in A King (ed), *The British Prime Minister* (2nd edn, London, Macmillan, 1985) 155-74. For the history of that paper, see *ibid* 173 n 1.

knew the broad lines upon which his party or the cabinet had decided to proceed. The advisers contributed practical knowledge such as no minister could be expected to possess unless he happened to have exceptionally long experience in that field. The relationship between minister and adviser thus comprised the essential feature of good partnership, namely that the contribution brought by each partner was different in kind.⁶⁴⁹

One feature of this partnership was particularly important. It was for the minister to make the final decision. 'It cannot be too often repeated that it is the politicians who make policy and are responsible for the laws which are made'.⁶⁵⁰ Both politicians and civil servants were quite clear on this point. 'The arguments have been admirably deployed in a number of papers by our officials, but the great decision remains with us Ministers to take', Macmillan recorded, in September 1956, of the discussion before the setting up of the Common Market.⁶⁵¹ On the civil service side, Parliamentary Counsel recorded that the decision whether a Bill should be prepared was one for the minister;⁶⁵² and that it was 'for the Minister to ordain what he wants in his Bill'.⁶⁵³ In theory, the power – indeed the responsibility – of government ministers to determine policy undoubtedly included the power to determine the form of the income tax legislation.

⁶⁴⁹ Sir E Bridges, *Portrait of a Profession: The Civil Service Tradition* (CUP 1950) 19-20.

⁶⁵⁰ Lord Home, *The Way the Wind Blows* (London, Collins, 1976) 195. 'The decision, or the recommendation, is unequivocally the responsibility of the Minister ... , but all manner of things may have been said by the officials before they are arrived at'. (Sisson (n 648) 130.)

⁶⁵¹ H Macmillan, *Riding the Storm 1956-1959* (London, Macmillan, 1971) 81.

⁶⁵² Sir G Ram, 'The Improvement of the Statute Book' [1951] *Journal of the Society of Public Teachers of Law* 442, 446.

⁶⁵³ 'One of the Parliamentary Counsel to the Treasury', 'The Making and form of Bills' (1949) 2 *Parliamentary Affairs* 175, 176. The author may have been Sir Alan Ellis, who was then the First Parliamentary Counsel.

In practice, however, the workings of the United Kingdom polity made it very difficult for government ministers to have the capacity to determine that form. The demands placed on ministers (both those of a general nature and those involved in the running of their departments) were very great; and it was difficult for ministers to respond effectively to those demands.

The general demands placed upon ministers were both numerous and various.⁶⁵⁴ Ministers were members of a political party; they needed to attend to party work, liaising with party members in Parliament and the country. Ministers were also members of the House of Commons; they needed to attend to constituency work. Government ministers needed to attend to parliamentary duties. Ministers who were members of the cabinet had to participate in cabinet meetings and might wish to take part in the general development of policy within government. Ministers were members of ministerial committees. Government ministers also had meetings with interested groups whose concerns were affected by their policies (or lack of them).

In addition to general demands, ministers also had to deal with the more specific demand of running their own departments. This specific demand was formidable. Lord Salisbury, in 1929, replying to the toast of 'His Majesty's Ministers', thought that business had enormously increased. Papers mounted higher and higher, so that, even if ministers had nothing else to do, it was with the greatest difficulty that they could get through the detailed business, and keep their heads above water. It was only by not getting rattled that ministers could get through their business at all. 'Therefore they could not do better than give their best wishes to the Government, and it did not matter whether the

⁶⁵⁴ The specification of general demands upon ministers which follows draws very heavily on R Brazier, *Ministers of the Crown* (OUP 1997) 129-30.

Government of the future was Conservative, Liberal or Labour, the same sort of difficulties would arise'.⁶⁵⁵ Herbert Morrison, a leading member of Attlee's cabinet, worked exceedingly hard during the years from 1945 to 1947 – and had many engagements. One visitor, seeking appointments, recalled being shown Morrison's diary 'and for weeks on end it was completely full from morning till late at night and often impossible to fit anything in even for five to ten minutes. Nobody could grasp the terrible pressure on a leading Cabinet minister without seeing his diaries which are a vivid memory to me'.⁶⁵⁶ Beveridge, dealing with the situation shortly after the first world war, thought that '[n]o Minister could possibly do one thousandth of the things that he is personally supposed to do. The better the Minister the fewer of those things does he in fact do'.⁶⁵⁷ Beveridge also thought that if the minister was to become again the political head of his department, in constant attendance on Parliament and the constituencies, he would find it 'all but impossible' to be the domestic head as well. 'If he is further to be a member of a Cabinet discussing policy generally, he will find it quite impossible. The two or three tasks are quite beyond one man'.⁶⁵⁸

Departmental duties could swamp departmental chiefs. Margaret Bondfield, on taking office in the Labour Government of 1924, referred to 'a gigantic mass of papers to be read'. 'The enormous mass of detail in the Department made it almost impossible to keep in touch with what was going on in connection with

⁶⁵⁵ Lord Salisbury speaking at the Royal Academy Banquet on 4 May 1929, as reported in *Times* (London, 6 May 1929) 21, col c.

⁶⁵⁶ B Donoghue and GW Jones, *Herbert Morrison: Portrait of a Politician* (London, Weidenfeld and Nicolson, 1973) 372.

⁶⁵⁷ W Beveridge, *The Public Service in War & in Peace* (London, Constable, 1920) 39.

⁶⁵⁸ *ibid* 54.

other Departments dealing with social services'.⁶⁵⁹ Richard Crossman, on assuming office in 1964, realised 'the tremendous effort it requires not to be taken over by the Civil Service. ... I've only to transfer everything that's in my in-tray to my out-tray without a single mark on it to ensure it will be dealt with'.⁶⁶⁰ In similar vein, MacDonald, when Prime Minister in 1924, wrote in his diary that he was beginning to see 'how officials dominate Ministers. Details are overwhelming & Ministers have no time to work out policy with officials as servants; they are immersed in pressing business with officials as masters'.⁶⁶¹ 'I am sorry that I just have not had a moment to look at these', Cripps commented to his Private Secretary on one set of papers in February 1948. 'Somehow or other I must try & get time ... [during the next four days]. Please try to arrange'.⁶⁶²

Departmental demands rose – and the ability of ministers to give personal attention to departmental legislation fell. The instructions for the Bill enacted as the Irish Land Act 1870⁶⁶³ were, to a great extent, given verbally during conferences held at Gladstone's house and attended by Gladstone (the Prime Minister) and Thring (the drafter).⁶⁶⁴ Chalmers,⁶⁶⁵ writing in the 1920s, thought

⁶⁵⁹ M Bondfield, *A Life's Work* (London, Hutchinson, 1949) 255-6.

⁶⁶⁰ R Crossman, *The Diaries of a Cabinet Minister: Volume 1: Minister of Housing 1964-6* (London, Hamish Hamilton and Jonathan Cape, 1975) 21-2. Crossman also recorded that 'My Minister's room is like a padded cell, and in certain ways I am like a person who is suddenly certified a lunatic and put safely into this great, vast room, cut off from real life and surrounded by male and female trained nurses and attendants. When I am in a good mood they occasionally allow an ordinary human being to come and visit me; but they make sure that I behave right, and that the other person behaves right; and they know how to handle me'. (ibid 21.)

⁶⁶¹ Quoted in K Theakston, *The Labour Party and Whitehall* (London, Routledge, 1992) 20-1.

⁶⁶² TNA file T 171/394. Endorsement on papers, [Cripps] to [Trend], 9 February [1948].

⁶⁶³ 33 & 34 Vict c 46.

⁶⁶⁴ Lord Thring, *Practical Legislation: The Composition and Language of Acts of Parliament and Business Documents* (London, John Murray, 1902) 5-6.

⁶⁶⁵ Sir Mackenzie Chalmers (1847-1927) was the drafter of three of the four codification Acts enacted during the late nineteenth and early twentieth centuries: the Bills of Exchange Act 1882 (45 & 46 Vict c 61), the Sale of Goods Act 1893 (56 & 57 Vict c 71), and the Marine Insurance

that the most conscientious minister he had worked under was Joseph Chamberlain, for whom Chalmers had drafted the Bill enacted as the Bankruptcy Act 1883.⁶⁶⁶ Before the Bill was introduced, Chamberlain had gone carefully through it with three members of his staff and the drafter; and, when the Bill was in committee, before the committee sat, he went through every amendment that was likely to come on that day.⁶⁶⁷ Graham-Harrison, reflecting on the situation in the mid 1930s, thought that, during his working lifetime, there had been a deplorable alteration in one respect from the drafter's point of view – a very considerable diminution of the amount of time which even ministers who were keen about their Bills found themselves able to devote to the preparation of them. No doubt a minister had much more to do than he could properly manage – 'to do all that he has to do he must be a superman' – but a drafter could not reasonably be expected to carry out a minister's wishes unless he had reasonable access to him, heard his criticisms of a draft at first hand, and had the opportunity of making his defence of his draft to the minister himself.⁶⁶⁸ Finally, Hutton, reflecting on the situation in the early 1960s, stated that, at that time, ministers were usually content to settle the policy of the proposed Bill and to master the finished article, leaving the business of instructing the drafter and working out the details which arose in the process of drafting to their legal advisers and administrative officials. Indeed, he thought, ministers scarcely had any option in that respect.⁶⁶⁹

Act 1906 (6 Edw 7 c 41). The other codification Act, the Partnership Act 1890 (53 & 54 Vict c 39), was drafted by Sir Frederick Pollock.

⁶⁶⁶ 46 & 47 Vict c 52.

⁶⁶⁷ Sir MD Chalmers, 'The English Statute Book' (1924) 239 *Edinburgh Review* 332, 336.

⁶⁶⁸ Sir WM Graham-Harrison, 'An examination of the main criticisms of the statute book and of the possibility of improvement' [1935] *Journal of the Society of Public Teachers of Law* 9, 44.

⁶⁶⁹ Sir N Hutton, 'Mechanics of Law Reform' (1961) 24 *Modern Law Review* 18, 19.

The demands placed on ministers had consequences for ministers themselves: for ministers were placed under strain. Herbert Samuel, speaking in the House of Commons in 1917, considered that the burdens of a great office of state were already overwhelmingly heavy. 'The health of Ministers is continually breaking down'. That had been true in times of peace, and it was even more so in times of war, when 'there is hardly any time to think or to plan'.⁶⁷⁰ Boyd-Carpenter, writing of the Conservative administrations from 1951 to 1964, considered that the office of Chancellor of the Exchequer 'had become a killer';⁶⁷¹ and that the burden of the office was such that Thorneycroft and Heathcoat Amory both became less effective.⁶⁷² Hailsham, writing in 1962, identified as the second of his three major shortcomings of government 'the increasing physical and moral strain on Ministers which drains them more and more of vitality and converts them progressively into administrative machines'.⁶⁷³

Government ministers could be overwhelmed by the tasks confronting them. It might be difficult for decisions to be made at all: for the transaction of government business was affected by the 'terrific pressure of the democratic machine' on 'over-driven ministers'.⁶⁷⁴ It was simply not possible for ministers to transact the entirety of the business to which they could usefully give

⁶⁷⁰ HC Deb 4 April 1917, vol 92, col 1371.

⁶⁷¹ J Boyd-Carpenter, *Way of Life* (London, Sidgwick & Jackson, 1980) 157.

⁶⁷² *ibid* 140 and 157-8.

⁶⁷³ TNA file PREM 11/4838. Memorandum, Lord President [Hailsham] to Prime Minister [Macmillan], 'The Machinery of Government', 23 October 1962. The other two major shortcomings of government were the cumulative backlog in the programme of legislation and the relatively piecemeal way in which great decisions were handled. Hailsham's memorandum, raising matters of a general nature, is considered further in chapter 8 below.

⁶⁷⁴ These expressions were used by Viscount Cecil of Chelwood who served in the Cabinet under Baldwin. See Viscount Cecil of Chelwood, *The Machinery of Government* (OUP 1932) 14. However, not all posts were subject to the same amount of pressure. It was remarked in 1958 that 'At present the Financial Secretary is so over-burdened that he has inadequate time to devote much thought to administrative improvements, much less to wider aspects of policy. On the other hand the Economic Secretary, dedicated mainly to city dinners and high thinking, has often had insufficient to occupy his full time'. TNA file T 199/631. Note, [unknown author] to Brook, 2 April 1958.

attention. 'As usual, every day was so filled with interviews, speeches, Parliamentary Questions, committees, Cabinet meetings, boxes of papers and the like that there was not enough time for reflection', Macmillan noted early in 1956 when he was Chancellor of the Exchequer.⁶⁷⁵ Ministers could make a major contribution only in the case of a few of the tasks confronting them. According to Enoch Powell, a minister could 'only take personal control and initiative on very few fronts at once'.⁶⁷⁶ It was highly unlikely that those few fronts would include the form of the income tax legislation.

Not only, however, was the capacity of ministers to determine the form of the income tax legislation limited by the extent of the demands placed upon them: it was also difficult for ministers to respond to those demands. The effectiveness of the response was limited by the highly finite supply of ministers, and by the qualities actually demanded from them. The 'pool' of individuals from which ministers could be selected was small. Qualification for office was restricted to members of the governing party (or parties) in the two Houses of Parliament; and, in the case of Treasury ministers, it was restricted to members of the House of Commons. This limitation on qualification for office certainly affected Labour governments during the inter-war period. In 1924 only two ministers had ever sat in a cabinet before. Haldane (one of the two) told Beatrice Webb that the trade unionists in the government 'simply accept everything that officials tell them'. 'Fortunately', he continued, 'we have a first rate and progressive Civil Service'.⁶⁷⁷ Neville Chamberlain was told by Baldwin that, when he spoke in the House of Commons, he gave the Prime Minister the impression 'that I looked on the Labour Party as dirt'. In a letter to his sister, written in 1927, he

⁶⁷⁵ H Macmillan, *Riding the Storm 1956-1959* (London, Macmillan, 1971) 18.

⁶⁷⁶ Quoted in I Gilmour, *The Body Politic* (London, Hutchinson, 1969) 201.

⁶⁷⁷ Theakston (n 661) 20.

then continued with the remark '[t]he fact is that intellectually, with a few exceptions, they are dirt'.⁶⁷⁸ During the second MacDonald government, from 1929 to 1931, there were complaints that JH Thomas and Margaret Bondfield were entirely in the hands of their principal civil servants; and MacDonald told his principal private secretary in 1929 that few of his team were up to the job of directing their departments. 'The truth is that we have not got the men'.⁶⁷⁹

As regards the qualities demanded from ministers, one civil servant took the view that '[t]o be a major Minister today, a man should have extraordinary capacity and versatility, to say nothing of energy; and in the ordinary Party there are simply not enough men of this calibre to go round'. The author also thought that ministers fell into three categories. In the lowest grade were those who could barely be trusted to explain and defend what was being done, let alone to initiate any activity on their own account. In the next grade were ministers who were good at explanation and defence, but did not initiate. Finally, however, and in the highest grade, there was the man who was the master of his ministry.⁶⁸⁰

The office of Chancellor of the Exchequer was most certainly one to be filled by an effective minister.⁶⁸¹ Attlee was advised by Dalton, on the appointment of a Chancellor of the Exchequer to succeed Cripps, that a crucial factor in the appointment would be the minister's ability to exhibit not only 'quick intelligence,

⁶⁷⁸ Neville Chamberlain to his sister Ida, 19 June 1927. (Underlining in original.) Quoted in R Self, *Neville Chamberlain: A Biography* (Aldershot, Ashgate, 2006) 115 and 474.

⁶⁷⁹ Theakston (n 661) 20.

⁶⁸⁰ CK Munro, *The Fountains in Trafalgar Square: Some Reflections on the Civil Service* (London, Heinemann, 1952) 139 and 159-63. The name 'CK Munro' was a pseudonym of CK MacMullen, who ended his civil service career as an Under Secretary in the Ministry of Labour.

⁶⁸¹ Austen Chamberlain had urged Bonar Law to take this post in 1915. 'That office gives its holder great authority and power. There is none other except the Prime Ministership which gives such influence, or such a starting point for influence in the whole field of policy. It is second in the Government when in the right hands'. Quoted in JP Mackintosh, *The British Cabinet* (London, Stevens, 1962) 399.

or bright ideas, or diligence or methodical administration, but power to resist high-powered advice'.⁶⁸² Attlee, for his part, believed that the Chancellor of the Exchequer 'must ... be of strength and standing in the party, able to influence his spending Ministers and tell them where to get off'.⁶⁸³ He also held the view that the Chancellor of the Exchequer should have 'considerable technical economic knowledge' – and that this knowledge had been possessed by Cripps and Gaitskell. 'This is not because the technical knowledge is all that important, but because unless Chancellors have it, they will be in the hands of their permanent officials'.⁶⁸⁴

An absence of this technical knowledge may well have placed Churchill at a disadvantage when Chancellor of the Exchequer between 1924 and 1929. Boothby remembered Churchill once saying to him, after a conference of senior Treasury officials, bankers and economists, that 'I wish they were admirals or generals. I speak their language and can beat them. But after a while these fellows start talking Persian. And then I am sunk'.⁶⁸⁵ Churchill later expressed the view that, although he had been Chancellor of the Exchequer from 1924 to 1929 'I never understood it'.⁶⁸⁶ All British Chancellors of the Exchequer, Churchill wrote, had yielded themselves 'some spontaneously, some unconsciously, some reluctantly, to [the] compulsive intellectual atmosphere' of

⁶⁸² Quoted in B Brivati, *Hugh Gaitskell* (London, Richard Cohen Books, 1996) 98.

⁶⁸³ F Field (ed), *Attlee's Great Contemporaries: The Politics of Character* (London, Continuum, 2009) 155. Attlee then added 'He needn't be an economic expert – the main thing is to know enough to stop economists blinding him with science'. (ibid.)

⁶⁸⁴ ibid 139-40.

⁶⁸⁵ Lord Boothby, *Recollections of a Rebel* (London, Hutchinsons, 1978) 46. Of the return to the gold standard in 1925 at the pre-war parity, Churchill wrote that 'I had no special comprehension of the currency problem, and therefore fell into the hands of the experts, as I never did later where military matters were concerned'. Quoted in R Toye, *Lloyd George & Churchill: Rivals for Greatness* (London, Macmillan, 2007) 256.

⁶⁸⁶ Boyd-Carpenter (n 671) 87. Boyd-Carpenter's meeting with Churchill took place in the autumn of 1951, when Churchill was forming his second administration.

the Treasury.⁶⁸⁷ It was also Churchill's view that Treasury officials' 'high abilities and immense knowledge of matters very difficult to be understood, requiring a lifetime to master, give them a real power'.⁶⁸⁸ Boothby once asked Churchill's private secretary (Grigg) why, with all his gifts, Churchill was apparently so impotent at the Treasury. Grigg replied that there was only one man who had ever 'made the Treasury do what it didn't want to do. That was Lloyd George. There will never be another'.⁶⁸⁹

Government ministers were more likely to be effective, so far as the form of the income tax legislation was concerned, if they possessed a certain amount of knowledge of income tax law and practice. Expert knowledge of those subjects, however, was likely to require a major expenditure of time; and, in the case of a government minister, it was highly arguable that the time in question would be more advantageously spent in the acquisition of other knowledge and skills. On the other hand, an absence of detailed knowledge of income tax law and practice could make a minister's ideas more difficult to deal with – and impede the minister's capacity to determine the form of the income tax legislation.⁶⁹⁰

The answer to the question whether government ministers had the capacity, in practice, to determine the form of income tax legislation during the first half of the twentieth century, therefore, is that the workings of the United Kingdom polity made it very difficult for a minister to determine that form. On the one hand, the demands upon ministers – both generally and those emanating from

⁶⁸⁷ Quoted in K Theakston, *Winston Churchill and the British Constitution* (London, Politico's, 2004) 161. Theakston is quoting from Churchill's work *Great Contemporaries*, first published in 1937.

⁶⁸⁸ *ibid.* The quotation is from an article appearing in the *Sunday Dispatch* for 28 April 1940 (*ibid* 161 n 9 and 252).

⁶⁸⁹ Boothby (n 685) 46.

⁶⁹⁰ This was certainly the case while Churchill was Chancellor of the Exchequer (section 3(2) of this chapter below).

their departments – were very great. On the other hand, there were difficulties in responding to those demands.

Against this background, it may, perhaps, be considered surprising that there were ever any effective ministers at all – but it is quite clear that effective ministers did exist. PJ Grigg, who served in the Treasury in the 1920s, before becoming Chairman of the Board of Customs and Excise and then Chairman of the Board of Inland Revenue, was lavish in his praise of Philip Snowden, the Labour Chancellor of the Exchequer:

Of all the Ministers I have ever known, he was easily the most popular with the Civil Servants who worked for him. This is not very surprising. In the first place he was the ideal of what a Minister should be in that he gave a clear lead on all questions of policy, interfered rarely, if at all, in matters of administration, gave decisions quickly and unequivocally, and then defended his decisions against all comers with confidence and vigour – and nearly always with success. Civil Servants, in fact, knew exactly where they were with him and could rely absolutely on his courage and good faith to defend his own actions and theirs. When there is added personal charm, humour and real kindness and, to his subordinates, gentleness as well as strength, can it be wondered that he is the most beloved of all the many Ministers I have served or known?⁶⁹¹

The man who was the master of his ministry existed – and had the capacity to determine the form of the income tax legislation.

2. Ministers' wish to determine the form of income tax legislation

An effective Treasury minister had the capacity to determine the form of the income tax legislation, but a further question still arises – how far (if at all) ministers might actually wish to give effect to that capacity. Action might be taken in two different ways: ministers might take action themselves – or they might authorise others to take action. Furthermore, if Treasury ministers themselves wished to take action to determine the form of income tax

⁶⁹¹ PJ Grigg, *Prejudice and Judgment* (London, Jonathan Cape, 1948) 136.

legislation, they could do so in two different contexts: in the context of the devising of the Budget (and the annual Finance Act) or in the context of the Chancellor of the Exchequer's overall running of the Treasury departments.

To the extent that there was a 'grand design' for the fiscal system as a whole, an official wrote in 1958, it was thrashed out by the Chancellor of the Exchequer in close consultation with the two junior Treasury ministers during the months before the Budget. It could be argued that there was a need for a more regular and comprehensive study of fiscal policy than ever took place; but the Budget was bound to be very much the personal concern of the Chancellor – and it seemed likely that any 'grand design' would always be settled in something like the present manner.⁶⁹² The Budget, however, whatever its additional content, was always and necessarily concerned with the next financial year: it was very easy, therefore, for any 'grand design' to relate to one financial year only.

Churchill, in 1928, repeated formally to senior officials that 'the first immediate objective of Treasury policy must be to prevent a deficit in the current year'.

This objective was to have priority over all other considerations until such time as officials were satisfied that all danger had passed away.⁶⁹³ Thorneycroft, in 1957, wrote a note about that year's Budget starting from the proposition that a Budget must have a theme. Consideration should be given to what the theme for the coming year should be. In 1956 there had been a 'Savings Budget'; and, for 1957, 'what I should really like would be a Productivity Budget'.⁶⁹⁴

The devising of a Budget for the next financial year implied a relative neglect of long-term objectives for the tax system. This matter was one of those

⁶⁹² TNA file T 199/631. Submission, Maude to Brook, 31 July 1958.

⁶⁹³ TNA file IR 63/121, fo 94. Note [by Churchill], 15 January 1928.

⁶⁹⁴ TNA file IR 63/205, fo 57. Note by Thorneycroft, 'The 1957 Budget', 13 February 1957.

considered in a note by Brooke (then the Financial Secretary to the Treasury) and written during the autumn of 1956.⁶⁹⁵ Brooke was 'passionately convinced' that levels of taxation, which had been inherited from the war, were too high. 'Some seem to do no great harm. Others are cruelly changing the life of our country, much for the worse'. Specific measures forming part of the Conservative party platform were taken as firm objectives to be achieved in the lifetime of a Parliament; but tax changes came 'to be a sort of residuary legatee when everybody else's requirements have been met'. There is no reason, however, to believe that these thoughts received any significant further consideration. Four months later, both Brooke himself and Macmillan, the Chancellor of the Exchequer to whom his note had been addressed, had moved onwards (and upwards) to other posts. Matters relating to the form of income tax legislation were classifiable as long-term matters: and, accordingly, were very likely to disappear from immediate attention in the context of ministers' devising of the Budget.

In the context of the devising of Budgets and Finance Acts, matters relating to the form of income tax legislation were also likely to disappear from immediate attention for another reason. The same official who wrote of the budgetary 'grand design' had earlier written that '[t]he administration and policies of each Revenue Department in their respective fields of direct and indirect taxation are very largely self-contained'.⁶⁹⁶ In the absence of special circumstances, therefore, it followed that there was no particular reason for matters relating to the form of income tax legislation to form any part of a Chancellor's 'grand

⁶⁹⁵ TNA file IR 63/205, fo 43. Note by Brooke, 'Thoughts on Taxation', 8 October 1956.

⁶⁹⁶ TNA file T 199/631. Submission, Maude to Brook, 31 July 1958. See also chapter 3 above, text around ns 309-12.

design'. Only rarely were matters relevant for the form of the income tax legislation mentioned in the Chancellor of the Exchequer's Budget speech.⁶⁹⁷

It was also unlikely that Treasury ministers would wish to make any major impact on the form of the income tax legislation in the context of their overall running of the Treasury departments. The evidence demonstrates that ministers were subject to a great number of different demands; and, in relation to the limited number of issues where they could take the initiative, there was no incentive for Treasury ministers to give any priority to statute law reform in general or to the making of changes in the form of income tax legislation in particular. It was Graham-Harrison's view that ministers, as a rule, took only a faint interest in the form of their Bills. Whatever they said to the contrary, they would always demand compression and also such an arrangement of subject matter as would secure the easiest passage for their Bills through Parliament 'but beyond this they take little interest in form, except at those times when public opinion calls for more intelligible Acts of Parliament'.⁶⁹⁸

There is evidence which points strongly to the conclusion that the pressures on Treasury ministers were such that they might decide not to proceed with proposals involving change in the form of the income tax legislation. One such decision was taken in 1957 after the Chairman of the Board of Inland Revenue (Sir Henry Hancock) had sent the Chancellor of the Exchequer (Thorneycroft) a submission⁶⁹⁹ in which he advocated the preparation of a separate Taxes

⁶⁹⁷ Matters relevant for the form of income tax legislation were mentioned in the Budget speeches delivered in 1913 (when Lloyd George announced a proposal to enact both a Finance Act and a Revenue Act in each parliamentary session); in 1920 (when Austen Chamberlain announced a proposal to enact a further Revenue Bill); and in 1927 (when Churchill announced that the Codification Committee was to be constituted).

⁶⁹⁸ Sir WM Graham-Harrison, *Notes on the Delegation by Parliament of legislative powers ...* (n 524) 121.

⁶⁹⁹ TNA file T 233/1596. Submission, [Hancock] to Chancellor of the Exchequer, 31 July 1957.

Management Bill – a programme Bill – which would decentralise the operation of surtax and carry out a number of administrative reforms recommended by the Royal Commission on the Taxation of Profits and Income.⁷⁰⁰ Hancock's submission, however, did not lead to a Taxes Management Bill on the lines that he had advocated. A note written several years later recorded that '[t]he Chancellor decided, however, without disputing the merits of the main proposals, that he would prefer not to take legislative action in 1958'.⁷⁰¹ Another later account recorded that '[i]n the end it was decided not to decentralise surtax and the question of a Management Bill lapsed'.⁷⁰² Nothing further about this particular decision is known: but the obvious inference is that, in circumstances where ministers could attend to some, but not all, of the matters placed before them, this particular matter was not considered to deserve priority.

Evidence exists that Treasury ministers were also prepared to defer a matter relevant for the form of income tax legislation because they were uninterested. In 1931, Grigg, the Chairman of the Board of Inland Revenue, was keen that the Income Tax Codification Committee should be reorganised. It had been suggested that a Law Lord should become the chairman of the committee; but the Lord Chancellor (Sankey) was opposed to this course. Grigg was then sent a letter by the private secretary to the Chancellor of the Exchequer (Snowden). A letter that Grigg had written had been shown to Snowden, but there was no chance that Snowden would seriously fight Sankey – at any rate in the first instance or until the present position became really embarrassing for him

⁷⁰⁰ Royal Commission on the Taxation of Profits and Income, *Final Report* (Cmd 9474, 1955).

⁷⁰¹ TNA file IR 40/13351, Part 3. Inland Revenue note entitled 'Ministerial consideration of a Taxes Management Bill', 31 October 1963.

⁷⁰² TNA file IR 40/13351, Part 1. Inland Revenue note entitled 'Income Tax Management Bill', 12 February 1959, para 4.

politically. This was, admittedly, an unsatisfactory reaction to Grigg's letter 'but the Chancellor is not at present really interested and obviously does not mind letting the thing drift on for the time being. ... [And] unless he becomes more interested in the matter than he is at present ... it will be difficult to get him to take any serious action'.⁷⁰³ The evidence, therefore, is that it was unlikely that government ministers would themselves wish to use such capacity as they had to act as a determinant producing change in the form of the income tax legislation.

In addition to (or as an alternative to) taking action themselves, government ministers might wish to give effect to their capacity to determine the form of the income tax legislation by authorising others to take action – with the action of those others having an impact on the form of the income tax legislation. Jowitt's patronage of Ram's scheme for statute law reform has already been considered.⁷⁰⁴ There is also a second example, dating from the early 1960s, and relating to Treasury ministers. It was said of Reginald Maudling, Chancellor of the Exchequer from 1962 to 1964, that he was always able and willing to delegate his work to junior ministers, only stepping in when they ran into trouble. 'Unless you make a complete ass of yourself, I'll back you', he told a junior minister in the early 1970s when he was Home Secretary.⁷⁰⁵ Having regard to this background, it may be inferred that Maudling was quite content for Alan Green, the Financial Secretary to the Treasury, to champion the Income Tax Management Bill in 1963 and 1964 – and, accordingly, to help to make a

⁷⁰³ TNA file T 172/2109. Letter, [Fergusson] to Grigg, 22 January 1931.

⁷⁰⁴ Chapter 4, section 2(2), above.

⁷⁰⁵ L Baston, *Reggie: The Life of Reginald Maudling* (Stroud, Sutton Publishing, 2004) 136 and 392. The junior minister in the early 1970s was Mark Carlisle.

change in the form of the legislation relating to income tax.⁷⁰⁶ The evidence, however, is that ministers' authorisation of others to take action could play only a supplemental role in determining the form of the income tax legislation. The success of such a course of action depended upon particular ministers being prepared to authorise others, who, in their turn, had an impact upon the form of income tax legislation. The actions of particular individuals were all-important – and favourable conjunctures of individuals could not be relied upon.

3. Ministers' ability to determine the form of income tax legislation

It was difficult – but not impossible – for ministers to exercise the capacity to determine the form of the income tax legislation. It was also unlikely – but not impossible – that ministers would wish to give effect to that capacity. It was possible, therefore, that, in determining the form of the income tax legislation, there might be occasions when the role played by a government minister was decisive. The third question addressed in this chapter is whether there were such occasions. The making of such a decisive contribution is to be expected to reveal a course of action pursued over an appreciable period. In investigating the occasions when the role played by a government minister might be decisive in determining the form of the income tax legislation, furthermore, the four types of primary legislation examined in chapter 2 (Finance Bills, programme Bills, Consolidation Bills and Codification Bills) did not present ministers with equal opportunities for playing a decisive role. It was overwhelmingly probable that a Finance Bill would be introduced and enacted each year. Ministers did not take decisive action by permitting the annual cycle to continue. So far as Consolidation Bills were concerned, ministers did not

⁷⁰⁶ See section 3(2) below; and, in particular, ns 756-7 and text around those notes for the role played by Maudling.

play a decisive role in the events leading to the decision that the 1952 Act should be prepared.⁷⁰⁷ In the case of the 1918 Act, a single remark made by Montagu, the Financial Secretary to the Treasury, in the House of Commons, admittedly transformed the prospects for the draft Bill produced by Cox, the Solicitor of Inland Revenue.⁷⁰⁸ A single remark, however, should be viewed as a single remark. There is no evidence that Montagu had any particular interest in the consolidation of the income tax legislation – let alone that he wished to do all that he reasonably could to advance a Consolidation Bill. Decisive action from ministers must accordingly be sought in courses of action pursued in relation to programme Bills and Codification Bills.

Ministers might play a decisive role in relation to these Bills in two very different cases. The first case was where the minister wished such a Bill to be introduced; and had success in causing progress to be made with the preparation and enactment of legislation. The second case was where the minister wished such a Bill to be introduced; but did not have success in causing progress to be made – for the Bill was not enacted. In this latter case, the reasons why the Bill was not enacted are capable of providing important information about the determinants of the income tax legislation. There is, accordingly, an investigation of his second case, followed by an investigation of the first.

(1) Government ministers and failures to enact legislation

There were three occasions, during the period from 1907 to 1965, when government ministers wished to enact legislation relating to income tax – only to

⁷⁰⁷ For the decisions leading to the preparation of the 1952 Act see JHN Pearce, 'The Income Tax Rewrite Projects: 1907-56' in J Tiley (ed), *Studies in the History of Tax Law: Volume 6* (Oxford, Hart, 2013) 159-66.

⁷⁰⁸ For this episode see Pearce (n 707) 138-9. For Montagu's remark see HC Deb 30 September 1915, vol 74, col 1103.

find that no statute was enacted. The Bills introduced were all programme Bills of a general nature – the Revenue Bills of 1913, 1914 and 1921.⁷⁰⁹ In 1913 and 1914, Lloyd George was the Chancellor of the Exchequer; and, in 1921, Austen Chamberlain was the Chancellor while the Bill was prepared. It is the role of these two ministers that is now investigated.

In 1913, in his Budget speech, Lloyd George announced a government initiative consisting of an explicitly formulated intention to aim at enacting both a Finance Act and a programme Act (in the form of a general Revenue Act) in each parliamentary session.⁷¹⁰ In that year, however, the text of the Revenue Bill became available for MPs to study only during the second half of July:⁷¹¹ and, by this time, the Bill had 15 clauses only (one earlier draft had contained 50 clauses).⁷¹² By this time, also, the ambit of the provisions contained in the Bill had contracted; and the Bill now dealt only with the land taxes introduced in the Finance (1909-10) Act 1910.⁷¹³ On 22 July, the Prime Minister (Asquith) hoped that the Revenue Bill might go through by consent as an agreed measure;⁷¹⁴ and, on 1 August, Lloyd George invited the co-operation of MPs on both sides of the House of Commons ‘in helping us to get the Bill’. The government could not give the Bill very much time; ‘and looking at the amendments carefully it would be quite impossible if they were discussed at any length, to find time to

⁷⁰⁹ For further details of the history of these Bills, see JHN Pearce, ‘The Rise of the Finance Act: 1853-1922’ in P Harris and D de Cogan (eds), *Studies in the History of Tax Law: Volume 7* (Oxford, Hart, 2015) 93-100.

⁷¹⁰ HC Deb 22 April 1913, vol 52, cols 279-80. See also chapter 2, section 2(2), text around ns 222-3.

⁷¹¹ Remarks by Lloyd George on 16 July 1913 indicated that the Bill was still unavailable for MPs to study (HC Deb 16 July 1913, vol 55, col 1398).

⁷¹² TNA file AM 1/42, fos 546-63 and 617-21.

⁷¹³ The land taxes were dealt with in Finance (1909-10) Act 1910 (10 Edw 7 c 8), pt 1.

⁷¹⁴ HC Deb 22 July 1913, vol 55, col 1878.

get the Bill through'.⁷¹⁵ No agreement, however, could be reached on the contents of the Bill; and, on 12 August 1913, it was withdrawn.⁷¹⁶

In 1914, the actions of Government ministers may be described as still more of a shambles.⁷¹⁷ During the summer of 1913, Lloyd George had announced the government's intention to bring in a more comprehensive Revenue Bill early in the next session;⁷¹⁸ but no early Revenue Bill materialised. On 4 May 1914, Lloyd George delivered his Budget speech; but, once again, there was delay before the text of the Revenue Bill became publicly available. The government had parliamentary difficulties with its financial proposals; changed its plans; and, in doing so, altered the balance of the material to be placed in the Finance and Revenue Bills. By early June it had been decided that the vital Finance Bill would be given priority; the Revenue Bill would have to be lightened and possibly postponed. On 5 June 1914, Edwin Montagu, the Financial Secretary to the Treasury, sent a letter to the First Parliamentary Counsel to tell him that he would be asked by the Chancellor of the Exchequer for a list of the clauses in the draft Revenue Bill which were pledges from last year and those which were essential. He would be asked to cut out all the rest. This was the decision of the Prime Minister and the Chancellor of the Exchequer.⁷¹⁹ When, on 18 June 1914, the text of the Revenue Bill was finally available for MPs to study, it had 21 clauses only (although two earlier drafts had each contained 61

⁷¹⁵ HC Deb 1 August 1913, vol 56, cols 939-40.

⁷¹⁶ HC Deb 12 August 1913, vol 56, cols 2419-24. By the time the Bill came to be withdrawn, at least 51 new clauses had been proposed. (See TNA file T 171/48.)

⁷¹⁷ On the events surrounding the budget of 1914, see generally BB Gilbert, 'David Lloyd George: the reform of British landholding and the budget of 1914' (1978) 21 *Historical Journal* 117; BK Murray, "'Battered and Shattered": Lloyd George and the 1914 Budget Fiasco' (1991) 23 *Albion* 483; and I Packer, 'The Liberal Cave and the 1914 Budget' (1996) 111 *English Historical Review* 620. The account in this work largely follows that given in Bentley's article (although his explanation of Revenue Bills (at 133 n 50) is not the explanation given in this thesis).

⁷¹⁸ HC Deb 1 August 1913, vol 56, col 940.

⁷¹⁹ TNA file AM 1/44, fo 274. Letter, Montagu to Thring, 5 June 1914.

clauses).⁷²⁰ The government's parliamentary difficulties continued; and, among other matters, the members of the cabinet realised that they had misunderstood the timetable for which the Provisional Collection of Taxes Act 1913⁷²¹ provided. The Finance Bill had to be enacted by 5 August and not 5 September (as had been believed). Asquith wrote to a correspondent, on 18 June, that it was impossible to enact both the Finance Bill and the Revenue Bill by that earlier date.⁷²² The Finance Bill was enacted;⁷²³ but, on 17 July, Asquith told the House of Commons that the Revenue Bill would be dropped.⁷²⁴ In 1914, therefore, as well as in 1913, Lloyd George's initiative failed to produce a Revenue Bill that was actually enacted.

It is clear that one reason for the failure to enact a Revenue Act in 1913 and 1914 was that Lloyd George gave inadequate attention to the preparation of the Bills in question – and, in particular, to the contents of those Bills. 'We shall never get the ChofEx to go into the [Revenue] Bill' the First Parliamentary Counsel lamented to the Chairman of the Board of Inland Revenue early in 1914;⁷²⁵ and, in that year, it was only in mid April that Lloyd George gave priority to the contents of his budget.⁷²⁶ Another official wrote of Lloyd George's difficulties in 1914 that it 'all springs from the besetting sin of the creature that he will not work at his business beforehand & betimes, and it serves him

⁷²⁰ TNA file AM 1/44, fos 135-72 and 232-249.

⁷²¹ 3 & 4 Geo 5 c 3.

⁷²² Packer (n 717) 625-6. Packer's overall conclusion on this whole sequence of events was that 'In this situation, the Cabinet had to admit that Lloyd George's ingenious plan to combine immediate new grants with major reforms of rating and grant allocation was impossible. There was simply not enough parliamentary time to allow the scheme to succeed.' (ibid 626.)

⁷²³ The Finance Act 1914 (4 & 5 Geo 5 c 10) received the Royal Assent on 31 July 1914.

⁷²⁴ HC Deb 17 July 1914, vol 64, col 2295.

⁷²⁵ TNA file IR 63/40, fo 491. Letter, Thring to Nathan, 28 January 1914.

⁷²⁶ Bentley (n 717) 131.

perfectly right that he has got it “in the neck”.⁷²⁷ CFG Masterman, a Liberal politician, who, as Financial Secretary to the Treasury from 1912 to 1914, worked closely with Lloyd George in these years, wrote that he considered himself of some use to Lloyd George in ‘mazes of technicalities – the details of which he does not greatly concern himself with’: only those who had worked intimately with ‘our brilliant friend’ could know how much it meant to be in possession of detail, when dealing with ‘a man who never reads an official paper and allows his mind to revolve around big questions to disregard of detail altogether’.⁷²⁸ The initiative, announced in 1913, to enact both a Finance Bill and a Revenue Bill during the same parliamentary Session was exceedingly optimistic: but, even if so, that can act as a limited excuse only in Lloyd George’s case. The initiative announced in 1913 was designed to deal with the government’s inability to enact all the financial legislation that it wished. It could therefore be said that it was incumbent upon Lloyd George to do all the work that he reasonably could to ensure the initiative’s success – and that Lloyd George did far less work than could usefully have been done.

What may be said in Lloyd George’s favour, by way of mitigation, on the subject of the failure to enact these two Bills, is that he had too much to do – and was overstretched. In 1913, during the early summer, Lloyd George was concerned to defend himself against the allegations made during the Marconi scandal. At the end of 1913, Lloyd George’s own priority was a project to achieve land reform;⁷²⁹ but he was unable to pursue this priority consistently. During most of a period of six weeks beginning in the middle of December 1913, he was almost

⁷²⁷ Quoted in A Offer, *Property and Politics 1870-1914: Landownership, Law, Ideology and Urban Development in England* (CUP 1981) 399. The official was Sir Robert Chalmers.

⁷²⁸ Quoted in E David, ‘The New Liberalism of C.F.G. Masterman, 1873-1927’ in KD Brown (ed), *Essays in Anti-Labour History* (London, Macmillan, 1974) 27 and 347.

⁷²⁹ Bentley (n 717) 117.

continually occupied by a dispute with Churchill at the Admiralty over the naval estimates – a dispute that ended with victory for Churchill at a cabinet held on 11 February 1914. Almost immediately afterwards, Lloyd George was again diverted from his project for land reform by the growing crisis in Ireland. Then, of the early summer of 1914, it has been noted that ‘it was typical of the intense pressure of these days’ that, on the day of the 1914 Budget (4 May), ‘before a long speech at three that afternoon for which he was woefully unprepared’, Lloyd George invited CP Scott, the editor of the *Manchester Guardian*, to lunch with him in order to learn his views about the Chancellor’s old project of Home Rule ‘All Round’.⁷³⁰ In the early summer of 1914, Masterman described the Chancellor as ‘jumpy, irritable, overworked, and unhappy’.⁷³¹ Lloyd George’s priorities in 1913 and 1914 never included the detailed contents of Revenue Bills: and one consequence of the Chancellor’s overload of work was that the two Revenue Bills were underprepared – and unenacted.

In the period shortly after the end of the first world war, a government minister again made a decision to introduce a general Revenue Bill – but again found that no legislation was enacted. Austen Chamberlain was the Chancellor whilst the Revenue Bill of 1921 was being prepared; and the primary purpose of this programme Bill was to give effect to some of the recommendations of the Royal Commission on the Income Tax, which had reported in 1920.⁷³² Those recommendations included proposals that assessments to income tax should be made, not by General Commissioners, but by inspectors of taxes.

⁷³⁰ Gilbert (n 717) 131.

⁷³¹ *ibid* 135.

⁷³² Royal Commission on the Income Tax, *Report* (Cmd 615, 1920). The Report was signed on 11 March 1920 (*ibid* 141).

Progress on the drafting of the Revenue Bill was slow. The Royal Commission's report had been signed shortly before Chamberlain delivered his Budget speech; and in that speech Chamberlain stated that he had decided that the general reform of income tax was a matter calling for a separate Bill – to be introduced as soon as possible. Chamberlain went on to say, however, that he might well not be able to bring in a Revenue Bill at a very early date as both he and Inland Revenue officials were 'pretty fully occupied just now'.⁷³³ On 16 February 1921, Chamberlain told a deputation from the Federation of British Industries that he had hoped to introduce a Revenue Bill the previous year – but that had not been possible. Both he and his officials were very hardy worked, and it had not been possible for him to find the time to get that Bill drafted in time. Even if the Bill had been drafted, he could not have hoped to make progress with it in so crowded a Session. He was hoping, however, to introduce the Bill early in the present Session and to get it through.⁷³⁴ On 22 February 1921, the Revenue Bill was still due to appear; and Chamberlain was asked whether it would be taken on the floor of the House of Commons. He replied 'No. I shall ask the House to send it upstairs. That is the only hope of passing it. If the House treats it as a contentious measure it will not be proceeded with'. He also added, a little later, that 'the House must understand that if it is to be

⁷³³ HC Deb 19 April 1920, vol 128, col 92.

⁷³⁴ TNA file T 171/198. Transcript of the shorthand note made of a meeting between a Deputation from the Federation of British Industries and the Chancellor of the Exchequer, 16 February 1921, 20-1. Earlier, on 22 July 1920, one official had written to another that there was 'no immediate hurry so far as the Revenue Bill is concerned, as the Chancellor does not now anticipate the introduction of the Bill during the Autumn Session'. (TNA file T 171/201. Note, [Gower] to Niemeyer, 22 July 1920.) At a meeting held on 29 September 1920, according to another official, Chamberlain 'said he saw very little prospect of getting a Bill this Session and appeared to view without much favour a suggestion to introduce one early next year for passage in the first part of the Session'. (TNA file IR 63/99, fos 1-2. Note by Hopkins, dated 2 October 1920, of meeting held on 29 September 1920.)

treated as a contentious measure I cannot possibly hope to make progress with it this Session'.⁷³⁵

The Revenue Bill was finally presented to Parliament on 6 April 1921.⁷³⁶ The Bill faced hostile criticism, being the subject of resolutions passed by bodies of General Commissioners and of a campaign in the press.⁷³⁷ On 22 April 1921, the *Times*, which was opposed to the Bill, reported that Sir William Joynson-Hicks proposed to move, on the Second Reading in the Commons, that the House 'declines to give a second reading to a Bill which increases the powers of Government officials and reduces the safeguards provided by the Constitution for the taxpayers of the country'.⁷³⁸ The Revenue Bill was accordingly due to be treated as a contentious measure – a state of affairs likely to be fatal for its enactment. With opposition both inside and outside Parliament, the Revenue Bill was withdrawn.⁷³⁹

The role played by Austen Chamberlain in the failure to enact the Revenue Bill of 1921 is difficult to assess. At one end of the spectrum of possibility is the view that Chamberlain was a keen supporter of the Bill. This view, however, has difficulties: because, if so, Chamberlain may be accused of incompetence – first for an absence of zeal in causing the Bill to be prepared and then for a display of poor judgment in Parliament. (Those opposed to the Bill were told precisely what they had to do to cause the Bill to be abandoned.) At the other

⁷³⁵ HC Deb 22 February 1921, vol 138, cols 760 and 761.

⁷³⁶ HC Deb 6 April 1921, vol 140, cols 279-80. For further details on the contents of the Revenue Bill of 1921 and on its fate see JHN Pearce, 'The Role of Central Government in the Process of determining liability to Income Tax in England and Wales: 1842-1970' in J Tiley (ed), *Studies in the History of Tax Law: Volume 3* (Oxford, Hart, 2009) 341-3.

⁷³⁷ Evidence of hostility from General Commissioners may be found in TNA file IR 40/2622 and TNA file IR 74/36. There is a collection of press cuttings relating to the Bill in TNA file IR 74/36. The roles of the General Commissioners and the press are considered further in chapter 6, sections 3 and 4 below.

⁷³⁸ *Times* (London, 22 April 1921) 10, col g.

⁷³⁹ HC Deb 4 May 1921, vol 141, cols 1045 and 1188.

end of the spectrum of possibility, it may be argued that the absence of zeal in the preparation of the Bill and Chamberlain's parliamentary performance should lead to the view that Chamberlain did not wish the Bill to make progress. This view, however, also has difficulties: for Chamberlain clearly indicated that he would like a Revenue Bill to be enacted.⁷⁴⁰

Chamberlain, ideally, would have liked the Revenue Bill to be enacted. On the other hand, he is likely to have been acutely conscious (probably much more so than the civil servants advising him) of the difficulties in the way of that ideal outcome. It may be taken as certain that Chamberlain was exceedingly conscious that the parliamentary timetable might not accommodate a general Revenue Bill – especially if it were to be opposed. Chamberlain would also be able to recall the failure to enact a Revenue Bill in 1913 and 1914: he had been the principal opposition Treasury spokesman at that time. There is also evidence that Chamberlain knew that the proposal to enable inspectors of taxes to make income tax assessments was dangerous terrain politically. In October 1919, having learned that a member of the Royal Commission, who was a General Commissioner, had become ill, Chamberlain wrote to the Chairman (Lord Colwyn) saying that he thought that the recommendations of the Commissioners, in so far as they might deal with the machinery of assessment or collection, would be very much strengthened if they were concurred in by an experienced Income Tax Commissioner. 'You may remember that on two or three occasions, notably under Mr. Gladstone and Lord Goschen, attempts were made to withdraw a large part of the powers of the Commissioners, but

⁷⁴⁰ See, for example, his remarks to the Federation of British Industries on 16 February 1921 (text around n 734 above).

met with so much opposition in the House of Commons that they had to be withdrawn'.⁷⁴¹

The evidence is consistent with the view that, as Chamberlain saw the matter, the enactment of the Revenue Bill was not a matter for which any significant sacrifices should be made. The surviving government records permit the conjecture that Chamberlain was careful to have no political or emotional capital invested in the Revenue Bill's successful enactment. On this view, the delay in preparing and presenting a Revenue Bill may readily be placed in a context where it may be taken as certain that Chamberlain, as Chancellor of the Exchequer, would have had many other matters to which he wished to give priority. The remarks made by Chamberlain in the House of Commons, however, cannot be explained away so easily. It may certainly be urged that those remarks may be considered to be unexceptionable as a statement of the government's position vis-a-vis its own legislative programme. It is nevertheless possible to take the view that it was not good judgment to specify, in such explicit detail, how those opposed to the Bill could defeat it. It was more difficult for governments to enact programme Bills (including Revenue Bills) than to enact Finance Bills. The overall result, in the case of the Revenue Bill of 1921, was that the Bill's prospects of being enacted were reduced so far that the Bill had to be abandoned. Whether this state of affairs may be attributed to Chamberlain's remarks in the House of Commons is a matter on which the surviving evidence does not permit an unequivocal view to be taken one way or

⁷⁴¹ TNA file T 172/985. Letter, Chamberlain to Colwyn, 17 October 1919. For the events alluded to, see M Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799-1914* (CUP 2001) 196-7. In the House of Commons in 1913, Chamberlain had said that 'I think you will have to consider very carefully before you change the system of having District Commissioners. ... [A]lthough the District Commissioners may be unpopular as long as the present system exists, they begin to become popular when you propose to put others in their place'. (HC Deb 2 June 1913, vol 53, cols 676-7.)

the other. It may certainly be said, however, that Chamberlain's remarks can only have made the government's situation more difficult.

The evidence does not permit an unequivocal view to be taken on whether government ministers played a decisive role in the failures to enact Revenue Acts in 1913, 1914 and 1921. Revenue Bills were likely to be victims if the general insufficiency of parliamentary time caused the government's legislative programme to be truncated. On the other hand, the evidence demonstrates that neither Lloyd George nor Austen Chamberlain played the government's hand as well as it could have been played. Lloyd George, in 1913 and 1914, did much less work than could usefully have been done; and the introduction of the Bills into the House of Commons was accordingly delayed. Austen Chamberlain, in 1921, indicated precisely how those opposed to the Bill could defeat it. The forces opposed to the 1921 Bill went into action accordingly; and the Bill was abandoned. Government ministers were certainly implicated in the failures to enact these Bills.

(2) Government ministers and successes in enacting legislation

Government ministers might also play a decisive role in determining the form of the income tax legislation by causing progress to be made with the preparation and enactment of programme Bills and Codification Bills. During the period from 1907 to 1965 three government ministers played major roles in advancing such legislation: and the actions that will be investigated are those of the Chancellor of the Exchequer, Kingsley Wood, during the second world war, in encouraging the development of the legislation which enabled the PAYE scheme to be made; the actions of the Financial Secretary to the Treasury, Alan Green, in encouraging the development of the legislation enacted as the Taxes

Management Act 1964; and the actions of Winston Churchill, Chancellor of the Exchequer from 1924 to 1929, in devising plans to produce a Bill to codify income tax law.

In 1942 and 1943, Kingsley Wood, the Chancellor of the Exchequer, promoted developments which resulted in changes to the form of the income tax legislation: the enactment of two programme Acts⁷⁴² and a major extension of subordinate legislation.⁷⁴³ The developments were those leading to the introduction of the PAYE scheme;⁷⁴⁴ and Kingsley Wood promoted change in the form of income tax legislation by ensuring that alternatives to the existing system of compulsory deductions from the earnings of employees were investigated and developed. By the end of 1942 it was clear that the existing system was operating in circumstances where there had been a major expansion in the number of taxpayers – and significant administrative arrears.⁷⁴⁵ It was also the case that the existing system was viewed differently in different parts of government. The Inland Revenue appears to have believed that existing arrangements were working well and had full ministerial support. The Chancellor of the Exchequer and the departmental Treasury, however, were perfectly willing to consider other possibilities. On 1 February 1943, the Treasury asked for draft paragraphs for inclusion in the Chancellor's Budget speech;⁷⁴⁶ and the Inland Revenue submitted a draft which included the

⁷⁴² The Income Tax (Employments) Act (6 & 7 Geo 6 c 45) and the Income Tax (Offices and Employments) Act 1944 (7 & 8 Geo 6 c 12).

⁷⁴³ The Income Tax (Employments) Regulations 1944 (SR & O 1944/251).

⁷⁴⁴ For the development of the PAYE system, see generally RS Sayers, *Financial Policy 1939-45: History of the Second World War: United Kingdom Civil Series* (London, HMSO and Longmans, Green and Co, 1956) 99-111; and JHN Pearce, 'The Road to 1944: Antecedents of the PAYE Scheme' in J Tiley (ed), *Studies in the History of Tax Law: Volume 5* (Oxford, Hart, 2012).

⁷⁴⁵ The system of compulsory deductions had been created in 1940. For the events mentioned in the text, see Pearce (n 744) 200-4.

⁷⁴⁶ TNA file T 171/363. Note, Proctor to Gregg, 1 February 1943.

statement that 'the modifications which were made in the machinery of collection last year have proved to be successful and have contributed to a smooth collection of the tax'.⁷⁴⁷ Kingsley Wood, however, also received other information. On 6 March 1943, he was sent a note by a Treasury official who thought that he ought to consider the inclusion of some short statement relating to wage-earners' income tax in his Budget speech. On this point, the author thought that the real testing time was going to be the first year after the war, when overtime and high piece-work rates had come off. It was absolutely essential to post-war finances that the government should be able to maintain wage-earners' income tax as a permanency; but if, when the first year of lower earnings came, wage-earners had to pay tax on the previous year's income when earnings were right at their peak, there would be such an outcry that the whole wage-earners' tax system might collapse altogether. The only chance of carrying on wage-earners' income tax into the post-war period, the author thought, was to get it on to a current earnings basis before the drop in earnings came. The author also believed that the Inland Revenue only needed a little encouragement and a little more time to work out such a system; and that it would be an enormous help if the Chancellor could give some pointer in his Budget speech to say that he was looking ahead to the problem that would arise when earnings fell, and was closely examining the possibility of shifting on to a current earnings basis before that time came.⁷⁴⁸

Kingsley Wood's Budget statement in 1943 contained some material capable of being linked with the Inland Revenue draft – and other material capable of being linked with the Treasury note. As regards the latter, the Chancellor said that he

⁷⁴⁷ TNA file T 171/363. 'Income Tax – Wage Earners', 27 February 1943.

⁷⁴⁸ TNA file T 171/363. Note, PD Proctor to Chancellor of the Exchequer, 6 March 1943. Proctor was an Under Secretary at the Treasury.

had not overlooked the suggestions that had been made to levy the tax on the basis of current earnings. He had described the difficulties the previous year, and there had been general agreement that no scheme had so far been produced which would be equitable and practicable. The different situation that might arise on the return to peace-time conditions, however, should also be considered: for a considerable change-over in employment might be expected to take place. His advisers were now engaged in a close examination of this aspect of the matter and the consideration of a current earnings basis for the deduction of tax would not be ruled out of their deliberations.⁷⁴⁹ The Chancellor returned to this matter at the end of the Budget debate when he stated that 'the Board of Inland Revenue are now looking into this matter again and are aware of the desires of the House, and that if there is any possibility of some sort of solution, they are the expert body to provide such a scheme'.⁷⁵⁰

Kingsley Wood accordingly put the Inland Revenue under pressure to produce a scheme of this type. An Inland Revenue departmental committee, appointed 'to examine the possibility of introducing a system of deducting income tax on wages on the current earnings basis' considered that Sir Kingsley Wood's remarks at the end of the budget debate left no doubt that the Chancellor 'regards the introduction of such a system as a necessity, if the Income Tax in post-war years is to continue to apply to wage-earning classes'.⁷⁵¹ The report

⁷⁴⁹ HC Deb 12 April 1943, vol 388, col 946.

⁷⁵⁰ HC Deb 21 April 1943, vol 388, col 1772.

⁷⁵¹ TNA file IR 63/163. 'Report of the Committee appointed to examine the possibility of introducing a system of deducting income tax on wages on the current earnings basis', 21 May 1943. In this piece, the Report is at 1-35 and the passage quoted is at 2 (para 1).

then went on to outline a scheme that stands at the beginning of the direct road to the PAYE legislation.⁷⁵²

Sir Kingsley Wood was unquestionably committed to the advance of the PAYE scheme during the period that ended with his collapse and death on 21 September 1943; and, shortly before that date, he had set out his own priorities at a meeting with representatives of the British Employers' Confederation.⁷⁵³

The note of the meeting recorded that the Chancellor saw 'two compelling reasons' for the immediate introduction of a PAYE scheme. The first reason related to the administration of income tax: if a scheme were not introduced, there would be problems with tax receipts, compliance and (perhaps) the extent to which the income tax system was accepted by taxpayers – and especially if the war came to an end without such a scheme being introduced. Kingsley Wood's second reason, however, was that wage-earners should continue to make a contribution, through direct taxation, to the affairs of the state. The two reasons, taken together, produced results that involved important changes in the form of income tax legislation. Kingsley Wood, however, did not promote those changes in the form of income tax legislation as ends in themselves. The changes were part of a state of affairs that came into existence as the result of a course of action pursued for other operational reasons.

A government minister also acted to promote change in the form of the income tax legislation in 1963 and 1964 when Alan Green, the Financial Secretary to the Treasury, championed the Bill enacted as the Income Tax Management Act

⁷⁵² For the events from the signing of the Inland Revenue report on 21 May 1943 to the making of the PAYE Regulations on 9 March 1944, see Pearce (n 744) 208-17.

⁷⁵³ TNA file T 171/366, item 9. Note on interview with representatives of the British Employers' Confederation, 17 September 1943. Kingsley Wood is recorded as saying that 'he would speak frankly to ... the Confederation in a manner which might not be possible in a public speech'. (ibid.)

1964. Green became Financial Secretary in the autumn of 1963 as part of the ministerial reorganisation following Home's accession to the premiership; and found that the Inland Revenue were keen that an Income Tax Management Bill should be enacted. He was introduced to the Bill shortly after his arrival at the Treasury;⁷⁵⁴ and wrote on 5 November that 'I shall be glad to seek to push this forward'.⁷⁵⁵

There can be no doubt that Green was keen to advance the cause of the Income Tax Management Bill. He set out his approach in a note to the Chancellor of the Exchequer (Maudling), dated 18 December 1963, and stated that he was convinced that the government should make every effort to get this Bill on to the statute book, not only because of its own intrinsic merits – which he personally thought were considerable – but also because it would establish and, he hoped, justify, the principle that detailed consideration of legislation on administrative matters which might otherwise only lengthen overcrowded Finance Bills was better removed from the floor of the House of Commons and taken upstairs in Committee. If Maudling agreed, he proposed to continue to press for a place to be found for this Bill in the government's legislative programme for that parliamentary session.⁷⁵⁶ It may be inferred that Maudling was content to let Green go ahead in the manner that he proposed.⁷⁵⁷

Among government ministers, Green went on to take the leading role in the development and enactment of the Income Tax Management Bill. He engaged

⁷⁵⁴ TNA file IR 40/13351. Part 4. Note, [Battishill] to [Financial Secretary], 'The Income Tax Management Bill', 25 October 1963.

⁷⁵⁵ TNA file IR 40/13351. Part 4. Manuscript note by Green, 5 November 1963 (on the note to him dated 25 October 1963).

⁷⁵⁶ TNA file IR 40/13351. Part 4. Note, Green to Chancellor of the Exchequer, 18 December 1963.

⁷⁵⁷ On Green's note, in red biro, there is a tick, the date '20/12', and a squiggle which may be taken to be Maudling's initials. See also text around n 706 above.

in correspondence with the chairman of the Legislation Committee, the Lord Chancellor (Dilhorne), who was very reluctant to introduce the Bill.⁷⁵⁸ Green and the Inland Revenue, however, continued to persevere. A note dated 19 November 1963 recorded Green's hope that the Chancellor of the Exchequer 'may feel that he can keep this simmering at least'.⁷⁵⁹ Maudling approached the leader of the House of Commons (Selwyn Lloyd) who was 'entirely sympathetic towards the Bill';⁷⁶⁰ and the Income Tax Management Bill was considered at the meeting of the Legislation Committee held on 17 December 1963, where Green was 'invited to consider further important points of principle on the Income Tax Management Bill'. Further work, however, resulted in the Bill being cleared by the Legislation Committee at a meeting held on 14 January 1964; and the Income Tax Management Bill was presented to the House of Commons on 4 February 1964,⁷⁶¹ and published. On 12 February 1964, Green opened the proceedings on behalf of the government when the Bill had an unopposed Second Reading in the House of Commons;⁷⁶² and, on 19 June, the Bill received the Royal Assent and became the Income Tax Management Act 1964. The manner in which Green and the Inland Revenue worked together on the Income Tax Management Bill constituted an excellent example of the partnership between government minister and civil service as that partnership was ideally conceived.⁷⁶³ The Inland Revenue supplied detailed knowledge and

⁷⁵⁸ TNA file IR 40/13351. Part 4. Letters, Green to Dilhorne, 6 November 1963 and Dilhorne to Green, 11 November 1963.

⁷⁵⁹ TNA file IR 40/13351. Part 4. Note, Battishill to Caulcott, 'Income Tax Management Bill', 19 November 1963.

⁷⁶⁰ TNA file IR 40/13351. Part 4. Note, Mitchell to Corlett, 'Income Tax Management Bill', 27 November 1963.

⁷⁶¹ TNA file IR 63/229, prefatory page and 2.

⁷⁶² HC Deb 12 February 1964, vol 689, cols 387-429.

⁷⁶³ See text around ns 646-53 above. See also chapter 3 above, text around ns 424-7.

information; and Green successfully presented the case for the Bill, both to his colleagues in government and to the House of Commons.⁷⁶⁴

Green's championing of the Income Tax Management Bill was essential for its enactment: and it is quite clear from his note to Maudling, dated 18 December 1963, that he took a personal interest in this Bill. The question then arises why he did so. The evidence does not establish that any one consideration was decisive: and the truth may be that, from Green's point of view, a number of different considerations all pointed towards the same overall result. There is no reason to doubt his statement that he believed in the considerable intrinsic merits of the Bill, or his statement that he wished to justify the principle that detailed consideration of legislation on administrative matters could be removed from Finance Bills and considered instead in committee. Beyond that, however, Green must have been aware that, with a general election imminent, which the Conservative government might well lose, and as an MP for a marginal constituency,⁷⁶⁵ his ministerial career might end in the foreseeable future – with highly uncertain prospects of ever being resumed. As a middle-ranking government minister, he may have welcomed a convenient opportunity, presented to him, of being able to make a distinctive contribution.⁷⁶⁶

⁷⁶⁴ On 13 February 1964, the day following the Second Reading debate in the House of Commons, Green wrote to the Chairman of the Board of Inland Revenue to let him know how greatly he appreciated the department's 'careful and prescient' briefing on the Bill. 'It would be difficult for a Minister to ask for more both before and during the Debates'. TNA file IR 40/13351. Part 3. Letter, Green to Johnston, 13 February [1964].

⁷⁶⁵ At the general election in October 1964, Green was defeated in his Preston constituency.

⁷⁶⁶ Green's own papers relating to the Income Tax Management Bill have been preserved as a distinct part (Part 4) of the Inland Revenue's principal collection of papers relating to that Bill (TNA file IR 40/13351). A typed note at the top of one part of this collection, dated 7 September 1964, records that the papers in question had been supplied by the Office of the Financial Secretary to the Treasury, and formed one complete set of all the papers relating to the Income Tax Management Bill which Green had received. It was thought that there was some point in keeping those papers together, and placing them with the Department's own records, even though this entailed overlapping in the documents retained. It is only from the preservation of

A government minister also acted to promote change in the form of income tax legislation during the period from 1924 to 1929 when Winston Churchill was Chancellor of the Exchequer. During these years, a committee was set up, charged with the task of drafting legislation to codify income tax law. That codification, if successfully carried out, would make a fundamental change in the form of the income tax legislation: for there would be a new principal Act relating to income tax; and the preparation and enactment of such an Act would be a more ambitious undertaking than the enactment of a new consolidation Act. Churchill's sponsorship of the scheme which included the setting up of the Codification Committee accordingly constituted the most dramatic case in which the default setting within which the United Kingdom polity operated was overridden.⁷⁶⁷ The overriding of that default setting, however, was no easy matter. It was only possible to bring the scheme that Churchill sponsored into operation at the end of a process which was protracted and fraught, and which had several stages.

Churchill had indicated his interest in income tax simplification fairly soon after becoming Chancellor: for, on 27 October 1925, Sir Richard Hopkins, the Chairman of the Board of Inland Revenue, sent Churchill 'some observations as desired by you on the complexity of the Income Tax system and the practicability of remedial measures'. Hopkins's analysis was acute: but he nevertheless believed that little could be done.⁷⁶⁸ Churchill was unconvinced. A note dated 12 January 1926 indicated his unease about the expansion of

this source that the importance of Green's own contribution may be gauged. This feature of the surviving documentation was noted in chapter 1 (text around ns 116-7).

⁷⁶⁷ For the default setting, see the conclusion to chapter 2 above.

⁷⁶⁸ TNA file IR 63/114, fos 318-31. Memorandum, with covering note, Hopkins to Churchill, 27 October 1925. Hopkins's memorandum was considered in chapter 3, section 2(1), text around ns 376-9. See also text around n 791 below.

central government. 'At the root of the whole of this matter lies the only possible remedy in a revolutionary alteration in the methods of Income Tax law and collection'; and Churchill, accordingly, was 'determined to search continually during the present year for the means of effecting fundamental simplification'.⁷⁶⁹

The devising of a scheme to simplify income tax – a scheme which included the plan to codify income tax law – began with the establishment of conditions permitting the devising of a viable scheme; and much time and effort had to be expended before those conditions were met. Churchill had an undoubted general wish to simplify the income tax system – and that general wish gave rise to general ideas. Inland Revenue officials, however, were obliged to examine each proposal separately and in detail – and to consider its administrative viability. From the point of view of those officials, any particular proposal that Churchill advanced might have technical defects – which they then proceeded to specify. Churchill, in his turn, was accordingly prompted to take the view that the officials' attitude was unconstructive and obscurantist. A report from an Inland Revenue departmental committee, dated 18 December 1925, was opposed to a proposal that Churchill had advanced.⁷⁷⁰ On 27 December 1925, Churchill replied in a minute, sharply critical of the departmental committee and its report. The report was 'disappointing'; and the committee was accused of holding the view that 'a system of taxation so complicated and elaborate that very few tax payers can understand it ... is the

⁷⁶⁹ M Gilbert, *Winston S. Churchill: Volume V, Companion Part I: Documents: The Exchequer Years: 1922-1929* (London, Heinemann, 1979) 631. Note, Churchill to Hopkins and Hamilton. (Sir Horace Hamilton was the Chairman of the Board of Customs and Excise.)

⁷⁷⁰ TNA file T 171/255, fos 3-40.

last word in efficiency and simplicity'.⁷⁷¹ During the early part of his chancellorship, therefore, not only was there tension between Churchill and Inland Revenue officials: relations between the two sides may be described as poor. The evidence suggests that this state of affairs resulted from the inability of each side to communicate effectively with the other. The overall outcome in the spring of 1926 was that Churchill had no significant progress to report. He told the Attorney-General (Hogg) that an Inland Revenue committee had 'up to the present ... not met with the success that I had hoped'.⁷⁷² On 26 April 1926, in his Budget speech, Churchill stated that everyone sought the simplification of the income tax. He had an expert committee sitting continuously under his personal direction, and trusted, some day, to be able to frame extensive proposals. 'All I can say at present is that the difficulties do not diminish with careful study'.⁷⁷³

During the spring and summer of 1926, however, Inland Revenue officials and Churchill made major progress in reaching a common understanding about the features of plans for the simplification of income tax – and how those plans might be devised. Churchill met the members of the Inland Revenue departmental committee on 22 March 1926;⁷⁷⁴ but no contemporary note of this meeting, made by an individual who was present, is known.⁷⁷⁵ The major report later submitted by the departmental committee recorded that, at this meeting, Churchill 'expressed a wish that the Committee should, if possible, submit for

⁷⁷¹ TNA file T 171/255, fos 109-14. Minute, Churchill to Hopkins, 27 December 1925.

⁷⁷² TNA file IR 63/114, fos 698-9. Letter, Churchill to Hogg, 31 March 1926.

⁷⁷³ HC Deb 26 April 1926, vol 194, col 1704.

⁷⁷⁴ TNA file T 171/255, fos 171-2. Note, Thompson to Churchill, March 1926. See also Churchill's minute on that document.

⁷⁷⁵ It would be interesting to know whether the 'tone' of the meeting was pleasant (constructive) or unpleasant (abusive) so far as the Inland Revenue representatives were concerned. Either alternative appears possible. It is possible that discussion was both informal and scattered – and that no systematic note of the meeting was ever made.

consideration their own constructive proposals for simplifying the Income Tax and Super-tax'.⁷⁷⁶ In forwarding that later report to Churchill, Hopkins's own submission included the comment that, in earlier conversations, Hopkins had understood Churchill to say that, if the committee found it necessary to propose that effect should be given to the recommendations of the Royal Commission on the Income Tax for curtailment of the routine and administrative functions of the local Commissioners and their officers, then Churchill would be prepared to face the serious parliamentary opposition to which such proposals were likely to give rise.⁷⁷⁷ When there was an understanding that possible parliamentary opposition could be faced – but only when there was such an understanding – plans to simplify income tax could aim to accomplish a significant amount.

The establishment of conditions permitting the devising of a viable scheme was accordingly followed by the devising of such a scheme: and, on this matter, the major report from the Inland Revenue departmental committee was dated 14 October 1926.⁷⁷⁸ It was this report which proposed a plan to simplify income tax; and which included a proposal that income tax law should be codified.⁷⁷⁹

The report proposed 'the initiation of measures for the codification of the Income Tax statutes with a view to their re-expression in a simpler and more modern

⁷⁷⁶ 'Report Of a [Departmental] Committee ... ' (n 778 below) para 3.

⁷⁷⁷ TNA file T 171/255, fos 222-37, 231. Submission, Hopkins to Churchill, 27 October 1926, para 15.

⁷⁷⁸ TNA file T 171/255, fos 238-316. 'Report Of a [Departmental] Committee appointed to consider the Simplification of the Income Tax and Super-tax'. This Report is dated 14 October 1926.

⁷⁷⁹ So far as the plan to simplify income tax was concerned, the departmental committee's 'scheme of simplification' consisted of proposals for changes both in the charge to income tax and in the administration of the tax. The committee proposed a rationalisation of the charge to tax, with income taxed by deduction being charged on a current year basis and other income on a preceding year basis. The committee also proposed that income tax and super-tax should be combined in a single tax, with super-tax (a tax that was legally distinct from income tax) being replaced by surtax, a deferred instalment of income tax. As regards the administration of income tax, the committee envisaged that a taxpayer would complete a single return annually. This return would be issued by the Inland Revenue and would be returned to that department. (See, in particular, paras 22 and 23 of the Departmental Committee Report (n 778 above).)

and intelligible form'.⁷⁸⁰ This proposal, if successfully implemented, was obviously capable of being of the utmost importance for the form of income tax legislation.

The departmental committee's plan then needed to be accepted: and, on this matter, it may be inferred that Churchill's initial reaction to the simplification scheme proposed in the departmental report was not particularly favourable. In a submission to him a little later, Hopkins wrote that Churchill had asked for another proposal to be examined.⁷⁸¹ That proposal was referred to the departmental committee; and was the subject of a report dated 22 November 1926.⁷⁸² The committee saw technical difficulties in this proposal and did not favour its adoption; and, in time, Churchill came to share this view.⁷⁸³ His minute to Hopkins, giving his official final verdict on the simplification scheme, was dated 26 January 1927.⁷⁸⁴ He had now read and re-read the whole of the income tax simplification papers. 'Let me first of all thank you and the Committee for the great care and thought they have given to this subject and

⁷⁸⁰ TNA file T 171/255, fos 222-37, 222. Submission, Hopkins to Churchill, 27 October 1926, para 2.

⁷⁸¹ TNA file T 171/255, fos 330-2. Note, Hopkins to Churchill, 1 December 1926. Churchill's views at this point may be taken to be reflected in a document entitled 'Rule of Thumb Principles (for consideration)'. The document is undated and has nothing on its face to indicate authorship; but it has been typed, using a font often used for Churchill's own documents, on the small sheets of paper which Churchill often used. It is accordingly considered safe to infer that this document was produced by Churchill himself, or by someone else acting with his approval. (TNA file T 171/255, fos 317-9).

⁷⁸² TNA file T 171/255, fos 320-9. Report of the Departmental Committee to the Chairman of the Board of Inland Revenue, 22 November 1926. The Report was transmitted to Churchill under cover of a submission to him from Hopkins dated 1 December 1926. (ibid fos 330-2.)

⁷⁸³ The departmental committee considered that the proposal was inapplicable to small incomes; that it presented great practical difficulties in relation to large incomes; that it was unfair in its operation in the case of fluctuating incomes; that it was more complex and difficult for the taxpayer to manage than the existing system; and that it involved a serious loss of tax with a consequent necessity to increase the scale of rates. At the end of Churchill's copy of the Report is his manuscript annotation 'I agree. W.S.C. 25.1[.1927]'. (TNA file T 171/255, fo 329.)

⁷⁸⁴ Churchill spent the end of 1926 and the beginning of 1927 abroad; and completed his study of the material relating to income tax simplification towards the end of that time. M Gilbert, *Winston S. Churchill: Volume 5: 1922-1939* (London, Heinemann, 1976) 222-9.

congratulate them upon the result, albeit modest, which they have achieved'.⁷⁸⁵

The words 'albeit modest' may be noted. They permit the inference that Churchill might ideally have wished to sponsor a larger simplification scheme than the one actually introduced.⁷⁸⁶

The scheme devised was finally implemented. The proposals comprised in the simplification scheme were enacted in the Finance Act 1927;⁷⁸⁷ and it is clear that both Churchill and Inland Revenue officials took trouble to ensure that these proposals reached the statute book safely.⁷⁸⁸ So far as the codification of the income tax legislation was concerned, Churchill told the House of Commons during his 1927 Budget Speech that he proposed to ask a body of experts to undertake this task.⁷⁸⁹ The Codification Committee was set up; and had its first meeting in 1927.⁷⁹⁰ 'I approached this quest at the outset with only modest hopes of success' Hopkins told Churchill during the autumn of 1926 – but the overall success of the initiative to simplify income tax obviously exceeded Hopkins's expectations.⁷⁹¹ Churchill could depart from office in 1929 able to say that, on this topic, at least, his work was done.

Churchill's achievement in causing the Income Tax Codification Committee to be set up was possible because a number of conditions were all met. Churchill was an effective departmental minister. 'There is no more capable chief of a

⁷⁸⁵ The original of this document is in TNA file IR 40/15963. There is a copy in TNA file T 171/255, fos 333-5; and the document is printed in the Companion volume (n 769) 926-7.

⁷⁸⁶ The explanation given here as to how Churchill's plans for income tax simplification came to be devised differs from that given in M Daunton, *Just Taxes: The Politics of Taxation in Britain 1914-1979* (CUP 2002) 111-2. Among other matters, it is considered that Daunton exaggerates the Inland Revenue's hostility to simplification and the extent to which Churchill himself devised the plans that were implemented.

⁷⁸⁷ 17 & 18 Geo 5 c 10.

⁷⁸⁸ The steps taken to conciliate interest groups and the press are considered below in chapter 6, sections 3 and 4 respectively.

⁷⁸⁹ HC Deb 11 April 1927, vol 205, cols 84-5.

⁷⁹⁰ The activities of the Codification Committee are considered in chapter 6, section 1, below.

⁷⁹¹ TNA file T 171/255, fo 227. Submission, Hopkins to Churchill, 27 October 1926, para 9.

department than he is', Christopher Addison wrote of him during the period of the Lloyd George coalition.⁷⁹² In the judgment of one present-day historian, in one sense Churchill was 'a civil servant's ideal minister: decisive, self-confident, industrious and battling hard for his policies at cabinet level'.⁷⁹³ It was also the case that Churchill himself wished action to be taken to simplify income tax.⁷⁹⁴ More than that: it has been said that it 'was not only that Churchill sought bold initiatives: he sought a theme or programme in which a number of different proposals were combined'.⁷⁹⁵ Neville Chamberlain's less than ecstatic comment was that Churchill was a man 'of tremendous drive and vivid imagination but obsessed with the glory of doing something spectacular which should erect monuments to him'.⁷⁹⁶

Churchill also succeeded in making the transition from the capacity and wish to take action to the devising and implementation of a particular scheme. This condition was not easily met. Churchill had many ideas – but those ideas were of unequal value. One comment, made by Lloyd George, was that 'he's got ten ideas and one of them is right, but he never knows which it is'.⁷⁹⁷ Of the ideas that Churchill did have, many were far from the state where they constituted viable administrative programmes. Proposals considered by the Inland Revenue departmental committee fall into this category.⁷⁹⁸ In 1928, Churchill

⁷⁹² Quoted in Theakston (n 687) 159.

⁷⁹³ *ibid* 155.

⁷⁹⁴ See above, text before ns 768-9.

⁷⁹⁵ P Addison, *Churchill on the Home Front: 1900-1955* (London, Jonathan Cape, 1992) 128.

⁷⁹⁶ Gilbert, *Companion* volume (n 769) 264 (diary entry for 26 November 1924).

⁷⁹⁷ Quoted in R Toye, *Lloyd George & Churchill: Rivals for Greatness* (London, Macmillan, 2007) 380. According to Attlee, there was some truth in this comment. (*ibid.*)

⁷⁹⁸ See above, text around ns 770-2 and 781-3. This state of affairs had also been in existence earlier, in 1910 and 1911, when Churchill had been Home Secretary. Sir Edward Troup, the Permanent Secretary at the Home Office, recorded that '[o]nce a week or oftener Mr Churchill came to the office bringing with him some adventurous or impossible projects; but after half an hour's discussion something was evolved which was still adventurous but not impossible'. Addison (n 795) 128.

had ideas for the derating of business premises. Neville Chamberlain's less than ecstatic comment on Churchill's plan was that it was 'dangerous because as usual it is only the idea he has got. He has nothing worked out but he gets so enamoured with his idea that he won't listen to difficulties or wait until plans have been made to get over them. It's like Gallipoli again'.⁷⁹⁹ One present-day historian has written of Churchill that he was 'impulsive, erratic, capricious, argumentative and domineering – he was never an easy minister to work for and at times he could be pretty impossible'.⁸⁰⁰ Neville Chamberlain's less than ecstatic comment was that 'not for all the joys of Paradise would I be a member of his staff! Mercurial! a much abused word, but it is the literal description of his temperament'.⁸⁰¹ In 1927, however, other characteristics of Churchill's enabled a constructive outcome to be produced. Churchill was able to reach the conclusion that one particular course of action was the best available – and then to go into action accordingly.⁸⁰² his final response to the departmental committee's report is an illustration of this trait.⁸⁰³ Churchill was also able to persist in a proposed course of action in circumstances in which others might have abandoned the struggle. 'Only someone with Churchill's bloody-mindedness and tenacity would have persevered' is one verdict on Churchill's actions in 1927.⁸⁰⁴

⁷⁹⁹ Addison (n 795) 278.

⁸⁰⁰ Theakston (n 687) 155.

⁸⁰¹ Neville Chamberlain to Baldwin, summer 1925. Quoted in Gilbert (n 784) 132.

⁸⁰² Colville recalled that Churchill was open to persuasion, although it often needed courage to press the point. 'He did need restraining and one of his virtues was that pertinaciously though he might contest an issue, tirelessly though he might probe, he did not reject restraint once he had convinced himself that the arguments for caution were neither craven nor bureaucratic. Unless he was so convinced, he was not susceptible to influence even by his closest friends and advisers. ... Nevertheless ... however much Churchill was determined to make up his mind, he seldom refused to listen and he was always prepared to weigh a good argument from whatever source it came'. Quoted in Theakston (n 687) 168.

⁸⁰³ See text around ns 784-6 above.

⁸⁰⁴ Daunton (n 786) 112.

The successful devising of the scheme to simplify income tax and to codify income tax law, however, is a matter that has received little attention and still less praise: and this relative neglect may be attributed to the contexts in which the initiative is likely to be placed. One context is that of Churchill's career as a whole: and, in that context, the view has been taken that '[in] home affairs the opening and closing phases of Churchill's career – before 1914 and after 1940 – were the most successful'.⁸⁰⁵ During the inter-war period, Churchill is often considered to have been less successful. In the more immediate context of Churchill's tenure of the office of Chancellor of the Exchequer from 1924 to 1929, Churchill's record may also be regarded as far from perfect. Much attention has been given to the decision, in 1925, to return the United Kingdom to the gold standard at the pre-war parity – and that decision has always had major critics. In 1928, Churchill devoted energy to the subject of derating – but less was accomplished than had been hoped.⁸⁰⁶ Churchill's actions in 1927 were also viewed unenthusiastically by one knowledgeable contemporary. Writing of the 1927 Budget, PJ Grigg, Churchill's Private Secretary during this period, viewed the 'ambitious alteration' in the structure of income tax as 'a side dish'. 'Probably none of this was worth the administrative and legislative effort it absorbed'.⁸⁰⁷ The view taken here is much more favourable: but, even so, the scheme to simplify the income tax system (involving the codification of income tax law) may be regarded as being in the nature of an exception to an exception: an episode deserving of more praise within a period deserving of less praise.

⁸⁰⁵ Addison (n 795) 433.

⁸⁰⁶ *ibid* 278-80.

⁸⁰⁷ Grigg (n 691) 199.

The other context in which Churchill's plans to simplify income tax is likely to be placed is that of the history of income tax. In this context, subsequent events may be described as unkind. The Income Tax Codification Committee, although it finally produced a draft Bill to codify the law of income tax, did not produce a draft Bill that was enacted.⁸⁰⁸ Then, during the second world war, the overall approach to the charge to income tax contained in the 1927 simplification scheme – that income received under deduction of tax should be taxed on a current year basis while other income was taxed on a preceding year basis – gained nothing in coherence, and quite possibly lost coherence, with the introduction of the PAYE system (which had its own different rationale). The scheme for the simplification of income tax, which involved the codification of income tax law, was not therefore completed as envisaged; and then disappeared from view, obscured by later events.

Conclusion

The evidence demonstrates that it was very difficult for government ministers to determine the form of the income tax legislation. The extent of the demands placed on ministers, and the extent of the qualities that effective ministers needed to display, made it very unlikely that ministers would have the capacity to be a significant determinant of that form. Ministers could take the initiative on very few fronts at any one time: and the budget cycle and their general oversight of the Treasury departments made it very unlikely that they would wish to make the form of the income tax legislation one of those fronts. It was

⁸⁰⁸ The actions of the Codification Committee are considered in chapter 6, section 1, below.

very unlikely, in practice, that government ministers would override the default setting within which the United Kingdom polity operated.⁸⁰⁹

Government ministers had too much to do. Lloyd George was overcommitted in 1913 and 1914; and it was easy for Austen Chamberlain to postpone serious consideration of the Revenue Bill in 1920. The general Revenue Bills over which they presided were not enacted. The burden of office could lead to a minister becoming less effective – as happened, perhaps, to Thorneycroft and Heathcoat Amory.⁸¹⁰ Hailsham, in 1962, was concerned about ‘the increasing physical and moral strain on Ministers’, which converted them into ‘administrative machines’.⁸¹¹ Even if they acted as ‘administrative machines’, however, there was insufficient time for ministers to undertake all the government business that could usefully be undertaken: and there were many matters – including the form of the income tax legislation – that received less attention than they could usefully have received.

Despite all these difficulties, government ministers could still determine the form of the income tax legislation. Kingsley Wood played a major role during the second world war; and Alan Green in 1963 and 1964. Both these ministers, however, concerned themselves with business that was already in existence; and it is likely that they had a number of different reasons for acting as they did. In Kingsley Wood’s case, furthermore, the role played by the government minister did not have the making of any change in the form of the income tax legislation as a significant part of its overall purpose: changes in the form of the

⁸⁰⁹ For the default setting, see, in particular, the conclusion to chapter 2 above.

⁸¹⁰ See text around n 671-2 above.

⁸¹¹ See text around n 673 above.

income tax legislation were by-products of a course of action undertaken to accomplish other objectives.

Churchill's course of action in promoting and sponsoring the scheme for the simplification of income tax, which had a proposal to codify income tax law as one of its components, was, by contrast, totally exceptional. There is no reason to think that either the general simplification scheme or the more particular codification proposal would have been given any significant attention had Churchill not been interested in making major changes to income tax law and practice – and taken action accordingly. This was a very clear overriding of the default setting within which the United Kingdom polity operated, undertaken by a man who was the master of his ministry. The enactment of a codifying statute would effect a complete transformation of the form of the income tax legislation. The successful devising of income tax law, however, depended not on actions taken within government, but on the actions to be taken by the Income Tax Codification Committee – a body belonging not to government, but to Amery's 'nation'.

CHAPTER 6: THE ROLE PLAYED BY DETERMINANTS FORMING PART OF AMERY'S 'NATION'

'The one force which is irresistible in the country is the electorate'.⁸¹²

Introduction

Amery viewed the United Kingdom polity in terms of a parley, taking place in Parliament, between the 'government' and the 'nation'.⁸¹³ The last three chapters have investigated the role played, in determining the form of the income tax legislation, by three important possible determinants within 'government'. This chapter investigates the role played, in determining the form of the income tax legislation, by five important possible determinants, which, on Amery's analysis, formed part of the 'nation': the Income Tax Codification Committee; Members of Parliament; interest groups; the press; and public opinion. These possible determinants are considered in that order – an order reflecting travel away from central government. A majority of them were mentioned in a note from the Prime Minister (Attlee), in 1946, which was clear that officials should be alive to the need to bring various features in subordinate legislation to the minister's notice: the features in question included those 'which might give rise to criticism by the public or in the press or to opposition in Parliament'.⁸¹⁴

⁸¹² Memorandum, dated 29 March 1910, in the Elbank papers. Quoted in AM Gollin, *The Observer and J.L. Garvin 1908-1914* (OUP 1960) 183.

⁸¹³ LS Amery, *Thoughts on the Constitution* (OUP 1947) esp ch 1. See also chapter 1 above, text around ns 139-41.

⁸¹⁴ TNA file PREM 8/153. 'Control of subordinate legislation by the Legislation Committee: Note by the Prime Minister', 17 June 1946. This piece also discloses that Attlee approved a draft document submitted to him; and, at this point, the document partly follows remarks made by Morrison at a meeting of the Legislation Committee on 4 June 1946.

It was explained in chapter 1 that the ascertainment of the determinants of the forms of income tax legislation would be carried out not only by investigating legislation that reached the statute book, but also by investigating legislation that was prepared but not enacted. The latter possessed defects which prevented its enactment – and the ascertainment of those defects provides important information for ascertaining the determinants of the forms of income tax legislation.⁸¹⁵ In this chapter, two Bills that were prepared but not enacted receive detailed investigation in order to ascertain those defects: the draft Bill produced by the Income Tax Codification Committee in 1936; and the Revenue Bill of 1921. The latter throws much light on the roles played by Members of Parliament, interest groups and the press.

1. The Income Tax Codification Committee

The Income Tax Codification Committee (the ‘Codification Committee’) was one outcome of Churchill’s scheme for the simplification of income tax.⁸¹⁶ In his 1927 Budget speech, Churchill stated that an attempt should be made to rewrite the Acts governing the income tax in a clearer and more intelligible form; and that he proposed ‘to ask a body of experts of the highest qualifications to take the task in hand. Their labours will be long, but I hope when they fructify the fruits will be found to be both rare and refreshing’.⁸¹⁷ The Codification Committee was then set up to ‘prepare a draft of a Bill or Bills to codify the law relating to Income Tax’.⁸¹⁸

⁸¹⁵ See chapter 1 above, text before n 43.

⁸¹⁶ For Churchill’s scheme, see chapter 5, section 3(2), above. For an account of the activities of the Codification Committee and of the aftermath, see JHN Pearce, ‘The Income Tax Law Rewrite Projects: 1907-56’ in J Tiley (ed), *Studies in the History of Tax Law: Volume 6* (Oxford, Hart, 2013) 148-59. The contents of this section reflect that account.

⁸¹⁷ HC Deb 11 April 1927, vol 205, cols 84-5.

⁸¹⁸ Income Tax Codification Committee, *Report: Volume 1: Report and Appendices* (Cmd 5131, 1936) 7, para 2. The full terms of reference were ‘[t]o prepare a draft of a Bill or Bills to codify

The Codification Committee was exceedingly well placed to make a contribution of the utmost importance to the determination of the form of the income tax legislation. It was charged with the task of preparing the draft of a new principal Act relating to income tax; it obviously wished to prepare such a draft; and a draft Bill to codify income tax law was eventually produced. The Codification Committee, under the chairmanship first of Sir Frederick Liddell and then of Lord Macmillan, finally reported in March 1936. Lord Macmillan, in his autobiography, described the Report as 'a formidable document in two parts'.⁸¹⁹ The first part⁸²⁰ ran to 541 pages and contained the report itself (consisting of a general introduction, a detailed discussion of special topics, and the Committee's conclusion) followed by five appendices, one of which dealt, clause by clause, with the Committee's draft Bill. The second part⁸²¹ contained the text of the Committee's draft Bill, which, in 417 clauses and eight schedules, presented a complete recasting and codification of the whole of the existing income tax law.

The draft Bill produced by the Codification Committee, however, was never enacted. Presented with an open goal, the Codification Committee failed to score. The question arising, therefore, is why the Codification Committee failed to take advantage of the obvious opportunity, placed before it, to make a major impact on the form of the income tax legislation.

the law relating to Income Tax, with the special aim of making the law as intelligible to the taxpayer as the nature of the legislation admits, and with power for that purpose to suggest any alterations which, while leaving substantially unaffected the liability of the taxpayer, the general system of administration and the powers and duties of the various authorities concerned therein, would promote uniformity and simplicity'. (ibid.)

⁸¹⁹ Lord Macmillan, *A Man of Law's Tale* (London, Macmillan, 1953) 200-1.

⁸²⁰ Income Tax Codification Committee, *Report: Volume 1: Report and Appendices* (Cmd 5131, 1936) (subsequently cited in this chapter as 'Codification Committee Report').

⁸²¹ Income Tax Codification Committee, *Report: Volume 2: Draft of an Income Tax Bill* (Cmd 5132, 1936).

It has been seen that if a Bill constituting a major restatement of the law on a particular topic – a restatement going beyond the consolidation of the existing legislation – was actually to be enacted by Parliament, it was essential for that Bill to be presented to Parliament in a form which had the support of all relevant major interests, both inside and outside government. A Bill with such support could be enacted as it stood (or with minor amendments) and would not absorb much precious parliamentary time.⁸²² A Bill without such support was virtually certain to require more parliamentary time than would be available – and, accordingly, would not be enacted. The Codification Committee's failure may be traced to a failure to produce a Bill that had the support of all major interests; and the explanation for that failure falls into two parts. The Committee prepared a draft Bill that did not have the wide measure of support that was essential: for that draft Bill did not have adequate support from one all-important 'consumer' – the Inland Revenue. The parliamentary prospects for an amended Codification Bill were then so uncertain that no such Bill was ever introduced.

The Codification Committee consisted entirely of lawyers; and its members may be divided into those in private practice and those in government service. The lawyers in private practice were AM Bremner, a barrister specialising in revenue law; RP Hills, the Junior Revenue Counsel; and EM Konstam, the author of a leading work on *The Law of Income Tax*.⁸²³ The lawyers in government service were Sir Frederick Liddell, the First Parliamentary Counsel (who was about to retire); Sir William Graham-Harrison,⁸²⁴ the Second Parliamentary Counsel; and

⁸²² See chapter 2, section 2(4), above, text around n 303.

⁸²³ This work went through twelve editions between 1921 and 1952.

⁸²⁴ Sir William Graham-Harrison (knighted 1926) was Second Parliamentary Counsel from 1917 to 1928 and First Parliamentary Counsel from 1928 to 1933 when he retired. At that time he also retired as a member of the Codification Committee (see text following n 834 below).

Sir John Shaw,⁸²⁵ the Solicitor of Inland Revenue. From the point of view of legal expertise, the Codification Committee was admirably served. The Attorney-General (Sir Douglas Hogg), who had considered it very important that the private practice side should be represented,⁸²⁶ thought that 'we are very fortunate indeed to have secured such a Committee'.⁸²⁷ Having regard to the identity of the six individuals appointed to be members of the Committee, therefore, an optimist could take the view that the final draft Bill produced would benefit from the combined wisdom of a balanced Committee. A pessimist could take the view that the Committee would divide into two hostile camps.

In its early meetings, the Codification Committee adopted an approach which kept the Inland Revenue at arm's length.⁸²⁸ The Minutes of the Codification Committee's first meeting recorded that '[i]t was agreed that written memoranda should be invited from responsible bodies interested in the codification and simplification of Income Tax law'.⁸²⁹ It may be inferred that one such invitation was sent to the Board of Inland Revenue: for the Board accepted an invitation 'to make suggestions as to the manner or direction in which the purposes for which the Committee has been appointed could best be accomplished'; and, during the first half of 1928, the Board submitted a number of memoranda to the Committee. One of those memoranda discussed the question 'whether the existing classification of income for assessment purposes under the five

⁸²⁵ Sir John Shaw (knighted 1927) was Solicitor of Inland Revenue from 1921 to 1939. He was succeeded in that post by Mr WB Blatch (later Sir Bernard Blatch), who had been the secretary to the Codification Committee.

⁸²⁶ TNA file T 160/592 (F 10520/1). Hogg's endorsement, dated 26 May 1927, on Hopkins's submission to Churchill, 17 May 1927.

⁸²⁷ TNA file T 160/592 (F 10520/1). Letter, Hogg to Churchill, 18 July 1927.

⁸²⁸ Sir Richard Hopkins, the Chairman of the Board of Inland Revenue, had taken the view that the text of the draft of the Codification Bill should be produced by the Inland Revenue and the Parliamentary Counsel serving on the Codification Committee (Liddell and Graham-Harrison). It was implicit in this view that the Bill produced would have the Inland Revenue's support in assisting with the further task of enacting the Bill as drafted. See Pearce (n 816) 149.

⁸²⁹ TNA file IR 75/4, document 00001. (Underlining in original.)

schedules should be retained’ – and took the view that it should.⁸³⁰ The Codification Committee, however, decided to discuss the subject of ‘classification of income’ – and then did little else from 1928 to 1930.

There is evidence that the Codification Committee was deeply divided. The First Parliamentary Counsel (Sir Granville Ram) later wrote that it had soon become clear that some members of the Committee regarded the Inland Revenue and Sir William Graham-Harrison (who had drafted almost all the Finance Bills during the preceding 19 years) as the people mainly responsible for the existing tangle and accordingly regarded any suggestions they made with the utmost suspicion. ‘Success could never have been attained in such an atmosphere’.⁸³¹ During the period of the Macmillan chairmanship, furthermore, the ‘private practice side’ achieved a clear predominance over the ‘government service side’. Macmillan’s own appointment, early in 1932, was followed by that of two more barristers in private practice (Fergus Morton KC and CL King) and by a Chartered Accountant in private practice (Sir Gilbert Garnsey).⁸³² The Committee accordingly consisted of a senior Judge (Macmillan), three lawyers in government service (Liddell, Graham-Harrison and Shaw) and six individuals in private practice: five lawyers (Bremner, Hills, Konstam, Morton and King) and one accountant (first Garnsey, and then, after his death, DH Allan).⁸³³ This imbalance became still greater when, in December 1933, Graham-Harrison resigned – and was not replaced.⁸³⁴

⁸³⁰ TNA file IR 75/2 (BO 107), fos 302-4.

⁸³¹ TNA file IR 40/8554. ‘Simplification of Income Tax Law, Memorandum by the Parliamentary Counsel’, 1 November 1945, para 4.

⁸³² Codification Committee Report (n 820) 6. These appointments had been proposed in a letter from Macmillan to Neville Chamberlain dated 20 February 1932 (TNA file T 160/592 (F 10520/2)).

⁸³³ Codification Committee Report (n 820) 6-7.

⁸³⁴ TNA file IR 75/8, document 476; Codification Committee Report (n 820) 6-7.

At the time of his resignation, Graham-Harrison told the Chancellor of the Exchequer's Private Secretary that he had felt for a long time past that he had been altogether in a false position on the Codification Committee. Almost all the members of the Committee had looked throughout with the greatest suspicion on everything he had said, and every suggestion which he had made – no doubt influenced by their preconception that he was the person mainly responsible for the state of confusion in which the income tax enactments found themselves. He believed that there was evidence that the Committee did not mean to listen to anything that he said.⁸³⁵ In a supplementary letter, Graham-Harrison made the further point that before the Codification Committee's Bill was introduced, it should be examined carefully by someone familiar with the procedure of the House of Commons applicable to Finance Bills. On two occasions, at least, he had pointed out that an alteration which the Committee proposed to make would or might affect procedure on Finance Bills; and, in one of the cases, might seriously embarrass the Chancellor of the Exchequer in Committee on the Bill. The only result of his protests had been that he had been told by the Chairman that the Codification Committee had nothing to do with questions of parliamentary procedure on Bills – 'let the House of Commons look after its own procedure'.⁸³⁶ It may be inferred, therefore, on the basis of the point made in the supplementary letter, that, so far as the Codification Committee was concerned, the production of a draft Bill well designed to have a straightforward parliamentary passage (the only parliamentary passage

⁸³⁵ TNA file IR 40/8554. Letter, Graham-Harrison to Fergusson, 29 December 1933. 'As some slight evidence of the attitude of the Committee, I may perhaps repeat to you in confidence an observation made by a member of the Committee to a friend of mine who passed it on to me; the remark was this "it is quite clear that the Committee does not mean to listen to anything that Graham-Harrison says".'

⁸³⁶ TNA file IR 40/8554. Letter, Graham-Harrison to Fergusson, 1 January 1934.

available if the Bill was ever going to be enacted) was not an objective that had priority.

Somewhat earlier, on 26 January 1933, Sir John Shaw, the Solicitor of Inland Revenue, had spoken to Lord Macmillan at the suggestion of the Chairman of the Board of Inland Revenue (Grigg). Shaw told Macmillan that he had always assumed that when the Committee had prepared a Bill, the Board would be given the opportunity of considering the Bill as a whole, and of making such observations and suggestions with regard to it as occurred to them, and that the Committee would consider these observations and suggestions. He had further assumed that his presence on the Committee would in no way restrict the Board's freedom to make such observations and suggestions. It was possible that the Board might desire to consult him with regard to the draft Bill, and he would be glad to know that he had a perfectly free hand to criticise the Bill as a whole.⁸³⁷ A note by Grigg, dated 16 June 1933, stated that, on reconsideration, he was not at all sure that it would be a good thing for the Committee formally to refer the draft Bill to the Inland Revenue for examination. Such an examination would take at least six months 'and it would probably involve the Inland Revenue too deeply in the ultimate fortunes of the Bill'.⁸³⁸ The Inland Revenue, therefore, was concerned to distance itself from the Codification Committee's work long before that work was complete.

⁸³⁷ TNA file IR 40/8554. Note, 'J.H.S.' [ie Shaw] to 'Chairman' (of the Board of Inland Revenue) [ie Grigg], 'Income Tax Codification Committee', 2 February 1933. Macmillan told Shaw that he could feel assured that his freedom to criticise was in no way prejudiced by his membership of the Committee. 'He thought that the Board certainly ought to have an opportunity of considering the Bill as a whole, though he would deprecate suggestions tending to reverse large decisions of policy taken by the Committee'. (ibid.)

⁸³⁸ TNA file IR 40/8554. Note by PJG [ie Grigg], 16 June 1933.

The Codification Committee presented its report and draft Bill in March 1936. The Inland Revenue had many observations on the draft Bill produced.⁸³⁹ The department wished to proceed with the draft Bill, but considered that it was abundantly clear that many alterations were required;⁸⁴⁰ and, during a period beginning with the presentation of the draft Bill and ending during the spring of 1938, both the Inland Revenue and the Office of the Parliamentary Counsel worked on the text of an amended Codification Bill to deal with the matters which the Inland Revenue considered required attention. It became quite clear, however, that a Codification Bill that the Inland Revenue was prepared to see enacted would differ significantly from the draft Codification Bill produced by the Codification Committee.

The parliamentary prospects for an amended Codification Bill were discussed in material written by two of the Parliamentary Counsel and considered by the Chancellor of the Exchequer (Simon) at the beginning of 1938.⁸⁴¹ Stainton, the Parliamentary Counsel who was dealing with the Codification Bill, thought it 'essential that Ministers should recognise the Parliamentary difficulties which the Bill is likely to present'.⁸⁴² The Bill was 'not a pure Consolidation Bill, and therefore will not be subject to the convenient procedure which enables such a Bill to be passed without taking up any Parliamentary time'. Stainton went on to point out that it would be quite clear that any Bill presented to the Commons would differ very significantly from the draft Bill produced by the Codification Committee; and he thought it virtually certain that the House of Commons would

⁸³⁹ TNA files IR 40/19419 and 19420 are two bound volumes in which these observations are collected.

⁸⁴⁰ TNA file T 172/1860. Submission, Canny to Chancellor of the Exchequer, 17 December 1937.

⁸⁴¹ TNA file T 172/1860 contains the material presented to Simon, together with Simon's own memorandum. The material presented by the Inland Revenue and the Office of the Parliamentary Counsel were also considered above in chapters 3 and 4 respectively.

⁸⁴² TNA file T 172/1860. Letter, Stainton to Canny, 8 December 1937.

wish to investigate why those differences existed. Proceedings in the Commons could therefore become protracted – and involve ministers in detailed explanations of highly technical matters. Ram, the First Parliamentary Counsel, supported Stainton's analysis, and also stated that, from his office's point of view, the thing most to be desired was that the Bill should be prepared, pressed forward, and passed without delay, for until it was either passed or finally abandoned it would be a constant source of embarrassment to his office, more particularly in impeding the vast amount of consolidation which was urgently required to be done. He dared not, however, ask for authority for Stainton's whole time employment upon the Bill without emphasising the need for a full appreciation of the parliamentary difficulties to which the passage of the Bill might give rise 'for it would be a calamity if, after so much had been sacrificed to secure the preparation of the Bill, it had ultimately to be abandoned'.⁸⁴³

Simon's own formal Memorandum recorded that he had the gravest doubts as to whether a comprehensive Income Tax Bill could be enacted at a time when Parliamentary time was so much occupied. If the Bill were a pure Codification Bill, and if the Chancellor of the Exchequer and the Attorney-General were able to assure the House that the Bill's passage would not change the law, that would be another matter. The House of Commons, however, would want to know whether this enormous measure changed the law. The answer, he understood (correctly), was that it did: and, if so, he would expect that the House of Commons would refuse to accept it on the certificate of Lord Macmillan or anybody else and would insist on examining and discussing the changes. Simon therefore took a very unfavourable view of the chance of

⁸⁴³ TNA file T 172/1860. Memorandum by Ram, 10 January 1938.

passing a vast Bill of this character into law in any near Session, when Parliament was likely to be very busy.⁸⁴⁴

In the spring of 1938, Ram was able to obtain a decision from Simon that further work on the Codification Bill should be downgraded and that Stainton should not work on the Bill in the foreseeable future.⁸⁴⁵ The Inland Revenue policy file dealing with the Codification Bill⁸⁴⁶ suggests that the text of the Codification Committee's draft Bill ceased to receive attention after these developments; and Macmillan was informed that 'some postponement is inevitable'.⁸⁴⁷ Time passed; and the decision that there should be 'some postponement' of the Bill gradually moved towards becoming a decision that the Bill would be abandoned. A milestone along this path was reached in August 1939, when Simon stated in Parliament that '[s]o long ... as the present pressure of affairs continues, I can see no possibility of finding sufficient Parliamentary time to deal with legislation on this complicated subject'.⁸⁴⁸ The second world war began one month later. There was no question of work on the Codification Bill being undertaken while the war was in progress; and, by 1945, the Inland Revenue and the Office of the Parliamentary Counsel were both quite clear that the draft Codification Bill was a text that was not of practical use.⁸⁴⁹

⁸⁴⁴ TNA file T 172/1860. Memorandum by the Chancellor of the Exchequer (Simon), 18 January 1938. Simon's memorandum appears to point clearly to the conclusion that the Codification Bill would have to be abandoned, but then to stop short of the implied conclusion.

⁸⁴⁵ TNA file IR 40/5274. Letter, Ram to Canny, 1 March 1938. For this decision, see chapter 4, text around ns 587-96.

⁸⁴⁶ TNA file IR 40/5274.

⁸⁴⁷ TNA file IR 40/5274. Letter, Simon to Macmillan, 17 March 1938.

⁸⁴⁸ HC Deb 3 August 1939, vol 350, col 2631.

⁸⁴⁹ In a document dated 3 November 1941, Ram and Stainton expressed the views that 'the abortive Income Tax Bill ... threw away work which occupied almost the whole time of two members of the office for about a year'; and that 'the Bill prepared by the Income Tax Committee in 1936 was not acceptable to the Inland Revenue. Much work was done on it by the department and Parliamentary Counsel, but it was far from ready when it had to be dropped owing to pressure of war legislation The legislation passed since will make another committee and another Bill almost inevitable'. TNA file LCO 2/3816. 'Observations by

Jowitt, the Lord Chancellor in the Attlee Government, considered that the Codification Committee 'approached the matter from the wrong point of view'. He thought the only chance of success was to get the Inland Revenue 'much more responsible than they were in that Committee and much more determined to support and sustain the conclusions arrived at'.⁸⁵⁰ Jowitt's point was valid. It was very important for a statute codifying the law of income tax to be presented to Parliament with the support of all major relevant interests, both inside and outside government. The draft Bill prepared by the Codification Committee did not have the necessary broad coalition of support (and, in particular, did not have the support of the Inland Revenue). If, however, the draft Bill was amended so that it did have the support of the Inland Revenue, the amended Bill could not safely be assumed to have the support of the members of the former Codification Committee – and, once again, the broad coalition of support would not exist. Without such a broad coalition of support, it was completely unsafe to assume that a Codification Bill could be enacted quickly. On the contrary: the reasonable assumption was that the time needed to enact such a Bill would greatly exceed the amount of time that would be available; and, in the events that happened, no Codification Bill was ever introduced into Parliament – let alone enacted.

It is a moot question whether the Codification Committee, as constituted, could ever have produced a Codification Bill capable of being presented to Parliament with good prospects for its speedy enactment. There is evidence permitting the inference that the private practice side was interested, from the very beginning,

Parliamentary Counsel with respect to a projected memorandum to the Lord Chancellor on the subject of the Statute Book', para 7 and app A; and letter, Somervell to Schuster, 6 November 1941 (for the attribution of the 'Observations' to Ram and Stainton).

⁸⁵⁰ TNA file LCO 2/3818. Letter, Jowitt to the President of the Institute of Chartered Accountants in England and Wales, 20 February 1948.

in proposing amendments to the law capable of going beyond those which the Inland Revenue would support – with the consequence that the all-important broad coalition of support for the text actually prepared would never be assembled.⁸⁵¹ What can be stated with confidence, however, is that, in the events that happened, the Codification Committee did not in fact assemble the necessary broad coalition of support for its draft Bill – with the consequence that neither the Codification Committee’s draft Bill, nor any other Bill derived from it, was ever presented to Parliament or enacted.

During the period from 1907 to 1965 the Codification Committee was unique in that it was an entity brought into existence for the purpose of providing for a transformation in the form of the income tax legislation. There can be no doubt, too, that the Committee wanted such a transformation to occur – but no such transformation occurred. The draft Bill produced by the Codification Committee was unenactable – and so was any recasting of that draft Bill that was acceptable to the Inland Revenue.

It was demonstrated in chapter 2 that the necessity to enact primary legislation relating to income tax in Parliament imposed constraints on government. It followed that primary legislation relating to income tax and involving changes to the form of the income tax legislation had to take account of those constraints if it was to be enacted. The draft Bill produced by the Codification Committee did

⁸⁵¹ Before the Codification Committee was formally constituted, the Attorney-General (Hogg) had written to Churchill and had told him that '[b]oth Konstam and Bremner came to discuss the matter with me separately as they felt a little doubtful whether we intended seriously to tackle the problem of re-modelling the whole existing Income Tax law, or whether it was intended only to patch up the present confused jargon of highly technical Statutes, and they were not willing to make the very considerable sacrifice of time and trouble which the acceptance of membership must involve unless they were satisfied that it was intended to tackle the whole problem. I have assured them that our desire is to have the existing Income Tax law rewritten in simple and intelligible language, and that they need have no fear that criticism of the present sections and drastic alteration of the language in which they are expressed will be resented'. TNA file T 160/592 (F 10520/1). Letter, Hogg to Churchill, 18 July 1927.

not take account of those constraints; and it was unsafe to assume that any amended Bill could be accommodated within them. There was no codification of income tax law.

2. Members of Parliament

(1) General

In theory, Members of Parliament ('MPs') could be of the utmost importance in determining the form of the income tax legislation. All primary legislation had to be enacted in Parliament. MPs, therefore, could, in theory, determine whether that legislation was enacted at all; its content; and the form in which it was enacted. In practice, however, the position was likely to be very different. MPs could be classified in various different ways and played various different roles; and, after taking those classifications and roles into account, the capacity and wish of MPs to determine the form of income tax legislation was slight.

The leading classification of MPs was according to party. On the one hand there was the governing party (or parties): on the other hand there were all the other parties (and, in particular, the official opposition). The vast majority of legislation enacted was government legislation. Opposition parties, accordingly, were likely to have little direct impact on enacted legislation in general and on the form of the income tax legislation in particular. Another classification of MPs was into 'frontbenchers' and 'backbenchers'. Both government and opposition had their own backbenchers. Of the two, it was the government backbenchers who were better placed to be an independent determinant of the form of legislation. Government frontbenchers needed the support (or acquiescence) of government backbenchers if legislation was to be enacted.

So far as the roles played by MPs were concerned, Rush, in his book on Members of Parliament since 1868, took the view that parliamentary government imposed three major inter-linked roles on MPs:⁸⁵² a partisan role (supporting the party under whose label they had been elected – and particularly as a supporter of the government or of the official opposition); a constituency role (looking after the collective and individual interests of those they represented); and a scrutiny role (acting as a parliamentary watchdog, not on behalf of their constituents in particular, but of the people in general). An individual MP who was most suited to be an independent determinant of the form of the income tax legislation was accordingly a government backbencher who was willing to give priority to Rush's scrutiny role. For a number of different reasons, however, it was only exceedingly rarely that such an MP would be encountered.

Within the House of Commons, the government increased in size. Members of the government could be assumed to support government policy (or, at the very least, to be unwilling to depart from it); and, during the twentieth century, the opportunity for MPs to become government ministers increased significantly. In 1900, there were 60 ministerial posts of which 33 (55.0%) were held by MPs; in 1970, there were 102 ministerial posts of which 85 (83.5%) were held by MPs.⁸⁵³ On these figures about 8% more members of the House of Commons were office-holders in 1970 than in 1900.

The first half of the twentieth century was also part of a longer period during which the nature of the office of MP changed significantly. As Rush noted, from

⁸⁵² M Rush, *The Role of the Member of Parliament Since 1868: From Gentlemen to Players* (OUP 2001) 21-2 and 167.

⁸⁵³ *ibid* 136, table 5.9, where further figures are also given.

being an unpaid (and – for the overwhelming majority – part-time) job, the office of MP became fully-paid and full-time.⁸⁵⁴ When considering the position as it existed in 1961, Sir Edward Fellowes, Clerk of the House of Commons from 1954 to 1961, believed that there were more ‘full time’ members than there had been 50 years earlier; and that, 40 years before, it was probable that more individuals had entered the House after they had become eminent in non-political spheres. The ‘country gentleman’ type of member had disappeared; and so had the trade union member. ‘Neither group wanted or expected to get office’.⁸⁵⁵ On the other hand, in a full-time career as an MP, government office was the high point to be aimed at. This evidence points to the conclusion that, during the period from 1907 to 1965, the number of ministerial aspirants among government backbenchers increased. Since ministerial aspirants (as well as government frontbenchers) would be unwilling to depart from government policy, it may be assumed that there was also an increase in a second category of MP unwilling to depart from the wishes of the government.

The three roles distinguished by Rush were, moreover, of unequal and changing importance. Rush himself took the view that the partisan role might be said to be dominant.⁸⁵⁶ Party cohesion increased during the nineteenth century; was virtually complete by 1900; and, during the twentieth century, was very high.⁸⁵⁷ As Rush viewed the matter, the constituency role also increased in importance during the twentieth century, both in scale and in scope;⁸⁵⁸ he also noted that MPs had little choice but to fulfil the partisan role and the

⁸⁵⁴ *ibid* 212.

⁸⁵⁵ Sir E Fellowes, ‘Changes in Parliamentary Life 1918-1961’ (1965) 36 *Political Quarterly* 256, 259-60. In addition to being Clerk of the House of Commons from 1954 to 1961, Fellowes had served in the House since 1919 (*ibid* 256n).

⁸⁵⁶ Rush (n 852) 213.

⁸⁵⁷ *ibid* 171-3.

⁸⁵⁸ *ibid* 199-205.

constituency role. The MP had the greatest choice when it came to the scrutiny role:⁸⁵⁹ but, since Rush took the view that, during the twentieth century, the partisan role was dominant and the constituency role increasing in scale and scope, his analysis led him to the conclusion that the scrutiny role correspondingly declined in importance.⁸⁶⁰ This decline was likely to be emphasised if – as knowledgeable contemporaries believed – MPs had too much to do and had to specialise.⁸⁶¹ ‘Members of Parliament have no time to read all that is laid before their respective Houses’ Graham-Harrison commented in 1930 in his oral evidence to the Committee on Ministers’ Powers.⁸⁶² After leaving the House of Commons, the Earl of Winterton, who had been an MP from 1904 to 1951, wrote that governments and MPs alike were overburdened. They had all too little time to consider complex issues, and, afterwards, to explain those issues to the electorate.⁸⁶³ ‘Not only are Ministers over-worked, but Members of Parliament are over-worked’ wrote the former leader of the Liberal Party, Clement Davies, in 1957.⁸⁶⁴ If MPs had too much to do, and too little time in which to do it, the scrutiny role could certainly expect to suffer. Indeed, the partisan and the scrutiny roles, Rush thought, were ultimately incompatible.⁸⁶⁵

More specifically, before becoming an independent determinant of the form of the income tax legislation, an individual MP who did wish to devote considerable attention to the scrutiny role would also have to be willing, as part

⁸⁵⁹ *ibid* 24.

⁸⁶⁰ *ibid* 213.

⁸⁶¹ Hugh Molson, speaking in the House of Commons in 1944, believed that ‘the business of Parliament is now so detailed and so complex that even the most assiduous Member has to concentrate his attention upon certain subjects’. (HC Deb 26 May 1944, vol 400, col 1093).

⁸⁶² Committee on Ministers’ Powers, Volume 2, *Minutes of Evidence* (London, HMSO, 1932) 45, para 591.

⁸⁶³ Earl Winterton, *Orders of the Day* (London, Cassell, 1953) 346-7.

⁸⁶⁴ TNA file PREM 11/2531. Letter, Davies to Prime Minister (Macmillan), 23 July 1957.

⁸⁶⁵ Rush (n 852) 223.

of that role, to devote attention to the form of the income tax legislation. This state of affairs would exist if the MP wished to scrutinise tax matters or the form of legislation generally.⁸⁶⁶ As regards tax matters, the MP most obviously of a scrutinising disposition was Sir Henry Buckingham.⁸⁶⁷ As regards the form of legislation, and according to Sir Donald Somervell, the Attorney-General during the second world war, complaints as to the state of the statute book were a commonplace to lawyers. 'They are occasionally made in Parliament, but, apart from the late Sir Arnold Wilson, no Member I think in my time has pressed the matter'.⁸⁶⁸

As Ball has written, '[t]he control of the House of Commons by governments whose position was based on party loyalty led to the stifling of any attempts by MPs to lessen the power of the executive'.⁸⁶⁹ An MP, according to Balfour, 'may further party ends by his eloquence; he may do so even more effectively perhaps by his silences'.⁸⁷⁰ In 1945, experienced Labour MPs explained to those who had just been elected that their contribution was to be negligible: '[k]eep mum, and let the Bills get through'.⁸⁷¹ Sir Edward Fellowes took the view that, by 1961, the House of Commons was more business-like – but that it was also duller. It seemed more concerned with detail and less with principle.

⁸⁶⁶ The MP who most obviously fits this description is Thomas Gibson Bowles, the plaintiff in *Bowles v Bank of England* [1913] 1 Ch 57, (1912) 6 TC 136 (Ch). See also text around n 275 above. During the period from 1907 to 1965, however, Bowles was an MP only during the period from January to December 1910.

⁸⁶⁷ Buckingham was the Chairman of the Income Taxpayers' Society. For further details see section 3 of this chapter.

⁸⁶⁸ TNA file LCO 2/3816. 'The Statute Book', Memorandum by Somervell, 6 November 1941. Sir Arnold Wilson (1884-1940) was the Conservative MP for Hitchin from 1933 to 1940. Wilson was later described as 'a valuable member of the S[tatute] L[aw] C[ommittee]; an enthusiast'. TNA file AM 4/252. Letter, Carr to Ram, 30 January 1946.

⁸⁶⁹ S Ball, 'Parliament and Politics in Britain, 1900-1951' (1991) 10 *Parliamentary History* 243, 259.

⁸⁷⁰ Quoted in R Rose, *Politics in England: Persistence and Change* (4th edn, London, Faber and Faber, 1985) 115.

⁸⁷¹ Quoted in R Toye, "'Perfectly Parliamentary'? The Labour Party and the House of Commons in the Inter-war years' (2014) 25 *Twentieth Century British History* 1, 29.

MPs were harder working, more professional, and in general better informed – although there were fewer with specialist expertise. Individual MPs were less disorderly; but the parties were less tolerant because more doctrinaire. In some ways MPs, drawn more widely from every layer of society, were more representative; in other ways less so, since the professional politician tended to rate his own views above those of his constituents. ‘For that reason the House may be more statesmanlike but also less well fitted to curb the executive’.⁸⁷²

During the twentieth century it was most unlikely that government backbencher MPs would wish to be independent determinants of the form of income tax legislation if such a course of action would involve significant conflict with the government.

Governments, therefore, were in a strong position in the House of Commons – but that position was not impregnable. Governments were not entitled to assume that MPs would automatically assent to all provisions placed before them for approval. Sir Edward Boyle, who held a succession of posts in the Conservative governments between 1951 and 1964, was clear that the need to obtain the support – or at least the acquiescence – of their own backbenchers acted as a constraint upon government ministers. This constraint was particularly explicit and clear-cut if a vote in the House of Commons was involved. ‘What does matter is the really fearful business of getting your party through the division lobby on something they really do not want or do not mean to vote for’.⁸⁷³

The necessity for all financial legislation to be passed by the House of Commons accordingly ensured that the government could never completely

⁸⁷² Fellowes (n 855) 265.

⁸⁷³ Sir E Boyle, ‘Who are the Policy Makers?’ (1965) 43 *Public Administration* 251, 255.

ignore the capacity and wish of MPs to determine whether or not such legislation was enacted – and the contents and form of that legislation. The ability of MPs to act as a determinant of the form of the income tax legislation, however, did not apply equally to the various categories of primary legislation distinguished in chapter 1. It varied from category to category. MPs had no opportunity to influence any Bill relating to the codification of income tax law: for no such Bill was ever placed before them.⁸⁷⁴ No evidence is known that MPs ever opposed the system under which there was a Finance Bill, every year, making general provision for the national finances. So far as consolidation legislation was concerned, it was Chalmers's opinion that if Parliament had a 'collective conscience' it would insist on a Consolidation Act when an act of general importance had been amended seven times or more. He went on to note, however, that there were many obstacles to consolidation – of which the first was that 'there is no parliamentary push behind it'.⁸⁷⁵ No evidence is known that MPs played any significant role in advancing (or retarding) the two consolidations of the income tax legislation that took place in 1918 and 1952.

(2) The impact of MPs on programme Bills

In the case of programme Bills relating to income tax, however, MPs could, and did, have a greater impact. The determinants of the form of the income tax legislation, it may be recalled, may be ascertained not only by investigating legislation that reached the statute book, but also by investigating Bills that were proposed but not enacted: for the reasons why those Bills were not enacted are

⁸⁷⁴ Although Terence Donovan, a newly elected Labour MP, urged, in late 1945, that work on the Income Tax Codification Committee's draft Bill should be resumed. See Pearce (n 816) 159.

⁸⁷⁵ Sir MD Chalmers, 'The English Statute Book' (1924) 239 *Edinburgh Review* 332, 340-1. The other obstacles that Chalmers mentioned were that skilled drafters might not be available and that government departments were seldom keen on consolidation Bills. (The work was hard and thankless; and departments might not be keen to reveal their 'mysteries'.) (*ibid.*)

capable of helping to ascertain the determinants of the income tax legislation.

During the first half of the twentieth century, there were two programme Bills, in particular, which show MPs acting as determinants of the form of the income tax legislation: the Revenue Bill of 1921 (which was not enacted) and the Income Tax Bill of 1945 (which was enacted).

The underlying objective of the Revenue Bill of 1921 was the implementation of recommendations made by the Royal Commission on the Income Tax, which had reported in 1920;⁸⁷⁶ and, as part of that objective, the Bill was designed to give the Inland Revenue and its officials a greater role, in law as well as in fact, in the process of determining liability to income tax.⁸⁷⁷ On 22 February 1921, the Revenue Bill was still due to appear; and, in the House of Commons, Austen Chamberlain was asked what he was going to do about it, and whether it would be taken on the Floor of the House. The reply was '[n]o. I shall ask the House to send it upstairs. That is the only hope of passing it. If the House treats it as a contentious measure it will not be proceeded with'.⁸⁷⁸ He added, a little later, that 'the House must understand that if it is to be treated as a contentious measure, I cannot possibly hope to make progress with it this Session'.⁸⁷⁹ Austen Chamberlain's role in relation to this Bill has been considered elsewhere,⁸⁸⁰ but it is very difficult to approach these remarks on any basis other than that they may well have done the government more harm than good: for those opposed to the enactment of the Revenue Bill were told precisely what they had to do to cause the Bill to be abandoned. The Revenue

⁸⁷⁶ Royal Commission on the Income Tax, *Report* (Cmd 615, 1920).

⁸⁷⁷ For further details on the background to the Revenue Bill, its contents and its fate, see JHN Pearce, 'The Role of Central Government in the Process of determining liability to Income Tax in England and Wales: 1842-1970' in J Tiley (ed) *Studies in the History of Tax Law: Volume 3* (Oxford, Hart, 2009) 341-3; and Pearce (n 816) 143-6.

⁸⁷⁸ HC Deb 22 February 1921, vol 138, col 760.

⁸⁷⁹ *ibid*, col 761.

⁸⁸⁰ See chapter 5, section 3(1), above, text around ns 732-41.

Bill was eventually presented to Parliament on 6 April 1921⁸⁸¹ – and faced hostile criticism, being the subject of Resolutions passed by bodies of General Commissioners and of a campaign in the Press.⁸⁸²

In this situation, MPs opposed to the Bill were able to take decisive action. On 22 April 1921, the *Times*, which was opposed to the Bill, reported that Sir William Joynson-Hicks proposed to move, on the Second Reading in the Commons, that the House ‘declines to give a second reading to a Bill which increases the powers of Government officials and reduces the safeguards provided by the Constitution for the taxpayers of the country’.⁸⁸³ The Revenue Bill was accordingly due to be treated as a contentious measure – a state of affairs likely to be fatal for its enactment. From the government’s point of view, it had become clear that the administrative clauses of the Revenue Bill were going to cause controversy in the House of Commons ‘so much so, indeed, that in view of the congested character of this Session it would have been impossible to pass the Bill’.⁸⁸⁴ The Revenue Bill was accordingly withdrawn.⁸⁸⁵ It was never reintroduced.

There were many reasons why the Revenue Bill of 1921 was not enacted; but it was the opposition of MPs that constituted the sufficient condition for the Bill’s failure. It may be asked, therefore, why Joynson-Hicks, and those who thought like him, chose to proceed as they did. Joynson-Hicks may well have wished to preserve the local administration of the income tax. It may be doubted, however, whether this was his only motivation: for he was a right-wing

⁸⁸¹ HC Deb 6 April 1921, vol 140, cols 279-80.

⁸⁸² For the hostility of General Commissioners and of the press see sections 3 and 4 of this chapter respectively.

⁸⁸³ *Times* (London, 22 April 1921) 10, col g.

⁸⁸⁴ HC Deb 25 May 1921, vol 142, col 219. The speaker was Sir Robert Horne, the Chancellor of the Exchequer, speaking on the second reading of the Finance Bill.

⁸⁸⁵ HC Deb 4 May 1921, vol 141, cols 1045 and 1188.

conservative MP fiercely opposed, not only to policies pursued by the Lloyd George coalition, but also to the existence of the coalition itself.⁸⁸⁶ The Revenue Bill, which had encountered hostility outside Parliament, presented an excellent opportunity to demonstrate that opposition.⁸⁸⁷ The immediate cause of the failure to enact a programme Bill may accordingly be said to be the pursuit by some MPs of Rush's partisan role – but a pursuit undertaken not in the interests of the governing Lloyd George coalition, but in the interests of a separate Conservative party. The result was that, in this case, the opposition of some MPs was sufficient to defeat a programme Bill put forward by the government.⁸⁸⁸

The Income Tax Bill of 1945⁸⁸⁹ revealed a change in approach by MPs so that a government Bill, which appeared to be heading towards failure, was enacted.⁸⁹⁰ Despite its widely expressed short title, the Bill dealt with capital allowances – and derived from the government's wish to help industry in the period

⁸⁸⁶ Joynton-Hicks is mentioned as one of 'a distinct group of right-wingers who pursued the government at every turn'. KO Morgan, *Consensus and Disunity: The Lloyd George Coalition Government 1918-1922* (OUP 1979) 240.

⁸⁸⁷ Thus Colonel Wedgwood stated in the House of Commons that '[m]y point is that these Revenue Bills are generally very carefully thought out by the permanent officials. They are introduced. Immediately some interested party or parties get hold of some Member of this House, such as the hon. Baronet the Member for Twickenham (Sir W. Joynton-Hicks), and he uses the opportunity to show the Government of the day the power that he wields both in the Press and in the House of Commons, particularly if he feels that he has not been treated properly by that Government. He takes the opportunity of wrecking their Bill'. HC Deb 21 June 1921, vol 143, cols 1258-9. A little later Wedgwood said that '[i]n this case the clerks to the local commissioners were the backbone of the opposition which grew up under the leadership of the hon. Member for Twickenham and the "Times" newspaper. They wrecked the Revenue Bill, not in the interests of efficiency and of economy, but solely in their own interests ...'. (ibid col 1259.)

⁸⁸⁸ 'Any opposition to any measure of any length or complexity has one weapon it can use – the consumption of time. Any government is vulnerable to this. For although there seems on the face of it a lot of time in the Parliamentary session, ... time for the Government's programme of legislation is very limited'. J Boyd-Carpenter, *Way of Life* (London, Sidgwick & Jackson, 1980) 216.

⁸⁸⁹ This Bill was enacted as the Income Tax Act 1945 (8 & 9 Geo 6 c 32).

⁸⁹⁰ See generally the account of the parliamentary proceedings relating to this Act in BEV Sabine, *British Budgets in Peace and War, 1932-1945* (London, George Allen & Unwin, 1970) 265-8.

immediately following the second world war.⁸⁹¹ Details of the government's proposals were given in the budget speech made by the Chancellor of the Exchequer (Sir John Anderson) on 25 April 1944;⁸⁹² and the Income Tax Bill, a substantial programme Bill then containing 65 clauses and two Schedules, had its second reading on 14 March 1945.⁸⁹³

The Income Tax Bill was first considered in committee on 27 April 1945. So far as the parliamentary proceedings on this day were concerned, a contrast may be drawn between what MPs accomplished and what MPs needed to accomplish. On the one hand, when, after nearly five hours, discussion came to an end, MPs had only reached clause 8 – a rate of progress that could be considered as both slow and disappointing.⁸⁹⁴ On the other hand, if the Bill was to be enacted, substantial progress with the committee proceedings needed to be made: for it was completely foreseeable that the war in Europe would soon be over; that the end of the war in Europe might be followed by the ending of the wartime coalition and a general election; that the general election would necessarily be preceded by a dissolution of Parliament; and that, on the dissolution of Parliament, all Bills not ready to receive the Royal Assent would fail. It is therefore not surprising to find that Anderson, in one of his contributions during the committee proceedings on this day, submitted that MPs 'must really make up their minds whether they are prepared to have this [Bill], which everyone admits is good as far as it goes, and be content for the time

⁸⁹¹ On the capital allowances background, see generally D de Cogan, 'Law and Administration in Capital Allowances Doctrine: 1878-1950' in J Tiley (ed), *Studies in the History of Tax Law: Volume 6* (Oxford, Hart, 2013).

⁸⁹² HC Deb 25 April 1944, vol 399, cols 671-80.

⁸⁹³ HC Deb 14 March 1945, vol 409, cols 257-340. The details of the contents of the Bill were stated at col 305.

⁸⁹⁴ HC Deb 27 April 1945, vol 410, cols 1113-1198.

being to stop there' – or whether they were going to jeopardise the whole Bill by pressing for what he considered to be unjustifiable extensions.⁸⁹⁵

Further committee proceedings took place on 15 May 1945. By this date the war in Europe was over; and it had become highly probable that there would be an early general election – necessarily preceded by a dissolution of Parliament. On this occasion, during proceedings occupying slightly less than seven hours, the House of Commons worked its way through the remainder of the Bill from clauses 8 to 65, and then went on to consider seven new clauses and three Schedules.⁸⁹⁶ The way was accordingly open for proceedings in the Commons to be completed on 4 June 1945;⁸⁹⁷ and for the Bill to receive the Royal Assent before Parliament was dissolved.⁸⁹⁸ During the brief proceedings on third reading, Anderson thanked MPs in all parts of the House for the manner in which they had facilitated the passage of the Bill; and Pethick-Lawrence, a Labour MP who was not part of the government, was 'very glad that in the massacre of the innocents this ewe lamb has escaped the general slaughter'.⁸⁹⁹

The successful enactment of the Income Tax Act 1945 was partly dependent on good fortune – in that the Bill (which was not of crucial importance for the government) was introduced sufficiently far in advance of the ending of the hostilities in Europe to enable it to be enacted before Parliament was dissolved. The successful enactment of that legislation, however, was also partly dependent on the attitude taken by those MPs who were active in considering the Bill in committee. Those MPs, faced with a choice between passing a Bill with only a limited number of amendments (even though some MPs certainly

⁸⁹⁵ HC Deb 27 April 1945, vol 410, col 1181.

⁸⁹⁶ HC Deb 15 May 1945, vol 410, cols 2311-2426.

⁸⁹⁷ HC Deb 4 June 1945, vol 411, cols 586-600.

⁸⁹⁸ The Income Tax Act 1945 (8 & 9 Geo 6 c 32) received the Royal Assent on 15 June 1945.

⁸⁹⁹ HC Deb 4 June 1945, vol 411, cols 600 and 599 respectively.

considered the Bill to be imperfect), or losing the Bill entirely because proceedings in committee had become unduly protracted, chose to take the former course. The result was that the Income Tax Act 1945 reached the statute book.

The evidence demonstrates, therefore, that, despite their theoretical powers, MPs were a determinant of the form of the income tax legislation whose role was marginal only. It was unlikely that MPs would wish – or be able – to determine that form independently of the government. On the other hand, it was not the case that MPs had no ability to determine that form. Governments needed the support (or acquiescence) of their backbenchers – so MPs could not be taken entirely for granted. MPs were best placed to exert their power in the case of programme Bills: and their opposition to, or support for, particular Bills of this type could here make the crucial difference between a Bill that went through all its parliamentary stages in the time that the government could allot to that Bill, and one that did not. The difference was that between a Bill that was enacted and one that failed – and, accordingly, upon the corpus of the income tax legislation and the form in which that corpus was expressed.

3. Interest groups

The ascertainment of the role played by interest groups is an obvious candidate when investigating the role played by determinants forming part of Amery's 'nation' in determining the form of the income tax legislation. The umbrella expression 'interest groups' nevertheless covers groups of many different types; and two main categories have been distinguished: 'promotional' groups, existing almost exclusively to further a particular policy; and 'spokesman' groups, with

the function of defending the interests of a section of the community.⁹⁰⁰

According to Rose, government looked to interest groups to provide information, advice, support for decisions made and co-operation in administering the law.⁹⁰¹

In the case of income tax, however, interest groups could not assert an unquestioned supremacy in a particular area of expertise (as, for example, the medical profession could in its dealings with the Ministry of Health). The Inland Revenue was well able to provide information and advice – and the department administered the tax. These considerations obviously worked against the ability of interest groups to determine the form of the income tax legislation.

Promotional groups that interested themselves in income tax matters during the first half of the twentieth century were few. One of the witnesses who gave evidence to the 1919 Royal Commission was GO Parsons, the Secretary to the Income Tax Reform League.⁹⁰² Parsons emphasised, however, that he was not giving evidence on behalf of the League,⁹⁰³ and, early in 1922, the League's executive committee decided to dissolve it.⁹⁰⁴

Another promotional group, with a higher profile, was the Income Taxpayers' Society, set up in 1921, in the wake of the withdrawal of the Revenue Bill. The 'sole object' of the society was stated to be 'the protection of the liberties and

⁹⁰⁰ SA Walkland, *The Legislative Process in Great Britain* (London, George Allen and Unwin, 1968) 36.

⁹⁰¹ 'Government needs four things from pressure groups. Information is the first of its needs. Groups accumulate from their members much information that does not otherwise come to Whitehall, and which is relevant in administering and reviewing policies. Second, Whitehall wants advice, so that it can know what pressure groups think ought to be done and how they would probably react to various proposals that a department is considering. Third, after a decision is made a department wants pressure groups to support what the government has decided. Finally, when a policy has been embodied in an Act of Parliament, government looks to pressure groups to co-operate in administering the law'. Rose (n 870) 260-1.

⁹⁰² Royal Commission on the Income Tax, *Minutes of Evidence* (London, HMSO, 1919-20) paras 1554-1863. Parsons was described as an 'Incorporated Accountant and Chartered Secretary'. (ibid.)

⁹⁰³ ibid, para 1554.

⁹⁰⁴ *Times* (London, 23 February 1922) 18 col d.

rights of the taxpaying public' – an object, in the society's view, which involved the maintenance of the system of the local administration of income tax.⁹⁰⁵ In these circumstances, it is not surprising to find links between the society and those involved in the local administration of income tax. Randle Holme, a solicitor whose firm went on to act for the society, recorded that he was consulted on the society's formation by Copley Hewitt, the Clerk to the City of London Commissioners.⁹⁰⁶

The Income Taxpayers' Society could point to achievements.⁹⁰⁷ For example, in 1922, it was an initiative, taken by the society, which stood behind the setting up of a committee to consider the simplification of income tax forms.⁹⁰⁸ Later, in 1927, Sir Henry Buckingham MP (the society's chairman) was one of two individuals to whom the essence of Churchill's simplification scheme was explained in advance 'by way of insurance against the possibility of a mud-slinging campaign'.⁹⁰⁹ These achievements, however, were of marginal significance only. In 1922, the society's original proposal for a committee to consider the simplification of income tax forms had been rejected by Horne, the

⁹⁰⁵ *Times* (London, 28 July 1921) 11 col d. Further information about the society is given in *Times* (London, 9 January 1921) 11 col e.

⁹⁰⁶ R Holme, *Some Things I have done* (Hepburn & Sons Ltd, 1949) 101. This volume of autobiography, which was privately printed when the author was in his 80s, contains factual inaccuracies; but no reason to question the statement in the text is known. At a dinner given by the Income Taxpayers' Society during July 1926, both Randle Holme and Copley Hewitt are listed as being among the guests. (*Times* (London, 23 July 1926) 11 col c.) (Prior to 1918, Randle Holme had produced his own version of a consolidated Income Tax Bill, which he placed at the disposal of Cox, the Solicitor of Inland Revenue. He also attended the meetings of the Joint Committee which considered the Bill enacted as the Income Tax Act 1918 (8 & 9 Geo 5 c 40).)

⁹⁰⁷ In addition to the matters discussed in the text, in 1926, the society claimed to have secured the adoption of four amendments to the Finance Bill. (*Times* (London, 23 July 1926) 11 col c). No reason is known for believing that these amendments were of major significance.

⁹⁰⁸ The initiative took the form of a letter to the Press which was published in the *Times* ((London, 14 September 1922) 6 col b). In a letter to Horne dated 21 September 1922 (see TNA file IR 40/2705) Lord Decies, the director of the society, stated that the letter was published 'in the London Press' on that day. The letter was also published on that same day in the *Yorkshire Post* (see TNA file IR 75/65, fo 207).

⁹⁰⁹ TNA file T 171/255, fos 222-37. Submission, Hopkins to Churchill, 27 October 1926. The quotation is from para 19 (fo 234). (The other individual was Sir Henry Seymour King (see text around n 926 below).)

Chancellor of the Exchequer.⁹¹⁰ It was only after the accession to power of Lloyd George's political opponents, that a later Chancellor of the Exchequer (Baldwin) reversed his predecessor's decision. The committee's terms of reference were narrowly drawn,⁹¹¹ and the committee, when it reported, was 'unable to recommend any far-reaching or fundamental recasting of the forms'.⁹¹² In 1927, similarly, it may be said that the conciliation of the society merely made it somewhat easier for the government to enact proposals which, with its large parliamentary majority, it was unquestionably in a position to carry. Churchill's comment, when asking Hopkins, the Chairman of the Board of Inland Revenue, to explain the government's proposals to Buckingham, was that '[i]t will not be necessary to take him too seriously'.⁹¹³ The Income Taxpayers' Society then appears to have faded away. In 1938, a casual allusion in a

⁹¹⁰ TNA file IR 40/2705. Letter, Horne to Decies, 16 October 1922.

⁹¹¹ Departmental Committee on the Simplification of Income Tax and Super-tax forms, *Report* (Cmd 2019, 1924). The terms of reference of the Committee were '[t]o consider any simplifications which may be practicable under existing law in the return forms, claim forms, and notices of assessment issued in connection with income tax and super-tax; and to make recommendations in regard thereto'. (ibid 1.)

⁹¹² ibid 4, para 6.

⁹¹³ TNA file T 171/255, fos 342-3. Memorandum, Hopkins to Churchill, 16 February 1927, with Churchill's manuscript endorsement, 12 March 1927. It was certainly the case that Buckingham did not impede the enactment of the scheme for the simplification of income tax. The evidence is that, when the relevant clauses were discussed in committee, Buckingham was present but remained silent; and that, when those clauses were later discussed on Report, Buckingham was absent. See HC Deb 30 June 1927, vol 208, cols 750-7 for the proceedings in Committee on the simplification scheme enacted in Finance Act 1927, pt 3; and, for the proceedings at Report Stage, see HC Deb 19 July 1927, vol 209, cols 359-74. During the proceedings at Report Stage, Churchill stated that Buckingham had been present during the relevant part of the proceedings in committee. 'The House was so impressed with his presence and his silence that they proceeded rapidly to accord this Clause the measure of support which, I am certain, on full consideration it will be found thoroughly to deserve'. (HC Deb 19 July 1927, vol 209, col 364.) On 30 June 1927, Buckingham had certainly been present earlier in the evening. He had made a short speech shortly before these clauses began to be discussed. See HC Deb 30 June 1927, vol 208, col 744. When, at the Report Stage, a division was forced on the proposed scheme, the government, with its large parliamentary majority, won easily – by 223 votes to 98. (HC Deb 19 July 1927, vol 209, cols 371-4.) Buckingham's name does not appear in the division list.

memorandum by Simon, the Chancellor of the Exchequer, showed him uncertain whether 'the Income Tax Society' (sic) still existed.⁹¹⁴

Of the spokesman groups, some had a direct interest in the administration of income tax: and, in the case of these particular groups, the introduction of the Revenue Bill of 1921 (which proposed to increase the powers of central government and to diminish those of local government in income tax administration) occasioned activity. On the side of central government, and in favour of the enactment of the Bill, the Association of His Majesty's Inspectors of Taxes had meetings with MPs and the Press; and claimed to have inspired action taken by others.⁹¹⁵

The interests of the local administration of income tax were defended by a number of different spokesman groups. One of these was the National Association of Assessors and Collectors of Government Taxes, which gave evidence to the 1919 Royal Commission on the Income Tax.⁹¹⁶ The Royal Commission, in its report, had expressed the opinion that the less important administrative matters relating to income tax (the machinery for assessment and collection of income tax for example) might be dealt with in a less particularised manner in a new Act rewriting the income tax legislation 'leaving the details to be covered by statutory regulations'.⁹¹⁷ The National Association recorded that it viewed this opinion 'with considerable apprehension and

⁹¹⁴ 'If the Income Tax Society still exists, and I think it does, the [proposed Codification] Bill would provide the Society with many opportunities for displaying its usefulness'. TNA file T 172/1860. Memorandum by the Chancellor of the Exchequer (Simon), 18 January 1938.

⁹¹⁵ TNA file IR 40/2622. Letter, Best to Hopkins, 9 May 1921. The Association believed that its members had done 'a great deal of useful work and will be bitterly disappointed' at the withdrawal of the Bill. The Association was also troubled that, following the withdrawal of the Bill, its members would 'not work again for the Bill with anything like the same enthusiasm after this fiasco'. (ibid.)

⁹¹⁶ For the evidence given by the Association, see Royal Commission on the Income Tax, *Minutes of Evidence* (n 902) paras 22,134-22,399.

⁹¹⁷ Royal Commission on the Income Tax, *Report* (Cmd 615, 1920) 89, para 401.

uneasiness' and sought guarantees that the claims of Assessors and Collectors would be secured before the introduction of legislation or the drafting of regulations.⁹¹⁸ This is the only occasion known when an interest group put forward a view on a particular matter relevant for the form of income tax legislation. No evidence is known that the Inland Revenue gave this view any attention; but, after the Revenue Bill of 1921 had been withdrawn, the point raised by the Association was not a live one.

Another group that gave evidence to the 1919 Royal Commission was the National Association of Clerks to Commissioners, in the person of Copley Hewitt, the Clerk to the City of London Commissioners.⁹¹⁹ Not everyone was impressed by this evidence. One MP later stated his view that Copley Hewitt had been totally demolished in cross-examination by two members of the Royal Commission.⁹²⁰ On the other hand, it may be taken that it was Copley Hewitt who organised and co-ordinated the opposition to the Revenue Bill of 1921.

One MP spoke of the activities of 'one rather able gentleman in the City of London';⁹²¹ and this may be taken as a reference to Copley Hewitt.⁹²²

Resolutions against the Bill were passed by bodies of General Commissioners;⁹²³ and hostility to the Bill was also displayed in the press.⁹²⁴ It

⁹¹⁸ TNA file IR 63/96, fos 10-13. 'Note to the Board by the National Association of Assessors and Collectors on the report of the Royal Commission on the Income Tax'.

⁹¹⁹ For this evidence, see Royal Commission on the Income Tax, *Minutes of Evidence* (n 902) paras 21,544-22,133.

⁹²⁰ Mr G Benson, after referring to the cross-examination of Copley Hewitt by Sir Josiah Stamp and Sir William McClintock, two members of the Royal Commission, went on to state that '[i]t was the most pitiful and painful exhibition I have ever read. They treated Mr. Hewitt like a small boy treats a fly. They pulled off his limbs one after the other until only the bleeding corpse was left. I have never seen a more terrible cross-examination in my life'. HC Deb 15 August 1940, vol 364, col 1016.

⁹²¹ HC Deb 25 May 1921, vol 142, col 181.

⁹²² Copley Hewitt was later mentioned by name by James Callaghan (who had earlier worked for the Inland Revenue) in proceedings in the House of Commons in 1946, when the office of assessor of taxes was abolished. See HC Deb 24 June 1946, vol 424, col 865.

⁹²³ Evidence of hostility from General Commissioners may be found in TNA file IR 40/2622 and TNA file IR 74/36.

was stated in the House of Commons that an 'agitation' in the newspapers had been carried out 'entirely at the instigation' of the 'rather able' gentleman.⁹²⁵

The Revenue Bill of 1921 was then withdrawn. Those involved with the local administration of income tax, by playing a significant role in the events leading to the withdrawal of the Revenue Bill, had made a contribution (though of a negative nature) to the income tax legislation in existence. It may be considered that the role taken by the City of London General Commissioners in 1921 was implicitly recognised by Hopkins's suggestion that the other individual to whom the essence of Churchill's 1927 simplification scheme could be explained in advance should be Sir Henry Seymour King, the Chairman of the Commissioners of Income Tax (Schedule D) for the City of London – a suggestion that was carried out.⁹²⁶ No evidence is known, however, that the City of London Commissioners took any significant action in relation to the successful enactment of Churchill's simplification scheme; and, after the second world war, features of the income tax administration which had been defended successfully in 1921 became the subject of change.⁹²⁷

The spokesman groups which had no direct interest in the administration of income tax included the two pre-eminent spokesman groups: the Trades Union Congress (the TUC) and the Federation of British Industries (the FBI). These spokesman groups might indeed be interested, at a very general level, in

⁹²⁴ There is a collection of press cuttings relating to the Bill in TNA file IR 74/36. For the role of the Press in 1921, see below in section 4 of this chapter.

⁹²⁵ HC Deb 25 May 1921, vol 142, col 181.

⁹²⁶ TNA file T 171/255, fos 222-37, at para 19 (fo 234). Submission, Hopkins to Churchill, 27 October 1926.

⁹²⁷ In 1946, the office of assessor was abolished by section 62 of the Finance Act 1946 (9 & 10 Geo 6 c 64); and, in 1964, the Income Tax Management Act 1964 gave the Inland Revenue full legal control over the process of making assessments to income tax.

specific aspects of the income tax legislation.⁹²⁸ These groups might also have the opportunity to influence the content of new income tax legislation at a very specific level.⁹²⁹ The form of the income tax legislation, however, was a matter of indifference to them; and no evidence is known that these groups ever interested themselves in this topic.⁹³⁰

The evidence discloses, therefore, that, during the first half of the twentieth century, interest groups did not determine the form of the income tax legislation to any major extent. The withdrawal of the Revenue Bill in 1921 was the one and only occasion when interest groups may be observed to have participated to a major extent in a significant decision with implications for the form of the income tax legislation. Even on this occasion, however, the argument for the importance of interest groups cannot be pressed too hard or too far: for the opposition of interest groups was only one element, among a number of elements, leading to the withdrawal of the Bill.

4. The press

The role played by the press also demands attention for the purposes of this chapter. During the first half of the twentieth century, however, the press pursued a number of different objectives and was subject to constraints. The

⁹²⁸ For example, during the second world war, the FBI were in favour of a more generous treatment of depreciation for income tax purposes (see M Daunton, *Just Taxes: The Politics of Taxation in Britain, 1914-1979* (CUP 2002) 206); and effect was given to this wish in the Income Tax Act 1945 (8 & 9 Geo 6 c 32). During that same period, the TUC were keen that a scheme for the deduction of income tax from current earnings should be developed. (See TNA file T 171/366, item 8. Letter, Citrine to Wood, 29 July 1943.)

⁹²⁹ 'The most successful consultation, from the point of view of pressure groups, is that which occurs at the fairly mundane level of administrative detail, or in the preparation of minor Departmental legislation, usually of an amending type'. Walkland (n 900) 38. In an income tax context, in the case of the new arrangements relating to deductions from earnings introduced by the Finance (No 2) Act 1940 (3 & 4 Geo 6 c 48), the FBI, the British Employers' Confederation and the TUC were all consulted – and all three had detailed points that they wished to make. (See TNA file IR 40/7454.)

⁹³⁰ In the early 1950s, representatives from both the FBI and the TUC came to see the Chancellor of the Exchequer (Butler) before Budgets; but this was a formality and the content had been all but finalised before their visits. A Seldon, *Churchill's Indian Summer: The Conservative Government, 1951-55* (London, Hodder and Stoughton, 1981) 166.

overall result, so far as the form of the income tax legislation was concerned, was that it was only exceedingly rarely that the press made a significant contribution towards determining that form. Bearing in mind, however, that the determinants of the forms of the income tax legislation may be ascertained not only by investigating statutes that were enacted, but also by investigating Bills that were proposed for enactment but which were not enacted, the press (like interest groups) nevertheless made a significant contribution to determining the form of the income tax legislation when it helped to prevent the enactment of the Revenue Bill of 1921.

There were tensions between the various different objectives which the press pursued. One objective was to report the news. The view of Lord Beaverbrook, as expressed in a letter to the editor of the *Daily Herald*, was that '[w]hoever reads the newspaper must be convinced that its first object is to tell him the news of the day and that its other aims must be subordinate to this'.⁹³¹ Another objective was to mould public opinion – very possibly in support of one particular political party. The view of Lord Beaverbrook, the proprietor of the *Daily Express*, was that 'I ran the paper purely for the purpose of making propaganda'.⁹³² Another objective, capable of being stated in elevated terms, was that the press should play what it considered to be its proper role in the United Kingdom polity. Williams, in a work published in 1946,⁹³³ referred to a leading article that had appeared in the *Times* in February 1852. On that occasion, the *Times* had denied that the press was bound by the same duties

⁹³¹ AJP Taylor, *Beaverbrook* (London, Hamish Hamilton, 1972) 250.

⁹³² Quoted in Rose (n 870) 230. Beaverbrook also believed that 'I do not think a paper is any good for propaganda unless you run it as a commercial success'. (ibid.)

⁹³³ F Williams, *Press, Parliament and People* (London, Heinemann, 1946). The account of the leader appearing in the *Times* on 6 February 1852 has been taken from this work at 138-9. The editor of the *Times* in 1852 was JT Delane.

as government ministers. 'The purpose and duties of the two powers are constantly separate, generally independent, sometimes diametrically opposite'. The first duty of the press was to obtain the earliest and most correct intelligence of the events of the time, and instantly, by disclosing them, to make them the common property of the nation. 'The Press lives by disclosures; whatever passes into its keeping becomes a part of the knowledge and the history of our times'. In terms of Amery's view of the constitution as a parley between 'government' and 'nation', the press's ideal view of itself was as a force exercising power and influence on behalf of the 'nation'. A final objective pursued by the press was more mundane. A newspaper needed to be commercially viable.

This final objective leads to the constraints to which the press was subject: for a contrast has been drawn between 'the solid late-Victorian press and the twentieth century popular press. The one was highly political and linked financially to the party system; the other was broader in its range and based in the market economy'.⁹³⁴ 'You left journalism a profession; we have made it a branch of commerce', Kennedy Jones, Northcliffe's collaborator in the founding of the *Daily Mail*, said to John Morley.⁹³⁵ Before Northcliffe's journalistic revolution, it has been stated, 'only one in person in six read a daily paper regularly; today [1980] only one person in six does not'.⁹³⁶

During the late nineteenth and early twentieth centuries, newspapers became large corporations needing to make profits on the large capital sums invested in

⁹³⁴ C Seymore-Ure, 'The Press and the Party System between the Wars' in G Peele and C Cook (eds), *The Politics of Reappraisal 1918-1939* (London, Macmillan, 1975) 232.

⁹³⁵ Quoted in Williams (n 933) 166.

⁹³⁶ H Cudlipp, *The Prerogative of the Harlot: Press Barons & Power* (London, Bodley Head, 1980) 82.

them – and interested primarily in commercial success.⁹³⁷ One consequence of this development was that the subsidised press declined.⁹³⁸ Another consequence was that the press had to seek its commercial stability from the support of its readers.⁹³⁹ A newspaper, therefore, had to derive revenue sufficient to cover the very large costs involved in its production; and that revenue had to be derived through sales – either directly or indirectly. That revenue, furthermore, had to be derived indirectly: for newspapers were ‘dumped products’ – in that the actual price to the purchaser was substantially less than the cost of production. The difference between net receipts from sales and production costs was met by revenue from the sale of advertising space. Newspapers depended upon advertisements for a crucial part of their revenue;⁹⁴⁰ and a large advertising revenue could be secured in one of two ways. It could be obtained by circulating to several million individuals whose aggregate purchasing power was large, even though a particular individual’s

⁹³⁷ Williams (n 933) 146.

⁹³⁸ At the beginning of the twentieth century, the *Daily News*, which supported the Liberal Party, was subsidised by the Cadbury family. See SE Koss, *Fleet Street Radical: A.G. Gardiner and the Daily News* (London, Allen Lane, 1973) 41 and 66-7. Lord Riddell noted in 1908 that Sir George Newnes’s ownership of the *Westminster Gazette* had involved him in substantial losses. Riddell considered that the *Westminster Gazette*, which supported the Liberal party, was most influential and that its leading articles ‘are religiously read by thinking people of all parties The *Westminster’s* trouble is that the said thinking people don’t appeal to the advertiser, so that the revenue from advertising is inadequate’. (Lord Riddell, *More Pages from my Diary* (London, Country Life, 1934) 14.) During the inter-war period, the *Daily News* and the *Westminster Gazette* both ceased to have an independent existence. Williams commented that with the very substantial expenditure involved ‘the amount of money that can be lost very rapidly in running a commercially unsuccessful paper whose revenue lags behind its costs is so huge that the subsidized newspaper, whether it obtains its subsidy from one or two rich sponsors or from a political organization, has ceased to be a practical proposition’. (Williams (n 933) 147.) Williams also commented that ‘[i]ndividual control of national newspapers is ... still possible – although only to very rich men. But even a rich man to-day cannot, in Britain, afford to run a commercially unsuccessful paper, as many did in the past, for the sake of the prestige and power accruing to him as a consequence or because he is deeply committed to particular principles for which he wishes to find a public platform’. (ibid.)

⁹³⁹ The account given of the economic imperatives of the press and of the consequences of those imperatives follows that given by Williams (n 933) 146-50.

⁹⁴⁰ Northcliffe commented that ‘[i]t is not pleasant to think that ... newspapers are now for the first time in their history entirely subordinate to advertisers. I see no way out of this impasse, other than by maintaining a great daily net sale and thus keeping the whip hand of the advertiser’. Cudlipp (n 936) 82.

purchasing power was small. Advertising revenue could also be secured by a 'quality' circulation among the comparatively wealthy, who had means that made them worthy of the advertiser's attention, both individually and in the aggregate. Newspapers in the United Kingdom accordingly fell into two types. There were large circulation 'popular' newspapers of which, in the middle of the twentieth century, the *Daily Express* was the most striking example; and there was the small circulation 'quality' newspaper of which the *Times* was the pre-eminent example.

So far as 'popular' newspapers were concerned, the need to obtain a mass circulation was of crucial importance. 'What matters is the counting of heads not what is inside the heads'.⁹⁴¹ Those managing a newspaper of this type took the view that its contents should deal with action and should be easy to read.⁹⁴²

This view had consequences.

Political, social, and economic analysis, the attempt to discover causes, to explain why men and women and nations acted in the way they did was not popular. It was difficult reading. It could not be put into half a column. It required application and even concentration and these were things no popular paper felt it had a right to expect of its readers. As a consequence the man or woman who depended for his understanding of the world upon his penny morning paper was likely to be as innocent of what was really happening in it as a child.⁹⁴³

Those managing 'popular' newspapers also took the view that many things were more interesting to their readers than parliamentary debates and the

⁹⁴¹ Williams (n 933) 150.

⁹⁴² *ibid* 208. So far as the manner in which the news should be presented, Williams considered that immediately before the second world war '[t]hose most successful in managing popular newspapers ... went on the assumption that the average reader wanted news presented in a bright, superficial and dramatic manner, written snappily in short sentences and brief paragraphs, no one story requiring more than a minute or so to read, and the whole thing being attractively dressed with catchy headlines and plenty of pictures'. (*ibid* 159.)

⁹⁴³ *ibid* 208-9.

United Kingdom's politics.⁹⁴⁴ Newspapers, Williams believed, were 'chiefly interested in politics when they produce sensations and crises. A row will get headlines – a detailed discussion of an important new piece of administration is hardly likely to do so'.⁹⁴⁵ It followed that a 'popular' newspaper was most unlikely to take any interest in the form of income tax legislation.

In the case of 'quality' newspapers, however, the position was different. Its constituency was an educated public, which was better trained in giving sustained attention to matters of public importance. A newspaper of this type could devote most of its space to serious reporting and to the consideration of serious events. Indeed, it could be said that it was bound to do so: for its readers bought the newspaper primarily to be informed rather than entertained.⁹⁴⁶ A newspaper of this type, therefore, was likely to take a serious interest in public affairs. A possible consequence – but not a necessary consequence – was that this interest would include income tax and the forms of its legislation.

There was, however, a further constraint upon the press in addition to the economic imperatives with which it had to comply: for there were limitations on what the press could accomplish if it conducted a campaign. 'The assumption that newspapers form and control public opinion cannot be substantiated', Cudlipp wrote in a book published in 1953; 'newspapers sell as much in spite of their policies as because of them'.⁹⁴⁷ He considered that a press campaign

⁹⁴⁴ *ibid* 116.

⁹⁴⁵ *ibid.* Macmillan considered the work of the press to be controversial, exaggerated and distorted – and often found it distasteful. H Evans, *Downing Street Diary: The Macmillan Years 1957-63* (London, Hodder and Stoughton, 1981) 63.

⁹⁴⁶ *ibid* 150.

⁹⁴⁷ H Cudlipp, *Publish and be Damned!* (London, Andrew Dakers, 1953) 225. The proposition that the press had little influence over the political opinions held by the electorate is supported by the evidence. The Labour party gained ground in 1929 and won an absolute majority of

would fail '[h]owever brilliantly or subtly it may be conducted', if, for example, it dealt with 'an aspect of life beyond the readers' daily experience or interest'. It followed that a press campaign explicitly directed to the subject of the form of the income tax legislation would not make progress – and no such campaign was ever mounted.

A press campaign was nevertheless capable of flourishing if certain conditions were met. Cudlipp considered that the press campaign should be in tune with public opinion which already existed; and should advocate a solution to a problem or scandal which was angering the average reader. If these conditions were met, a newspaper might 'successfully accelerate but never reverse the popular attitude which commonsense has commended to the public'.⁹⁴⁸ In the opinion of another writer the press 'may be an inconsistent weapon, but, with its cutting edge towards the enemy, it can be very effective in a short sharp conflict'.⁹⁴⁹

The press participated vigorously in the 'short sharp conflict' against the enactment of the Revenue Bill of 1921 – and participated on the victorious side. There was accordingly an impact on the form of the income tax legislation: for a programme Bill relating to income tax was not enacted. Headlines such as 'Hunting the Taxpayer: Safeguards to be Withdrawn', and 'A Principle at Stake'

seats in the House of Commons in 1945; but, in the general elections held in those years, newspaper support was given overwhelmingly to the Conservative party. Detailed studies of the 1950 and 1951 general elections used identical words when describing the part played by the press. Its 'treatment ... was overwhelmingly partisan, relatively demure, and, so far as can be judged, politically ineffective'. (Quoted in JP Mackintosh, *The British Cabinet* (London, Stevens, 1962) 507.)

⁹⁴⁸ *ibid.* 'The press was not a creative element in its own right, but a medium of expression for opinion formed elsewhere'. S Ball, *Baldwin and the Conservative Party: The Crisis of 1929-1931* (New Haven [Connecticut] and London, Yale UP, 1988) 209.

⁹⁴⁹ PG Cambray, *The Game of Politics: A Study of the Principles of British Political Strategy* (London, John Murray, 1932) 168. Cambray then added that '[i]n the long fight it is less valuable since its whole policy is founded upon "sensation" which makes continuous ... support impossible'. (*ibid.*)

were two of those that appeared.⁹⁵⁰ It is clear, however, that the campaign against the enactment of the Revenue Bill took place in circumstances in which the press was well placed to make an effective contribution. Significant opposition to the Bill was already in existence from MPs and those concerned with the local administration of income tax; and the press could advocate a simple solution – the Bill’s withdrawal. The campaign against the Bill was also easy to align with another objective being pursued by some sections of the press at that time: for Northcliffe, in his final years, pursued a vendetta against Lloyd George.⁹⁵¹ A Bill introduced by Lloyd George’s government, which had aroused obvious hostility, and which was going to be opposed in the House of Commons by the government’s own backbenchers presented an obvious opportunity. The *Times* (a ‘quality’ paper owned by Northcliffe) invited ‘chambers of commerce or other representative bodies of citizens’ to send their criticisms to MPs hostile to the Bill ‘in order that the full weight of public criticism may be brought to bear’.⁹⁵² The press could also claim the high ground on the basis that it was the guardian of the constitution. The *Daily Mail* (a ‘popular’ paper owned by Northcliffe) published an article with the headlines ‘Squeezing you dry’ and ‘Taxpayers at mercy of officialdom’.⁹⁵³ The article included a statement made by a ‘prominent official’⁹⁵⁴ that the Bill ‘hands over to the control of the Commissioners of Inland Revenue the entire administration of income tax, and places the poor taxpayer entirely at their mercy with no body to

⁹⁵⁰ C Stebbings, *The Victorian Taxpayer and the Law: A Study in Constitutional Conflict* (CUP 2009) 192.

⁹⁵¹ Cudlipp (n 936) 134. Northcliffe died in 1922, the year in which Lloyd George ceased to be Prime Minister.

⁹⁵² *Times* (London, 22 April 1921) 10 col g.

⁹⁵³ *Daily Mail* (London, 20 April 1921) (quoted from a cutting in TNA file IR 74/36).

⁹⁵⁴ The ‘prominent official’ is not identified in the article; but it is possible to conjecture that it may have been Copley Hewitt or someone else connected with the City of London General Commissioners.

whom appeal could be made'. (This statement was untrue.)⁹⁵⁵ The article ended with the official's exhortation that every taxpayer 'in his own interests should fight the Bill through his member of Parliament, write to him urging him to oppose it, and not give up the fight till the Bill ... has been dropped'. The short press campaign concluded with the government's withdrawal of the Revenue Bill. To a considerable extent, however, this result may be said to be a by-product of a press campaign undertaken to achieve different objectives.

Against the background of events such as these, it is not surprising to find that government treated the press with respect. One element in government's respect could be related to public opinion, on which depended the all-important matter of electoral success. Information about public opinion was far from perfect; and government had less trustworthy information on this subject than at the end of the twentieth century. Statements of opinion in the press might not reflect public opinion: but, on the other hand, they might – and, if they did, those statements needed to be taken seriously.⁹⁵⁶ Constant reiteration in the press might lead the government to believe that the opinion being voiced really was public opinion.⁹⁵⁷ Another element in government's respect was demonstrated by the events of 1921. The press's vigorous opposition to the government

⁹⁵⁵ It was always envisaged that the taxpayer would have a right of appeal to the General or Special Commissioners.

⁹⁵⁶ Williams wrote of newspapers that 'although their long-term influence in serious affairs is small and their effect on their readers' political thinking negligible, they often exert a good deal of influence on Ministers and Government Departments. Most Cabinet ministers are indeed almost excessively sensitive to newspaper comment. During the war it was a constant source of wonderment, not merely to me but to many newspaper friends of mine who were temporarily holding high office in the Civil Service, to find the amount of attention paid by ministers and Heads of Departments to newspaper stories which our experience told us had no particular significance as an indication of general public feeling, but were merely the result of a not very bright idea by a harassed news-editor trying to keep a junior reporter busy. Yet such stories would set Ministers in a fret'. (Williams (n 933) 165.) Williams went on to comment that '[t]hat is all to the good. It is better that ministers should trouble themselves too much about newspaper criticism than too little. Anything that keeps great Government Departments constantly aware that they are the servants of the public and are liable to a public reprimand if they do not do their work properly is an advantage'. (ibid.)

⁹⁵⁷ I Gilmour, *The Body Politic* (London, Hutchinson, 1969) 408.

undoubtedly played a significant role in the withdrawal of the Revenue Bill. In both world wars, Churchill's approach to dealing with an obstreperous press was 'square or squash'.⁹⁵⁸

In 1927, this approach may be observed in operation. Shortly before the Budget speech, the Chairman of the Board of Inland Revenue (Hopkins) suggested that Churchill should approach Beaverbrook and Rothermere about one aspect of the Budget proposals in order to prevent a press campaign of the type that had been seen in 1921.⁹⁵⁹ Such a campaign was also capable of destroying Churchill's simplification scheme – a scheme which had the setting up of the Income Tax Codification Committee as one of its components. It is not known whether Beaverbrook was approached, but Rothermere was: for, on 5 May 1927, a letter from Ward Price,⁹⁶⁰ on *Daily Mail* headed notepaper, marked 'Confidential', and addressed to 'The Rt. Hon. Winston Churchill, P.C., C.H., etc., etc., etc.,' stated that

I spoke to Lord Rothermere last evening on the matter which you desired me to mention to him.

His reply was that The Daily Mail has no wish to show itself querulous or captious. There are so many matters of great importance to which The Daily Mail has to give its attention that, if you should decide to introduce the change of which you spoke, you may rely upon it that it would be made without comment on our part.

I return herewith the document which you entrusted to me.

I have the honour to be,

With much respect,

Yours obediently

⁹⁵⁸ Cudlipp (n 936) 117. See also Taylor (n 931) 562.

⁹⁵⁹ TNA file T 171/255, fos 385-7. Letter, Hopkins to Churchill, 6 April 1927.

⁹⁶⁰ Cudlipp described Ward Price as 'a notably articulate journalist who was his [Rothermere's] mouthpiece and frequently his "ghost" writer'. (Cudlipp (n 936) 151.)

Ward Price⁹⁶¹

Despite the hubristic language, those in government who saw this letter were unlikely to have been totally dissatisfied. Lord Rothermere had been squared; and the simplification scheme, announced in Churchill's budget speech, was enacted without any difficulties from the press.

The evidence discloses, therefore, that the press was a determinant of the form of the income tax legislation that was of marginal significance only. The press had little interest in income tax or in the forms of its legislation; and it became a significant force only in 1921, when a press campaign had an impact on that form.

5. Public opinion

Public opinion could, in theory, be a most important determinant of the forms of the income tax legislation. Where it existed, public opinion was of the utmost importance in determining the approach taken by politicians – and, accordingly, the actions taken by governments. By the twentieth century the United Kingdom had a mass electorate; and, at a general election, that electorate could – and did – change the political party supplying the country's ministers. 'The one force which is irresistible in the country is the electorate'.⁹⁶² As a practical matter, therefore, it was essential for the government to be alert to the state of public opinion – and so, of course, it was. 'The climate of public opinion on people is overwhelming', Churchill observed in late 1943.⁹⁶³ As Dicey argued

⁹⁶¹ TNA file T 171/255, fo 394. Letter, Price to Churchill, 5 May 1927.

⁹⁶² Memorandum, dated 29 March 1910, in the Elibank papers. Quoted in AM Gollin, *The Observer and J.L. Garvin 1908-1914* (OUP 1960) 183.

⁹⁶³ Quoted in GK Fry, *The Politics of Crisis: An Interpretation of British Politics, 1931-1945* (Basingstoke, Palgrave, 2001) 187. Churchill was considering Baldwin's predicament in government in the 1930s.

so forcefully over a century ago, public opinion had the capacity to determine the law;⁹⁶⁴ and, accordingly, the form of the income tax legislation.

Public opinion might be all-powerful in theory: but, in the case of statute law in general and of the form of income tax legislation in particular, public opinion did not exist. In 1956, it was Devlin's opinion that the ordinary man might like or dislike the substance of legislation 'but he does not ... much mind what form it takes'.⁹⁶⁵ In an earlier article, published in 1924, Chalmers had taken the view that '[a] Consolidation Act probably has never won a single vote at an election, and the public do not perceive its effect on their pockets'.⁹⁶⁶ More specifically in the context of the income tax legislation, in a memorandum to Churchill, written in the autumn of 1925, the Chairman of the Board of Inland Revenue, Sir Richard Hopkins, noted that an attempt 'to re-express the existing [income tax] legislation still has, no doubt, some attractions. There is, however, practically no demand for it'.⁹⁶⁷ Public opinion, therefore, did not determine the form of the income tax legislation – the public had no views about the form that the income tax legislation should take.

Public opinion on other matters, however, could, and did, have an impact on the form of income tax legislation. It was public opinion that lay behind the enactment of the primary legislation enabling the PAYE Regulations to be made – and, accordingly, behind the making of the Regulations themselves. The

⁹⁶⁴ AV Dicey, *Lectures on the relation between Law and Public Opinion in England during the Nineteenth Century* (London, Macmillan, 1905). See also chapter 1 above, text around n 61.

⁹⁶⁵ P Devlin, 'The Common Law, Public Policy and the Executive' (1956) 9 *Current Legal Problems* 1, 14.

⁹⁶⁶ Chalmers (n 875) 341.

⁹⁶⁷ TNA file IR 63/114, fos 318-31. Memorandum, with covering note, Hopkins to Churchill, 27 October 1925. In that same memorandum Hopkins also pointed out that income tax adjustments were necessary to deal with the various different personal reliefs – but the existence of those reliefs was supported by public opinion 'and no simplification in this respect appears to be within the range of practical politics'.

Inland Revenue Departmental Report, dated 21 May 1943, which stood at the beginning of the sequence of events leading directly to the making of those Regulations, began by stating that '[t]he public demand for a system of deducting tax on the current earnings or pay-as-you-go basis has reached the point at which it is hardly any longer a question whether such a system is or is not possible'.⁹⁶⁸ Later in that sequence of events, on the second reading of the Bill enacted as the Income Tax (Employment) Act 1943,⁹⁶⁹ one MP considered that the Bill met 'a very real demand of the country. This is a case in which the demand has produced the supply, which always seems to me the correct sequence of events'.⁹⁷⁰ There can also be no doubt that, by the end of the 1950s, there was a general view that post-war credits had remained unpaid for too long. The enactment of the Income Tax (Repayment of Post-War Credits) Act 1959⁹⁷¹ may accordingly be viewed as a response to this grievance by the government of the day. It is arguable whether or not the opposition to the Revenue Bill of 1921 (with its contested administrative provisions) constituted public opinion: for the view may be taken that opposition to that Bill was the work of vocal minorities, acting within a majority who were indifferent to the issues arising. It may certainly be said, however, that there was a body of outside opinion opposed to the Bill – and that this body was much more visible than any body of outside opinion supporting the Bill. On these occasions,

⁹⁶⁸ TNA file IR 63/163, fos 1-35, 2 (para 1). Report of the Committee appointed to examine the possibility of introducing a system of deducting income tax on wages on the current earnings basis, 21 May 1943. For the sequence of events leading to the enactment of the primary legislation enabling the PAYE Regulations to be made, see JHN Pearce, 'The Road to 1944: Antecedents of the PAYE Scheme' in J Tiley (ed), *Studies in the History of Tax Law: Volume 5* (Oxford, Hart, 2012) 207-17. See also chapter 7, section 3, below.

⁹⁶⁹ 6 & 7 Geo 6 c 45.

⁹⁷⁰ HC Deb 14 October 1943, vol 392, col 1164.

⁹⁷¹ 7 & 8 Eliz 2 c 28.

therefore, outside opinion on matters not directly relevant for the form of income tax legislation became a determinant of the form of that legislation.

Those in favour of statute law reform hoped that there would be a development of public opinion on this subject. Birkenhead believed that, in order '[t]o facilitate the work of consolidation, it is highly desirable that public opinion should be stimulated in its favour'; but he also had to admit that '[at] present, the work excites no enthusiasm'.⁹⁷² Hewart expressed optimism that public opinion could provide the remedy for the mischief he claimed to have identified in *The New Despotism*. He considered it 'tolerably safe' to suppose that, at the time he was writing, only a small part of the electorate knew what was being done and that only a still smaller part had 'any real appreciation of the meaning and effect of the statutory provisions which offer at once the occasion and the instrument of despotic power'.⁹⁷³ What was necessary to deal with the situation was simply a particular state of public opinion; and, in order that such a state of public opinion might be brought into existence, what was necessary was 'simply a knowledge of the facts'. Hopes for the development of public opinion were also displayed by the drafters of statutes. Ilbert,⁹⁷⁴ in 1901, addressing himself to the subject of consolidation, thought that '[w]hat seems to be most needed is the formation of a body of public opinion which will encourage and stimulate the Government of the day in the introduction of Consolidation Bills'; and he also thought that 'such an expression of public opinion ... would justify the Ministers

⁹⁷² Viscount Birkenhead, *Points of View* (London, Hodder and Stoughton, no date but around 1922) 176.

⁹⁷³ Lord Hewart, *The New Despotism* (London, Ernest Benn, 1929) 147-8. This work is considered further in chapter 7, section 1, below.

⁹⁷⁴ Sir Courtenay Ilbert (1841-1928) was first Parliamentary Counsel from 1899 to 1901. He was then the Clerk of the House of Commons from 1902 to 1921.

of the Crown in undertaking a troublesome task'.⁹⁷⁵ Half a century later, Ram, in an address delivered in 1951, concluded by observing that the Lord Chancellor (Jowitt) had given the business of statute law reform a definite place among the duties of Parliament and of the executive government. 'He has given it that place, but it must keep its place for many years to come and only the pressure of informed public opinion can secure that'.⁹⁷⁶ Such hopes as there may have been, however, for the development of public opinion on the subject of statute law reform in general, and the form of the income tax legislation in particular, were not fulfilled. On another occasion, Ram described statute law reform as 'a "hole and corner affair", of little interest to anyone except a few despairing enthusiasts';⁹⁷⁷ and there was no general development of public opinion in the manner that Ram, and others, hoped.⁹⁷⁸

The effect of public opinion on the form of the income tax legislation, therefore, was a by-product of public opinion about specific aspects of the income tax system. In the cases of PAYE and of the Income Tax (Repayment of Post-War Credits) Act 1959, further legislation came into existence; in the case of the Revenue Bill of 1921, proposed legislation was abandoned.

The impact of public opinion was also confined to one of the four categories of primary legislation distinguished: that of programme Acts. There was no impact of public opinion on the Finance Bill cycle (presumably silently acquiesced in on

⁹⁷⁵ Sir C Ilbert, *Legislative Methods and Forms* (OUP 1901) 116.

⁹⁷⁶ Sir G Ram, 'The Improvement of the Statute Book' [1951] *Journal of the Society of Public Teachers of Law* 442, 458. Ram's address was delivered on 28 September 1951.

⁹⁷⁷ TNA file LCO 2/3817. Letter, Ram to Jowitt, 6 August 1948.

⁹⁷⁸ '[O]ther things being equal, the larger the number of individuals or firms that would benefit from a collective good, the smaller the share of the gains from action in the group interest that will accrue to the individual or firm that undertakes the action. Thus, in the absence of selective incentives, the incentive for group action diminishes as group size increases, so that large groups are less able to act in their common interest than small ones'. M Olson, *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities* (New Haven [Connecticut] and London, Yale UP, 1982) 31.

the basis that nothing could be done about it); and there was no impact of public opinion on Consolidation Bills or Codification Bills (presumably on the basis that the public knew – and cared – next to nothing for such things). Programme Bills dealing with specific topics, on the other hand, offered matters on which it was much easier for the public to have an opinion – and, if the public had an opinion, there could be important consequences.

Conclusion

The evidence shows that determinants outside government were of minor importance in determining the form of the income tax legislation. The Income Tax Codification Committee was brought into existence with a view to transforming the form of that legislation; but the Committee did not produce a draft Bill that had the assent of all relevant major interests (the essential precondition for the enactment of any Codification Bill) and there was no prospect of obtaining the support of those interests for a different Codification Bill. No codification statute was enacted.

The other determinants examined – MPs, interest groups, the press and public opinion – existed completely independently of the form of the income tax legislation. The determination of that form was not, in any way, a priority for any of them. Indeed, it is not possible to discern that there was any public opinion relating to the form of the income tax legislation. Each of these possible determinants, however, had some influence on that form. These influences were largely confined to programme Bills (the form of legislation that it was easiest for those outside government to influence) and those influences acted upon particular Bills to achieve particular objectives. Public opinion was in favour of an income tax scheme which provided for deductions from current

earnings – and accordingly influenced the legislation enabling the PAYE scheme to be made. MPs, interest groups and the press all acted in concert to oppose the Revenue Bill of 1921 – and that Bill was withdrawn. In the cases of MPs and the press, however, the opposition was, to a significant extent, to Lloyd George and the Lloyd George coalition. In the case of interest groups, the opposition took the form of the protection of the existing roles played in the administration of income tax. Both in 1921 and in the second world war, during the period leading up to the making of the PAYE Regulations, therefore, the impact on the form of the income tax legislation was a by-product of campaigns waged, and climates of opinion existing, to achieve different objectives. Even having regard to these ‘successes’, however, the overall impact of the possible determinants investigated in this chapter on the form of the income tax legislation during the period from 1907 to 1965 was slight. The overall effect of the ‘default setting’,⁹⁷⁹ under which the form of the income tax legislation only received attention subject to the constraints of parliamentary procedure, was not overridden.

⁹⁷⁹ For the default setting, see, in particular, the conclusion to chapter 2 above.

CHAPTER 7: THE LIMITED AND UNEVEN ROLE PLAYED BY SUBORDINATE LEGISLATION

'The relation between Statutory Instrument and Statute has become one of the main parts of the law ...'.⁹⁸⁰

Introduction

The use made of subordinate legislation⁹⁸¹ increased greatly during the first half of the twentieth century.⁹⁸² As early as 1920, when 82 Acts of Parliament received the Royal Assent, but 916 general statutory rules and orders were officially registered, it was remarked that '[i]n mere bulk the child now dwarfs the parent'.⁹⁸³ From 1896 to 1911, the average annual total of general statutory rules and orders was about 188.⁹⁸⁴ Then, during the first world war, there was a

⁹⁸⁰ Kenneth Pickthorn MP speaking in the House of Commons. HC Deb 21 February 1951, vol 484, col 1334.

⁹⁸¹ Subordinate legislation has been described as a 'rather technical and forbidding subject' (CT Carr, *Concerning English Administrative Law* (New York, Columbia UP, 1941) 31); but the subject has been well investigated in academic writing. See generally CT Carr, *Delegated Legislation: Three Lectures* (CUP 1921) (subsequently cited in this chapter as 'Three Lectures'); Chih-Mai Chen, *Parliamentary Opinion of Delegated Legislation* (New York, Columbia UP 1933); J Willis, *The Parliamentary Powers of English Government Departments* (Cambridge (Mass), Harvard UP 1933); CT Carr, *Concerning English Administrative Law* (New York, Columbia UP 1941) (subsequently cited in this chapter as 'Administrative Law'); Sir C Carr, 'Delegated Legislation' in Lord Campion and others, *Parliament: A Survey* (London, George Allen & Unwin, 1955) (subsequently cited in this chapter as 'Delegated Legislation'); J Eaves, *Emergency Powers and the Parliamentary Watchdog: Parliament and the Executive in Great Britain, 1939-1951*, (London, Hansard Society, 1957); JE Kersell, *Parliamentary Supervision of Delegated Legislation* (London, Stevens, 1960); WH Greenleaf, *The British Political Tradition: Volume 3: A Much Governed Nation: Part 2* (London, Methuen, 1987) 529-97; and M Taggart, 'From "parliamentary powers" to privatization: The chequered history of delegated legislation in the twentieth century' (2005) 55 *University of Toronto Law Journal* 575. The author is grateful to Dominic de Cogan for drawing his attention to Taggart's article.

⁹⁸² Statutory Rules and Orders and then, later, Statutory Instruments have been published for 1890 and all subsequent years. From 1894 onwards, following the enactment of the Rules Publication Act 1893 (56 & 57 Vict c 66), the volumes published distinguish between instruments of a general and a local character, with instruments in the former category only being printed and published in full. It is nevertheless unexpected to find that the published volumes for each year provide no convenient statements of the number of instruments falling within each of these two major categories. It is also unexpected to find that no comprehensive list of the number of instruments made each year appears to exist – although figures for various different years have been given on various different occasions. (See also n 984 below.)

⁹⁸³ Carr 'Three Lectures' (n 981) 2.

⁹⁸⁴ Appendix 2 is a table setting out the numbers of Statutory Rules & Orders (from 1895 to 1947) and the numbers of Statutory Instruments (from 1948 to 1958) as far as those numbers

great expansion, with 1,204 general instruments being made in 1918, and 1,091 in 1919. The 1920s saw fewer general statutory rules and orders being made, but more than in the years before the first world war. The average annual total of general statutory rules and orders made during the period from 1920 to 1929 was 503. The second world war then saw another great expansion: 644 such instruments were made in 1937, but 1,901 in 1942. More than 1,000 general statutory rules and orders (and then general statutory instruments)⁹⁸⁵ were made every year from 1939 to 1952 inclusive. The 1950s then saw fewer general statutory instruments being made, but more than during the inter-war years. The average annual total of general statutory instruments made during the period from 1953 to 1958 was about 717. The two world wars may accordingly be said to have produced the same displacement effect in the case of subordinate legislation as that noted in the case of public expenditure by Peacock and Wiseman.⁹⁸⁶ The evidence considered in this chapter demonstrates that this is not a coincidence.

The legislation relating to income tax, however, reflected this growth to a limited extent only: for, in this area, subordinate legislation remained comparatively rare. Important income tax legislation was nearly always primary legislation. During the period from 1907 to 1965, only 80 statutory rules and orders or statutory instruments dealing with income tax matters, either in whole or in part, and not involving any foreign element, are known – a very small percentage of

are known. The table sets out the number of instruments of a general character; the number of instruments of a local character; and the total number of instruments. The paragraph in the text summarises the information set out in that Appendix.

⁹⁸⁵ The Statutory Instruments Act 1946 (9 & 10 Geo 6 c 36) repealed the Rules Publication Act 1893 (56 & 57 Vict c 66) and made further provision as to the instruments by which statutory powers to make subordinate legislation were to be exercised, replacing statutory rules and orders with statutory instruments. The Act came into operation on 1 January 1948 by virtue of Statutory Instruments Act, 1946 (Commencement) Order, SI 1948/3.

⁹⁸⁶ AT Peacock and J Wiseman, *The Growth of Public Expenditure in the United Kingdom* (OUP 1961). See chapter 1 above, text around n 67.

the number brought into existence. Appendix 3 is a table setting out these statutory rules and orders and statutory instruments. The first question addressed in this chapter, therefore, is why there was comparatively little subordinate legislation relating to income tax. On the other hand, an appreciable amount of subordinate legislation relating to income tax was nevertheless made. The second question addressed in this chapter, therefore, is why this limited, but significant, amount of subordinate legislation was brought into existence. It was also the case that a very substantial amount of the subordinate legislation relating to income tax that was made was concerned with one particular subject: deductions on account of income tax from the earnings of employees. By the end of the second world war, the legislation dealing with this subject was to be found in subordinate legislation – the PAYE Regulations.⁹⁸⁷ The third and final question addressed in this chapter, therefore, is why this particular subject received so much attention.

1. The limited amount of subordinate legislation relating to income tax

The question why there was comparatively little subordinate legislation relating to income tax is addressed by investigating two further questions. Features of the United Kingdom polity that worked against the introduction of subordinate legislation relating to income tax are investigated. There is then an investigation of the manner in which those features operated: for the features had a number of different consequences that operated to place different constraints on the making of subordinate legislation.

⁹⁸⁷ Income Tax (Employments) Regulations 1944, SR & O 1944/251.

(1) Features of the United Kingdom polity

Three features of the United Kingdom polity worked against the introduction of subordinate legislation relating to income tax. The first feature was that the imposition of taxation was a matter where deeply entrenched constitutional understandings existed. Following the constitutional conflicts of the seventeenth century, and well before the twentieth century, it had become very firmly settled that the legal basis of the right to tax and the liability to pay was parliamentary authority; that, within Parliament, the primary role in the imposition of taxation was that taken by the House of Commons; and that, within the House of Commons, the initiative in financial matters rested with the Crown.⁹⁸⁸ Against the background of those deeply entrenched understandings, the imposition of taxation by subordinate legislation would constitute a major departure of an unexpected nature – a departure that did not march well with those constitutional understandings. Anything resembling such a departure could expect to be noticed as such – and this was the case, shortly after the first world war, both in the House of Commons and in the Courts.

In the House of Commons, in December 1919, Lord Robert Cecil submitted that the Imports and Exports Regulation Bill was out of order: 'it is a fundamental rule that this House does not delegate its power of taxation'.⁹⁸⁹ The Speaker, in his turn, took the view that it had been part of the unwritten law of Parliament that the goods upon which and the rates at which taxes were to be levied should be fixed and determined by the House of Commons itself. He was not

⁹⁸⁸ For these matters, see chapter 1, text around ns 127-33.

⁹⁸⁹ HC Deb 2 December 1919, vol 122, cols 211-3. The passage quoted directly is at 212.

prepared to say that the House could not delegate that power to some other body. 'I will only say that at present I am not aware of any similar case'.⁹⁹⁰

In the Courts, in the case of *A-G v Wilts United Dairies Ltd*,⁹⁹¹ the company argued that the Food Controller,⁹⁹² when granting it a licence, had no power to impose a condition requiring payments to be made; and that the condition imposed amounted to a tax, which could not be imposed upon the subject without clear legal authority. The Court of Appeal found in favour of the company. Atkin LJ considered that, against the background of 'the historic struggle of the Legislature to secure for itself the sole power to levy money upon the subject', its complete success in that struggle, and the elaborate means adopted by the House of Commons to control the amount, the conditions and the purposes of the levy, the Food Controller's powers did not authorise the condition, imposed upon the company, requiring payments to be made.⁹⁹³

Scrutton LJ thought it conceivable that Parliament, which might pass legislation requiring the subject to pay money to the Crown, might also delegate its powers of imposing such payments to the executive: but, in his view, the clearest words would be required before the Courts would hold that such an unusual delegation had taken place – and there were no such words.⁹⁹⁴ The House of Lords upheld the Court of Appeal;⁹⁹⁵ and it was said, in a later case, that the decisions both of the Court of Appeal and of the House of Lords had been much influenced by the knowledge of the struggle to prevent the levying of taxes

⁹⁹⁰ *ibid* col 213.

⁹⁹¹ (1921) 37 TLR 884 (CA).

⁹⁹² The Food Controller had power, under the Defence of the Realm Acts enacted during the first world war, to make orders regulating the production, distribution, supply, sale and purchase of milk and milk products.

⁹⁹³ (1921) 37 TLR 884, 885.

⁹⁹⁴ *ibid* 886.

⁹⁹⁵ (1922) 38 TLR 781 (HL).

without the express sanction of Parliament – with a consequent disposition to interpret the Food Controller’s powers in the light of that history.⁹⁹⁶

Legislation making provision for subordinate legislation affecting the ambit of taxation was nevertheless enacted during the inter-war period, and again during the second world war. Following the financial crisis of 1931, the Abnormal Importations (Customs Duties) Act 1931,⁹⁹⁷ in force for six months only, empowered the Board of Trade, with the concurrence of the Treasury, to make orders imposing customs duties on certain articles in certain circumstances. The Import Duties Act 1932,⁹⁹⁸ which followed it, and was not restricted in the period for which it was in force, imposed a general customs duty of 10% on all goods imported into the United Kingdom other than exempted goods. The Act then authorised subordinate legislation to vary the category of exempted goods; to impose additional duties in the interests of the United Kingdom’s economy; to grant exemptions and preferences to foreign goods; and to impose supplementary duties in the case of foreign countries which discriminated against British goods. Then, at the beginning of the second world war, section 2(1) of the Emergency Powers (Defence) Act 1939⁹⁹⁹ expressly authorised the Treasury to provide by order for the imposition and recovery, in connection with any scheme of control contained in or authorised by Defence Regulations, of such charges as might be specified in the order.

The general constitutional understandings that worked against the imposition of taxation by subordinate legislation were not, however, displaced by the enactment of this legislation. The 1939 Act was emergency wartime legislation;

⁹⁹⁶ *A-G for Canada v Hallet & Carey Ltd* [1952] AC 427 (PC) 451 (Lord Radcliffe).

⁹⁹⁷ 22 & 23 Geo 5 c 1.

⁹⁹⁸ 22 & 23 Geo 5 c 8.

⁹⁹⁹ 2 & 3 Geo 6 c 62.

the content of section 2(1) of that Act has been attributed to the wish of the government to avoid the difficulties that had arisen after the first world war in the *Wilts United Dairies* case;¹⁰⁰⁰ and the emergency legislation in force during the second world war was gradually repealed after its end.

The 1932 Act, however, could not be reconciled so easily with these general constitutional understandings. The Committee on Ministers' Powers¹⁰⁰¹ considered that this statute was 'obviously one of the most important delegating enactments which Parliament has ever passed';¹⁰⁰² and took the view that the 1932 Act was a totally exceptional statute required for totally exceptional circumstances. At a general level, the Committee's report considered that 'instances of powers to legislate on matters of principle and even to impose taxation' were exceptional instances of delegated legislative powers. The Committee stopped short of recommending that such powers should never be conferred: but did state that it was 'of the essence of constitutional Government that the normal control of Parliament should not be suspended either to a greater degree, or for a longer time, than the exigency demands'.¹⁰⁰³ The provisions relating to subordinate legislation contained in the 1932 Act, however, did not have any limited existence. The Act continued in force until it was repealed and replaced by the Import Duties Act 1958;¹⁰⁰⁴ and section 1(1) of the 1958 Act gave power to the Treasury to impose protective duties by order.¹⁰⁰⁵ The justification given for legislation of this type was that a tariff

¹⁰⁰⁰ Carr 'Administrative Law' (n 981) 74.

¹⁰⁰¹ For this Committee see text around ns 1040-48 below.

¹⁰⁰² Committee on Ministers' Powers, *Report* (Cmd 4060, 1932) 36.

¹⁰⁰³ *ibid* 31, 52 and 58-9.

¹⁰⁰⁴ 6 & 7 Eliz 2 c 6.

¹⁰⁰⁵ These powers were then augmented by those in Finance Act 1961 (9 & 10 Eliz 2 c 36), s 9, which enabled the Treasury to vary the main customs and excise revenue duties and purchase tax by order. The maximum change was to be 10% in either direction. Finance Act 1961, s 9, was in force for a few years only: for it was repealed by Finance Act 1964, sch 9.

system could not be operated without subordinate legislation: for it was considered essential to the success of such a policy that machinery should exist under which protective duties could be imposed (or removed) or increased (or reduced) more rapidly than was possible by enacting a statute.¹⁰⁰⁶ The justification given, therefore, was specific to indirect and not to direct taxation.

The deeply entrenched constitutional understandings, working against the imposition of direct taxation by subordinate legislation, accordingly remained. Shortly after the second world war, for example, the view was expressed that '[s]uch a matter as imposing a charge upon the subject is one which according to sound constitutional theory ought to be kept in the hands of Parliament'.¹⁰⁰⁷ There is also evidence that, after the second world war, the general constitutional understandings against the imposition of taxation in subordinate legislation continued to be given effect. The Select Committee on Statutory Rules and Orders, set up in 1944, was required to draw the special attention of the House of Commons to subordinate legislation on a number of grounds, of which the first was that the instrument imposed a charge on public revenues. By the end of the 1958-59 Session, only one instrument had been reported under this head.¹⁰⁰⁸

The second feature of the United Kingdom polity that worked against the introduction of subordinate legislation relating to income tax was that, for the majority of the period from 1907 to 1965, in times of peace, it was possible to discern what may be called a traditional instinctive hostility to government – with a hostility to the making of subordinate legislation as one of its components.

¹⁰⁰⁶ Carr 'Administrative Law' (n 981) 40; Lord Hemingford, *Back-Bencher and Chairman* (London, John Murray, 1946) 164.

¹⁰⁰⁷ H Molson, *Delegated Legislation* (reprinted in PM Briers and others, *Papers on Parliament: A Symposium* (London, Hansard Society, 1949) 105.)

¹⁰⁰⁸ Kersell (n 981) 47 and 49 n 16.

The hostility to government (like the constitutional understandings relating to the imposition of taxation) had the events of the seventeenth century as its point of departure.¹⁰⁰⁹ It was Bagehot's view that the English had inherited the traditions of conflict and had preserved them in the fullness of victory. They looked on state action 'not as our own action but as alien action, as an enforced imposed tyranny from without, not as the consummated result of our own organised wishes'.¹⁰¹⁰ The connection between this traditional instinctive hostility to government and a hostility to the making of subordinate legislation appeared vividly in a speech made by Lord Banbury in 1929:

[T]his Bill perpetuates a vicious principle which unfortunately has grown very much in the last few years. It gives power to a Department to usurp the functions of Parliament, and to pass what they call regulations which have the effect of an Act of Parliament and deal with His Majesty's subjects; in fact, this does what in days gone by caused a King to lose his head. King Charles endeavoured to usurp the functions of Parliament and make laws himself. The result was that he was beheaded and Parliament regained its old powers. Now, in these days, we are asked to give powers to a Minister and a Department which we have always refused to give to a King.¹⁰¹¹

Hughes, in a work published in 1957, noted that, except from a socialist standpoint, a good defence of subordinate legislation was hard to find.¹⁰¹²

Lawyers, in particular, exhibited this instinctive hostility to government. In 1929, it was the view of Sir Claud Schuster, the Permanent Secretary in the Lord Chancellor's Office, that, in recent years, 'the weight of prejudice against the State in the minds of many members of the Court of Appeal and Judges of the

¹⁰⁰⁹ The complexion of English constitutional law, according to Lord Chorley, had been very much coloured by the events of the seventeenth century 'when the legislature triumphed over the executive which then had the judiciary very much in its pocket'. Lord Chorley, 'Law-Making in Whitehall' (1946) 9 *Modern Law Review* 26.

¹⁰¹⁰ W Bagehot, *The English Constitution* (London, Chapman and Hall, 1867) 316.

¹⁰¹¹ HL Deb 14 February 1929, vol 72, cols 932-3. Lord Banbury was speaking during the second Reading of the Factory and Workshop (Cotton Cloth Factories) Bill.

¹⁰¹² C Hughes, *The British Statute Book* (London, Hutchinson, 1957) 161.

High Court has been such as seriously to affect the Administration of Justice'.¹⁰¹³ The views expressed in Lord Hewart's work *The New Despotism*¹⁰¹⁴ exemplified that prejudice (as Schuster viewed it); and, at the time of publication in 1929, it was considered that his view represented 99% of the opinion then held by the bench, the bar and the solicitors' branch of the profession.¹⁰¹⁵

In times of war, however, the traditional instinctive hostility to government did not apply. 'In the eternal dispute between government and liberty, crisis means more government and less liberty'.¹⁰¹⁶ War, according to Scrutton LJ, speaking shortly before the end of the first world war, could not be carried on according to the principles of Magna Carta – there had to be some modification of the liberty of the subject in the interests of the state.¹⁰¹⁷ 'In a time of war', Bonar Law told the House of Commons in 1917, 'the executive Government must be given more rather than less power than in ordinary times, or it cannot carry out the work in which it is engaged';¹⁰¹⁸ and the *Economist* summarised the Emergency Powers (Defence) Act 1940¹⁰¹⁹ by stating that 'the Government takes control of everybody and everything. It is the complete conscription of persons, labour and capital'.¹⁰²⁰ In terms of Amery's analysis, times of peace saw a preference

¹⁰¹³ Quoted in Lord Nolan and Sir S Sedley, *The Making and Remaking of the British Constitution* (London, Blackstone Press, 1997) 20.

¹⁰¹⁴ Lord Hewart, *The New Despotism* (London, Ernest Benn, 1929). See text around ns 1038-9 below.

¹⁰¹⁵ DGT Williams, 'The Donoughmore Report in Retrospect' (1982) 60 *Public Administration* 273, 281.

¹⁰¹⁶ Carr 'Administrative Law' (n 981) 92.

¹⁰¹⁷ *Ronnfeldt v Phillips* (1918) 35 TLR 46 (CA) 47. The judgments in that case were delivered on 29 October 1918.

¹⁰¹⁸ HC Deb 4 April 1917, vol 92, col 1395.

¹⁰¹⁹ 3 & 4 Geo 6 c 20.

¹⁰²⁰ Quoted in GK Fry, *The Politics of Crisis: An Interpretation of British Politics, 1931-1945* (Basingstoke, Palgrave, 2001) 200.

for the 'nation' over the 'government', but times of war a preference for the 'government' over the 'nation'.¹⁰²¹

The real justification for the emergency Acts placed on the statute book at the beginning of the second world war, according to one Parliamentarian, was that 'they were essential for the prosecution of the War, or for preventing troubles and hardships at home which would otherwise have been bound to arise had the Acts not been passed – and that without any delay'.¹⁰²² The legislation consisted of emergency Acts of a temporary nature, and was only to be operative during the emergency period of the war. The Emergency Powers (Defence) Act 1939,¹⁰²³ the Parliamentarian believed, could only be justified by the war. That Act transferred authority and powers which properly belonged to Parliament to the government and to government departments; and Parliament ought not to have handed over those powers except in a time of emergency; but, in such a time, the powers had to be handed over if they were to be exercised effectively.¹⁰²⁴

Despite the hostility shown to government and subordinate legislation during peacetime, therefore, there was an increase in government during each of the world wars. The increase in government led not only to an increase in subordinate legislation, but to entire codes of subordinate legislation, deriving from the Defence of the Realm Act 1914¹⁰²⁵ (in the case of the first world war) and the Emergency Powers (Defence) Act 1939¹⁰²⁶ (in the case of the

¹⁰²¹ See chapter 1, text around ns 139-40.

¹⁰²² Hemingford (n 1006) 214-5. Lord Hemingford had previously been Sir Dennis Herbert MP, Chairman of Ways and Means and Deputy Speaker of the House of Commons from 1929 to 1943.

¹⁰²³ 2 & 3 Geo 6 c 62.

¹⁰²⁴ Hemingford (n 1006) 214-5.

¹⁰²⁵ 4 & 5 Geo 5 c 29.

¹⁰²⁶ 2 & 3 Geo 6 c 62.

second).¹⁰²⁷ The validity of this subordinate legislation derived from emergency wartime primary legislation: and, in each case, with the arrival of peace, the removal (or retention) of those codes was a matter requiring attention.

The third feature of the United Kingdom polity that worked against the introduction of subordinate legislation relating to income tax was that, for a significant part of the twentieth century, both the making and the extent of subordinate legislation were matters of controversy.¹⁰²⁸ That controversy was most acute in the years following the first world war.

The view has been taken that, at the beginning of the twentieth century, subordinate legislation was not viewed as a controversial subject.¹⁰²⁹ The first world war then transformed this situation.¹⁰³⁰ Subordinate legislation was made on an unprecedented scale; but (as the matter was put later) was 'built up haphazard without plan or logic'.¹⁰³¹ The subordinate legislation made under

¹⁰²⁷ Carr 'Administrative Law' (n 981) 71.

¹⁰²⁸ For this controversy, see, in particular, the accounts given in Greenleaf and Taggart (n 981). Taggart does not refer to Greenleaf.

¹⁰²⁹ This was the view taken by Graham-Harrison, who considered that, at that time, subordinate legislation was not viewed as a controversial subject. The practice of the delegation by Parliament of legislative powers to government departments was accepted as normal and constitutional; and the resulting legislation was not felt to be any more oppressive than that enacted by Parliament – while Parliament itself did not appear to be troubled by any apprehensions that it had improperly handed over its functions to the executive. Sir WM Graham-Harrison, *Notes on the Delegation by Parliament of Legislative Powers ...* (n 524) 1. Although this book was published well after the first world war, Graham-Harrison stated that it was written with nearly 29 years experience in the Office of the Parliamentary Counsel (ibid 117). Even before the first world war, however, the increase in subordinate legislation was capable of being viewed with disquiet – and not least by lawyers. In 1911, Cozens-Hardy MR, speaking extra-judicially, was reported as saying that Parliament had been in the habit of delegating very great powers to government departments in recent years. The real legislation was not to be found in the statute book only: Rules and Orders might be made by some government department under the authority of the statute. 'He was one of those who regarded that as a very bad system and one attended by very great danger' (Quoted in Hewart (n 1014) 144-5.

¹⁰³⁰ 'The circumstances of the [first world] war made it necessary to confer on the Executive powers of a wide nature, inevitably ill-defined, which gave rise to much irritation and abuse of "the bureaucracy", not always fair-minded or well-informed, and in some cases the legality of the action taken by the Government has been successfully questioned in the Courts of law'. AH Dennis, 'The Place of the Official Lawyer in the Constitution' (1925) 41 *Law Quarterly Review* 378.

¹⁰³¹ Committee on Ministers' Powers, *Report* (Cmd 4060, 1932) 30.

the Defence of the Realm Acts was particularly capable of attracting criticism. One possible ground of objection went to the extent of this legislation: it was not obvious that the war effort made it necessary to forbid people to hold dog shows or to whistle for a taxicab in London.¹⁰³² Another possible ground of objection went to the validity of much of the subordinate legislation: for regulations made under the Defence of the Realm Acts 'brought forth a teeming progeny of subsidiary orders, so that the Act had not only children but also grandchildren'.¹⁰³³ These were circumstances in which it could have been argued that the maxim *delegatus non potest delegare* (a delegate is not able to delegate) applied – so that all the subsidiary orders were ultra vires and void: but Carr, who noted this point, was not aware that any challenge along these lines was ever made.¹⁰³⁴ More generally, executive action was taken without any legal justification at all. 'You must remember', Schuster wrote in February 1917, 'that a good deal of the actions taken by the various Departments has succeeded because those who suffered were patriotic and still more because the departments bluffed with confidence'.¹⁰³⁵ 'Experience in the present war must have taught us all', Lord Sumner opined in *A-G v De Keyser's Royal Hotel Ltd* 'that many things are done in the name of the executive in such times purporting to be for the common good, which Englishmen have been too patriotic to contest'. He went on to note that 'much was voluntarily submitted to which might have been disputed, and that the absence of contest and even of protest is by no means always an admission of the right'.¹⁰³⁶

¹⁰³² Carr 'Delegated Legislation' (n 981) 244.

¹⁰³³ *ibid* 245.

¹⁰³⁴ *ibid* 245-6; see also Carr 'Administrative Law' (n 981) 88-9.

¹⁰³⁵ Quoted in GR Rubin, *Private Property, Government Requisition and the Constitution: 1914-1927* (London, Hambledon Press, 1994) 61.

¹⁰³⁶ *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508 (HL) 563.

After the first world war, accordingly, subordinate legislation attracted attention – and increased hostility. According to one MP in 1919, ‘government by Order in Council is in war time excusable – or may be – but in peace time it is not to be endured’.¹⁰³⁷ Finally, in 1929, *The New Despotism*¹⁰³⁸ appeared: the book in which Lord Hewart, the serving Lord Chief Justice, attacked the use and extent of subordinate legislation; and the publication of that book has been described as ‘undoubtedly the high-water mark of the attack on delegated legislation’.¹⁰³⁹

The subsiding of criticism of subordinate legislation after 1929 had both short-term and long-term causes.¹⁰⁴⁰ In the short term, action centred upon the activities of the Committee on Ministers’ Powers, set up in 1929, and often known from the name of its first chairman as ‘the Donoughmore Committee’. The setting-up of that committee, as Greenleaf has shown, was a pre-emptive strike on the part of government. Knowing that Hewart’s book was about to be published, it appeared to the Lord Chancellor (Sankey) to be ‘highly expedient that the Government should be beforehand in this matter and should have indicated their desire to investigate it before such a publication stirs up further public excitement on the question’.¹⁰⁴¹ The membership of the committee accorded with this government policy. The committee included three leading civil servants¹⁰⁴² – but no one who could have been considered to have participated in the recent controversies on the ‘anti-delegation’ side.¹⁰⁴³ The

¹⁰³⁷ HC Deb 17 March 1919, vol 113, col 1826.

¹⁰³⁸ Lord Hewart, *The New Despotism* (London, Ernest Benn, 1929).

¹⁰³⁹ Greenleaf (n 981) 553.

¹⁰⁴⁰ This paragraph derives from material to be found in Greenleaf (n 981) 557-63.

¹⁰⁴¹ Quoted in Greenleaf (n 981) 558.

¹⁰⁴² Sir Warren Fisher (then Permanent Secretary to the Treasury), Sir John Anderson (then Permanent Secretary at the Home Office and later Chancellor of the Exchequer) and Sir Claud Schuster (Permanent Secretary in the Lord Chancellor’s Office). (Greenleaf (n 981) 558.)

¹⁰⁴³ Hewart was invited to give evidence ‘but he replied that as we had read his book and he had at present nothing to add to it, he did not think he could be of further assistance to the Committee’. Committee on Ministers’ Powers, *Report* (Cmd 4060, 1932) 3. Greenleaf

committee's terms of reference were to consider the powers exercised by Ministers of the Crown by way of both delegated legislation and judicial or quasi-judicial decisions and 'to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the Law'.¹⁰⁴⁴ These terms of reference carried within them an implicit invitation for the committee to consider (as one witness put the matter) 'the whole philosophy and technique of modern government'.¹⁰⁴⁵ The committee, however, did not tackle its terms of reference in this broad manner: its focus was more specific.

The Donoughmore Committee did not consider that subordinate legislation was wholly bad. The committee saw 'definite advantages' in it – although risks of abuse were incidental to it, and 'we believe that safeguards are required, if the country is to continue to enjoy the advantages of the practice without suffering its inherent dangers'.¹⁰⁴⁶ Parliament passed so many laws each year that it lacked the time to shape all the legislative details. 'The truth is that if Parliament were not willing to delegate law-making power, Parliament would be unable to pass the kind and quantity of legislation which modern public opinion requires'.¹⁰⁴⁷ Greenleaf's conclusion on the committee's work is to be accepted: to an important degree 'the committee met a good many of the particular points which the critics had raised, thus justifying some at least of the unease which had been expressed and which had led to the appointment of the

speculates that Hewart did not wish to give the committee – and especially Schuster – the opportunity to cross-examine him. (Greenleaf (n 981) 560.)

¹⁰⁴⁴ Committee on Ministers' Powers, *Report* (n 1043) v. The witness was Sir Maurice Gwyer, then the Treasury Solicitor.

¹⁰⁴⁵ Quoted in Greenleaf (n 981) 560.

¹⁰⁴⁶ Committee on Ministers' Powers, *Report* (n 1043) 4-5.

¹⁰⁴⁷ *ibid* 23.

inquiry in the first place'.¹⁰⁴⁸ Even before the second world war, Lord Hewart had privately disowned *The New Despotism* because the welfare state 'would never be born or live unless the powers that he had inveighed against were taken by the men entrusted with the task of making the new conception of welfare work'.¹⁰⁴⁹

In the longer term, there was a lessening of the controversy regarding the use of subordinate legislation as public attention came to concentrate on other matters. During the second half of the 1930s, interest taken in domestic affairs fell relative to that taken in international affairs. The second world war was then accompanied by another major expansion of subordinate legislation; and the Labour governments in power from 1945 used subordinate legislation extensively.¹⁰⁵⁰ 'There is now general agreement about the necessity of delegated legislation', Aneurin Bevan wrote in 1953, and 'the real problem is how this legislation can be reconciled with the processes of democratic consultation, scrutiny and control'.¹⁰⁵¹

It has been said that, so far as subordinate legislation was concerned, the twentieth century 'was a century of two halves' – and this view of Taggart's is to be accepted. During the first half of the century, the battle for the legitimacy of subordinate legislation was fought and won.¹⁰⁵² Agreement that subordinate legislation was a necessity, however, might well be grudging, as opposed to

¹⁰⁴⁸ Greenleaf (n 981) 562.

¹⁰⁴⁹ Quoted in Taggart (n 981) 594.

¹⁰⁵⁰ For further details on this point, see below, text around ns 1077-85.

¹⁰⁵¹ Select Committee on Delegated Legislation, *Report together with the Proceedings of the Committee, Minutes of Evidence and Appendices* (1952-53, HC 310-1) 144-6. Memorandum by Bevan dated 17 June 1953.

¹⁰⁵² Taggart (n 981) 624. Taggart then states that '[t]he second half was dominated by the attempt to enhance parliamentary safeguards against potential and actual "abuses" of these delegated powers'. (ibid.)

enthusiastic – and any such agreement did not lead, necessarily, to the enactment of subordinate legislation on all topics.

(2) Consequences of the features investigated

These features of the United Kingdom polity – the existence of deeply entrenched constitutional understandings relating to the imposition of income tax; the traditional instinctive hostility to government in times of peace; and the fact that the making of subordinate legislation was controversial – had a number of different consequences: and those consequences operated to place three different constraints on the making of subordinate legislation relating to income tax.

A first constraint was a general prompting towards caution in those involved in the preparation of income tax legislation. A proposal for a provision enabling subordinate legislation to be made deserved careful thought before being exposed to general view in a public Bill; and it was perfectly possible for a proposal of this kind to be abandoned or modified before its existence could become generally known. Discretion could be the better part of valour – and, accordingly, determinants producing inertia could prevail over those producing change. There is no method for identifying such proposals, and it may well be difficult to assess precisely why any particular proposal was abandoned or modified – but the evidence is that such proposals existed.

One proposal for legislation, involving the enactment of enabling legislation, but which was subsequently abandoned, was considered for inclusion in the Finance Bill of 1928. The Chancellor of the Exchequer (Churchill) wished to consider the rewarding of early payments of income tax and the penalising of late payments. As far as the latter was concerned, the material sent by the

Inland Revenue to Churchill on 28 March 1928 included its own 'lay draft' of the proposed legislation; and one draft clause provided that:

The Commissioners of Inland Revenue may make regulations generally with respect to the charge and collection of the penalty and to the procedure to be adopted for the purpose, and may, in particular, by those regulations provide for the charge of the penalty by the surveyor or by the Special Commissioners, as the case may be¹⁰⁵³

There was, however, no such legislation along these lines in the Finance Act 1928.¹⁰⁵⁴ A number of different considerations, however, may have affected Churchill's decision that the proposal should be abandoned. There is evidence that Churchill wished to limit the size of the Finance Bill. In January 1928, he had minuted on one Inland Revenue note 'I approve. But beware at this time of year of the temptation to put all sorts of handy little things into the Finance Bill'.¹⁰⁵⁵ There is also evidence that Churchill was troubled at the increase in the powers of the Inland Revenue officials which the proposal would bring. A passage in one document sent to him by the Inland Revenue stated that the scheme could not be worked 'unless statutory power is given to Inspectors to determine, by agreement with taxpayers, in disputed assessments, the amount of liability not in dispute'. Churchill's manuscript marginal annotation was 'nasty'.¹⁰⁵⁶ The Inland Revenue's overall conclusion, in that same document, was that the operational advantages of the proposal were outweighed by its parliamentary difficulties.¹⁰⁵⁷ Churchill's final verdict was '[p]ut by for a rainy

¹⁰⁵³ TNA file T 171/271. Note, Gowers to Chancellor of the Exchequer [Churchill], 'Penalty on Arrears', 28 March 1928.

¹⁰⁵⁴ 18 & 19 Geo 5 c 17.

¹⁰⁵⁵ TNA file IR 63/121, fos 393-4. Note, [Gowers] to Chancellor of the Exchequer [Churchill], 'Finance Bill', 26 January 1928. Annotation by Churchill dated 21 January 1928.

¹⁰⁵⁶ TNA file T 171/271. Submission [Gowers] to Chancellor of the Exchequer [Churchill], 13 January 1928, with undated manuscript annotation by Churchill.

¹⁰⁵⁷ TNA file T 171/271. Submission [Gowers] to Chancellor of the Exchequer [Churchill], 13 January 1928.

day'.¹⁰⁵⁸ He did not want the Finance Bill, he wrote on another occasion, to be 'a Bill of Pains and Penalties'.¹⁰⁵⁹ The proposal for a provision enabling subordinate legislation to be made accordingly disappeared. The evidence does not permit a clear view to be taken on the reasons for that disappearance: but the fact that this proposal explicitly envisaged the making of subordinate legislation which gave powers to Inland Revenue officials at a time when the making of subordinate legislation was particularly controversial can only have counted against its introduction and not in favour of it.

A proposal that was significantly modified dated from 1915 and related to the government's proposals for the deduction and collection of income tax from employment income.¹⁰⁶⁰ An early draft of the legislation ultimately enacted as part of the Finance (No 2) Act 1915¹⁰⁶¹ included a provision providing that the Commissioners of Inland Revenue might make regulations for the purpose of carrying that particular section into effect, 'and may by those regulations make such adaptations of the Income Tax Acts as appear to them necessary or expedient for the purpose'.¹⁰⁶² Further drafts, however, resulted in the enabling legislation being split into a number of different provisions and becoming longer, more detailed, and more restricted; and, in particular, the wording which explicitly envisaged adaptations of the Income Tax Acts disappeared.¹⁰⁶³

The second constraint on the making of subordinate legislation relating to income tax was that different areas of this subject were considered to be of

¹⁰⁵⁸ TNA file T 171/271. Note, Gowers to Chancellor of the Exchequer [Churchill], 'Penalty on Arrears', 28 March 1928. Manuscript annotation by Churchill dated 8 April [1928].

¹⁰⁵⁹ TNA file T 171/271. Note, Gowers to Chancellor of the Exchequer [Churchill], 19 April 1928 (sic). Manuscript annotation by Churchill dated 18 April [1928] (sic).

¹⁰⁶⁰ This legislation is considered further in section 3 of this chapter.

¹⁰⁶¹ 5 & 6 Geo 5 c 89.

¹⁰⁶² TNA file AM 1/49, fos 278-81. This document has a backsheet dated 28 September 1915.

¹⁰⁶³ TNA file AM 1/49, fos 282-301.

differing suitability as subjects for subordinate legislation. The core of the distinction made was that the charge to income tax was completely unsuitable for subordinate legislation: but that the administration of income tax did not have to be treated in the same way. Such a proposition, however, might well be easier to state in general than to apply in a particular case: for it was not always possible to assign all income tax provisions, unequivocally, to one category or the other – and, accordingly, matters of judgment arose.

No suggestion that a charge to income tax might be placed in subordinate legislation is known. The position as regards the administration of income tax, however, was very different. In 1920, the Report of the Royal Commission on the Income Tax, stated that, while it considered it important that those portions of a new Act dealing with the liability of the taxpayer should be fully set out, ‘the less important administrative matters’ (the machinery for assessment and collection for example) ‘might with advantage be dealt with in the new Act in a less particularized manner than in the old, leaving the details to be covered by statutory regulations’.¹⁰⁶⁴ The Revenue Bill of 1921, however, did not include any provision of this kind; and, following the failure to enact that Bill, no evidence is known that any government pursued the Royal Commission’s expression of opinion. Emergency legislation relating to income tax, and providing for the making of subordinate legislation, was enacted in 1939, on the outbreak of the second world war: but the Income Tax Procedure (Emergency Provisions) Act 1939¹⁰⁶⁵ applied only to administrative matters and not to the charge to the tax. No subordinate legislation was ever made under this statute;

¹⁰⁶⁴ Royal Commission on the Income Tax, *Report* (Cmd 615, 1920) 89 para 401. It was this statement that attracted the (uneasy) attention of the National Association of Assessors and Collectors of Government Taxes (see chapter 6 above, text around n 918).

¹⁰⁶⁵ 2 & 3 Geo 6 c 99. See also below, text around ns 1096-7.

and the Act itself was repealed in 1950.¹⁰⁶⁶ The position in the middle of the century was summarised in a document which stated that the Board of Inland Revenue 'have power under various Finance and other Acts to make Regulations. These Regulations relate entirely to points of machinery and procedure'. The document then observed that this subordinate legislation differed markedly from that made by many other government departments which often created substantive law.¹⁰⁶⁷

The proposition that matters of judgment arose when considering the application of subordinate legislation to different areas of income tax law and practice may be demonstrated by examining the provision enacted as section 11 of the Finance (No 2) Act 1940.¹⁰⁶⁸ Having been asked to make legislative provision for a scheme which involved a great increase in the powers of the Inland Revenue to make regulations dealing with the deduction and collection of sums by way of income tax from employees' earnings,¹⁰⁶⁹ Parliamentary Counsel (Stainton) produced a draft clause with three subsections. Subsection (1), Stainton commented in his covering letter,¹⁰⁷⁰ conferred powers that would enable the Inland Revenue to make regulations covering the entirety of the area envisaged. The regulations were to apply 'notwithstanding anything in the Income Tax Acts'; and there was nothing to indicate that Stainton was in any way troubled by the extent of the powers conferred. Subsection (2) of the draft clause, on the other hand, dealt with penalties: and on this subsection Stainton

¹⁰⁶⁶ See the Statute Law Revision Act 1950, sch 1 (14 Geo 6 c 6).

¹⁰⁶⁷ TNA file T 171/427. 'Enquiry into the taxation of income: review of the field' para 161. This substantial document was prepared by Cockfield in the Inland Revenue and sent to Plowden at the Treasury with a covering note dated 4 February 1950 (ibid).

¹⁰⁶⁸ 3 & 4 Geo 6 c 48. The material in the records of the Office of the Parliamentary Counsel specifically relating to this provision is at TNA file AM 6/49, fos 911-68.

¹⁰⁶⁹ Section 11 of the Finance (No 2) Act 1940 and the subordinate legislation made under it are considered below in section 3 of this chapter.

¹⁰⁷⁰ TNA file IR 40/7454. Stainton to Gregg, 12 July 1940.

commented that 'I think we ought certainly to specify the penalties in the clause and not leave it to the regulations to impose what penalties you choose; that would be asking altogether too much from the House'. Subsection (3) of the draft clause extended the time limit during which summary proceedings for the recovery of tax might be taken in England; and on this provision Stainton commented 'I have no doubt at all that if you intend to extend the time limit for summary proceedings, this ought to be done by the clause and not by the regulations'. This clause then went forward very much as Stainton had originally drafted it. Many matters had been considered suitable for subordinate legislation – but some others had not.

The third constraint on the making of subordinate legislation was that the Conservative and Labour parties had different approaches to the use of subordinate legislation – a rare instance where party political differences were significant determinants of the form of income tax legislation. The party that was more sympathetic to the use of subordinate legislation was the Labour party.

The Labour party supported the use of subordinate legislation, viewing it as a mechanism which was necessarily involved in the extensive social legislation which the party wished to enact. The system of subordinate legislation, Laski wrote, was 'an elementary procedural convenience essential to the positive state'.¹⁰⁷¹ This general approach may be seen in the views expressed by members of the Labour party who served on the Donoughmore Committee. The Labour MP, Ellen Wilkinson, produced a note on delegated legislation that appeared as an annex to the Committee's report. Some passages in the report

¹⁰⁷¹ HJ Laski, *Parliamentary Government in England* (London, George Allen & Unwin, 1938) 351-2.

gave the impression that subordinate legislation was 'a necessary evil, inevitable in the present state of pressure on parliamentary time, but nevertheless a tendency to be watched with misgiving and carefully safeguarded'; but Ellen Wilkinson felt that in the conditions of the modern state, which not only had to undertake immense new social services, but which might also become responsible for the greater part of the country's industrial and commercial activities, the practice of granting powers to make subordinate legislation 'instead of being grudgingly conceded, ought to be widely extended, and new ways devised to facilitate the process'. Laski (another Committee member) was 'in complete agreement' with Ellen Wilkinson's emphasis upon the desirability of subordinate legislation 'as the only way to grapple with the functions now performed by modern governments'.¹⁰⁷²

In the early 1930s, individual members of the Labour party took this general approach to extremes. In 1933, Sir Stafford Cripps, looking forward to the next election, declared that the first step of a future socialist government should be to call Parliament together at the earliest moment and to place before it an Emergency Powers Bill to be passed through all its stages on the first day. This Bill, an Enabling Act, should be wide enough to allow all measures immediately necessary to be taken by ministerial orders. Those orders were to be incapable of challenge in the Courts or in any way except in the House of Commons.¹⁰⁷³

'The powers granted must be of the widest nature so that no loophole will be left

¹⁰⁷² Committee on Ministers' Powers, *Report* (n 1043) 137. Laski also saw a need 'for a thorough revision of existing parliamentary procedure which was mainly devised for a quite different kind of state'. That matter, however, was outside the Committee's terms of reference – and Laski did not attempt to pursue it. (*ibid.*)

¹⁰⁷³ S Cripps, 'Can Socialism Come by Constitutional Methods?' in C Addison and others, *Problems of a Socialist Government* (London, Victor Gollancz, 1933) 43.

open to capitalist attack'.¹⁰⁷⁴ Cripps argued that 'during the transition [to socialism] ... the temptation to dictatorship will be almost overwhelming' and that this could be avoided only if power in Parliament and government was placed in the hands of a rigidly disciplined party cadre comparable with the Communist party in the Soviet Union. 'That should be for us the great lesson of the Russian experiment. Once the party is in power it will have to be ruthless as regards individuals'.¹⁰⁷⁵ It was never explained how, having regard to existing parliamentary procedure, such a controversial Bill could be enacted in a single day; and, as Pimlott has pointed out, no major national policy or decision between 1931 and 1939 'was made or prevented by anything any politician on the Left said, wrote or did'.¹⁰⁷⁶

By the end of the 1930s, however, the Labour party had views that were less spectacular and more realistic. Toye has argued convincingly that, during the inter-war period, the Labour party came increasingly to view Parliament 'instrumentally', 'as the handmaiden to executive power, instead of being valued principally as a forum for discussion through morally forceful speech'.¹⁰⁷⁷ The party, in Toye's view, expressed admiration for the way that the National Government used Orders in Council extensively from 1931. The substance of what had been done had been wrong – but the technique had been right. The House of Commons, in Lansbury's view, 'is every day becoming more and more

¹⁰⁷⁴ Quoted in W Frame, "Sir Stafford Cripps and his Friends": the Socialist League, the National Government and the Reform of the House of Lords 1931-1935' (2005) 24 *Parliamentary History* 316, 320.

¹⁰⁷⁵ *ibid.*

¹⁰⁷⁶ B Pimlott, *Labour and the Left in the 1930s* (CUP 1977) 1.

¹⁰⁷⁷ R Toye, "Perfectly Parliamentary"? The Labour Party and the House of Commons in the Inter-war Years' (2014) 25 *Twentieth Century British History* 1. The passage quoted directly is at 5.

like a machine. And the House is not therefore getting more useless, it is daily becoming more and more efficient'.¹⁰⁷⁸

Herbert Morrison was one Labour politician who believed in the use of subordinate legislation;¹⁰⁷⁹ and he made a major analysis of the legislative situation facing a post-war government in a speech in 1944.¹⁰⁸⁰ In that speech, Morrison considered how Parliament was going to do its business in the post-war period. In his view, two great principles had to be kept in view; and the problem lay in reconciling them in practice. The first principle was that there should be 'the utmost possible freedom of discussion among the representatives of the people' so that government by consent was real and full. 'But the second principle, which in form and to some extent in fact threatens to conflict with the first, is that amid the awful problems of the post-war period democracy must work fast if it is to survive'. Even if full advantage were to be taken of existing techniques, 'the fact still remains that the pressure upon Parliamentary time is going to be almost overwhelming'. In this situation, in Morrison's view, legislative methods needed to be conceived on lines of broad principles. After that, Parliament had to be prepared to leave to the executive the task of working out the details, within the policy Parliament had approved, and implementing the details of that policy through subordinate legislation.

¹⁰⁷⁸ *ibid* 26. The party's more detailed programme 'For Socialism and Peace', dating from 1934, explained that the existing forms of parliamentary government 'were devised to suit the purposes of the negative State in the nineteenth century, and are unsuited to the needs of the positive State in the twentieth'. The 'old-fashioned procedure of the House of Commons which facilitates obstruction and delay' would therefore be rationalised to expedite government business. (*ibid* 25.)

¹⁰⁷⁹ 'I am, quite frankly, an advocate of the proper and adequate use of delegated legislation, under proper conditions'. Morrison speaking in the House of Commons (HC Deb 17 May 1944, vol 400, col 263). When Minister of Transport between 1929 and 1931, Morrison had supported legislation of this kind. See B Donoghue and GW Jones, *Herbert Morrison: Portrait of a Politician* (London, Weidenfeld and Nicolson, 1973) 140.

¹⁰⁸⁰ TNA file CAB 118/60 contains a transcript of this speech, which was delivered in Bradford on 5 March 1944. From October 1942 until May 1945, Morrison was the Home Secretary and a member of the War Cabinet.

‘This means, and we have to face the fact, that we may have to accept in peace-time rather more use of delegated legislation than we had before the war’.¹⁰⁸¹

The approach taken by the Attlee government after 1945 was the approach indicated by Morrison in his 1944 speech. Every twentieth century government had provided for subordinate legislation, Morrison told the House of Commons in August 1945.¹⁰⁸² ‘The tendency is for it to increase and it is bound to be so. What is the good of boggling at something which is bound to increase if the whole legislative process is to survive at all?’ The subject could be debated ‘until we are blue in the face, but for this Government or any other Government delegated legislation has increased, will increase, and, in my judgment, ought to increase’.¹⁰⁸³ Much subordinate legislation was made by the Labour government in office after the war.¹⁰⁸⁴ ‘The truth is’, Morrison wrote in 1950, ‘that the formidable number of instruments is the inevitable result of the complicated and detailed character of modern government’.¹⁰⁸⁵

¹⁰⁸¹ One month later, at a meeting of the War Cabinet’s Committee on the Machinery of Government, Morrison was recorded as saying that ‘subordinate legislation was valuable not only as a means of lightening the legislative load confronting Parliament. There was also the additional advantage that if administrative detail was embodied in subordinate legislation, it was a simple matter to make any detailed amendments that might be necessary from time to time. If on the other hand administrative detail was embodied in the statute itself, amendments, however small, involved legislation by Bill’. (TNA file CAB 87/73. War Cabinet: Committee on the Machinery of Government, Minutes of meeting held on 20 April 1944.)

¹⁰⁸² Morrison was now leader of the House of Commons.

¹⁰⁸³ HC Deb 24 August 1945, vol 413, col 1050.

¹⁰⁸⁴ The position was such that, in the spring of 1950, the Cabinet’s Legislation Committee invited the Lord Chancellor to consider what steps could be taken to reduce the bulk of statutory instruments in force and currently being made. Ram was consulted; and stated that the large number of Statutory Instruments made had resulted from the deliberate policy of the government that Bills should be drawn in a form that left as much detail as possible to be dealt with by subordinate legislation. Had this not been the case, the vast majority of the Acts passed since 1945 could not have reached the Statute Book. ‘Nothing short of re-enactment of these Acts in a different form (which is of course unthinkable) could do much to reduce the number of Statutory Instruments which are necessarily made under them’. (TNA file LCO 2/4326. Minutes of Legislation Committee, 7 March 1950; letter, Dobson to Ram, 12 April 1950; letter, Ram to Dobson, 19 April 1950.)

¹⁰⁸⁵ TNA file LCO 2/4326. Letter, Morrison to [Jowitt], 9 May 1950.

The Conservative party held views which contrasted strongly with those held in the Labour party. It was to the Conservative party that politicians instinctively hostile to the use of subordinate legislation could be expected to belong. Sir Frederick Banbury¹⁰⁸⁶ and Sir John Marriott¹⁰⁸⁷ were two such Conservative Parliamentarians in the period before the second world war; and, later, during that war, the group of MPs which was particularly active in scrutinising subordinate legislation, and which called itself the 'Active Back-Benchers', was a group of Conservative MPs.¹⁰⁸⁸ This critical attitude was reflected in the general policy of the Conservative governments in power from 1951. A parliamentary question in 1952 attracted the reply from the Prime Minister (Churchill) that it was the government's 'constant endeavour to limit as far as possible the number of Statutory Rules and Regulations'.¹⁰⁸⁹

This policy had an impact on the form of income tax legislation – as is demonstrated by events that took place during the 1950s.¹⁰⁹⁰ On 25 July 1952, the Chairman of the Board of Inland Revenue (Bamford) sent a submission to the Chancellor of the Exchequer (Butler) hoping that there was no objection to the presentation of a memorandum to the Royal Commission on the Taxation of Profits and Income, which the department had prepared. The submission

¹⁰⁸⁶ Banbury was later ennobled as Lord Banbury of Southam; and for his hostility to the use of subordinate legislation see text before n 1011 above. In January 1924, Banbury was so moved by the peril of a prospective Labour government that he offered to lead the Coldstream Guards into the House of Commons in order to save the constitution. M Pugh, "Class Traitors": Conservative Recruits to Labour, 1900-30' (1998) 113 *English Historical Review* 38.

¹⁰⁸⁷ Greenleaf states that 'Sir John Marriott, both in speeches in Parliament and in his published works, drew attention to "the curtailment of individual liberty" which had resulted not only from the greater volume of legislation but also from its character, since it was increasingly formulated under delegated powers by public departments'. Greenleaf (n 981) 547.

¹⁰⁸⁸ Greenleaf (n 981) 567-8 and 573.

¹⁰⁸⁹ HC Deb 1 April 1952, vol 498, col 1409.

¹⁰⁹⁰ This paragraph and the following paragraph have both been derived from material in TNA file IR 40/11166. It appears safe to assume that the draft memorandum to be found in that piece accords with the memorandum as sent to the Royal Commission; but, in the National Archives, the piece containing the Board's Memoranda to the Royal Commission (TNA file IR 75/35) is (at present) closed for 75 years until 1 January 2031.

pointed out that there was nothing in the proposals made in the memorandum which committed ministers; and that, if the Royal Commission should see fit to endorse those proposals, they could only be brought into effect by legislation. The memorandum made three proposals, of which one was that 'Statutory Regulations should be more freely adopted for the purpose of prescribing the details of the administrative machinery'.¹⁰⁹¹ It was thought that, with the power to deal with these matters in subordinate legislation, 'the Board could more easily adapt their procedures to the changing needs of the times and could more easily adopt improved procedures which experience showed to be desirable'.

The Financial Secretary to the Treasury (Boyd-Carpenter) thought it would be 'an admirable thing' if the Revenue's proposals were submitted to the Royal Commission; but recommended that this should be done with the express statement that those proposals set out the department's views, but not necessarily those of the government. The proposal relating to the use of subordinate legislation was 'quite contrary to the general policy of H.M.G., in that it recommends conferring on [the] Revenue of greater power to act under delegated powers of legislation'. Butler agreed that the Inland Revenue should submit their memorandum on that basis – and it may be inferred that this was done. In its Final Report in 1955, the Royal Commission concurred in the Board's view that a power to prescribe, by statutory instrument, the matters which the Board had specified would make it easier to adapt administrative

¹⁰⁹¹ The other two proposals were that the power of making income tax assessments should be vested in inspectors of taxes instead of the General Commissioners; and that the method of appointment and the property qualifications of General Commissioners should be amended. The administrative matters where the Inland Revenue now suggested that it should have the power to make subordinate legislation were the issue of return forms, the machinery of assessment, notices of assessment, the supervision of collection and accounting for tax, procedure for the submission of appeals, the disposal of appeals settled by negotiation and the boundaries of Divisions of General Commissioners.

provisions to the needs of the times – and made a recommendation accordingly.¹⁰⁹² During nearly all of the period from 1951 to 1965, however, Conservative governments were in office. The policy of those governments was as Boyd-Carpenter had indicated; and the Inland Revenue's proposal and the Royal Commission's recommendation remained unimplemented. A suggestion that would have produced change in the form of the income tax legislation did not give rise to action – and there was inertia and not change.

In the overall result, therefore, comparatively little subordinate legislation relating to income tax was made. A proposal that involved the making of subordinate legislation relating to income tax was (so to speak) taking part in an obstacle race in which it was necessary for the proposal to overcome a considerable number of different obstacles, any one of which could be fatal for the proposal's implementation. It is far from surprising that, in the case of income tax, comparatively little subordinate legislation was made. Confirmation of this outcome is provided by the Report of the Select Committee on Delegated Legislation of 1953. The Committee had invited and obtained evidence from 22 government departments on the procedure followed in the department in connection with the drafting of a clause in a Bill giving power to make regulations and on the procedure followed in the department in making the regulations. The 22 government departments consulted included neither the Treasury nor the Inland Revenue.¹⁰⁹³

¹⁰⁹² Royal Commission on the Taxation of Profits and Income, *Final Report* (Cmd 9474, 1955) 291-2 and 340 (paras 976 and 1090(71)).

¹⁰⁹³ Select Committee on Delegated Legislation, *Report together with the Proceedings of the Committee, Minutes of Evidence and Appendices* (1952-53, HC 310-1) ix and 170-183 (paras 33-34 and Appendix B).

2. The subordinate legislation brought into existence

The first section of this chapter addressed the question why only a comparatively small amount of subordinate legislation relating to income tax was brought into existence. An appreciable amount of such subordinate legislation was nevertheless made; and this second section addresses the question why this limited, but significant, amount of subordinate legislation came into existence. It was also the case, however, that a very substantial amount of this subordinate legislation related to one particular topic: to deductions on account of income tax from the earnings of employees; and the question of what determinants brought the subordinate legislation on this topic into existence is addressed separately in the third section of this chapter.

The subordinate legislation relating to areas of income tax other than the earnings of employees, was concerned with a considerable number of miscellaneous topics. The service of documents by post; post war credits; the specification of the nature of mineral deposits; and exemptions for visiting NATO forces – these were only some of the subjects dealt with in the subordinate legislation made.¹⁰⁹⁴ The listing of these miscellaneous topics is quite sufficient, in itself, to make it clear that the coherence of the body of subordinate legislation relating to income tax formed no part of the thinking of those who caused some income tax legislation to be enacted in this form. There is an irresistible inference that this overall outcome was the aggregate result of a considerable number of different particular decisions, taken on a considerable number of different occasions.

¹⁰⁹⁴ See Appendix 3 for a table listing the subordinate legislation relating to income tax and not involving any foreign element.

The evidence suggests that enabling powers were conferred, and that subordinate legislation relating to income tax was then made, as a result of decisions which may be placed in one of two categories. Subordinate legislation might be made following general decisions taken earlier at a high level in government. Those general decisions had an impact on the income tax system among their general consequences – and that impact was dealt with in subordinate legislation. The decision, taken in the 1920s, to partition Ireland falls into this category: and three Orders were concerned, to a greater or lesser extent, with the adaptation of the Income Tax Acts to deal with the partition.¹⁰⁹⁵ The decision to go to war in 1939 also falls into this category: and the emergency legislation enacted included the Income Tax Procedure (Emergency Provisions) Act 1939,¹⁰⁹⁶ which empowered the Commissioners of Inland Revenue, during the emergency occasioned by the second world war, to make orders providing for functions of officials concerned in the administration of income tax to be carried out by other officials instead. No evidence is known, however, that the Inland Revenue ever contemplated making any order under this Act. It may be conjectured that, although the department wished to make changes in the administration of the tax, it wished to do so not for the duration of the emergency, but permanently. In the events that happened, therefore, the only item of subordinate legislation made under this statute was an Order in Council declaring that the emergency came to an end on 1 February 1946.¹⁰⁹⁷

¹⁰⁹⁵ The Government of Ireland (Adaptation of the Taxing Acts) Order 1922, SR & O 1922/80 made under the Government of Ireland Act 1920, s 69 (10 & 11 Geo 5 c 67); the Irish Free State (Consequential Adaptation of Enactments) Order 1923, SR & O 1923/405, and the Irish Free State (Consequential Adaptation of Taxing Acts) Order 1923, SR & O 1923/453, both made under the Irish Free State (Consequential Provisions) Act 1922, s 6 (13 Geo 5 sess 2 c 2).

¹⁰⁹⁶ 2 & 3 Geo 6 c 99. This Act received the Royal Assent on 7 September 1939.

¹⁰⁹⁷ The Income Tax Procedure (Emergency Provisions) Act (Expiry) Order 1946, SR & O 1946/163.

Subordinate legislation might also be made following a decision that the legislation required was technical, and that subordinate legislation was appropriate having regard to the nature of the subject matter involved. One early item falling into this category dated from 1914 and gave effect to the decision of the Chancellor of the Exchequer (Lloyd George) that, following the United Kingdom's entry into the first world war, income tax rates should be doubled for the second half of the income tax year only.¹⁰⁹⁸ Another item of subordinate legislation of a technical nature derived from enabling legislation in section 36(2) of the Finance Act 1926,¹⁰⁹⁹ a provision which, in order to give effect to the provisions of Part IV of the 1926 Act (dealing with the basis of assessment for income tax), permitted amendments to be made to the forms of statements, lists and declarations contained in the Fifth Schedule to the 1918 Act. Subordinate legislation was made accordingly.¹¹⁰⁰ A further example falling into this category, and dating from 1956, consisted of the regulations dealing with purchased life annuities. Long before any provisions appeared in a Finance Bill, it had been recognised that 'the legislation would be somewhat complicated'.¹¹⁰¹

3. The deduction of income tax from the earnings of employees

Although subordinate legislation relating to income tax was concerned with a considerable number of miscellaneous topics, much of that subordinate

¹⁰⁹⁸ The subordinate legislation enacted was SR & O 1914/1863 (which did not provide for citation). The background to the making of this instrument is described in Sir J Stamp, 'Recent Tendencies Towards the Devolution of Legislative Functions to the Administration' (1923) 2 *Journal of Public Administration* 23, 33.

¹⁰⁹⁹ 16 & 17 Geo 5 c 22.

¹¹⁰⁰ See the Income Tax (Schedule V Amendment) Order 1927, SR & O 1927/81. (The legislation amended by this Order was repealed by the Finance Act 1927 (17 & 18 Geo 5 c 10).)

¹¹⁰¹ TNA file T 171/451. Submission by [Bamford] to Chancellor of the Exchequer (Butler), 6 December 1954. The subordinate legislation consisted of the Income Tax (Purchased Life Annuities) Regulations 1956, SI 1956/1230). Those Regulations were amended by the Income Tax (Purchased Life Annuities) (Amendment) Regulations 1960, SI 1960/2308; and also, later, by other statutory instruments made after 1965.

legislation was nevertheless concerned with one topic only: the deduction and collection of income tax from the earnings of employees.¹¹⁰² The legislation relating to this subject – one of great operational importance – constituted a striking exception to the general rule that important income tax legislation was primary legislation. Of the 80 items of subordinate legislation relating to income tax listed in Appendix 3, 38 were concerned with this topic. This section of this chapter accordingly addresses the question why subordinate legislation on this subject was made. That subordinate legislation, however, which culminated in the making of the original PAYE Regulations in 1944,¹¹⁰³ consisted of a process with three episodes, taking place in 1915, 1940 and 1943-4. Each episode involved the advance of subordinate legislation relating to the deduction and collection of income tax from the earnings of employees.¹¹⁰⁴

A number of questions are now investigated in relation to these episodes, with a view to ascertaining, in each case, why an initiative involving the making of subordinate legislation and not primary legislation was undertaken; which elements within government determined that the initiative should take this form; and how far (if at all) the initiative was altered during the later period beginning with its exposure to the public and ending with the making of the subordinate

¹¹⁰² On the developments leading to the making of the PAYE legislation, see generally RS Sayers, *Financial Policy 1939-45: History of the Second World War: United Kingdom Civil Series* (London, HMSO and Longmans, Green and Co, 1956) 99-111 and JHN Pearce, 'The Road to 1944: Antecedents of the PAYE Scheme' in J Tiley (ed), *Studies in the History of Tax Law: Volume 5* (Oxford, Hart, 2012).

¹¹⁰³ The original PAYE Regulations were the Income Tax (Employments) Regulations 1944, SR & O 1944/251. For later subordinate legislation on this subject see text around ns 1182-3 below.

¹¹⁰⁴ The deduction and collection of income tax from employment income is, however, a subject where material relating to the enactment of the relevant primary legislation is plentiful, but material relating to the choice and enactment of the relevant subordinate legislation is sparse. It may be inferred that those involved in the legislative process devoted most of their attention to primary, and not to subordinate, legislation.

legislation itself. The roles played by different elements within the United Kingdom polity differed markedly from episode to episode.

The undertaking of initiatives involving the making of subordinate legislation concerning the deduction and collection of income tax from the earnings of employees in 1915, 1940 and 1943-4 may be traced to the need to raise unprecedented revenue for central government. In 1915 and 1940, the immediate context was the United Kingdom's participation in the world war then being fought; and, in 1915, one consequence of the need to obtain increased receipts from income tax was that more people would be called upon to pay the tax.¹¹⁰⁵ The Inland Revenue, faced with the prospects of large increases in the number of income tax payers and in the rates of that tax, was concerned to ensure that it could obtain the tax now envisaged as becoming payable. The proposals brought forward included one that employees should be assessed to income tax, and should pay income tax, each quarter, in respect of the income of quarterly periods; and it was intended that this change should be 'incorporated in the permanent structure of the income tax'.¹¹⁰⁶ The Chancellor of the Exchequer (McKenna) introduced a Budget on 21 September 1915; and his speech included the statement that, so far as income tax was concerned, one important change would be 'that for employees of all descriptions, both assessment and collection will be quarterly'.¹¹⁰⁷

¹¹⁰⁵ It was the view of Reginald McKenna, the Chancellor of the Exchequer in 1915, that '[t]o enable us to cope with our colossal task, every section of the nation must be called upon to contribute and to make great sacrifices'. (HC Deb 21 September 1915, vol 74, col 348.)

¹¹⁰⁶ TNA file T 171/126. 'War Taxation'. Note by McKenna, 10 September 1915.

¹¹⁰⁷ HC Deb 21 September 1915, vol 74, cols 347-64. The passage quoted is at 353. The *Economist* commented that '[t]hose who listened to Mr. McKenna opening his first Budget on Tuesday afternoon could not complain that he was enveloping them in a war mist, or trying to conceal the black truth by statistical jugglery or political rhapsodies. It was a plain, unvarnished statement of an unparalleled revenue, an inconceivable expenditure, and an unimaginable deficit, followed by a list of fresh taxation which imposed, as he said, an unprecedented burden on the country'. (*Economist* (London, 25 September 1915) 81, 463-4.)

The responsibility for devising a detailed scheme for the quarterly assessment and collection of income tax was that of the Inland Revenue. A Committee appointed by the Chief Inspector of Taxes produced a report¹¹⁰⁸ which, after dealing with the procedure recommended for the future, contained two further cross-headings. The first was entitled '[p]oints on which legislation appears to be required' and consisted of 15 short paragraphs, but with no indication whether each particular point should be dealt with in primary or subordinate legislation. The second cross-heading was entitled '[a]dministrative details to be prescribed by Regulations of the Commissioners of Inland Revenue' and specified six matters. This report was known to a Departmental Committee which reported a little later. The report from the Departmental Committee did not incorporate the report of the Chief Inspector's Committee on any wholesale basis, but the major recommendations were the same.¹¹⁰⁹ The Departmental Committee took the view that if income tax on the earnings of employees was to be assessed and collected quarterly, as opposed to yearly, new and speedier methods of assessment and collection would have to be devised.¹¹¹⁰ There was a heading stating that '[l]egislation on the following lines would be required to give effect to the foregoing proposals' followed by 21 short paragraphs. One of those paragraphs referred to 'such cases as may be prescribed under Regulations to be made by the Commissioners of Inland Revenue'. The demand for increased revenue from income tax in wartime, to be collected in

¹¹⁰⁸ TNA file IR 63/57 contains material relating to the Committee appointed by the Chief Inspector of Taxes and to the Inland Revenue Departmental Committee. The Chief Inspector's Committee's Report was dated 17 September 1915.

¹¹⁰⁹ TNA file IR 63/57. This Report, dated 27 September 1915, was printed; and, on 28 September 1915, a copy of the printed Report was sent by the Commissioners of Inland Revenue to the Chancellor of the Exchequer (TNA file T 171/119). It may be noted the date of this Report was nearly a week after McKenna had delivered his Budget speech.

¹¹¹⁰ TNA file T 171/119. 'Report of the Committee appointed by the Board of Inland Revenue to consider the legislative and administrative measures required by the Budget proposals', 27 September 1915.

new and speedier ways, had accordingly led the Inland Revenue to devise a detailed scheme involving the introduction of subordinate legislation as one of its features. The Inland Revenue's 'Notes on Clauses' explained the position by stating that '[t]he regulations to be made under this sub-clause arise out of the necessity of compressing the operations of assessment and collection, hitherto requiring a whole year, into the compass of three months'.¹¹¹¹

The need to raise unprecedented sums resulting from the United Kingdom's participation in a world war also lay behind the further initiative undertaken in 1940. Following the outbreak of the second world war, it was obvious that there was a need for greatly increased government expenditure and taxation; and there is evidence that, by the summer of 1940, the Inland Revenue was considering action of the type ultimately taken. On 3 May 1940, in a letter apparently unrelated to any business immediately in hand, Gregg (at the Inland Revenue) wrote to Hopkins (at the Treasury) stating that if it should prove necessary to increase the income tax payable by small incomes, the question of practicability was whether the tax could be collected. Any attempt to deal with individuals with small incomes through the income tax was only possible by the adoption of deduction at the source and giving the Inland Revenue powers to make compulsory a scheme of deduction on lines similar to that laid down in a voluntary scheme which was then in existence.¹¹¹² 'Should we not arm ourselves accordingly?'¹¹¹³

The legislative form which a new scheme might take was a subject on which those concerned with the initiative said little in the early stages. The Report of

¹¹¹¹ The Inland Revenue's Notes on Clauses, as they existed at this time, are in TNA file T 171/127.

¹¹¹² For details of this voluntary scheme see Pearce (n 1102) 198-200.

¹¹¹³ TNA file T 160/927 (F 12728). Gregg to Hopkins, 3 May 1940.

an Inland Revenue Departmental Committee, dated 8 July 1940, in which the initiative was considered, made no explicit statement or recommendation about the legal form in which its proposals should be enacted.¹¹¹⁴ The obvious legal form for the scheme proposed in 1940, however, was the same as for the scheme, introduced in 1915, which applied to weekly wage-earners, and was embodied in regulations. The obvious inference is that the limited number of experienced officials dealing with this matter all understood that the Departmental Committee's Report would be implemented by subordinate legislation. There is no evidence that senior Inland Revenue officials ever envisaged that the new arrangements would take any other legal form. The department's instructions to Parliamentary Counsel for the drafting of appropriate material for the Finance Bill consisted principally of a copy of the Departmental Committee's Report.¹¹¹⁵ Parliamentary Counsel, in response, produced the draft of a single clause to deal with this matter, and commented that, so far as he could see, the enabling powers conferred in the first subsection of the draft clause 'will enable you to make regulations covering the whole of the document you gave me'.¹¹¹⁶

The Inland Revenue made a number of points in favour of the form to be taken by the scheme proposed in 1940 in the notes it prepared on the Budget

¹¹¹⁴ TNA file IR 40/7454 contains the original report. The scheme ultimately put forward by the Inland Revenue largely followed the Departmental Committee's Report, but departed from it in certain details.

¹¹¹⁵ Material relevant for the provision enacted as section 11 of that Act is at TNA file AM 6/49, fos 911-68.

¹¹¹⁶ TNA file IR 40/7454. Stainton to Gregg, 12 July 1940. The 'document you gave me' was undoubtedly the Departmental Committee's Report. Although some changes were made to the wording of subsection (1) of the draft clause before the Finance Bill was printed, the changes made did not involve any point of principle. Parliamentary Counsel's response was considered above: see text around ns 1068-70.

Resolutions and on the clauses of the Finance Bill.¹¹¹⁷ One point was that there was a relevant precedent: for the machinery of assessment and collection for income tax payable by weekly wage-earners was already prescribed by regulations. With this as the starting point, the Inland Revenue felt able to advance to the statements that '[t]he power to make Regulations for carrying out this new method of collection accords with precedent' and that there was 'nothing novel' in what was proposed. This point included a major element of advocacy. There was an existing compulsory scheme (involving regulations) applying to some employees and there was an existing voluntary scheme (not involving regulations) with provisions similar to those proposed:¹¹¹⁸ but there was no compulsory scheme involving regulations that applied to all employees – and the initiative now proposed would result in a major expansion in the ambit of subordinate legislation as it applied to employees' earnings.¹¹¹⁹ An initiative involving the making of subordinate legislation was accordingly brought forward because it was considered that the need for increased revenue in wartime demanded the amplification of the existing arrangements for the deduction and collection of income tax from the earnings of employees, which were already contained in subordinate legislation.

¹¹¹⁷ TNA file IR 63/154 contains this material. The Inland Revenue also made the point that the regulations would deal only with matters of administration: neither the amount of tax payable by any employee, nor the existing rights of appeal against assessments would be affected; and this point was valid. In addition, the department made the further point that details of the scheme could be amended more easily if those details were set out in subordinate legislation as opposed to primary legislation; and this point was also valid.

¹¹¹⁸ For details of this voluntary scheme see Pearce (n 1102) 198-200.

¹¹¹⁹ 'Though the proposal to collect income-tax due on salaries and wages at the source has been hailed in some quarters as revolutionary, it is, in fact, only an extension of a system which has been introduced voluntarily by a number of concerns and local authorities, and applies to railway officials, civil servants and the fighting services. That it is now to apply to the whole range of salary and wage earners is a wise move. The burden of income tax is too often allowed to fall entirely on the month in which it is due, imposing a disproportionate strain on the taxpayer for a few weeks. As income-tax has now risen to altogether unprecedented heights, the absolute necessity of spreading the burden can no longer be questioned. It will, of course, mean more responsibility for employers and certainly more work for accountants'. *Accountant: Tax Supplement* (London, 27 July 1940) 15, 281-2.

In 1943-44, by contrast, the initiative that extended the ambit of subordinate legislation relating to income tax had a somewhat different context. The need to raise unprecedented sums during the current war was not the only matter requiring attention.¹¹²⁰ The collection of income tax from the earnings of employees during the post war period also needed consideration.¹¹²¹ On 6 March 1943, the case for a scheme based on current earnings, taking account of the public finances as they would exist after the war, was set out in a note sent by a Treasury official to the Chancellor of the Exchequer:

... although things are pretty quiet at present the real testing time on wage-earners income tax is going to be the first year after the war, when overtime and high piece-work rates have come off. It is absolutely essential to post-war finances that we should be able to maintain wage-earners' income tax as a permanency, but if, when the first year of lower earnings comes they have to pay tax on the previous year's income when earnings were right at their peak, there will be such an outcry that the whole wage-earners' tax system might collapse altogether. It seems to me that our only chance of carrying on wage-earners' income tax into the post-war period is to get it on to a current earnings basis before the drop in earnings comes.¹¹²²

The need, therefore, to obtain unprecedented revenue for central government, not only in the context of the current war but also in the context of the forthcoming peace, produced an initiative involving the further extension of subordinate legislation relating to the deduction and collection of income tax from the earnings of employees.

¹¹²⁰ By 1943, the existing arrangements for the deduction of income tax from the earnings of employees were encountering difficulties. Further details are given in Pearce (n 1102) 204-7.

¹¹²¹ As early as February 1942, Ernest Bevin, the Minister of Labour, stated his 'conviction that the present system as it applies to the weekly wage earner must be modified' and considered that 'the real essence of the matter is that the wage earner budgets on the basis of his weekly earnings. ... Any system must be simple in its operation and must be related to current earnings'. (TNA file T 171/360. WP (42) 78, War Cabinet: Effect of Income Tax on the Weekly Wage-earner: Memorandum by the Minister of Labour and National Service, 13 February 1942.)

¹¹²² TNA file T 171/363. Note to Chancellor of the Exchequer by P D Proctor, 6 March 1943. Proctor was an Under Secretary at the Treasury. (Underlining in original.)

An appendix to the Departmental Report, dated 21 May 1943, which stands at the beginning of the sequence of events leading directly to the making of the PAYE Regulations, listed 'the main points upon which early legislation is necessary'.¹¹²³ The final matter listed was '[g]eneral power to Commissioners of Inland Revenue to make Regulations which would enable tax to be deducted on the proposed basis, if it is considered that the powers contained in Section 11 of the Finance (No. 2) Act, 1940, are inadequate'. This last matter demonstrates that in 1943-4, as in 1940, the new scheme was viewed as a development of existing arrangements. The initiative undertaken in 1940 had been implemented by the making of subordinate legislation; and the PAYE scheme was to be implemented in the same way.

The elements within government that determined on the initiatives extending the ambit of subordinate legislation (and, accordingly, affecting the form of the income tax legislation) differed greatly in 1915, 1940 and 1943-44. In 1915, the evidence is that different elements within government worked together constructively and without friction. All was in accordance with ideals of how government ministers and civil servants should work together.¹¹²⁴ Political ministers, headed by the Chancellor of the Exchequer, set the guidelines; and

¹¹²³ TNA file IR 63/163. 'Report of the Committee appointed to examine the possibility of introducing a system of deducting income tax on wages on the current earnings basis', 21 May 1943, 1, 19 (in appendix II to the Report). The list was as follows:
'(1) The writing off of that part of the tax deductible on the old basis which would overlap the deductions on the new basis i.e. 10/12ths of the 1943/44 tax for manual wage-earners and 7/12ths of the 1943/44 tax for other employees.
(2) Alteration of basis of assessment under Schedule E to that of the current year ... with possible relieving provisions in certain cases.
(3) Transfer of Schedule E assessing from Commissioners to Inspector, and abolition of half yearly assessment of manual wage-earners.
(4) Alteration of basis of Life Insurance Relief
(5) General power to Commissioners of Inland Revenue to make Regulations which would enable tax to be deducted on the proposed basis, if it is considered that the powers contained in Section 11 of the Finance (No. 2) Act, 1940, are inadequate'.

¹¹²⁴ See chapter 5, section 1, above, text around ns 645-53.

the Inland Revenue and the Office of the Parliamentary Counsel devised detailed plans and provided for the legal form to implement those plans.

In 1940, by contrast, the element advancing the initiative was the Inland Revenue. Having suggested that the department should have power to impose a compulsory scheme from the earnings of employees,¹¹²⁵ the language of Inland Revenue officials became more forceful during the summer of 1940. One document stated that the only way in which the department considered that high rates of income tax could satisfactorily be collected from weekly and monthly wage-earners was to secure the spreading of payments over the whole year. It was accordingly proposed that a scheme should be put into operation under which employers should be required to deduct an appropriate amount in respect of income tax from the payment of wages or salaries every week or month – and this scheme would apply to all earnings.¹¹²⁶

The Inland Revenue acted in a context in which other individuals concerned with the formulation of tax policy were either well disposed to the initiative or were concentrating on other matters. On 8 May 1940, Hopkins, at the Treasury, indicated support for 'this large new departure'.¹¹²⁷ On the other hand, it may

¹¹²⁵ See text around ns 1112-3 above.

¹¹²⁶ TNA file T 171/354 (Part C). 'Deduction at source of the Income Tax due in respect of salaries and wages', 10 July 1940. An earlier note, dated 1 June 1940, had contained a passage stating that the increase in tax on all incomes and particularly on earned incomes would be very heavy. The actual collection of these large amounts would be extremely difficult; and it was considered that if any increase of this magnitude was going to be made in the income tax payable by individuals under direct assessment, there must be instituted some machinery for spreading the burden and deducting it from salary month by month. If action of this kind was to be taken, there must be statutory power for it that summer, as the system of collection at the source should commence in October next, and arrangements needed to be made in advance to get that system under way. (TNA file IR 63/154. 'Note by Board of Inland Revenue on possible expedients for increased yield of Income Tax'. The Note was signed by Gregg and dated 1 June 1940.)

¹¹²⁷ TNA file T 160/927 (F 12728). Manuscript note, Hopkins to Padmore, 8 May 1940.

be inferred that the new Chancellor of the Exchequer, Sir Kingsley Wood,¹¹²⁸ was unaware of developments. A manuscript endorsement, dated 4 June, on Hopkins's note of 8 May, stated that '[w]hen the Chancellor is ready we had better mention it to him'.¹¹²⁹ By the beginning of July, the Chancellor had decided, for reasons that had nothing to do with the collection of income tax, to introduce an early supplementary Budget;¹¹³⁰ and, during the course of a discussion about this Budget, held on 5 July 1940, '[o]n points of detail it was mentioned to the Chancellor that the Inland Revenue would certainly press for a system of deduction of Income Tax from wages ...'.¹¹³¹

In 1940, therefore, senior Inland Revenue officials pressed vigorously for their initiative to be advanced: so the questions why they pressed so vigorously for this to be done and why they did so at this particular juncture both arise. The Inland Revenue was undoubtedly keen to advance this initiative: for it would achieve the departmental objective of providing for income tax deductions from the earnings of employees.¹¹³² There can be no doubt, also, that war strengthened the case for undertaking the initiative – and made it easier to accomplish. It is also possible to go further. The most important official in the Treasury (from the Inland Revenue's point of view) was content for the initiative to succeed; the Chancellor of the Exchequer was new, inexperienced, and concentrating on other business. The country's situation was desperate: it was reasonable to hope that any initiative taken would not be wrecked by

¹¹²⁸ On 10 May 1940, Winston Churchill succeeded Neville Chamberlain as Prime Minister; and, soon after that, Sir Kingsley Wood succeeded Sir John Simon as Chancellor of the Exchequer.

¹¹²⁹ TNA file T 160/927 (F 12728). Manuscript note, Hopkins to Padmore, 8 May 1940. Manuscript annotation on note.

¹¹³⁰ The Chancellor's priority was to be able to introduce purchase tax to which the Labour party (now part of the governing coalition) had earlier declared its opposition. For an account of the events leading to the decision to introduce this supplementary Budget see Sayers (n 1102) 48-50.

¹¹³¹ TNA file T 171/354 (Part A). Note, 'Second Budget, 1940', 5 July 1940.

¹¹³² See chapter 3 above, text around ns 342-6.

employers, employees, and other groups within society. It may be conjectured that senior Inland Revenue officials judged that the forces favouring their initiative were as strong, and that the forces opposing their initiative were as weak, as could ever reasonably be expected – and that those officials pressed forward accordingly. The successful promotion of their initiative had the consequence that there was an expansion of the ambit of the subordinate legislation relating to income tax.

In 1943-4, by contrast, it was different elements within government that advanced an initiative which involved the making of subordinate legislation relating to income tax. On this occasion, the roles played may be said to be the mirror image of those played in 1940. The Treasury and the Chancellor of the Exchequer¹¹³³ were both looking for a scheme with different characteristics; and, accordingly, put pressure on the Inland Revenue, which believed that the existing arrangements were working satisfactorily.¹¹³⁴

In the spring of 1943, Proctor, at the Treasury, believed that the Inland Revenue might be able to work out a system using a current earnings basis; and that it would help if the Chancellor could give some pointer in his Budget speech to say that he was looking ahead to the problem that would arise when earnings fell, and that he was closely examining the possibility of shifting on to a current earnings basis before that time came.¹¹³⁵ The Chancellor accordingly stated in his Budget speech that his advisers were now engaged in a close examination

¹¹³³ The approach of Kingsley Wood in 1943 to the introduction of PAYE was considered in more detail in chapter 5, section 3(2), above, text around ns 742-53.

¹¹³⁴ On 1 February 1943, the Treasury asked for draft paragraphs for inclusion in the Chancellor's Budget speech; and the Inland Revenue produced a draft which included the statement that 'the modifications which were made in the machinery of collection last year have proved to be successful and have contributed to a smooth collection of the tax'. (TNA file T 171/363. Proctor to Gregg, 1 February 1943; and Note, 'Income Tax – Wage Earners', 27 February 1943.)

¹¹³⁵ TNA file T 171/363. Note, Proctor to Chancellor of the Exchequer, 6 March 1943.

of this aspect of the matter and that the consideration of a current earnings basis for the deduction of tax would not be ruled out of their deliberations.¹¹³⁶

The Chancellor also returned to this matter at the end of the Budget Debate with a statement that the Inland Revenue 'are now looking into this matter again and are aware of the desires of the House, and that if there is any possibility of some sort of solution, they are the expert body to provide such a scheme'.¹¹³⁷

The Inland Revenue accordingly believed itself to be under pressure – which it was. A further Inland Revenue Departmental Committee, appointed 'to examine the possibility of introducing a system of deducting income tax on wages on the current earnings basis', reported on 21 May 1943; and began by stating that '[t]he public demand for a system of deducting tax on the current earnings ... basis has reached the point at which it is hardly any longer a question whether such a system is or is not possible'. The authors of the Report also considered that Sir Kingsley Wood's remarks at the end of the Budget Debate left no doubt that the Chancellor 'regards the introduction of such a system as a necessity, if the Income Tax in post-war years is to continue to apply to wage-earning classes'.¹¹³⁸ It is this report, proposing that income tax should be deducted on a cumulative basis, which stands at the beginning of the sequence of events leading directly to the making of the PAYE Regulations.¹¹³⁹

It is clear, however, that those devising the new scheme concentrated principally on the technical operation of the scheme and on the work that would be necessary if that scheme were to be brought into operation on 6 April 1944 –

¹¹³⁶ HC Deb 12 April 1943, vol 388, col 946.

¹¹³⁷ HC Deb 21 April 1943, vol 388, col 1772.

¹¹³⁸ TNA file IR 63/163. 'Report of the Committee appointed to examine the possibility of introducing a system of deducting income tax on wages on the current earnings basis', 21 May 1943. In this piece, the Report is at 1-35 and the passage quoted is at 2 (para 1).

¹¹³⁹ For this sequence of events see Pearce (n 1102) 209-18.

the beginning of the next income tax year. The Inland Revenue Departmental Committee paid less attention to legislative matters – and still less to the form of that legislation.¹¹⁴⁰ The Report stated that if, as was envisaged, the scheme was to come into force on 6 April 1944 'legislation before that date is absolutely essential and acceptance of the scheme would involve the introduction, at a very early date, of a special Bill, all the stages of which would have to go through within the next three or four months'.¹¹⁴¹ In fact, two programme Bills were enacted in 1943 and 1944;¹¹⁴² and the PAYE Regulations were then made.¹¹⁴³

Not only were there major contrasts in the elements within government advancing the initiatives to make subordinate legislation relating to the deduction of income tax from the earnings of employees in 1915, 1940 and 1943-44, there were also major contrasts in the alterations made to those initiatives during the later period beginning with the exposure of the initiative to the public and ending with the making of the subordinate legislation. As a result, the ambit of the subordinate legislation and the form of the income tax legislation were both affected.

In 1915, the version of the Finance Bill which became generally available in printed form contained four different provisions enabling subordinate legislation to be made.¹¹⁴⁴ Clause 24(2) gave the power to exclude any class of employed

¹¹⁴⁰ The view of the Chairman of the Board of Inland Revenue (now Cornelius Gregg) was to the same effect: although there were 'difficult issues that will require legislation they are soluble and the adoption of the scheme for current earnings cannot be said to depend upon their solution'. (TNA file IR 63/163, fo 72 (para 2 of the covering Memorandum).)

¹¹⁴¹ TNA file IR 63/163, fo 3 (para 6 of the Report).

¹¹⁴² The Income Tax (Employments) Act 1943 (6 & 7 Geo 6 c 45) and the Income Tax (Offices and Employments) Act 1943 (7 & 8 Geo 6 c 12). For the events that led to the enactment of two statutes, see text around ns 1174-82 below.

¹¹⁴³ Income Tax Employments Regulations 1944, SR & O 1944/251.

¹¹⁴⁴ These provisions had already been significantly altered before the text of the Bill became generally available: see text around ns 1060-3 above. There is a copy of the Bill as it existed at

person from the operation of the new quarterly scheme.¹¹⁴⁵ Clause 25(1) referred to regulations in the context of the requirement for employers to make deductions from future earnings. Clause 25(3) gave power to apportion yearly allowances and deductions. Finally (and most controversially) clause 25(4) provided that the Commissioners of Inland Revenue might 'make regulations generally with respect to the assessment and collection of income tax in the case of employed persons, and with respect to the procedure to be adopted for the purpose'.

The government's scheme could be contested. That scheme affected both employers and employees – and the government was consequently vulnerable to any adverse reaction from those groups. The government's scheme also involved a major extension of the administration of income tax by central government at the expense of the existing system of local administration – and the proposals would encounter major difficulties if the existing system of administration should be defended energetically. The government's proposals encountered opposition from both groups of interests; and both caused amendments to be made to the Bill – with the result that the changes to the form of the income tax legislation were less extensive than had originally been proposed.

In the case of employers and employees, conflict centred upon clause 25(1). On 26 October, the provision was much criticised when it was considered in Committee by the House of Commons; and McKenna ended by accepting a suggestion that he should obtain the views of the representatives of employers

this stage [Bill 145] in TNA file IR 63/55. The Finance Bill only became generally available in printed form on 12 October, one day before its Second Reading. (See HC Deb 26 October 1915, vol 74, cols 1302, 1367 and 1403.)

¹¹⁴⁵ Similar arrangements were already in place for some classes of employees – notably civil servants.

and employees on the subject of the deduction of income tax from the payments of earnings.¹¹⁴⁶ A conference held to ascertain views reached the conclusion that the employer should not make income tax deductions in the circumstances envisaged in this subsection.¹¹⁴⁷ Clause 25(1) of the Bill in the form originally proposed was accordingly omitted.

It does not appear that anyone in government had foreseen that difficulties would arise from those concerned with the local administration of income tax: but representatives of the General Commissioners were exceedingly active in opposing the government's scheme¹¹⁴⁸ – with the *Times* newspaper in support.¹¹⁴⁹ It was the Inland Revenue's view that, to a very significant extent, the agitation was not real and spontaneous, but stage-managed by the General Commissioners for the City of London – and, in particular, by their Clerk, Sir Thomas Hewitt. The extant material suggests that many of the documents sent to the government made use of possible background and precedent material – and that the source of the material in question was the City of London General Commissioners.¹¹⁵⁰

¹¹⁴⁶ See HC Deb 26 October 1915, vol 75, cols 113-133 for the consideration of clause 25(1).

¹¹⁴⁷ TNA file T 172/222 consists of a transcript of the shorthand notes of this conference held on 3 December 1915. As one of the employees' representatives put it '[t]here is enough trouble between employers and employed without any more being brought in'. (transcript 37). The conference was sizable: five civil servants are listed as assisting the Chancellor of the Exchequer and about 30 individuals attended from the employers' side and about 20 from the employees'. (Manuscript additions make it impossible to be sure about the exact numbers.)

¹¹⁴⁸ TNA file T 171/120 contains material relating to the actions taken on behalf of the General Commissioners.

¹¹⁴⁹ The *Times* printed a letter from three of the City of London General Commissioners, H Cosmo O Bonsor, John C Bell, and Arthur Hill, protesting against the government's scheme (*Times* (London, 25 October 1915) at 9 col d). This matter was also the subject of two paragraphs of commentary in the financial section, in which the letter was described as 'a protest ... very properly made' and in which the first paragraph had the heading 'A vicious proposal'. (See 'City Notes' at *ibid* 14 col a.) Statements in the commentary permit the conjecture that the *Times* had also been provided with background material (in addition to being lobbied).

¹¹⁵⁰ TNA file T 171/120 contains material relating to the actions taken on behalf of the General Commissioners. A letter written by the Chairman of the City Commissioners, H Cosmo O Bonsor, to Austen Chamberlain began by stating that 'I have been urged and reluctantly

The General Commissioners' opposition nevertheless produced results. On 26 October, the relevant clauses of the Finance Bill were considered in Committee by the House of Commons,¹¹⁵¹ and there was much hostility to clause 25(4) in the state in which it then existed. McKenna admitted that he 'could not press the clause in its present form'; and stated that he would communicate with the representatives of the General Commissioners before the Report Stage. He would 'endeavour to come to some definite arrangement as to the final form of the Clause'. On the following day, therefore, McKenna presided at a meeting held with representatives of the General Commissioners, led by Sir Thomas Hewitt.¹¹⁵² During this meeting McKenna expressed the view that the contents of the clause should be 'a matter of agreement between us' (meaning the representatives of the General Commissioners) and announced that the ambit of the clause would be limited to weekly wage earners. A little later, on 5 November, McKenna had 'a prolonged interview with Sir Thomas Hewitt' at which decisions were reached on the resolution of the dispute;¹¹⁵³ and matters were concluded accordingly. The dealings between the government and the representatives of the General Commissioners may be regarded as a piece of 'horse trading' – with the outcome being an untidy compromise.

The legislation finally enacted accordingly differed from the legislation originally proposed; and the outcome had aspects that were disappointing for the

consented to write and call your attention' to clause 25(4) of the Finance Bill. (TNA file T 171/120. Letter, Bonsor to Austen Chamberlain, 25 October 1915.)

¹¹⁵¹ See HC Deb 26 October 1915, vol 75, cols 133-153 for the consideration of clause 25(4). The remarks made by McKenna which are quoted are at cols 141 and 142.

¹¹⁵² TNA file T 171/120 includes a transcript of the shorthand notes taken at this meeting; TNA file T 172/226 is another copy of that same transcript. The body of the transcript records many remarks made by the Chancellor of the Exchequer (i.e. McKenna), but the front sheet to the transcript states that the Deputation was to the Financial Secretary to the Treasury (i.e. Montagu). However, remarks later made by Montagu in the House of Commons permit the inference that both were present: see HC Deb 6 December 1915, vol 76, col 1122.

¹¹⁵³ TNA file AM 1/50, fo 101. Nott-Bower to Thring, 6 November 1915.

government. Employers were not required to make deductions on account of income tax when paying employees. The new scheme, furthermore, applied to the employment income of some employees only: the legislation was no longer applicable to 'employees of all descriptions' – the announcement made by McKenna in his Budget speech. On the other hand, there were aspects of the outcome that the government could welcome. The General Commissioners had defended their existing workload: but there was also additional new work to be done – and this new work was to be done by central government and not by local government. At the meeting held on 27 October, the Chancellor told the General Commissioners' representatives 'you appreciate [that] all we are proposing now, we look upon as a permanent alteration' – and this statement went uncontested.¹¹⁵⁴ After this legislation had been enacted, central government was relatively stronger and local government was relatively weaker.

The legislation finally enacted accordingly made changes to the form of the income tax legislation that were less extensive than those proposed earlier. The power to make regulations to exclude individuals from the new quarterly regime (which had been contained in clause 24(2) of the Bill as originally introduced) had now been omitted: the ambit of the new regime depended upon primary legislation only. Clause 25(1), providing for compulsory deductions from earnings, had also gone – and the reference to subordinate legislation in that provision had gone as well. On the other hand, the power to make regulations to deal with exemptions, reliefs and abatements under the new quarterly regime had survived (in what became section 28(2) of the Finance (No

¹¹⁵⁴ TNA file T 171/120. Deputation from Representatives of the General Commissioners of Income Tax, transcript of the shorthand notes of the meeting, 5.

2) Act 1915);¹¹⁵⁵ and, more importantly, the Commissioners of Inland Revenue now had the power to ‘make regulations generally with respect to the assessment and collection of income tax under this Act in the case of weekly wage earners, and with respect to the procedure to be adopted for the purpose’ in section 28(3) of that Act. The form of the income tax legislation had been affected: for the ambit of subordinate legislation had been increased. Regulations duly appeared.¹¹⁵⁶ Eight further sets of Regulations were later made on this subject, until, on 6 April 1944, the scheme for weekly wage earners was superseded by the PAYE scheme.¹¹⁵⁷

In 1940, in contrast to 1915, no extensive changes were made to the legislation embodying the government initiative during the period beginning with its announcement by the Chancellor of the Exchequer, Sir Kingsley Wood, in the House of Commons, on 23 July 1940,¹¹⁵⁸ and ending with the making of regulations under the enacted legislation on 3 October 1940.¹¹⁵⁹ On the other hand, there was evidence of disquiet – from some MPs and also from the Chancellor of the Exchequer himself.

Initial reaction in the House of Commons was favourable;¹¹⁶⁰ but, when the Finance Bill was in Committee, the government then found that it had to deal

¹¹⁵⁵ 5 & 6 Geo 5 c 89.

¹¹⁵⁶ SR & O 1916/202. These Regulations, made on 29 March 1916, did not provide for citation.

¹¹⁵⁷ The Regulations in question were SR & O 1916/887, 1920/1991, 1925/702, 1928/582, 1931/827, 1940/1520, 1941/1379 (none of which provided for citation) and the Seasonal Employments (Income Tax) Regulations 1942, SR & O 1942/1970.

¹¹⁵⁸ For Sir Kingsley Wood’s financial statement in which the initiative was announced see HC Deb 23 July 1940, vol 363, cols 637-57.

¹¹⁵⁹ The Regulations in question were the Deduction of Income Tax (Schedule E) Regulations 1940 (SR & O 1940/1776).

¹¹⁶⁰ One MP described the initiative as ‘one of the greatest reforms introduced within my memory in regard to Income Tax’ (HC Deb 23 July 1940, vol 363, col 699); and another as ‘an excellent piece of machinery which will be helpful to wage and salary earners, and it is a matter which those engaged in management for a long time have felt to be highly desirable’. (HC Deb

with opposition – once again from those speaking on behalf of the local administration of income tax.¹¹⁶¹ This opposition, however, was less formidable in 1940 than in 1915. In 1940 there was evidence neither of any organised campaign of opposition to the government's proposals nor of any support for that opposition from a leading newspaper. There was also no sense that the general feeling in the House of Commons was in favour of the local administration of the income tax and hostile to the government's proposals. The Chancellor of the Exchequer promised to have the wording of the clause re-examined in the light of the criticisms made. Kingsley Wood himself then showed disquiet about the position, after an amendment had been drafted.¹¹⁶² At a meeting with officials on 14 August 1940, the Chancellor became 'very excited' and 're-acted very badly' when the detail of what was proposed was considered. A note of this meeting then recorded, however, that it was decided 'that the clause should stand as drafted, with the proviso as on the order paper',¹¹⁶³ and the parliamentary proceedings were, in fact, concluded without any particular difficulty.¹¹⁶⁴

6 August 1940, vol 364, col 93). Sir Kingsley Wood believed that the proposed new scheme 'has been generally welcomed' (HC Deb 31 July 1940, vol 363, col 1285).

¹¹⁶¹ For the proceedings in Committee see HC Deb 8 August 1940, vol 364, cols 474-7.

¹¹⁶² The amendment consisted of a proviso to clause 11(1), which stated that the Regulations 'shall not affect the powers or duties of the general or other commissioners as respects the signing, allowance or rectification of assessments or determination of appeals'. (TNA file IR 63/154.) The wording of the proviso may also be found in HC Deb 15 August 1940, vol 364, col 1021.

¹¹⁶³ TNA file AM 6/49, fo 965. The note, dated '14/8' and addressed to 'Sir John Stainton' is handwritten; but an identification of the author has not proved possible. The obvious working hypothesis is that the author was some other member of the Office of the Parliamentary Counsel. This note of the meeting held on 14 August supports the view that it was the Inland Revenue, as opposed to the Chancellor of the Exchequer, who were pressing forward with this initiative.

¹¹⁶⁴ For the proceedings at Report Stage see HC Deb 15 August 1940, vol 364, cols 1011-1021.

The initiative was accordingly enacted as section 11 of the Finance (No 2) Act 1940;¹¹⁶⁵ and section 11(1) extended the ambit of subordinate legislation by conferring power on the Inland Revenue to make regulations 'for the assessment and collection of tax chargeable under Schedule E, including in particular provision for requiring employers and other persons to deduct any tax so chargeable from any payments made by them'. The form of the income tax legislation had again been affected: for the ambit of subordinate legislation had again been increased. Regulations made on 3 October 1940 imposed duties on employers to deduct tax from payments made to employees and to pay the sums deducted to the Collector of Taxes.¹¹⁶⁶ Seven sets of amending Regulations were then made before the subordinate legislation made under section 11 of the 1940 Act was superseded by the PAYE Regulations.¹¹⁶⁷

In 1943-44, in contrast to 1940, major changes were made to the legislation embodying the government initiative during the period beginning with the public announcement of the initiative and ending with the making of the PAYE Regulations. In contrast to 1915, furthermore, the ambit of the subordinate

¹¹⁶⁵ 3 & 4 Geo 6 c 48. This Act received the Royal Assent on 22 August 1940.

¹¹⁶⁶ The Deduction of Income Tax (Schedule E) Regulations 1940, SR & O 1940/1776. The duty to make deductions from earnings was imposed by regns 3(1) and 5(1); and the duty to pay the sums deducted to the Collector by regn 11(1). The drafting papers for these Regulations have survived (in TNA file IR 40/7454); and are among those that show that, in the Inland Revenue, during the first half of the twentieth century, subordinate legislation was drafted in the Stamps and Taxes Division and not in the Solicitor's Office.

¹¹⁶⁷ The amending regulations were Deduction of Income Tax (Schedule E) (Amendment) Regulations 1941, SR & O 1941/1378; Deduction of Income Tax (Schedule E) (Amendment No 2) Regulations 1941, SR & O 1941/1667; Deduction of Income Tax (Schedule E) (Amendment No 3) Regulations 1942, SR & O 1942/1324; Deduction of Income Tax (Schedule E) (Amendment No 4) Regulations 1943, SR & O 1943/397; Deduction of Income Tax (Schedule E) (Amendment No 5) Regulations 1943, SR & O 1943/1024; Deduction of Income Tax (Schedule E) (Merchant Navy) Regulations 1943, SR & O 1943/1310; and Deduction of Income Tax (Schedule E) (Amendment No 6) Regulations 1943, SR & O 1943/1669.

legislation was enlarged and a second programme Act was added to the one the government proposed.¹¹⁶⁸

The scheme announced to the House of Commons on 22 September 1943¹¹⁶⁹ was in accordance with the original decision of ministers: that the new scheme should apply to manual wage-earners and to other wage earners whose earnings were calculated weekly. The proposed arrangements were favourably received;¹¹⁷⁰ but the restricted scope of the scheme was criticised. A widely-held view was that the new scheme should apply to all employees.¹¹⁷¹ During the proceedings on the second reading of the Wage-earners' Income Tax Bill (as it was called at that stage), the Chancellor of the Exchequer (now Sir John Anderson)¹¹⁷² indicated his willingness to extend the scope of the Bill to individuals whose earnings did not exceed £600 per annum.¹¹⁷³

Events of great importance for the PAYE Regulations took place on 20 October 1943, when the House of Commons considered the Bill in Committee.¹¹⁷⁴ The amendment considered to clause 1 was a proposal to the effect that the new PAYE arrangements should be extended to all income charged under Schedule E; and 25 MPs contributed to the discussion. No MP was overtly hostile to the extension; many were strongly in favour; and the mover of the amendment announced in his summing-up that he thought it would be a very long day before he moved any other amendment which was found to carry such support

¹¹⁶⁸ The statutes enacted were the Income Tax (Employments) Act 1943 (6 & 7 Geo 6 c 45) and the Income Tax (Offices and Employments) Act 1944 (7 & 8 Geo 6 c 12).

¹¹⁶⁹ HC Deb 22 September 1943, vol 392, cols 209-11.

¹¹⁷⁰ Sayers (n 1102) 108.

¹¹⁷¹ One periodical, for example, regretted that the government 'does not find it possible at the present time to make the scheme operative for all employees. It seems quite impossible to argue that it is a good scheme for persons paid weekly but a bad scheme for persons paid monthly'. (*Taxation* (London, 2 October 1943) 32, 3.)

¹¹⁷² On 21 September 1943, Sir Kingsley Wood had collapsed and died.

¹¹⁷³ HC Deb 20 October 1943, vol 392, col 1107.

¹¹⁷⁴ For these proceedings see HC Deb 20 October 1943, vol 392, cols 1402-1480.

in so many quarters.¹¹⁷⁵ Another MP did not remember such unanimity on any other point of substance whilst he had been an MP; and thought that the Chancellor should give effect to the wishes of the House of Commons.¹¹⁷⁶ A third MP hoped that the Chancellor would think again; and was sure that if the previous Chancellor of the Exchequer (Kingsley Wood) had been present, he would have recognised that such strength of opinion could not possibly be resisted.¹¹⁷⁷ Anderson found, accordingly, that MPs wished him to reach decisions on the extension of the scheme more speedily than he had contemplated.¹¹⁷⁸

The government, therefore, needed to deal with the state of feeling in the House of Commons. One week later, Anderson reported to the War Cabinet, stating that, during the committee stage of the Bill, an unexpected demand had developed from all parts of the House of Commons that the new system should extend to all salaried persons without limit of income. As the principle had already been admitted, it would be difficult to resist the extension now demanded; and the Whips advised that feeling in the House was so strong that, if the Government were unwilling to meet it, they might be defeated. Subject to the War Cabinet's approval, therefore, Anderson proposed to hold informal discussions with representatives of the various parties in the House of Commons, in which he would explain the position frankly, and would offer to extend the proposed arrangements to all employment income if he could be assured that MPs would be ready to accept the consequential anti-avoidance

¹¹⁷⁵ *ibid*, col 1451.

¹¹⁷⁶ *ibid*, col 1448.

¹¹⁷⁷ *ibid*, col 1419.

¹¹⁷⁸ *ibid*, col 1420.

provisions considered to be necessary. The War Cabinet agreed that Anderson might go forward in this manner.¹¹⁷⁹

Further events of great importance for the PAYE Regulations took place on the following day (28 October 1943) when Anderson held his informal meeting with MPs. The Chancellor was recorded as saying that the pressure on the parliamentary timetable was such that it would not be possible to introduce the proposed anti-avoidance measures in the existing Bill, since those measures would require a resolution and would be of a character which the House would wish to examine carefully and debate. It was, however, essential (Anderson said) that if the scheme as a whole was to be launched in time for its introduction, as planned, next April, the present measure should be put on the statute book without delay. This being so, he thought that the most sensible and logical procedure would be to ask the House to pass the present Bill as it stood, subject to the amendments which had already been put down in his name, but that he should promise the House that he would introduce proposals to extend the scope of the scheme to the whole of Schedule E at a later stage. Those proposals would include the requisite anti-avoidance provisions. A note made of this meeting recorded that '[t]his line of action appeared to be generally acceptable to the Members present'.¹¹⁸⁰ Matters were put in hand accordingly; and the Income Tax (Employments) Act 1943¹¹⁸¹ received the Royal Assent on

¹¹⁷⁹ TNA file CAB 65/36. War Cabinet Conclusions 1943 (War Cabinet 147 (43)) (27 October 1943).

¹¹⁸⁰ TNA file IR 63/163, fos 142-3. 'Wage-Earners Income Tax Bill: Note of Meeting with Members of Parliament'.

¹¹⁸¹ 6 & 7 Geo 6 c 45.

11 November 1943; and the Income Tax (Offices and Employments) Act 1944¹¹⁸² on 1 March 1944.

During the debate on the Second Reading of the Income Tax (Offices and Employments) Bill, early in 1944, one MP described it as 'unique'. 'It is a Bill which has been forced upon the Government by the House'.¹¹⁸³ No doubt the government might have put the matter differently: but it was MPs who compelled the PAYE scheme to be expanded, so that it applied generally to earnings from employments.

The question accordingly arises why MPs wished to modify the government's proposed legislation: and here two considerations worked towards producing the same result. The first related to administration. As one MP put it, the limited PAYE scheme originally introduced created a large number of anomalies which ought not to be created:¹¹⁸⁴ a comprehensive PAYE scheme could accordingly be supported on the grounds that it was an administrative improvement on the government's own limited scheme. The second consideration related to public opinion. In so far as there was any public opinion on the subject of PAYE, and in so far as any public opinion on that

¹¹⁸² 7 & 8 Geo 6 c 12. For a very clear statement that this legislation carried out the Chancellor of the Exchequer's earlier undertaking, see the speech of Sir John Anderson on the Second Reading of the Bill. HC Deb 10 February 1944, vol 396, col 1926.

¹¹⁸³ HC Deb 10 February 1944, vol 396, col 1955. The speaker went on to say that 'From the very beginning of the demand for Pay-as-you-earn the Government have resisted and the House has won a steady series of engagements against the Government. We were told first of all that Pay-as-you-earn was quite an impossible and impracticable suggestion, and instead of having a Pay-as-you-earn scheme we were given the modifications of the weekly deductions. Then, rather, I think, to the surprise of many of us, the Board of Inland Revenue produced a very brilliant cumulative scheme. Again it was limited in its operation, limited to manual workers and weekly wage-earners or rather earners who were paid within periods of less than a month. In the first Bill the Chancellor was compelled to extend its operation to all Schedule E earners up to £600. As a result of further pressure it was extended to all Schedule E incomes irrespective of amount'. (ibid.)

¹¹⁸⁴ HC Deb 20 October 1943, vol 392, col 1448.

subject was capable of being discerned,¹¹⁸⁵ MPs understood that public opinion to be in favour of a comprehensive PAYE scheme. A comprehensive PAYE scheme, therefore, could be presented as being in accordance both with good administration and with public opinion.

The Income Tax (Employments) Regulations were made on 9 March 1944;¹¹⁸⁶ and, on 6 April 1944, those Regulations and the PAYE scheme came into operation. The PAYE Regulations were later consolidated in 1950, 1962, and 1965;¹¹⁸⁷ and, during the period from 1944 to 1965 there were also 17 amending instruments.¹¹⁸⁸

The successful introduction and operation of the PAYE scheme was viewed as a great achievement, both at the time and subsequently. It has been conjectured that the very success of the PAYE scheme may subsequently have operated to hinder reform of the structure of income tax.¹¹⁸⁹ Douglas Houghton, speaking many years later, called PAYE a 'money-spinner'. 'Could any conceivable anti-evasion measures match the scale and effectiveness of this

¹¹⁸⁵ See the report of the Inland Departmental Committee, dated 21 May 1943, text before n 1138 above.

¹¹⁸⁶ SR & O 1944/251. In the National Archives, TNA file IR 40/9148B would appear from the description in the catalogue to be the drafting papers for the PAYE Regulations, but those papers were marked as being closed for 75 years. Under the Freedom of Information Act 2000, the author required this decision to be reviewed – but was told, in reply, that the file had been missing since 1998.

¹¹⁸⁷ Income Tax (Employments) Regulations 1950, SI 1950/453; Income Tax (Employments) Regulations 1962, SI 1962/1003; and Income Tax (Employments) Regulations 1965, SI 1965/316.

¹¹⁸⁸ Income Tax (Employments) (No 2) Regulations 1944, SR & O 1944/1015; Income Tax (Employments) (No 3) Regulations 1945, SR & O 1945/365; Income Tax (Employments) (No 4) Regulations 1946, SR & O 1946/458; Income Tax (Employments) (No 5) Regulations 1947, SR & O 1947/582; Income Tax (Employments) (No 6) Regulations 1947, SR & O 1947/1295; Income Tax (Employments) (No 7) Regulations 1948, SI 1948/464; Income Tax (Employments) (No 8) Regulations 1948, SI 1948/1519; Income Tax (Employments) (No 9) Regulations 1948, SI 1948/1819; Income Tax (Employments) (No 2) Regulations 1951, SI 1951/836; Income Tax (Employments) (No 3) Regulations 1952, SI 1952/1004; Income Tax (Employments) (No 4) Regulations 1952, SI 1952/1758, Income Tax (Employments) (No 5) Regulations 1954, SI 1954/1577; Income Tax (Employments) (No 6) Regulations 1955, SI 1955/835; Income Tax (Employments) (No 7) Regulations 1958, SI 1958/1166; Income Tax (Employments) (No 8) Regulations 1961, SI 1961/591; Income Tax (Employments) (No 9) Regulations 1961, SI 1961/1596 and Income Tax (Employments) (No 2) Regulations 1963, SI 1963/1082.

¹¹⁸⁹ Sayers (n 1102) 111.

one-armed bandit?’¹¹⁹⁰ It was Houghton’s view that there could not be the slightest doubt that the retention of PAYE had enabled successive governments after the second world war to tax earnings far more heavily than would otherwise have been possible. ‘If ever there was a gift handed to bureaucracy on a plate in wartime for permanent use thereafter, PAYE was certainly it’.¹¹⁹¹

Conclusion

There was comparatively little subordinate legislation relating to income tax during the period from 1907 to 1965 because the United Kingdom polity had a number of features that worked against the introduction of such subordinate legislation. The constraints placed on the making of subordinate legislation, furthermore, did not operate evenly across all areas of income tax law and practice. The charge to income tax was agreed to be a subject totally inappropriate for subordinate legislation: income tax administration, however, could be – and was – very differently treated. It was only to a limited extent, therefore, that the enactment of subordinate legislation could make good the shortfall in the enactment of primary legislation relating to income tax that was one of the characteristics of the default setting of the United Kingdom polity.¹¹⁹²

A significant amount of subordinate legislation relating to income tax was nevertheless made during the period from 1907 to 1965; and, during that period, the quantity of that subordinate legislation increased. That subordinate legislation dealt with a considerable number of miscellaneous topics; and, there is an irresistible inference that this overall outcome was the aggregate result of a considerable number of particular decisions, taken on a considerable number

¹¹⁹⁰ D Houghton, ‘The futility of taxation by menaces’ in A Seldon and others, *Tax Avoidance: The Economic, Legal and Moral Inter-relationships between Avoidance and Evasion* (London, Institute of Economic Affairs, 1979) 96.

¹¹⁹¹ *ibid* 97.

¹¹⁹² For the default setting, see the conclusion to chapter 2 above.

of different occasions. The growth in the subordinate legislation relating to income tax – like the growth in subordinate legislation during the first world war – was haphazard.¹¹⁹³

Of the subordinate legislation made, a significant proportion related to the deduction of income tax from employees' earnings; and the investigation of how that subordinate legislation came to be made in 1915, 1940 and 1943-4 has shown that, on these three occasions, there were both points of contrast and common features. One point of contrast relates to the elements within government advancing these initiatives. In 1940, the Inland Revenue was in the lead, with the departmental Treasury and government ministers following. In 1943-4, the Inland Revenue was in the rear, responding to pressure placed upon it by the Chancellor of the Exchequer and the departmental Treasury. Another point of contrast relates to the fortunes of the government initiatives after they were exposed to the public. In 1915, the scope of the proposed scheme was curtailed; in 1943-4, it was enlarged. On the other hand, one point of similarity was that, on all three occasions, there were MPs who took a real interest in the government's initiative; and, in 1915 and 1943-4, in particular, MPs were unquestionably responsive to opinion outside the House of Commons. Another point of similarity was the wartime need for unprecedented government revenues. The United Kingdom's participation in the two world wars included an expansion in the subordinate legislation relating to income tax as one of its results.

¹¹⁹³ See text around n 1031 above.

CHAPTER 8: CONCLUSION

‘For all their fabled devotion to fair play, the British ... have been profoundly uncurious about the rules under which the hugely important ‘national game’ of politics and government are played’.¹¹⁹⁴

The aim of this investigation was to ascertain the determinants of the forms of income tax legislation during the period from 1907 to 1965 and to assess their importance.

The investigation has found that the insufficiency of parliamentary time was a determinant of the utmost importance for the form of the income tax legislation during that period. It was not possible for the government to enact all the legislation that it wished to enact; and the different forms of primary legislation distinguished could be used with different degrees of difficulty. The insufficiency of parliamentary time constituted a constraint – and imposed a default setting upon the United Kingdom polity. That default setting had two essential characteristics: the primary legislation that was actually enacted and which related to income tax used the different forms of legislation very unequally; and the primary legislation that the government wished to see enacted was not enacted in full.

The investigation has also found that it was only rarely that the default setting was overridden. The Inland Revenue’s aim was to administer income tax successfully: the department took an active interest in the form of the income tax legislation only when that form had implications for the achievement of departmental operational objectives. The Office of the Parliamentary Counsel

¹¹⁹⁴ P Hennessy, *The Hidden Wiring: Unearthing the British Constitution* (London, Gollancz, 1995) 7.

was interested in the form of primary legislation: but the capacity of that office was inadequate and it was dependent on the wishes of its clients. Government ministers had many tasks confronting them: only the man who was the master of his ministry had the capacity to override the default setting. Elements outside government hardly ever took any action relevant for the forms of income tax legislation – and then only because those forms happened to be implicated in other objectives, pursued for other reasons. The investigation has further found that, in the case of the legislation relating to income tax, the enactment of subordinate legislation could have only a limited impact upon the default setting. The default setting, therefore, was overridden only rarely – for particular purposes on particular occasions. Otherwise it remained in place.

Six clear conclusions can be drawn from the evidence presented; and those conclusions will now be stated. The ascertainment of the determinants of the forms of the income tax legislation and then, finally, the importance of those determinants will then be considered in the context of the statement of those conclusions.

The first – and principal – conclusion is that, during the period from 1907 to 1965, the business that the United Kingdom polity could usefully transact exceeded the polity's capacity to transact that business. Parliament could not enact all the legislation that the government would have liked to see enacted in the time available for the enactment of that legislation. Government ministers could all too easily be overwhelmed by the quantity and variety of the tasks facing them.¹¹⁹⁵ Members of Parliament were also over-burdened.¹¹⁹⁶ The Office of the Parliamentary Counsel struggled to deal with its primary task of

¹¹⁹⁵ See chapter 5, section 1.

¹¹⁹⁶ See chapter 6, section 2(1), text around ns 862-4.

drafting current legislation. The highly finite group of Inland Revenue officials who could make a useful contribution to matters relating to the enactment of income tax legislation had numerous other calls upon their time. The pressure of time, it was stated in 1946, 'must be expected to be a permanent feature of parliamentary government'.¹¹⁹⁷ The business of the United Kingdom polity was transacted in the context of an insufficiency of time.

The second conclusion, which follows on from the first, is that some topics to which government could usefully give attention did not receive attention – or received only inadequate attention. The topics that did receive attention were a selection from a longer list – and different individuals might well have made a different selection. Brook reflected to Bridges in April 1950 that it was curious that, in modern times, the Cabinet, though it had always insisted on considering particular proposals for developments of policy and their cost, had never thought it necessary to review the development of expenditure under the civil estimates as a whole. It was remarkable that the Attlee Government had never reflected upon the great increase in public expenditure, and the substantial change in its pattern which had come about during the past five years in consequence of their policies in the field of the social services.¹¹⁹⁸

The third conclusion is that, in competing for an insufficient quantity of attention, some items of business were better placed to receive attention than others.

The evidence is that a particular item of business was well placed to receive attention if it could be placed in at least one of two categories.

¹¹⁹⁷ TNA file T 162/911 (E 17496/1). 'Statute Law Reform'. Memorandum by the Parliamentary Counsel (Sir Granville Ram), 30 January 1946, app 1, para 27.

¹¹⁹⁸ TNA file CAB 21/1626. Note, Brook to Bridges, 21 April 1950.

An item of business was well placed to receive attention if it could be dealt with easily: that is to say, if it could be accomplished relatively successfully, in relatively little time, and with relatively little effort. In February 1959, at a time when it was clearly foreseeable that there might be a general election soon, the Financial Secretary to the Treasury (Simon) sent a note to the Chancellor (Amory) stating that he took it that the Chancellor would wish that the Finance Bill, while embodying reforms, should give rise to the minimum of controversy and delay. 'It follows that we should, so far as possible, concentrate on non-contentious and simple reforms and, again as far as possible, those which are agreeable to our supporters'.¹¹⁹⁹ As the time and effort involved in completing the item of business rose, and as the chances of success in completing that item diminished, so it became less likely that the item of business would be undertaken.

An item of business was also well placed to receive attention if it was urgent. Cairncross received the advice from the first permanent civil servant with whom he worked 'that no one bothered to decide important matters – what always received prior attention was what was urgent'.¹²⁰⁰ This maxim may be a caricature; but it nevertheless highlighted the ability of urgent matters to receive disproportionate attention.

The fourth conclusion – a conclusion on which there is a significant amount to say – is that, in the context of an insufficiency of time, decisions were often made on a short-term basis. It might well be very difficult to decide how a

¹¹⁹⁹ TNA file T 171/499. Note, Financial Secretary [Simon] to Chancellor [Amory], 17 February 1959.

¹²⁰⁰ AK Cairncross, 'On being an Economic Adviser' in *Factors in Economic Development* (London, George Allen & Unwin, 1962) 272, 277. Cairncross went on to add, of the individual in question (Sir Piers Debenham), 'that he was a very unusual civil servant, even when one applies the high standard of unusualness necessary in the British Civil Service, and that he proved to be no more permanent than I was'. (ibid.) (Underlining in original.)

particular problem should be tackled in the long term – but if it was possible, without difficulty, to decide what should be done immediately, there was no need to decide anything further at that particular moment. Lord Strang, writing during the 1950s, thought that, for a minister, ‘the next step he has to take is the important step; the long-term aim, however well thought out, will tend to be contingent and uncertain’.¹²⁰¹ The matter could then be considered further in due course: but, if and when that happened, the matter might well not have the same characteristics as when it had been considered previously.

An extremely good example of a decision of this type, affecting the form of the income tax legislation, arose towards the end of 1945.¹²⁰² The Attorney-General in the new Labour government (Shawcross) supported a proposal that the draft Codification Bill, prepared before the second world war, should be brought out of cold storage and enacted. When the Chancellor of the Exchequer (Dalton) came to consider the position for himself, he was able to take into account the contents of two lengthy memoranda – one written by the Chairman of the Board of Inland Revenue and the other by the First Parliamentary Counsel. These two memoranda were both quite clear that work on the draft Codification Bill should not be resumed.¹²⁰³ Dalton told his Private Secretary that he discounted a good deal of the material submitted. ‘But we can’t spare Parliamentary Counsel just yet’.¹²⁰⁴ Dalton’s decision, therefore, was a decision made for the short term only: and was made not by reference to the proposal for government action that was under consideration, but by

¹²⁰¹ Lord Strang, *Home and Abroad* (London, Andre Deutsch, 1956) 16 n 1.

¹²⁰² For this episode see generally JHN Pearce, ‘The Income Tax Law Rewrite Projects: 1907-56’ in J Tiley (ed), *Studies in the History of Tax Law: Volume 6* (Oxford, Hart, 2013) 159-62.

¹²⁰³ For the memorandum prepared by the Inland Revenue, see chapter 3, text following n 399. For the memorandum prepared by the Office of the Parliamentary Counsel, see chapter 4, text following n 601.

¹²⁰⁴ TNA file IR 40/8554. Note, Dalton to Trend, 11 November 1945.

reference to the difficulties experienced by the Office of the Parliamentary Counsel in dealing with its heavy current workload. In the immediate future, the drafting of other government Bills had a superior claim on the limited resources of that office. In the short term, therefore, nothing happened; time passed; and, by the summer of 1947, the civil service had devised its own plan as to how the rewriting of the income tax legislation might be tackled. When the rewriting of the income tax legislation was considered further in 1947, the context in which that matter came to be considered was no longer the same as in 1945.

To a very great extent, therefore, the business actually transacted in the United Kingdom polity received attention in accordance with particular decisions, taken for particular reasons in particular contexts – and not in accordance with carefully considered long-term general plans. The miscellaneous topics dealt with in the subordinate legislation relating to income tax provide a striking illustration of this point.¹²⁰⁵ As a newcomer to the Budget Committee, Plowden wrote to Bridges in 1948 that two things stood out from his experience on the Committee. The first of these was ‘[I]ack of time for the examination of fundamental issues’.¹²⁰⁶ It was Woolton’s view in 1954 that the civil service gave devoted and competent service ‘but the chief officers of the Service, like the Ministers, are so encumbered with a host of problems that very few have time or energy left to sit back and think beyond the passing duties of the day’.¹²⁰⁷ This same point was also made in the Fulton Report on the Civil Service, published in 1968. The report stated that the operation of existing

¹²⁰⁵ Chapter 7, section 2, above.

¹²⁰⁶ TNA file T 171/397. Note, [Plowden] to Bridges, 23 March 1948. The second matter which Plowden thought stood out was ‘[I]ack of basic economic knowledge on which to frame policy’.
(*ibid.*)

¹²⁰⁷ A Seldon, *Churchill’s Indian Summer: The Conservative Government, 1951-55* (London, Hodder and Stoughton, 1981) 110. In 1954, Woolton was Chancellor of the Duchy of Lancaster and a member of the cabinet.

policies and the detailed preparation of legislation (together with the associated negotiations and discussions) frequently crowded out demands that appeared less immediate. Senior civil servants had to spend much time preparing explanatory briefs, answers to parliamentary questions and ministers' cases. Almost invariably, there were urgent deadlines to be met; and, in this press of daily business, long-term policy planning and research tended to take second place.¹²⁰⁸ It was Amery's 'profound conviction' that a Cabinet consisting of overworked departmental ministers was quite incapable of either thinking out a definite policy or of securing its effective and consistent execution. Government policy was hardly ever discussed in Cabinet meetings. When there were so many urgent matters of detail always waiting to be decided, the result was that there was very little Cabinet policy, as such, on any subject. 'No one has time to think it out, to discuss it, to co-ordinate its various elements, or to see to its prompt and consistent enforcement'.¹²⁰⁹

An episode demonstrating the difficulties of dealing with these more general features of the United Kingdom polity began on 23 October 1962, when the Lord President of the Council (Hailsham) sent a memorandum to the Prime Minister (Macmillan). Hailsham identified three main defects in the existing machinery of government: 'the steady and cumulative backlog now mounting up in our programme of legislation in relatively uncontroversial matters'; 'the increasing physical and moral strain on Ministers'; and 'the relatively piecemeal way in which we handle great decisions, and the relative absence of long-term forecasting in defence, foreign and economic policy'.¹²¹⁰ 'There needs to be

¹²⁰⁸ Civil Service, *Report of the Committee 1966-68* (Cmnd 3638, 1968) (vol 1) 57.

¹²⁰⁹ LS Amery, *Thoughts on the Constitution* (OUP 1947) 86-7.

¹²¹⁰ TNA file PREM 11/4838. Memorandum, Lord President of the Council [Hailsham] to Prime Minister [Macmillan], 23 October 1962, 'The Machinery of Government'. See also, generally, on

more regular consideration of the main fields of policy and their inter-relation, so that the decisions on vital matters are not taken, as now, in a rather piecemeal fashion'.¹²¹¹ Macmillan considered Hailsham's paper 'very impressive'.¹²¹²

The sequel, however, demonstrated how difficult it was, in practice, to deal with these defects. When Macmillan sent his considered reply to Hailsham, the prospect of immediate action to reduce the backlog in legislation was ruled out. There was much to be said for seeking some new procedure; but 'this is not the sort of reform that could be carried through in the last eighteen months of a Parliament's life'. The time for any government to take such a step was at the outset of a new Parliament when the government had a sizeable majority.¹²¹³

Consideration of the suggestion was therefore postponed. In the short term, the absence of parliamentary time became the reason for failing to deal with the problem of the absence of parliamentary time; and, in the longer term, Macmillan and Hailsham were both out of office after 1964. No evidence is known that Hailsham's memorandum received any further consideration: so a postponement which, on its face, was an initial postponement for a limited period only, became, in fact, a postponement until the Greek Calends.

this episode, Hennessy (n 1194) 166-7. Hailsham's full description of his second defect was 'the increasing physical and moral strain on Ministers which drains them more and more of vitality and converts them progressively into administrative machines, spending their days in committees, their evenings at public banquets and their nights reading telegrams'. To deal with these shortcomings, Hailsham advocated the creation of an uncontroversial legislation committee, which would certify certain Bills for expedited procedure; an increased role for more junior ministers; and that 'the Cabinet should from time to time examine various aspects of policy as a whole and in relation to one another'.

¹²¹¹ *ibid.*

¹²¹² TNA file PREM 11/4838. Note, Prime Minister [Macmillan] to Lord President of the Council [Hailsham], 26 October 1963.

¹²¹³ TNA file PREM 11/4838. Note, Macmillan to Lord President of the Council [Hailsham], 11 January 1963. As regards the other 'main defects' identified by Hailsham, Macmillan believed that there would always be appeals from Junior Ministers to 'the Minister ultimately responsible'; he also hoped that recent innovations in Cabinet procedure would be of assistance for the process of decision making.

The fifth conclusion is that the prospects for a particular item of government business receiving significant attention could be transformed if an influential individual took an interest in it. Individuals mattered. Given that government ministers and leading officials could not deal with all matters with a claim upon their attention, a choice to give time and attention to one matter rather than another could have significant results. In the Inland Revenue, the sequence of events leading to the enactment of the 1918 Act had its origins in the fact that, before the first world war, Cox, the Solicitor of Inland Revenue, began, without specific instructions and in his own time, to prepare a consolidation of the Income Tax Acts.¹²¹⁴ In the Office of the Parliamentary Counsel, Ram, the First Parliamentary Counsel from 1937 to 1947, had a programme for statute law reform. A programme of this type did not interest Sir John Rowlatt, one of his successors.¹²¹⁵

Initiatives originating within the civil service, however, needed ministerial approval or acquiescence before there could be legislation. In 1915, the prospects for Cox's initiative were transformed when it was mentioned in the House of Commons. Ram's programme for statute law reform made no progress during the second world war because the Lord Chancellor (Simon) took no interest in it. The initiative was only able to make progress when, after that war, a different Lord Chancellor (Jowitt) took office and became the patron of Ram's programme.

Government ministers themselves could, of course, be the individuals who mattered. Churchill's tenacious pursuit of the goal of simplification, which had the setting up of the Income Tax Codification Committee as one of its results,

¹²¹⁴ See chapter 3, section 2(2), above, text around ns 418-9.

¹²¹⁵ See above, chapter 4, section 2(2) and conclusion to that chapter.

was the leading occasion, during the first half of the twentieth century, when the default setting of the United Kingdom polity was overridden.¹²¹⁶ Alan Green's active support for the Income Tax Management Bill was of fundamental importance for the enactment of the Income Tax Management Act 1964.¹²¹⁷ Lloyd George, by contrast, gave very little time and attention to the Revenue Bills promised for 1913 and 1914 – and those Bills were not enacted.¹²¹⁸

The sixth and final conclusion, following on from the earlier conclusions, is that the determinants of the forms of the income tax legislation were located far from the law and practice of income tax. That law and practice could – and did – present many problems worthy of legislative attention. There were, however, constraints acting on the supply of legislation to deal with those problems; and, in the United Kingdom polity, those constraints lay elsewhere.

The ascertainment of the determinants of the forms of the income tax legislation is now considered generally having regard to these conclusions.

The form of the United Kingdom's income tax legislation, during the period from 1907 to 1965, was determined by the workings of the United Kingdom polity – a polity in which the business that could usefully be transacted exceeded the polity's capacity to transact that business. The form of the income tax legislation, furthermore, was not a strong candidate for the receipt of such attention as was available. The subject was under-apprehended by those who had the power to give it significant attention. It was not unknown for the subject to be given significant attention by a leading government minister or civil

¹²¹⁶ See chapter 5, section 3(2), above.

¹²¹⁷ *ibid.*

¹²¹⁸ See chapter 5, section 3(1), above.

servant;¹²¹⁹ but the giving of such significant attention was rare. It could also be the case that events outside government (the development of opposition to the Revenue Bill of 1921¹²²⁰ or the extent of support for the proposed PAYE scheme during the second world war¹²²¹ for example) could affect the form of the income tax legislation; but these outside events were also rare. With few exceptions, therefore, the default setting of the United Kingdom polity for the enactment of primary legislation remained in place; and the form of the income tax legislation was determined by that default setting.

The default setting explains why the use made of the various forms of primary legislation distinguished was so unequal.¹²²² Finance Bills were urgent and virtually certain to be enacted; the government treated their enactment as a priority. During the period from 1907 to 1965, 68 Finance Acts were enacted. Programme Bills, by contrast, were rarely given priority; and, if they were not given priority, it was very easy for such Bills to absorb more parliamentary time than was available. This was particularly likely to be the case if the programme Bill was of a general nature (a Revenue Bill). During the period from 1907 to 1965, only eight programme Acts relating to income tax were enacted. Consolidation Bills were not viewed as urgent; but the parliamentary prospects for the enactment of a Consolidation Bill actually prepared were excellent. The legislation relating to income tax was consolidated in the 1918 Act and then, again, in the 1952 Act. A Codification Bill, also, was not viewed as urgent; and did not have the benefit of the advantageous parliamentary procedure available for Consolidation Bills. In the events that happened, no Codification Bill relating

¹²¹⁹ See text around ns 1214-7 above.

¹²²⁰ See chapter 6, sections 2 to 4.

¹²²¹ See chapter 7, section 3.

¹²²² The income tax legislation enacted is set out in Appendix 1.

to income tax was presented to Parliament or enacted during this period. A new principal Act relating to income tax would absorb so much Parliamentary time as to make the enactment of such a Bill a practical impossibility: and, during the period from 1907 to 1965, no evidence is known that the preparation of such an Act was ever seriously contemplated.

The default setting of the United Kingdom polity also explains why that polity may be described as operating in a manner in which changes in the United Kingdom's income tax legislation had an ambiguous and indecisive overall outcome. It was likely that the principal Act relating to income tax would be replaced (infrequently) by a Consolidation Act – and so it was. It was also likely that the principal Act (whether the Income Tax Act 1842, the 1918 Act or the 1952 Act) would come to be supplemented, as time went on, by a larger number of Finance Acts and a smaller number of programme Acts – and so it was. The legislation changed; but the mechanisms by which the legislation was changed and the overall form of that legislation from time to time remained the same. There was inertia as well as change; and a cyclical process took place. After the enactment of a principal Act (in 1842, 1918 or 1952), the subsequent enactment of a large number of Finance Acts and a smaller number of programme Acts gradually brought about a state of affairs in which the enactment of a new principal Act became appropriate. That was the situation in 1907. It was also the situation in 1965. There was indeed a sense in which it was legitimate to say that everything had changed, but that everything was still the same.¹²²³ So far as an overall statement of the United Kingdom's income tax legislation was concerned, what could readily be accomplished did not effect

¹²²³ See the remark from G di Lampedusa, *The Leopard* referred to in chapter 1 (n 51).

a transformation; and what would have effected a transformation could not readily be accomplished.

In chapter 1, a statement by Rose and Karran was quoted: '[t]he more that critics of a tax system attack the alleged faults, the more it is made apparent that the forces accounting for this "unsystematic" system must be strong and only imperfectly understood'.¹²²⁴ This thesis claims to have made a contribution towards the understanding of the strength of the forces accounting for this unsystematic system.

The assessment of the importance of the determinants of the forms of the income tax legislation, it was stated in chapter 1, would be undertaken by considering the importance of those determinants when placed in wider contexts – and that three contexts would be considered.¹²²⁵ The first of those contexts was the law and practice of income tax in the United Kingdom during the period from 1907 to 1965. The understanding of the determinants of the forms of the income tax legislation is of importance because legislation would only be enacted if it took account of those determinants; and because those determinants had an impact on the content of the income tax legislation and on the manner in which that legislation was expressed.

If legislation relating to income tax was to be brought into existence, those who prepared that legislation had to take account of the determinants of the forms of the income tax legislation if the proposed legislation was to be enacted. Cox, in 1917, had to consider the suggestion that the proposed Consolidation Bill might make amendments to the existing law – and rejected the suggestion. 'If we ...

¹²²⁴ R Rose and T Karran, *Taxation by Political Inertia: Financing the Growth of Government in Britain* (London, Allen & Unwin, 1987) vii. See also chapter 1, text around n 55.

¹²²⁵ See chapter 1, text around ns 51-75.

started making sensible amendments the bill would cease to be a consolidation bill & would never have a chance of getting through'.¹²²⁶ The Codification Committee, by contrast, did not work closely with the Inland Revenue; and, accordingly, did not produce a draft Bill which had the support of an overwhelming coalition of interests, both inside and outside government.¹²²⁷ Only a Bill which had the support of such a coalition would obtain a speedy and uncontroversial passage through Parliament – and only by obtaining such a passage could such a Bill be enacted.¹²²⁸ In the events that happened, the Consolidation Bill presented to Parliament in 1918 became the new principal Act for the income tax legislation. The draft Codification Bill published in 1936 remained unenacted.

The determinants of the form of the income tax legislation had an impact on the content of that legislation. The income tax legislation was not fully stated: for the default setting of the United Kingdom polity operated to produce the result that not all the provisions available to be called could be chosen. It did not follow, however, that all candidate provisions had an equal chance of being enacted. A provision that was of political importance to ministers was better placed than one that was not; a provision that had a major effect on the tax yield was better placed than one that did not; a provision that was uncontroversial was better placed than one that was not; and a provision that could be stated briefly was better placed than one that could not. 'The pressure on the annual Finance Bill', it was stated in 1952, 'is almost always too great to allow room for any amendments which do not affect the year's revenue and which in the

¹²²⁶ See chapter 2, section 2(2), above, text before n 292.

¹²²⁷ For the draft Codification Bill see chapter 6, section 1, above.

¹²²⁸ See chapter 2, section 2(4), above.

context of the Budget can only be regarded as of small importance'.¹²²⁹ One year earlier, Rowlatt had pointed to a link between the overall parliamentary situation and the enactment of particular provisions. The Conservative government, recently elected, had a small parliamentary majority; and it was therefore no good anybody thinking that in that Parliament anything whatever was going to be done by way of clarification of the income tax law in current Finance Bills. 'The need for brevity will dominate the position, and contrary to the general impression, provisions codifying and clarifying the law, whatever else they may be, cannot possibly be brief'.¹²³⁰ 'Experience over the years', the Chairman of the Board of Inland Revenue (Johnston) told the Chief Secretary to the Treasury (Boyd-Carpenter) in 1963, '... shows that competition for inclusion in a Finance Bill is almost invariably so great that administrative provisions, other than the most urgent or the very brief, are only too apt to be among the first to be deferred'.¹²³¹ The evidence is that, in the struggle for places in Finance Bills, provisions relating to income tax administration and provisions clarifying income tax law were highly likely to take particularly heavy casualties.

The shortfall in the enacted legislation relating to income tax was the background for the major expansion in the use of Extra Statutory Concessions which took place during the first half of the twentieth century.¹²³² Extra Statutory Concessions were first reported to the Public Accounts Committee in 1897; and 68 concessions were reported to that committee in 1915, 57 in 1928

¹²²⁹ TNA file IR 40/11166. 'Memorandum for the Royal Commission; Administration', accompanying a submission from Bamford to Chancellor of the Exchequer [Butler], 25 July 1952.

¹²³⁰ TNA file IR 40/14566. Letter, Rowlatt to Bridges, 14 November 1951.

¹²³¹ TNA file IR 40/13351 (Part 4). Minute, Inland Revenue [Johnston] to Chief Secretary [Boyd-Carpenter], 'Income Tax Management Bill', 30 September 1963.

¹²³² For a recent article on Extra Statutory Concessions, see S Daly, 'The Life and Times of ESCs: a Defence?' in P Harris and D de Cogan (eds), *Studies in the History of Tax Law: Volume 8* (Oxford, Hart, 2017).

and 57 in 1935.¹²³³ Lord Radcliffe 'never understood the procedure of extra-statutory concessions in the case of a body to whom at least the door of Parliament is opened every year for adjustment of the tax code';¹²³⁴ but this dictum emphasises the theoretical and not the practical working of the United Kingdom polity. The fact that such extra-statutory concessions had to be made to avoid hardships, Scott LJ remarked in *Absalom v Talbot (HM Inspector of Taxes)*, 'is conclusive that there is something wrong with the legislation'.¹²³⁵

The determinants of the form of the income tax legislation, which imposed constraints on the enactment of that legislation and which made it particularly difficult to enact provisions clarifying income tax law, had the further consequence that the income tax legislation was stated in an unsatisfactory manner. This result was demonstrated by two events that took place in 1928. It was not possible, the Attorney-General (Inskip) told the House of Commons during the committee stage of the Finance Bill, to take a group of sections in a Finance Act and to repeal them, re-enacting them from start to finish with the amendments that the government wished to see. 'That would give facilities for proposing Amendments which would probably make the passage of the Bill impossible'.¹²³⁶ The 'exigencies of Parliamentary time' accordingly produced a situation in which the government proposed a series of limited amendments to the existing legislation, with a view to restricting the opportunities for proposing amendments liable to slow down the progress of the Bill. In this way 'difficulties'

¹²³³ DW Williams, 'Extra Statutory Concessions' [1979] *British Tax Review* 137, 137 n 3a.

¹²³⁴ *IRC v Frere* [1965] AC 402 429; (1964) 42 TC 125, 142 (HL).

¹²³⁵ [1943] 1 All ER 589 598; (1943) 26 TC 166, 181 (CA).

¹²³⁶ HC Deb 27 June 1928, vol 219, col 617.

compelled the government to 'adopt expedients', which, in their turn, produced 'perplexities'.¹²³⁷

A few days earlier, Inskip had been speaking on the same topic in the Courts. In *Lionel Sutcliffe Ltd v IRC*¹²³⁸ Rowlatt J was required to consider section 21 of the Finance Act 1922;¹²³⁹ and reference was made in argument to section 31 of the Finance Act 1927.¹²⁴⁰ His Lordship was not impressed:

This Section 31 is a Section which in five pages introduces piecemeal amendments into Section 21 with the result that the latter section is made perfectly unintelligible to any layman or any lawyer who has not made a prolonged study with all his law books at his elbow, and it is a crying scandal that legislation by which the subject is taxed should appear in the Statute Book in that utterly unintelligible form. I am told, and rightly told, by the Attorney-General – he understands it as much as anybody – that it is only in this form that the legislation can be carried through at all. Then all I have to say is that the price of getting this legislation through is that the people of this country are taxed by laws which they cannot possibly understand¹²⁴¹

Income tax law and practice, therefore, existed in a context in which the only course of action readily available was the management of an existing state of affairs. Piecemeal legislative engineering was possible: wholesale legislative engineering was far more difficult. The income tax legislation was enacted only in part. However, that which was perfect did not come; and that which was enacted only in part did not vanish away.

The second context in which the importance of the determinants of the forms of the income tax legislation may be assessed is that of the workings of the United Kingdom polity from 1907 to 1965. In this context, the importance of these determinants remains to be established: but the conjecture may be advanced

¹²³⁷ *ibid.*

¹²³⁸ (1928) 14 TC 171 (KB).

¹²³⁹ 12 & 13 Geo 5 c 17.

¹²⁴⁰ 17 & 18 Geo 5 c 10.

¹²⁴¹ (1928) 14 TC 171, 187.

that the ascertainment of the determinants of the form of the income tax legislation provides a framework for studying and understanding the law and practice of other areas of government activity in the United Kingdom in the twentieth century.

The evidence presented in this thesis has demonstrated that the ascertainment of the determinants of the forms of the income tax legislation enables a number of statements to be made about the law and practice of income tax. Legislation was enacted subject to the constraint of insufficient parliamentary time; that legislation was not fully enacted; the different forms of primary legislation were used very unequally; and it was not equally easy to enact primary legislation relating to the various areas of the subject. The subject could be managed – but it was very difficult to transform.

Income tax, however, was only one subject whose law and practice had become exceedingly large and complicated by 1965. Town and country planning, public health and national insurance were other obvious examples.

The possibility accordingly arises that the statements made in the last paragraph may also hold good for other areas of government activity. It would, no doubt, be a bad pun to refer to the government of the United Kingdom in the mid twentieth century as having 'overmighty subjects' as one of its features (such an expression is better reserved for individuals in late medieval England); but, during the second half of the twentieth century, it may be possible to approach the United Kingdom polity on the basis that it had to manage – but could not dominate – a considerable number of overmighty topics.

The validity and helpfulness of such an approach remains to be established. It must be admitted that the enactment of the urgent annual Finance Act (which

was virtually certain to pass) was essentially a matter for the Treasury, the Inland Revenue and Customs and Excise only. All other departments depended for their statute law upon the enactment of programme Bills. The Inland Revenue, furthermore, did not depend upon outside bodies for expertise. There was no outside interest with a monopoly of important expertise – the position faced (for example) by the Ministry of Health in its dealings with the medical profession. In the case of the law and practice relating to income tax the ‘government’ (to use Amery’s terminology) was very strong vis-a-vis the ‘nation’. In the case of the law and practice relating to health (for example), the relative strengths of these two components of the United Kingdom polity may well have been very different. It is also highly possible that different government departments managed topics with differing degrees of competence.¹²⁴²

On the other hand, the pressure of time was expected to be a permanent feature of parliamentary government;¹²⁴³ and the drafter of the Town and Country Planning Act 1947¹²⁴⁴ (Hutton) is on record as stating that ‘the bill had been put together under the most intense pressure of time’.¹²⁴⁵ In a most suggestive article on the antecedents of this statute Cocks also considered that ‘[t]he unsystematic process by which important law reforms may come under

¹²⁴² In his major memorandum on statute law reform, dated 30 January 1946, Ram wrote that ‘[d]uring the last twenty-five years almost the sole motive power for consolidation has come from the Departments. Some (e.g. the Ministry of Health) have formulated long-term programmes and had sufficient perseverance and importunity to get the Parliamentary Counsel to devote the time required for carrying them out; others, whose law is no less in need of reform, have either been less fortunate or less energetic and have achieved little or nothing’. TNA file T 162/911 (E 17496/1) ‘Statute Law Reform’. Memorandum by the Parliamentary Counsel (Sir Granville Ram), 30 January 1946, app 1, para 27.

¹²⁴³ See n 1197 above.

¹²⁴⁴ 10 & 11 Geo 6 c 51.

¹²⁴⁵ R Cocks, ‘Enforced Creativity: Noel Hutton and the New Law for Development Control, 1945-47’ (2001) 22 *Journal of Legal History* 21, 46.

the control of a few particular civil servants in Whitehall can be relevant in determining the content of legislation'.¹²⁴⁶

Cocks has also expressed the view that there are 'many books about twentieth century judges and their role in the making of case law. In contrast, there are only a few detailed studies of how major statutes have come into being',¹²⁴⁷ and he went on to call for 'studies of how intellectual and administrative traditions have determined the way in which this power of bill-making has been used in twentieth century Britain'.¹²⁴⁸ Such studies might reveal (or might not reveal) that the determinants of the forms of the income tax legislation also acted to determine law and practice in other areas of government activity. It is certainly the case, however, that the forces determining the form and contents of major twentieth century statutes as they came to be enacted is a subject on which there is more to be known than we know at present.

The third context in which the importance of the determinants of the forms of the income tax legislation may be assessed is that of the history of the United Kingdom during the period from 1907 to 1965. In chapter 1, three major developments (the expansion of the activities carried on by central government, the growth of public expenditure and the United Kingdom's participation in the two world wars) were considered; and the views of Dicey, MacDonagh, Peacock and Wiseman and Rose were discussed.¹²⁴⁹ The ascertainment of the determinants of the forms of the income tax legislation cannot – and does not – make a decisive contribution to the study of these historical developments: but

¹²⁴⁶ *ibid* 21.

¹²⁴⁷ *ibid* 48-9.

¹²⁴⁸ *ibid* 49.

¹²⁴⁹ See chapter 1, text around ns 56-75.

the evidence relating to the determinants of those forms accords better with some of the views advanced than with others.

The evidence considered in this thesis does not offer strong support for the leading approaches to the expansion of the activities carried on by central government during the first half of the twentieth century when that subject is studied directly. It was Dicey's view that public opinion governed the development of the law.¹²⁵⁰ The evidence considered in this thesis supports Dicey's view in one very important respect: for it may certainly be said that, where public opinion was capable of being discerned, there was legislation in accordance with that public opinion. In 1943, it is possible to discern that public opinion favoured a broadly based PAYE scheme – and legislation to enable the PAYE scheme to come into operation was enacted.¹²⁵¹ Not only that: the legislation was extended – with a second programme Act reaching the statute book, which widened the ambit of the first.¹²⁵² The problem with Dicey's view, however, is that the further 'mirror-image' proposition – that, where there was an absence of public opinion, there was also an absence of legislation – must be rejected. A very considerable amount of legislation relevant for the form of income tax legislation was enacted during this period – but that legislation was enacted without any particular relationship to public opinion. On the material considered in this thesis, Dicey's view that public opinion governed the development of the law applies only to a very small percentage of the income tax legislation enacted. Public opinion, although of the utmost importance for the form of income tax legislation where it may be discerned, does not provide

¹²⁵⁰ AV Dicey, *Lectures on the relation between Law and Public Opinion in England during the Nineteenth Century* (1905, London, Macmillan).

¹²⁵¹ See chapter 7, section 3, above.

¹²⁵² The Income Tax (Offices and Employments) Act 1944 (7 & 8 Geo 6 c 12) widened the ambit of the Income Tax (Employments) Act 1943 (6 & 7 Geo 6 c 45).

the golden thread through the labyrinth of the growth in the income tax legislation during the first half of the twentieth century.

MacDonagh's approach¹²⁵³ is also vulnerable to the criticism that it gives a good account of only a small number of the developments considered. Once again, there is no difficulty in identifying developments that work well with this approach: the 'momentum of government itself' may be observed in operation. The scheme relating to the deduction and collection of income tax from the earnings of employees which was contained in regulations and introduced in 1915, was succeeded by a more far-reaching scheme introduced in 1940, which, in its turn, was superseded by the comprehensive PAYE scheme introduced in 1944.¹²⁵⁴ The Office of the Parliamentary Counsel (and particularly during the period when Ram was the First Parliamentary Counsel) may be observed expanding its activities (or attempting to expand them).¹²⁵⁵

On the other hand, the Office of the Parliamentary Counsel had few employees when compared with the Inland Revenue – and the evidence does not suggest that the Inland Revenue was at all concerned to promote its own expansion.

MacDonagh's model may provide a better account of new government functions than of government functions that were already established. The 'momentum of government itself', however, gives a good explanation only of a small percentage of the developments considered in this thesis.

By contrast, the 'displacement effect' noted by Peacock and Wiseman¹²⁵⁶ provides a more satisfactory context for the questions investigated in this thesis.

¹²⁵³ O MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal' (1958) 1 *Historical Journal* 52.

¹²⁵⁴ See chapter 7, section 3, above.

¹²⁵⁵ See chapter 4, section 2(2), above.

¹²⁵⁶ AT Peacock and J Wiseman, *The Growth of Public Expenditure in the United Kingdom* (OUP 1961). See chapter 1, text following n 67.

The movements in the levels of public expenditure that those authors noted are the same as the movements in the quantity of subordinate legislation made. It may nevertheless be objected that changes in the level of public expenditure do not explain changes in the form of income tax legislation (or vice versa). The explanation, instead, is likely to be that similar movements of different indices both reflect some larger force affecting both.

The conclusion is accordingly reached that, so far as the developments in the United Kingdom's history during the first half of the twentieth century is concerned, it is Rose's classification¹²⁵⁷ of the functions and priorities of government that provides the most helpful context for the matters investigated in this thesis. In particular, it is helpful to draw a strong contrast drawn between periods of war and peace. During times of war, legislation could be enacted which could not be enacted in times of peace. Taxation could be raised to unprecedented levels; subordinate legislation relating to the deduction and collection of income tax from employees could be introduced and then extended. With the return of peace some of the wartime legislation would cease to exist: but some would be retained, so that the more limited changes to government possible during peace would be carried out in significantly different circumstances. Peacock and Wiseman's 'displacement effect' may accordingly be seen as one particular result obtained from Rose's approach as it operated during the first half of the twentieth century. The overall result is an endorsement of Greenleaf's view that '[p]erhaps paradoxically, war may be the real paradigm of the welfare state and managed economy of peacetime'.¹²⁵⁸

¹²⁵⁷ R Rose, 'On the Priorities of Government: A Developmental Analysis of Public Policies' (1976) 4 *European Journal of Political Research* 247.

¹²⁵⁸ WH Greenleaf, *The British Political Tradition: Volume 1: The Rise of Collectivism* (London, Methuen, 1983) 76.

Karl Marx, according to Aneurin Bevan, had declared 'that war is the locomotive of history'.¹²⁵⁹

¹²⁵⁹ R McKibbin, *Parties and People: England 1914-1951* (OUP 2010) 144 n 14.

APPENDIX 1: PRIMARY LEGISLATION RELATING TO INCOME TAX

1. FINANCE ACTS

- | | | |
|-----|------------------------------|---------------------------|
| 1. | Finance Act 1907 | (7 Edw 7 c 13) |
| 2. | Finance Act 1908 | (8 Edw 7 c 16) |
| 3. | Finance (1909-10) Act 1910 | (10 Edw 7 c 8) |
| 4. | Finance Act 1910 | (10 Edw 7 & 1 Geo 5 c 35) |
| 5. | Finance Act 1911 | (1 & 2 Geo 5 c 48) |
| 6. | Finance Act 1912 | (2 & 3 Geo 5 c 8) |
| 7. | Finance Act 1913 | (3 & 4 Geo 5 c 30) |
| 8. | Finance Act 1914 | (4 & 5 Geo 5 c 10) |
| 9. | Finance Act 1914 (Session 2) | (5 & 6 Geo 5 c 7) |
| 10. | Finance Act 1915 | (5 & 6 Geo 5 c 62) |
| 11. | Finance (No 2) Act 1915 | (5 & 6 Geo 5 c 89) |
| 12. | Finance Act 1916 | (6 & 7 Geo 5 c 24) |
| 13. | Finance Act 1917 | (7 & 8 Geo 5 c 31) |
| 14. | Finance Act 1918 | (8 & 9 Geo 5 c. 15) |
| 15. | Finance Act 1919 | (9 & 10 Geo 5 c 32) |
| 16. | Finance Act 1920 | (10 & 11 Geo 5 c 18) |
| 17. | Finance Act 1921 | (11 & 12 Geo 5 c 32) |
| 18. | Finance Act 1922 | (12 & 13 Geo 5 c 17) |

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

19.	Finance Act 1923	(13 & 14 Geo 5 c 14)
20.	Finance Act 1924	(14 & 15 Geo 5 c 21)
21.	Finance Act 1925	(15 & 16 Geo 5 c 36)
22.	Finance Act 1926	(16 & 17 Geo 5 c 22)
23.	Finance Act 1927	(17 & 18 Geo 5 c 10)
24.	Finance Act 1928	(18 & 19 Geo 5 c 17)
25.	Finance Act 1929	(19 & 20 Geo 5 c 21)
26.	Finance Act 1930	(20 & 21 Geo 5 c 28)
27.	Finance Act 1931	(21 & 22 Geo 5 c 28)
28.	Finance (No 2) Act 1931	(21 & 22 Geo 5 c 49)
29.	Finance Act 1932	(22 & 23 Geo 5 c 25)
30.	Finance Act 1933	(23 & 24 Geo 5 c 19)
31.	Finance Act 1934	(24 & 25 Geo 5 c 32)
32.	Finance Act 1935	(25 & 26 Geo 5 c 24)
33.	Finance Act 1936	(26 Geo 5 & 1 Edw 8 c 34)
34.	Finance Act 1937	(1 Edw 8 & 1 Geo 6 c 54)
35.	Finance Act 1938	(1 & 2 Geo 6 c 46)
36.	Finance Act 1939	(2 & 3 Geo 6 c 41)
37.	Finance (No 2) Act 1939	(2 & 3 Geo 6 c 109)
38.	Finance Act 1940	(3 & 4 Geo 6 c 29)

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

39.	Finance (No 2) Act 1940	(3 & 4 Geo 6 c 48)
40.	Finance Act 1941	(4 & 5 Geo 6 c 30)
41.	Finance Act 1942	(5 & 6 Geo 6 c 21)
42.	Finance Act 1943	(6 & 7 Geo 6 c 28)
43.	Finance Act 1944	(7 & 8 Geo 6 c 23)
44.	Finance Act 1945	(8 & 9 Geo 6 c 24)
45.	Finance (No 2) Act 1945	(9 & 10 Geo 6 c 13)
46.	Finance Act 1946	(9 & 10 Geo 6 c 64)
47.	Finance Act 1947	(10 & 11 Geo 6 c 35)
48.	Finance (No 2) Act 1947	(11 & 12 Geo 6 c 9)
49.	Finance Act 1948	(11 & 12 Geo 6 c 49)
50.	Finance Act 1949	(12 & 13 Geo 6 c 47)
51.	Finance Act 1950	(14 Geo 6 c 15)
52.	Finance Act 1951	(14 & 15 Geo 6 c 43)
53.	Finance Act 1952	(15 & 16 Geo 6 & 1 Eliz 2 c 33)
54.	Finance Act 1953	(1 & 2 Eliz 2 c 34)
55.	Finance Act 1954	(2 & 3 Eliz 2 c 44)
56.	Finance Act 1955	(3 & 4 Eliz 2 c 15)
57.	Finance (No 2) Act 1955	(3 & 4 Eliz 2 c 17)
58.	Finance Act 1956	(4 & 5 Eliz 2 c 54)

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

59.	Finance Act 1957	(5 & 6 Eliz 2 c 49)
60.	Finance Act 1958	(6 & 7 Eliz 2 c 56)
61.	Finance Act 1959	(7 & 8 Eliz 2 c 58)
62.	Finance Act 1960	(8 & 9 Eliz 2 c 44)
63.	Finance Act 1961	(9 & 10 Eliz 2 c 36)
64.	Finance Act 1962	(10 & 11 Eliz 2 c 44)
65.	Finance Act 1963	(1963 c 25)
66.	Finance Act 1964	(1964 c 49)
67.	Finance (No 2) Act 1964	(1964 c 92)
68.	Finance Act 1965	(1965 c 25)

2. PROGRAMME ACTS

1. Revenue Act 1911 (1 Geo 5 c 21)
2. Provisional Collection of Taxes Act 1913 (3 & 4 Geo 5 c 3)
3. Income Tax Procedure (Emergency Provisions) Act 1939
(2 & 3 Geo 6 c 99)
4. Income Tax (Employments) Act 1943 (6 & 7 Geo 6 c 45)
5. Income Tax (Offices and Employments) Act 1944 (7 & 8 Geo 6 c 12)
6. Income Tax Act 1945 (8 & 9 Geo 6 c 32)
7. Income Tax (Repayment of Post-War Credits) Act 1959
(7 & 8 Eliz 2 c 28)
8. Income Tax Management Act 1964 (1964 c 37)

3. CONSOLIDATION ACTS

1. Income Tax Act 1918. (8 & 9 Geo 5 c 40)
(Referred to as 'the 1918 Act' in this thesis.)
2. Income Tax Act 1952. (15 & 16 Geo 6 & 1 Eliz 2 c 10)
(Referred to as 'the 1952 Act' in this thesis.)

APPENDIX 2: NUMBER OF STATUTORY RULES & ORDERS (1895-1947)

NUMBER OF STATUTORY INSTRUMENTS (1948 ONWARDS)

<u>Year</u>	<u>General</u>	<u>Local</u>	<u>Total</u>
1895	246	706	950
1896	197	1,032	1,229
1897	168	818	986
1898	200	951	1,151
1899	223	777	1,000
1900	174	821	995
1901	156	886	1,042
1902	161	819	980
1903	170	1,026	1,196
1904	143	1,756	1,899
1905	162	1,217	1,379
1906	165	821	986
1907	231	827	1,058
1908	256	1,093	1,349

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

<u>Year</u>	<u>General</u>	<u>Local</u>	<u>Total</u>
1909	205	1,323	1,528
1910	218	1,150	1,368
1911	172	1,164	1,336
1912	342	1,577	1,919
1913	414	992	1,406
1914	522	1,392	1,914
1915	406	835	1,241
1916	508	433	941
1917	753	630	1,383
1918	1,204	621	1,825
1919	1,091	1,150	2,241
1920	916	1,559	2,475
1921	727	1,383	2,110
1922	430	1,020	1,450
1923	366	1,258	1,624
1924	426	1,175	1,601

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

<u>Year</u>	<u>General</u>	<u>Local</u>	<u>Total</u>
1925	466	995	1,461
1926	448	1,297	1,745
1927	445	904	1,349
1928	415	717	1,132
1929	391	871	1,262
1930			
1931			
1932			
1933			
1934			
1935			
1936			
1937	644	597	1,231
1938	831	830	1,661
1939	1,336	610	1,946
1940	1,626	596	2,222

*The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance*

<u>Year</u>	<u>General</u>	<u>Local</u>	<u>Total</u>
1941	1,590	567	2,157
1942	1,901	1,036	2,937
1943	1,333	455	1,788
1944	1,028	455	1,483
1945	1,179	527	1,706
1946	1,291	996	2,287
1947	1,387	1,531	2,918
1948	1,508	1,350	2,858
1949	1,382	1,086	2,468
1950	1,211	933	2,144
1951	1,166	1,170	2,336
1952	1,029	1,283	2,312
1953	829	1,108	1,937
1954	706	1,057	1,763
1955	657	1,350	2,007
1956	722	1,402	2,124

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

<u>Year</u>	<u>General</u>	<u>Local</u>	<u>Total</u>
1957	705	1,545	2,250
1958	685	1,595	2,280
1959			
1960			
1961			
1962			
1963			
1964			

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Years from 1946 to 1958 (inclusive). JE Kersell, *Parliamentary Supervision of Delegated Legislation* (London, Stevens, 1960) 169. Kersell supplies figures for general instruments and total instruments only. For these years, therefore, the number of local instruments has been calculated arithmetically.

**APPENDIX 3: SUBORDINATE LEGISLATION RELATING TO INCOME TAX
AND NOT INVOLVING ANY FOREIGN ELEMENT**

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STATUTORY RULES AND ORDERS

1910/666	[Concerned with super-tax] [No provision for citation]
1914/1863	[Concerned with 1914-15] [No provision for citation]
1915/1222	[Concerned with deductions] [No provision for citation]
1916/202	[Concerned with weekly wage-earners] [No provision for citation]
1916/887	[Concerned with weekly wage-earners] [No provision for citation]
1917/422	[Service of documents by post] [No provision for citation]
1920/1991	[Concerned with weekly wage-earners] [No provision for citation]
1921/1699	[Concerned with superannuation funds] [No provision for citation]
1922/80	Government of Ireland (Adaptation of the Taxing Acts) Order 1922
1922/1329	[Concerned with super-tax] [No provision for citation]
1923/405	Irish Free State (Consequential Adaptation of Enactments) Order 1923
1923/453	Irish Free State (Consequential Adaptation of Taxing Acts) Order 1923
1925/702	[Concerned with weekly wage-earners] [No provision for citation]
1927/81	Income Tax (Schedule V Amendment) Order 1927
1928/582	[Concerned with weekly wage-earners] [No provision for citation]
1928/610	[Concerned with surtax notices] [No provision for citation]

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

- 1931/638 [Concerned with superannuation funds] [No provision for citation]
- 1931/827 [Concerned with weekly wage-earners] [No provision for citation]
- 1936/1103 [Concerned with surtax notices] [No provision for citation]
- 1938/1637 [Concerned with service of documents] [No provision for citation]
- 1939/1292 [Concerned with service of documents] [No provision for citation]
- 1940/1520 [Concerned with weekly wage-earners] [No provision for citation]
- 1940/1776 Deduction of Income Tax (Schedule E) Regulations 1940
- 1941/1378 Deduction of Income Tax (Schedule E) (Amendment) Regulations 1941
- 1941/1379 [Concerned with weekly wage-earners] [No provision for citation]
- 1941/1476 Tax Free Payments (Transitional Provisions) Regulations 1941
- 1941/1667 Deduction of Income Tax (Schedule E) (Amendment No 2) Regulations 1941
- 1942/1111 Post-War Credit (Income Tax) Regulations 1942
- 1942/1324 Deduction of Income Tax (Schedule E) (Amendment No 3) Regulations 1942
- 1942/1970 Seasonal Employments (Income Tax) Regulations 1942
- 1943/397 Deduction of Income Tax (Schedule E) (Amendment No 4) Regulations 1943
- 1943/411 Ulster and Colonial Savings Certificates (Income Tax Exemption) Regulations 1943
- 1943/1024 Deduction of Income Tax (Schedule E) (Amendment No 5) Regulations 1943
- 1943/1310 Deduction of Income Tax (Schedule E) (Merchant Navy) Regulations 1943

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

- 1943/1669 Deduction of Income Tax (Schedule E) (Amendment No 6) Regulations 1943
- 1944/251 Income Tax (Employments) Regulations 1944
- 1944/1015 Income Tax (Employments) (No 2) Regulations 1944
- 1945/137 Ulster and Colonial Savings Certificates (Income Tax Exemption) Regulations 1945
- 1945/365 Income Tax (Employments) (No 3) Regulations 1945
- 1945/1687 Ulster and Colonial Savings Certificates (Income Tax Exemption) (Amendment) Regulations 1945
- 1946/163 Income Tax Procedure (Emergency Provisions) Act (Expiry) Order 1946
- 1946/458 Income Tax (Employments) (No 4) Regulations 1946
- 1946/1309 Post War Credit (Income Tax) Regulations 1946
- 1947/582 Income Tax (Employments) (No 5) Regulations 1947
- 1947/947 Income Tax (Mineral Deposits) Regulations 1947
- 1947/1295 Income Tax (Employments) (No 6) Regulations 1947
- 1947/1691 Post War Credit (Income Tax) Regulations 1947

SI STATUTORY INSTRUMENTS

- 1948/464 Income Tax (Employments) (No 7) Regulations 1948
- 1948/1519 Income Tax (Employments) (No 8) Regulations 1948
- 1948/1819 Income Tax (Employments) (No 9) Regulations 1948
- 1950/3 Income Tax (Applications for Increase of Wear and Tear Percentages) Regulations 1950
- 1950/453 Income Tax (Employments) Regulations 1950

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

- 1951/836 Income Tax (Employments) (No 2) Regulations 1951
- 1952/89 Ulster and Colonial Savings Certificates (Income Tax Exemption) Regulations 1945
- 1952/653 Income Tax (Service of Notices) Regulations 1952
- 1952/1004 Income Tax (Employments) (No 3) Regulations 1952
- 1952/1255 Post-War Credit (Income Tax) Regulations 1959
- 1952/1758 Income Tax (Employments) (No 4) Regulations 1952
- 1954/1577 Income Tax (Employments) (No 5) Regulations 1954
- 1955/835 Income Tax (Employments) (No 6) Regulations 1955
- 1956/715 Ulster and Colonial Savings Certificates (Income Tax Exemption) Regulations 1956
- 1956/1149 Ulster and Colonial Savings Certificates (Income Tax Exemption) (Amendment) Regulations 1956
- 1956/1230 Income Tax (Purchased Life Annuities) Regulations 1956
- 1956/1295 Investment Allowances (Fuel Economy Plant) Order 1956
- 1958/1166 Income Tax (Employments) (No 7) Regulations 1958
- 1958/1548 Ulster and Colonial Savings Certificates (Income Tax Exemption) (Amendment) Regulations 1956
- 1959/876 Post-War Credit (Income Tax) Regulations 1959
- 1960/769 Post-War Credit (Income Tax) Amendment Regulations 1960
- 1960/2308 Income Tax (Purchased Life Annuities) (Amendment) Regulations 1960
- 1961/580 Visiting Forces and Allied Headquarters (Income Tax and Death Duties) (Designation) Order 1961

The determinants of the forms of income tax legislation 1907-65
Their ascertainment and importance

- 1961/591 Income Tax (Employments) (No 8) Regulations 1961
- 1961/1596 Income Tax (Employments) (No 9) Regulations 1961
- 1962/1003 Income Tax (Employments) Regulations 1962
- 1962/2455 Post-War Credit (Income Tax) Amendment Regulations 1962
- 1963/922 Ulster and Colonial Savings Certificates (Income Tax Exemption) (Amendment) Regulations 1963
- 1963/1082 Income Tax (Employments) (No 2) Regulations 1963
- 1964/562 Ulster and Colonial Savings Certificates (Income Tax Exemption) (Amendment) Regulations 1963
- 1964/924 Visiting Forces and Allied Headquarters (Income Tax and Death Duties) (Designation) Order 1964
- 1965/433 Income Tax (Surtax etc.) Regulations 1965
- 1965/516 Income Tax (Employments) Regulations 1965

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- CAB Cabinet Office records.
- IR Inland Revenue records.
- LCO Lord Chancellor's Office records.
- PREM Prime Minister's Office records.
- T Treasury records.

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