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978-0-521-89924-6 - The Victorian Taxpayer and the Law: A Study in Constitutional Conflict

Chantal Stebbings

Excerpt

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The establishment of the taxpayer's safeguards in English law

Prologue

One of America's greatest judges famously observed that 'taxes are what we pay for civilised society',¹ and from the earliest times English men and women were called on to pay for the costs of managing the state in an orderly way, providing an infrastructure of good government and defence.² As the effective government of a state depended to a great extent on the condition of its finances, the state's power to tax its subjects was central to its relationship with them, and the law of tax its principal and voluminous formal expression. The imposition of a tax, whether novel or merely an increase in the rate or incidence, was always perceived and accepted as an act of considerable constitutional importance. It affirmed the power and legitimacy of the state. To tax was to govern, and, implicitly, to do so by right, and as such was an expression of sovereignty. In taxation, above all, the interests of the individual most closely and repeatedly came into direct conflict with those of central government. Tensions between the state and the subject in this respect were inevitable, and not merely because the payment of taxes, however worthy or necessary the object, was disliked by most and constituted a very real hardship to many. Tensions were deep seated for three reasons. First, the exaction of taxes by the state by its nature violated the fundamental right of the subject to private property, one of the three absolute rights vested in the English people³ that constituted an aspect of their personal liberty.⁴ The right

¹ *Compañía General de Tabacos v. Collector* 275 US 87 (1927) at 100 per Holmes J.

² J. S. Mill, *Principles of Political Economy*, 6th edition, People's Edition (London: Longmans, Green & Co., 1896), Book V, p. 483.

³ Sir William Blackstone, *Commentaries on the Laws of England*, 1783 edition printed for W. Strahan and T. Cadell, London and D. Prince, Oxford, 4 vols. (New York: Garland Publishing Inc., 1978), vol. i, p. 138, and see generally pp. 127–40.

⁴ See generally Jane Frecknall Hughes, 'The Concept of Taxation and the Age of Enlightenment', in John Tiley (ed.), *Studies in the History of Tax Law II* (Oxford and Portland, Ore.: Hart Publishing, 2007), pp. 256–65.

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was highly valued by the English and it occupied a prominent place in political thought.⁵ As it was *prima facie* inviolable and guarded by the law,⁶ it was a common foundation of objections to any new taxation.⁷ Nevertheless, taxation was demanded as ‘a sacrifice of part of the public property ... for the preservation of the whole’.⁸ Sacrifice indeed, and a necessary evil. Secondly, the balance of power between the state and the subject was by its very nature an unequal one, and in no area was this more keenly felt by the individual than in taxation. Taxpayers were for the most part ordinary people of moderate means, but even the wealthy were too weak and poor as individuals to withstand the mighty organs of the state.⁹ When the state argued necessity, the individual taxpayer could have little effective response. The political and administrative history of Britain shows the state increasing its power, authority and resources as its financial needs grew, with the position of the subject remaining, inevitably, subordinate and growing correspondingly in vulnerability. Thirdly, the highly personal nature, especially of direct taxation, and the mechanics of assessment and collection, demanded and engendered a close and continuous relationship between the state and the taxpayer. This made taxation a highly visible and tangible expression of potent state power. These three factors combined to make tax a highly sensitive issue in the relationship between government and governed. Indeed, the history of tax law is the history of the reconciliation of the power of the state and the right of the subject. Taxpayers acknowledged that they paid tax to the state in return for defence and stable government,¹⁰ but the inherent tensions in their relationship with the state, and its necessary intimacy, led them to question whether that arrangement included any provision to ensure the state did not abuse its unequal position and that the demands of the public revenue were not favoured at their expense.¹¹

⁵ W. R. Cornish and G. de N. Clark, *Law and Society in England 1750–1950* (London: Sweet & Maxwell, 1989), p. 3.

⁶ 9 Hen. III c. 29 (1225).

⁷ For example the triple assessment was condemned as ‘a profligate contempt of property’: *Parliamentary History* vol. 33, cols. 1111–12, 14 December 1797 *per* Charles James Fox.

⁸ *Ibid.*, col. 1075, 4 December 1797 *per* William Pitt. See Frecknall Hughes, ‘Concept of Taxation’, pp. 262–3.

⁹ See *The Times*, 29 June 1864, p. 9 col. f; *ibid.*, 7 July 1864, p. 14 col. a.

¹⁰ For Locke’s theory of social contract, see Frecknall Hughes, ‘Concept of Taxation’, pp. 261–2.

¹¹ John Booth, *The Inland Revenue ... Saint or Sinner?* (Lymington: Coracle Publishing, 2002), where the author argues that the balance is firmly in favour of the Board of Inland Revenue.

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ESTABLISHMENT OF THE TAXPAYER'S SAFEGUARDS 3

The law of tax was clearly primarily, and in its essential nature, one of constraint, expressing a power which has been described as 'the most pervasive and privileged exercise of the police power of the state'.¹² It compelled the payment of taxes with penal sanctions, and provided for the compulsory disclosure of personal information regarding an individual's property and income. It was the very power of that constraint which raised a correspondingly strong demand by the taxpayer¹³ for a protective element in his relationship with the law. As Bracton had stated in the thirteenth century, even the king stood under not only God but the law,¹⁴ and the place of law was integral to the English model of government. Governments were the servants of the law, not its masters, and law was, as William Blackstone observed, 'the supreme arbiter of every man's life, liberty, and property'.¹⁵ It was thus to the law that the taxpayer looked for protection. Only the law could ensure the government did not abuse its immensely powerful position. It was in the state's interests to promote this protective character of the law. While the state equally had to be protected against too lenient an assessment, compliance to tax was of self-evident importance, and it could best be achieved by providing the taxpayer with systems to ensure that he was taxed accurately and according to the letter of the legislation, for legal safeguards went a long way towards ensuring public co-operation. Furthermore, the absence of legal protection could allow abuse by the state of its taxation powers leading to the inevitable surfacing of the fundamental tensions and the consequent release of popular resentment. There was plenty of evidence for this. Used oppressively, taxation gave rise to popular anger and revolt, and disputes between the state and its subjects over the nature or extent of taxation lay at the heart of the political revolutions of the Western world.¹⁶ The English civil war, the American war of independence and the French revolution were all the result, to varying degrees, of the unrestrained exercise of the powerful instrument of taxation by central government. The power and needs of the state, both fiscally and politically, made the establishment of legal safeguards for the taxpayer

¹² John Tiley, *Revenue Law*, 4th edition (Oxford: Hart Publishing, 2000), p. 9.

¹³ As to the existence of 'The Taxpayer' see James Coffield, *The Tax Gatherers* (London: Hutchinson, 1960), p. 10.

¹⁴ George E. Woodbine (ed.), *Bracton on the Laws and Customs of England*, Samuel S. Thorne (trans.), 4 vols. (Cambridge, Mass.: Harvard University Press, 1968), vol. ii, p. 33.

¹⁵ Blackstone, *Commentaries*, vol. i, p. 141.

¹⁶ See H. C. G. Matthew, 'Disraeli, Gladstone, and the Politics of Mid-Victorian Budgets', *Historical Journal*, 22 (1979), 615 at 615–16.

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a matter of necessity and defined the nature of the relationship between the taxpayer and law.

Taxpayers required more than the economic and moral considerations which yielded notions of fairness, equality and good administration¹⁷ which were certainly of considerable importance in the formulation of tax policy and the development of an ideology of taxation.¹⁸ They wanted safeguards of law and they acquired a role in the imposition of tax through the fundamental constitutional safeguard of parliamentary democracy, and an undisputed right to pay only what Parliament had consented to, as expressed in the legislation of that body, neither more nor less. This ensured that the state taxed only within those limits, that it acted legally, not arbitrarily, in the imposition of tax. They enjoyed protection against excessive or unjust assessment through two supporting tax-specific legal safeguards, namely local administration and the overarching enforcing power of the judiciary. The three legal safeguards, namely the constitutional safeguards of Parliament, the administrative safeguard of localism, and the judicial safeguard of the regular courts of law, constituted the bulwarks of the law safeguarding the taxpayer from the abuse of the state and its taxing organs.

A new commercial and industrial age

Most aspects of the three fundamental legal safeguards of Parliament, local administration and the judiciary, were conceived and established in a world very different from that of the Victorian taxpayer in nineteenth-century England. The context of their establishment was an agricultural economy, with domestic commerce and industry generally being small-scale, local and often family-based and requiring little capital. Workers operated either singly or in small groups, largely in their own homes, with unsophisticated tools and machines and forms of power which were all limited in extent, reliability or time. Only foreign commerce was

¹⁷ Notably Adam Smith's four canons of taxation: Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (R. H. Campbell, A. S. Skinner, W. B. Todd (eds.), 2 vols. (Oxford: Clarendon Press, 1976), vol. ii, Book V, Chapter 2, pp. 825–8. See H. Lloyd Reid, *The British Tax-Payers' Rights* (London: T Fisher Unwin, 1898), p. 210. Notions of fairness pervaded contemporary debate on taxation: Arthur Herald, *The Income Tax in Utopia* (Letchworth: Garden City Press Ltd. 1917), p. 5; *Young v. IRC* (1875) 1 TC 57 at 61.

¹⁸ See G. S. A. Wheatcroft, 'The Attitude of the Legislature and the Courts to Tax Avoidance', *Modern Law Review* 18 (1955), 209 at 212 for popular views on tax avoidance; Henk Vording, 'The Normative Background for a Broad Concept of Tax' in Bruno Peeters (ed.), *The Concept of Tax*, IBFD series no. 3 (Amsterdam: IBFD, 2008), pp. 30–48.

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important in scale and in its use of capital. Society reflected this agrarian economy. Land was the foundation of political power, social status and material wealth; the main focus of society was the village or the small town and the population was small, and communications poor.¹⁹

The fiscal system reflected this. Immediately prior to the Victorian period public revenue was raised primarily through the indirect excise and customs duties, while direct taxation was limited to times of national emergency, generally war. The principal direct tax was the land tax, originally a tax on real and personal property and incomes²⁰ but it became a tax purely on land in the nature of a perpetual charge by the end of the eighteenth century.²¹ Though it was levied every year, and constituted a real burden on landowners,²² the tax reduced in importance and effectiveness, and in 1798 provision was made for its redemption.²³ The demands of war forced William Pitt to seek other methods of raising revenue, and he increased the already large number of assessed taxes on luxury goods, including the famous window and inhabited house taxes, and extended them to servants, horses, carriages, coaches and carts.²⁴ These taxes were rendered complex and relatively unproductive by the many exemptions they allowed, and in 1798 he turned to a new and conceptually important tax, the triple assessment based on multiples of a taxpayer's assessed tax charge of the previous year.²⁵ The eighteenth century closed, however, with the introduction by William Pitt of a general charge on all leading branches of income,²⁶ namely the new income tax. The tax

¹⁹ See generally, M. J. Daunt, *Progress and Poverty* (Oxford University Press, 1995).

²⁰ 38 Geo. III c. 5 s. 2 (1797).

²¹ See CIR Thirteenth Report, *HCPP* (1870) (82, 82–1) xx 193, 377; Charles Wilson, *England's Apprenticeship 1603–1763* (London: Longman, 1965), pp. 130–1; Pretor W. Chandler, *The Land Tax: its Creation and Management* (London: Reeves & Turner, 1899); W. R. Ward, *The English Land Tax in the Eighteenth Century* (London: Oxford University Press, 1953); Paul Langford, *Public Life and the Propertied Englishman 1689–1798* (Oxford: Clarendon Press, 1991), pp. 339–66; J. V. Beckett, 'Land Tax or Excise: The Levying of Taxation in Seventeenth- and Eighteenth-Century England', *English Historical Review* 100 (1985), 285; William Phillips, 'No Flowers, By Request', *BTR* (1963), 285.

²² See R. A. C. Parker, 'Direct Taxation on the Coke Estates in the Eighteenth Century', *English Historical Review* 71 (1956), 247.

²³ 38 Geo. III c. 60 (1798). See *Parliamentary History*, vol. 33, cols. 1434–54, 9 May 1798; Anon., *Considerations on the Act for the Redemption of the Land Tax* (London: J. Payne, 1798).

²⁴ For a history of these taxes see Stephen Dowell, *A History of Taxation and Taxes in England*, 4 vols. (London: Longmans, Green & Co, 1884), vol. iv.

²⁵ 38 Geo. III c. 16 (1798).

²⁶ 39 Geo. III c. 13 (1799). For the history of income tax, see B. E. V. Sabine, *A History of Income Tax* (London: George Allen & Unwin Ltd, 1966); Peter Harris, *Income Tax in*

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failed, and needed substantial procedural reform by Henry Addington in 1803 to make it succeed.²⁷ The revenue from the customs, excise and stamp duties together, however, far exceeded that from the direct taxes.²⁸ Governments favoured indirect taxation not only because it was easy to collect but because it was thought to constitute an accurate taxation of wealth. The greatest proportion of the public revenue was contributed by the ancient customs,²⁹ imposed on spirits, beer, wine and tobacco, paid by the merchant on certain imported articles and the cost passed on to the consumer. The excise, introduced as part of the financial measures of the civil war in 1643, was of particular importance in the eighteenth century³⁰ and applied to a wide range of articles of domestic consumption and raw materials, including beer, malt, spirits, soap, salt, glass, tea, coffee, tobacco, and paper. Of all the taxes of the period, the excise was the most unpopular primarily because it tended to be imposed on items of necessity rather than luxury as part of the purchase price and so could not easily be avoided, and its administration was obtrusive. '[I]ts very name,' observed Blackstone, 'has been odious to the people of England',³¹ and violent excise riots had been experienced after the tax's introduction.³² Like the customs, the excise was increased throughout the eighteenth century³³ and reached its peak in the early nineteenth century, before declining, as the customs did, in the face of the free trade movement. Stamp duties, introduced in 1694 to finance the war against France,³⁴ were imposed on

Common Law Jurisdictions, Cambridge Tax Law Series (Cambridge University Press, 2006); B. E. V. Sabine, 'Great Budgets: Pitt's Budget of 1799', *BTR* (1970), 201; CIR Thirteenth Report, *HCPP* (1870) (82, 82–1) xx 193, 377 at pp. 326–7.

²⁷ 43 Geo. III c. 122 (1803). See generally A. Farnsworth, *Addington: the Author of the Modern Income Tax* (London: Stevens and Sons, 1951).

²⁸ Patrick K. O'Brien, 'The Political Economy of British Taxation, 1660–1815', *Economic History Review*, 41 (1988), 1.

²⁹ For a history of the customs duties see First Report, Commissioners of Customs, *HCPP* (1857) (2186) iii 301 at pp. 358–76. See generally Ronald Max Hartwell, 'Taxation in England during the Industrial Revolution', *Cato Journal*, 1 (1981), 129 at 145; Sir John Craig, *A History of Red Tape* (London: Macdonald & Evans Ltd, 1955), pp. 91–6; William Phillips, 'Anything to Declare', *BTR* (1965), 226.

³⁰ Hartwell, 'Taxation in England', 145; Craig, *Red Tape*, pp. 99–101.

³¹ Blackstone, *Commentaries*, vol. i, p. 321. See Wilson, *England's Apprenticeship*, pp. 129–30.

³² Michael J. Braddick, 'Popular Politics and Public Policy: the Excise Riot at Smithfield in February 1647 and its Aftermath', *Historical Journal*, 34 (1991), 597; Stephen Matthews, 'A Tax Riot in Tewkesbury in 1805', *BTR* (2002), 437.

³³ See generally Edward Carson, 'The Development of Taxation up to the Eighteenth Century', *BTR* (1984), 237; Graham Smith, *Something to Declare* (London: Harrap, 1980).

³⁴ 5 & 6 Will. & M. c. 21 (1694). See generally R. S. Nock, '1694 And All That', *BTR* (1994), 432.

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the vellum, paper or parchment on which legal transactions were written, on various licences, postage stamps, pamphlets and newspapers.³⁵ The duty was either a fixed amount depending on the nature of the item in question, or was an ad valorem duty depending on the value involved. Probate duty had been introduced in 1694 as a stamp duty on the grant of probate or letters of administration, while legacy duty, originally a stamp duty, dated from 1780³⁶ and became a tax on moveable property. Both applied mainly to personalty passing by death.

When Victoria came to the throne in 1837, profound economic and social changes in the fabric of national life were transforming Britain from an agricultural economy to the leading industrial nation in the world and the essentials of this process were already in place. Developments in technology had established the potential for replacing natural power with steam power for the production of quality iron and the mechanisation of industry. Developments in communications took the form of better roads and the development of canals. Overseas trade had grown with the opening of new markets in America, India and the Far East. The coal, iron and cotton manufacturing industries all grew rapidly, and the development of the railways was astonishing, all stimulated by an expansion in markets and available labour resulting from a trebling of the population. Mass production and heavy industry came to dominate, and towns and cities grew up around centres of industry, while London became the centre of new financial and commercial institutions. All these changes and developments interlinked, and industrial and economic development were self-perpetuating. Britain's commercial and industrial prosperity, as well as her confidence and global influence, were evident at the time of the Great Exhibition of 1851, and reflected in the contemporary statistics of production.³⁷ The country's economy continued to grow throughout the century,³⁸ and by 1870 it had far outstripped its European neighbours and the United States. A new fund of commercial wealth was created. There was a decline in the political, economic and social value of land, and an increased tendency to express wealth in terms of money, and new investments in the form of the shares and debentures of joint stock banks, public

³⁵ See generally Pauline Sadler and Lynne Oats, "This Great Crisis in the Republic of Letters" – The Introduction in 1712 of Stamp Duties on Newspapers and Pamphlets', *BTR* (2002), 353.

³⁶ 20 Geo. III c. 28 (1780). See too 36 Geo. III c. 52 (1796). For a history of these duties see CIR First Report, *HCPP* (1857) (2199 sess. 1) iv 65 at Appendix 10.

³⁷ Cornish and Clark, *Law and Society*, p. 5.

³⁸ CIR Fifteenth Report, *HCPP* 1872 (646) xviii 259 at p. 318.

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utilities and Britain's expanding empire.³⁹ These new commercial opportunities considerably increased the complexities of wealth and business. Better communications and postal services increased the pace of work to an unprecedented degree, and business methods were of rapidly growing sophistication. The industrial revolution changed the commercial and industrial life of the country, and shaped its society, its politics, its outlook and its priorities.

These new social and economic conditions challenged almost every aspect of the English legal system,⁴⁰ a system which was essentially medieval in substance, structure, procedures and institutions. The legal process and legal institutions were forced to change as a result of wider political, social and economic pressures. The enormous and rapid growth in the population and the migration from the countryside to towns which became overcrowded and diseased⁴¹ were problems of social regulation of the greatest magnitude, and tested the very structures of government. New and appalling working conditions in factories⁴² and mines and the exploitation of children gave rise to new public health and safety issues, and the crushing pervasive influence of poverty challenged the old poor laws.⁴³ New relationships in the workplace were not addressed by the old law of master and servant, while crowded cities and the erosion of the family by new work practices were believed to lead to increased crime, with which the old criminal law was not equipped to deal efficiently. Traditional legal institutions for the preservation of wealth and the support of the family were tested as commercial pressures came into conflict with moral imperatives.⁴⁴ A new commercial economy challenged a law of property based entirely on landownership, found bankruptcy laws

³⁹ See P. L. Cottrell, *British Overseas Investment in the Nineteenth Century* (London: Macmillan, 1975).

⁴⁰ See generally W. Blake Odgers, 'Changes in Domestic Legislation', in Council of Legal Education (eds.), *A Century of Law Reform* (London: Macmillan & Co. Ltd, 1901), pp. 131–41; Derek Fraser, *The Evolution of the British Welfare State* (London: Macmillan, 1973), pp. 28–50; David Roberts, *Victorian Origins of the British Welfare State*, reprint of Yale University Press edition 1960 (Hamden, Connecticut: Archon Books, 1969), pp. 38–9.

⁴¹ Poor Law Commissioners, *Report on an Inquiry into the Sanitary Condition of the Labouring Population of Great Britain* (London: HMSO, 1842).

⁴² First Report of the Central Board of Commissioners for inquiring into the Employment of Children in Factories, *HCPP* (1833) (450) xx 1 at p. 36.

⁴³ See generally S. G. and E. O. A. Checkland (eds.), *The Poor Law Report of 1834* (Pelican Books, 1974), Introduction.

⁴⁴ See generally C. Stebbings, *The Private Trustee in Victorian England* (Cambridge University Press, 2002).

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inadequate, a law of commercial association rudimentary and a property law inhibiting the full exploitation of land and minerals. Finally the legal process was one of infinite slowness, technicality and expense, unfit to serve a new dynamic economy and society. These demands on the existing law and legal process were all novel and required a significant degree of adaptation and, in some cases, fundamental changes in principle.

Taxation and the law of tax in 1837 were not immune to these momentous social and economic pressures. Tax had to operate in this new commercial climate in which not only would individuals' tax affairs inevitably grow in complexity, but the taxpayer population was itself growing rapidly. In an age when the objective of nearly all taxation was still simply to raise government finance, the fiscal challenge of the new Victorian age was the traditional one of insufficient yield. The wars against France in the mid and late eighteenth century had created a fiscal crisis for early Victorian governments and when Sir Robert Peel began his second Tory administration in 1841, the Treasury was empty. The debt resulting from the wars was still taking over half of the total gross central government expenditure, and navy and army costs were high. A series of bad harvests and depressed wages had increased the demand for relief from the established indirect taxes, and the earlier remission of a number of taxes to promote Whig free trade had absorbed what surplus there was. The problem facing the government was not only to secure new sources of public revenue, but equally to ensure its steady and consistent flow to sustain the rapid and widespread social reforms and to meet the increased expenditure of a developing bureaucratic state. The need was therefore to increase the public revenue from taxation to satisfy pressing military and domestic demands. It was the industrial revolution which provided both the solution and the challenge. The solution lay in the new commercial wealth of the transformed British economy; the challenge lay in how to tap it. The challenge was compounded, however, by two difficulties.

First, the existing taxes did not yield sufficient revenue to meet the government's long-term demands. This was despite the increased commercial activity and wealth which naturally gave rise to higher yields, and despite the increase in the range and rate of most taxes in the eighteenth and early nineteenth centuries, and a measure of consolidation and innovation. In particular, though the land tax continued to yield a steady revenue, it was undermined by its methods of administration and was limited in the extent to which it was suited or could be made to suit the increasing demand for public revenue. It had long become unrealistic

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through being based on out-of-date valuations and had become of little fiscal significance.⁴⁵

Secondly, the public's attitudes were not conducive to new or increased taxes. The popular perception in pre-Victorian England was one of heavy personal taxation.⁴⁶ The triple assessment, along with the permanence of the land tax and then the income tax, constituted a heavy burden on the wealthier classes at the dawn of the nineteenth century.⁴⁷ The income tax had been in suspension since 1816 and its reintroduction was not necessarily straightforward. Pitt had faced acute problems in introducing it in 1799, and any reintroduction after such a long period would almost amount to the institution of a new tax, with all the political and practical problems associated with it. In 1837 the compulsory taxation of income was still a novelty, for only a small proportion of the working population could remember its introduction less than forty years before, and most had no experience of it at all. Ideological objections to direct income taxation as inquisitorial, though weaker, were still widely held, and the tax was one which, as a commentator was to observe some forty years later, 'touches to the very quick the sensitiveness of the taxpayer'.⁴⁸ Furthermore, a direct influence of the industrial revolution was the impact of centralisation. The addressing of the new social problems through the intervention of central government led to a growth in state bureaucracy. While state intervention to address major public social issues began only in the 1830s, tax had been the first sphere of government activity to see a significant growth in bureaucracy. Blackstone had observed in the 1760s that the management of the revenue by the crown had given rise to a 'multitude' of officers who had 'extended the influence of government to every corner of the nation', an influence he called 'most amazingly extensive'.⁴⁹ Not only were taxpayers aware that a growth in state bureaucracy had to be paid for and would result in increased taxation, they disliked state interference in its own right. It was contrary to their orthodox belief in *laissez-faire*, and their traditional faith in local government and local institutions. Since substantive national taxation was the ultimate expression of centralisation,

⁴⁵ See CIR Twenty-ninth Report, *HCPP* (1886) (4816) xx 279 at pp. 307–8.

⁴⁶ See the famous words of Sidney Smith quoted by Monroe: H. H. Monroe, *Intolerable Inquisition? Reflections on the Law of Tax* (London: Stevens & Sons, 1981), pp. 18–19.

⁴⁷ John Habakkuk, *Marriage, Debt, and the Estates System, English Landownership 1650–1950* (Oxford: Clarendon Press, 1994), pp. 522–3.

⁴⁸ Leone Levi, 'On the Reconstruction of the Income and Property Tax', *Journal of the Statistical Society of London*, 37 (1874), 155 at 157.

⁴⁹ Blackstone, *Commentaries*, vol. i, p. 336.