

The Charitable Purposes Exemption from Income Tax:

Pitt to Pemsel 1798 – 1891

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Dedicated

To the Memory

of the late Professor June Pallot

11.9.1953 – 5.11.2004

An inspiration

and

A true academic and friend to all who knew her

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I wish you, the reader, as much enjoyment in reading my Thesis, and in the gaining of knowledge of the history of the charitable purposes exemption from Income Tax, from Pitt in 1798 to *Pemsel* in 1891, as I have had in researching and writing this Thesis over many years.

Abstract

In the Assessed Taxes Act 1798, and the Duties upon Income Act 1799, William Pitt the Younger provided exemptions from those taxes for charitable institutions. However, the legislation failed to provide a definition of charitable purposes with respect to either Assessed Taxes or Duties upon Income. The problems for charitable institutions began when Addington introduced deduction at source in 1803, thus catching charitable institutions in the tax net by requiring them to claim refunds of Income Tax that had been deducted from their non-voluntary income. To deal with the issues arising from such claims, Pitt created the Special Commissioners in 1805. The Duties upon Income Act 1799 and its successors were only intended as temporary war-time taxes, and Income Tax was eventually repealed in 1816 once peace with France had been achieved. However, Peel reintroduced Income Tax in 1842, based on the earlier Income Tax Acts. Once again, Income Tax was intended only as a short-term fiscal measure, but that was not to be and, during the course of the Nineteenth Century, the Income Tax became a permanent fixture of the legislative calendar. However, the issue of what was understood by the term “charitable purposes” with respect to Income Tax became an issue which, it was suggested in 1863, Parliament should resolve. That was not to be, and it was not until 1891 that Lord Macnaghten, in *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531 laid down the four principal divisions of charity that continue to dominate charity case law in the Twenty-First Century. Until then, the exemption of charitable institutions from Income Tax had been a contentious issue. Anthony Highmore, a London lawyer who was also very active in a number of London’s charities in the late Eighteenth and early Nineteenth Centuries until his death in 1829, proposed in 1786, that charities should be exempt from all forms of taxation. In 1863 Gladstone unsuccessfully challenged the exemption of charitable institutions from Income Tax, arguing that income other than voluntary donations should be taxed, and that governments should decide which charitable institutions were worthy of direct government funding. However, charity case law continued to influence the decisions of the Special Commissioners until ultimately in 1891 *Pemsel* resolved the issue in a case which continues to resonate in the Twenty-first Century. The question that this Thesis seeks to answer is, what was the rationale for the charitable purposes exemption from Income Tax that Pitt had provided in his Income Tax Acts? I propose that the rationale was not founded in fiscal policy, or charity case law, but in social policy as influenced by the Evangelicals of late Eighteenth Century London, predominantly William Wilberforce and Hannah More, who were close friends of William Pitt the Younger.

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Introduction

“It demands a great deal of study to acquire moderate knowledge.”
- Montesquieu*

As Montesquieu has asserted, it has indeed taken a great deal of study to learn of the history of the charitable purposes exemption from Income Tax, and I trust that my efforts have not been in vain, both for myself and those who read this work. This Thesis was inspired by my work as the general manager of the Pacific Leprosy Foundation, a charitable trust with international purposes founded in 1939, a position which I held from 1989 to late 2007. Prior to that appointment I had been employed as a secondary school teacher of accounting, and had also previously worked in the commercial sector as a company secretary and accountant. As the manager of a charitable trust, I had taken it upon myself to learn more about the nature of such organisations. I found that it was surprisingly difficult to locate material, apart from specialist legal texts on the subject, and even more difficult to locate in-depth material on accountancy issues relating to the charity sector in New Zealand. I began collecting newspaper clippings and other material that I came across, and stored these away for future use, although initially I had no idea what that might be. In those early years, I had yet to discover the Internet. Eventually I became a proficient and frequent user of the Internet which provided me with access to the many sophisticated databases that during the course of my research either became available, or I discovered, at the University of Canterbury and

* ‘Miscellaneous Thoughts, by Montesquieu; translated from his Posthumous Works, just published at Paris’ *The Annual Register for the Year 1799* (1801) 439.

elsewhere, such as the National Archives at Kew, the British Library in London and the Christchurch City Library.

In 1998 I had returned to the University of Canterbury as a part-time student in the Bachelor of Commerce (Hons) programme to upgrade my Bachelor of Business Studies degree, with which I had graduated from Massey University in 1985. My return to university was inspired by two people. Sue Newberry, then a Lecturer at the University of Canterbury, had interviewed me for a research project concerning charities and accounting for her MCom degree (followed by her doctoral study, which she completed in 2002). Alan Robb, a Senior Lecturer at the University of Canterbury, also had an interest in charity issues and after a conversation with him one day, I made the decision to study for a BCom(Hons), after which I intended to study for a Masters degree in Commerce.

I graduated BCom(Hons) in April 2001 and on 25 July 2001 I presented an MCom Thesis Proposal to Departmental staff, entitled *A Comparative Study of the Effects of Charity and Fiscal Law on Charitable Organisations in Australia, Canada, New Zealand, the United Kingdom and the United States*. Shortly after having made my presentation, I was advised that my proposal merited study at doctoral level and instead of continuing with the Masters programme, I was admitted as a PhD student. Professor Adrian Sawyer, Professor June Pallot, and Andrew Maples were appointed as my supervisors. My journey had begun. My proposed Thesis was officially registered in 2002 with a scheduled completion date of October 2009. I was not at all daunted by the prospect of so many years study, being then only a young 50 years of age!

A change of focus: The charitable purposes exemption from Income Tax

As my research slowly progressed, it became apparent that there was one issue that did not seem to have been studied from an historical perspective. It was an issue that had intrigued me, being what I now refer to, throughout my Thesis, as the charitable purposes exemption from Income Tax. My question to lawyers and accountants had been, why do charities not pay Income Tax? The stock standard answer was usually with reference to the provision of the exemption in the New Zealand Income Tax legislation, but no-one could tell me any more than I had been able to find for myself. While no-one could tell me about that aspect of the charitable purposes exemption, I also realised that the same phenomenon applied to a case

which most first-year law students and lawyers know as the *Pemsel* case.¹ A lawyer will tell you that in *Pemsel* four heads of charity were laid down, and as long as a charity fits within those heads, it will be held to be charitable, therefore the charity will be exempt from Income Tax. That answer was not satisfactory to me, and my research took a complete change of tack in order to seek an answer to the question which ultimately became the theme of this Thesis: how and why was it that charitable institutions were provided with an exemption from Income Tax, first in 1798 then in 1799, and at various times throughout the Nineteenth Century?

My research for this Thesis led me to discover works of which I had no knowledge, as I had never before studied history. This was to become more than a task of finding an explanation, if one existed, of the reasons for the charitable purposes exemption in the English Income Tax Acts of the late Eighteenth and Nineteenth Centuries. As a direct consequence of my studies, my research has also broadened my knowledge of international and domestic charity sector issues in a way that I had not foreseen, as well as opening up avenues for future research on the completion of this study.² While this Thesis addresses the issue of the charitable purposes exemption from Income Tax, from Pitt in 1798 to *Pemsel* in 1891, there also exists a veritable researchers' goldmine of material on other forms of taxation that affected charities, such as the Assessed Taxes and charities liability to local rates during the Eighteenth and Nineteen Centuries.

Rationale for the charitable purposes exemption from Income Tax

I had also discovered, in 2002, David Owen's text, *English Philanthropy 1660-1960*, in which Owen stated that:

[t]he exemption of British charities from the Income Tax dated from its inception. *We can only guess as to the motives that inspired Pitt to include in his Income Tax Act of 1799 [39 Geo. III c. 13] a clause exempting charitable organizations, but it was a natural enough*

¹ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

² What I found was that there existed a body of works on the history of charitable hospitals, not only in England, but also in New Zealand. The issue that I intend to pursue is that of fee-charging charity hospitals and the provision of public benefit, on which I have had papers published. In addition, another research question that I wish to pursue is that of the capital charge levied on public hospitals and whether that creates inequity between public hospitals and so-called private charity hospitals, which are exempt not only from Income Tax, but also from the capital charge, a concept that has its origins in the cost of capital applied in the commercial sector. See M.J. Gousmett, 'Fee-charging Charity Hospitals: An Abuse of Fiscal Privilege or Merely Pragmatism?' (2006) 12(2) *New Zealand Journal of Taxation Law and Policy* 141-180. See also Chapter 10 of this Thesis for comment on future research that I have identified during the course of my research.

decision. ... It would have been preposterous to tax the income of ... quasi-public agencies [such as grammar and free schools]. (Emphasis added.)³

While Owen inferred that Pitt's Duties upon Income Act of 1799 was England's first Income Tax Act it is now generally agreed that Pitt's Assessed Taxes Act of 1798, the so-called Triple Assessment Act, was the first Act to tax income.⁴ While the Assessed Taxes Act of 1798 contained a charitable purposes exemption, this was very narrowly applied, and concerned only the Royal and public hospitals.⁵ It is the broader charitable purposes exemption from the 1799 Act that is to be found, in various forms, in the Income Tax Acts of the later Nineteenth Century. The charitable purposes exemption in the Duties upon Income Act 1799 exempted "the income of any 'Corporation, Fraternity, or Society of persons established for charitable purposes only'."⁶ Owen also observed that:

the great London charities were not negligible politically and, when necessary, could apply pressure. Ordinarily, therefore, it was *taken for granted* that rents, dividends, and interest received by legitimate charities and *applied to charitable purposes should be free of tax.* (Emphasis added.)⁷

A natural enough decision? Taken for granted? It was these two assertions by Owen, coupled with my own curiosity, that led me down the path to endeavour to research the history of the charitable purposes exemption from Income Tax.

Emory, a legal historian, provided another rationale for the charitable purposes exemption, in that the exemption was the manifestation, in legislation, of prevailing social policies.⁸ Emory provides two such examples, the first being that "physicians, surgeons, apothecaries and midwives were liable for only the single additional assessment rate for one carriage or two horses where they kept no more," and the second that "royal or public hospitals, or any chambers or apartments therein used or occupied for charitable purposes," were exempt from "the said additional rate or duty on the amount of duties payable on houses, windows, or

³ David E. Owen, *English Philanthropy 1660-1960* (1965) 330.

⁴ *An Act for granting to His Majesty an aid and contribution for the prosecution of the war* 38 Geo. III c. 16 [12 January 1798].

⁵ *An Act ...*, above n 4, s. XIX.

⁶ *An Act to repeal the Duties imposed by an Act, made in the last session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties* 39 Geo. III c. 13 [9 January 1799] s. V.

⁷ Owen, above n 3, 331.

⁸ Meade Emory, 'The Early English Income Tax: A Heritage for the Contemporary' (1965) 9(4) *The American Journal of Legal History* 286, 294.

lights.”⁹ Emory was referring to Pitt’s Triple Assessment Act 1798, not his Income Tax Act of 1799 (the latter referring to the exemption for specific types of establishments in the form of corporations, fraternities and societies of persons).

At this point, it is appropriate that I explain that throughout this Thesis I refer primarily to the “charitable purposes” exemption from Income Tax. While it might seem fitting to use “charities,” from a legal perspective “charitable purposes” is more precise and, for the purposes of this Thesis, more appropriate. My reason is that in 1798 Pitt applied the charitable purposes exemption to Royal and public hospitals and, a year later, an exemption was provided for corporations, fraternities, and societies of persons established for charitable purposes only in Pitt’s Duties upon Income Act 1799.¹⁰ In 1842, the charitable purposes exemption was extended to include trustees for charitable purposes only, thus the phrase “charitable purposes” can be seen to cover a variety of legal structures. The complication, however, was that nowhere in the Nineteenth Century Acts for taxing income was the phrase “charitable purposes only” defined.¹¹ Given that the word “income” had not even been defined in the Income Tax Acts, a point made by Sabine, this is hardly surprising.¹² It was not until 1891 that a clear definition of charitable purposes was provided, with respect to the charitable purposes exemption, not in statute but in case law, in *Pemsel*.¹³ But the questions remain. What, how, and whom influenced Pitt to include the charitable purposes exemption in his income-taxing Acts of 1798 and 1799?

After many years of “part-time” research, I must report that I have been unable to find any conclusive evidence of debates that lead to the inclusion of the charitable purposes exemption clause in Pitt’s Duties upon Income Act of 1799 or indeed in any of the Income Tax Acts which followed it at various times during the Nineteenth Century. The fact is that the charitable purposes exemption was provided in the Income Tax Acts, and one reason why it was included is that similar exemptions can be found in history dating back as far as the early

⁹ Emory, above n 8, 294.

¹⁰ *An Act ...*, above n 6.

¹¹ Note that “[t]he UK legislation of the late Nineteenth and early Twentieth Centuries retained the basic structure of the 1799 and 1803 Acts.” See Assaf Likhovski, ‘A Map of Society: Defining Income in British, British-Colonial and American Tax Legislation’ (2005) 1 *British Tax Review* 159, 168. Likhovski discussed exemptions only with respect to taxpayers “who could claim an exemption or abatement according to the annual income,” but made no mention of charities. See Likhovski, 161.

¹² “For there is a surprising lack of definition in the Income Tax Acts, starting with the remarkable fact that nowhere in those Acts is the word ‘income’ defined” B.E.V. Sabine, *A History of Income Tax* (1966) 247.

¹³ *Pemsel*, above n 1.

Crusades in the Twelfth Century. Thus one answer, one that other scholars have also written of, is that there is an historical precedent for such an exemption.¹⁴

Rationale for the Thesis

The title of this Thesis indicates that my study is historical in nature. What then is history? Chambers *Dictionary of Etymology* explains the origins of the word “history” as meaning, before 1393, “[a] story, legend, biography.”¹⁵ From Latin, *historia* is “[a] narrative, account, tale, story,” and from Greek *historiā* is “a learning or knowing by inquiry.”¹⁶ Thus my Thesis is historical, in that it seeks to explain the charitable purposes exemption from Income Tax, based on archival research. My Thesis falls within two distinct periods in British history: the Hanoverian Age, from 1714-1837, followed by the Victorian Era, 1837-1901. It was during those periods that the Income Tax, intended by Pitt to be a temporary war-time tax, became a permanent fixture in the Parliamentary fiscal calendar.

In 1989 Joanna Innes asked, in ‘Parliament and the Shaping of Eighteenth Century English Social Policy,’ “why has [the subject of social policy] not attracted more attention from other historians? And what sort of work *have* [sic] they undertaken that bears, in some fairly immediate way, upon it?”¹⁷ The charitable purposes exemption from Income Tax, while being fiscal policy, at the same has its roots in social policy. I trust that my work will be found to have responded to the question posed by Innes, particularly as Innes, like most social historians has, understandably, not addressed the role of the charitable purposes exemption from Income Tax and its contribution to social policy in the late Eighteenth and Nineteenth centuries.

My rationale for undertaking this study was my desire to understand the nature and history of the charitable purposes exemption from Income Tax, being a concept that is an accepted part of fiscal policy in common law countries for over two hundred years since its inclusion in Great Britain’s Income Tax legislation. I also realised that there did not appear to have been any studies undertaken that bore a resemblance to my work. Further, history has much to teach us. In Emory’s words:

¹⁴ See Chapter 2 of this Thesis.

¹⁵ Robert K. Barnhart, *Chambers Dictionary of Etymology* (1988; reprinted 2002) 483.

¹⁶ Barnhart, above n 15, 483.

¹⁷ Joanna Innes, ‘Parliament and the Shaping of Eighteenth-Century English Social Policy’ (1990) 40 *Transactions of the Royal Historical Society* 63, 64.

*[t]here can be little doubt that an examination of the origins and early development of the tax which plays such an important part in contemporary life can be beneficial. ... To reflect for a time, however, on the nature of the early modern Income Tax, and the reasons for its enactment, can place in perspective and sharpen many of the concepts and ideas which are accepted today without much thought. (Emphasis added.)*¹⁸

Emory reinforces my observation that the focus of scholars of the past has been on the concept of the Income Tax yet, within the English Income Tax Acts, one can find social policies to which scant regard has been given by historians. One of those, the subject of this Thesis, is the charitable purposes exemption from Income Tax. Another, by way of example, is the abatements allowed, according to income bands, relating to the number of children “born in wedlock” in accordance with the ages of those children.¹⁹

Another interesting aspect of Pitt’s Duties upon Income Act of 1799 is that it was a tax on income, not on expenditure. It was, according to Emory, a tax that:

contravened the doctrine that revenue should be raised through taxes on expenditure and not by direct assessment of means [not having] the feature of optionality which was regarded by some as the very essence of taxation in a free country.²⁰

To study the charitable purposes exemption from Income Tax in isolation from the events of the time would be akin to a study the human heart independent of its function in the human body. Pitt needed funds to fight the war with the French. Hence the Income Tax was a war tax which Parliament saw fit to abolish in 1816, two years after peace had been achieved. Without the Napoleonic Wars, there was no need for Income Tax, ergo the charitable purposes exemption. The question is, what lay behind the inclusion of the charitable purposes exemption from the Income Tax Acts of 1798 and 1799? Who or what ensured the exemption from the Income Tax? Was the realisation that precedent existed which provided more than ample reason for the charitable purposes exemption to be enshrined in the Income Tax legislation? In Edinburgh in 1863 Thomas Hare claimed that “[a]t the time of the introduction of the Income Tax by Mr Pitt, very little was known of the extent of charitable

¹⁸ Emory, above n 8, 287.

¹⁹ *An Act ...*, above n 6, s. III.

²⁰ Emory, above n 8, 292.

estates.”²¹ That may have been so, but the Guilds of London were prominent in their charitable activities, as were numerous other charitable institutions as can be seen from the outstanding work of Anthony Highmore in his *Pietas Londinensis*.²² Were these forces at work to ensure that the charitable purposes exemption from Income Tax came to be in 1798 and 1799?

Other historians have chosen to ignore this subject for research, or have placed their own interpretation on the charitable purposes exemption, such as Owen who merely stated that “[w]e can only guess as to the motives that inspired Pitt” to include such an exemption.²³ It was largely this opinion by Owen that inspired me to seek out what those motives might have been. While I have not found a definitive answer, I believe that a closer examination of the archives of the charities of London may reveal clues to the exemption, for I find it hard to believe that there was no discussion between charities in 1798 and 1799 on the likely effect of Pitt’s proposed tax on income. I have attempted to place myself in those times, to try to understand what might have been going on in that difficult period of England’s history. That is a problem the historian is confronted with, for the risk is that of imposing my ideas on what I saw before me. I have not approached the subject solely from the point of view of law, tax, or social policy, for the charitable purposes exemption is a part of these three disciplines and to do so would have narrowed the Thesis to that point of view only. “The study of history is a study of causes. The historian ... continuously asks the question ‘why?’ and so long as he [sic] hopes for an answer, he cannot rest.”²⁴ That in the Twenty-first Century an encompassing explanation for the fiscal rationale of the charitable purposes exemption from Income Tax has yet to be accepted, at least in common law countries, demonstrates why academics still seek an answer to the question “why?”

The result of my work is that I believe that I have made a small, but significant, contribution to the knowledge of the history of taxation in Great Britain in attempting to understand how the charitable purposes exemption came to be, a concept that over two hundred years later applies to so many organisations with charitable purposes worldwide.²⁵ As I was not basing

²¹ Thomas Hare, ‘The injustice and impolicy of exempting the income of property, on the ground of its charitable or meritorious employment, from the taxation to which other like property is subject’ in George W. Hastings (ed), *Transactions of the National Association for the Promotion of Social Science* (1864) 734.

²² Anthony Highmore, *Pietas Londinensis* (1810).

²³ Owen, above n 3, 330.

²⁴ E.H. Carr, *What is history?* (2nd ed, 1990) 87.

²⁵ New Zealand adopted the law of Great Britain in 1840 as the basis of this country’s legal system.

my research on prior studies that had aroused my interest, I literally had no idea where to begin, other than to take Julie Andrew's advice to begin at the very beginning.²⁶

The rationale for my Thesis is three-fold: first, to discuss the charitable purposes exemption from Income Tax in the Eighteenth and Nineteenth centuries; second, to contribute to the growing body of literature on tax history; and third, to inspire others to examine the role of taxation in social policy.

Research methodology

My study has not been based on an hypothesis founded in fiscal policy and applied to tax policy during the Hanoverian era, such as the theory of differentiation as proposed by Peel in his Budget of 1842.²⁷ Sabine suggested that “[o]n the face of it, the theory of differentiation could be justified on equitable grounds, but its advocates betrayed themselves into inconsistencies and manifest illogicalities [sic] such as the exemption of savings.”²⁸ Why not then the charitable purposes exemption from Income Tax? All the more so, especially when “time and time again Gladstone and Robert Lowe exploited the inequity of giving relief on large commercial incomes ... while leaving unrelieved comparatively modest incomes from land or securities.”²⁹ Further, the Chairman of the Board [of Inland Revenue], Charles Pressley, refused to discuss differentiation on the basis that it was “a principle which he fully justified on the ground that his job was to administer Income Tax, *not speculate on its theoretical base*. (Emphasis added.)”³⁰

Instead of basing my research on an hypothesis, my research has been based on inquiry through archival research and the written word, in its many forms. “The historian’s job,” stated Thompson, “is to find out about the past and make it intelligible and accessible to the present.”³¹ According to O’Gorman, “[h]istorians divide up the past into periods which suit them and which provide a suitable context to their researches.”³² I have certainly done as

²⁶ Julie Andrews, “The Sound of Music,” *Do-Re-Mi* “Let’s start at the very beginning.”

²⁷ Sabine, above n 12, 61. “Differentiation” distinguished between permanent [land] and precarious [professional] incomes. Sabine, *ibid* 64.

²⁸ Sabine, above n 12, 86.

²⁹ Sabine, above n 12, 87.

³⁰ Sabine, above n 12, 87 citing Hubbard Report, Q. 148. John. G. Hubbard, an independent M.P and Governor of the Bank of England, had been appointed as Chairman of a Select Committee [to inquire into the Income Tax].

³¹ F.M.L. Thompson, *The Cambridge Social History of Britain 1750-1950: Social agencies and institutions* (1990) vol 3 ix.

³² Frank O’Gorman, *The Long Eighteenth Century: British Political and Social History 1688-1832* (1997) xi.

O’Gorman has suggested, as it became clear in the early stages of my work that the start of the historical period for my research would be the Assessed Taxes Act 1798, and the end the *Pemsel* case of 1891.

The approach that I applied to this study was rather like my experience as an amateur archaeologist in the early 1980’s. Suspecting that something might exist in a particular place, all I had to do was to painstakingly search for it. My first experience of an archaeological dig was just that. I had become involved with the museum in my home town of Nelson, and one beautiful sunny Saturday morning I found myself on my hands and knees at a beach near Mapua where, hundreds of years ago, Maori were believed to have lived and fished in the rich seas of Tasman Bay. Under the watchful eye of expert archaeologists, my fellow amateur archaeologists and I were each assigned to a small square of earth as part of a larger grid and given tiny implements with which to scratch carefully through the sand and soil. After many hours in the hot sun, we began to find what we suspected may have been there – the bones of fish and small mammals that had been cooked in umu, the Maori word for small oven. On another occasion I spent a day in the hills above Nelson, working at a site where Maori quarried stone which was used to make axe heads and adzes. I have never forgotten the excitement of those field trips, especially when we made interesting discoveries! My Thesis has provided me with similar experiences, and I have enjoyed this long journey immensely. An astute friend observed that I seemed reluctant to want to complete the task. In some respects, he is right.

I also took inspiration from O’Brien’s 1967 Thesis, in which he wrote that “[t]he questions raised [concerning fiscal and financial policy] could not be answered within the confines of a single discipline.”³³ To that end, my Thesis traverses the history of taxation, politics, charity law, and social policy. I believe that I can make the claim that no other historian has examined the charitable purposes exemption from Income Tax, from Pitt in 1798 to the *Pemsel* case in 1891, as closely as I have. The research has been extremely difficult as, with the exception of Highmore’s writings in 1787 and 1809 on *Mortmain*,³⁴ and his *Pietas Londinensis* of 1810,³⁵ I did not find any work of significance on taxation and charities written about that time. Highmore’s work is extremely important in this regard and I am

³³ P.K. O’Brien, *Government Revenue 1793-1815 A Study in Fiscal and Financial Policy in the Wars against France* (1967) (Unpublished doctoral Thesis, University of Oxford) Abstract.

³⁴ Anthony Highmore, *A Succinct View of the History of Mortmain* (1787) and (1809).

³⁵ Highmore, above n 22.

hopeful that my rediscovery of his writings will be given their rightful place in the history of taxation.

Grounded Theory

Grounded Theory, or the discovery of theory from data, is a sociological research method first proposed by Glaser and Straus.³⁶ It has been described as taking “the view that investigators enter research settings without preconceived theories and hypotheses about what they will find. Essentially, investigators will immerse themselves into the research setting and describe what they have found.”³⁷ Having gathered their data, “investigators will generate explanations about various phenomena that are developed directly from what they see and understand.”³⁸ The appropriateness of Grounded Theory for a study such as this is that “any theoretical explanation devised is rooted in observed behaviours and social exchanges.”³⁹ The complication is that as this is a study of events of over two hundred years ago, the observations are based on written accounts of events, with all their inherent flaws. Further, while researcher bias may exist, such flaws are corrected through the process of “continual refinement and development, as new factual information is disclosed about research settings.”⁴⁰

In discussing Grounded Theory, Glaser and Strauss emphasis that “the basic sociological activity that *only* [sic] sociologists can do [is] generating sociological theory.”⁴¹ While that may have been true in 1967 when Glaser and Strauss first published their findings, fiscal sociology has also demonstrated that it has the capability to explain the role of taxation in society.

Historical method after Garraghan

I have to admit to having largely developed my own style of research, but under the watchful eyes of my three supervisors. However, the method I used is identical to that as described by Garraghan in *A Guide to Historical Method*.⁴² Garraghan described historical method as being “a systematic body of principles and rules designed to aid effectively in gathering the

³⁶ Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for qualitative research* (1967) 1.

³⁷ Dean John Champion, *Research Methods for Criminal Justice and Criminology* (3rd ed, 2006) 45.

³⁸ Champion, above n 37, 45.

³⁹ Champion, above n 37, 45.

⁴⁰ Champion, above n 37, 51.

⁴¹ Glaser and Strauss, above n 36, 6.

⁴² Gilbert J. Garraghan, *A Guide to Historical Method* (1946).

source-materials of history, appraising them critically, and presenting a synthesis (generally in a written form) of the results achieved.”⁴³ Being a systematic person, I had no difficulty in gathering and collating the material I discovered, while at the same time continuing to search for the elusive key to my Thesis. The research method has continued up to the present without hesitation, following new leads as they arose, which I then accepted or rejected. I have attempted to follow Cicero’s “principles of genuine history” which states that:

[i]t is the first law of history that it dare say nothing which is false nor fear to utter anything that is true, in order that there may be no suspicion either of partiality or of hostility in the writer.⁴⁴

A difficulty with historical research is viewing the events of the late Eighteenth Century through the eyes of a person writing over two hundred years later. “The attainment of historical truth,” wrote Garraghan, “[involves the] search for sources of information, critical evaluation of the same, synthesis and exposition of the results of research and criticism.”⁴⁵ Garraghan defines the research process as having three components: the search for materials and sources (heuristic); appraisal from the viewpoint of the evidence compiled (criticism); and the formal statement of the findings of heuristic and criticism (synthesis and exposition).⁴⁶

Heuristic – The search for materials

The search for materials began with the resources immediately available at the University of Canterbury in the Central Library and the library of the Law School. I quickly became familiar with material that I had never before needed to use. As well as books and journals, microfilm and microfiche quickly became my friends. In conjunction, I familiarised myself with the databases available through the library, such as JSTOR and HeinOnline.

As with any research project, a key task was identify, through a literature review, any prior works, firstly to ensure that the intended research focus had not already been studied, and secondly to identify any clues that might lead me to providing an answer as to the history of the charitable purposes exemption in Pitt’s Duties upon Income Act and subsequent Income Tax Acts. Because I have relied solely on printed works, it has been necessary to be aware of

⁴³ Garraghan, above n 42, 33.

⁴⁴ Garraghan, above n 42, 43 citing Cicero. Garraghan did not provide the source of this quote.

⁴⁵ Garraghan, above n 42, 33.

⁴⁶ Garraghan, above n 42, 33.

what Garraghan described as “the tyranny of the printed page.”⁴⁷ With respect to this study this has been particularly important, as newspapers have been a major resource upon which I have relied.

As well as using the resources to which I had immediate access, namely the Law Library and Central Library at the University of Canterbury, I found many books in second-hand shops in the course of my travels over the years in New Zealand, Australia, and the United Kingdom, which have provided me with valuable clues. As I became more proficient with the Internet, and its many search engines, I also located books overseas that I was able to acquire for my rapidly growing private library. One such book was a history of the Charity Commission for England and Wales, by Richard Tompson who, at the time of publishing his book, was Professor of History at the University of Utah.⁴⁸ It was amongst these books that I began to find clues, such as Tompson’s comment that:

[y]et another subject of [Eighteenth Century] legislation which impinged on charitable trusts as property was taxation. The trusts were eligible for Land Tax, house duty, stamp duty, and legacy duty (and sometimes tithes or local rates). Generally the tax picture for charitable trusts was becoming brighter – more exemptions and less taxes overall were the general tendencies. ... *On all tax matters, charitable trusts suffered the same state supervision that private owners did, but with occasional special treatment.* There was no policy, and indeed we have no detailed information on the administration of the tax laws, except for Land Tax exemptions. (Emphasis added.)⁴⁹

Tompson’s statement above that “[t]here was no policy” provides an indication of how difficult this research has been. Had there been formal policies, then the public record of debate in 1798 and 1799 may have provided clues as to the reasoning behind those policies. The only mention that Tompson made of the charitable purposes exemption was in a footnote on Land Tax, in which he referred to the “Property (Income) Tax by 46 Geo 3 c. 65,” of 1806.⁵⁰ However, his observation (as noted above) that the general tendency for “more exemptions and less taxes overall” is notable in as much as Tompson did not explain why that might have been so.

⁴⁷ Garraghan, above n 42, 35.

⁴⁸ Richard Tompson, *The Charity Commission and the Age of Reform* (1979).

⁴⁹ Tompson, above n 48, 62.

⁵⁰ Tompson, above n 48, fn 11 243.

Even works devoted to the study of taxation do not mention the charitable purposes exemption, such as Tayler,⁵¹ Dowell,⁵² Hope-Jones,⁵³ Seligman⁵⁴ or, more recently, Sabine.⁵⁵ Sinclair's *History of the Public Revenue* provides a very good listing of exemptions from taxes throughout history, but he did not provide any in-depth discussion on Pitt's charitable purposes exemption.⁵⁶

If, as Emory has suggested, social policies manifested themselves in the legislation, one supposes that comment might readily be found on that phenomenon. However, a review of many books written during and after the Eighteenth and Nineteenth Centuries from different perspectives has not revealed evidence of any debate on the need to exempt certain institutions from Income Tax for the purposes of social policy. Marshall's *Eighteenth Century England*⁵⁷ referred briefly to the Charity Schools, whereas Briggs, in *The Age of Improvement*, provided a more extensive comment on philanthropy,⁵⁸ taxation,⁵⁹ and Pitt's fiscal policy.⁶⁰ Yet neither author commented on the exemption of charities from taxation to achieve social objectives, nor have I been able to find comment on the charitable purposes exemption in the work of other social historians.

As parliamentary reporting had progressively improved during the Nineteenth Century, with detailed indexing of subjects, the search for resources became less strenuous. Nevertheless, I undertook several visits to the Parliamentary Library in Wellington to access legislation and parliamentary debate that was not available in Christchurch. Then, one of the librarians at the Central Library of the University of Canterbury, Tim O'Sullivan, told me one day that it was possible to access *The Times*, from 1785 to 1985, online through the Christchurch City Library. That database, which also provided access to the British Newspapers 1600-1900, proved to be a goldmine of material for my Thesis.

⁵¹ William Tayler, *The History of the Taxation of England* (1853).

⁵² Stephen Dowell, *A History of Taxation and Taxes in England* (1888). Dowell merely stated, at 94 of vol III, that "... the income of any corporation, fraternity, or society established for charitable purposes only, were exempted,"

⁵³ A. Hope-Jones, *Income Tax in the Napoleonic Wars* (1939).

⁵⁴ E.R.A. Seligman, *The Income Tax* (1914).

⁵⁵ Sabine, above n 12.

⁵⁶ Sir John Sinclair, *The History of the Public Revenue of the British Empire* (1803; reprint 1966) vol III App. No. 1 61.

⁵⁷ Dorothy Marshall, *Eighteenth Century England* (1965) 101, 243-4.

⁵⁸ Asa Briggs, *The Age of Improvement 1783 – 1867* (1959), 13, 16, 17, 58, 59, 62, 65, 74, 213, 335-6, 438-9, 440.

⁵⁹ Briggs, above n 58, 118-9, 132-3, 169-70, 271, 341, 362, 384, 427, 490.

⁶⁰ Briggs, above n 58, 117-23, 169-70, 204.

Understanding the social events of the time provides an understanding, from my perspective as an historian in the Twenty-first Century, why charities should be not deprived of funds at such a dire time. Professor John Cookson, who had joined my supervisory team on the passing of Professor June Pallot in 2004, has been an invaluable mentor in assisting me with understanding the social aspects of England in the Eighteenth and Nineteenth Centuries.

As well as understanding social life in England, I considered that it was necessary to also understand the history of the charitable purposes exemption from a time that predated the Napoleonic Wars. For that, I have Anthony Highmore and his two works on *Mortmain*, in 1787 and 1810, to thank. I discovered Highmore's work at the British Library while on a research visit to London in June 2005. While Highmore rationalised as to why charities should be exempt from all forms of tax, because I have found no documents from the Pitt era on the charitable purposes exemption, I can only suppose that the law draftsmen knew of such exemptions.

Finally, in the search for resources for my study, I learnt that as I became immersed in my subject I began to identify that what at first appeared to be unlikely sources (such as the British Newspapers and *The Times*) as being of more value. Crump described this as "the importance of a mind trained to seize any useful scrap of knowledge that may turn up by chance even when the attention is not specially directed to it."⁶¹

Criticism

"Historical method," wrote Garraghan, "is largely a matter of reasoning about sources and the data they contain."⁶² A key purpose of my research was to identify writings from the late Eighteenth and the Nineteenth Centuries which had a connection to the charitable purposes exemption from Income Tax, or were able to lead to the discovery of other related material. Having found such material, the task of the historian is then to critique the document in order to deduce what the author was saying. In Carr's words, "[n]o document can tell us more than what the author of the document thought ... until the historian has got to work and deciphered it."⁶³ The difficulty in doing so is that the decipherer brings his or her own perspectives into view, as time separates observer and the observed with all the distortions that distance brings

⁶¹ Garraghan, above n 42, 35 citing Charles G. Crump, *History and historical research* (1928) 129.

⁶² Garraghan, above n 42, 143.

⁶³ Carr, above n 24, 16.

to the subject under review. Past acts are meaningless, explained Carr, “unless [the historian] can understand the thought that lay behind it.”⁶⁴ The difficulty that I experienced, particularly with respect to the series of tax Acts in 1798 and 1799, was the sheer difficulty in finding any documents in relation to the charitable purposes exemption from Income Tax, ergo the “thought” behind those enactments.

Synthesis and exposition

Synthesis and exposition requires that the body of historical data be presented in terms of objective truth and significance.⁶⁵ The process of synthesis requires the “[connecting] of recorded facts with other facts not directly recorded, or the [bringing] to light [of] some hidden connection between various facts.”⁶⁶ Synthesis requires a level of objectivity which is “detached and neutral attitude [in order to be able] to deal with [the] material in the light of the evidence alone.”⁶⁷ However, it is not possible to “be actually free from prejudices or prepossessions – a psychological impossibility.”⁶⁸ This is certainly true in my case, as having worked in the charity sector for nearly 19 years, I was aware that I “wanted” to find the answer that confirmed my own beliefs about why charitable institutions should be exempt from Income Tax. However, I was also prepared to be challenged on my prejudices if that became necessary. “The historian,” said Sir Henry Lambert, “carries into his problem his whole personality, with all the attitudes, mental, emotional, moral, that distinguish it.”⁶⁹

I have endeavoured to ensure that my writings are accurate in every detail, and any errors are mine alone. “Accuracy is truth,” declared Garraghan, “and any history may do no less than aim at being true.”⁷⁰ This requires correctness in the statement of fact, whereas the interpretation of those facts has the inherent faults as already described. Garraghan also wrote of “thoroughness,” which requires that “first, use of all important sources bearing on the subject at hand; secondly, treatment of all significant phases of the subject.”⁷¹ As well as being thorough, an historical work must also stand the test of verifiability. That is, the reader

⁶⁴ Carr, above n 24, 22.

⁶⁵ Garraghan, above n 42, 34.

⁶⁶ Garraghan, above n 42, 346.

⁶⁷ Garraghan, above n 42, 47.

⁶⁸ Garraghan, above n 42, 47.

⁶⁹ Garraghan, above n 42, 47.

⁷⁰ Garraghan, above n 42, 55.

⁷¹ Garraghan, above n 42, 57.

is able to go to the sources cited in order to check both “the accuracy of individual statements and the reliability of the work as a whole.”⁷²

Garraghan used the analogy of the stained glass window to explain the necessity of historians viewing the past from within. “The stained glass window,” wrote Garraghan, “[when] viewed from without, is a meaningless pattern of dull glass and leaden joints. [W]hen viewed from within, it is a colourful splendour lighting up a definitely traced picture.”⁷³ This is certainly the experience I have had with my Thesis. The first such experience was when I discovered Gladstone’s challenge in 1863 of the charitable purposes exemption from Income Tax, and the response by the charities of London.⁷⁴ What until then had been a smoky haze began to slowly fade. The second moment of epiphany was when I began researching social issues of the Eighteenth and Nineteenth Centuries, venturing into subjects of which I knew little. The purpose of this phase of my study was, as described by Garraghan, “[an] attempt to search out [facts] and [to] interpret the deep-lying forces that operate below their surface.”⁷⁵ As I delved into the work of the Evangelicals at the end of the Eighteenth Century, gradually the smoky haze began to clear altogether, until finally I could see the stained glass window in all its glory. In regard to this aspect of my Thesis in particular, the support and advice of Professor John Cookson, one of my three supervisors and an historian, became increasingly valuable. The result of that work is to be found in the chapter in which I propose a rationale for the charitable purposes exemption from Income Tax.⁷⁶

A contribution to Fiscal Sociology

In 2007, when I was developing the Thesis as a written work, I created a chapter with the title “The charity exemption from Income Tax as social policy.” Then, in 2009, quite by chance I came across the concept of fiscal sociology. This appears to be a re-emerging discipline, as in July 2009 a text with the title *The New Fiscal Sociology: Taxation in comparative and historical perspective*, was published.⁷⁷ The text, which is comprised of sixteen essays, is described as offering “a state-of-the art survey of the new fiscal sociology that is emerging at the intersection of sociology, history, political science, and law. ... [The authors] approach

⁷² Garraghan, above n 42, 58.

⁷³ Garraghan, above n 42, 363.

⁷⁴ See Chapter 6 of this Thesis.

⁷⁵ Garraghan, above n 42, 370.

⁷⁶ See Chapter 10 of this Thesis.

⁷⁷ Isaac William Martin, Ajay K. Mehrotra and Monica Prasad (eds), *The New Fiscal Sociology: Taxation in comparative and historical perspective* (July 2009).

the institution of taxation as a window on the changing social contract.”⁷⁸ Other recent works on the subject are: ‘The State and Fiscal Sociology’⁷⁹ and ‘Fiscal Sociology: What for?’.⁸⁰

Campbell describes “fiscal sociology” as “the sociological analysis of taxation and public finances.”⁸¹ Schumpeter, according to Campbell, argued that “fiscal sociology ... [being] the study of the social processes behind taxation [is therefore] one of the best starting points for an investigation of society.”⁸² In his paper, Campbell explores the literature to identify “the effects [sic] that tax policies have on political rebellion, state building, economic organization, labour force participation, and philanthropy, to illustrate the wide-ranging influence that taxation has on phenomena that sociologists study. (Emphasis added.)”⁸³ Further, Campbell believes that:

sociologists can make a unique contribution [to tax policy] by analysing how the [Federal] tax code affects the creation of foundations, trusts, and other institutions that are designed to mitigate against the redistributive effects of tax policy, and, therefore, contribute to the preservation of inequality.⁸⁴

Fiscal sociology is not a “new” discipline in that “the father of the term ‘fiscal sociology’ (*Finanzsoziologie*)” was Rudolph Goldscheid, who coined the term in 1919.⁸⁵ According to Bachhaus:

Goldscheid [was] one of the first classical authors in the field [whose] contribution has to be seen next to that of Joseph Schumpeter, since Schumpeter, in his classic piece, *The Crisis of the Tax State*, responded to Goldscheid’s analysis and thereby contributed the second classical piece to the field.⁸⁶

From these brief notes on fiscal sociology, it can be seen that an alternative approach to the role of the charitable purposes exemption from Income Tax might be undertaken from a sociological perspective to augment the work that I have undertaken from an historical

⁷⁸ Cambridge, *The New Fiscal Sociology* www.cambridge.org/catalogue at 21 June 2009.

⁷⁹ John L. Campbell, ‘The State and Fiscal Sociology’ (1993) 19 *Annual Review of Sociology* 163-85.

⁸⁰ Juergen Backhaus, ‘Fiscal Sociology’ (2002) 61(1) *American Journal of Economics and Sociology* 55-77.

⁸¹ Campbell, above n 79, 163.

⁸² J.A. Schumpeter, [1918] “The crisis of the tax state” in A.T. Peacock et al (eds), 4 *International Economic Papers* (1954) 5-38 cited in Campbell, above n 79, 163.

⁸³ Campbell, above n 79, 165.

⁸⁴ Campbell, above n 79, 180.

⁸⁵ Backhaus, above n 80, 58.

⁸⁶ Backhaus, above n 80, 58.

perspective, by studying the government subsidy of the exemption from the perspective of fiscal sociology.⁸⁷

Structure of the Thesis

Following the introduction to the Thesis at Chapter 1, Chapter 2 discusses prior research and sets out the literature review. The substantive part of my Thesis begins at Chapter 3 with an introduction to Anthony Highmore, a London lawyer, who was actively involved with a number of charities in London as well as being a prolific author. Of Highmore's publications one in particular, on *Mortmain*, has made a significant and unexpected contribution to this study. Highmore himself is worthy of further study from the perspective of his contribution, not only to London charities, but also to the legal profession through his many and varied legal publications.

The Duties upon Income Tax Act of 1799 is discussed in Chapter 4, and is followed by a discussion of the Income Tax Acts following that of the Duties upon Income Act of 1799 in Chapter 5. Between 1799 and 1816, the War Tax had a chequered history until the Act finally expired on 5 April 1816. Taxes upon income were not seen again until 1842 but, instead of creating a new statute, the Act of 1842 was based almost entirely on the Act of 1806. The charitable purposes exemption clause, which had been a part of all the earlier statutes, was also included in the Act of 1842, in a different style which maintained the original intent.

The charitable purposes exemption did not go unchallenged, and the various challenges to this privileged status are discussed in Chapter 6. The charitable purposes exemption did not exist unscathed as, in 1863, Gladstone made a dramatic attempt to abolish the privilege. This long-forgotten event, which resulted in the largest deputation ever having being made (at that time) to a Prime Minister, provoked an outrage of monumental proportions. It also produced, for the first time in the history of the charitable purposes exemption from Income Tax, specific reasons why such an exemption should exist in the first place, at least from the perspective of Victorian England if not based in fiscal or economic policy.

Chapter 7 reviews the Parliamentary Returns concerning the taxation of charities, as in 1865 a Return on the Income Tax of charities was filed in the House of Commons, and then again in

⁸⁷ The University of Erfurt, which holds the Krupp Chair in Public Finance and Fiscal Sociology, first held a conference on Fiscal Sociology in January 2002. See www.uni-erfurt.de/ at 20 September 2009.

the Commons in 1888. These returns are of particular interest and place the taxation of charities in a context not since seen. The timing of the Return of 1888 is extremely significant for, at that same time, the issue of charities and taxation was being seriously tested in court, not in England, but in Scotland. In Chapter 8 I evaluate the *Pemsel* case which, once and for all, resolved the issue of the charitable purposes exemption from Income Tax.⁸⁸ This was almost one hundred years after Pitt had introduced the clause, first in the Assessed Taxes Act 1798,⁸⁹ then the Duties upon Income Act 1799.⁹⁰ Chapter 9 discusses the nature of charitable activity in England during the Eighteenth and Nineteenth Centuries. Finally, I conclude my Thesis at Chapter 10 with the proposal of my rationale for the charitable purposes exemption from Income Tax during the Pitt era, followed by my conclusions and a discussion of the limitations of my study, as well as my suggestions for further research.

A note on style

The style guide that I have followed is the *Australian Guide to Legal Citation*.⁹¹ I have also used modern-day conventions in written English rather than slavishly following old-style English and its excessive use of capitalisation and punctuation, unless the occasion specifically called for it.

⁸⁸ *Pemsel*, above n 1.

⁸⁹ *An Act ...*, above n 4.

⁹⁰ *An Act ...*, above n 6.

⁹¹ Lucy Kirwan and Jeremy Masters (General eds), *Australian Guide to Legal Citation* (2nd ed, 2002).

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Part I Tax policy

Introduction

The nature of this Thesis is that it encompasses a dual history of taxation and social policy. As the research process proceeded, but particularly in the closing stages of the study, it became clear that a study of social policy was required. The reason was that the material that

I had identified, such as the debates on the Assessed Taxes Act of 1798,¹ and the Duties upon Income Act of 1799,² and then the later Income Tax Acts, was not revealing evidence of any rationale regarding the charitable purposes exemption from Income Tax. The first indications of such a rationale did not emerge until 1863, when Gladstone had attempted to remove the charitable purposes exemption from the Income Tax Act of 1842.³

The tax historians

A number of significant works on taxation have been published over the centuries.⁴ These works are of two types, historical perspectives, and contemporary commentary. With respect to this Thesis, Adler's work is significant because of the historical perspective of taxation that it provides, but he provided no comment on Pitt's tax Acts of 1798 and 1799. Alongside Adler, the works of Firth and Rait, Lunt, and Moe, can be rightfully placed for the contribution on the history of charity taxation before the era of Pitt the Younger.

Works such as that by Highmore, Richards, Shelford, and Sargant, provided contemporary comment on taxation, with reference to charities to a greater or lesser degree, whereas Owen, Simcock, and O'Halloran, McGregor-Lowndes and Simon offered explanations for the charitable purposes exemption from Income Tax, but not with respect to that of the Pitt era. This may be due to the fact that like myself, Owen and Simcock were not able to locate any material on that issue in 1798 and 1799. Ditchfield has provided me with an explanation as to why I have not been able to discover any discussion on Pitt's charitable purposes exemption, as "[r]esistance to unfavourable legislative initiatives was more effectively conducted by private solicitation ... than by passionate oratory in debate."⁵ Pitt's manner of working is seen with the concern by the church over Land Tax when:

¹ *An Act for granting to His Majesty an aid and contribution for the prosecution of the war* 38 Geo. III c. 16 [12 January 1798].

² *An Act to repeal the Duties imposed by an Act, made in the last session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effect provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties* 39 Geo. III c. 13 [9 January 1799].

³ See Chapter 6 of this Thesis.

⁴ For an excellent collection of such works, published in facsimile format, see D.P. O'Brien, *The History of Taxation* (1999) vols I to VII encompassing works from William Petty in 1662 to Thomas Nixon Carver in 1904.

⁵ G.M. Ditchfield, 'Ecclesiastical Legislation during the Ministry of the Younger Pitt, 1783-1801' (2000) 19 *Parliamentary History* 79.

Pitt, for instance, consulted Pretyman, himself a statistician, over the implications for ecclesiastical estates of the redemption of the Land Tax, and received a welter of unsolicited advice from Samuel Horsley.⁶

That Pitt often worked behind the scene has also been noted by other authors such as Duffy, who noted that:

Pitt's administrative methods were too personal to ensure the smooth, secure and successful passage of business. There was too much informality in his proceedings. ... Pitt preferred to do business directly rather than by correspondence, but he did not keep minutes of his meetings.⁷

If there had been any discussion about the possibility of charities being liable to Income Tax, I have not been able to locate any records of conversations with Pitt over the matter.

The social historians

Significantly, specialist social historians have not commented on the charitable purposes exemption from Income Tax, such as Poynter in *Society and Pauperism*.⁸ Yet Poynter's text is a significant work encompassing the period during which Pitt introduced both the Assessed Taxes Act of 1798 and the Income Tax Act of 1799. Professor Cookson has suggested to me that this is not unexpected, due to the fact that:

poor relief was largely under the control of public authorities in England, and was financed out of local rates. The issue of exemption from taxation for these "public" institutions, that is, the poor houses, could not arise. Perhaps this explains Poynter's silence on the matter. The case for exemption related to private charities, especially hospitals, *but in the Eighteenth Century social policy was not concerned with the 'peoples health'*, for example the madhouses were private business concerns. Charities were focussed on the poverty, criminality, and disorder of the poorer classes, concerns that intensified towards the end of the century, but they were local in their scope, reflected the ideals and values of the propertied classes and, more often than not, were genuinely benevolent rather than products of social engineering. (Emphasis added.)⁹

Professor Cookson also suggested that:

⁶ Ditchfield, above n 5, 70.

⁷ Michael Duffy, *The Younger Pitt* (2000) 88.

⁸ J.R. Poynter, *Society and Pauperism: English Ideas on Poor Relief 1795 – 1834* (1969).

⁹ Professor John Cookson, note to author, November 2008.

the [charitable purposes] exemption of 1799 is closely tied up with the growth of voluntarism, in that the [Assessed Taxes Act] of 1798 relieved charitable institutions whereas the [Duties upon Income Act] of 1799 was well disposed towards voluntary societies which relied on subscriptions and did not have [in many cases] large capital investments and [land] and buildings.¹⁰

While I agree with Professor Cookson in principle, the complication is that I have not found any evidence to support or refute that Thesis. On Professor Cookson's advice, I took a closer look at the work of other social historians, but again, I was unable to find any detailed discussion on the charitable purposes exemption.¹¹ Many authors wrote of the role of philanthropy and volunteerism but, other than Highmore, Owen was the only scholar to comment on the charitable purposes exemption during the Hanoverian era.

The tax historians: Historical perspectives

Dwight - 1862

I mention the paper by Dwight only to show that the exemption of charitable uses from taxation has indeed a deep history, reaching back to Justinian and his Code.¹² In his paper on the jurisdiction of the Court of Chancery and the enforcement of charitable uses, Dwight observed that “[t]he State favoured [gifts to pious uses] by providing that they should be exempt from taxation of profits ... which prevailed in other cases.”¹³ It was the gifts to pious uses that had so incensed Henry VIII, which led to the dissolution of the monasteries and their charitable activities in the form of hospitals, and the secularisation of charity. Coincidentally, or perhaps not, two hundred years later in France, on 19 December 1798, the Constituent Assembly voted for the sale of the estates of the Church with the result being that:

¹⁰ Cookson, above n 9.

¹¹ The works that I reviewed were: Raymond G. Cowherd, *Political Economists and the English Poor Laws: An Historical Study of the Influence of Classical Economics on the Formation of Social Welfare Policy* (1977); David Roberts, *Paternalism in Early Victorian England* (1979); Boyd Hilton, *The Age of Atonement: The Influence of Evangelicalism on Social and Economic Thought 1795-1865* (1988); Hugh Cunningham and Joanna Innes (eds), *Charity, Philanthropy and Reform from the 1690s to 1850* (1998); and Joanna Innes, *Managing the Metropolis: London's Social Problems and their Control c. 1660-1830* in Peter Clark and Raymond Gillespie (eds), *Two Capitals: London and Dublin 1500-1840* (2001) 52.

¹² Theodore W. Dwight, ‘The Jurisdiction of the Court of Chancery to enforce Charitable Uses’ (1862) *The American Law Register* 129, 135. “TWD,” as he signed himself, was an editor of the *American Law Register*.

¹³ Dwight, above n 12, 135. See, for discussion on the history of the charitable use, F.W. Maitland, ‘The Origin of Uses’ (1894) 8(3) *Harvard Law Review* 18-137; Montague Crackanthorpe, ‘The Uses of Legal History’ (1896) 12 *Law Quarterly Review* 337-353; Rupert Sargent Holland, ‘The Modern Law of Charities as derived from the Statute of Charitable Uses’ (1904) 52(4) *American Law Register* 201-212.

corporation lands amounting to the value of 400 million livres [sic] were offered for sale on the public market. Thus the financial ruin of the Church which had been so ably prepared for by the economists was completed under the pressure of expediency.¹⁴

Was it possible that Turgot's inspiration lived on, a French economist, who in his famous essay, *On Foundations*, published in 1757, argued that "[p]ublic utility is the supreme law ... *corps particuliers* do not exist of themselves, or for themselves; they have been formed for society, and they must cease to exist immediately after they cease to be useful?"¹⁵ As in England, the churches had grown excessively wealthy and had also benefited from being exempt from taxation, for example, "in 1711 church property was fully and perpetually exempted from the *dixième* after the payment of a *don gratuit* of 8 millions."¹⁶ Thus, exempting religious institutions was not unique solely to England where, over the course of time, the charitable purposes exemption from Income Tax had prevailed. But in France, "[s]ecular foundations have never flourished as they have in Anglo-Saxon countries [as] the ordinary Frenchman continues to regard individual philanthropy as a more justifiable disposition of accumulated wealth."¹⁷

Adler - 1922

Yet another significant resource that I found was a 1922 publication by the Westchester County Chamber of Commerce, with the interesting title *Tax Exemptions on Real Estate*.¹⁸ As this publication contained a chapter entitled 'Historical Origin of the Exemption from Taxation of Charitable Institutions,' at first it seemed that my intended research had already been undertaken by another scholar, in this case Philip Adler.¹⁹ However, once the interloan from America arrived (after what seemed to be an interminable time) I was relieved to find that the author had not given attention to the charitable purposes exemption as provided by

¹⁴ Jack A. Clarke, 'Turgot's Critique of Perpetual Endowments' (1964) 3(4) *French Historical Studies* 495, 506 fn 9.

¹⁵ Anne Robert Jacques Turgot (1727-1781), *On Foundations* in Keith Michael Baker (ed), *The Old Regime and the French Revolution* (1987).

¹⁶ Clarke, above n 14, 497 citing Marcel Marion, *L'impôt sur le revenu au dix-huitième siècle* (Paris, 1901, 111-112).

¹⁷ Clarke, above n 14, 506.

¹⁸ Philip Adler, *Historical Origin of the Exemption from Taxation of Charitable Institutions* Part I in The Westchester County Chamber of Commerce (ed), *Tax Exemptions on Real Estate An Increasing Menace: A Study by the Westchester County Chamber of Commerce* (1922).

¹⁹ Adler, above n 18.

Pitt in his Duties upon Income Act of 9 January 1799,²⁰ and the issues which ultimately led to the *Pemsel* case of 1891.²¹

Increasing concerns about property tax exemptions in Westchester had led to the Westchester County Chamber of Commerce Committee on Taxation being given the task of researching the issue and developing a remedy. At issue was the fact that:

[t]he growth in [property tax] exemptions in proportion to assessed values, [and] the gross injustices and inequalities made it important to do something. But as Mark Twain said about the weather, “Everybody talks about it and nobody does anything about it.”²²

The Chamber’s Committee on Taxation, “itself a busy body of men,”²³ having decided to do something about the issue of property tax exemptions, sought assistance, and:

[w]ith the aid of kindly and sympathetic professors at Columbia University, it found a young man trained in the law, in history and in economics, with a scientific as well as literary turn of mind, who was willing to undertake the task of historical research. And it gave him full rein. It left him like a student in a chemical laboratory with no duty [other than] to find the bug. He was not even to find a serum. In short, he was merely to isolate the important historical facts and let us develop the remedy. ... This study of the historical origin of tax exemptions is, we believe, the first ever attempted. We know of no flaws in it.²⁴

That young man was Philip Adler, and the Chamber published the results of his work as Part II of a three-part publication.²⁵ The only reference to the English Income Taxes of the Eighteenth or Nineteenth Centuries that Adler had made was to note that “[i]n the numerous Acts passed during the reign of Queen Victoria, such as the Income Tax Act (1842), [and] the Inland Revenue Act (1885), educational, charitable, literary and scientific institutions are expressly exempted.”²⁶ However, in answering his own question, “[w]hat was the cause of

²⁰ *An Act*, ... , above n 2.

²¹ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

²² Westchester County Chamber of Commerce, above n 40, III.

²³ Westchester County Chamber of Commerce, above n 40, IV.

²⁴ Westchester County Chamber of Commerce, above n 40, IV. If this was, as the Chamber claimed, the first such study, how could they claim that it was flawless as there was nothing else with which to compare it? As far as I am aware, the study was not published as a peer-reviewed academic paper. The paper is certainly of a very high standard.

²⁵ Part II was entitled ‘Statistical[:] [D]etails of exemption in Westchester County and in [the] entire State of New York.’ Westchester County Chamber of Commerce, above n 40, 89. Part III, the President noted in his Introduction to the text, “is yet unwritten. It will be entitled ‘The Remedy.’” Westchester County Chamber of Commerce, above n 40, V.

²⁶ Adler, above n 18, 53.

the injection into the Taxation Acts of this clause exempting educational and charitable institutions?” Adler explained that:

the moving cause of this phenomenon was the fact that beginning with the Fifteenth Century the State, in most cases the municipalities, took over the function of administering charity, and that consequently *it was thought* that property devoted to a public use should be freed from the burden of taxation. (Emphasis added.)²⁷

By whom was it thought? Parliamentarians? Charity Governors? As will be seen from my Thesis, it was not until the second half of the Nineteenth Century that public debate emerged on the charitable purposes exemption from Income Tax, beginning in 1863 when Gladstone unsuccessfully attempted to remove the exemption from the statute books.

Adler later returned to the issue of exemptions in his discussion on private charity benefiting from legislative sanction, in particular the “tax exemption.”²⁸ After a brief discussion on the Charitable Trusts Acts of 1853 to 1894, Adler observed that:

[charities are] at first ... subsidized by the government; often they are under public control, either wholly or in part. Soon public aid finds expression, not in open, direct bounty, but in the granting of the privilege of exemption from taxation.²⁹

Adler then made the very interesting observation that:

[t]his seems to be the only explanation of the fact that, beginning with the Tudor period, there appears in the subsidy and taxation Acts clauses of exemption for educational and charitable institutions, Deans, Colleges, Chapters, Hospitals, Grammar Schools, Almshouses, Maison-Die, Spittals, etc. Subsequent legislation added literary, scientific and fine arts societies to the list. *In this policy, consistently followed and liberally applied, there seems to be general acquiescence; at least the books reveal no traces of any opposition.* (Emphasis added.)³⁰

Adler, who was incorrect in saying that there was no such opposition, compounded his error by commenting that:

²⁷ Adler, above n 18, 54.

²⁸ Adler, above n 18, 62.

²⁹ Adler, above n 18, 63.

³⁰ Adler, above n 18, 63.

[t]here are, to be sure, stray instances reported by Hansard, in his *Parliamentary Debates*, where it is urged that an exemption is too sweeping, but nowhere is there any challenge of the policy dictating such exemption. Nor is positive evidence wanting on that score. In the debates on the Bills for exempting Literary and Scientific Societies from local rates there was not even a ripple of dissent when one of the speakers said in support of the Bill: “It (this exemption) would in effect be equivalent to a vote by that House of so much public money”³¹

It is clear from Adler’s work that he had applied considerable effort in researching the history of the charity exemption from Income Tax, yet somehow he missed the greatest threat to the charitable purposes exemption by Gladstone in 1863.

Adler’s first source was the debate in the House of Commons on 2 May 1842 on the Income Tax Bill, (during discussion on Rule 6 concerning the allowances to be made in respect of the duties in Schedule A,) when Mr W. Turner had “proposed to exempt all literary and scientific institutions.”³² (After a short debate, Turner’s motion failed, and the Rule was agreed to.) Adler’s second source concerned the rating of literary and scientific societies, and what he described was, over one hundred years later, to be defined as Subsidy Theory.³³ Adler, however, had a different explanation, based on the Preamble to the Rating Act of 1843³⁴ which stated that “[w]hereas it is expedient that societies established exclusively for purposes of science, literature, or the Fine Arts should be exempt [from rating],” for he argued that “the only reason for exempting these societies is *that it is expedient to do so*. (Emphasis added.)”³⁵

Adler also convincingly argued, but without suggesting any fiscal or economic rationale, that:

[q]uestions of expediency are generally determined, not by historical considerations, but by weighing ends sought immediately to be achieved. Historical justification is not an element dictating an expedient course of action. And yet, in the case in hand, there is ample historical justification for the expediency, which now impels the exemption of religious, charitable, benevolent, educational and literary institutions. . . . thus the very policy that dictated the taxation of the ample and economically productive property devoted to charitable uses in the Middle Ages dictated the exemption from taxation of the

³¹ Adler, above n 18, 63.

³² Hansard’s *Parliamentary Debates* (1842) (3rd series) vol LXII col. 1390.

³³ See Note, ‘Developments in the Law of Nonprofit Corporations’ (1992) 105 *Harvard Law Review* 1578, 1620.

³⁴ *An Act to exempt from County, Borough, Parochial, and other local Rates, land and buildings occupied by Scientific or Literary Societies* 6 & 7 Vict. c. 43 [1843].

³⁵ Adler, above n 18, 64.

meagre and economically unproductive properties devoted to charitable uses in the succeeding era.³⁶

Adler's conclusions, of which I have included only those of relevance to this Thesis, were that:

1. There is ample historical justification for the exemption from taxation of charitable institutions which perform without compensation a function which the State has, from Tudor times in England and colonial times in [America], avowedly undertaken to perform, viz, the care of the poor, sick, demented, crippled, blind, deaf, impotent, the helpless aged and young.

...

6. Where an institution justly entitled to exemption, because of its charitable function, engages in other activities, such as renting its premises for profit, its claim for exemption not only ceases, but there is direct historical precedent for taxing such an institution.

7. When a charitable institution derives income from fees of its inmates, there seems to be no historical basis for exempting it from taxation. To prevent vagabondage and begging the state undertook to maintain only the poor and impotent, the utterly helpless. Those in a position to pay have, therefore, no claim on state support. In housing such inmates an institution is in no way relieving the State of a burden which the latter has never undertaken to bear.³⁷

Firth and Rait - 1911

A major body of work which included material on the early history of charities and exemptions from taxation was Firth and Rait's 'Acts and Ordinances of the Interregnum 1642-1660.'³⁸ It was while I was searching through the many volumes of *The Statutes of the Realm* in the University of Canterbury Law School Library for early taxation statutes that I realised there was a considerable gap of some years.³⁹ Initially, I did not understand why that was so, until I found that the "gap" was for the period of the Interregnum, from 1642 to 1660, during the time of Oliver Cromwell. Further research led me to Firth and Rait and the Ordinances of the Interregnum.

In 1922 Adler also commented on the Ordinances, as he noted that "[u]nder the Cromwellian dictatorship it seems that all the lands customarily exempt were brought under the contribution, for it was only at the humble solicitation of the Universities and Colleges that

³⁶ Adler, above n 18, 65. Adler had also discussed how the wealth of the Church in the Middle Ages contributed towards the expenditure of the Realm through taxation but, following the dissolution of the monasteries, the properties which had been subjected to taxation were put to public charitable use, therefore, "[m]anifestly property so used was not taxable." Adler, above n 18, 65.

³⁷ Adler, above n 18, 80.

³⁸ C.H. Firth and R.S. Rait, *Acts and Ordinances of the Interregnum 1642-1660* (1911) vols I, II, and III.

³⁹ By Command of His Majesty King George the Third, *The Statutes of the Realm* (reprint 1993).

these institutions were exempted.”⁴⁰ The ordinance to which Adler had referred was *An ordinance for the freeing and discharging of all Rents and Revenues (belonging to the Hospitalls [sic] of Saint Bartholomew, Bridewell, Saint Thomas, and Bethlem) from any assessments, taxes and charges whatsoever*, of 16 November 1644.⁴¹ The Ordinance declared that:

[t]he said Lords and Commons taking the Premises into their consideration, thinke fit, and Ordain, and be it Ordained, That all the Rents and Revenues belonging to the said the Hospitalls respectively (being to be received and disbursed for the immediate use, and reliefe of the Poore in the same Hospitalls) shall be freed and discharged of and from all Assessments, Taxes and Charges whatsoever, as well already made or charged, and not paid, as hereafter to be made or charged by vertue of any Ordinance of Parliament.⁴²

On 26 September 1649 Westminster School was exempted “from rents, seizures and taxes”⁴³ then, on 27 November 1650, “[b]oth Universities, and schools of Winchester, Eton, and Westminster,” were exempt from the taxes levied to raise £120,000 for the maintenance of the [Armed] Forces in England, Ireland, and Scotland.⁴⁴

Lunt – 1915-65

My discovery of Lunt’s studies of Papal taxation in England, published between 1915 and 1965, was a serendipitous find, as his various works will be of immense value for my intended future research on the history of early charities and taxation, in particular two of his publications, in 1939 *Financial Relations of the Papacy with England to 1327* and, in 1965, *Papal Revenues in the Middle Ages*. Lunt’s work also appeared in the *English Historical Review*, for example: in 1915, ‘Papal Taxation in England in the Reign of Edward 1,’⁴⁵ and in 1915 (written in Latin with a short introduction in English) ‘A Papal Tenth Levied in the British Isles from 1274 to 1280.’⁴⁶ From Lunt’s work I was able identify (not being a Latin scholar) what would appear to be an exemption provided to hospitals and leprosarium from a taxation of a tenth:

⁴⁰ Adler, above n 18, 53.

⁴¹ Firth and Rait, above n 38, vol I 570.

⁴² Firth and Rait, above n 38, vol I 570.

⁴³ Firth and Rait, above n 38, vol II 274.

⁴⁴ Firth and Rait, above n 38, vol II 456.

⁴⁵ W.E. Lunt, ‘Papal Taxation in England in the Reign of Edward I’ (1915) 30(119) *English Historical Review* 398-417.

⁴⁶ W.E. Lunt, ‘A Papal Tenth Levied in the British Isles from 1274 to 1280’ (1917) 32(125) *English Historical Review* 49-89.

In primis ubi dicitur *de proventibus et redditibus leprosiarum, domorum dei, et hospitalium pauperum, qui in usus infirmorum et pauperum convertuntur, decima non solvetur.*⁴⁷

Lunt also noted that “[o]pposite this item in the margin appears in a later hand: *nota de hospitalibus et leprosiis qualiter debet recipi decima.*”⁴⁸ This particular document was written in 1274, concerning the interpretation of the Papal Bull “Cum pro negotio,”⁴⁹ the intent of which was to clarify doubts about whom to tax and whom to exempt. It is clear from Lunt’s publications that the history of the charitable purposes exemption from taxation has a long-established history.

Moe - 1958

In a Dinner Address given to, and later published by, the American Philosophical Society on 25 April 1958, Henry Allen Moe, Secretary-General of the Guggenheim Memorial Foundation, discussed the law of foundations.⁵⁰ He did so with reference to William Langland’s poem *The Vision of Piers the Plowman*, “written in its several forms between the years 1362 and 1377, [which] was a ‘light-giver to ignorance’ in defining what are, and what are not, valid purposes for foundations, both then and now.”⁵¹ By “foundations,” Moe explained that he meant:

[a]ll that host of organisations set up for charitable, educational, religious, and eleemosynary purposes – of which the law says two things: the first that they *may* go on for-ever and the second that they need not pay taxes. ... There is no other form of organization – except government – of which this statement can, even theoretically, be made. ... But this definition leaves open the question *why* the organizations called foundations are accorded the privileges of freedom from death and taxes. The usual present-day answer is *that the foundations do things that the law deems to be in the public interest*. But this answer is not good enough; for of course, most businesses, too, do things that the law deems to be in the public interest, and so do banks; and banks and businesses, too, may go on forever. But these are not foundations. *The distinction can only be explained by recourse to history.* (Emphasis added.)⁵²

⁴⁷ Lunt, above n 46, 86.

⁴⁸ Lunt, above n 46, 86.

⁴⁹ *Cum pro negotio*, or “the declarations concerning doubts,” was written to explain the assessment of sexennial tenth commencing on 24 June 1274. See W.E. Lunt, *Financial Relations of the Papacy with England to 1327* (1939) 312.

⁵⁰ Henry Allen Moe, “‘The Vision of Piers the Plowman’ and the Law of Foundations’ (1958) 102(4) *Proceedings of the American Philosophical Society* 371.

⁵¹ Moe, above n 50, 371. See also Joseph Willard, ‘Illustrations of the Origin of *Cy Près*’ (1894) 8(2) *Harvard Law Review* 69, 70, where the author discusses the links between Langland’s poem and the Preamble to 43 Eliz c. 4.

⁵² Moe, above n 50, 371.

Moe then proceeded to discuss that distinction, which he began by noting:

the first recorded words of English law ... [which are to be found] in the laws of Aethelbert, King of the Kentish men, baptized by St. Augustine himself, at Canterbury, about A.D. 600. These first words of recorded English law – the very first words of the laws of England ever set down – are: “God’s property” God is the owner of property, and so ... are His saints, though dead.⁵³

Thus for centuries property was bequeathed to God and His saints for one purpose – “*pro anima mea, pro salute animae meae* – for the repose of the donors’ souls.”⁵⁴ Then, in the Fourteenth Century, a poem was written which, with respect to charitable purposes, continues to resonate in the Twenty-first Century. William Langland’s comment on the social history of the period contained what is believed to have been the inspiration for the Preamble to the Statute of Elizabeth of 43 Eliz c.4 regarding charitable uses, which is considered to be a “[codification] of the law of charities and enumerated the purposes of gifts which were good as gifts to charitable uses,” with the notable exclusion of gifts to pious uses.⁵⁵ Or, as Moe put it:

The Vision of Piers the Plowman and the Act of 43 Elizabeth, Chapter 4, determine the forms, the functions, and the purposes of all those institutions for the common good which we [in America] call foundations. This was the vision of Piers the Plowman; and, as in his vision, the motivating force of philanthropic gifts through all the ages, then and now, has been a religious one in its essence – to do good in the world, to help one’s fellowmen who need help. And the function and motivating force of tax-exempt, perpetual-living philanthropic and educational foundations in society today is no different from what it has been for at least a millennium and a half.⁵⁶

Moe, citing his own work, wrote elsewhere that:

[Langland’s] poem, I think it not too much to say, shifted the emphasis from pious uses – the saying of masses for the dead, the maintenance of tapers before alters for the good of the donors’ souls, which had been good charitable uses thitherto – to works for the public good, the repair of roads and bridges, the endowment of learning, the relief of the poor, the building of hospitals.⁵⁷

⁵³ Moe, above n 50, 371.

⁵⁴ Moe, above n 50, 372.

⁵⁵ Moe, above n 50, 373.

⁵⁶ Moe, above n 50, 375.

⁵⁷ Henry Allen Moe, ‘Notes on the Origin of Philanthropy in Christendom’ (1961) 105(2) *Proceedings of the American Philosophical Society* 141, 144.

Thus it was that Moe explained that the rationale for such entities was that they existed because:

government could not do what these foundations do – at least could not do what they did when they began to do it. But much that the foundations did in their beginnings has later been taken over by government to do, for the people would not stand for getting along without it.⁵⁸

The corollary to that, although Moe did not expound it, is that the taxation of such institutions is an anathema, due to those institutions being, as he considered, “an acknowledgment, express and implied of our duty to God, and to our neighbour.”⁵⁹

The tax historians: Contemporary commentaries

Highmore – 1786 & 1810

There was, however, a lone voice in the late Eighteenth and early Nineteenth Centuries on the matter of the taxation of charities. In a book on the history of the charities of London, published in 1810, Anthony Highmore wrote that in 1786 he had put forward a proposal that charities should be exempt from all forms of taxation.⁶⁰ In his monumental work, *Pietas Londinensis*, Highmore had written, in his chapter on Guy’s Hospital, that:

I have endeavoured to shew [sic], in another place, ample grounds for a general Act of exemption of all charities from [the tax on servants] and other taxes; and I may add, that it was not for want of time and trouble that such a measure was not effected.⁶¹

That “other place” was Highmore’s *Mortmain*, of which two editions were published, in 1787 and 1809, respectively. Then, in his chapter on the Small-pox and Inoculation Hospitals in *Pietas*, Highmore declared that:

[i]n the year 1786, I submitted to this and other charities and finally to some members of the administration, a plan for the total exemption of all institutions of charities, by one general Act; but, notwithstanding many interviews, and a tolerable concurrence in the principle, *the reduction of the revenue was an obstacle too powerful to be subdued.* (Emphasis added.)⁶²

⁵⁸ Moe, above n 50, 375.

⁵⁹ Moe, above n 50, 375.

⁶⁰ Anthony Highmore, *Pietas Londinensis* (1810).

⁶¹ Highmore, above n 60, 141.

⁶² Highmore, above n 60, 291.

I discovered Highmore's work during my visit to London in 2005 to undertake research for this Thesis. This in turn led to my discovery of what Highmore had, at length, written on this very subject and which had been published as a part of another of his works, in this case on mortmain. On obtaining an interloan of the two editions of Highmore's *Mortmain*,⁶³ I found that he had written very comprehensive chapters in each, entitled "Of Taxes, and Exemption from them," and I realised that I had made a significant find that had been long forgotten.

I have not been able to locate the "general Act" to which Highmore referred in *Pietas Londinensis*, and there is no mention of any such Act, or Bill, in Hoppit's *Failed Legislation, 1660-1800*.⁶⁴ I can only presume, and my presumption is supported by Highmore's own comments, that his proposal was not written up as a Bill for discussion in the House of Commons. What is significant, however, is the concern about the drain on the revenue, to which Highmore alluded, should such an Act come into being, yet there were no such concerns in 1798 nor 1799 should charities be exempted from paying Income Tax. The answer may simply be that as the Income Tax was a new form of taxation, no revenue from charities was forgone by the government whereas, with the existing forms of tax which affected charities, to remove those would have had a significant impact on the government's revenue.

Richards - 1812

A serendipitous find was a comment by William Richards, a Radical Welsh Baptist Minister, on Pitt's Income Tax.⁶⁵ "In former times," Richards wrote, "this odious tax would have been very unwelcome in this country, and probably deemed intolerable by the whole nation."⁶⁶ Richards considered that:

[t]his vile impost was indeed doubly detestable, as it not only sunk the subjects below the rank of freemen, *but also laid before them a strong incitement to falsehood and perjury*, and was, in all probability, the means of greatly increasing our national guilt and depravity. (Emphasis added.)⁶⁷

⁶³ See Chapter 3 of this Thesis.

⁶⁴ Julian Hoppit (ed), *Failed Legislation 1660-1800* (1997). The details of the "failed legislation" in this book of 615 pages were extracted from the Commons and Lord Journals, and has an Introduction written by Julian Hoppit and Joanna Innes.

⁶⁵ John Oddy (ed), *The [Selected] Writings of the Radical Welsh Baptist Minister William Richards [1749-1818]* (2008) citing William Richards, *History of Lynn* (1812) [vol] II [of 2].

⁶⁶ Oddy, above n 65, 213.

⁶⁷ Oddy, above n 65, 213.

However, according to Richards, as far as Pitt was concerned, “these were considerations that weighed but little with the minister and his associates [as] an increasing revenue was with them of infinitely greater importance.”⁶⁸ Interestingly, Richards did not mention the charitable purposes exemption from Income Tax which, given Richards’ interest in schools,⁶⁹ and hospitals and almshouses,⁷⁰ is somewhat surprising.

Shelford - 1836

Shelford’s ‘Law of Mortmain’ contains a very comprehensive chapter entitled ‘Of the liability to, and exemption from, the payment of taxes in respect of charities.’⁷¹ The chapter contains four sections, with the first discussing charitable bequests and legacy duty, the second, indentures of apprenticeships, and public parochial funds, the third, the exemption of charities from poor and church rates, and the fourth, charities and Land Tax.

Shelford did not discuss the charitable purposes exemption from Income Tax for the simple reason that between 1816 and 1842 no Income Tax statutes were in force. As Shelford was writing in 1836, he would have been able to comment on the Income Tax statutes between 1798 and 1816 but chose not to. What he did write about regarding taxation concerned local taxation in the form of the poor and church rates.

Sargant - 1861

William Sargant, in 1861,⁷² made an argument which, had he carried it further, may well have been acceptable as a justification for the charitable purposes exemption. Sargant, while being opposed to Income Tax, considered that the relief that the Poor Law administered was “far more efficacious than the capricious dole of private charity, notwithstanding the large proportion of the rates expended on buildings and salaries.”⁷³ Sargant argued:

this is not all; we ought to look also at the incidence of the tax, or of the voluntary substitute for it. Where any function is performed by the Government, the expense of it falls on the general fund of taxation, which is levied pretty equally on the people at large; when any public good is effected by individuals or by voluntary associations, the money to carry it out is generally furnished by a few persons; and everyone knows that a majority of

⁶⁸ Oddy, above n 65, 213.

⁶⁹ Oddy, above n 65, 155.

⁷⁰ Oddy, above n 65, 187.

⁷¹ Leonard Shelford, *A Practical Treatise of the Law of Mortmain* (1836) Ch VIII 773.

⁷² William Lucas Sargant, ‘Some Observations on the Fallacy of the Warburton Argument in Favour of an Indiscriminating Income Tax’ (1861) 24(2) *Journal of the Statistical Society of London* 213-228.

⁷³ Sargant, above n 72, 214.

the world, and even of the richest part of the world, absolutely refuses to render any considerable assistance. Government poor rates are paid by the mean-spirited as well as by the liberal; government education is paid for by the shabby rich as well as by the munificent; *but hospitals, ragged schools, missions, and the thousand associations of the day, receive little aid from a vast number of persons in affluence.* (Emphasis added.)⁷⁴

Sargant continued his attack on the Income Tax in 1862 in another paper in which he considered “the practice of exempting certain persons, wholly or partially, on the ground[s] of their inability to pay,” namely, fathers with a certain number of children or income of a certain amount.⁷⁵ Sargant claimed that “[a]s regards mere *justice*, therefore, such persons have no claim to exemption. From considerations of charity, or compassion, of political expediency, this exemption may be allowed, but certainly not from consideration of justice.”⁷⁶ Sargant might also have extended his argument to include charities, but he did not. He discussed, for example, clerical incomes, mines and quarries, life insurance, traders, and solicitors, and the exemption of incomes under £100 a year, but not charities. Why Sargant did not do so is all the more peculiar given the argument that he made against exempting incomes, as he had argued that:

the alteration of incidence which would follow the proposed mode of exemption [was that] the relief granted ... would cause an additional burden to some one [else]. ... [T]he owner of £2,000 a year would have his assessment increased by the exemption; the owner of £10,000 a year would have his assessment increased in a still higher proportion.⁷⁷

Mill - 1863

J. S. Mill, who gave evidence before the Select Committee on Income and Property Tax in 1861, also discussed taxation in his *Principles of Political Economy* (“*Principles*”) in 1848.⁷⁸ While Mill discussed “private charity” in *Principles*, when discussing “eleemosynary education and ‘poor scholars (persons who have received a learned education from some public or private charity)’,” he made no mention of the charitable purposes exemption from Income Tax.⁷⁹ Mill considered that it was:

⁷⁴ Sargant, above n 72, 215.

⁷⁵ William Lucas Sargant, ‘An Undiscriminating Income Tax Reconsidered’ (1862) 25(3) *Journal of the Statistical Society of London* 339, 344.

⁷⁶ Sargant, above n 75, 344.

⁷⁷ Sargant, above n 75, 373, 374.

⁷⁸ See John Stuart Mill, *Principles of Political Economy with some of their applications to Social Philosophy* (1848).

⁷⁹ Mill, above n 78, Book II ‘Distribution’ Chapter 14, 21.

of course, not desirable that anything should be done by funds derived from compulsory taxation, *which is already sufficiently well done by individual liberality*. ... *I hold it therefore the duty of government to supply the defect, by giving pecuniary support to elementary schools*, such as to render them accessible to all the children of the poor, either freely, or for a payment too inconsiderable to be sensibly felt. (Emphasis added.)⁸⁰

While Mill did not refer to the charitable purposes exemption from Income Tax, I consider that, given the statement that it was the duty of government to supply any shortages in funding, Mill may have held the view that charitable institutions should be taxed, and funded by direct government grants where there was a deficit of income. However, of more significance is that in a letter to William Thornton on 23 October 1863, Mill wrote that “any portion of income should be only taxed if spent on private uses, but should be *free from taxation* [sic] (at least at its origin) when devoted to public ends.”⁸¹ This was the concluding sentence of a paragraph which began “[h]ave you considered the subject of the *taxation* [sic] of charities?”⁸²

Mill suggested that if Thornton were to consider the subject of the taxation of charities, he may not have agreed with Gladstone’s arguments in his attempt to remove the charitable purposes exemption.⁸³ Mill was, however, “a little shaken” by Hare’s arguments who, Mill, considered, “was the teacher if not the prompter of Gladstone on this subject.”⁸⁴ Thomas Hare, an Inspector of Charities, was the author of at least two significant reports as part of the ongoing inquiry into charities in 1863. These were his report of 12 February 1864 on Christ’s Hospital,⁸⁵ and of 30 March 1864 into Morden College.⁸⁶ Mill did not state specifically what Hare had said that shook him, but it may have been Hare’s presentation in 1863 to the

⁸⁰ Mill, above n 78, Book V ‘On the Influence of Government’ Chapter 11, 26.

⁸¹ John Stuart Mill, *The Collected Works of John Stuart Mill, Volume XV – The Later Letters of John Stuart Mill 1849-1873 Part II* (1856) [letter no.] 653 <http://oll.libertyfund.org/index> at 11 June 2009. Mill had written to Thornton on the subject of co-operation, which Mill hoped would be published by “the *Edinburgh*,” but, if not, he was confident that “the *Westminster* will.” In fact, it was *The Westminster Review* which published an article, “*Strikes and Industrial Co-operation*,” although Thornton’s name is not appended to the paper, nor is he included in the Index. See *The Westminster Review* New Series vol XXV (January-April 1864) 349-383. Mark Donoghue cited this work in ‘William Thomas Thornton on Trade Union Efficacy: a fraction too much friction’ (2009) 11(2) *Review of Political Economy* 215.

⁸² Mill, above n 81.

⁸³ Mill, above n 81.

⁸⁴ Mill, above n 81.

⁸⁵ House of Commons, *Parliamentary Papers* (1865) vol XLI 30.

⁸⁶ House of Commons, *Parliamentary Papers*, above n 85, 162.

National Association for the Promotion of Social Science.⁸⁷ Mill refuted Hare's claims on the basis:

that the charities which are not useful, as the majority are not, should be reformed altogether instead of being merely taxed ... [that those who benefit from] the funds distributed ... whose income from that and other sources exceeds £100 pay their proper quota to the tax already and those whose income is below £100 have, on the general principle of the tax, the same claim as all other such people to be exempted from it ... [that savings should be] exempt from Income Tax and [that] the tax on income [should be] virtually a tax on expenditure. By this rule, any portion of income should only be taxed if spent on private uses, but should be *free from taxation* [sic] (at least at its origin) when devoted to public ends.⁸⁸

I have not found any evidence of a response by Thornton to Mill's suggestion that he consider the subject of the taxation of charities.

Hare - 1864

In a paper presented in 1864 to the National Association for the Promotion of Social Science, Thomas Hare argued that income from property owned or invested by charitable institutions should not be exempt from taxation.⁸⁹ That Hare argued such a case is interesting, for Hare was also the author of the reports to the Charity Commissioners for England and Wales following his inquiry into Christ's Hospital and Morden College in 1864.⁹⁰ As Hare considered that it was inappropriate that "vast and constantly increasing" sums were being withdrawn each year "from the public purse ... without any control of parliament [nor] any revision or control whatever,"⁹¹ his impartiality in the task of investigating the affairs of Christ's College and Morden College is somewhat questionable. However, Hare's paper to the National Association for the promotion of Social Science is invaluable for the comment that he provided on the charitable purposes exemption from Income tax in 1864.

⁸⁷ Thomas Hare, *The injustice and impolicy of exempting the income of property, on the ground of its charitable or meritorious employment, from the taxation to which other like property is subject* in George W. Hastings (ed), *Transactions of the National Association for the Promotion of Social Science* (1864) 733. The National Association for the Promotion of Social Science, which was founded in 1857, "held annual conferences and gave many controversial subjects a hearing. All shades of opinion were represented and matters on which little was known were brought to the general notice, and the public were made aware of these through the annual publication of the transactions of the Association." Kathleen Heasmann, *Evangelicals in Action* (1962) 10.

⁸⁸ Mill, above n 81.

⁸⁹ Hare, above n 87, 733.

⁹⁰ See *Parliamentary Papers*, 'Accounts and Papers: Charitable funds; Charities; Ecclesiastical', (1865) vol XLI 36 and 162. *The Times* described "Mr Thomas Hare" as an "Inspector of Charities." 'The Schools' Commission', *The Times* (London), 15 February 1866, Issue 25422.

⁹¹ Hare, above n 87, 739.

Rogers - 1865

It is apparent, from Rogers' paper read to the Statistical Society of London in 1865, that the matter of defining "income" in statistical and fiscal terms was one that vexed the minds of the members of the Society as, in his introduction, Rogers wrote that:

[i]t will not be necessary, I hope, to apologise for introducing anew to the attention of the Society, a question the discussion of which has so often occupied the time and tasked the abilities of the Fellows. *The subject is one of great interest, of difficult interpretation, and of warm debate.* It is not, I believe, too much to say, that it is from this disposition among the Fellows to argue on the abstract significance of the term which forms the material for this paper, that attempts, hitherto indeed unfruitful, have been made to settle the basis on which the latter sense of the word "income" should be taken. *The practical service which dispassionate inquiry into fiscal questions renders to the administration of any country, is at once valuable as a guide into the determination of principles, and as rendering easy the battle against self-interest and prejudice which, to judge from the language of public men, is the hardest part of the work in defining "income."* (Emphasis added.)⁹²

Rogers' also had something to say about the exemption of charities from Income Tax, as he asserted that:

I cannot understand why the profits on co-operative stores are exempt from taxation, *or the rents of land devoted to what are called charitable purposes*, any more than I can see the justice of exempting such corporate incomes as do not represent value in labour from succession duties; and I am still waiting for a proof from Mr Mill that a property tax (such as I suggest) would be wrong or a spoliation. (Emphasis added.)⁹³

The tax historians: The charitable purposes exemption from Income Tax

Farnsworth - 1942

Farnsworth's comprehensive paper on the Income Tax Act of 1842, written one hundred years after the Act was introduced, confirmed for me that the Act remained in force substantially in that form for many years.⁹⁴ Farnsworth explained that "[t]he main outlines of our present Income Tax system were then laid down and, in their essentials, have been preserved in barely altered language by the Consolidation Act of 1918 [8 & 9 Geo. 5 c. 40] which [in 1942] is still the governing law."⁹⁵

⁹² J.E. Thorold Rogers, 'On the Statistical and Fiscal Definitions of the word "Income"' (1865) 28(2) *Journal of the Statistical Society of London* 242, 242.

⁹³ Rogers, above n 92, 259.

⁹⁴ A. Farnsworth, 'The Income Tax Act 1842 – A Century of Judicial Interpretation' (1942) 58 *The Law Quarterly Review* 314, 314.

⁹⁵ Farnsworth, above n 94, 314.

Farnsworth also said that “[t]he Courts, during the years, have been forced not only to seek out the principles inherent in the stark words of the Income Tax Act, 1842, but also to deduce those principles which, though unexpressed, lay behind the whole scheme of the statute.”⁹⁶ However, the Courts did not begin hearing tax cases *per se* until 1874, as until that time the Commissioners of the Inland Revenue, both General and Special, dealt with such matters. However, Farnsworth was correct in stating that the Courts had the task of seeking out the principles underlying the Income Tax Act 1842, a task that was compounded by the lack of definitions, such as that of “income,” yet “sources of income are enunciated and methods of computing income therefrom are prescribed.”⁹⁷ It was in 1901, Farnsworth explained, that Lord Macnaghten made what I suggest must be the most tongue-in-cheek understatement in the history of tax cases, and which Farnsworth described as Lord Macnaghten’s “pregnant observation,” that “Income Tax was a tax on income; it is not meant to be a tax on anything else.”⁹⁸

As Farnsworth was writing comprehensively on the Income Tax Act 1842, it was with some disappointment that I found, on the last page, that he had written that:

[c]onsiderations of space prevent more than the barest mention being made of principles of general interest which the Courts have evolved in the consideration of Income Tax cases; for example, Lord Macnaghten’s classic definition of ‘charitable purposes’ [in *Pemsel v Special Commissioners of Income Tax* [1891] AC 531], the modernized principles of *res judicata*, the executor’s common law of retainer, the nature of a right in equity, and so on.⁹⁹

It would indeed have been interesting to see what comment Farnsworth would have made about *Pemsel*,¹⁰⁰ for neither did Farnsworth discuss the charitable purposes exemption in his 1951 text *Addington: Author of the Modern Income Tax*.¹⁰¹

Owen - 1965

Owen noted that charities enjoy two important legal concessions, being “the right to perpetuity, [and] fiscal liabilities.”¹⁰² During Victorian times, tax concessions were able to be

⁹⁶ Farnsworth, above n 94, 314.

⁹⁷ Farnsworth, above n 94, 314.

⁹⁸ *Attorney-General v London County Council* [1901] AC 26; Farnsworth, above n 94, 315.

⁹⁹ Farnsworth, above n 94, 333. Oddly, Farnsworth has cited the *Pemsel* case incorrectly, as the correct form is *Commissioners for Special Purposes of the Income Tax v John Frederick Pemsel* [1891] AC 531.

¹⁰⁰ *Pemsel*, above n 21.

¹⁰¹ A. Farnsworth, *Addington Author of the Modern Income Tax* (1951).

defended “on the utilitarian ground of public benefit.”¹⁰³ Yet, no similar defence or argument was proposed when Pitt included the charitable purposes exemption in the Duties upon Income Act of 1799.¹⁰⁴ Instead, Owen stated that “[w]e can only guess as to the motives that inspired Pitt to include in his Income Tax Act [sic] of 1799 a clause exempting charitable organizations, *but it was a natural enough decision.* (Emphasis added.)”¹⁰⁵ By way of example, Owen explained that “grammar schools and free schools were carrying the entire burden of popular education and thus performed a public function of incontestable value.”¹⁰⁶ On such grounds, Owen argued, “[i]t would have been preposterous to tax the income of such quasi-public agencies.”¹⁰⁷ Notably, both Addington in 1803, and Sir Robert Peel in 1842, in their respective Income Tax Acts, followed Pitt’s 1799 example of the charitable purposes *without question.*

Simcock - 1976

A New Zealand based research paper, a Doctor of Juridical Science (SJD) Thesis written by Donald Simcock while he was a student at Harvard University Law School,¹⁰⁸ *The Tax Exemption of Charitable Institutions and Donors: Reform Proposals for New Zealand*, contains a brief history of English charities and the welfare state, and also includes references to Adler.¹⁰⁹ Simcock’s Thesis contains a chapter entitled “Rationale for the charitable tax exemption,” in which he briefly describes the historical basis, followed by a theory of the state absolved of responsibility, or the quid pro quo argument, but he did not explore the charitable purposes exemption in the context of the era from 1798 to 1891.¹¹⁰ Simcock’s work is wide-ranging and raised an issue which has, over thirty years after he had submitted his dissertation, yet to be debated in New Zealand, that of the international harmonization of charitable tax exemptions. The significance of this issue is such that I had made a comment on that matter in my submission in 2008 to Inland Revenue on the matter of imputation

¹⁰² David E. Owen, *English Philanthropy 1660-1960* (1965) 330.

¹⁰³ Owen, above n 102, 330.

¹⁰⁴ *An Act...*, above n 2.

¹⁰⁵ *An Act, ...*, above n 2, s. V.

¹⁰⁶ Owen, above n 102, 330.

¹⁰⁷ Owen, above n 102, 330.

¹⁰⁸ Donald Hugh Simcock, *The Tax Exemption of Charitable Institutions and Donors: Reform Proposals for New Zealand* (SJD) (1976) (Unpublished doctoral Thesis, Harvard University Law School.)

¹⁰⁹ Simcock, above n 108, Part A *The Tax Exemption of Charities* 3-71.

¹¹⁰ Simcock also discusses, at Part A, the characteristics of charitable institutions, voluntary action, Subsidy Theory (but does not identify it as such), direct vs. indirect tax subsidies, equity (Donative Theory), tax credits, estate duty, accountability, and funding. Part B discusses *Evaluation of New Zealand Tax Exemption Laws*, and Part C *International Harmonization of Charitable Tax Exemptions*.

credits for charities.¹¹¹ In my submission I stated that in my experience New Zealand charities often invest funds overseas, Australia being one of those countries. With New Zealand and Australia being closely linked economically, I foresee the time when the harmonization of tax rules will be required and that event will include the cross-border investing activities of New Zealand and Australian charities.

O'Halloran, McGregor-Lowndes and Simon - 2008

The nexus between charity law and social policy in the common law countries in the Twenty-first Century is comprehensively argued by O'Halloran, McGregor-Lowndes and Simon in their 2008 text, *Charity Law and Social Policy*.¹¹² While the basis for social policy is to be found in the Statute of Charitable Uses 1601,¹¹³ as refined in *Pemsel* in 1891,¹¹⁴ the glue between the four principal divisions of charity as laid down by Lord Macnaghten and social policy is the charitable purposes exemption from Income Tax. O'Halloran et al touch on the key element of charitable status, that is, the charitable purposes exemption from Income Tax but only to note that:

[s]ince [the provision of the charitable purposes exemption in the Duties upon Income Act 1799], reinforced by the decision a century later in *Pemsel*, the Inland Revenue has exempted charities from liability for national Income Tax. *This privilege or right, extended to include exemption from rates, is available to all charities whatever their purpose simply on proof of charitable status and constitutes the single most important form of support provided by government.* (Emphasis added.)¹¹⁵

Rather than reinforce the charitable purposes in s. 5 of the Duties upon Income Tax 1799, what Lord Macnaghten did in *Pemsel* was to clarify the concept of charitable purpose, as no such definition had been provided in the Duties upon Income Act 1799 for the purposes of that Act. However, the problem of charitable purpose in a taxing statute had only arisen following the re-introduction of Income Tax after a hiatus of many years, in the form of the

¹¹¹ Michael Gousmett, Submission to Inland Revenue in response to the tax policy discussion document, *Streaming and refundability of imputation credits* (August 2008).

¹¹² Kerry O'Halloran, Myles McGregor-Lowndes and Karla W. Simon, *Charity Law & Social Policy* (2008).

¹¹³ *An Act to redress the misemployment of lands goods and stocks of money heretofore given to Charitable Uses* 43 Eliz. I c. 4 [1601].

¹¹⁴ *Pemsel*, above n 21.

¹¹⁵ O'Halloran et al, above n 112, 199. The authors do not discuss Gladstone's challenge to the charitable purpose exemption in 1863, nor the Parliamentary enquiries into the taxation of charities in 1865 and 1888. Notably, charities were liable for rates for the greater part of the Nineteenth Century, as can be seen from the body of case law on rating that extends back to the Eighteenth Century.

Income Tax Act 1842, and it was in relation to charitable purposes in that Act that Lord Macnaghten addressed the question.

The rating of charities

Elliot - 1887

A number of other papers on taxation were also published during the Nineteenth Century, but it was not until 1891 that any specific reference to the taxation of charities was made, and then only in connection with the rating of charities.¹¹⁶ Elliott's paper in 1887 came close to discussing the charitable purposes exemption, when he noted that a reduction of £1,328,970 had been allowed for deductions from the gross value of Income Tax assessed under Schedule A being the assessments of land and buildings, of £158,032,961, such as "Land Tax, sea walls, &c., ecclesiastical deductions, repairs of churches, parochial rates on rent charges for tithes and 'other deductions'."¹¹⁷ Elliott paid little attention to Schedule C, the assessment of government securities, and even stated that Schedule C was "of small interest, in a purely fiscal aspect, to anyone but the Chancellor of the Exchequer."¹¹⁸ That may well have been the case but as a revenue generator, Schedule C played an important role as, according to Elliott, "[p]robably no other sum of £1,400,000 will reach the revenue during the current year 1886-87 with such ease as that collected from the holders of Government stocks assessed according to its rules."¹¹⁹ Following the presentation of Elliott's paper, fellow members of the Royal Statistical Society gave their verdicts on his work. One member, Mr F.B. Garnett, astutely observed that:

the gross annual value attributed to Schedule A ... comprehended all property in the nature of lands and tenements not being railways and other properties charged under Schedule D ... [and] included both exempt and taxable properties; but the charge under Schedules C, D, and E, on the other hand, only comprehended so much as was taxable, and took no account of incomes, which were exempt.¹²⁰

¹¹⁶ See Frederick Purdy, 'The Pressure of Taxation on Real Property' (1869) 32(3) *Journal of the Statistical Society of London* 308-324; Leone Levi, 'On the Reconstruction of the Income and Property Tax' (1874) 37(2) *Journal of the Statistical Society of London* 155-186; and Thomas Henry Elliott, 'The Annual Taxes on Property and Income' (1887) 50(2) *Journal of the Statistical Society of London* 293-325;

¹¹⁷ Elliott, above n 116, 298.

¹¹⁸ Elliott, above n 116, 307.

¹¹⁹ Elliott, above n 116, 307.

¹²⁰ Elliott, above n 116, 320.

But, like others before him, Garnett made no specific mention of the charitable purposes exemption from Income Tax.

Steele - 1891

Dr Steele's paper, which he read before the Royal Statistical Society on 21 April 1891, contained direct references to the taxation of charities by way of rating.¹²¹ In discussing the difficulty of developing a "standard cost of permanently occupied beds, which in fact is the only safe criterion left us for comparing the economic advantages of one establishment with another," Dr Steele observed that "rents, rates, taxes and other burdens may fall heavily on some, while others enjoy a comparative immunity."¹²² Steele also discussed the issue of taxes in the form of the poor rates, as:

[t]here is yet another grievance from which medical charities suffer, and all the more acutely from its being of modern growth. *It is well known that by the provisions of the poor law of Queen Elizabeth all charities were exempt from local taxation, and most people [were] under the impression that they still enjoy this immunity. This is not the case however, for by an unfortunate decision in the House of Lords in 1866, local authorities in various places, mainly in the south of England, began to exercise what was afterwards considered to be their legal right to impose taxation on charities in accordance with a true or fictitious value of the premises they occupied. (Emphasis added.)*¹²³

The House of Lords case to which Steele had referred was the *Mersey Docks* case¹²⁴ which, some twenty-five years later, caused Steele to argue that:

[t]he history of this change of procedure on the part of parochial and other assessing authorities is peculiar, and contains within itself sufficient evidence to warrant the hope *that if the entire circumstances connected with the new interpretation of the law were brought under notice of Parliament, there is every probability that an exemption which had existed for a period of two hundred and sixty years would be restored. It is hardly conceivable that institutions established for the relief and maintenance of the sick poor, should bear the national burdens for a similar purpose outside their jurisdiction.* It is also strange that the case which has brought about the legal decision so adverse to hospitals should have no connection with a charitable trust, but was essentially of a municipal character, originating with the Mersey Docks and Harbour Board declining to pay rates, on the ground that they were rendering public service to the community in a similar way to

¹²¹ Dr Steele, 'The Charitable Aspects of Medical Relief' (1891) 54(2) *Journal of the Royal Statistical Society* 263-310.

¹²² Steele, above n 121, 285.

¹²³ Steele, above n 121, 291.

¹²⁴ *Mersey Docks v Gibbs* [1864-66] 11 HL Cas 686.

public charities, *which had always enjoyed the privilege of exemption from public rating.* (Emphasis added.)¹²⁵

The decision in the *Mersey Docks* case, Steele noted:

was finally decided against the Board, but no opinion was ever given either for or against the rating of public charities, *although the decision has acted as a precedent for taxing all charities unless they had been made expressly exempt by Act of Parliament.* (Emphasis added.)¹²⁶

On 20 July 1891 Lord Halsbury, in his judgement in the *Pemsel* case, declared that:

[i]t is suggested, indeed, *that the reason for an exemption may be that the public nature of the interest is that which may justify the exemption.* ... It was undoubtedly thought that property held for public purposes was not rateable; but this is now clearly not the law. It is settled that no such exemption applies.¹²⁷

The issue of charities and rating in the Nineteenth Century was one that I have noted for further study, for there was as much confusion over this issue as there was over the exemption from Income Tax. For example, in 1866, King's College Hospital noted, at its annual court on 31 April, that:

[t]he total ordinary receipts for the year amounted to £7,834 13s 3d, and the total expenses to £9,145 19s 3d. ... The novel outlay of £173 13s for parochial rates had for the first time materially added to the expenditure, and that only for a period of nine months. They had contemplated to appeal against this extraordinary charge on a charitable institution, but after the decision of the House of Lords in *Jones v The Mersey Docks*, they felt such a course would be useless. *The question of imposing taxes of any description on charitable institutions was one deserving the attention of government.* (Emphasis added.)¹²⁸

King's College was not the only institution to express its grievance with rating as, on 12 June, 1866:

Earl Cadogan presented a petition from the Governor's of St. George's Hospital [to the House of Lords], praying that means should be taken to relieve them from liability to be assessed to the poor-rate. In consequence of the decision in *Jones v Mersey Docks and*

¹²⁵ Steele, above n 121, 291.

¹²⁶ Steele, above n 121, 291.

¹²⁷ *Pemsel*, above n 21, 552 citing *Mersey Docks v Cameron* 11 HL Cas. 443 [1864].

¹²⁸ [Anonymous], 'King's College Hospital', *The Times* (London), 1 March 1866, 12.

Harbour Board, the parish of St. George's had assessed the hospital at £587, *although the institution had been hitherto exempt from assessment to the poor-rate*. The petitioners submitted that they already did much for the poor of their parish, inasmuch as many out-patients, who would otherwise be thrown upon the workhouse infirmary, were now relieved by them. (Emphasis added.)¹²⁹

In 1874, the Governors of St. Thomas's Hospital unsuccessfully tried their luck as, in the Court of Error in the Exchequer Chamber, on 2 February, the Lord Chief Justice "thought that the law, as construed and expounded by the House of Lords in the cases of *Jones v The Mersey Docks* and *Greig v The University of Edinburgh* clearly covered the case."¹³⁰

Charities were now liable to the poor-rates, the exemption applying only where there was no beneficial occupation, or the premises were occupied by the crown, or the "direct and immediate servants of the crown, whose occupation is that of the crown itself."¹³¹ Lord Halsbury's ammunition was ready and waiting for *Pemsel*.

Dr Steele did not advance any other reason why charities should be exempt from rating, nor did he discuss the charitable purposes exemption from Income Tax in support of his argument. An obvious reason for that omission is that Steele's paper was published in June 1891, whereas the *Pemsel* decision was handed down in July 1891, yet Steele must have been aware of the pending decision at the time that he was writing his paper. Mr C.S. Loch did, however, in his comments on Dr Steele's paper, declare that:

[i]n regard to the rating of charities, he confessed he could not agree with Dr Steele. The argument for including charities among rateable institutions seemed to him fair. Charity had all the advantages of the public service. *If it paid no rates, it, by doing so, imposed upon each member of the community the payment of a kind of contribution to the hospital, as his rates had to go for the benefit of the hospital whether he would or not.* (Emphasis added.)¹³²

Steele's response was that:

¹²⁹ Parliamentary Intelligence, 'House of Lords', *The Times* (London), 12 June 1866, 6.

¹³⁰ Law Report, '*The Governors of St. Thomas's Hospital v The Overseers of Streatheam*' *The Times* (London), 5 February 1874, 11.

¹³¹ *Jones v Mersey Docks and Harbour Board; Mersey Docks and Harbour Board v Cameron*, 11 Jur NS 746; 35 LJ MC 1; 13 WR 1069; 12 LT NS 643 HL in 'Digest,' (1866) 11 *Jurist* ns 145. See also 20 CB (NS) 56; SC 11 HL Cas 443; 11 ER 1405.

¹³² Steele, above n 121, 306.

he was sorry to hear Mr Loch approving of the taxation of hospitals. Did it not appear very unfair and unreasonable to tax hospitals, which were engaged in relieving the sick poor, in order that the sick poor should be relieved also in the sick asylums of the unions? He had been connected for many years with Guy's and with Scotch hospitals, where there were no such rates levied; and he understood that in some towns in England the municipal authorities had relieved the local hospitals from the burden of taxation. In London the rates are levied very unequally, some hospitals paying very little and others a great deal too much. ... *It would no doubt be a great benefit if the hospitals could get restitution of the exemption they formerly enjoyed.* (Emphasis added.)¹³³

In 1892 one J.C. Steele, who would appear to be the same Dr Steele as discussed above, presented a paper to the Royal Statistical Society concerning the effects of the agricultural depression on Guy's Hospital.¹³⁴ Steele referred to what he considered to have been "a judicial blunder on the part of the Court of Appeal," the consequence of which was the liability of local hospitals for rates.¹³⁵ Steele was particularly alarmed that:

it is hardly conceivable that in a country where the spirit of legislation has ever been on the alert to remove every impediment that might interfere with the benevolent instincts of the people, a decision on a matter totally irrespective of charitable institutions should become to be recognised as a principle of common law. *The hospitals in this country have a special history, inasmuch as they are all the offspring of voluntary effort to relieve the commonwealth of a huge responsibility in attending to the medical requirements of the sick poor, without seeking compensation in any way from the public exchequer.* In Scotland and in Ireland the hospitals are freed from these restrictions, and in the colonies, and in fact in most civilized countries, they are not only free from taxation, but are largely subsidised by the municipal or imperial authorities in accordance with their respective needs. *The subject is one loudly demanding consideration by the legislature, and it is earnestly to be hoped that Parliament, which has never failed to deal justly as well as mercifully with the charities, will pronounce judgment on this question by passing a declaratory Act by which their ancient privileges would be restored to them.* (Emphasis added.)¹³⁶

Part II Social Policy

Introduction

As my research progressed, it became apparent that I would need to expand the range of resources that I had hitherto been using. Issues surrounding the Poor Law appeared frequently in much of what I was reading and, after discussing my proposal with my supervisory team, I began to search for debate on social policy that might provide clues on the

¹³³ Steele, above n 121, 310.

¹³⁴ J.C. Steele, 'The Agricultural Depression and its Effects on a Leading London Hospital' (1892) 55(1) *Journal of the Royal Statistical Society* 37-55.

¹³⁵ Steele, above n 134, 42.

¹³⁶ Steele, above n 134, 42.

inclusion of the charitable purposes exemption from Income Tax. The field of social policy is vast, therefore I had to be judicious in what material I decided to explore. What I learnt from that study, while being not totally unexpected, was nonetheless surprising in that I had not fully understood the role of the Poor Law as social policy, and its strengths and weaknesses.

Spencer - 1897

In 1897 Herbert Spencer, “the English social theorist,”¹³⁷ published a two-volume book, *The Principles of Ethics* (“*Ethics*”).¹³⁸ The significance of Spencer’s work is that the second volume contains, at Part VI ‘The Ethics of Social Life: Positive Beneficence,’ ten chapters on beneficence. As *Ethics* was published in London in 1897, only a few short years after the significant judgment in *Pemsel* concerning charitable purposes had been handed down, one might expect that Spencer would have referred to that somewhere in his chapters on beneficence. Somewhat surprisingly, that is not the case, all the more so given that *Pemsel* featured in the newspapers of the day.¹³⁹ I find that all the more surprising on reading that “[w]hile Spencer opposed tax-funded welfare programs, he strongly supported voluntary charity, and indeed devoted ten chapters of his *Principles of Ethics* to a discussion of the duty of ‘positive beneficence’.”¹⁴⁰

Spencer had first written of his opposition to the Poor-laws in 1851.¹⁴¹ While Spencer considered that “charity is in its nature essentially civilizing” in that “[t]he emotion accompanying every generous act adds an atom to the fabric of the ideal man,” the Poor-laws, as “law-enforced plans of relief ... exercise just the opposite influence.”¹⁴² Being “act-of-parliament charity,” the Poor-laws absolved individuals of the responsibilities towards their fellow-man or, as Spencer put it in the form of an advertisement:

¹³⁷ Roderick T. Long, ‘Herbert Spencer: Libertarian Prophet,’ (2004) *The Freeman* July/August 25, 25. Spencer was held in high esteem as *The Times* of 6 January 1897 contained a long list of “more than 80 of the best known [names] in the literature, philosophy, and science of the country, [*The Times* (London), 5 March 1898]” who had subscribed to “The Herbert Spencer Portrait Fund.” In a letter dated 30 November 1896, which was published at the foot of the list, W.E. Gladstone wrote that “[i]t has long been my rule to decline joining in groups of signatures, nor do I think myself entitled to bear a prominent part in the present case. But I beg that you will, if you think proper, set me down as an approver of the request to Mr Spencer, whose signal abilities and, rarer still, whose manful and self-denying character, are so justly objects of admiration.”

¹³⁸ Herbert Spencer, *The Principles of Ethics* (1897) vol 2.

¹³⁹ See, for example, ‘Taxation of Charities’, *The Times* (London), 28 August 1888, 8; [Editorial], *The Graphic* (London), 3 November 1888, Issue 988; ‘Law Notices’, *The Times* (London), 22 March 1890, 4; ‘The Taxation of Charities’, *The Times* (London), 25 July 1891, 16; and ‘*The Income Tax Special Commissioners v Pemsel*’, *The Times* (London), 27 July 1891, 11.

¹⁴⁰ Long, above n 137, 25.

¹⁴¹ Herbert Spencer, *Social Statics or The Conditions Essential to Human Happiness Specified and the First of Them Developed* (1851; reprinted 1969).

¹⁴² Spencer, above n 141, 318.

[g]entlemen's benevolence done for them, in the most business-like manner, and on the lowest terms. Charity doled out by a patent apparatus, warranted to save all soiling of fingers and offence to the nose. Good works undertaken by contract. Infallible remedies for self-reproach always on hand. Tender feelings kept easy at [sic] per annum.¹⁴³

Long also noted that Spencer held the view “that since production is logically prior to distribution, charitable assistance should aim at helping the needy to become productive rather than habituating them to a condition of dependence.”¹⁴⁴ The need existed but it was not for the state to fulfil. In his discussion on the limits of state duties, Spencer noted that:

nongovernmental agencies – bodies for voluntary religious teaching, philanthropic associations, trade unions ... activity and growth, or quiescence and decay, occur according as they do or do not fulfil wants that are felt. ... [U]nder this stress of competition, each of these agencies is impelled to perform the greatest amount of function in return for a given amount of nutrition. ... The direct relation between efficiency and prosperity obliges all voluntary co-operations to work at high pressure.¹⁴⁵

It is obvious that some of the “nutrition” that organisations with charitable purposes received was in the form of being exempt from Income Tax, yet Spencer made no mention of the financial benefit in enhancing the work of such organizations. However, he does provide an insight as to why it may have been that there were no challenges to the charitable purposes exemption in the Income Tax Acts of the early years of the Nineteenth Century, nor in 1842. Spencer wrote of an event in the House of Lords, on 19 May 1890 when, during a discussion on “socialistic legislation,” the Prime Minister had stated that:

[w]e no more ask what is the derivation or philosophical extraction of a proposal before we adopt it than a wise man would ask the character of a footman's grandfather before engaging the footman. ... We ought first to discuss every subject on its own merits.¹⁴⁶

“Abstract principles,” maintained Spencer, were to be sneered at, and instead “the method universally followed by politicians who call themselves practical” should be followed.¹⁴⁷ If that were the case, that may explain why the charitable purposes exemption was accepted without question by all, except for Gladstone in 1863.

¹⁴³ Spencer, above n 141, 320.

¹⁴⁴ Long, above n 137, 26.

¹⁴⁵ Spencer, above n 138, 143.

¹⁴⁶ Spencer, above n 138, 149.

¹⁴⁷ Spencer, above n 138, 149.

Spencer's support for philanthropy is evident, and, without the need "to go back into the past to exemplify the operation of [voluntary institutions]," he maintained that:

[t]he present day furnishes ample evidence of their potency. [In England] we have vast sums left for founding colleges ... we have gifts of immense sums to build and fill public libraries ... bequests to hospitals, asylums, missions, societies, for 1889 amounted to £1,080,000; and that for the first quarter of 1890 they amounted to £300,000.¹⁴⁸

Spencer's abundant enthusiasm for voluntary activity is clearly evident in his assertion that:

[n]or must we forget the daily activity of multitudinous philanthropic people in urging one or other movement for the benefit of fellow citizens. Countless societies, with an enormous aggregate revenue, are formed for unselfish purposes: all good in design if not in result. And the motives, largely if not wholly altruistic, which prompt the establishment and working of these, far from showing any decrease of strength, become continually stronger. Surely, then, if these forces have already done so much and are continually doing more, their future efficiency may be counted upon. And it may be reasonably inferred that they will do many things which we do not yet see how to do.¹⁴⁹

The context in which Spencer was writing was that of limiting the power of the State. It is evident, given Spencer's enthusiasm for voluntary activity, that he would agree that it was entirely appropriate for the charitable purposes exemption from Income Tax to be granted to such organisations by the State, in return for their actions in alleviating the State of those responsibilities. Yet, in spite of acknowledging that there were "[c]ountless societies with an enormous aggregate revenue," he did not extend his argument to include State support through the charitable purposes exemption. Nor does Spencer consider the concept in his chapters: 'Aiding the Sick and the Injured';¹⁵⁰ 'Succour to the Ill-used and the Endangered';¹⁵¹ 'Relief of the Poor';¹⁵² nor 'Political Beneficence.'¹⁵³

In his chapter on 'Relief of the Poor,' Spencer described beneficence in its "three different shapes," that is:

¹⁴⁸ Spencer, above n 138, 153.

¹⁴⁹ Spencer, above n 138, 153.

¹⁵⁰ Spencer, above n 138, 214.

¹⁵¹ Spencer, above n 138, 218.

¹⁵² Spencer, above n 138, 227.

¹⁵³ Spencer, above n 138, 245.

[w]e have the law-established relief for the distribution of money compulsorily extracted; with which may fitly be joined the alms derived from endowments. We have relief of the poor carried on by spontaneously organized societies, to which funds are voluntarily contributed. And then, lastly, we have the help privately given – now to those who stand in some relation of dependence, now to those concerning whose claims partial knowledge has been obtained, and now haphazard [sic] to beggars.¹⁵⁴

Of those three shapes, Spencer says of the spontaneously organized societies that they are “[l]ess objectionable than administration of poor relief by a law-established and coercive organization.”¹⁵⁵ Less objectionable but, at the same time, Spencer argued, “still objectionable: in some ways even more objectionable. ... The beneficiary is not brought in direct relation with the benefactor, but in relation with an agent appointed by a number of benefactors.”¹⁵⁶ Not only was this a failing in Spencer’s eyes, along with the “hypocrisy ... [of the] religious professions ... [which] favour those who are most skilled in utterance of spiritual experiences, and in benedictions after receiving gifts,” another evil existed in the form of “sectarian competition.”¹⁵⁷ The competition was evident in the “competing missions which collect and distribute money to push their respective creeds, and bribe by farthing breakfasts and penny dinners.”¹⁵⁸ There were also:

cunning fellows who want to make places for themselves and get salaries ... As there are bubble mercantile companies, so there are bubble philanthropic societies ... Nay on good authority I learn that there are gangs of men who make it their business to float bogus charities solely to serve their private ends.¹⁵⁹

Not only were there fraudulent fund-raising schemes, there was also “the insincerity of those who furnish the funds distributed: flunkeyism and the desire to display being often larger motives than beneficent feeling.”¹⁶⁰ “Swindling promoters” would seek out wealthy patrons, while the family of the “*nouveaux* rich ... enjoy the thought of seeing his name annually thus associated in the list of officers; and they contemplate this result more than the benefits to be given.”¹⁶¹

¹⁵⁴ Spencer, above n 138, 227.

¹⁵⁵ Spencer, above n 138, 230.

¹⁵⁶ Spencer, above n 138, 230.

¹⁵⁷ Spencer, above n 138, 230.

¹⁵⁸ Spencer, above n 138, 230.

¹⁵⁹ Spencer, above n 138, 231.

¹⁶⁰ Spencer, above n 138, 231.

¹⁶¹ Spencer, above n 138, 231.

Neither did the hospitals and dispensaries escape Spencer's scathing criticism. Most of those who used the services at the London hospitals were, according to Spencer, "able to pay their doctors."¹⁶² What Spencer objected to was that:

[g]ratias medical relief tends to pauperize in more definite ways ... during the forty years from 1830 to 1869, the increase in the number of hospital patients has been five times greater than the increase of population; and as there has not been more disease, the implication is obvious. ... These gratuitous medical benefits, such as they are, are conferred chiefly by the members of the unpaid professional staffs of these charities.¹⁶³

Spencer's main objection was that "whatever benefits flow from [those societies and institutions supported by voluntary gifts and subscriptions] are accompanied by grave evils – evils sometimes greater than the benefits."¹⁶⁴ In so saying, Spencer does not have an immediate answer, as can be seen in a statement which today would be considered extreme, as in his opinion "[w]hether assistance is given through state machinery, or by charitable societies, or privately, it is difficult to see how it can be restricted in such manner as to prevent the inferior from begetting more of the inferior."¹⁶⁵ At the conclusion of his chapter on 'Relief of the Poor' Spencer wrote that "[t]he transition from state beneficence to a healthy condition of self-help and private beneficence, must be like the transition from an opium-eating life to a normal life – painful but remedial."¹⁶⁶ As far as Spencer was concerned, the only good charity was that "which may be described as helping men to help themselves ... [a]nd in helping men to help themselves, there remains abundant scope for the exercise of people's sympathies."¹⁶⁷

Spencer first published his text on *Social Statics* in 1851, then again in 1892, only one year after the *Pemsel* case of 1891.¹⁶⁸ In both editions, Spencer makes the same claim regarding charities: that in spite of "the distribution of fifteen millions a year by endowed charities, benevolent societies, and poor-law unions, ... that so much misery should exist ... was uncalled for."¹⁶⁹ In neither edition did Spencer consider the charitable purposes exemption

¹⁶² Spencer, above n 138, 231.

¹⁶³ Spencer, above n 138, 231.

¹⁶⁴ Spencer, above n 138, 232.

¹⁶⁵ Spencer, above n 138, 235.

¹⁶⁶ Spencer, above n 138, 236.

¹⁶⁷ Spencer, above n 141, 326.

¹⁶⁸ *Pemsel*, above n 21.

¹⁶⁹ Herbert Spencer, *Social Statics, Abridged and Revised: Together with The Man versus the State* (1892) 152; Spencer, above n 141, 328.

from Income Tax, and whether the exemption enhanced or hindered the work of charities in the reduction of poverty.

I expected to find, in Spencer's chapter of 'Political Beneficence,' a description of the charitable purposes exemption from Income Tax being described as such. That was not the case as Spencer wrote of political beneficence as being the duty to ensure that a free political organization remained "alive and healthy, [with] all its units [playing] their parts. ... [P]olitical beneficence requires of each man that he shall take his share in seeing that political machinery, general and local, does its work properly."¹⁷⁰ In particular, "in seeking a pure and efficient administration of justice, [men] are conducing to human happiness far more than in seeking the ends ordinarily classed as philanthropic."¹⁷¹ While Spencer was writing in a macro, rather than micro sense, I suggest that the charitable purposes exemption from Income Tax was, and is today, a form of political beneficence in the sense that is granted by Parliament through legislation. However, the qualification in order for entities to benefit from the charitable purposes exemption is the requirement to conform to the concept of charitable purposes as defined in *Pemsel*.¹⁷² One does not exist without the other.

Joanna Innes - 1989

In her very interesting paper on the role of Parliament in the shaping of Eighteenth-Century English social policy, Innes asks why have historians not "been moved to enquire into the various aspects of the history of this substantial body of laws and projected laws?"¹⁷³ The issue that has dominated the debate on social policy is the poor laws, but in isolation from the role of charities alongside the poor laws. Innes suggested "that the whole question of Parliament's role in shaping social policy is worth opening up," to which I add that the role of charities in implementing social policy, encouraged by the charitable purposes exemption from Income Tax, is an issue that has been entirely overlooked by social historians.¹⁷⁴

By 1795, Ehrmann noted, "[t]he Poor Laws, held in the frame of Elizabethan and Carolean tenets, amounted to a system of social welfare which was coming increasingly under

¹⁷⁰ Spencer, above n 138, 245 and 249.

¹⁷¹ Spencer, above n 138, 246.

¹⁷² *Pemsel*, above n 21.

¹⁷³ Joanna Innes, 'Parliament and the Shaping of Eighteenth-Century English Social Policy' (1989) 40 *Transactions of the Royal Historical Society* 63, 63.

¹⁷⁴ Innes, above n 173, 66.

strain.”¹⁷⁵ With the government suffering from financial stress due to the Napoleonic Wars, and “the [sound of the] trumpet of approaching famine ... from the Orkneys to Land’s End,”¹⁷⁶ the need for charitable activity to supplement the failure of the Poor Laws at the end of the Eighteenth Century may have never been greater.

Coats suggested that “a careful study of contemporary ideas will help clarify the objectives of policy, and may suggest that apparently unrelated measures form part of a general programme of action.”¹⁷⁷ Reflecting on Pitt’s failure to reform the Poor Laws suggests that, given the dire circumstances that the country faced at the turn of the Nineteenth Century, did he see the provision of a charitable purposes exemption from Income Tax as a way of stimulating philanthropy and encouraging charitable activity? If so, why then was the exempting clause, in both the Assessed Taxes Act of 1798 and the Income Tax Act of 1799 included only in the later stages of the debate on the Bill? And, to echo Innes, why have social historians not explored the relationship between charities and the Poor Laws at this time in England’s history?

Donna T. Andrew - 1989

The fly-leaf to Andrew’s text, *Philanthropy and Police: London Charity in the Eighteenth Century*, contains two very pertinent comments in relation to this Thesis.¹⁷⁸ In Rogers’ opinion:

Philanthropy and Police fills a real lacuna in the history of social welfare in England, and it does so in a creative way. Andrew is especially impressive in her treatment of the relationship between social goals and charitable practice, and the conclusions she reaches allow for a more nuanced picture of philanthropic enterprise in an age of imperial expansion and manufacture.¹⁷⁹

Innes expands on Rogers view, from the perspective that:

Andrew reconsiders the adequacy of humanitarianism as an explanation for the wave of charitable theorizing and experimentation that characterized this period. Focussing on

¹⁷⁵ John Ehrman, *The Younger Pitt: The Reluctant Transition* (1983) 448.

¹⁷⁶ John Ehrman, *The Younger Pitt: The Consuming Struggle* (1996) 289 citing the Earl of Darnley in the Lords, 27 February 1800.

¹⁷⁷ A.W. Coats, ‘Economic Thought and Poor Law Policy in the Eighteenth Century’ (1960) 13(1) *The Economic History Review* 39, 39.

¹⁷⁸ Donna T. Andrew, *Philanthropy and Police: London Charity in the Eighteenth Century* (1989).

¹⁷⁹ Nicholas Rogers, York University, in Andrew, above n 178, flyleaf.

London, this book examines the political as well as benevolent motives behind the great expansion of public institutions – nondenominational organizations seeking not only to relieve hardship, but to benefit the nation directly – funded and run by voluntary associations of citizens.¹⁸⁰

It is not until the last chapter of the book that Andrew discusses the late Eighteenth Century, an era during which William Pitt (1759-1806) became, on 19 December 1783, First Lord of the Treasury and Chancellor of the Exchequer.¹⁸¹ Andrew notes that philanthropists had, by the later years of the Eighteenth Century:

[adopted] scientific or utilitarian techniques [upon which their] approach to social problems [was based] on universal rules of human psychology [that were] aimed at the goal of the greatest good for the greatest number. [This approach also] provided a method and justification for the new charities of the century's end.¹⁸²

In particular, Andrew observed that:

evangelicalism, political economy, Malthusianism, and utilitarianism combined to make a powerful platform from which to combat poverty through charity. Both evangelicalism and Malthusianism set the tone and the agenda, political economy the limits to interference, and utilitarianism the methods by which the benevolent attempted to reknit the tattered fabric of English social life and strove to recreate social harmony through the reunification of interclass bonds and interests.¹⁸³

Andrew touches only briefly on financial matters, for example with respect to the plight of the Lying-in Charity in which, in 1803, had £537 invested in stocks.¹⁸⁴ Those investments, equivalent to £36,970 in 2005,¹⁸⁵ would have been caught in the Income Tax net and, were it not for the charitable purposes exemption from Income Tax, the Lying-in Charity would have

¹⁸⁰ Joanna Innes, Somerville College, Oxford, above n 178, flyleaf.

¹⁸¹ Lord Rosebery, *Pitt* (1891) 45; John Ehrman, *The Younger Pitt* (1969) 127. Duffy notes that it was not until 1803 that the first real definition of the term “Prime Minister” was made, by Pitt himself when he had referred to “the person generally called the First Minister.” [Author’s note: Pitt’s comment is recorded in correspondence from Viscount Melville to Henry Addington on 22 March 1803; see A. Aspinall and A. Smith (eds), *English Historical Documents* (1959; reprint 1971) vol 11 125, also cited in Duffy, above n 7, 49.] Jarrett wrote of Pitt that “[he] has a special place among prime ministers for many reasons. He was the youngest of them all. He held the office without a break for longer than any of his successors. He was an orator of the first rank ... he was the first prime minister to dominate his Cabinet.” Derek Jarrett, *Pitt the Younger* (1974) 9. Pitt had previously held the post of Chancellor of the Exchequer from 13 July 1782 to 31 March 1783.

¹⁸² Andrew, above n 178, 169.

¹⁸³ Andrew, above n 178, 169.

¹⁸⁴ Andrew, above n 178, fn 53 181.

¹⁸⁵ Price index 2005/1803 = 757.3/11.0 = 68.85 * £537 = £36,879. Research Paper 06/09, “Inflation: the value of the pound 1750-2005,” House of Commons Library 13 February 2006 www.parliament.uk.

been worse off financially. Yet Andrew does not consider, with respect to the Lying-in Charity and other charities of the time, the reason for, nor the effect of, the charitable purposes exemption regarding the financial affairs of the charities of London.

The Poor Laws and charitable trusts

From my review of the literature on social policy, I have formed an impression that the role of charitable trusts in relation to the Poor Laws has largely been ignored by social historians. For example, Cowherd's text made no mention of charitable trusts, yet he mentioned "[t]he humanitarian reformers of Pitt's time [who] were Evangelical Christians who had come into prominence and influence as a result of the revivals conducted by John Wesley and George Whitfield."¹⁸⁶ Never mind that Sir Fredrick Eden, "in his influential history, *The State of the Poor*, ... disparaged the Evangelicals with the remark that their 'humanity exceeded their good sense'.¹⁸⁷ Cowherd's observation that "England has had a national policy of social welfare since the time of Queen Elizabeth I" is not a reference to the Statute of Charitable Uses of 1601, but to the Poor Laws of her reign. Because the Poor Laws were funded through taxation, studies of those laws have been undertaken in isolation from the role charities played in society. Cowherd discusses Friendly Societies, and charities, such as the Society for Bettering the Condition and Increasing the Comfort of the Poor,¹⁸⁸ and the Foundling hospitals which Hanway, an early and influential Evangelical reformer, considered to be "hurtful to the state."¹⁸⁹ Cowherd also notes that "[a]part from the reform of the Poor Laws, there was no slackening of Christian philanthropy during the Napoleonic Wars. The voluntary agencies for the redemption of mankind, morally and physically, seemed to multiply at a Malthusian rate.¹⁹⁰ But he makes no mention of Pitt's encouragement of voluntary activity for the advancement of social policies through the charitable purposes exemption.

Why, in a text on political economists, was there no mention by Cowherd of the fiscal benefits provided to the charities of Pitt's era? Was this because the Income Tax Acts from 1799 to 1816 were only temporary War Taxes, and the effect of the charitable purposes exemption was considered only to be minimal, therefore not worthy of study, whereas the

¹⁸⁶ Cowherd, above n 11, xiv.

¹⁸⁷ Cowherd, above n 11, xiv (source not cited).

¹⁸⁸ Cowherd, above n 11, 14.

¹⁸⁹ Cowherd, above n 11, 34 citing T.R. Malthus, *An Essay on the Principle of Population* (4th ed, 1807) I, 342.

¹⁹⁰ Cowherd, above n 11, 36.

Poor Laws were more enduring? Why did Ricardo, who considered “the poor rate to be ‘a tax which falls with peculiar weight on the profits of the farmer, and therefore may be considered as affecting the price of raw produce,’ [while at the same time causing] the transfer of capital from agriculture to manufacturing,” not also consider the burden imposed through the charitable purposes exemption from Income Tax?¹⁹¹

“Indiscriminate charity”

It appears, from having reviewed Cowherd’s work, that his study of the English Poor Laws between 1785 and 1834 as a social issue did not take into account the role of charities in society. Cowherd’s bibliography of contemporary books and pamphlets made no mention of Highmore and his comprehensive studies of charities in 1787 and 1810.¹⁹² The activities of some charities no doubt contributed to, rather than resolved, social problems, yet studies such as Cowherd’s did not take that into account. The issue of indiscriminate charity was well recognised and was even the subject of sermons, such as that by Richard Dawes, the Dean of Hereford, which was published in January 1856.¹⁹³ The Preface by Dawes stated that it was not intended that his sermon be published as:

[p]arts of it have only a local interest; its publication, however, having been requested, on account of the opinions expressed on our charities, and on some of our social evils, it is entirely in deference to that request that it appears in print.¹⁹⁴

However, Dawes was not as enamoured of charities as it might first appear. In particular, Dawes was highly critical of:

many of the charities which exist among us [which] we find ... [are] too often worse than useless to those who ought to be benefited by them. Those for education are often a positive hindrance to it; and there can be no doubt that all such charities so administered are productive of evil rather than of good.¹⁹⁵

¹⁹¹ Cowherd, above n 11, 115, citing Ricardo, *Works*, ‘On the Principles of Political Economy and Taxation’ (year not cited) vol I 257.

¹⁹² Cowherd, above n 11, 288.

¹⁹³ Richard Dawes, *The Evils of Indiscriminate Charity, and of a Careless Administration of Funds left for Charitable Purposes. A Sermon preached in the Cathedral, in aid of the funds of the Hereford Dispensary* 27 January 1856.

¹⁹⁴ Dawes, above n 193, Preface.

¹⁹⁵ Dawes, above n 193, 8.

The standard of administration of the medical charities was higher than of most other charities, in spite of the pressure placed upon them. Was this because of the involvement of professionally qualified men, such as doctors? Dawes observed that “our medical charities – our hospitals and dispensaries; ... minister to wants which cannot be otherwise supplied. They are also, from their greater and more general usefulness, better looked after than any other.”¹⁹⁶ Many of the smaller charities “paralyze industry, when they are meant to encourage it, ... [and are] positively mischievous.”¹⁹⁷ Dawes’ intention was to encourage the congregation to support the Hereford Dispensary by “[admitting] both the obligation to give bountifully, and the obligation also to give prudently.”¹⁹⁸ The only reference to the funds of the Hereford Dispensary that Dawes made was that:

the cost of medicine alone considerably exceeded the total amount of subscriptions during [the last year], thus leaving a balance against the Institution of £21 12s 9d. Let me add that whatever misery has been relieved or prevented by this Institution, and it must have been great, has been effected at one-twentieth part of the cost which would have been necessary to bring the same measure of relief to the poor sufferers in their own homes.¹⁹⁹

Finally, Dawes exhorted the congregation:

to remember the words of Him that said, “It is more blessed to give than receive;” and I would remind those who may have come unprepared to give, that it is not remembering them in a proper sense if they allow this to be an excuse.²⁰⁰

With reference to the Hereford Dispensary, it may be said that the charitable purposes exemption from Income Tax did not necessarily mean that charities were better off financially in order to deal with social issues, as the exemption merely retained the status quo prior to the introduction of the Income Tax Acts during the Nineteenth Century.

¹⁹⁶ Dawes, above n 193, 8.

¹⁹⁷ Dawes, above n 193, 8.

¹⁹⁸ Dawes, above n 193, 26.

¹⁹⁹ Dawes, above n 193, 29.

²⁰⁰ Dawes, above n 193, 29.

Philanthropy

W.K. Jordan – 1959-61

One of the most significant contributors on the subject of philanthropy as a social mechanism is Professor W.K. Jordan and his three studies covering the period 1480 to 1660.²⁰¹ In particular, Jordan noted the importance:

[of the] roughly parallel development of the law of charitable trusts and the evolution, and, at the close of the [Sixteenth] Century, the perfection, of the charitable trust as a great and most effective mechanism for those who wished to perpetuate their philanthropic aspirations.²⁰²

Jordan also observed that:

[while] trusts were in most cases required to pay out the whole of income received, *they have not been wholly exempted from the weight of taxation*, and they have been administered through three centuries marked not only by violent economic dislocations but by a steady mounting spiral of inflation. None the less, the original capital worth of £727,590 for this group of charitable trusts had increased at their last reporting dates [1808 to 1955] to the staggering total capital sum of £10,549,387, a gain of 14.5 times in worth, which is very possibly not far off the factor of inflation obtaining over the course of this long interval. (Emphasis added.)²⁰³

While Jordan's data has been criticised, it is none-the-less valuable for the picture it paints of philanthropy in Sixteenth and Seventeenth Century England. The reason that Jordan's data has been criticised is that he did not adjust his data for inflation. In a re-assessment of Jordan's data, Bittle and Todd reproduced Jordan's graph of charitable benefactions in England from 1490 to 1660 with a considerably different result.²⁰⁴ From a peak in 1510, price-adjusted benefactions fell away steadily until 1600 from whence they rose to peak again in 1630, then falling away mirroring Jordan's curve.²⁰⁵ The peak in 1630, according to Jordan's curve, indicated benefactions of £425,000 while Bittle and Todd indicate benefactions of £100,000.

²⁰¹ W.K. Jordan, *Philanthropy in England 1480-1660* (1959); *The Charities of London 1480-1660* (1960); and W.K. Jordan, *The Charities of Rural England* (1961).

²⁰² W.K. Jordan, *Philanthropy in England 1480-1660* (1959) 77.

²⁰³ Jordan, above n 202, 124. Jordan's source was the Parliamentary Charity Commissioners' Reports. Jordan, *ibid* 77 at fn1.

²⁰⁴ William G. Bittle and R. Todd Lane, 'Inflation and Philanthropy in England: A Re-Assessment of W.K. Jordan's Data' (1976) 29(2) *The Economic History Review* 203. As well as ignoring the effects of inflation, Bittle and Lane note that Jordan's figures do not reveal absolute changes in philanthropic giving over time. Nevertheless, philanthropy was alive and well.

²⁰⁵ Bittle and Lane, above n 204, 208.

In turn Bittle and Lane's figures have also been criticised, as Coleman, in his comment on their work, argued:

[b]ut are such crude and drastic reductions in Jordan's figures really justified? ... Messrs Bittle and Lane's valuable statistical service in presenting the deflated series should not blind anyone to two central fallacies of the whole exercise: changing amounts of "generosity" cannot be measured by monetary series of testamentary benefactions; *and the social value of such charity remains concealed* even after those aggregates have been deflated by a price index and adjusted for population change. (Emphasis added.)²⁰⁶

Having found Jordan's work, I searched unsuccessfully for a similar study of philanthropic activity during Pitt's era which might have revealed the effect of the charitable purposes exemption from Income Tax in encouraging philanthropy. As a future research project, I suggest a study of the formation of charities both before 1799, when Pitt introduced the charitable purposes exemption for corporations, fraternities and societies of persons, then for the years 1799 to 1816, 1816 to 1842, and 1842 to 1891. The reason as to why I have suggested those dates should be clear after reading this Thesis.

Conclusion

What has become clear from my research is that studies of the history of taxation, and the history of social policy, have each ignored the nexus between the social and fiscal implications of the charitable purposes exemption from Income Tax. Farnsworth merely touched on *Pemsel*, due to a lack of space.²⁰⁷ This is disappointing, for what Farnsworth might have said, given his knowledge of the early Income Tax Acts, may have been an invaluable addition to my Thesis. Clearly, from the debate on the rating of charities that I discuss, precedent exists for exempting charitable institutions from taxation. The fact is that the charitable purposes exemption from Income Tax has not attracted the same interest as the rating issue, with the exception of Gladstone's challenge of the exemption in 1863,²⁰⁸ and the Returns of 1865 and 1888.²⁰⁹

²⁰⁶ D.C. Coleman, 'Philanthropy Deflated: A Comment' (1978) 31(1) *The Economic History Review* 118, 119. For a paper in support of Bittle and Lane, see J.F. Hadwin, 'Deflating Philanthropy' (1978) 31(1) *The Economic History Review* 155.

²⁰⁷ Farnsworth, above n 94, 333.

²⁰⁸ See Chapter 6 of this Thesis.

²⁰⁹ See Chapter 7 of this Thesis.

Had the charitable purposes exemption not been provided by Pitt, the role of charities in common law countries may not have developed to the extent that, in the Twenty-first Century, they have become irreplaceable as providers in support of governments' social policy.²¹⁰ It is particularly noticeable that what is not evident in the literature on social policy is the recognition of the charitable purposes exemption from Income Tax as a factor in the provision of social services in Great Britain of the Nineteenth Century. In this regard, social theorists such as Spencer have not considered the relevance of fiscal policy to social theory. Further, it was not that many years after Spencer had published his text, *The Principles of Ethics*,²¹¹ that the discipline of Fiscal Sociology was to emerge in post-World War I Germany.²¹²

²¹⁰ See, for example, Robert Whelan, *The Corrosion of Charity: From Moral Renewal to Contract Culture* (1996). Pitt's key contributions were first in the Assessed Taxes Act 1798, then in a more encompassing form in the Duties upon Income Act 1799, and ultimately in the Income Tax Act 1842.

²¹¹ Spencer, above n 138.

²¹² See Chapter 1 of this Thesis.

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Part I Anthony Highmore and the Smallpox Hospital

Introduction

During my two week visit to London in 2005, to undertake research for my Thesis, I discovered the works of Anthony Highmore.¹ The relevance of Highmore to this Thesis is his involvement with a number of the London's charities in the late Eighteenth and early Nineteenth Centuries, and his extensive writings on charity issues. The Oxford Dictionary of National Biography (hereafter "ODNB") describes Anthony Highmore (1758/9-1829), as a "legal writer," the son of Anthony Highmore (1718-1799), a draughtsman, and grandson of Joseph Highmore (1692-1780), the painter.² The ODNB recorded that Highmore "devoted much of his spare time to the management of charitable concerns and served as secretary to the London Lying-In Hospital."³ The Lying-In Hospital was not the only charity that benefited from Highmore's skills, as *The Times* contains numerous advertisements that provide evidence of his involvement with the School for the Indigent Blind,⁴ but particularly the Hospital for the Smallpox and Inoculation (hereafter "Smallpox Hospital"). While the ODNB refers to concerns in 1808 regarding smallpox and inoculation, there is no reference in the ODNB of Highmore's involvement with the Smallpox Hospital. The first advertisement that I found which described Highmore's involvement with the Smallpox Hospital was in a 1785 issue of *The Times*, in which he is described as a "jun. Attorney at Law, Secretary, and Receiver,"⁵ and the last was in the issue of the same paper on Monday, September 15, 1828, by which time Highmore was the hospital's "Secretary."⁶

As well as his charitable work, Highmore authored a number of legal texts and treatises, in addition to submitting numerous tracts to *The Gentleman's Magazine* for over forty years, from 1784 until 1828,⁷ the year before his death. Highmore's writings have proved invaluable for this Thesis, particularly and most unexpectedly the second edition of *A*

¹ I had returned to the British Library on the last evening of my all too short two-week visit to London to undertake research for my Thesis. During my search of the library's catalogue, I had found the listing of Highmore's *Pietas Londinensis*, but had not had time to look at the book, which is published in two volumes. On remembering that I had not done so, although I was very tired from a long day's work, I made the effort to return to the library. It was in the second volume of his book on the charities of London that I found Highmore's comment on charities and taxation which has proven to be so significant for this Thesis.

² *Oxford Dictionary of National Biography* (ODNB) 27 (2004) 81.

³ ODNB, above n 2, 81. See also 'Advertisements', *The Times* (London), 18 January 1796, 1.

⁴ 'Advertisements', *The Times* (London), 16 January 1800, 2.

⁵ 'Advertisements', *The Times* (London), 26 February 1785, 1.

⁶ 'Advertisements', *The Times* (London), 15 September 1828, 1.

⁷ etext.lib.virginia.edu/etcbin/browse-gm3?id=3GMSYNH via <http://vivisimo.com/> "Anthony Highmore".

Succinct View of the History of Mortmain (hereafter “*Mortmain*”) which was published in 1809, the first edition having been published in 1787.⁸ Until I found the texts on *Mortmain*, I had not identified any commentary on the exemption of charities from taxation in the years leading up to Pitt’s Duties Upon Income Act of 1799. Neither is there any reference in Highmore’s listing in the *ODNB* to his proposal which, in 1786, he had:

submitted to [the Smallpox Hospital] and other charities, and finally to some of the members of the administration, [being] a plan for the total exemption of all institutions of charity from taxes, by one general Act; but, notwithstanding many interviews, and a tolerable concurrence in the principle, the reduction of the revenue was an obstacle too powerful to be subdued.⁹

The significance of this single paragraph for this Thesis is that it confirms that in 1786 institutions of charity were liable for taxation. Evidence that charities were indeed liable to tax at about that time can be seen in *The Times* of 1792, when it was reported that £6,341 6s 1d had been expended by Bridewell Hospital “for taxes.”¹⁰ The nature of those taxes was not disclosed.

With the exception of Highmore’s *Mortmain*, I have not been able to find any comment during the period 1786 to January 1799 about the taxation of charities.¹¹ Owen would not have considered that to be unusual, as:

[t]he exemption of British charities from the Income Tax dated from its inception. We can only guess as to the motives that inspired Pitt to include in his Income Tax Act of 1799 a clause exempting charitable organizations, *but it was a natural enough decision*. To take a single example, grammar schools and free schools were carrying the entire burden of popular education and thus performed a public function of incontestable value. It would have been preposterous to tax the income of such quasi-public agencies.¹²

The charitable purposes exemption resurfaced in later Income Tax Acts, and Owen also commented on its inclusion, and explained the rationale for so doing, on the basis that:

⁸ Anthony Highmore, *A Succinct View of the History of Mortmain* (1st ed, 1787) and (2nd ed, 1809). My discussion is based on the 1809 edition.

⁹ Anthony Highmore, *Pietas Londinensis* (1810) 291.

¹⁰ [Editorial,] ‘Bridewell and Bethlem Hospitals’, *The Times* (London), 31 May, 1792, 2.

¹¹ Highmore’s *Pietas Londinensis* was published in 1810. The effort required to publish this text, which was preceded by *Mortmain* in 1809, detailed as they are, in such a short space of time must have been tremendous.

¹² David E. Owen, *English Philanthropy 1660-1960* (1965) 330.

[w]hen ... Sir Robert Peel reintroduced the Income Tax [in 1842, the tax having lapsed in 1816], he followed the precedent established by Pitt and continued by Addington in his Act of 1803. ... [While there were rare attacks on this privilege during the Nineteenth Century] the philanthropic interests of the Kingdom, most conspicuously the great London charities, were not negligible politically and, when necessary, could apply pressure. Ordinarily, therefore, it was *taken for granted* that rents, dividends, and interest received by legitimate charities and applied to charitable purposes should be free of tax. (Emphasis added.)¹³

If it were “a natural enough decision,” and if it was “taken for granted” that charities should be exempt from Income Tax, why then had Highmore argued, in 1786, for an exemption from taxes? In due course, I found the answer in Highmore’s *Mortmain*. The obvious answer is that there was no Income Tax in 1786, but charities were liable to other forms of tax, which is what Highmore discusses in *Mortmain*. Before discussing that issue, in order to place Highmore’s writings into the context of this Thesis, we need to understand the role of the Smallpox Hospital with which Highmore was intimately involved, as well as the hospital being a charity of significance in London during the Eighteenth and Nineteenth Centuries.

A brief history of the Smallpox Hospital

It was in one of Highmore’s books, *Pietas Londinensis*,¹⁴ that I found a key reference to charities and taxation, in a chapter on the Smallpox Hospital. I was to find later that few books on the history of hospitals in England have any reference to the Smallpox Hospital with which Highmore was involved. Abel-Smith’s *The Hospitals in England and Wales 1800-1948* merely stated that “[t]he only London smallpox hospital was founded in 1746,”¹⁵ and the source for this statement was Highmore’s *Pietas Londinensis*.¹⁶ The significance of the Smallpox Hospital is that general hospitals, which were reluctant to admit patients suffering from smallpox due to the nature of the disease, had an arrangement for such patients to be treated at the Smallpox Hospital. In his history of *The London [Hospital]*, Clark-Kennedy wrote that:

[s]mallpox, which was endemic in London at that time [c.1749], outbreaks of it occurring almost every year, was kept out [of the London Infirmary] by making arrangements with the Smallpox Hospital (of which the Bishop of Worcester was also a governor) “to receive such sick Persons under this Complaint as shall be recommended by this Charity.” They subscribed five guineas in the name of John Harrison [surgeon, and founder of the London Infirmary, which opened its doors on Monday 3 November 1740]. Two years later they

¹³ Owen, above n 12, 330.

¹⁴ Highmore, above n 9.

¹⁵ Brian Abel-Smith, *The Hospitals In England and Wales 1800-1948* (1964) 23.

¹⁶ Highmore, above n 9.

increased their subscription to ten, “the number of objects sent to the Smallpox Hospital having exceeded that number it was apprehended it would have done, they never having less than two in their house at a time.”¹⁷

Cameron’s *Mr Guy’s Hospital 1726-1948* made no mention of smallpox,¹⁸ while *The Royal Hospital of Saint Bartholomew 1123-1973* briefly noted the mortality of the disease¹⁹ and early attempts at inoculation,²⁰ and that “a smallpox hospital was opened in 1746.”²¹ Considering that in the Eighteenth Century “smallpox was seen as the most fatal pestilence that every [sic] preyed upon man,”²² it is surprising that so little attention was given to the Smallpox Hospital by those authors.

It is to Dr Albert Rinsler²³ that I also owe a debt of gratitude for his assistance in providing me with material on the history of the Smallpox Hospital in my search for further information relating to taxation. Dr Rinsler’s paper, *A Short History of the Jenner Building*, which was published in *The Transactions of the Medical Society of London*,²⁴ provides a most detailed account of the early days of the Smallpox Hospital. It was through the efforts of Dr Robert Poole (1708-1752) that “a charity was established for the relief of poor persons suffering from smallpox.”²⁵ Dr Rinsler also noted that the Smallpox Hospital that “Dr Poole was instrumental in establishing ... [was] probably the first of its kind in England.”²⁶

Dr Rinsler noted that “the first meeting of the charity committee to establish a smallpox hospital took place on 11 February, 1746, in the vestry room of the Church of St. Paul, Covent Garden.”²⁷ From money raised from subscribers:

¹⁷ A.E. Clark-Kennedy, *The London: A Study in the Voluntary Hospital System* (1962) 59.

¹⁸ H.C. Cameron, *Mr Guy’s Hospital 1726-1948* (1954).

¹⁹ Victor Cornelius Medvei and John L. Thornton (eds), *The Royal Hospital of Saint Bartholomew 1123-1973* (1974) 132.

²⁰ Medvei and Thornton, above n 19, 133.

²¹ Medvei and Thornton, above n 19, 135.

²² Medvei and Thornton, above n 19, 132 citing J. Moore, *A history of the smallpox* (1815). Smallpox was to linger for many years yet until its eventual eradication. A “small outbreak of smallpox” in Auckland and Wellington [N.Z.] “may have been [a] stimulus for the passing of [New Zealand’s] Public Health Act [of] 1872.” F.S. Maclean, *Challenge for Health: A History of Public Health in New Zealand* (1964) 12.

²³ Dr Albert Rinsler MRCGP DHMSA Hon. Medical Historian, Whittington Hospital. Personal correspondence to author, May 2006.

²⁴ Dr Albert Rinsler, ‘A Short History of the Jenner Building’ *The Transactions of the Medical Society of London* (1999-2000) vol 116, 77-85. By kind permission of The Medical Society of London.

²⁵ Rinsler, above n 24, 79 citing F.A.H. Simons, *A History of Clare Hall Hospital* (1962) 6. Barnet Group Hospital Management Committee.

²⁶ Rinsler, above n 24, 79.

²⁷ Rinsler, above n 24, 80.

[a] small house in Windmill St off the Tottenham Court [Road] was leased, and first opened in July 1746. Dr Poole was appointed physician and sub-treasurer; but he resigned in 1748 through ill health. The hospital was named the Middlesex County Hospital for the Smallpox [and Inoculation].²⁸

Having only 13 beds, a further house in Mortimer St. was leased, as well as houses in Shoreditch, Bethnal Green, and Islington.²⁹ In 1754 the lease of an estate at Cold Bath Fields, Clerkenwell, was purchased, and a smallpox hospital was built on that site.³⁰ In 1763, four acres were purchased near Battle Bridge, in the parish of St. Pancras, the intention being to build “a larger hospital for inoculation,”³¹ and the hospital was opened in 1767. The patients were moved from the other smaller hospitals, which were then closed, apart from Cold Bath Fields.³²

By 1791, the need for repairs at the Cold Bath Fields hospital resulted in its closure, and a new building was constructed adjacent to the Inoculation Hospital, to which the patients from Cold Bath Fields were moved in 1794.³³ These buildings then became known as the London Smallpox and Inoculation Hospital,³⁴ and the hospital remained there until 1846.

Establishing a Smallpox Hospital was not without its difficulties, due to the fear in which the disease was held. In his 1793 *Addenda to the Law of Charitable Uses*, Highmore reported on an undated case brought in nuisance in the form of a “Bill for an injunction to stay building an hospital for people infected with the Smallpox, in Cold-Bath Fields.”³⁵ While the Bill challenged the proposed lease for the hospital, the residents of London were also concerned at the “infectiousness of the distemper, and the terror it occasioned in the neighbourhood,” to which “Lord Chancellor [Hardwicke] would not suffer it to be read, but took it up on hearing the counsel for the motion,”³⁶ and:

declined making any order, declaring himself of the opinion that it was a charity like to prove of great advantage to mankind; that such an hospital should not be far from a town,

²⁸ Rinsler, above n 24, 80 citing W. Pinks, *The History of Clerkenwell* (1881) 122; and A. Highmore, above n 9, 274.

²⁹ Rinsler, above n 24, 80.

³⁰ Rinsler, above n 24, 80.

³¹ Rinsler, above n 24, 80.

³² Rinsler, above n 24, 81.

³³ Rinsler, above n 24, 81 citing Highmore, above n 9, 293.

³⁴ Rinsler, above n 24, 81.

³⁵ A. Highmore, *Addenda to the Law of Charitable Uses* (1793) 54.

³⁶ Highmore, above n 35, 54.

because those who are attacked with that disorder in a natural way, may not be in a condition to be carried far. ... If the cases cited [during the hearing] were law, *Query*, How far they would extend to all the hospitals in this town? Motion denied.³⁷

In 1747, complaints were made by the residents of Mortimer Street and Cavendish Square to the Attorney General with the result that, provided the complainants raised £150 in compensation, the hospital in Cavendish Square would be moved, and it was, “to some old houses in Gray’s Inn Lane.”³⁸

In the Nineteenth Century, the hospital was relocated, not because of public health concerns but due to industrial growth. The *London Encyclopaedia* noted that “Whittington Hospital incorporates the former Smallpox Hospital, removed here to the country from King’s Cross in 1841 [sic].”³⁹ That year appears to be incorrect as, in 1846, the Great Northern Railway (“GNR”) was able to compulsorily purchase, under the Railway Act of 1846, the Smallpox Hospital and the London Fever Hospital, both being on the same site which was needed by the GNR for the construction of the terminus at King’s Cross.⁴⁰ The acquisition of both hospitals cost the GNR £65,000.⁴¹ From King’s Cross, the Smallpox Hospital was moved to Highgate Hill “some time between 1848 and 1850,” and became the Smallpox and Vaccination Hospital, with 108 beds.⁴² In 1896, the hospital was purchased by the Islington Board of Guardians, who built St. Mary’s Infirmary in the grounds of the Smallpox Hospital.⁴³ With the closure of the Smallpox Hospital in 1896, “the patients were transferred to Clare Hall, which became Clare Hall Hospital, at South Mimms on the boundary of the county of Middlesex.”⁴⁴ Until 1906 Clare Hall Hospital was:

a private hospital, run by a Board of management and administered by a House Committee, with a resident doctor and visiting physician. In 1906 the Joint Hospital Board of 14 Middlesex districts purchased Clare Hall Hospital. This was the end of the old independent Smallpox Hospital which had been founded in 1746 and played its role for 160 years ending in 1906. ... the old Smallpox and Vaccination Hospital at Highgate

³⁷ Highmore, above n 35, 55.

³⁸ Highmore, above n 35, 80.

³⁹ Ben Weinreb and Christopher Hibbert (eds), *The London Encyclopaedia* 388.

⁴⁰ Rinsler, above n 24, 83.

⁴¹ Rinsler, above n 24, 83.

⁴² Rinsler, above n 24, 83. Between 1855 and 1859, 1,187 patients were admitted, with a 20% mortality rate.

⁴³ Rinsler, above n 24, 84.

⁴⁴ Rinsler, above n 24, 84.

Hospital was converted into a nurses' home and subsequently became an administration F Block. In 1997 [the hospital] was renamed the Jenner Building.⁴⁵

Professor Michael Warren has also provided me with information relating to the history of the Smallpox Hospital. In a letter,⁴⁶ in which he cites Rivett's *The Development of the London Hospital System 1823-1982*, Professor Warren wrote that:

[i]n 1746, by "the benevolence of a few generous individuals" a charity was established to receive persons of all ages and denominations who were suffering from smallpox. The charity intended not merely to provide every facility for treatment, but also to study alternative methods of treating the disease. A house was taken in Windmill Street, Tottenham Court Road, and was soon filled. Others were procured in Coldbath Fields and Old Street. Expansion proved necessary and Rocque's map of London (1769) shows the new smallpox hospital at Battle Bridge, where King's Cross Station now stands. It was rebuilt yet again in 1846 as the London Smallpox and Vaccination Hospital on Highgate Hill in Upper Holloway and the building now forms part of the [Whittington] Hospital. Patients were admitted by presentation of a governor's letter, or from the hospitals and workhouses of London on the payment of a fixed sum.⁴⁷

While it may not have been appreciated at the time, the Smallpox Hospital was one of a number of specialist hospitals which had been established during the Eighteenth Century. Dainton described their evolution thus:

Queen Charlotte's Lying-In Hospital had been founded in 1739, the City of London Maternity Hospital in 1750, and the General Lying-In Hospital in 1765. The London Lock Hospital for the treatment of venereal disease was established in 1746. The same year saw the opening of the Middlesex County Hospital for smallpox and inoculation. Fifty years later the craze for sea-bathing led to the establishment of the Sea-Bathing Infirmary at Margate, the country's first hospital for tuberculosis.⁴⁸

While Highmore's *Pietas Londinensis* of 1810 provides an excellent history of the Smallpox and Inoculation Hospitals,⁴⁹ Genevieve Millar's 1955 Doctoral Thesis⁵⁰ has also provided a further invaluable repository of resources concerning the Smallpox Hospital. Miller noted that in the year that the Smallpox Hospital was founded, London was again visited by an epidemic of smallpox as:

⁴⁵ Rinsler, above n 24, 84. Also citing *The Hospital on the Hill* (1992) Whittington Hospital Project. Revised edn.

⁴⁶ Personal communication 18 May 2006.

⁴⁷ Geoffrey Rivett, *The Development of the London Hospital System* (1986) 83.

⁴⁸ Courtney Dainton, *The Story of England's Hospitals* (1961) 93.

⁴⁹ Highmore, above n 9, 273–310.

⁵⁰ Genevieve Miller, *The Adoption of Inoculation for Smallpox in England and France* (Unpublished Doctoral Thesis, Cornell University, 1955.)

[t]he Bills of Mortality listed 3,236 deaths, which meant that there were at least five or six times that number of cases, most of which were among the poor. ... the upper classes were already preserving their children by inoculation, which was probably done quietly in these years with little publicity. Now the awakening public conscience which had begun to create public charitable institutions for the lower classes began to direct its attention towards smallpox.⁵¹

The initiative for the Smallpox Hospital had come from the Rev. Isaac Maddox, the Lord Bishop of Worcester,⁵² as “at this time none of the public hospitals would admit a smallpox victim to its wards. A working man, thus afflicted, had to give up his job and be nursed at home where he probably infected his entire household.”⁵³ There was another reason for establishing such an hospital, for, “[i]t was next to impossible for a person who had not had smallpox to obtain employment in family service or in a hospital.”⁵⁴ Maddox had established a similar hospital in Worcester in 1745.⁵⁵ His inspiration in the creation, on September 26, 1746, at Middlesex, of the County Hospital for the Smallpox was motivated by his desire to provide “for the relief of poor distressed housekeepers, labourers, servants, and strangers, seized with this unhappy distemper, who will here be immediately relieved in the best manner without expense.”⁵⁶ Thus:

[u]nder the joint presidency of Maddox and the Duke of Marlborough, a hierarchy of subscribers was formed, whose voting power and patronage were determined by the amount subscribed annually, ranging from 1 guinea to 5. In 1765 and 1766 the annual collection from the patrons amounted to nearly £900. Patients were generally recommended by a subscriber, but others were received also.⁵⁷

Why the hospital was known as the “Hospital for the Smallpox and Inoculation” becomes clear once one realises that the hospital was in fact two separate buildings. One hospital was used for the treatment of natural cases of smallpox, and the other, for the inoculation of persons against smallpox. Before inoculation, candidates for inoculation were required to undertake:

dietary regulations and evacuations which were deemed necessary to render the body in optimum condition. To this end, a separate house was provided for inoculation, in a

⁵¹ Miller, above n 50, 149.

⁵² Miller, above n 50, 150.

⁵³ Miller, above n 50, 149.

⁵⁴ Miller, above n 50, 150. Having been exposed to smallpox and survived, patients developed a life-long immunity to the disease.

⁵⁵ Miller, above n 50, 150.

⁵⁶ Miller, above n 50, 150.

⁵⁷ Miller, above n 50, 151.

different part of the city ... [*the two hospitals* were] at a due distance from each other, in airy situations. That for preparing the patients for inoculation is in the Lower-Street, Islington; and is capable of receiving fifty at a time: And that for receiving them, when the disease appears, and for the reception of patients in the natural way, is in Cold Bath-fields, containing one hundred and thirty beds for patients. ... As soon as the pocks began to appear, the patients were removed in a coach or chair from the inoculation house to the Smallpox Hospital, and their room in the former building was carefully fumigated with burning sulphur in order to remove all possible infection for the next occupant, in spite of the belief that the disease was not contagious before the pocks had begun to suppurate. (Emphasis added.)⁵⁸

While the establishment of the Smallpox Hospital must have had some impact on the incidence of the disease, Miller considered that:

[i]t would be a mistake to assume that the success of the [hospital] even began to solve the problem of smallpox among the lower classes. The number of inoculations which could be performed there at any given time was infinitesimal in comparison with the total need. By the end of 1757, reporting on 10 years of operating the Hospital, it was announced that 3,506 victims of natural smallpox had been treated, and 1,252 persons had received inoculation. ... The annual reports for the years 1752 reflected a steady increase, [of 112, 129, 135, and 217 cases respectively], and finally there was such a large number of applications that frequently there were over 100 names on the waiting list, which discouraged others from applying at all.⁵⁹

The only places in the entire kingdom where inoculation was offered free of charge were at the Foundling Hospital and the Smallpox Hospital.⁶⁰ This led to articles “[appearing] in the public press urging that similar charities be created elsewhere, or that the expense of the operation be reduced so that the common people could afford it.”⁶¹ Miller noted that:

[t]here were examples of private charity. Near Guilford in Surrey a local surgeon was paid 40 shillings a head by a wealthy nobleman for each inoculation performed on the country people. ... The price was considerably cheaper in Scotland twenty years later. Boswell recorded that during Johnson’s visit to the Hebrides in 1773 the Laird of the Isle of Muck told that during the preceding year he had contracted with a surgeon to come and inoculate the non-immune inhabitants of his island at half a crown, or 2½ shillings a head.⁶²

While outbreaks of smallpox in a village would encourage the parish church to fund inoculation, and a public charity in London, the General Dispensary, treated the poor in their homes, the barrier to treatment by the poor was its cost, thus without the intervention of

⁵⁸ Miller, above n 50, 153.

⁵⁹ Miller, above n 50, 155.

⁶⁰ Miller, above n 50, 158.

⁶¹ Miller, above n 50, 158.

⁶² Miller, above n 50, 159.

charity hospitals inoculation remained a privilege of those who could afford it.⁶³ Inoculation, however, was a practice which divided both the medical profession and the church.⁶⁴ But:

despite opposition the inoculators proved victorious. Ideas of isolation developed, a Smallpox Hospital was opened in 1746, and in 1752 the Governors at St Bartholomew's ordered that smallpox patients should be kept in separate wards to prevent the spread of the disease.⁶⁵

The reason for the church's opposition to inoculation was religious prejudice. In the fight against such prejudice, Maddox took the lead. During the epidemic of 1752, in which there were 3,538 deaths in London alone,⁶⁶ Maddox:

on the occasion of the yearly meeting of the governors and trustees of the Smallpox Hospital on March 5 preached on inoculation at St. Andrew's Holborn in the pulpit formerly occupied by its arch-enemy, the Rev. Mr. Edmund Massey. The sermon extolled the charity which the governors of the hospital supported and pleaded a strong case for inoculation, by answering possible objections and presenting evidence of the harmlessness of the practice from three well-known physicians. This sermon, which was published in numerous editions, was unquestionably one of the most influential pamphlets on the subject in the entire literature. ... Maddox's sermon inaugurated the custom of publishing the anniversary sermon with the annual report of the Smallpox Hospital, and for a number of years prominent prelates of England lent their names to the support of the Hospital by their sermons.⁶⁷

Objections were also raised on other than religious grounds: medical and social concerns were also evident, according to Miller.⁶⁸ It is worth recording those objections, as they place the role of the Smallpox Hospital into the context of the times:

Medical questions asked whether the operation actually conferred smallpox and thus produced permanent immunity; whether other diseases might not also be inoculated along with the smallpox; whether the body was not weakened by what appeared to be an incomplete attack of smallpox. The defense [sic] rested its case on actual experience and the demonstration of mortality rates. The social objections, always present but voiced more loudly as the practice became more widespread, centered on *the hazard which*

⁶³ Miller, above n 50, 160.

⁶⁴ Medvei and Thornton, above n 19, 133. "Dr Massey [likened] the activities of the inoculators to Satan smiting 'Job with sore boils, from the sole of his foot unto his crown,' while the Bishop of Worcester proclaimed inoculation no sin but the bounded duty of Christians." Medvei and Thornton, *ibid* 133.

⁶⁵ Medvei and Thornton, above n 19, 135.

⁶⁶ Miller, above n 50, 163. Based on the London Bills of Mortality, in 1752 the ratio of deaths from smallpox to deaths from all causes was approximately 170:1,000 falling to 40:1,000 in 1753. In 1796, the rate was in excess of 180:1,000 falling to 30:1,000 the following year. Miller *ibid* 322.

⁶⁷ Miller, above n 50, 165.

⁶⁸ Miller, above n 50, 296.

inoculation brought to the whole community by maintaining foci of disease which might lead to unsought infection. In England and her American colonies, as in Paris later, this resulted in legislative action to protect the community by regulating the locale of the practice. The religious objections, which probably worried the greater number of individuals, questioned *how far man was to take an active role in directing medical events in his life*; whether it was a sin to make oneself ill deliberately; whether illness itself was not a part of a providential plan, sent for the education and chastisement of mankind; whether man should interfere in the ways of God. (Emphasis added.)⁶⁹

Highmore's account of the Smallpox and Inoculation Hospitals

Highmore has provided us with a very detailed and interesting account of the history and activities of the Smallpox Hospital in his *Pietas Londinensis*.⁷⁰ From this, and the work of authors whom I have previously cited, there is a significant amount of material from which to compile a comprehensive study of this important charity hospital, a task that I shall leave for another researcher to complete. Highmore, in an emotive style, described the purpose of the Smallpox Hospital, as being:

[to provide] for the reception of infected patients, with the casual smallpox, and for inoculation; where, being separated from the rest of the community [the patients] might enjoy peace and quiet, [and] skill and medicine to promote their recovery, and to overcome the sufferings and privations which their poverty in some cases, and their mode of living in others, had sharpened; here every necessary comfort is also supplied; and the hardships to which they were exposed, are lessened and assuaged; ... *finding not even the doors of other hospitals opened to receive them, they have here found a ready asylum appropriated to their affliction, a salutary pool of Bethesda, into which they might plunge and be clean.* (Emphasis added.)⁷¹

As can be seen, the need for such a hospital is readily apparent as, firstly, no such hospital existed until the early 1740s and, secondly, due to the practice of other hospitals in excluding patients affected with smallpox from treatment. Highmore noted that:

[t]he institution of this useful and humane establishment, which was the first of the kind in Europe, was indebted to the benevolence of a few generous individuals, who in the year 1745 were desirous that a charity of this nature should be founded near the metropolis, *because the objects for whom it should be devoted were, from infection, necessarily excluded from other hospitals* (Emphasis added.)⁷²

Such was the fear of this disease, that Europeans even took advantage of the introduction of inoculation in England, as:

⁶⁹ Miller, above n 50, 296.

⁷⁰ Highmore, above n 9.

⁷¹ Highmore, above n 9, 273.

⁷² Highmore, above n 9, 274.

[l]ong before inoculation was practised in their own countries, solicitous Dutch parents sent their children to London to be inoculated, and foreign diplomats or business men took advantage of their sojourn in the British capital to secure themselves or their children from the dread disease.⁷³

Highmore also provided, in considerable detail, a record the first meeting of those whose vision saw the need for such an hospital. Highmore's account of the proceedings is also indicative of the seriousness with which the proposal was taken, as can be seen from the status of those who attended that first meeting.⁷⁴ Highmore tells us that the meeting:

was held in the vestry-room of the Church of St. Paul, Covent Garden, on Wednesday, 11 February 1746, [and was attended] by Sir Roger Newdigate, Bart., Sir Samuel Gower, Rev. Dr. Stephan Hales, and several others, who were styled governors and subscribers of the Middlesex county hospital for the Smallpox and inoculation. The Duke of Marlborough, and Dr. Isaac Maddox, Lord Bishop of Worcester, were elected presidents for the year; Sir Hugh Smithson, Sir R. Newdigate, Hon. Colonel Beckland, and Rev. Dr. Hales, vice-presidents; Sir Samuel Gower, treasurer; Dr. Poole, physician and sub-treasurer; and Mr William Umfreville, of the Inner Temple, Attorney, the secretary; a committee was chosen to consider of ways and means for the further improvement of this charity; and to form such useful laws and rules of economy as might be judged proper to be laid before a general meeting for approbation; and the election of the committee was ordered to be by ballot.⁷⁵

A considerable sum of money was subscribed in the first year of the operation of the Smallpox Hospital, with "subscriptions amounting to £1,082 9s out of which £874 8s was expended in relieving one hundred and fifteen patients."⁷⁶ In its first "methodised report," presented in September 1750, the effectiveness of the work of the hospital was proudly exclaimed in that:

it appears by a general calculation that twenty-five or thirty die out of one hundred and fifty patients who have the distemper in the natural way, and only one dies out of that number when they are inoculated, [therefore] it will appear that this is a thing of very high importance.⁷⁷

⁷³ Miller, above n 50, 181.

⁷⁴ Highmore noted that in 1792 George 3 was patron of the Smallpox Hospital. Highmore above n 9 293.

⁷⁵ Highmore, above n 9, 274. In 1750 "£40 was the qualification for life [as a governor], and five guineas for an annual governor; this was reduced, in 1751, to £31 10s and has so continued, except twenty guineas for a short time." Highmore, *ibid* 277.

⁷⁶ Highmore, above n 9, 276.

⁷⁷ Highmore, above n 9, 278.

Funds were also raised from governors' subscriptions for which, in 1750, £40 purchased a life governorship, the subscription being "reduced in 1751 to £31 10s and has so continued, except twenty guineas for a short time."⁷⁸ Governorship gave the right of admitting persons to the hospital for treatment, at the discretion of the governors who were guided by the requirement that "[e]very person destitute of friends or money, and labouring under this melancholy disease, was and is still deemed a proper object of the charity."⁷⁹

It is apparent from Highmore's account of the hospital that the charity was attracting considerable financial support, as in its early days "their funded capital then amounted to £1,000 in 3 per cents."⁸⁰ This was a reference to investments in government stocks, the "consols" as they were known, or the consolidated fund. By May 1756 the governors were able to purchase "£500 consols of 3 per cent which increased the fund to £3,000 at 90^{3/8} [indistinct] per cent."⁸¹ In 1763, four acres "called Drakefield, at Battle-bridge, St. Pancras," were purchased for £840 with "sufficient capital, in 3 per cent consols, ... ordered to be sold for the purpose."⁸² The hospital that was to be erected there was estimated to cost £14,565, which was to be funded by subscription,⁸³ the purpose of the hospital being "a house for preparation [for inoculation] only, and not for patients with the Smallpox."⁸⁴ The final cost was £8,955 19s 1d.⁸⁵

In spite of being "a thing of very high importance," it appears that Parliament was not so minded to assist financially, as in 1767 "an application to Parliament for pecuniary aid [laid before the Duke of Grafton and Lord North and supported by] an estimate and plan of the charity, with an account of its expenditure and funds ... was [not] pursued."⁸⁶ It seems that the charity was not without other problems as "[o]n 25 March, 1784, the late secretary, having declined to furnish any satisfactory account of several sums received by him, ... was dismissed;"⁸⁷ Following the dismissal, on 8 April 1784, at a meeting of the committee "at St. Martin's-le-grand coffee-house" Highmore, having received "a considerable majority

⁷⁸ Highmore, above n 9, 277.

⁷⁹ Highmore, above n 9, 278.

⁸⁰ Highmore, above n 9, 279.

⁸¹ Highmore, above n 9, 283.

⁸² Highmore, above n 9, 287.

⁸³ Highmore, above n 9, 287.

⁸⁴ Highmore, above n 9, 289.

⁸⁵ Highmore, above n 9, 289.

⁸⁶ Highmore, above n 9, 290.

⁸⁷ Highmore, above n 9, 290.

of votes” for the three candidates was appointed, at the age of 26, as the secretary to the hospital.⁸⁸ His appointment was confirmed on 13 May at a general court held at Haberdashers’ Hall.⁸⁹

At that time, in May 1784, the funds of the charity “consisted of £1,656 10s 8d consols. of 3 per cent. and £1,700 reduced annuities.”⁹⁰ It was immediately following that statement in *Pietas Londinensis* that I found the key element of this Thesis, *the one and only comment that I have found from that era relating to the exemption of charities from taxation*, when Highmore claimed that:

[i]n the year 1786, I submitted to this and other charities, and finally to some of the members of the administration, *a plan for the total exemption of all institutions of charity from taxes, by one general Act*; but, notwithstanding many interviews, and a tolerable concurrence in the principle, the reduction of the revenue was an obstacle too powerful to be subdued. (Emphasis added.)⁹¹

The construction of a new hospital on freehold land adjacent to the Inoculation Hospital at Pancras began, after an extensive fundraising campaign during which Highmore “had the honour of ready access to the first nobility, to the most opulent commoners, and to commercial men, to the corporation of London, and to the courts of the principal livery companies,”⁹² with the laying of the first stone by the Duke of Leeds as president, on 2 May 1793, and the hospital being completed in June 1794.⁹³ Subscriptions had amounted to £3,971 18s 8d but, as “the building charges amounted to £761 3s 2d beyond that sum, so the governors were obliged to supply this balance by a sale of part of the capital in funds.”⁹⁴

The Smallpox Hospital was not altruistic in its operation, not all of its services having been provided free of charge, as “patients admitted with natural smallpox had to make a deposit of 16 shillings to cover burial expenses in case of death.”⁹⁵ Altruism only went so far. Charging patient’s fees was an anathema to Highmore, and in 1793 he used his *Addenda to the Law of Charitable Uses* to voice his concern:

⁸⁸ Highmore, above n 9, 291.

⁸⁹ Highmore, above n 9, 291.

⁹⁰ Highmore, above n 9, 291.

⁹¹ Highmore, above n 9, 291.

⁹² Highmore, above n 9, 293.

⁹³ Highmore, above n 9, 294.

⁹⁴ Highmore, above n 9, 294.

⁹⁵ Miller, above n 50, 156.

[about] a practice which tends to the disgrace of this country – to the ruin of every principle or emotion of gratitude which might arise in the breast of a patient feeling the blessings of recovery while under their protection – which leads many of the indigent and distressed to undervalue the benevolent motives of their benefactors – and which opens a source of corruption inconsistent with the principle of every charitable foundation. I mean, *the practice of levying fees upon patients at their admission to, during their residence in, or at their discharge from, several of our principal hospitals*. The wages of nurses and servants are thus, in part, drained from the scanty pittance of the poor, whose difficulty and delay in previously providing themselves with money and necessaries, often retard their admission till the ravages of their complaint leave them but a hopeless recovery. If admitted, through prevailing entreaties, and the extremity of their case, without these payments, they must despair of receiving all the attention necessary; and if it be granted them, the smallest act of duty is made to wear the semblance of favour and liberality. On the other hand, if they have money enough for the purpose, all gratitude is stifled by the right of an apparent purchase. (Emphasis added.)⁹⁶

The governance, management and financial affairs of the Smallpox Hospital

Highmore also provided a fascinating insight into the governance, management and financial affairs of the Smallpox Hospital in an exposition in which he stated, at length, that:

[t]his society is supported without charter by *voluntary contribution*; their property consists of the freehold estate at Pancras, consisting of four acres of freehold land, near the confluence of the four principal roads, held by conveyance in trust, duly inrolled in Chancery; to which is to be added, £8,000 in reduced Bank annuities, and £9,000 consols, and £38 7s 2d imperial annuities. The receipts generally amount to about £1,400 per annum, and the expenses generally exceed that sum. The establishment is governed and conducted by a president, six vice-presidents, a treasurer, physician, secretary, apothecary, and matron, a house committee of thirteen governors, and a committee of seven auditors, chosen annually; £31 10s constitutes a governor, and five guineas an annual subscriber; and any double subscription gives a double privilege; smaller sums are gratefully received, but give no privilege. *Every governor may recommend one patient into each house at a time ... no annual governor can vote unless his subscription shall have been paid six months previous to the day of election; but those becoming governors for life before the chair is taken, may vote. ... The apothecary and matron are never absent at the same time. No officer can receive any fee on pain of dismissal* [sic]. Every poor person, if five years of age or upwards, labouring under the natural smallpox, or desirous of inoculation, as also children under that age, accompanied by their mother or nurse, are objects of this charity; the casual patients are received every day, upon a governor's recommendation, on depositing £1 2s as a security against funeral charges; patients for inoculation are admitted every morning before nine o'clock on depositing 5s. These deposits are returned, unless forfeited by death or misconduct. They are required to bring with them sufficient changes of clean linen, and warm clothing, according to the season. ... Donations may be paid to the treasurer or secretary, and legacies may be bequeathed to the treasurer for the time being of the Hospital for the Smallpox and Inoculation at Pancras, to carry on its benevolent designs. (Emphasis added.)⁹⁷

⁹⁶ Highmore, above n 35, 81.

⁹⁷ Highmore, above n 9, 306.

Highmore made no mention of Income Tax in his discussion on the hospital's financial affairs for, when the 1810 edition of *Pietas Londinensis* was published, there were, from Highmore's account, no issues concerning the charitable purposes exemption at that time.

It appears that the Smallpox Hospital was still in existence in London in 1864 as Hodgkinson, in *The Origins of the National Health Service*, observed that “[s]mallpox was endemic in the Metropolis in 1863-64. ... The Smallpox Hospital was quickly filled, for hundreds of cases occurred every week,”⁹⁸ but that there was “inadequate hospital accommodation, for the Smallpox Hospital would only receive thirty-two patients a week.”⁹⁹ The governors of the hospital may well have been too preoccupied with the business of the Smallpox Hospital, in having to deal with the high case-loads in 1863, for they were not listed as being amongst the deputation who met with the Prime Minister, William Gladstone, on 4 May, 1863, to oppose his desire to tax charities.¹⁰⁰

Conclusion to Part I

I had not initially appreciated the dreadful nature of smallpox, and why it was so feared. Nor had I appreciated the role of the Smallpox Hospital during the Eighteenth and Nineteenth centuries as a hospital for the inoculation, as well as the treatment, of smallpox. Once I understood those facts, I began to see why Highmore considered that such institutions should be free of all taxes. *Thus the link between social policy, through the encouragement of the activities of charitable institutions particularly at a time when government-funded social welfare was non-existent, and fiscal policy, through the exemption of such institutions from the burden of taxes that would otherwise inhibit their work, becomes clear.* However, other forces were also at work.¹⁰¹

Part II The enigma of Anthony Highmore

Introduction

Who then was Anthony Highmore? Anthony Highmore, the son of Anthony Highmore and Anna Maria Ellis, who were married on 23 April 1740 at Old Brampton, Derby, was christened on 27 August 1758 at Saint Dionis Backchurch, London.¹⁰² As a London solicitor,

⁹⁸ Ruth G. Hodgkinson, *The Origins of the National Health Service* (1967) 664.

⁹⁹ Hodgkinson, above n 98, 665.

¹⁰⁰ See Chapter 6 of this Thesis.

¹⁰¹ See Chapter 9 of this Thesis.

¹⁰² IGI Individual Record, www.familysearch.org downloaded 20 July 2006.

he demonstrated a strong sense of civic duty, with an especial interest in the charities of London. Highmore has proven to be both an interesting person, and an enigma. The *ODNB* provides a detailed picture of Highmore in describing him thus:

Highmore, Anthony (1758/9-1829), legal writer, was born in London, the son of Anthony Highmore (1718-1799), draughtsman, and grandson of Joseph Highmore, the painter [and one of fifteen children]. From 1766 he was educated at a school in Greenwich, and he commenced practice as a solicitor in 1783. Although he worked for over forty years as a solicitor, Highmore, *a devout Christian, devoted much of his spare time to the management of charitable concerns* and served as secretary to the London Lying-In Hospital. In addition *he also moved in radical parliamentary circles*; in particular Highmore was an intimate friend of Granville Sharp, and was *active in opposition to the slave trade*.

Besides contributing to the *Gentleman's Magazine*, Highmore also wrote a number of works on legal and social issues. His earliest was a digest of the law relating to the use of bail in civil and criminal cases (1783). *A Succinct View of the History of Mortmain* appeared in 1787, and explored its charitable uses. This was judged to be a pioneering work: a contemporary referred to "his little book, but great work" (*GM*, 181). Early in the following decade Highmore published his *Reflections* (1791) on the law of libel. In this he was an ally of Charles James Fox who, the following year, gave the issue greater prominence when he persuaded the Commons to pass a bill giving juries full powers in legal actions. In 1793, Highmore brought out *Addenda to the Law of Charitable Uses*, and also an account of the laws relating to the excise.

During the alarm created by the threatened French invasion Highmore became a member of the Honourable Artillery Company, and in 1804 he wrote a history of the company, at the suggestion of its court assistants. In 1808 a Bill was brought before parliament to prevent the spreading of smallpox. This stipulated that no medical practitioner was to inoculate for the smallpox within 3 miles of any town, and provisions were made for isolating smallpox patients. Highmore, though a believer in vaccination, wrote a pamphlet opposing the terms of the Bill, as amended by the Commons, in 1808.

Among Highmore's legal treatises was one on the law of lunacy (1807), a pocket book for attorneys and solicitors (1814), and a guide to the executors of wills and codicils on how to keep accounts and administer the estates of the deceased (1815). He also wrote further works about charities. *Pietas Londinensis* (1810) was a history of public charities in and near London; a second volume, *Philanthropia Metropolitana* (1822), gave an account of the charitable institutions established in London between 1810 and 1822. Highmore died at Dulwich, Surrey, on 19 July 1829, in his seventy-first year. (Emphasis added.)¹⁰³

It is curious that the *ODNB* made no mention of Highmore as the secretary of the Smallpox Hospital, particularly given his long association with the hospital since his appointment as its secretary in 1784. While the *ODNB* refers to Highmore's *Pietas Londinensis*, it would appear that the biographers have overlooked Highmore's connection to the Smallpox Hospital. Highmore's relationship with Sharp is interesting, as the *ODNB* states that Sharp, who

¹⁰³ Francis Watt, Rev. Robert Brown, in *ODNB*, above n 2, 81. Sharp was one of the first directors of the African Institution on its founding in 1807. Charlotte Fell Smith and Rev. H.C.G. Matthew, 'Granville Sharp', *ODNB*, vol 50 17.

“deplored the idea of rebellion or American separation, ... believed that appropriate reforms, such as the abandonment of parliamentary taxation, could preserve the unity of the empire.”¹⁰⁴ One might speculate that Sharp would have agreed with Highmore that charities should indeed be free from all forms of taxes. While the *ODNB* described Sharp as being an “intimate friend” of Highmore,¹⁰⁵ an electronic search of the A2A archive has not revealed any correspondence between Highmore and Sharp on the matter of charity taxation.

In addition to the two extensive volumes on the charities of London, *Pietas Londinensis*, which was published in 1810, Highmore also wrote a further text, which was published in 1822, entitled *Philanthropia Metropolitana: A View of the Charitable Institutions established in and near London Chiefly during the last Twelve Years*. These books provide a key to Highmore’s religious leanings and social philosophy, as on the title page of the 1810 publication of *Pietas Londinensis* are the words “Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me. – *Matt. XXV. 40.*” The title page of *Philanthropia Metropolitana* contains two similar inscriptions: “The increase of Faith, Hope and Charity. *Collect*, [indecipherable],” and “Faith believes the Revelations of God – Hope expects his promises – and Charity loves his Excellencies and Mercies. *Taylor.*”

Highmore’s strong Christian ethics are no more pronounced than in the Preface to *Philanthropia Metropolitana*. For example: “Hospitals and other foundations of charity, now so common in the world, are owing to Christianity;¹⁰⁶ “Wisely is it ordained by Providence, says Lord Kames (2 Sketches, 321) that charity should in every respect be voluntary, to prevent the idle and profligate from depending on it for support.”¹⁰⁷ Highmore’s sense of civic duty and his concern for the down-trodden pervade the pages of *Pietas Londinensis* and *Philanthropia Metropolitana*. While recognizing that “the benevolence of the opulent and powerful has not been backward to answer the call,”¹⁰⁸ Highmore observed, “[b]ut still the question remains unanswered, of the cause of that diversity between the rich and the poor, the powerful and the subordinate, the prosperous and the afflicted.”¹⁰⁹ Social historians would no doubt be interested to learn that Highmore considered that:

¹⁰⁴ ‘Granville Sharp’, *ODNB*, above n 103, 16.

¹⁰⁵ ‘Granville Sharp’, *ODNB*, above n 103, 15.

¹⁰⁶ Anthony Highmore, *Philanthropia Metropolitana* (1822) xvi.

¹⁰⁷ Highmore, above n 106, xvii.

¹⁰⁸ Highmore, above n 9, xv.

¹⁰⁹ Highmore, above n 9, xvi.

[s]o long as every rank preserves its respective place, the shades of difference between individuals of the same station are seldom felt, and thus a general harmony is preserved: on each side they verge gradually to the next rank, which by the same imperceptible gradations joins them, and thus the feuds and murmurs of jealousy are seldom raised on this account; ...¹¹⁰

One can readily visualise “Empire,” on reading Highmore’s words, that, “[a]s in battle [the gallantry of the English] is not questioned, so their liberality to a vanquished enemy has never been denied; their courage is national instinct, and their charity is national refinement.”¹¹¹ However, Highmore expected that benevolence received was benevolence to be gratefully acknowledged:

There is a sweet solace in the sensation of gratitude which elevates and purifies the mind, and there is more joy over one such person whom we find in a house of charity than over ninety and nine others who are as much relieved but do not seem to acknowledge the benefit. But the imperfection of human nature must be pardoned in such cases; all institutions themselves are not perfect, nor is every patient capable of duly appreciating the benefit which is provided for them; it will be sufficient if the best regulations are conscientiously fulfilled, and the intended good is faithfully administered, that must effect the welfare of the community, and must apportion to each benefactor his just share of internal satisfaction.¹¹²

Highmore did not make any mention of his role as secretary to the Smallpox Hospital in *Pietas Londinensis*, possibly because he “mentioned only such officers as are the most ostensible,”¹¹³ and he may have considered it inappropriate to consider himself as such. However, Highmore was more forthright of his contribution to the Smallpox Hospital in his dedication to His Royal Highness Frederick Duke of York and Albany, in the frontispiece to *Philanthropia Metropolitana*, in which he stated:

[f]or my own humble part, I shall never cease to contemplate with sentiments of the sincerest satisfaction, that it has fallen to my lot to have been made instrumental in the management of one of these [charitable] institutions, the Hospital for the Smallpox and Vaccination, which it has pleased Your Royal Highness thus to patronise; ...¹¹⁴

Highmore noted that while *Pietas Londinensis* was “a concise history ... of more than four hundred and fifty institutions of charity in and near London,” *Philanthropia Metropolitana*:

¹¹⁰ Highmore, above n 9, xvi.

¹¹¹ Highmore, above n 9, xx.

¹¹² Highmore, above n 9, 966.

¹¹³ Highmore, above n 9, x.

¹¹⁴ Highmore, above n 106, v.

presents a review of more than sixty additional societies, which, in the short interval of twelve years, have emanated from the same active benevolence of my fellow citizens; the whole together forming a standing record to the honour of my native city, too nearly allied to the national character to be suffered to pass unregistered to posterity!¹¹⁵

I can only but wonder at and appreciate the countless hours that Highmore must have spent in researching and writing his many works. To give some impression of what this task must have entailed I have set out the details of his *Pietas Londinensis* and *Philanthropia metropolitana* in Table 1 The contents of *Pietas Londinensis* (1810), and

Table 2 The contents of *Philanthropia Metropolitana* (1822):

Table 1 The contents of *Pietas Londinensis* (1810)

Part	Title	Page
	Dedication to the King	v
	Preface	ix
	Introduction	xv
I	Hospitals	1
II	Dispensaries, Lying-In, and Medical Charities	331
III	Colleges	442
IV	Alms-Houses	503
V	School Charities	569
[-]	Charities for binding poor apprentices	679
VI	Miscellaneous Charities	931
[-]	Of Registering Charities	962
[-]	Conclusion	965
[-]	Index	969

Table 2 The contents of *Philanthropia Metropolitana* (1822)

Section	Title	Page
	Dedication	iii
	Preface	xi
I	<i>Societies for Religious Purposes</i>	1
II	<i>Societies for Education</i>	185
III	<i>Societies for Local Charity</i>	289
IV	<i>Societies for Visiting, &c.</i>	315
V	<i>Dispensaries</i>	345
VI	<i>Infirmaries</i>	373
VII	<i>Societies for Philanthropic Purposes</i>	402
[-]	Addenda	609
[-]	Conclusion	627
[-]	Index	631

¹¹⁵ Highmore, above n 106, iv.

Highmore was indeed a prolific author as, by 1822, as well as *Philanthropia Metropolitana*, he had also published the following works:¹¹⁶

A Digest of the Doctrine of Bail, Cadell, 1783 and 1791.

A Succinct View of the History of Mortmain, 1787.

Reflections on the distinction usually adopted in criminal prosecutions for libel, 1791.

The Parliamentary Debates on the Statute of 32 Geo. III c. 60, for removing Doubts respecting the Functions of Juries in Cases of Libel, Johnson, 1792.

Addenda to the Law of Charitable Uses, 1793.

A Practical Arrangement of the Laws of Excise, with an Appendix of Precedents, Butterworth, 1796. 2 vols.

A History of the Honourable Artillery Company, White, 1804.

A Treatise on the Law of Idiocy and Lunacy, Butterworth, 1807.

The History of Mortmain and Law of Charitable Uses, Butterworth, 2nd ed. 1809.

Pietas Londinensis, a History of the Public Charities in London, Baldwin and Co. 1810.

Observations on the Bill for Registering Charities, 1810.

A Letter to W. Wilberforce, Esq. on the same subject, 1810.

The Attorney and Solicitor's New Pocket Book and Conveyancer's Assistant, Butterworth. 1814, 4th ed, 1820.

An Arrangement of Accounts of Executors and Administrators, Butterworth, 1821, 2nd ed.

But, notwithstanding the extent of Highmore's copious writings, there is little to be found in archive records in response to his concerns regarding the taxation of charities. The National Register of Archives, at Kew, lists only "Highmore, Anthony (1758-1829) Legal Writer" with one record accredited to him: "1811: (letters) to and from R Ryder," which are held at the Harrowby Manuscripts Trust, Sandon Hall, Stafford.¹¹⁷

The Gentleman's Magazine

I now turn to Highmore's published works in the *The Gentleman's Magazine* (hereafter "GM"), which is a veritable goldmine for an historical researcher. I was also surprised at not finding anything by Highmore in the GM on the taxation of charities, particularly given that Highmore's obituarist described him as being "almost a monthly contributor; as his numerous

¹¹⁶ These publications are listed in unnumbered pages in the first pages of each of *Pietas Londinensis* and *Philanthropia Metropolitana*. The catalogue of the *Eighteenth Century Collections Online* at the British Library as at 1 July 2005 provided additional details not contained in the aforementioned books.

¹¹⁷ National Register of Archives, <<http://www.nra.nationalarchives.gov.uk/nra/searches/ndpresult.asp>> at 26 July 2005. A request to obtain a copy of that letter was unsuccessful.

and valuable communications on various subjects under the signature of A.H. abundantly testify.”¹¹⁸

However, extensive searches throughout this publication, in hard copy form and online, failed to lead to any references regarding Highmore’s opposition to the taxation of charities.¹¹⁹ This is very curious, particularly as Highmore was a prolific contributor of articles and letters on a number of different subjects. His first contribution, “Verses to the Memory of Tho. Hollis,”¹²⁰ was published in 1780 and his last, “New University,”¹²¹ in 1828, a year before his death. His sole contribution in 1786 appears to have been “Memoirs of the Late Rev. John Duncombe, M.A.”¹²² Yet Highmore wrote a number of articles in relation to charities, as can be seen in Table 3 Highmore’s articles on charities in *The Gentleman’s Magazine*.

Table 3 Highmore’s articles on charities in *The Gentleman’s Magazine*

Title	Year	Volume	Pages
A New History of Public Charities Announced	1806	76-ii	603-605
On the Increase of Charitable Institutions	1816	86-i	409-410
On the Increase of Public Charities	1817	87-ii	405-406
On the Management of Charitable Institutions	1823	93-i	402-404
On the Management of Charitable Institutions	1823	93-i	497-499
Admissions to Hospitals	1824	94-i	519-520
Letter of Mrs [Elizabeth] Montagu	1827	97-i	306-307

Highmore’s last contribution to the *GM* in 1828 was in the form of a letter to the editor, Mr Urban.¹²³ This letter provides a valuable insight into Highmore as a person who fervently believed in the simplification of language in order to diffuse knowledge to students in a hurry in an advancing society. Further insight into Highmore’s writing skills can be seen from his belief that “so many learned bodies and cautious practitioners will rise up and condemn [him],” when he advised:

¹¹⁸ [Anonymous], ‘Anthony Highmore, Esq.’ (1829) 99 *The Gentleman’s Magazine* 182.

¹¹⁹ Emily Lorraine de Montluzin, “Attributions of Authorship in *The Gentleman’s Magazine*, 1731-1868 (hereafter “Attributions”),” <http://etext.virginia.edu/> at 17 September 2007. This is an excellent resource which facilitated my research on Highmore considerably. I was also fortunate in that the Central Library at the University of Canterbury holds *The Gentleman’s Magazine* in its Rare Book Collection and also as shelved items. The *GM* published very detailed indexes in which I also searched for Highmore’s works. I discovered de Montluzin’s work during that process and was able to confirm my findings as well as to identify other works by Highmore. The assistance provided to me by Robin Stevens, the Rare Books Collection librarian, was outstanding.

¹²⁰ de Montluzin, above n 119, 50 *The Gentleman’s Magazine* (1780) 486.

¹²¹ A.H., ‘Hint for a new university’ (1828) *The Gentleman’s Magazine* 98-i 494.

¹²² [Highmore], ‘Memoirs of the Late Rev. John Duncombe, M.A.’ (1786) 56 *The Gentleman’s Magazine* 187.

¹²³ Highmore, above n 121, 494.

every new University, every extensive Society for science and literature, every library, where lectures are the leading features of the institutions for diffusing knowledge, to constitute an indispensable rule or regulation, [to ensure] that the introductory lecture should in the most forcible manner, and in plain broad English, so that those who run in for a moment, and back again to their offices, desks, stalls, and shop boards, might be able to hear and carry forth with them the joyful sounds of denunciation against all languages, except English and French – against all compounds of Greek and Latin – all terms known only to the professors, and by which they have hitherto kept the world in bondage, and by this happy means would now break away the barriers to general knowledge, and enable every man, and every scarcely man, to grow wiser than his teachers, and to govern the hitherto governor.¹²⁴

While the medical profession were exempt from such strictures, lawyers were not, as:

lawyers would honestly avow that instead of “toujours prêt,” they were literally always ready; and would fairly shew that they had never promised, instead of lurking behind their non-assumpsits, their dilemma, their rebutter, and surrebutter. I believe the medical science, and surgical art, have the claim of delicacy and decorum in the adoption of Latin and Greek phrases for diseases, and parts of the human structure, which could not be fairly cured in plain English.¹²⁵

Yet, with such skills literally at his fingertips, why was Highmore so silent on the matter of the taxation of charities in the *GM*, and in other forums?

Anthony Highmore’s Obituary

In the July 1829 issue of the *Gentleman’s Magazine* there is a note in the Obituary section which reads:

Surrey. - July 19. At Dulwich, in his 71st year, Anthony Highmore, esq. formerly of Gray’s-inn [sic]. Of this amiable individual, and very frequent correspondent of this miscellany, we hope to give a memoir in our next.¹²⁶

The editor was true to his word as in the August issue of that same year a five-column obituary was published. Given that on the preceding page three obituaries of army personnel were published, of two Lieutenants-General, and a Major, an indication of Highmore’s standing can be gauged. Without repeating details of his published works, the following will

¹²⁴ Highmore, above n 121, 494.

¹²⁵ Highmore, above n 121, 495.

¹²⁶ [Anonymous], above n 118, 93.

be of interest to scholars intending to study this interesting person in more detail than time and access to resources allow me.

The Obituary does not reveal that Highmore had a relationship of any kind with William Pitt the Younger as, if he had done so, then that would have been mentioned, as other prominent politicians of the day are noted. For example, Highmore was an admirer and supporter of Granville Sharp in his crusade against slavery; “[a]t about [1787], or a few years before, [Highmore] formed an acquaintance with that great philanthropist Granville Sharp, which, notwithstanding their difference of age, speedily ripened into a most intimate friendship, that ceased only with his life.”¹²⁷

Curiously there is no mention of his involvement with specific charities, particularly the Hospital for the Smallpox and Inoculation. The only reference to smallpox by the un-named obituarist is “A Statement of some Objections to a Bill to prevent the spreading of the Smallpox.”¹²⁸ However, his contribution to the works of charities is acknowledged, and in some detail, in the following words:

[i]t has already been remarked, that in 1810 Mr. Highmore had published a History of Public Charities; and it is perhaps almost superfluous to observe, that from his first entrance into life he had intimately connected himself with many of those valuable institutions, and in the full and beneficent spirit of “*Humanum, nihil a me alienum pulo,*” he felt the deepest interest in them all; therefore, carefully watching this subject, he did not fail to notice, that, among the other innumerable blessings the return of peace had brought to our country, it was pre-eminently accompanied by “good will towards men,” and *that a very large portion of public attention had been directed to the sufferings of our fellow-creatures, and to the erection of establishments for their cure or relief.* He therefore collected the history of those institutions which had been called into existence since 1810, and finding that their description would require a volume equal in interest, and almost in size, to its predecessor, he published in 1822, his *Philanthropia Metropolitana*. (Emphasis added.)¹²⁹

Anthony Highmore’s last days

Highmore’s failing health in his last two years, “which nature could hardly endure,” left him “stretched on the bed of sickness for nearly 12 months, suffering during that whole period

¹²⁷ [Anonymous], above n 118, 181.

¹²⁸ [Anonymous], above n 118, 181.

¹²⁹ [Anonymous], above n 118, 182.

constant and excruciating pain, and during part of it experiencing little short of agony.”¹³⁰ There is no reference as to what it was that Highmore was suffering from, but his spirits were maintained, according to his obituarist, from a life well spent as:

[i]t was here that his retrospect of life came to him as a happy dream, unruffled by the recollection of a single misspent day, or a single wasted hour. It was here that his long course of useful charity and active benevolence gave him the sweetest and most consoling recollections. It was here that his exemplary resignation, and his truly religious fortitude, evinced the genuine, humble, though confident Christian. It was here that his daily service to his maker, and his devotional submission to His dispensations, painful as they were, were expressed with a genuine, sustained, and fervent piety, a piety as far as removed from the evanescent zeal of enthusiasm, as from the selfish coldness of apathy. It was here that his exhortations to a good and virtuous course, his comments on the truth and perfectness of our holy religion, his reliance on future salvation through a crucified Saviour, seemed as coming from one standing on the borders of eternity – almost as though one rose from the dead. It was here that in his 71st year, life passed from him without murmur or effort, and seemed only to be exchanged for evident peace and hope!¹³¹

Anthony Highmore’s Will

Highmore’s papers do not seem to have been kept for posterity, as the only document relating to Highmore that I have found at the National Archive was a copy of his Will, dated 1 November 1828, which was proven at London on 4 August 1829.¹³² I had hoped that my discovery of the Will of Anthony Highmore, Gentleman of Dulwich, Surrey, in the Public Record Office at the National Archives,¹³³ might lead me to copies of Highmore’s plan for the exemption of charities from taxes. To James Clift, Highmore had bequeathed “all my law books and furniture which I left in his office as a small token of my wish for his professional success.”¹³⁴ To his wife, Elizabeth, “such of my books as well printed as manuscript as she may select for herself,” and, to his “dear daughter Harriot ... the second choice of my before mentioned books.” Son Anthony was bequeathed “all the rest of my said books and manuscripts.” There are no other references to Highmore’s copious writings in his Will, yet one would assume that Highmore, as a lawyer, would have kept copies of all his correspondence. If they do exist, their whereabouts are a mystery.

¹³⁰ [Anonymous], above n 118, 183.

¹³¹ [Anonymous], above n 118, 183.

¹³² The last Will of Anthony Highmore Esquire, Public Record Office Catalogue Reference: Prob 11/1759 Image Reference: 273, www.nationalarchives.gov.uk/documentsonline/ (downloaded 7 April 2006).

¹³³ PRO, above n 132.

¹³⁴ PRO, above n 132.

Highmore's obituarist described him in what today might be considered the most effusive of terms. Highmore did not let his "great attention to literary pursuits" distract him from his professional responsibilities, "which were ever performed with a peculiarly disinterested conscientiousness, and guided by the most strict and undeviating integrity."¹³⁵ Neither did he allow his literary pursuits:

to trespass upon those duties of a still higher and more important order – *his duties towards his neighbour*, which he ever fulfilled with uninterrupted, unceasing, and unmixed benevolence – his duties towards his God, which he ever performed with the strictest regularity, and with the most humble, the most pure, the most genuine, and most unaffected piety. Such qualities and such pursuits had eminently prepared him for that retirement which he had enjoyed during the last few years of his life at Dulwich, where his extreme urbanity of manners, his peculiar sweetness of temper and disposition, his remarkable singleness of heart, and simplicity of character, his great stores of information, his refined and correct taste, his sound and well regulated judgement, combined with a more than usually easy command of language and flow of conversation, made him the revered and beloved nucleus of his own domestic circle. (Emphasis added.)¹³⁶

Anthony Highmore was, by all accounts, a remarkable person, a man of letters and a person of great integrity who embodied the ideals of Christian charity of the England of the Eighteenth and Nineteenth Centuries. This may well be why so little is known of him, yet at the same time his copious writings reveal a person with the strength of character to speak out on matters of interest and concern to him.¹³⁷

A new history of public charities

Highmore was not the only person with an author's eye for publications on the history of England's charities. In 1806 a new book on the history of public charities was heralded in the *GM*.¹³⁸ In announcing the new history of public charities Highmore again illustrated the extent to which charities in England played a role in society, and his pride in his country, in that:

the Metropolis of Britain deservedly holds a very distinguished rank among the cities of the world: but in a display of public benevolence, she rises into a decided and splendid pre-eminence. ... And in a comparison with modern cities, London ... stands unrivalled; and

¹³⁵ [Anonymous], above n 118, 182.

¹³⁶ [Anonymous], above n 118, 182.

¹³⁷ I intend to submit my findings on Highmore for publication in an academic journal, but not until I have returned to London to undertake further research on him.

¹³⁸ A Biographer, 'A new history of public charities announced' (1806) *The Gentleman's Magazine* 76-ii, 603. The listing in "Attributions" notes that there is some uncertainty about the identity of the author, who is presumed to have been Highmore; de Montluzin, above n 119.

may justly boast, that the variety, number, and liberality of her charitable institutions are unequalled by those of any other mart of commerce, or seat of royalty.¹³⁹

The new history that Highmore announced was a work by one Rev. Richard Yates, who “[had] undertaken to present to the public a circumstantial, comprehensive, and connected historical memoir of the various public charities that adorn the capital of our country, and dignify the British character.”¹⁴⁰

Part III “A Succinct View of the History of *Mortmain*”

Introduction

Highmore’s *Pietas Londinensis* of 1810 was preceded by his study of the history *Mortmain*, which he first published in 1787, and, in a fuller edition, again in 1809. The full title of Highmore’s text is *A Succinct View of the History of Mortmain and the Statutes Relative to Charitable Uses with a Full Exposition of the Last Statute of Mortmain 9 Geo. II c. 36 and its Subsequent Alterations: Comprising the law as it now stands relative to devises, bequests, visitation, leases, taxes, and other incidents to the establishment of Public Charities* (hereafter “*Mortmain*”).¹⁴¹

It was the reference to taxes in the title that had caught my attention. It was out of curiosity, rather than an expectation that I would find anything significant, that I had requested interloan copies of the two editions of *Mortmain*. My curiosity was well rewarded. Part I of *Mortmain* is entitled “The History of *Mortmain*,” Part II, “Of *Mortmain* and Charitable Uses;” and Part III, “Of Several Incidents to Colleges and Charitable Institutions.” It was within Part III that I found Highmore’s discussion on taxes. The contents of Part III, which contains a number of chapters on a variety of issues, are detailed in Table 4 Contents of Part III of *Mortmain*.

¹³⁹ A Biographer, above n 138, 603.

¹⁴⁰ A Biographer, above n 138, 604. I have been unable to locate a copy of Yates book.

¹⁴¹ Highmore, above n 8. The following discussion refers to the 1809 edition of *Mortmain*.

Table 4 Contents of Part III of *Mortmain*

Chapter	Beginning page number	Ending Page number	Number of pages
I <i>Of Visitation</i>	395	431	37
II <i>Of Leases</i>	432	477	46
III <i>Of Taxes</i>	478	504	27
IV <i>Of Evidence</i>	505	518	14
V <i>Of Charitable Loans at Interest</i>	519	527	9
VI <i>Of Nuisance</i>	528	530	3
VIII <i>Of the Agreement between the Corporation of London</i>	531	539	9
VIII <i>Of Friendly Societies</i>	540	549	10
IX <i>Of the Term Public Charities</i>	550	554	5
X <i>Of Charitable Donations in General</i>	555	557	3
XI <i>Practical Notes</i>	558	571	14

While I have not been able to find Highmore’s 1786 “plan for the total exemption of all institutions of charity from taxes,”¹⁴² this may not be as disappointing as at first appears, since Highmore provided a considerable amount of information in that regard in both the 1787 and 1809 editions of *Mortmain*, in the chapter “*Of Taxes, and of Exemption from them* (hereafter “*Of Taxes*”).”¹⁴³ Highmore also provided, as might be expected of a legal writer, references to case law throughout the chapter, which provides further insight into the thinking of the judiciary well before the famous *Pemsel*¹⁴⁴ case of 1891. I have explored a representative selection of those cases with respect to hospitals in this chapter of my Thesis.

Methodology

Having obtained microfilm copies of the 1787 and 1809 editions of *Mortmain*, I was then in a position to be able to compare both editions in order to determine what, if any, substantive changes Highmore made to the earlier edition. The first indication that Highmore had undertaken significant work on the chapter “*Of Taxes*” in the later edition can be seen by simply counting the pages. The contents of the 1787 edition are: Chapter I, “The History of *Mortmain*,” Chapter II, “Of Charitable Institutions, and Devises or Bequests for their Benefit; or Charitable Uses;” Chapter 3 (sic), Sect[ion] I “*Of Exemption from Taxes*,” Sect[ion] 2, “*Hospital Leases*,” and Chapter 4, “Of Visitation.” Section I contains only 11 pages. In the 1809 edition, “*Of Taxes*,” is printed as a chapter in its own right within Part III, and consists of 27 pages. There is a considerable difference in the length of the two editions, as the 1809

¹⁴² Highmore, above n 9, 291.

¹⁴³ Highmore, above n 8, 478-504.

¹⁴⁴ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

edition of *Mortmain* is comprised of some 600 pages, whereas the 1787 edition is approximately 200 pages in length.

In order to compare the two chapters on taxes in the 1787 and 1809 editions, after some trial and error I decided to transcribe the 1787 chapter, including the margin notes of case law and statutes. Then, working from the 1809 edition, I edited the 1787 version by using strike-through to indicate text that had been changed or deleted, and inserted the additional words or text using SMALL CAPS, thus providing a comprehensive document to analyse. The document that I created can be found in the Appendix to this Thesis.¹⁴⁵

“Of Taxes, and of Exemption from them.”

Highmore began the chapter with a glowing description of hospitals, all of which “are erected and maintained for the relief of the poor and afflicted.”¹⁴⁶ In spite of the difficulties of those times:

the whole establishment is a work of mercy; and considering the extreme exigency of latter times, *the liberality of the opulent is a monument of wonder to ourselves and to surrounding nations*: however pressing may have been the demands of the state, however excessive may have been the luxuries and extravagance of the people in an age refined and polished as the present, *still our charitable institutions have continually increased in number, in extent, and in wealth.* (Emphasis added.)¹⁴⁷

Nevertheless, Highmore is not without criticism of the fact that few of the newly established charities:

have yet been so established as to become independent of, or indifferent to their annual contributions; a large capital is necessary to be laid up, before even a moderate income can be secured; and if their wants alone are all supplied, they must be said to flourish under the public favour!¹⁴⁸

As well as a lack of financial capital, the burden of taxes affected the ability of the charities to perform their functions. Highmore was aggrieved that, given the need for large sums of capital to provide a modicum of income, “it should seem extraordinary that any taxes should

¹⁴⁵ Page numbers from the 1787 edition are indicated by (round) brackets, with those from the 1809 edition being indicated by [square] brackets.

¹⁴⁶ Highmore, above n 8, 478.

¹⁴⁷ Highmore, above n 8, 478.

¹⁴⁸ Highmore, above n 8, 478.

ever have been levied upon charities.”¹⁴⁹ While “every part of them, appropriated to the occupation of the afflicted, are exempted,” Highmore was offended at “a seeming injustice to charge the revenues of the institution, with a tax upon those apartments where the officers and servants are lodged.”¹⁵⁰ Highmore’s pragmatic approach to this issue was that:

it is obvious, [that] the servants of an hospital are as essential to it, as any other part of its administration; and the directors would, for their own sakes, and the sake of its revenues, never employ one more than the immediate necessity of the case required.¹⁵¹

Highmore also made a judgment about the extent of tax that charities were paying as a proportion of the total tax revenue collected by the government, when he implied that, as the tax on charities was so small, if it were to be abolished the effect would hardly be noticed by the Government. In Highmore’s opinion:

[t]he heavy charge of assessments upon officers’ apartments, and of 10 per cent. upon all charitable legacies, which are placed on the same footing as those to *strangers in blood* of any testator, and of stamp duties for benefactions and subscriptions [which] form a considerable drawback upon every charity, struggling for the means of payment of its ordinary expenses, ... would not be felt by the state if they were relinquished. (Emphasis added – see footnote.)¹⁵²

Highmore then argued his case from a different perspective, that the tax forgone by way of an exemption, if spread amongst the populace, would have little effect on an individual. At the same time, to tax a charity was to reduce its ability to undertake its charitable activities. Highmore’s argument was that:

if it be alleged, that such an exemption [as he was proposing] would throw the hospital’s share of any tax upon the rest of the people, it is fair and manifest to answer, that the burden, which thus would fall on each individual in any parish or district, is so minute, that if it were not pointed out to him he would never discover it in his annual expenditure; *whereas, the whole share of every tax falling upon any charity very considerably reduces*

¹⁴⁹ Highmore, above n 8, 478.

¹⁵⁰ Highmore, above n 8, 478.

¹⁵¹ Highmore, above n 8, 478.

¹⁵² Highmore, above n 8, 479. The use by Highmore of the phrase “strangers in blood” is deliberate, being taken from Pitt’s 1796 tax on collateral successions (36 Geo III c. 52), which levied a duty of £6 per cent on “collateral relatives and strangers in blood.” Stephen Dowell, *A History of Taxation and Taxes in England from the earliest times to the year 1885* (1888) vol 3 134. In 1799 a Corporation Legacy Duty Exemption Act was passed but I have been unable to locate a copy of the statute. I suspect that public charities were not included in this legislation as in 1909 a request to exempt hospitals from legacy duty was declined. The duty was not a tax on charities; it was a tax on a bequest. House of Commons, ‘Politics and Parliament’, *The Times* (London), 27 June 1799, 2; and *Hansard* “Hospital Requests (Legacy Duty Exemption)” (1909) vol 10 2 September cc 547-8 <http://hansard.millbanksystems.com/commons/> at 29 December 2008.

its revenue, and abridges and restrains the benevolent designs of its institution. (Emphasis added.)¹⁵³

While Highmore also argued that “where property is devoted to the poor, it seems inconsistent to subject any part of it to taxation,”¹⁵⁴ he did not explain why that was so, leaving it to the reader to come to their own conclusion as to why the taxing of such property was “inconsistent.” Was it inconsistent, from Highmore’s perspective, with respect to fiscal or economic policy, social policy, or humanitarian or Christian principles? Regardless, Highmore argued that:

[f]or these reasons, it is humbly recommended to the consideration of the [B]oard of [T]reasury, and, finally, to the legislature, to pass a general Act of exemption of all charitable institutions from all taxes and assessments. For if any part of its lands are let at a profit, still that profit is or ought to be applied for the general benefit of the charity, and therefore should not be made [the] subject of taxation.¹⁵⁵

Land Tax

Highmore also had the Land Tax in his sights, as he then proceeded to discuss the “annual Acts heretofore passed for the Land Tax,”¹⁵⁶ from which “the two universities, the colleges of Eton, Winchester, and Westminster, the corporation for relief of poor widows and children of clergymen, [and] the college of Bromley,”¹⁵⁷ were exempted with respect to the relief of the poor. The Land Tax Acts provided an exemption for:

all hospitals in respect of the sites thereof or buildings within their walls or limits ... and also the lands, which, before 25 March 1693, did belong in the sites of any college or hall, or to Christ’s hospital, St. Bartholomew’s, Bridewell, St. Thomas’s, and Bethlem, or any other hospitals or alms-houses in respect of any rents or revenues, which, before that time, were payable to them, being to be received and disbursed for the immediate use and relief of the poor of the said hospitals and alms-houses only.¹⁵⁸

This was not, as may at first appear, a blanket exemption, since:

in general it was provided, that all such lands, revenues, or rents, belonging to any hospital or almshouse, or settled to any charitable or pious use, as were assessed in 4 Wm. and Mary [of 1694], should be liable, and that no other lands, &c. *then belonging* to any

¹⁵³ Highmore, above n 8, 479.

¹⁵⁴ Highmore, above n 8, 479.

¹⁵⁵ Highmore, above n 8, 479.

¹⁵⁶ Highmore, above n 8, 480.

¹⁵⁷ Highmore, above n 8, 480.

¹⁵⁸ Highmore, above n 8, 480.

hospital or almshouse, or settled to any charitable or pious use, should be charged or assessed. (Emphasis added.)¹⁵⁹

Highmore explained that lands “appropriated to charities” which were exempt in 1694 should place no burden on the community in later years, “for the other lands paid no more on account of such exemption.”¹⁶⁰ In terms of equity, one might well question such thinking today. The problem, according to Highmore, arose from lands “appropriated to charities since that time” that have later become exempt, as the taxes that were originally borne by those lands were then spread over the remaining lands, thus increasing the burden on those lands.¹⁶¹ At first, this appears to be an unusual way of looking at how taxes were raised until it is understood that taxes were levied on parishes which, regardless of the onerous financial burden, were required to provide the government with the sum that had been levied upon them.¹⁶²

Redemption of the Land Tax

Highmore also addressed the issue of the redemption of the Land Tax, such provision having been made in the Land Tax Redemption Act of 1801-2.¹⁶³ The statute for the redemption of the Land Tax provided that:

trustees for charitable and other purposes, college and corporations, as well ecclesiastical as lay, are empowered to contract for the purchase of their Land Tax, and to sell and exchange their lands for that purpose; those who are in possession are preferred to those in reversion, and those in reversion to all who had no interest previous to 1803; after which time they may all redeem it on the same terms, except as to the different periods of transfer, if no other offer should be made.¹⁶⁴

Trust property, including legacies and voluntary donations could be used to redeem the Land Tax.¹⁶⁵ However, the result was that “the profits to the public ... amounted to a very large sum,” with the result being that corporations and trustees for charitable and other purposes

¹⁵⁹ Highmore, above n 8, 480.

¹⁶⁰ Highmore, above n 8, 481.

¹⁶¹ Highmore, above n 8, 481.

¹⁶² This was also an issue regarding rates assessments. A heavy burden was placed on those communities where there was a heavy government presence, such as naval dockyards or other military establishments which were exempt from rating. Highmore noted that “[a]ll questions [concerning] how far any such lands should be taxed were to be determined *finally* on appeal, by three or more of the commissioners.” Highmore, above n 8, 481. See also Chapter 5 of this Thesis for further discussion on the Land Tax.

¹⁶³ *Land Tax Redemption Act* 42 Geo. III c. 116 s. 17 and 19 [1801-2].

¹⁶⁴ Highmore, above n 8, 481. Reversion is defined as: “a returning of a possession to the former owner or his heirs.” E. Coles, *An English Dictionary explaining the difficult terms that are used in Divinity, Husbandry, Physick, Phylofophy, Law, Navigation, Mathematics, and other Arts and Sciences* (1676).

¹⁶⁵ Highmore, above n 8, 481.

were exonerated from the Land Tax “where the whole clear annual income should not exceed £150 without any consideration for the same; provided the annual amount of Land Tax so exonerated should not exceed £6,000.”¹⁶⁶ In 1809 the Acts for the redemption and sale of Land Tax were consolidated, and “further provision [was made] for exonerating small livings and charitable institutions from the Land Tax.”¹⁶⁷

Case law

Having addressed in considerable detail the issue of the redemption of the Land Tax, Highmore then turned his attention to case law. As Highmore had not argued in 1786 for an exemption from Income Tax (Income Tax not having been introduced until 1799), but for an exemption from taxes, the question then arises as to which taxes hospitals, in 1786 and in 1809, were liable. Highmore conveniently provided an historical overview of the case law of the time, which also gives an insight into the forms of tax against which he had argued.¹⁶⁸ I have commented on a selection of the cases concerning hospitals, due to the sheer number of cases that Highmore had cited.

Highmore began with a discussion of the Poor’s Rate of 43 Eliz. c. 2 and an unnamed case upon the same from which Highmore quoted Holt C.J.:

[a]ll lands within a parish are to be assessed to the Poor’s Rate. Hospital lands are chargeable to the poor as well as others; for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes *to which they were subject before*, and throw a great burden upon their neighbours. (Emphasis added.)¹⁶⁹

Holt C.J.’s decision was subsequently overturned by Lord Mansfield who considered that, with respect to St Luke’s hospital, a hospital for lunatics, “was not chargeable to the parish rates; and that in general no hospital is so.”¹⁷⁰ This was not because of the house in question being “given to charitable purposes” for use as an hospital, but because “there was no person who could be said to be the occupier of it.”¹⁷¹ Had there been an occupier, while the Land

¹⁶⁶ Highmore, above n 8, 482.

¹⁶⁷ Highmore, above n 8, 482. The term “small livings” referred to the meagre incomes of the clergy.

¹⁶⁸ I spent some considerable time in an attempt to compile a volume of the cases Highmore had cited, but there were a number of case law reports to which I did not have access, such as Bott’s Poor Law Settlement Cases (1761-1827); Nolan’s Magistrate’s Cases (1791-2); and Burrow’s Settlement Cases.

¹⁶⁹ Highmore, above n 8, 483 citing 2 Salk 527. Highmore does not oblige by providing the name of the case in most of the examples he cites. This case was titled “Anonymous,” Pasch. 1 Ann. B.R., 2 Salk 527 in *The English Reports*, vol XCI KB Division XX, 448.

¹⁷⁰ Highmore, above n 8, 483. *Rex v. Occupiers of St Luke’s Hospital* Burr. 1053; 2 Burn. Eccl. Law 286.

¹⁷¹ Highmore, above n 8, 488.

Tax Acts exempted the property, no such exemptions existed in those Acts “respecting the relief of the poor.”¹⁷²

The position was that any part of the hospital that was “inhabited by the officers belonging to the hospital, as the chaplain and the physician,” were liable for rating as the officers were deemed to be “occupiers.”¹⁷³ Not only were they “occupiers,” they were deemed to be “beneficial occupiers and therefore held liable to the Poor Rate.”¹⁷⁴ In contrast, “it was said that the objects themselves of a charity, though beneficial occupiers, did not come within the meaning of 43 Eliz. c. 2.”¹⁷⁵ Highmore explained that the reason why that part of the premises of a hospital which was used for the treatment of patients was not liable for assessment was because the patients “in this hospital of the sick or mad persons:”

[were not] the occupiers ...for it would be absurd to call the poor objects so with respect to this purpose; and the lessees of the hospital in trust for the charitable purposes to which it is applied, cannot with any propriety be considered as the occupiers of it, although part of its site may have paid poor’s rate before its appropriation to that purposes.¹⁷⁶

St. Luke’s case had ramifications for the Smallpox Hospital, for the House Duty Act 1777-78, at s. 35, provided an exemption for which the hospital qualified.¹⁷⁷ Highmore described this situation thus:

[i]t is upon the equity of the decision on St. Luke’s hospital, that the assessors usually levied only upon officers’ apartments in all the taxes charged upon the hospitals. But in the original Act for levying a duty on inhabited houses, called the *House Tax*, there was a clause of exemption without this reserve; and on that ground the Smallpox Hospital was relieved *in toto*, on appeal to the Commissioners in 1807.¹⁷⁸

Once again, Highmore tantalises, this time with his reference to the appeal by the Smallpox Hospital to the commissioners.¹⁷⁹ Returning to the matter of charities being exempt from certain taxes, Highmore elucidated that:

¹⁷² Highmore, above n 8, 488.

¹⁷³ Highmore, above n 8, 483.

¹⁷⁴ Highmore, above n 8, 488.

¹⁷⁵ Highmore, above n 8, 491. *An Act for the relief of the poor* 43 Eliz. c. 2 [1601].

¹⁷⁶ Highmore, above n 8, 483.

¹⁷⁷ Highmore, above n 8, 493. *House Duty* 18 Geo. III c. 26 [1777-78].

¹⁷⁸ Highmore, above n 8, 493.

¹⁷⁹ The first was being unable to discover any of Highmore’s documents from 1786 concerning the exemption of charities from tax. This is another issue that I wish to follow up on a future visit to London, to undertake further research on the taxation of charities.

[b]ut by the last [A]ct for raising the Assessed Taxes,¹⁸⁰ the Duty on Windows and on Inhabited Houses is excepted as to any hospital, charity-school, or house provided for the reception or relief of poor persons; except such apartments therein as are occupied by the officers or servants thereof, which are made subject to the same duty, according to the number of windows contained in each, as entire dwellings and other inhabited houses: and chambers at either of the universities or inns of court are liable to the duties as separate tenements. The same [A]ct ... exempts ... the [R]oyal [H]ospitals of Christ, St. Bartholomew, Bridewell, Bethlem, and St. Thomas; and also Guy, and the Foundling.¹⁸¹

It is curious that, while referring to the various taxing Acts which impacted on the Smallpox Hospital, Highmore made no mention of Pitt's Duties upon Income Act 1799,¹⁸² and its specific exemption for charitable institutions.¹⁸³ Instead, Highmore merely stated that, "[i]n the statute of 1803, for levying duty on property, the revenues and income of lands and funds of charitable institutions were exempted. This Act was repealed by 46 Geo III c. 65 [in] 1806."¹⁸⁴ Highmore then listed the exemptions from the duties, including the charitable purposes exemption, as provided at Schedule A, No. 6 of 46 Geo III c. 65 [1806], which provided for allowances to be made in respect of the duties in Schedule A:

[o]r on the rents and profits of messuages lands tenements or hereditaments belonging to any hospital public school or alms-house or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes.¹⁸⁵

Sabine noted that "[t]he period 1806-16 saw no significant changes in the law or administration of Income Tax. ... Income Tax was now settling down and securing a general, if somewhat, reluctant acceptance. Between 1806 and 1815, for instance, even the most casual references to Income Tax are very few."¹⁸⁶ Highmore's *Mortmain* supports Sabine's observation, for Highmore's discussion on the Income Tax is matter of fact, and reveals no difficulties being experienced by charities claiming refunds of Income Tax that had been deducted at source.

¹⁸⁰ Highmore cited the *House Tax* 48 G. III c. 55 [1808] in the margin to his text. The Assessed Taxes comprised a variety of taxes: Inhabited Houses; Windows; Male Servants; Horses; Dogs; and Carriages and Carts.

¹⁸¹ Highmore, above n 8, 493.

¹⁸² *An Act to repeal the Duties imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties* 39 Geo. III c. 13 [9 January 1799].

¹⁸³ Pitt's 1799 Act and its successors through to 1891 are discussed at Chapter 5 of this Thesis.

¹⁸⁴ Highmore above n 8, 500. While the statute of 1803 (43 G. III c. 122) was indeed repealed by 46 G. III c. 65 [1806], the Act was only repealed in part, whereas 46 G. III c. 65 provided duties additional to those in 45 G. III c. 15 [1805].

¹⁸⁵ Highmore, above n 8, 501.

¹⁸⁶ B.E.V. Sabine, *A History of Income Tax* (1966) 39.

Claims for refunds of Income Tax

Following the introduction by Addington in 1803 of deduction at source, charities were for the first time caught in the tax net. Sabine has observed that:

Addington, as Chancellor of the Exchequer, has hardly been used by historians. There is no doubt about the fact that by adopting the five schedule system and the mechanism of deduction of tax at source, he achieved almost as big a breakthrough as Pitt in his changeover from a tax on expenditure to a tax on income.¹⁸⁷

In 1805 Pitt, “a dying man, brought in his last Budget.”¹⁸⁸ His contribution to the history of tax and charities was to create the Commissioners for the Special Purposes of the Income Tax, in order to administer claims for relief under Schedule A and Schedule C concerning the charitable purposes exemption.¹⁸⁹ Then, in 1891, the Commissioners for the Special Purposes were immortalised in charity case law by Lord Macnaghten in the *Pemsel* case.¹⁹⁰

Highmore’s *Mortmain* provided an explanation of how refunds of Income Tax were to be claimed from the General Commissioners then, from 1805, the Special Commissioners:

[a]s soon as the trustee or agent for the charity has paid [the duties chargeable], it is necessary for him to address a letter to the Special Commissioners, stating the amount and soliciting the return; he will in a short time afterwards receive a printed affidavit, filled up at their office conformably with his return, stating that the premises in question are wholly occupied for the purposes of the charity, noticing the resident officer’s apartments. This affidavit must then be signed and sworn before a commissioner acting for his district, for which no fee is demanded; and when it has been transmitted to the Special Commissioners, a certificate will be returned for re-payment of the duty at the office of the receiver-general of the county.¹⁹¹

Highmore made another comment on the manner in which applications for refunds of Income Tax were handled by the Special Commissioners and the Bank of England, as:

¹⁸⁷ Sabine, above n 186, 37.

¹⁸⁸ Sabine, above n 186, 38.

¹⁸⁹ John F. Avery Jones, ‘The Special Commissioners from Trafalgar to Waterloo’ (2005) 1 *British Tax Review* 40, 46 and 48. The position was created by s. 30 and ss. 73-85 of the Income Tax Act 45 Geo III. c. 49.

¹⁹⁰ *Pemsel*, above n 144.

¹⁹¹ Highmore, above n 141, 501. Highmore’s otherwise detailed account did not refer to the Special Commissioners by referring to the Act of 1805 which created them.

[h]aving occasion at every quarter of the year to make this application, I cannot forbear my humble testimony to the facility with which this arrangement is conducted, so as to create neither trouble to the parties, or unnecessary delay in the payment.¹⁹²

Highmore did not declare for which charities on whose behalf he had submitted those claims, possibly due to a conflict of interest arising in his capacity as the legal adviser to, or officer of, those charities preventing him from making such a disclosure in a public document.

“Of the Term Public Charities”

Highmore’s *Mortmain* provides further valuable information on the charitable purposes exemption in the chapter “*Of the Term Public Charities* (hereafter “*Public Charities*”),” as that chapter presents evidence of the extent to which charities were provided with exemptions under statutes other than Income Tax. According to Highmore:

[t]he legislature has also, *in most if not all of its Revenue Acts*, recognised charitable institutions in general terms, whether corporate or not, by exempting the scite [sic], buildings, and funded property from the duties otherwise chargeable; whereby their lands have been left out of the valuations, and the value of the officers’ apartments only have been rated, and the duty retained out of the dividends on their funded property has been returned. The poor-rates, highway-duties, church-rates, and other assessments are made upon the same principle, and the officers’ apartments only are charged as single tenements. (Emphasis added.)¹⁹³

Highmore also provided a possible clue as to the historical basis of the exemption in his statement that:

[w]hatsoever hospital or charitable institution is founded by subjects, under the benevolent privileges granted originally by the Act of Eliz. [sic] is thus comprehended and recognised as a public charity, by being made subject to parliamentary regulation, not only in cases of revenue, but in the statutes that relate to visitation. The great encouragement and support thus given to charitable institutions, by legislative and general protection, have formed the basis of their establishment, and the promotion of their extensive and general progress.¹⁹⁴

Highmore did not identify the statute of Elizabeth to which he had referred, nor is it particularly clear what he meant by “under the benevolent privileges granted originally by the

¹⁹² Highmore, above n 8, 503.

¹⁹³ Highmore, above n 8, 551.

¹⁹⁴ Highmore, above n 8, 551.

act of Eliz[abeth].” After discussing what constituted a “public charity,”¹⁹⁵ Highmore then commented that:

indeed where charities are particularly named, or [where] any provision [is] made for them in any legislative [A]ct, there cannot arise any doubt of their publicity ... [as] by the [A]ct for levying a Duty on Property, 46 Geo. 3 c. 65 [1806] ... And also in the *universal acquiescence* with the decision relative to taxation, either of Land Tax, House or Window Tax, highway-duty, or consolidated rates, in which their scite (sic) and buildings are left out of the valuation, ... the assessments are made on the officers’ apartments only as single tenements. *In all these cases, and in others which might be suggested, they must be deemed public charities.* (Emphasis added.)¹⁹⁶

Although Highmore made a direct reference to the Property Tax of 1806, and other taxes that concerned charities, he did not make any specific reference to the charitable purposes exemption from Income Tax, yet he referred to “the universal acquiescence with the decision relative to taxation.” What is so tantalising is that I have not been able to find any evidence of “universal acquiescence” between 1786 and 1809, unless one supposes that the fact that the exemptions provided from the various forms of taxation is evidence of “acquiescence.”

Highmore concluded his discussion on public charities with the comment:

I conceive that the establishment of any charity by Act of Parliament] is sufficient to give it that character which is necessary to constitute it a public charity, several of which are enumerated in a preceding part of this work [*Of Mortmain and Charitable Uses*] and to which may be added Friendly Societies already mentioned.¹⁹⁷

Returning to the question, to which of Elizabeth’s statutes had Highmore referred, the answer may be found in *Mortmain* in the chapter “*Of the Law of Charitable Uses, from the Reformation till the 9th Geo. II.*”¹⁹⁸ A statute, passed in the first year of Elizabeth’s reign, that is in 1558, entitled *An Acte For the Restitution of the First Fruites and Tenths, and Rentes reserved Nomine Decime, and of Parsonages Improprate, to Thimperiall Crowne of this Realme*,¹⁹⁹ contained an exemption clause thus:

¹⁹⁵ “I conceive that the establishment of any charity by act of [P]arliament, as sufficient to give it that character which is necessary to constitute it a public charity” Highmore, above n 8, 554.

¹⁹⁶ Highmore, above n 8, 554.

¹⁹⁷ Highmore, above n 8, 554. The public charities to which Highmore had referred were: The two universities; the colleges of Eton, Winchester, and Westminster; the Bath Infirmary; London Hospital; the Foundling Hospital; the Magdalen Hospital; Rugby School; Downing College; and Queen Anne’s Bounty. Highmore, above n 8, 372.

¹⁹⁸ Highmore, above n 8, 372.

¹⁹⁹ 1 Eliz. c.4, *The Statutes of the Realm* (1993) vol 4 Part 1 359.

[a]fter the reformation, when seminaries for education and hospitals began to be founded, Queen Elizabeth, in the act she procured for restitution of first-fruits to the crown, by a special proviso, shews her regard to religion and humanity; whereby it is declared that “nothing in the Act shall extend to charge any hospital, founded and used, and the possessions thereof employed to the relief of poor people, or any school, or the possessions thereof, with the payment of any Tenths or First-fruits.”²⁰⁰

Fourteen years later, in 1571, wrote Highmore:

wherefore to obviate [the difficulty of an hospital not being clearly named by a testator], we find an Act which appears evidently made for the benefit of Christ’s Hospital, St. Thomas’s, and St. Bartholomew’s, but it includes also all other hospitals.²⁰¹

This Act, entitled *An Act for the better assurance of gifts grants etc. made and to be made for the relief of the poor in the hospital within and near unto the City of London of Christ Bridewell and St. Thomas’s*,²⁰² was followed, in 1597-8, by *An Act to reform deceipts [sic] and breaches of trust touching lands given to charitable uses*.²⁰³ According to Highmore, the purpose of the Act was “for awarding commissions to inquire of lands or goods given to hospitals, or other charitable uses misemployed, and to reform them: but this was repealed in about four years afterwards, ...”²⁰⁴ That is, in 1601, by 43 Eliz c. 4, which also exempted, from the commissioners’ visits, those “colleges, hospitals, or free schools ... [having] special visitors or governors, or overseers appointed them by their founders.”²⁰⁵ Highmore explained that:

²⁰⁰ Highmore, above n 8, 49. The actual text of the relevant clause of the statute is: “XIII Hospitals and Schools exempted from Tenths and First Fruits. Provided also that this Acte or any Thing therein conteyned shall not in any wise extende to charge anny Hospitall founded and used, and the Possessions therof employed to and for the Relief of poore People, or anny Scoole or Scooles or the Possessions or Revenues of them or any of them, with the payment of any Tenthes or First Fruites; Any thing in this Acte before mentioned to the contrarye in any wise notwithstanding.”

²⁰¹ Highmore, above n 8, 49. Highmore noted, at 53, that “[p]ersons within age, women covert without their husbands, and not [insane], are excluded from making or endowing such corporations.”

²⁰² [*An Act for the better assurance of gifts, grants, &c made and to be made, to and for the relief of the poor in the hospitals, in and near unto the city of London, of Christ’s, Bridewell, and St. Thomas the Apostle* 14 Eliz. c.14 [1572].

²⁰³ *Commissions may be awarded to certain persons, to enquire of lands or goods given to hospitals, or other charitable uses, misemployed, and to reform [Charitable Trusts]* 39 Eliz. c. 6 [1597].

²⁰⁴ Highmore, above n 8, 54.

²⁰⁵ *An Act to redress the misemployment of lands goods and stocks of money heretofore given to Charitable Uses* 43 Eliz. c. 4 [1601] s. III.

[a] visitor being then of necessity created by the law (as 8 Ed. III, 69, 70), every hospital is visitable, either by the patron if a lay hospital, or by the ordinary if spiritual. He is to judge according to the statutes and rules of the college.²⁰⁶

That the concept of “charity” was considered, in Elizabethan England, to be more than relief of the poor, and that charities were an essential part of every-day life, is revealed in Highmore’s observation that “[t]he preamble of [43 Eliz. c.4] sufficiently shews [sic] how the humane disposition of the crown and people had extended and branched itself forth into a very numerous class of public charities, which have since greatly multiplied.”²⁰⁷ Highmore also explained that:

[t]he construction of charitable uses in the statute of 43 Eliz. c. 4. goes much beyond the relief of the poor; the term extends, as appears by the preamble, to the repair of bridges, ports, highways, &c. *and therefore implies a gift to the rich as well as the poor;* (Emphasis added.)²⁰⁸

Therefore, as a consequence of the passing of 43 Eliz c.4:

it became necessary for the courts to define, upon the principles of the reformation, what was and what was not a “charitable use” ... “superstitious uses” within 1 Ed. VI c. 14. ... became forfeited to the crown; but if any charitable use was intermingled with the superstitious use, there the crown only took so much as was devoted to the latter.²⁰⁹

“Hence,” stated Highmore, “it was also held, that all which were not superstitious uses ... became charitable uses [in accordance with the Preamble to 43 Eliz c.4] [including] the founding of hospitals, ... setting up bells, &c.”²¹⁰ “Charity,” maintained Highmore:

in its original sense, denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses is it employed by the court. There its signification is derived chiefly from the Statute 43 Eliz. c. 4.²¹¹

This quote from Highmore resonates, for Highmore is citing none other Sir W. Grant M.R., in his judgment in *Morice v The Bishop of Durham*, although Highmore did not acknowledge

²⁰⁶ Highmore, above n 8, 407. I have not been able to identify the Act of Edward III (The Confessor) to which Highmore referred.

²⁰⁷ Highmore, above n 8, 59.

²⁰⁸ Highmore, above n 8, 93.

²⁰⁹ Highmore, above n 8, 59.

²¹⁰ Highmore, above n 8, 59.

²¹¹ Highmore, above n 8, 60.

the source.²¹² Highmore's earlier reference to "the principles of the reformation" is evidence of the Protestant concept of charity in England, as Highmore considered that the concept of charity was strongly influenced by Protestant religious principles. His explanation was that "[t]he reason for the legislature promoting such incorporations was obvious; they desired to see public charity, and the protestant interest, well rooted among the people"²¹³

Part IV Influencing factors

The taxation of charity hospitals

In the Assessed Taxes Act 1798, Pitt provided an exemption for "the Royal or public hospitals, or any chambers or apartments therein used or occupied for charitable purposes."²¹⁴ This was not the first time that the phrase "charitable purposes" had been used in a taxing statute, as the phrase is also to be found in a 1797 Act which levied duties on clocks and watches, but exempted "any hospital or other building erected and maintained for charitable purposes."²¹⁵ Commonly, the phrase used to exempt charitable activities described instead the nature of the entity, such as a "free school," hospital, or almshouse, and concluded the relevant section with the admonition use and relief of the poor," instead of "charitable purposes," as in the first Land Tax Act in 1688.²¹⁶

On 5 December 1797, during the debate on the Assessed Taxes Bill, a set of six resolutions proposed by Pitt were reported in full in *The Times* of 6 December.²¹⁷ None of those resolutions contained any reference to charitable institutions. However, the possible impact of Pitt's plan on altruism was brought to the attention of the House by Hobhouse who declared that:

²¹² *Morice v The Bishop of Durham* (1804) 9 Ves. 399, 405.

²¹³ Highmore, above n 8, 54. I wonder how the concept of charity in law would have developed, had England remained faithful to the Church of Rome. Would it have developed in the same way had Henry VIII not succeeded in his Reformation? Having found a text written by a Jesuit, I suspect not. See Gérard Gillemann, S.J., *The Primacy of Charity in Moral Theology* (1959), translated from the second French edition by William F. Ryan, S.J., and André Vachon, S.J. See also Thomas Aquinas, *Summa Theologica* (Fathers of the English Dominican Province, revised by Daniel J. Sullivan, 1952 reprinted 1989 Robert Maynard Hutchins ed) Question XXII Of Charity in Itself (In Eight Articles) 482 *The Summa Theologica of Saint Thomas Aquinas*.

²¹⁴ *An Act for granting to His Majesty an aid and contribution for the prosecution of the war* 38 Geo. III c. 16 [12 January 1798] s. XIX.

²¹⁵ *An Act for granting to His Majesty certain duties on clocks and watches* 37 Geo. III c. CVIII [19 July 1797] s. XXIII.

²¹⁶ *An Act for a grant to their Majesties of an aid of twelve pence in the pound for one year for the necessary defence of their Realms* 1 Will. & Mar. c. 20 [1688] s. XIX.

²¹⁷ 'Parliamentary Intelligence', *The Times* (London), 6 December 1797, 2.

[i]t has been said, that this tax will not affect the poor. I know it is the object of the right hon. Gentleman's plan to exclude the indigent from its operation: he may shelter them from the immediate, but he cannot from its remote effects. *The British nation has always been characterized for the liberality with which its charitable foundations are endowed, as well as for the spirit with which benevolent subscriptions are always promoted.* But this tax will prevent the diffusions of that philanthropy for which the nation is so justly distinguished. Persons will no longer have a superfluity, which may enable them to relieve their distressed brethren; they must look only to provide a sufficiency for the tax-gatherer. A selfish [selfishness?] will succeed to that generous and compassionate disposition which has hitherto marked us as Britons. The tax upon wine has occasioned many of those who were in the habit of assisting the poor with wine, to discontinue the practice of affording them that help under sickness. (Emphasis added.)²¹⁸

On 30 December 1797, the Bill “was ordered to be ingrossed, to be printed with the amendments, and to be read a third time on Wednesday next.”²¹⁹ On the following Wednesday, 3 January 1798, Pitt moved that “the Bill for granting additional duties on the amount of certain duties, now charged by assessment, having undergone various modifications in the committee ... be now read a third time.”²²⁰ While exemptions were again brought up during the course of debate, but only in respect of “the lower orders of society ... the middling ranks”²²¹ in that those “who have not sixty pounds are wholly exempted,”²²² still there was no specific exemption for charitable purposes. On this day also, for the first time in the course of the debate on the Assessed Taxes Bill, charitable institutions were mentioned. Immediately after the motion for the third reading, Mr Thomson declared that:

[Pitt] would destroy all charitable institutions, which it would no longer be possible to maintain. Persons in the middling ranks of life would no longer be able to give proper education to their children; and thus public morals, which so much depends upon the information of that class, would be destroyed. (Emphasis added.)²²³

Expressing his discontent and mixing his concerns for the middle classes and charities, *The Times* reported that Thomson had said that he did not believe that Pitt:

would venture to walk along the streets and contemplate the desolation occasioned by his tax upon houses. Not to mention the annihilation of our trade, and of our credit, what

²¹⁸ *The Parliamentary History of England*, (1818) vol XXXIII 24 November 1797 1085.

²¹⁹ *The Parliamentary Register*, (1798) vol IV 520.

²²⁰ *The Parliamentary History of England*, above n 218, 1146.

²²¹ *The Parliamentary History of England*, above n 218, 1173.

²²² *The Parliamentary History of England*, above n 218, 1178.

²²³ ‘Parliamentary Intelligence’, *Oracle and Public Advertiser* (London), 4 January 1798, Issue 19822.

would gentlemen think of the interdict on the education of the poor, whose school-houses would be shut up by this tax? What of the middle classes, placed in a nearly similar situation by certain clauses of the Bill? *The situation of public hospitals was equally to be regretted.* (Emphasis added.)²²⁴

What Thomson meant by his reference to public hospitals was not reported. However, the *Whitehall Evening Post* provided a dramatic commentary on Thomson's performance, which leads me to believe that the newspaper was being extremely liberal with its artistic licence, in attributing Thomson, on rising to speak, with having:

expressed his detestation to the Bill *in toto*. Never was there a measure adopted of so arbitrary and desporic [sic] a nature. The present scale of assessment, with all the modifications which had been adopted, was still glaringly partial and unequal. A Bill of a more audacious nature was never brought into that House. The consequence of it would be fatal and ruinous to the extreme. *What would become of those hospitals, infirmaries, and dispensaries, which were now the glory of the metropolis? What would become of those charity schools in every parish supported by voluntary contributions, if this assessment took place? It was impossible they could be continued.* (Emphasis added.)²²⁵

Now a clearer picture of the effect of the Assessed Taxes Bill on charitable institutions was beginning to emerge. Yet *The Parliamentary Register* merely stated that Thomson had described the Bill as an “insupportable weight upon the poor,” and, “[i]n short, a tax on poverty.”²²⁶ In an oblique reference to charity schools, *The Parliamentary History* credited Thomson with having said that the Bill “would put an end to private bounty, destroy the morals and intellects of the rising generation, by abridging their parents of the means of educating them; and would totally annihilate the education of the poor.”²²⁷ Neither Pitt, nor any other member of the House, responded to Thomson's concerns, but Thomson may have inspired an event that was to occur two days later.

Finally, on 4 January 1798 the motion “that the said Bill be now read the third time” was put to the House of Commons, and with the Yeas 196 and the Noes 71, the Bill “was resolved in

²²⁴ ‘Parliamentary Intelligence’, *The Times* (London), 4 January 1798, 2.

²²⁵ ‘Parliamentary Intelligence’, *Whitehall Evening Post* (London), 2 January 1798, Issue 7979. Parliamentary reporting in 1798 was nothing like it is in the Twenty-first Century. Aspinall noted that it was not “until 1908 [that] parliament tardily decided to have debates officially reported.” Until then, “the newspapers were the principal sources drawn upon by *Hansard* and its predecessors.” A. Aspinall, “The reporting and publishing of the House of Commons’ debates 1771-1834” in Richard Pares and A.J.P. Taylor (eds), *Essays presented to Sir Lewis Namier* (1956) 232.

²²⁶ *The Parliamentary Register*, above n 219, 524.

²²⁷ *The Parliamentary History of England*, above n 218, 1147.

the affirmative and the House adjourned at five o'clock in the morning."²²⁸ *The Parliamentary Register* of 5 January 1798 recorded "that several clauses were added as riders to the Bill,"²²⁹ one of those being that "[a]n indemnity was introduced in favour of Royal and other hospitals, &c."²³⁰ These latest events are not recorded in *The Parliamentary History*, but were reported in the daily newspapers. The *Evening Mall* noted that "[a] clause to exempt from the Bill all chambers and apartments in hospitals, occupied for charitable purposes" was one of a number of clauses proposed as "riders to the Bill."²³¹ *Bell's Weekly Messenger* stated that "[a]n indemnity was introduced in favour of Royal and other hospitals, &c."²³² *The Times* reported that the Chancellor of the Exchequer had proposed several clauses, one of which was "to exempt from the Bill all chambers and apartments in hospitals, occupied by persons for charitable purposes."²³³

The *Gentleman's Magazine*, in reporting on the exemption for hospitals, added that "charitable foundations" were also to benefit. The *Gentleman's Magazine* of 5 January informed its readers that:

Mr Pitt brought up some clauses as ryders [sic] to the Bill. One was, to exempt all hospitals and charitable foundations; which caused Mr Serjeant Adair to remark, that he thought the houses in which the officers belonging to those institutions reside ought not to be exempted. He proposed an amendment; which was agreed to.²³⁴

The *Gentleman's Magazine* made no comment on the nature of Adair's amendment. However, the *Morning Chronicle* provided a clue as to the rationale of the amendment, as the *Morning Chronicle* reported that "[t]o prevent evasions in the exemptions, it is not to extend to such houses as had not been used in lodgings and furnished houses, or offered to be let for those purposes for twelve months before this Act."²³⁵ That same clause is reported in *The Parliamentary Register*, immediately after the indemnity clause for hospitals, and may well

²²⁸ *The Parliamentary History of England*, above n 218, 1274.

²²⁹ *The Parliamentary Register*, above n 219, 641.

²³⁰ *The Parliamentary Register*, above n 219, 642.

²³¹ 'Parliamentary Intelligence', *Evening Mall* (London), 5 January 1798. 'British Parliament', *Star* (London), 6 January 1798, Issue 2930.

²³² 'Assessed Tax Bill', *Bell's Weekly Messenger* (London), 7 January 1798, Issue 89.

²³³ 'Parliamentary Intelligence', *The Times* (London), 6 January 1798, 2.

²³⁴ Proceedings in Parliament, 1797-8, House of Commons, *The Gentleman's Magazine* vol LXVIII, Part II (1798) 683.

²³⁵ 'Assessed Taxes Bill', *The Morning Chronicle* (London), 6 January 1798, 2.

have been Adair's amendment, but I can only suppose that, as no person is attributed by either publication with having proposed the evasions clause.

Kearsley's Tax Tables

Kearsley's *Annual Ten-penny Tax Tables for the Year 1798* detailed the sections relating to hospitals as follows:

HOSPITALS. Nothing herein shall charge the additional duty on the amount of the duties on houses, windows, or lights, in respect of any of the Royal or public hospitals, or any chambers or apartments therein used or occupied for charitable purposes.²³⁶

The relevant section of the Assessed Taxes Act stated:

XIX. That nothing herein contained shall be construed to extend to charge the said additional rate or duty on the amount of duties payable on houses, windows, or lights, in respect of any of the Royal or public hospitals, or any chambers or apartments therein used or occupied for charitable purposes.²³⁷

Kearsley's *Tax Tables* also noted, under "Assessed Taxes. II *Clocks and Watches*," that the duty chargeable under 37 Geo III. c. 108 [1796-7] was not chargeable on "any hospital or other building for charitable purposes."²³⁸ "Houses for the reception of the poor" were exempt from the Duty upon Houses 19 Geo. III c. 59 [1778-9]; and "charity schools, and houses provided for the relief of poor persons; likewise hospitals except apartments for officers," were exempt from the Window Duty of 36 Geo. III c. 117 [1795-6]. However, Kearsley was not as specific as he might have been, with respect to the exemption for houses provided for the relief of poor persons, as the Duties upon Inhabited House Act 1778 contained what I consider to be the first such exemption for hospitals from the house tax.²³⁹

The Duties upon Inhabited Houses Act 1778 provided:

[t]hat nothing herein contained shall extend, *or be construed to extend*, to charge or make liable any hospital, or house provided for the reception and relief of poor persons, to the payment of the rate or duty to be laid by virtue of his Act. (Emphasis added.)²⁴⁰

²³⁶ Kearsley's *Annual Ten-penny Tax Tables for the year 1798*, (1798) 10.

²³⁷ *An Act for granting to his Majesty an aid and contribution for the prosecution of the war* 38 Geo. III c. 16 [12 January 1798].

²³⁸ Kearsley, above n 236, 2, *Duties on clocks and watches* 37 Geo. III c. 108 [1796-7].

²³⁹ *An Act for granting to His Majesty certain duties upon all inhabited houses within the kingdom of Great Britain* 18 Geo. III c. 26 [1778].

²⁴⁰ *An Act ...*, above n 239, s. XXXV.

Therefore, it is evident that a precedent for exempting charitable institutions from various forms of tax existed in the statute books of the late Eighteenth Century. My conclusion is that the exemption for the Royal and public hospitals was added only as an afterthought, presumably on the realisation that it had been inadvertently omitted from the Assessed Taxes Bill, due to the fact that it was remembered that a set of historical precedents justifying such an exemption existed. The fact that members of the House of Commons did not have all the details before them until the last stages of the Assessed Taxes Bill may also have played a factor in the exemption for the Royal and public hospitals being included as a rider to the Bill. How the exemption came to be included in the dying stages of the Bill remains a mystery for another researcher to resolve.

The financial status of England's hospitals

In the absence of financial records, the extent to which hospitals in the Eighteenth Century were affected by taxes being a drain on their funds is difficult to state with any degree of accuracy, and further research in this regard is warranted. However, an article in *The Times* of 1792, following an enquiry by a Select Committee appointed by the Governor's of Bridewell Hospital, an hospital "for the correction of idle vagabonds,"²⁴¹ and Bethlem Hospital, "the first hospital to become famous as a refuge for the insane,"²⁴² into "the Revenue, Expenditure, and Management," provides an interesting perspective of those hospitals at that time.²⁴³ *The Times* published an extract from the Governor's report, which stated that:

[the Governors] reported that the Court and Cash Books have been lately very irregularly kept, and extremely obscure and defective. By the statements made, it appears, that £5,957 11s has been expended on the Apprentices, and £7,493 16s 4d in maintaining the Vagrants, (the only two objects of the charity of Bridewell since 1775) whereas it has cost in the same period £19,254 9s 4d in salaries &c. of the Officers employed in the management, besides £6,341 6s 1d for taxes, view of estates, &c. and £3,234 9s 1d in feasts, making together £28,829 15s 6d and what appeared to the Committee as very extraordinary, the further enormous sum of £17,332 19s 7d for repairs at the Hospital of Bridewell alone. [The Governors] are of the opinion [that] the disbursements may be greatly reduced, and the savings more usefully and properly applied. ... the salaries of the different Officers [are to] be reduced or annihilated. (Emphasis added.)²⁴⁴

²⁴¹ Dainton, above n 48, 33.

²⁴² Dainton, above n 48, 140. Bethlem Hospital was also known as Bedlam (Dainton 153), hence the well-known saying "to create bedlam."

²⁴³ [Editorial], *The Times* (London), 31 May 1792, 2.

²⁴⁴ [Editorial], above n 243.

The Governors also reported that £500 was to be retained “only to answer contingencies,” with “£4,854 2s 6d to be vested in the public funds.”²⁴⁵ From the figures contained in the report in *The Times*,²⁴⁶ it is possible to calculate the application of the total funds of Bridewell Hospital for the period under review by the Governors, from which the amount of tax paid as a percentage of the hospital’s total funds can be crudely stated (in that the figure includes items other than solely taxes), as in Table 5 The expenditure of Bridewell Hospital:

Table 5 The expenditure of Bridewell Hospital

Category	£ s d	%
Contingency fund	500 0 0	0.7
Invested in public funds	4,854 2 6	7.5
Apprentices	5,957 11 0	9.2
Vagrants	7,493 16 4	11.5
Salaries	19,254 0 4	29.6
Taxes, view of estates, &c.	6,341 6 1	9.8
Feasts	3,234 9 1	5.0
Repairs at Bridewell Hospital	17,332 19 7	26.7
Total Expenditure	£64,968 4 11	100.0

There are two items in Table 2 that warrant a brief comment. The first is the proportion of funds used to fund salaries, at nearly 30 per cent, and the second is the cost of feasts, at what might appear to be a modest 5 per cent of the total. However, £3,234 was a considerable sum of money to spend on feasts and, in 1863, the Governors of St Bartholomew’s Hospital felt the wrath of William Gladstone over the expenditure of a considerably smaller sum.²⁴⁷

Thomas Gilbert, MP

The question to which I have been seeking an answer is, what was it that inspired Highmore to argue, in 1786, for “the total exemption of all institutions of charity from taxes”?²⁴⁸ As I have not found any concrete evidence of what it was that Highmore wrote, in 1786, and whom he approached on the matter, there is little to go on. However, I consider that the chapter *Of Taxes, And of Exemption From Them* in Highmore’s 1787 edition of *Mortmain*, is strong evidence of his thinking at that time. From the 1809 edition of *Mortmain*, one can see how Highmore had developed his argument since 1787. In addition, both *Pietas Londinensis* and *The Times* of London also provide evidence of what may well have been influential

²⁴⁵ [Editorial], above n 243.

²⁴⁶ It is assumed that the figures provided are all of those as contained in the Governors’ “voluminous report,” which was how the report was described by *The Times*.

²⁴⁷ See Chapter 6 of this Thesis.

²⁴⁸ Highmore, above n 9, 291.

factors. In *Pietas Londinensis*, in his chapter ‘On the proposed registry of charities and charitable donations,’ Highmore wrote that:

[i]n the year 1786, the legislature thought it expedient to have a general inspection of the funds of all charities ... [and] passed an Act [26 Geo. III c. 58] to enforce information of the several donations for the use and benefit of poor persons. ... Not many returns were made pursuant to this Act, and therefore a bill was on 28 April, 1809, introduced by Mr. Wilberforce into the House of Commons, for the registry of all charitable donations by deed or will, and for the transfer of charity property to the *custos rotulorum* of the county, in conjunction with the trustees.²⁴⁹

The Times of 25 March 1786 reported this matter thus:

[a] Parliamentary inquiry, we hear, will speedily take place, respecting the revenues of several of the hospitals and other charities in and about this metropolis; by which, it is conjectured, great benefit will accrue to the public. In the Parliamentary inquiry respecting the revenue of Hospitals, and the use of the charities, it is hoped the Charter-House will not be forgotten.²⁵⁰

During 1786, Parliament had passed a number of statutes that may have inspired Highmore to turn his thoughts to the taxation of charities. There were five statutes relating to Land Tax,²⁵¹ and one relating to Duties on houses.²⁵² I also suggest that the statutes concerning the returns of expenditure on the poor, and the registration of charitable donations, may have been catalysts for Highmore’s work.²⁵³

There were a number of statutes passed in 1786 which impacted directly on charities. The events leading to the passing of the first Act, *Returns Relative to the Poor*,²⁵⁴ which was supplemented by a second,²⁵⁵ *An Act for Procuring, upon Oath, Returns of all Charitable Donations, for the Benefit of Poor Persons, in the Several Parishes and Places Within that Part of Great Britain Called England (Return of Charitable Donations Act)*,²⁵⁶ may have had an influence on Highmore. The progenitor of these Acts was Thomas Gilbert, who, “in the

²⁴⁹ Highmore, above n 9, 963.

²⁵⁰ [Editorial], *The Times* (London), 25 March 1786, 3.

²⁵¹ *Land Tax* 26 Geo. III cc. 3, 54, 103, 105 and 121 [1786].

²⁵² *Duties on Houses* 26 Geo. III c. 79 [1786].

²⁵³ *Returns relative to the poor* 26 Geo. III c. 56 [1786]; *Returns of charitable donations* 26 Geo. III c. 58 [1786].

²⁵⁴ *Returns relative to the poor* 26 Geo. III c. 56 [1786]. Poynter considered that ‘Thomas Gilbert’s famous Act of 1782 was a poor mutilation of his general plans for poor-law reform,’ J.R. Poynter, *Society and Pauperism English Ideas on Poor Relief, 1795 – 1834* (1969) 12.

²⁵⁵ Marjie Bloy, *The Victorian Web* (12 November 2002) < www.victorianweb.org/history/poorlaw/gilbert.html (at 31 May 2006).

²⁵⁶ *Returns of charitable donations* 26 Geo. III c. 58 [1786].

context of his interest in the examination of poor law expenditures and the use of charitable endowments for relief of the poor, succeeded in having a statute passed that required ministers and churchworkers to provide data on charities that benefited the poor.”²⁵⁷ Consequently, the Returns became known as “the Gilbert Returns.”

While *The Parliamentary History of England*²⁵⁸ contains no reports of debate on this bill, nor of its passage through the House of Commons and House of Lords, *The Parliamentary Register* reported a considerable amount of debate on the Charitable Donations Bill. However, the report of the debate on the Bill by *The Parliamentary Register* contains no references to the reviews of the revenues of hospitals, as was suggested by *The Times* of 25 March 1786. The history of the passage of Gilbert’s Bill can also be traced through *The Times*, parliamentary reporting having been in its infancy at that time.²⁵⁹ On Tuesday 23 May 1786, *The Times* reported that on the previous day, Mr Gilbert:

rose and observed that the situation of the poor respecting the administration of the laws in different parts of this kingdom, were such as demanded an immediate enquiry. He, therefore, thought it necessary to give notice to the House that [he] meant to bring in a Bill for this purpose. It had two objects. The one was to enact, that a complete revision of the poor laws might be made, and the other was, that an enquiry might be made into the distribution of all the donations in the respective parishes throughout the kingdom.²⁶⁰

Gilbert’s attempts to enquire into charitable donations in particular were frustrated by those opposed to his proposal. Evidence of this can be seen in *The Parliamentary Register* which recorded that, on 25 May 1786, Thomas Gilbert:

made a motion for leave to bring in a Bill for the better regulation of the poor in that part of Great Britain called England; and that those concerned in the management of charitable institutions should be ordered to make returns of the manner in which the donations granted for the relief of the poor have been distributed.²⁶¹

²⁵⁷ James J. Fishman, ‘Charitable Accountability and Reform in Nineteenth-Century England: The Case of the Charity Commission’ (2005) 80 *Chicago-Kent Law Review* 724, 725 < www.lawreview.kentlaw.edu/articles/80-2/Fishman.pdf > at 29 May 2006.

²⁵⁸ *The Parliamentary History of England*, (1816) vol XXVI (Comprising the period from the fifteenth of May 1786, to the eighth of February 1788).

²⁵⁹ See Aspinall, above n 225, 227.

²⁶⁰ Parliamentary Intelligence, ‘House of Commons’, *The Times*, 23 May 1786, 2.

²⁶¹ *The Parliamentary Register*, (1787) vol XX 251.

Gilbert's motion was not well received, for "[t]he Speaker objected to the mode which the honourable gentleman adopted as being irregular and not parliamentary."²⁶² It was not only Gilbert's manner which raised hackles, with an alleged implication of impropriety, as "Mr Dempster contended, that the motion operated as an impeachment of those concerned in the distribution of charitable donations."²⁶³ That was not how Viscount Beauchamp viewed Gilbert's efforts and, speaking in his support, declared:

that he could not avoid offering his best thanks to the honourable gentleman for his generous and humane disposition. The subject demanded the consideration of Parliament, especially if there were any grounds for supposing that the donations granted for the relief of the poor had been misapplied.²⁶⁴

However, Mr Hussey was not to be placated, and responded:

that no motion of the kind could properly be submitted to the House before there was a specific charge of the misapplication of the donations in question. To whom were the returns to be referred? To the House? Surely not: for it was inconsistent with the maxims of Parliament to check the spirit of charity by making improper discoveries.²⁶⁵

His argument was not supported, as the Master of the Rolls considered "that for his part, he was convinced that the motion was founded in general utility, and that nothing detrimental to charitable institutions could result from the operations of the Bill."²⁶⁶

Gilbert was obviously concerned about the misapplication of charity funds, but the matter was so contentious that he was wary of making outright allegations. In explaining his reasoning, and defending his stance, Gilbert declared that:

the object of his Bill was *to prove the right application of public donations*, and consequently the rectitude of those who were entrusted with the distribution or management of charities in general. With respect to the grounds of misapplication of these benefits, proof might easily be produced, but it was a subject of too much delicacy for the present investigation of the House. *He himself knew many instances of considerable donations in land and money having been either misapplied or concealed in such a manner as never to have been publicly heard of.* His Bill went no farther than to a future discovery of acts of embezzlement and misapplication, by obliging those concerned in the

²⁶² *The Parliamentary Register*, above n 261, 251.

²⁶³ *The Parliamentary Register*, above n 261, 251.

²⁶⁴ *The Parliamentary Register*, above n 261, 251.

²⁶⁵ *The Parliamentary Register*, above n 261, 251.

²⁶⁶ *The Parliamentary Register*, above n 261, 251.

management of charitable institutions to make regular returns to Parliament of the distribution of the donations granted. (Emphasis added.)²⁶⁷

Finally, “[t]he question was the put and carried, when Mr Gilbert was ordered to bring in a Bill.”²⁶⁸ The events in the House of Commons were reported succinctly by *The Times* of the 31st of May, which informed the public that:

Mr Gilbert presented his Bill for the enquiry into the state of the poor laws in the kingdom. The objects of the bill are, as we before stated, *to ascertain all the donations given for charitable purposes, and to know how they were applied*. On the Bill being moved to be read a first time, the Attorney General expressed his disapprobation of the Bill extending beyond the limits he understood it was the intention of the Hon. Gentleman it should extend, when he first gave the House notice of the business. *He had not the least objection to the parochial donations being ascertained – but he had to ascertaining every species of donation that was given for charitable purposes*. A few further observations was [sic] made by Mr Hussey on this Bill, when it was read a first time, and its second reading was then moved for, which was agreed. It was then ordered to be printed, previous to its being committed. (Emphasis added.)²⁶⁹

The process moved steadily onwards, and on 12 June 1786 *The Times* reported that the House of Commons had “[r]ead a second time, and committed for Friday, the Charitable Donations Bill.”²⁷⁰ On Friday, 23 June, the Charitable Donations Bill was reported to the House of Lords.²⁷¹ At first it appears that Gilbert was making good progress, if *The Times* report of 30 September 1786 is to be believed, as according to that newspaper:

Mr. Gilbert’s Bill for obtaining accounts from the different parishes through England, of the donations and bequests that have been made for the use of their respective poor, has already been the means of procuring much important information. So numerous are the accounts which have been received of donations which were suppressed; and of bequests which never have been recovered, that it is said to be in the intention of Ministry to enter into the business very seriously, and to take the management of the poor’s rate entirely into the hands of Government. There is certainly much room for reform, and with some exertion, savings may be made which would prove of essential benefit to the kingdom.²⁷²

Gilbert’s concerns were finally vindicated when, by the end of 1786, it was found that charitable funds had indeed been applied to private purposes. In a report from Newcastle, dated 11 November 1786, *The Times* reported that:

²⁶⁷ *The Parliamentary Register*, above n 261, 251.

²⁶⁸ *The Parliamentary Register*, above n 261, 251.

²⁶⁹ Parliamentary Intelligence, ‘House of Commons’, *The Times*, 1 June 1786, 2.

²⁷⁰ Parliamentary Intelligence, ‘House of Commons’, *The Times* (London), 13 June 1786, 2.

²⁷¹ Parliamentary Intelligence, ‘House of Commons’, *The Times* (London), 24 June 1786, 2.

²⁷² [Editorial], *The Times* (London), 30 September 1786, 2.

[t]he late enquiries set on foot by Parliament have confirmed the general ideas, *that many public charities have been applied to private purposes*. The difficulty of preventing such abuses has long been acknowledged, and has operated, no doubt, against the bequests of many a good legacy. *Those who wish to relieve the indigent and deserving, will now be induced to do it in their life-time; by which means we hope to see the poor relieved, and public at large greatly benefited*. What must have been the management at Bury, where the church-wardens have delivered in a schedule of the several charitable donations amounting to £1,800 per year, which they do not believe to be the whole, and are indulged which [sic] three weeks longer for further enquiries! (Emphasis added.)²⁷³

The following day, *The Times* indicated its support of Gilbert's efforts, in that:

[m]uch praise is certainly due to Mr Gilbert for his Bill of last session, relative to bequests, and devises to the poor and the manner of their disposal. A variety of peculation, we understand, from the provincial papers, has already been diservered [sic] to a considerable amount, *which will now of course be applied to the purposes for which it was originally intended*. It is seriously to be hoped, that the same Hon. Gentleman will follow up this necessary enquiry by forming and compiling a consistent system of poor laws. It is now become a matter not only of regulation, but of finance. It is well known that there are numbers who live in opulence in different parts of the kingdom, by defrauding the poor of their subsistence, and the nation of its right. It is also computed on the most liberal calculation, *that of the millions at present nominally expended in the support of the poor, one half at least, under a proper regulation, would be convertible to public use*. Such an undertaking, therefore, must reflect the highest honour on the person who shall sedulously devote himself to its completion; whilst it offers a fund to the Minister to prevent any future, or to relieve us from the most oppressive of our present burdens. (Emphasis added).²⁷⁴

Two points can be made of this issue. The first is that the enquiry into charitable donations came to nothing for it was not until 1818, when a further enquiry into charities commenced, that the matter was taken seriously. Tompson described the situation thus: "In England, one abortive survey of charities occurred in the 1780's, and it went almost completely unnoticed for thirty years."²⁷⁵ It was not until 1809 that "[t]he first comprehensive legislation for English charitable trust reform was introduced," but, "belaboured with delays and obstruction, while petitions were brought in against it from several London hospitals[,] [t]he Bill was finally killed in Committee."²⁷⁶ A revised Bill was introduced in 1810, and one of those who opposed it was Anthony Highmore.²⁷⁷ Highmore:

²⁷³ [Editorial], *The Times* (London), 15 November 1786, 3.

²⁷⁴ [Editorial], *The Times* (London), 16 November 1786, 2.

²⁷⁵ Richard Tompson, *The Charity Commission and the Age of Reform* (1979) 81.

²⁷⁶ Tompson, above n 275, 90.

²⁷⁷ Tompson, above n 275, 90.

[who] was connected with some of the governing boards of the London Hospitals, ... challenged assertions that charitable trusts were negligently run. He also argued that the proposed registry simply duplicated existing stamp office and probate registries, and hence would meet unnecessary cost and harassment to trusts.²⁷⁸

Again, the Bill was defeated.²⁷⁹ Then, in 1811, “the Bill came in with a new provision for trust registration ... [b]ut once again the Bill failed.”²⁸⁰ In 1816, “an order was made to reprint the Select Committee Report of 1787 and to reprint the Gilbert returns.”²⁸¹ The Bill died in the House of Lords.²⁸² In 1818 the Commission of Inquiry into Charities finally commenced its work.²⁸³ The task was to take nearly twenty years, until 1837 when a Final Report summarized the findings of the Commission.²⁸⁴ A significant but indirect outcome of the inquiry was the appointment, following the introduction in 1853 of *An Act for the better administration of Charitable Trusts* 1853, of the Charities Commissioners for England and Wales, the forerunners of today’s Charities Commission for England and Wales.²⁸⁵

The second point is that I have been unable to find any reference, in *The Times* nor *The Parliamentary Register* of 1786, (nor in later years), to Highmore’s concerns regarding charities and taxation. While Gilbert was concerned with the abuse of charitable donations and bequests, as were others in the years up to 1818, the taxation of charities appears to have been of concern to only Highmore, as the case was not taken up by the print media nor the Parliamentarians of the time.

The Members of the Administration

In *Pietas Londinensis* Highmore claimed that, in 1786, he had made submissions to “some of the members of the administration” regarding his concerns over the taxation of charities.²⁸⁶ I have searched the records of those who were the Parliamentary representatives of Middlesex, Westminster City, London City and Cambridge University as being likely persons whom Highmore may have approached. This was done via the internet by undertaking an electronic search of the National Archives database for any documents connecting the name of those members to Highmore in an attempt to discover any correspondence in 1786 between them on

²⁷⁸ Tompson, above n 275, 90.

²⁷⁹ Tompson, above n 275, 90.

²⁸⁰ Tompson, above n 275, 90.

²⁸¹ Tompson, above n 275, 93.

²⁸² Tompson, above n 275, 93.

²⁸³ Tompson, above n 275, 99.

²⁸⁴ Tompson, above n 275, 155.

²⁸⁵ Tompson, above n 275, 202-3. *An Act for the better administration of Charitable Trusts* 16 & 17 Vict. c. 137 [20 August 1853].

²⁸⁶ Highmore, above n 9, 291.

the taxation of charities issue. However, I was unable to locate any relationships between Highmore and those members. For the record, I have listed those of whom a search was undertaken, after first having identified the Members of Parliament for the above constituencies in 1786. This information is to be found in the *Return of Members of Parliament*²⁸⁷ as described in Table 6 Extract from Return of Members of Parliament.

Table 6 Extract from Return of Members of Parliament

Member of Parliament	Constituency
William Pitt	Cambridge University
John Wilkes	Middlesex
William Mainwaring	Middlesex
Brook Watson	London City
Sir Watkin Lewes	London City
Nathaniel Newenham	London City
John Sawbridge	London City
Sir Samuel Hood	Westminster City
Charles James Fox	Westminster City
John Townshend	Westminster City

Part V The growth in the charities of London

In 1793 Highmore had made some very interesting observations on what appears to have been the unchecked growth in the number of charitable institutions in and around London. Beginning with the observation “that the Statute of *Mortmain* was never designed to prevent charities, but to restrain a too copious endowment of them, to the detriment of the community,” Highmore considered that the law should, in some circumstances at least:

operate in some degree *towards restraining an unlimited extension in the number of charitable institutions with which this metropolis is surrounded*, and with which the country abounds. Their great number tends to injure the support of each other, which generally depends on voluntary and casual contributions. *There are many institutions of charity so similar a nature in their object and extent, and embracing so nearly the same districts, that they might easily be united; and thereby their incomes, which barely serve to keep up their respective annual expense, would enable the directors to relieve a considerably greater number of poor.* By this union, the very serious charge of so many separate establishments of houses and offices would be saved. (Emphasis added.)²⁸⁸

²⁸⁷ *Return to Two Orders of the Honourable The House of Commons*, dated 4 May 1876 and 9 March 1877; - for, (Order, 4 May 1876) Return “of the Names of every Member returned to serve in each Parliament from the Year 1696 up to the present Time, specifying the Names of the County, City, University, Borough, or Place for which returned[;]” (Order, 9 March 1877) “That there be added to the Return relative to Members of Parliament, Ordered by this House on the 4th day of May 1876, a Return, from so remote a Period as it can be obtained up to the Year 1696, of the Surnames, Christian Names, and Titles of all Members of the Lower House of Parliament of England, Scotland, and Ireland, with the Name of the Constituency represented, and Date of Return of each.”

²⁸⁸ Highmore, above n 35, 54.

The sums spent on charitable relief in the metropolis of London were substantial, as “the sums annually expended ... independently of private relief to individuals, has been estimated at £850,000.”²⁸⁹ Highmore observed, in his 1822 work *Philanthropia Metropolitana*, that:

[a]ll these [charitable] establishments, founded and conducted at the aggregate cost of millions of sterling money, are the spontaneous bounty of the opulent and humane, ever watchful for the comfort and relief of the poor and afflicted, in addition to the vast sums also contributed in taxation to poor rates, and in the incalculable number and amount of benefactions daily bestowed, in answer to the casual complaints of wretchedness and private affliction.²⁹⁰

While Highmore’s *Pietas Londinensis* provides an extensive commentary on the numerous charities of London, the concluding chapter reveals the extent to which charitable activity was being undertaken. However, this commentary is not by Highmore himself, but by “the [unnamed] author of the picture of London, to whose industry I am willing to trust for the numbers he states.”²⁹¹ The reference to “the picture of London” is not a descriptive term, but is the name of the book from which Highmore quoted, that is, *Picture of London*. I was eventually able to identify the author as Samuel Leigh who, in 1819, had published *New Picture of London*. As Highmore’s *Pietas Londinensis* was published in 1810, I presume that there may have been an earlier version of Leigh’s work to which Highmore had referred, for Leigh’s *New Picture of London* stated that the amount distributed by the livery companies of the city of London was “above £75,000.”²⁹² However, Leigh’s work provides another glimpse of social policy in England at that time. Leigh wrote that:

[a]mong the moral features of the metropolis is the multitude of its institutions for the relief of the indigent and the diseased in their various wants. Besides two hospitals supported at the public charge, one for the maintenance of invalid seamen at Greenwich, and the other for invalid soldiers at Chelsea, London has twenty-two hospitals or asylums for the sick and lame, and pregnant women; one hundred and seven alms-houses for the maintenance of old men and women; eighteen institutions for indigent persons of various other descriptions; seventeen dispensaries for gratuitously supplying the poor with medicine and medical aid at their own dwellings; forty-one free schools with perpetual endowments for educating and maintaining three thousand five hundred children of both sexes; seventeen other public schools for deserted and poor children; one hundred and sixty-five parish schools, supported by their respective parishes, with the aid of voluntary contributions, which on average clothe and educate six thousand boys and girls; and in each parish a workhouse for maintaining its own helpless poor: but this ample list of public

²⁸⁹ Highmore, above n 9, 967.

²⁹⁰ Highmore, above n 106, 630.

²⁹¹ Highmore, above n 9, 966.

²⁹² Samuel Leigh, *New Picture of London*, London Charities and Hospitals, (1819) available at www.londonancestor.com/leighs/chr-intro.htm .

charities does not include the whole account; in the City of London, belonging to its corporation, there are ninety-four public companies, who distribute above £7,500 [sic] annually in charity, and the metropolis has besides many institutions either for the education or relief of those who are actually distressed, of a less public and prominent nature than the above, but which immensely swell the aid given to the indigent: the sums annually expended in the metropolis in charitable purposes, independently of private relief to individuals, has been estimated at £850,000. *Most of the hospitals and asylums were founded by private munificence; of these some are endowed with perpetual revenues, and others supported by annual or occasional and voluntary contributions.*

The alms-houses were built and endowed either by private persons or corporate bodies of tradesmen, and many of the free-schools sprang from the same origin. The magnitude of several of the buildings dedicated to public charities, *and the large revenues attached to them*, well deserve the stranger's notice, but that which graces the capital and the nation with more unequivocal honour is the general administration of the public charities. The wards of a London hospital do not form a contrast with exterior magnificence, by any inward filth, and a niggardly measure of the aid afforded to the unfortunate inhabitants. The medical assistance is the best which that profession can supply; their attendance is ample, humane and considerate, (and in most instances gratuitous); the rooms cleanly, and as wholesome as care can render the dwelling of a multitude of diseased persons; and the food is of the best kinds.

From the free-schools, youth as learned, have been sent to the universities of the kingdom as from any of the most expensive seminaries for private tuition, whilst all the public scholars receive an education completely adapted to the stations for which they are designed. (Emphasis added.)²⁹³

Thus it can be seen that Leigh had identified some 387 charities, excluding the military hospitals at Greenwich and Chelsea, and the charities of the Guilds of the City of London. The Guilds of London were powerful entities in their own right, with significant funds under their management for charitable purposes.²⁹⁴ I suggest that the influence of the Guilds may have played a role in ensuring the inclusion of the charitable purposes exemption in Pitt's Duties upon Income Act 1799.

Herbert's excellent publications of 1834 and 1837 provide an in-depth history of the twelve great livery companies of London, as well as a detailed examination of their charitable trusts.²⁹⁵ The Mercers' Company was ranked first in order of precedence, followed by the

²⁹³ [Samuel Leigh], *Picture of London* 43, 44 cited by Highmore, above n 9, 966.

²⁹⁴ During my 2005 visit to London, I searched the records held at Guildhall for evidence of concerns regarding Pitt's proposed Income Tax, but without success. However the records of the Grocer's Guild recorded that, on the 26 March 1799, "six hundred pounds as not being less than one tenth of their income made out according to the directions of the said Act," it was resolved that payment was to be made to the Commissioners. Records of the Worshipful Company of Grocers, *Committee Book 1789-1801*, MS 11589/5, 500.

²⁹⁵ William Herbert, *The History of the Twelve Great Livery Companies of London* (1834; Reprinted 1968) vol I; (1837; Reprinted 1968) vol II.

Grocers, Drapers, Fishmongers and Goldsmiths, rankings which remain unchanged.²⁹⁶ Herbert says very little about taxation, and nothing at all about Income Tax. Given that these works were published in 1834 and 1837, at a time when Income Tax was in a hiatus, that is no surprise. In a careful search of Herbert's work I found a reference to tax in the account of the annual income of the school which had been founded by Dr John Colett in the early years of the reign of Henry VIII.²⁹⁷ The income of this charity, one of a number managed by the Mercers' Company, included in its rental income of £1,874 1s 11d "from Stepney" an unidentified amount of redeemed Land Tax.²⁹⁸

While I was unable to find very little on tax, the charter of the Grocers' Company contains what would appear to be an exemption from taxation. The *Eleventh Part of Patents in the fifth year of King James the Second, of a Charter to the Wardens and Commonalty of the Mystery of Grocers of London, to them and their successors*:

do grant, restore, ratify and confirm ... all the singular jurisdictions, powers, liberties, privileges and profits in or by the Charter or Letters Patent of Henry the Sixth, ... and in or by the Charter or Letters Patent of our most dear father Charles I ... all and all manner of liberties, franchises, exemptions, customs, privileges, profits, immunities, acquittances ... which the Wardens ... now have, hold, enjoy, and use, ... forever.²⁹⁹

Evidence of the wealth of charities can also be found in Colquhoun's work. According to Colquhoun, in 1812 the aggregate income of "[p]ersons ... who have incomes from the Funds and other sources, including also trustees for orphans, minors, and charitable foundations and institutions, [was] about £5,211,063."³⁰⁰ Colquhoun also confirmed that charities, and other organisations, invested their surplus funds in Government investments. This point is significant once one understands how the government collected Income Tax in the early Nineteenth Century.³⁰¹

²⁹⁶ Herbert, above n 295, vol I Frontispiece. See also Corporation of London, *The Livery Companies of the City of London* (2nd ed, 2001).

²⁹⁷ Herbert, above n 295, vol I 273.

²⁹⁸ Herbert, above n 295, vol I 276.

²⁹⁹ Herbert, above n 295, vol I 378.

³⁰⁰ P. Colquhoun, *A Treatise on the Wealth, Power, and Resources of the British Empire* (1815) 125.

³⁰¹ See Chapters 4 and 5 of this Thesis.

However, charities were not the only “not-for-profit” entities that had funds in the government stocks, as the Friendly Societies also invested in the funds, as can be seen from Colquhoun’s explanation of this phenomenon:

[c]haritable corporations and other benevolent institutions, of which there are a vast number in the kingdom, together with the Friendly Societies, consisting of 9,672 in England and Wales, uniformly place their surplus contributions in the funds, making a large aggregate in the course of the year. It is probable, that the funds of the Friendly Societies, with other associations of a similar nature, may amount to about £3,000,000. Including Scotland and Ireland, the funds of the societies in the United Kingdom may approach nearly to £3,500,000. ...³⁰²

In his discussion on the national debt, Colquhoun provided further evidence of the extent of investments by charities and societies in the funds, and likely effect on those organisations should that source of income be lost to them, as he considered that:

it is impossible to look forward to a period by which the extinction of the national debt shall dissolve the present system without exciting a considerable degree of alarm. Under such circumstances, it is not difficult to foresee the calamities, which would ensue from the vast masses of property belonging to charitable corporations, and societies, and to wards of chancery, minors and numerous classes of individuals where no adequate security could be obtained; and where the interest must be so reduced as to destroy many of the sources from whence a revenue is obtained *for the support of the state*. (Emphasis added.)³⁰³

Rather than the State subsidising charities through the provision of the charitable purposes exemption from Income Tax, Colquhoun saw the role of charities, in a reverse of the Subsidy Theory argument, as assisting the State in the provision of welfare through their charitable activities.

Conclusion

Finding Highmore’s work has proved to be invaluable for the purposes of this Thesis and I owe him a debt of gratitude and appreciation for his efforts of over two hundred years ago. It is my wish that through my own work, and that of future researchers, Anthony Highmore’s contribution to the history of charities, and their tax issues in particular, will take its rightful place amongst the works of other authors also long since deceased. It is my desire that I have

³⁰² Colquhoun, above n 300, 277.

³⁰³ Colquhoun, above n 300, 277. An 1829 publication also provides details of the activities of the charities of London: see Commissioners for Inquiring Concerning Charities, *The Endowed Charities of the City of London; reprinted at large from seventeen reports of the Commissioners* (1829). Numerous reports on the Chartered Companies (which I presume are in abbreviated form) can be found in this publication.

given Highmore the long-deserved recognition of his contribution to this subject, both having been ignored by historians of tax and charities for too long.

Through his inspirational work, Highmore demonstrated that charities were not naturally exempt from tax, as Owen has claimed.³⁰⁴ What Highmore did not know was that it would not be until 1891 that the issue of how the charitable purposes exemption from Income Tax was to be applied in practice would be resolved. A resolution to the issue, that is, as to what was meant in the Income Tax statutes by the term “charitable purpose,” was only achieved once the distinction between how the phrase was to be applied in accordance with the fiscal statutes, and the meaning that had been developed by the Courts of Chancery over many hundreds of years, were reconciled. That process took from 1842 until 1891 as, in the early years of the charitable purposes exemption, from 1799 to 1816 there were no significant concerns.

Highmore’s discussion in his texts on *Mortmain*, in 1787 then 1809,³⁰⁵ shows how his concern broadened from the matter of “hospitals” to “charities”. A research study of the archives, and financial statements and annual reports, of the London charity hospitals may provide a greater understanding of the effects of taxation on their finances and charitable activities in the Eighteenth and Nineteenth Centuries. While no Income Tax existed in 1786, Highmore’s argument “for the total exemption of all institutions of charity from taxes, by one general Act,”³⁰⁶ demonstrates that charitable institutions were liable to tax in one form or another.

While in this chapter I discuss (briefly) the issue of Land Tax and its redemption, this is an extensive topic with respect to charities, requiring a separate Chapter of its own. I wrote such a chapter but, due to the size of this Thesis and as the chapter on Land Tax consists of 61 pages, that chapter has been omitted from the Thesis, as has a further chapter of 54 pages on the Assessed Taxes. Thus these taxes, as well as the Income Tax, if imposed on charitable institutions would, Highmore claimed, have very considerably reduced the ability of charities to undertake their “benevolent designs.”³⁰⁷

³⁰⁴ Owen, above n 12 and accompanying text.

³⁰⁵ See Appendix to this Thesis.

³⁰⁶ Highmore, above n 9, 291.

³⁰⁷ Highmore, above n 8.

Chapter 4 The Duties upon Income Act of January 1799

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Part I Pitt and the Duties upon Income Bill

Introduction

Theories of taxation in the middle and later Eighteenth Century were in something of the same position as theories of politics. ... No man, it was argued, should be exempt from liability for tax, in return for the protection afforded the state; but taxes should fall as lightly as possible on the poor, for the sake of social justice (an indeed of social quiet) ... taxes should fall on consumption ... [i]ndirect taxation in fact was the staple of revenue in quiet times. ... In times of greater expense direct taxes also had to be levied; and these, once imposed, seldom entirely disappeared.¹

Since 1787, the British public had generally believed that war with France was inevitable.² Following the fall of the Bastille in 1789,³ in early 1790 the defence estimates became the subject of debate in the Commons.⁴ The Opposition considered that there was no longer any need for “such high defence expenditure now that French absolutism, the traditional danger against which free-born Britons had had to arm themselves, was at an end.”⁵ Threatened by France, on 2 February 1793 with Britain having declared war on France, George III wrote that “[his] natural sentiments were strong for peace [even though] duty as well as interest calls on us to join against the most savage as well as unprincipled nation.”⁶

Having been embroiled since 1793 in what later became known as the Napoleonic Wars, by 1797 Pitt had all but exhausted the ability of the nation to advance funds by way of loan, leaving him to having to resort to “means ... more radical than anything [he] had before attempted in the realm of taxation.”⁷

¹ John Ehrman, *The Younger Pitt: The Years of Acclaim* (1969) 248.

² Derek Jarrett, *Pitt the Younger* (1974) 150.

³ Jarrett, above n 2, 151.

⁴ Jarrett, above n 2, 153.

⁵ Jarrett, above n 2, 153.

⁶ Jarrett, above n 2, 160.

⁷ Richard Cooper, ‘William Pitt, Taxation, and the Needs of War’ (1982) 22(1) *The Journal of British Studies* 94, 100.

The process that Pitt employed to achieve his financial targets was described by Duffy who explained that:

Pitt gestated major financial legislation ... in the autumn of 1797 ... [when] he decided to make a fundamental change in his methods of financing the war – including what was effectively a switch towards an Income Tax through a graduated increase in the Assessed Taxes on property.⁸

Thus it was that the Triple Assessment of January 1798 came into being.⁹ However, the description as a “triple” assessment is a misnomer: it was, as noted by Rose, “a rather cumbersome form of graduated Income Tax.”¹⁰ Regardless, the yield was less than Pitt had budgeted for, leading Pitt to seek further means to raise much-needed funds, as in 1798 Great Britain was threatened by French invasion and faced the prospect of a long-continued war with a country which:

Pitt understood perfectly clearly, from the moment he took over the management of the King’s government, [was] Britain’s most dangerous enemy and that her appetite for revenge had by no means been satisfied by her apparent victory in the War of the American Independence.¹¹

Duffy explained how Pitt:

[i]n the Parliamentary session of 1797-8 [had] selected payment of the Assessed Taxes as an indicator of personal property, and increased their rates on a graduated scale according to past payment. ... He followed this in 1798 with a plan to allow those paying the Land Tax to buy themselves out of it over five years through buying back National debt stock, the interest on which would be sufficient to replace their Land Tax dues, while the capital of the debt would thus be diminished.¹²

Lord Rosebery has described how Pitt, as War Minister:

explored and attempted every source of taxation. He added repeatedly to existing taxes. He even appealed to voluntary contribution; by which he obtained more than two millions sterling in 1798, and a further sum in 1799. He introduced such fertile expedients as the

⁸ Michael Duffy, *The Younger Pitt* (2000) 77.

⁹ Cooper explains that “the innovative nature of the triple assessment has been little understood. [It was not a trebling of the Assessed Taxes.] Rather, [Pitt] devised a kind of jury-rigged Income Tax based on past payment of Assessed Taxes.” Cooper, above n 7, 100.

¹⁰ John Holland Rose, *A Short Life of William Pitt* (1925) 149, as cited by Cooper, above n 7, 101.

¹¹ Jarrett, above n 2, 146.

¹² Duffy, above n 8, 94.

legacy duty, which he borrowed from Holland in 1796. In 1796 [sic – 1798] he took the desperate measure of trebling the Assessed Taxes ... ; *and when this impost fell short of expectations, finding that “the resources of taxation were failing under him,” he boldly carried through an Income Tax of minute and complicated graduation in an oration “which,” said a competent French writer, Mallet du Pan, who heard it, “is not a speech spoken by the minister; it is a complete course of public economy; a work, and one of the finest works, upon practical and theoretical finance that ever distinguished the pen of a philosopher and statesman.”* ... It was only when the trebling of the Assessed Taxes had failed, that [Pitt] determined to attain, by a direct impost, his avowed object, of taking a tenth of the income of the country. The net of the tax was extremely wide, and the mesh extremely small. ... The imposition and acceptance of a tithe so novel and exasperating shows sufficiently that all that taxation could do was done, as well as the anxiety of Pitt and his generation to bear the fullest possible proportion of the burden of the war. (Emphasis added.)¹³

Pitt had no choice but to find alternative means of funding the threat posed by France. Thus the necessity of the Income Tax was, according to Talyer, a consequence of:

the utter hopelessness of successfully meeting the claims occasioned by war, which induced the laying [of] a tax upon incomes; a tax, in its then origin, and always afterwards, until its memorable infliction in time of peace by Sir Robert Peel, [was] emphatically designated and considered a *war tax* [sic].¹⁴

Thus it was that, having failed to achieve his financial targets, and not wanting to further burden the national with debt, Pitt:

in the session of 1798-99, taking advantage of the new patriotic upsurge, ... at last went the whole way and produced his famous direct tax on incomes, completing the switch to a principle which, he told the Commons in November 1797 [sic], was “new in the financial operations of this country, at least for more than a century.”¹⁵

In spite of the contempt in which taxes were held, Jarrett noted that Pitt’s power and influence was clearly evident as, “[i]n 1799 Pitt had even managed to get the British Parliament to accept an Income Tax.”¹⁶ However, that was not achieved “without strong opposition to his unpopular proposal.”¹⁷ Neither of the tax Bills of 1797 and 1798 had passed easily as, in order to “still objections,”¹⁸ Pitt of necessity had to amend both the Assessed Taxes Bill of

¹³ Lord Rosebery, *Pitt* (1891) 153.

¹⁴ William Talyer, *The History of the Taxation of England* (1853) 52.

¹⁵ Duffy, above n 8, 95. Duffy does not state precisely where the source for the quote from Pitt is to be found.

¹⁶ Jarrett, above n 11, 189.

¹⁷ Michael J. Turner, *Pitt the Younger: A Life* (2003) 184.

¹⁸ Duffy, above n 8, 125.

November 1797 and the Income Tax Bill of December 1798. Even so, Pitt's Duties upon Income Act of 9 January 1799, "a very formidable document containing 124 sections covering 152 pages,"¹⁹ was not without its problems, "as only three months later, an amending Act [39 Geo. III, c. 22] was passed,"²⁰ the purpose of the amending Act being to extend the time allowed for submitting Returns.

The reporting of Parliamentary Proceedings

The question which this Thesis seeks to answer is: how was it that charitable institutions were provided by Pitt in 1799 with an exemption from the payment of duties upon income? It is notable that nowhere in the reports of Parliamentary debates on the Duties upon Income Act of 9 January 1799 have I been able to find any discussion on the charitable purposes exemption clause, notwithstanding that there was extensive debate in the House of Commons on what was a radical and controversial proposal. While being extensive, the extent to which the reporting of the debates in Parliament varied can be seen in the reports as published in *The Parliamentary Register*, *The Parliamentary History*, *The Times*, *The Morning Chronicle*, and other British newspapers.²¹ However, *The Times* was the common source for both *The Parliamentary History* and *The Parliamentary Register* and, I suspect, *The Morning Chronicle*. Farnsworth has noted that *The Times*, as long ago as 1803 and earlier, in 1798, "specialised in detailed reports of proceedings in Parliament".²² Farnsworth has also observed that:

[t]he reference in *The Parliamentary History* of the day to the details of the new Income Tax is in the briefest form ... [which] brings to light an extraordinary hiatus [in that publication]. The proposals of Pitt for an Income Tax and the speeches made by him in the Commons in explanation and defence have been very fully reported in the current issues of *The Parliamentary Register*. For example no fewer than one hundred and seventy columns were devoted to the debates on the Income Tax Act, 1799, while the debates upon Pitts abortive Bill of 1800, and the one which replaced it, were reported, unimportant though they were, in over seventy columns.²³

It was not until 1908 that "Parliament tardily decided to have the debates officially reported ... [with] the London newspapers [being] the principal sources drawn upon by *Hansard* and

¹⁹ A. Farnsworth, *Addington: Author of the Modern Income Tax* (1951) 15.

²⁰ Farnsworth, above n 19, 16.

²¹ When I first began this study, I used microfilm to search laboriously for material on the subject of this Thesis. In the later years of my work, technology allowed me to access these invaluable resources electronically, through the Christchurch City Library data base.

²² Farnsworth, above n 19, 51.

²³ Farnsworth, above n 19, 51.

its predecessors” (the predecessors being the Hansard reporters as parliamentary employees).²⁴ Hence my need to use more than one source for an indepth study such as this, which is what I had been doing, while being blissfully unaware of the erratic nature of the reporting of Parliamentary proceedings in the late Eighteenth and early Nineteenth centuries.²⁵ Later I started to see for myself that there were similarities in what I was reading, leading me to investigate the reporting of Parliamentary debates which reinforced what I had observed for myself, that *The Times* was indeed the primary source of the debates, as published by its competitors and other publishers.

Pitt’s confidantes

I have not been able to locate any contribution from Pitt’s confidantes on the issue of the charitable purposes exemption from Income Tax. One person to whom Pitt turned “as sounding boards for his ideas and as back-up to his own efforts in debates,”²⁶ was John Sargent (1750-1831). Duffy describes Sargent as having been:

Clerk of the Ordnance (1793-1802) and a former Director of the Bank of England, [and] a Pitt nominee to the balloted Select Committee on the Public Accounts in 1791, who in 1799 chaired the Income Tax Bill through its Committee stages in the Commons.²⁷

I have been unable to find any reference in the *Journals of the House of Commons* to Sargent having chaired the Committee stages of the “Income Tax Bill,” as it was John Smyth, or Smith, who had chaired the committee in December 1798 and January 1799.²⁸ The *Journals of the House of Commons* of March 1799 record that Mr Bragge had chaired the Committee when the Duties upon Income Act of 9 January 1799 was further debated, after its introduction, with the intention of “explaining and amending the said Act.”²⁹ Yet it is Sargent to whom credit is given in the *Oxford Dictionary of National Biography* with having “secured tax exemption for physicians on 22 December 1797.”³⁰ However, there is no mention of

²⁴ A. Aspinall, *The Reporting and Publishing of the House of Commons’ Debates 1771-1834* in Richard Pares and A.J.P. Taylor (eds), *Essays presented to Sir Lewis Namier* (1956) 232.

²⁵ *The Parliamentary History* contains approximately 112 columns, or 56 pages, of debate on the Duties upon Income Bill between 3 December 1798 and 8 January 1799, whereas *The Parliamentary Register* contains over 200 pages. However, the font type and size differs between the two publications, with the former containing approximately 65 words per column inch (130 words per page inch) and the latter 76 words per page inch. Farnsworth’s comment might therefore be somewhat misleading.

²⁶ Duffy, above n 8, 119.

²⁷ Duffy, above n 8, 118.

²⁸ *Journals of the House of Commons* (1803) (20 November 1798 – 27 August 1799) vol 54, 62.

²⁹ *Journals of the House of Commons*, above n 28, 313.

³⁰ ‘John Sargent’, *Oxford Dictionary of National Biography* (2004) vol 48 966.

Sargent having secured the charitable purposes exemption in the Duties upon Income Act 1799, nor the Assessed Taxes Act 1798.

Another reason that I find it surprising that I have been unable to locate any material on the charitable purposes exemption is that Pitt did not work alone. He surrounded himself with “a core of dedicated activists who were essential to Pitt’s management of Parliament [and whom] he used ... to gauge the sense of the House and to influence its debates.”³¹ On financial matters, Pitt drew on a wide circle of consultants who were drawn from:

the active, doing members of the House [on whom he] focused his attention ... rather than on the silent majority, many of whom attended only sporadically. ... [As well as senior members of the both Houses] Pitt also used a number of back-benchers as very useful opinion formers. ... [Pitt] looked to [these men] as sounding boards for his ideas and as back-up to his own efforts in debates.³²

To Pitt, the charitable purposes exemption might have been the least of his worries, yet Turner described him:

[a]s a policy maker, [who] engaged in painstaking research in order to get his facts straight before making plans. ... To major policy plans Pitt would devote himself single-mindedly for days or even weeks. *His war-time financial measures involved exhaustive preparation and many long discussions with colleagues and advisers (on the Income Tax he sought the views of, among others, Rose, Auckland, Addington, Liverpool, Grenville and Canning).* This concentrated effort helped Pitt to identify problems and contemplate solutions. Consultation was central to his approach. ... Pitt often engaged his experts, political friend and (sometimes) junior officials in open discussion, during which he expressed doubts as well as confident expectations. (Emphasis added.)³³

If there was one person whose papers might have assisted me, it was George Rose, “[who] had begun his long and profitable career as Secretary to the old Board of Taxes under Lord North ... [and] became, in 1783, Pitt’s Secretary of the Treasury ... [Rose] his right-hand man until 1801.”³⁴ But here also, the trail ‘ran cold’.

³¹ Duffy, above n 8, 116,

³² Duffy, above n 8, 118.

³³ Turner, above n 17, 143.

³⁴ Arthur Hope-Jones, *Income Tax in the Napoleonic Wars* (1939) 58.

Pitt and the Lobbyists

I have also found it surprising that no material on the charitable purposes exemption has come to light in the public domain, particularly as the tax was considered to be “a tax odious and unpopular to the last degree.”³⁵ If such a proposal was so unpopular, then surely the charitable institutions would have been as outspoken as the general public during the short passage of the Duties upon Income Bill through the House of Commons in December 1798 and early January of 1799. Duffy described Pitt as “probably the most accessible Prime Minister of the Eighteenth Century to commercial lobbying.”³⁶ The MP Charles Abbot was told in 1796 that: “[i]n his reception of the merchants, when they wait upon him, [Pitt] is particularly desirous of satisfying them that his measures are right.”³⁷

Therefore, not having found any evidence of depositions from the charitable institutions of London concerning the Income Tax is all the more puzzling. This is even more so when one considers that “Pitt’s paper’s are full of schemes for taxes and advice on finance from every conceivable strata of society, [and] he appears as a man with contacts everywhere and ready to consult those intimately affected by his taxation proposals.”³⁸

The mystery deepens when one reads that, according to O’Brien, “[Pitt’s] proposals for taxes frequently aroused opposition from pressure groups, occasionally powerful enough to enforce modifications.”³⁹ There were significant lobbyists, in the form of “the West India merchants and planters, the East India Company ... coal owners and their friends in Parliament ... landowners ... the ‘City Members’ ...,”⁴⁰ and, as well, “[p]ressure could be exercised through Parliament itself and also directly upon Ministers and public departments.”⁴¹ O’Brien also noted that “in taxation policy Chancellors of the Exchequer found their initiative limited by the presence of Parliament and pressure groups.”⁴² While “Parliamentary and public opinion held that the necessities of the poor should be taxed moderately or preferably exempt from taxation,”⁴³ there is no evidence of this concept having been debated with respect to charitable

³⁵ Tayler, above n 14, 71.

³⁶ Duffy, above n 8, 137 citing P. Langford, *Public Life and Propertied Englishmen 1689-1798* (1991) 205.

³⁷ Duffy, above n 8, 137 citing Colchester (ed.), *Abbott Diary* [year not cited] vol 1, 45.

³⁸ P.K. O’Brien, *Government Revenue 1793-1815 – A Study in Fiscal and Financial Policy in the Wars against France* (Unpublished Doctoral Thesis, University of Oxford, 1967) 29.

³⁹ O’Brien, above n 38, 29.

⁴⁰ O’Brien, above n 38, 30.

⁴¹ O’Brien, above n 38, 30.

⁴² O’Brien, above n 38, 351.

⁴³ O’Brien, above n 38, 351.

institutions, yet somehow an exemption from duties upon income was made available to those entities undertaking charitable purposes in Pitt's Duties upon Income Act of 1799.

Another resource that I scrutinised, unsuccessfully, for evidence of lobbying or depositions from charitable institutions, were the *Journals of the House of Commons*, particularly as:

The Journals of the House [of Commons] are full of references to petitions against particular taxes, which usually asserted that the tax in question would ruin the industry involved or in some way react adversely on the national interest. These petitions were often investigated by Committees of the House who reported to the Government on the potential effects of the proposed changes in taxation. Petitions sometimes formed part of a well organised campaign designed to mobilise public opinion against changes in taxation.⁴⁴

Pitt's personal papers contain some interesting material concerning the proposed tax upon income, but there were no specific challenges by charitable institutions as occurred in 1863 when Gladstone attempted to remove the charitable institutions exemption from Income Tax. Again, this is surprising, especially as O'Brien wrote that:

[g]roups affected by taxes also attempted to exercise influence directly upon Ministers and departments of State concerned with revenue such as the Treasury The papers of Pitt, Huskisson, Vansittart and Liverpool [contain] abundant examples of letters and memoranda designed to prevent or modify some proposed change in taxation. Statesmen sometimes consulted interested parties before proceeding with a new tax.⁴⁵

Neither did the Treasury archives provide any assistance. This was possibly because "[l]etters to the Treasury and to the departments responsible for the collection of revenue [were] on the whole concerned with the interpretation of tax law."⁴⁶ It is also possible that the reason that I have been unable to find any evidence of charitable institutions submitting petitions on the Duties upon Income of 1799 may be due to the fact that:

[n]o good study has yet [as at 1967] been made *of the organisation and mode of pressure group activity in the late Eighteenth Century*, but it is obvious from the debates on taxation policy for the period 1788-1815 that the House of Commons contained spokesmen for the West India planters and traders, for the mercantile marine, for the East India Company, for the Bank of England and for particular industries as well as the more amorphous and less

⁴⁴ O'Brien, above n 38, 427.

⁴⁵ O'Brien, above n 38, 427. A further check of the Royal Historical Society Bibliography on the Society's website failed to identify any new material on lobbying or petitions regarding Pitt's charitable purposes exemption in the Duties upon Income Act 1799.

⁴⁶ O'Brien, above n 38, 427.

organised groups of members connected with the concerns of the City of London, and a majority who spoke for agriculture as a whole. In Parliament and on Parliamentary Committees members sought to defend particular industries or sectors of the economy against taxes and if possible to obtain advantages for the economic activity they represented. ... Given the fluid nature of political allegiance, Governments of the day had to cultivate members of Parliament and to modify taxation policy in order to retain their support. (Emphasis added.)⁴⁷

Another reason may be that:

[r]evenue policy ... operated within a framework of ideology or canons of taxation. Parliamentary and public opposition to particular taxes often crystallised around fairly well defined and widely held attitudes and the Government not only sought to avoid opposition but also operated in terms of the same precepts which effectively limited its discretion in the selection of taxes. The basis for taxation can be found in the ideals of the age with respect to distributive justice and prevailing notions of how to promote economic development and national security. To summarise these ideals and notions crudely we can say that *at the end of the Eighteenth Century most Englishmen opposed taxes which fell on the necessities of the poor*, approved of levies on luxuries consumed by the rich, found all excises and a general tax on income repugnant to their liberal sentiments, felt that duties on exports or the inputs used by the export sector should be avoided, considered that certain industries described as “basic” should not be taxed, thought that the country’s tariff should be designed primarily to favour the produce and shipping of the British Empire and secondarily to favour imports from countries which granted concessions to British exports. (Emphasis added.)⁴⁸

Scholars of Pitt

While scholars of Pitt, particularly John Ehrmann, have been of immense value to my research, as with the archive searches that I have conducted, none have been able to throw any light onto the theme of my Thesis. Typically, for example, O’Brien merely noted, after having discussed the exemptions provided for in the Duties upon Income Act 1799, that “[f]inally the Act excluded from assessment income accruing to charitable institutions, Friendly Societies, hospitals and colleges and the Tenths and First Fruits of clergymen.”⁴⁹

The procedure to claim exemptions and abatements

In what appears to have been an attempt to minimise evasion Pitt had, in his Plan of Finance for 1798 (that is, the Triple Assessment of 1798), decided that “[t]hose who wished to claim exemptions and abatements had to disclose their incomes and the Tax Office issued very

⁴⁷ O’Brien, above n 38, 426.

⁴⁸ O’Brien, above n 38, 427.

⁴⁹ O’Brien, above n 38, 408.

careful instructions as to how their circumstances might be investigated.”⁵⁰ Section LXIV of the Assessed Taxes Act 1798 appeared to reflect that intent, the section having provided:

[t]hat if any person shall, on account of his or her income, claim to be exempted from the additional rate or duty which shall be assessed by virtue of this Act, or to be entitled to any abatement thereof ... it shall be lawful for him or her to appeal to the Assistant Commissioners⁵¹

Addington included a similar section in his Income Tax Act 1803.⁵² However, Addington also included a specific requirement for the income of hospitals and alms-houses applicable to “charitable purposes only,” to be claimed in accordance with sections 197, 198 and 199 of his Income Tax Act of 1803.⁵³ This raises the question that as Pitt, in the Assessed Taxes Act 1798, had required exemptions to be claimed by way of appeal, why did he not apply this concept to the exemption for charitable purposes in the Duties upon Income Act of 1799? The answer is that Pitt, unlike Addington, had not provided for the Income Tax to be deducted at source, hence the need to submit a claim for the deduction under Addington’s Act to be refunded.⁵⁴

The Duties upon Income Bill of 1798-9: The charitable purposes exemption clause

A copy of the first Duties upon Income Bill, as promoted by Pitt in the House of Commons on 3 December 1798, does not appear to exist, as no such copy is listed in Lambert’s compilation of the House of Commons Sessional Papers (hereafter “Sessional Papers.”)⁵⁵ The first listing of Pitt’s Duties upon Income Bill in the Sessional Papers is for:

[a] Bill (as amended by the Committee) to repeal the duties imposed by an Act [38 Geo. III c. 16 1798] ...; and to make more effectual provision for like purpose, by granting certain duties upon income, in lieu of the said duties. *Presented by Hon. William Pitt, 1a 5*

⁵⁰ Plan of Finance for 1798, *Pitt Papers* vol. 273 cited by O’Brien, above n 38, 401.

⁵¹ *An Act for granting to His Majesty an aid and contribution for the prosecution of the war* 38 Geo. III c. 16 [12 January 1798] s. LXIV.

⁵² *An Act for granting to His Majesty, until the sixth day of May next after the Ratification of a definitive Treaty of Peace, a contribution on the profits arising from property, professions, trades, and offices* 43 Geo. III c. 122 [11 August 1803] ss. CXCVI and CXCIX.

⁵³ *An Act ...*, above n 52, Rules attached to Schedule A; Rule No. IV.

⁵⁴ Addington had a deep knowledge of the history of taxation, and “[t]he principal of deduction of taxation at source would therefore, be familiar to him.” The earliest that deduction at source had appeared was in 1657, in an Act of that year, in which ‘certain tenants were allowed to deduct tax from their rents,’” the Act being to raise “a Monthly Assessment of £60,000.” B.E.V. Sabine, *A History of Income Tax* (1966) 37.

⁵⁵ Sheila Lambert (ed), *House of Commons Sessional Papers of the Eighteenth Century* (1975) vol. 120 George III Bills 1798-99.

December, *otbp* as amended 8 December 1798 *Enacted* 39 Geo. III, c. 13 [5 January 1799].⁵⁶

A notation to the Duties upon Income Bill (as amended by the Committee), which was printed on 8 December 1798, recorded that “[t]he Clauses marked (A,) (B,) (C,) and (D,) were added by the Committee.”⁵⁷ However, none of those clauses related to the charitable purposes exemption. The Duties upon Income Bill (as amended by the Committee), the clauses of which were not otherwise numbered alphabetically or numerically provided (with the exception of those above), at the third clause, for the duties which were to be levied to include that “of every body politic or corporate, or company, fraternity, or society of persons, (whether corporate or not corporate) in Great Britain.”⁵⁸

It is not until the forty-fifth clause of the Duties upon Income Bill (as amended by the Committee) that the charitable purposes exemption, of 79 words, is to be found and which provided:

[t]hat where any bodies politic or corporate, companies, fraternities, or societies of persons, whether corporate or not corporate, shall be entitled unto any annual income, to the respective amounts before specified, *other than and besides any income applicable to charitable purposes*, such *annual income not applicable to charitable purposes* only shall be chargeable with such and the like rates as any other annual income of the same amount will, under and by virtue of this Act, be chargeable with. (Emphasis added.)⁵⁹

At issue would have been the determination of what income had, and what had not, been applied to charitable purposes.

The second listing of the Duties upon Income Bill in the Sessional Papers is that of the Duties upon Income Bill (as amended on recommitment), which was printed on 22 December 1798. The “income applicable to charitable purposes” exemption clause reappeared as the seventy-sixth clause in the Duties upon Income Bill (as amended on recommitment), the only amendments made having been to insert round brackets as follows: “(other than and besides

⁵⁶ *A Bill as amended by the Committee*, Lambert, above n 55, v.

⁵⁷ *A Bill as amended by the Committee*, Lambert, above n 55, [1].

⁵⁸ *A Bill as amended by the Committee*, Lambert, above n 55, [2].

⁵⁹ *A Bill as amended by the Committee*, Lambert, above n 55, [28].

any income applicable to charitable Purposes)” and “(not applicable to charitable purposes only).”⁶⁰ This clause ultimately appeared in the Duties upon Income Act 1799 in s. 87.

There is a significant difference between the forty-sixth clause of the Duties upon Income Bill (as amended by the Committee) and its counterpart, section 88, in the Duties upon Income Bill (as amended on re-commitment). This particular clause in the Duties upon Income Bill (as amended by the Committee) declared:

[t]hat no such bodies politic or corporate, companies, fraternities, or societies aforesaid, shall be charged or chargeable, in respect of any income which, according to the Rules or Regulations of such corporations, companies, fraternities, or societies, shall be applicable to the payment of any annual dividends or interest to arise and become payable to any individual members of such corporations or public companies⁶¹

The reason for such a clause is quite clear – to avoid double taxation. However, a direct reference to charitable purposes was inserted into the seventy-seventh clause of the Duties upon Income Bill (as amended on re-commitment) which now read:

[t]hat no such bodies politic or corporate, companies, fraternities, or societies aforesaid, shall be charged or chargeable, in respect of any income which, according to the Rules or Regulations of such corporations, companies, fraternities, or societies, shall be *applicable to charitable purposes* or to the payment of any annual dividends or interest to arise and become payable to any individual members of such corporations or public companies (Emphasis added).⁶²

This clause ultimately appeared in the Duties upon Income Act 1799 in s. 88.⁶³

The Duties upon Income Bill (as amended by the Committee) contained yet another clause of which, while not specifically targeting entities with charitable purposes, the intention is nevertheless quite clear. The forty-seventh clause required a “Statement” to be delivered to the Assessors, being a statement:

⁶⁰ *A Bill as amended on Re-Commitment*, Lambert, above n 55.

⁶¹ *A Bill as amended by the Committee*, Lambert above n 55, [29].

⁶² *A Bill as amended on Re-commitment*, Lambert above n 55, [42].

⁶³ *An Act to repeal the Duties imposed by an Act, made in the last session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for like purpose, by granting certain Duties upon Income, in lieu of the said Duties* 39 Geo. III. c. 13 [9 January 1799] s. 88.

of the annual income of such corporation, company, fraternity, or society, ... [specifying] how much and what proportion of such annual income is not chargeable by virtue of this Act upon such corporation, company, fraternity, or society, and *for what purposes the income, not chargeable as aforesaid, is or shall be applicable.* (Emphasis added).⁶⁴

This clause also appeared, at the seventy-eighth clause, in the Duties upon Income Bill (as amended on re-commitment),⁶⁵ and in the Duties upon Income Act 1799 in s. 90.⁶⁶ There is yet another section in the Duties upon Income Act 1799 concerning the charitable purposes exemption, but this section was not contained in either of the Duties upon Income Bills. The mystery is how did this particular charitable purposes exemption clause come to be included at section 5 of the Duties upon Income Act 1799. Section 5 simply stated:

[t]hat no corporation, fraternity, or society of persons established for charitable purposes only, shall be chargeable under this Act, in respect of the income of such corporation, fraternity, or society.⁶⁷

It is also interesting why this section was needed at all, given that sections 87 and 88 of the Duties upon Income Act 1799 made it quite clear that income applicable to charitable purposes was exempt from duties upon income. The only difference between section 5 and sections 87 and 88 is that whereas section 5 uses the phrase “charitable purposes only,” sections 87 and 88 both refer to “charitable purposes.” The distinction may well be in the nature of trusts for charitable purposes in that there were those established solely for that purpose, whereas other entities, such as the Guilds of London, had income some of which was applicable to charitable purposes, and some not applicable. Hence the requirement for the Statement declaring what income was not chargeable and for what purposes it was intended to be used. This alone raises another issue. Were such Statements filed, and if so, were inquiries made to ensure that income applicable to charitable purposes had been so applied, to ascertain that evasion or avoidance was not being practiced? While Duke had written extensively on the law of charitable uses as long ago as 1676,⁶⁸ the concept of charitable

⁶⁴ *A Bill as amended by the Committee*, Lambert, above n 55, [29].

⁶⁵ *A Bill as amended on Re-commitment*, Lambert, above n 55, [43].

⁶⁶ Section 89 of the Duties upon Income Act provided that “no corporate city, &c. shall be charged for income appropriated to the expences [sic] of its government, nor collegiate bodies, &c for income applied to the maintenance of Fellows, &c.”

⁶⁷ *An Act...*, above n 63, s. V.

⁶⁸ George Duke, *The Law of Charitable Uses ... whereunto is now added, the Learned Reading of Sr. Francis Moor* [sic] (1676). The first chapter recites 43 Eliz. c. 4, upon which Duke elucidates. The second chapter, “Commission,” gives the date of 43 Eliz. c. 4 as having been “made in the High Court of Parliament, holden the seven and twentieth day of October, the three and fortieth year of the reign of the late Queen Elizabeth”

purpose with respect to Income Tax was not refined in charity case law until the *Pemsel* case of 1891 when the nexus between “charitable purpose” and the exemption from Income Tax was definitively resolved.⁶⁹

A comparison of the Duties upon Income Act 1799 and the Assessed Taxes Act 1798

The wording of the charitable purposes exemption at section 5 of the Duties upon Income Act 1799 differs significantly from the charitable purposes exemption clause in the Assessed Taxes Act 1798, *An Act for granting to His Majesty an aid and contribution for the prosecution of the war*. The Assessed Taxes Act 1798 provided, in s. XIX:

[t]hat nothing herein contained shall be construed to extend to charge the said additional rate or duty on the amount of the Duties payable on houses, windows, or lights, in respect of any of the Royal or public hospitals, or any chambers or apartments therein used or occupied for charitable purposes.⁷⁰

Historical precedent for the exemption of hospitals from Imperial taxation can be found in the Duties upon Inhabited Houses Act 1778 in which s. XXXV provided:

[t]hat nothing therein contained shall extend, or be construed to extend, to charge or make liable any hospital, or house provided for the reception and relief of poor persons, to the payment of the rate or duty to be laid by virtue of this Act.⁷¹

My research indicates that the Duties upon Inhabited House Act 1778 is the first such Act to include an exemption for hospitals, and indeed for a charitable activity, in the legislation providing for duties upon inhabited houses. While the exemption was later applied to Royal and public hospitals in the Assessed Taxes Act 1798, it is interesting that houses for the reception of ‘lunatics’ [sic] in the 1798 Act were not seen in the same light as houses for the reception and relief of poor persons in the 1778 Act. In the Assessed Taxes Act 1798, houses kept for the reception of lunatics, an activity that one might today consider to be charitable in nature, did not benefit from an exemption to the same extent as that provided for Royal and

⁶⁹ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

⁷⁰ *An Act ...*, above n 51, s. XIX. The earliest Act which contains a tax on windows appears to be *An Act for granting to His Majesty several rates or duties upon houses, for making good the deficiency of the clipped money* 7 & 8 Will. III c. 18 [1696].

⁷¹ *An Act for granting to His Majesty certain duties upon all inhabited houses within the kingdom of Great Britain* 18 Geo. III c. 26 [1778] s. XXXV.

public hospitals (see s. XIX above of the Assessed Taxes Act 1798). This can be seen in section XX of the Assessed Taxes Act 1798 which provided:

[t]hat no person who is or shall be duly licensed to keep, and who shall keep a house for the reception of lunatics, shall be chargeable with any greater rate of duty than if such house had been let out to lodgers.⁷²

The rationale for this section was that houses for the reception of lunatics and houses for lodgers were seen by Parliament as being private businesses. “Lodging Houses” were chargeable, in the Duties upon Inhabited Houses Act 1778, under s. III, which provided:

that every person who shall occupy any dwelling house usually let by such person in part to lodgers, or with the purpose of usually so letting out the same, or any dwelling house, part whereof is occupied and used by the same person as a shop, the amount of whose last assessment or assessments, in respect of the Duties now payable on houses, windows, or lights, or on inhabited houses, or on dogs, clocks, watches, or timekeepers, shall be in the whole under three pounds, shall be exempted from any additional Rate or Duty; ...⁷³

While the Assessed Taxes Act 1798 provided for exemptions in certain cases, these were not intended to continue *ad infinitum* but had to be reapplied for within a certain time-frame each year, as provided for at s. LXXXV:

the allowance of any exemption from, or abatement to be made of the said Additional Rate or Duty, in the manner before directed, shall not have continuance or be in force for any longer term than the expiration of one week after the fifth day of January next ensuing the allowance of such exemption or abatement; but that it shall be lawful for any person to whom such allowance was granted, at any time during the continuance of the Rate or Duty hereby imposed, and so from time to time whenever there shall be occasion, to appeal again from the assessment made by virtue of this Act to the Commissioners ... [who may subject to proof] on oath or affirmation continue the said exemption⁷⁴

This requirement can be distinguished from the charitable purposes exemption in the Duties upon Income Act 1799 as the Assessed Taxes Act 1798 was intended as a continuing Act, whereas the Duties upon Income Act 1799 was intended only as a temporary war-time measure. The objects of the respective taxes also differed markedly between the two Acts.

⁷² *An Act ...*, above n 51, s. XX.

⁷³ *An Act ...*, above n 71, s. III.

⁷⁴ *An Act ...*, above n 51, s. LXXXV.

Summary

While there is evidence, prior to the commencement of debate on the Duties upon Income Bill in December 1798, of precedent of an exemption from tax for those entities undertaking charitable purposes, there is no evidence that the precedent was cited during debate on the Duties upon Income Bill. This was only discoverable after an intensive study of the debates, and reports of those debates, in the House of Commons on December 1798 and January 1799, and in the House of Lords in January 1799. I conclude that the precedent which existed was, at a later stage in the debate on the Duties upon Income Bill, brought to the attention of Pitt, the charitable purposes exemption having been inadvertently omitted from the Bill.

Part II **The debates on Pitt's Duties upon Income Bill December 1798 – January 1799.**

Introduction

The Assessed Taxes Act 1798 was a complex piece of legislation and, as such, one can appreciate why lack of compliance was rife. Hence Pitt's frustration, and why it was that Ehrman observed that "[a]t some point probably in the later summer or early autumn of 1798 Pitt was therefore considering replacing the Triple Assessment [of 1798] by an outright Income Tax."⁷⁵ In a footnote, Ehrman explained that:

[i]t seems impossible to specify a date. In a letter undated (but from its references to the Minister's reviving health, to Ireland, and to the redemption of tithes) written probably between mid June and mid October and possibly (from Pitt's movements) in late July or very early August, Pretzman mentions a conversation at Holywood which also included a "new Finance Bill for a tenth of income in place of the Assessed Taxes" (to Mrs Pretzman). Undoubtedly the Minister had got as far as "heads of a Plan" in September and by 31 October he had made extensive notes as the background for a Bill. Rumours of an impending scheme appeared in the London newspapers during that time (e.g., *The Morning Chronicle* of 10 October, *The Times* of the 14 October, *The True Briton* of 17 October) and in November it was being widely discussed.⁷⁶

3 December 1798

On 3 December *The Times* reported to its readers that:

Mr Pitt will this day bring forward his new plan of taxation, in lieu of the Assessed Taxes. We have carefully avoided every attempt to give what we understood to be the outlines of it, as we were convinced that any such statement would be liable to great error. The

⁷⁵ John Ehrman, *The Younger Pitt: The Consuming Struggle* (1996) 260.

⁷⁶ Ehrman, above n 75, fn 3.

principle of the plan, which is a certain tax on every man's income, is universally acknowledged to be extremely fair, and highly judicious.⁷⁷

The first official record of the Duties upon Income Bill is to be found in the *Journals of the House of Commons* which recorded that on 3 December 1798, the House of Commons, having “resolve[d] itself into a Committee of the whole House, moved “[t]hat an Act, made in the last Session of Parliament, intituled ‘An Act for granting to His Majesty an aid and contribution for the prosecution of the war,’ might be read.”⁷⁸ The *Parliamentary History* record of that momentous occasion is considerably more detailed. Pitt began the outline of his plans in the House of Commons by moving “that the [A]ct of the 38th of his present Majesty, chap. 16, for granting an aid or contribution to His Majesty, might be read, and that it might be an instruction to the Committee to consider of the said Act.”⁷⁹ Pitt’s motion having been accepted, he then commenced to give a very long and detailed explanation of his proposal to tax income, beginning with an explanation of what funding was required and for what purpose, a total of £29,272,000.⁸⁰ Pitt expected to raise this amount from “the same resources ... as are applicable at all periods, whether of peace or war.”⁸¹ After raising £6,150,000 from “[t]he land and malt ... at £2,750,000 ... the lottery, £200,000 ... the growing produce of the consolidated fund [of] £1,500,000 [duty] upon exports and imports ... at £1,700,000,” Pitt forecast a deficit of £23,000,000 which “must be raised either by a tax within the year, in the same manner as the Assessed Tax Bill of last year, or by a loan.”⁸²

Pitt also explained that “two fundamental principles”⁸³ had been established during the Assessed Taxes debate, that is:

to reduce the total amount to be at present raised by a loan; and next, as far as it was not reducible, to reduce it to such a limit, that no more loan should be raised than a temporary tax should defray within a limited time.⁸⁴

One can see, and almost hear, on reading *The Parliamentary History* record of Pitt’s oration on the Duties upon Income Bill, the passion and skill which he brought to the task of

⁷⁷ [Editorial], *The Times* (London), 3 December 1798, 2.

⁷⁸ *Journals of the House of Commons*, above n 28, 54.

⁷⁹ *The Parliamentary History of England*, (1819) (3 December 1798 to 21 March 1800) vol. XXXIV, 1.

⁸⁰ *The Parliamentary History*, above n 79, 2.

⁸¹ *The Parliamentary History*, above n 79, 2.

⁸² *The Parliamentary History*, above n 79, 2.

⁸³ *The Parliamentary History*, above n 79, 2.

⁸⁴ *The Parliamentary History*, above n 79, 2.

persuading the House of Commons to adopt his strategy. While openly acknowledging the shortcomings of the Assessed Taxes, he demonstrated his deep grasp of financial policy with his new proposal.⁸⁵ As the deficit of Assessed Taxes had to be subsidised by voluntary giving, due to “tricks and evasion,”⁸⁶ Pitt had realised:

that although the Assessed Taxes furnished the most comprehensive and efficient scale of contribution, there necessarily must be much income, much wealth, great means, which were not included in its application. *It now appears that not by any error in the calculation of our resources, not by any exaggeration of our wealth, but by the general facility of modification, by the anxiety to render the measure as little oppressive as possible, a defalcation has arisen which ought not to have taken place.* Yet, under the disadvantage and imperfections of an unequal and inadequate scale of application, the effects of the measure have tended to confirm our estimates of its benefits and to encourage us to persevere in its principle. Every circumstance in our situation, every event in the retrospect of our affairs, demonstrates the advantages of the system *of raising a considerable part of the supplies within the year*, and ought to induce us to enforce it more effectually to prevent those frauds, which an imperfect criterion and a loose facility of modification have introduced; to repress those evasions so disgraceful to the country, so injurious to those who honourably discharged their equal contribution, and, above all, so detrimental to the great object of national advantage which it is intended to promote. In these sentiments, our leading principle should be to guard against all evasion, to endeavour by a fair and strict application, to realize that full tenth, which it was the original purpose of the measure of the Assessed Taxes to obtain, and *to extend this as far as possible in every direction, till it may be necessary clearly to mark the modification, or to renounce, in certain instances, the application of it altogether.* If, then, the Committee assent to this principle, they must feel the necessity of following it up, by more efficient provisions. They will perceive the necessity of obtaining a more specific statement of income than the loose scale of modification, which, under the former measure, permitted such fraud and evasion. If such a provision be requisite to correct the abuses of collection, to obviate the artifices of dishonesty, to extend the utility of the whole system, it will be found that many of the regulations of the old measure will be adapted to a more comprehensive and efficient application of the principle. (Emphasis added.)⁸⁷

After further arguing his case, Pitt finally declared that:

[i]mpressed, then with the importance of the subject, convinced that we ought, as far as possible, to prevent all evasion and fraud, *it remains for us to consider, by what means these defects may be redressed, by what means a more equal scale of contribution can be applied, and a more extensive effect obtained*, for this purpose it is my intention to propose, that the presumption founded upon the Assessed Taxes shall be laid aside, and that *a general tax shall be imposed upon all the leading branches of income.* ... The details of a measure which attempts an end so great and important, must necessarily require

⁸⁵ I suggest that the debate on Pitt’s Duties upon Income Bill should be required reading for every *ab initio* student of tax, economics and political science, such is the power of Pitt’s oration.

⁸⁶ *The Parliamentary History*, above n 79, 3.

⁸⁷ *The Parliamentary History*, above n 79, 4.

mature deliberation. At present all I can pretend to do is, to lay before the Committee an outline of a plan which endeavours to combine every thing at which such a measure ought to aim. This outline I shall now proceed to develop to the Committee as clearly and distinctly as I am able. (Emphasis added.)⁸⁸

There are two aspects of Pitt's oratory that require a special mention. The first is that Pitt intended to use the Assessed Taxes Act of 1798 as the basis for new and improved regulations, and the second is his desire for "mature deliberation." That being the case, why then was the matter of exempting organisations which undertook charitable purposes not considered, even in a sentence or two, in the House of Commons during the debate on the Duties upon Income Bill? One would have expected, at this early stage of the debate, that the charitable institutions of England might have become somewhat alarmed at Pitt's intention "to extend this as far as possible in every direction, till it may be necessary clearly to mark the modification, or to renounce, in certain instances, the application of it altogether,"⁸⁹ and that "a general tax shall be imposed upon all the leading branches of income,"⁹⁰ and would have reacted accordingly. While somewhat surprisingly, I have found no such evidence, given the precedent in the Duties upon Inhabited House Act 1778,⁹¹ in 1798 the charitable institutions may not have been as concerned as I had expected.

Pitt expounded further on the problems of non-compliance, and explained that:

[as] in the case of the Assessed Taxes we have had so much experience of the evasions which have taken place; when we see the consequences which have resulted from a vague rule of exemption, and an indefinite principle of deduction; when we see that, by the different modes by which exemptions were regulated, persons, who probably would have shrunk from a direct fraud, have been able by different pretences to disguise to themselves the fair and adequate proportion which they ought to have contributed, it becomes more than ever necessary *to render every case of exemption precise*, and to guard every title to deduction from the danger of being abused. (Emphasis added.)⁹²

Notably, Pitt made no mention of the exemption provided to hospitals and almshouses in the Assessed Taxes Act of 1798. Pitt also desired to prevent "the willing contributor from being taxed to the utmost proportion of his means, while his wealthy neighbour owes his exemption to meanness. [It is therefore] necessary to guard with greater strictness against every chance

⁸⁸ *The Parliamentary History*, above n 79, 4.

⁸⁹ *The Parliamentary History*, above n 79, 4.

⁹⁰ *The Parliamentary History*, above n 79, 4.

⁹¹ *An Act ...*, above n 71.

⁹² *The Parliamentary History*, above n 79, 7.

of evasion.”⁹³ Pitt then explained at length how the tax was to be collected, particularly in those situations:

[w]hen doubts are entertained that a false statement has been given, it shall be competent for the Commissioners to call for a specification of income ... from land, from trade, annuity, or profession, which shall entitle to deduction. ... *[E]very case of exemption or deduction shall be presented by the party, with his claim clearly specified.* ... To the truth of the schedule he shall make oath. (Emphasis added.)⁹⁴

Pitt made no mention whatsoever of charitable institutions in his opening address on the Duties upon Income Bill. But he did make special mention of “one class of men” to whom the tax he intended to propose might be injurious and from which they ought to be excepted, those persons being:

the poorest persons engaged in mercantile concerns; a class whose gains are most precarious, whose credit may be most doubtful, and most injured by a disclosure – I speak of the persons engaged in retail trades, to whom the Assessed Taxes Bill of last Session gave great indulgencies, considering that the relief of abatement was one of which they could not avail themselves, without greater inconvenience and injury to them, perhaps, than to a higher description of mercantile traders.⁹⁵

Pitt, having exhorted “the Committee to consider whether it may not be as well to leave that class to pay on the mitigated rate of assessment to which they are liable under the Assessed Taxes Bill, as to subject them to the general rate of the present Bill,”⁹⁶ then stated “[t]hat it will also naturally enter into the consideration of the Committee, *what allowances or exemptions ought to be extended to other descriptions of persons.* (Emphasis added.)”⁹⁷ Pitt had in mind “the last Act [in which] certain allowances and abatements were granted to persons with large families,”⁹⁸ which he suggested “was not carried far enough in the Bill of last year.”⁹⁹

Pitt then explained that taxes were to be laid on various objects of income, the “first great object of income being the property derived from land,” by which Pitt meant “the rent of the

⁹³ *The Parliamentary History*, above n 79, 8.

⁹⁴ *The Parliamentary History*, above n 79, 8.

⁹⁵ *The Parliamentary History*, above n 79, 9.

⁹⁶ *The Parliamentary History*, above n 79, 10.

⁹⁷ *The Parliamentary History*, above n 79, 10.

⁹⁸ *The Parliamentary History*, above n 79, 10.

⁹⁹ *The Parliamentary History*, above n 79, 10.

land of this country.”¹⁰⁰ Having described his plan in that regard in detail, Pitt explained that taxes would be levied on:

that part of income from land which belongs to the tenant; tithes, [being] income enjoyed, either by lay or impropiators, or by the clergy; ... mines; ... shares in canals; ... the sale of timber; ... rent received for houses; ... the profits gained by the professors of the law; ... the professions; ... the profits of retail trade; ... the income spent in this country by person who derive it from other parts of the world; ... the income of persons not in trade [including] [public and private] annuities of all kinds, public and private mortgages, and income arising from money lent upon securities under various denominations.¹⁰¹

Pitt also proposed “that when a general assessment upon income is to take place, no distinction ought to be made as to the sources from which that income may arise.”¹⁰² It was his intention that “[i]f persons possess incomes from various sources, they are to be calculated in the aggregate.”¹⁰³ The foundations of tax policy were slowly but surely being laid. Here, Pitt was addressing the taxation of public annuities. The issue for Pitt was that stockholders ought also to contribute to the common good, stockholders having been previously “secured against any imposts.”¹⁰⁴ Because of their support of the nation in time of need, Pitt stated that the duty of the stockholder, as with a member of the public, was that “if you expect from the state the protection which is common to us all, you ought also to make the sacrifice which we are called upon to make.”¹⁰⁵ This concept is aligned with the definition of taxes by Judge Blackstone, who considered taxes as being “a portion which each subject contributes of his property, in order to secure the remainder.”¹⁰⁶

As the art of accountancy was very much in its infancy at that time, not having developed the concepts so well understood in the Twenty-first Century, Pitt also had a problem in being able to ascertain the incomes of those involved in activities unrelated to what is known in the Twenty-first Century as the ‘public sector’. That is, assessing the tax liability of the activities of the private sector in the late Eighteenth and early Nineteenth centuries, was next to

¹⁰⁰ *The Parliamentary History*, above n 79, 10.

¹⁰¹ *The Parliamentary History*, above n 79, 12.

¹⁰² *The Parliamentary History*, above n 79, 14.

¹⁰³ *The Parliamentary History*, above n 79, 16.

¹⁰⁴ *The Parliamentary History*, above n 79, 14.

¹⁰⁵ *The Parliamentary History*, above n 79, 15.

¹⁰⁶ *The Parliamentary History*, above n 79, 83. During the debate on the Duties upon Income Bill on 14 December, Sir John Sinclair had referred to Blackstone, but did not mention the name of the case to which he had referred. *The Parliamentary History*, above n 79, 83.

impossible. Accordingly, Pitt left the more difficult branches of income to estimate to the last, that is, the produce of foreign trade, but more particularly:

that which more than any other branch of our income baffles the power of scrutiny, and affords even very limited grounds for conjecture: I mean the profits arising from domestic trade and manufacture ... from the first preparation of the rude and raw material to its state of perfection ... [as well as the income of] artisans, architects, brewers, distillers, brickmakers, masons, carpenters, and all that innumerable class of persons who, by skill in their professions, draw their incomes from the general prosperity of the country.¹⁰⁷

Before proceeding with a recapitulation of the various branches of income and the gross income of each, which he proposed to tax at 10 per cent, Pitt declared that:

I have thus rapidly gone through all the distinct branches of national rental, and of national profits, from which we have to derive the tax that I mean to propose to you *without presuming to think that I have been able to do it with that accuracy of detail which can only be derived from practice, or with that certainty upon which you ought to repose*. I have through the whole, been anxious to understate the amount of the estimate, and to overrate the exemptions and deductions that it would be necessary to make from each. I make the whole annual rental and profits after making the deductions which I think reasonable, £102,000,000 sterling. ... Upon this sum a tax of 10 per cent is likely to produce £10,000,000 a year, and this is the sum at which I shall assume it. (Emphasis added.)¹⁰⁸

There was not one word of the wealth of church, or of England's charitable institutions, and their investing activities. Yet according to Colquhoun's 1815 publication, *A Treatise on the Wealth, Power and Resources of the British Empire*, in 1812 the aggregate income from income in the funds for "[p]ersons included in the various families mentioned above [in Colquhoun's Table], who have incomes from the funds and other sources, including also trustees for orphans, minors, and charitable foundations and institutions," was "about £5,211,063."¹⁰⁹ Colquhoun also stated that:

¹⁰⁷ *The Parliamentary History*, above n 79, 16.

¹⁰⁸ *The Parliamentary History*, above n 79, 17, and W.S. Hathaway, *The Speeches of The Right Honourable William Pitt* (1808) vol. 2, 447. The text that I have emphasised is contained in Hathaway, but not in *The Parliamentary History*.

¹⁰⁹ P. Colquhoun, *A Treatise on the Wealth, Power, and Resources, of the British Empire, in Every Quarter of the World* (2nd ed, 1815) 125. Colquhoun considered that it was "probable" that the Friendly Societies of the United Kingdom alone had "nearly up to £3,500,000" invested in the funds. Colquhoun, above n 109, 277. The accuracy of Colquhoun's figures have been brought into question. "The limitations of Colquhoun's estimate are already well known". P.K. O'Brien, 'British Income and Property in the Early Nineteenth Century' 12 *The Economic History Review* 2 (1959) 255, 255. See also Phyllis Deane, 'Contemporary Estimates of National Income in the First Half of the Nineteenth Century' (1956) 8(3) *The Economic History Review* 339-354.

[c]haritable corporations and other benevolent institutions, of which there are a vast number in the kingdom, together with the Friendly Societies, consisting of 9,672 in England and Wales, uniformly place their surplus contributions in the funds, making a large aggregate in the course of the year. It is probable, that the funds of the Friendly Societies, with other associations of a similar nature, may amount to about £3,000,000. Including Scotland and Ireland, the funds of the societies in the United Kingdom may approach nearly to £3,500,000.¹¹⁰

Colquhoun provides further evidence of the extent of investments by charitable institutions in government funds in his discussion on the national debt, as he considered that:

it is impossible to look forward to a period by which the extinction of the national debt shall dissolve the present system without exciting a considerable degree of alarm. *Under such circumstances, it is not difficult to foresee the calamities, which would ensue from the vast masses of property belonging to charitable corporations, and societies, and to wards of chancery, minors and numerous classes of individuals where no adequate security could be obtained; and where the interest must be so reduced as to destroy many of the sources from whence a revenue is obtained for the support of the state.*¹¹¹

I find it curious that Colquhoun must have gone to some trouble to compile “An Account of the Property of Foreigners in the Public Funds of Great Britain” for the four quarters ending on the 10 October 1809, yet did not do so for the charitable institutions and Friendly Societies.¹¹² The total invested by “Foreigners” in the public funds for those twelve months was £35,443,259 3s 9d, with exemptions from the Property Tax “of 10 per cent on the dividends” totalling £59,298 5s 7d.¹¹³ That Colquhoun was able to produce these figures suggests that similar figures could also be produced for charitable institutions. Pitt also must have had the ability to discover more detail on the funds invested by charitable institutions, and what the “cost” to the country of the forgone income by way of the charitable purposes exemption might have been.

Of all the branches of income that Pitt had “rapidly gone through,” the public annuities were singled out for particular attention with respect to “that part of the public annuities which have been redeemed by the nation [and] is to be exempted from the charge of the tax.”¹¹⁴ Pitt considered that:

¹¹⁰ Colquhoun, above n 109, 277.

¹¹¹ Colquhoun, above n 109, 277.

¹¹² Colquhoun, above n 109, 298.

¹¹³ Colquhoun, above n 109, 298.

¹¹⁴ *The Parliamentary History*, above n 79, 15.

the rental of the public annuities may be estimated at £15,000,000 ... there will, of course, be admitted the same exemptions to all annuitants who have less than £60 a year, and the same modifications to all who possess from £60 to £200 a year. At the same time it is to be considered, that these exemptions and modifications are only to apply to those individuals whose whole income amounts to less than £200 a year. ... I am sure that I shall over-rate the amount of these exemptions and modifications, when I deduct one-fifth from the sum that I have stated the public annuities to be; *but I do not admit that deduction*, and therefore state the total of the income from the public funds at £12,000,000. (Emphasis added.)¹¹⁵

Why was Pitt not prepared to “admit” the deduction? He had, after all, in effect made an allowance for at least some £3,000,000 to be exempt from taxation. After further detailing his proposal, Pitt moved two resolutions, the first being to repeal “*An Act for granting to His Majesty an aid and contribution for the prosecution of the war*,”¹¹⁶ that is, the Assessed Taxes Act 1798 of the last session. Pitt’s second resolution was that, in order to raise the supply granted to his Majesty:

there be charged annually, during a term to be limited, the several rates and duties following, upon all income arising from property in Great Britain, belonging to any of his Majesty’s subjects, although not resident in great Britain; and upon all income of every person residing in Great Britain, *and of every body politic or corporate, or company, fraternity, or society of persons, whether corporate or not corporate, in Great Britain*, whether any such income shall arise from lands, tenements, or hereditaments, wheresoever the same shall be situated in Great Britain, or elsewhere; or from any kind of personal property, or other property whatsoever; or from any profession, office, employment, trade, or vocation ;(Emphasis added.)¹¹⁷

Tierney then began his attack on Pitt whom he accused of “[seeming] to expect either support or silence from this side of the House.”¹¹⁸ Tierney told Pitt to expect neither as, having opposed the Assessed Taxes, “it would be strange if I were silent upon a measure, which is ... infinitely more destructive, even than that destructive measure.”¹¹⁹ Tierney considered Pitt’s plan to be a “monstrous proposition.” Tierney also considered that there were other options that should be considered before such a plan as Pitt was proposing was put in place. “At all events,” declared Tierney, “I must have it in my power to say to my constituents before I adopt this, that every other resource has been exhausted. Now I cannot say that, for there are

¹¹⁵ *The Parliamentary History*, above n 79, 16.

¹¹⁶ *The Parliamentary History*, above n 79, 20.

¹¹⁷ *The Parliamentary History*, above n 79, 20.

¹¹⁸ *The Parliamentary History*, above n 79, 22.

¹¹⁹ *The Parliamentary History*, above n 79, 22.

others yet to be touched, which ought to go before this measure is resorted to.”¹²⁰ Tierney had in his sights:

[the] many valuable things under the church establishment, not in the smallest degree beneficial to religion, but which only swell out the pomp and pride and imaginary greatness of some inflated individuals which ought to be brought in aid of the public burthens. *The individuals possessing these things ought to be made to contribute their full share.* The corporations also are liable in the same manner, *as I conceive – [Here a cry of hear! hear! Hear!] Gentlemen might cry “hear, but he would repeat what he said: he was the last man in that House who would lay violent hands on any property; but when that was to be done, he thought the tax ought to be laid on a different description from that of individuals.*¹²¹

Why did Tierney not mention, at this point, the charitable purposes exemption? The answer may well be due to the fact that the Duties upon Income Bill had yet to be printed for the use of the members of the House of Commons, and he may well have been unaware of such an exemption. However, Tierney’s reference to corporations, without any further specific reference as to what he meant, particularly given the reaction to his comments, leaves the question I ask without an answer.

Both *The Times* and *The Morning Chronicle* reported on Pitt’s plans in their respective editions of 4 December 1798. The editor of *The Morning Chronicle* declared that:

[a]t length our readers are put into possession of the plan of the Chancellor of the Exchequer, for a general assessment of property and income, under all its various forms of land rental, public annuity, profession, trade, or industry. It would not be possible for us, this day, to enter into any examination of a question so complicated, which affects more or less every individual in the country; but we shall feel it our duty to enter into the merits of the plan, and we respectfully invite gentlemen to communicate their thoughts on the subject, through the channel of this paper, as a means of information to the public. It shall be our duty to pay the utmost attention to the letters with which we may be favoured.¹²²

¹²⁰ *The Parliamentary History*, above n 79, 23.

¹²¹ *The Parliamentary History*, above n 79, 23; *The Morning Chronicle* (London), 4 December 1798, 3; *The Times* (London), 4 December 1798, 3. The text which is underlined was that as in *The Times*, but not in the other two sources cited.

¹²² [Editorial], *The Morning Chronicle* (London), 4 December 1798, 4.

In the view of the editor of *The Times*, “[t]he parsimonious man will now have to contribute in common with the man of more liberal principles and expenditure.”¹²³ Such was the scepticism in which Pitt’s grand plan was held.

The source of Pitt’s inspiration for his Duties upon Income?

Adam Smith’s maxims on taxation may also have played a role in Pitt’s thinking.¹²⁴ Smith’s first maxim stated that “[t]he subjects of every state ought to contribute towards the support of the government, as nearly as possible, *in proportion to their respective abilities*. (Emphasis added.)”¹²⁵ The similarity between Smith’s first maxim is evident in Pitt’s declaration that:

[b]y the operation of these powers, and by the influence of these rules, we may expect to arrive more nearly *at that fair proportion which each man ought to contribute* towards the exigencies, and for the service of the country. (Emphasis added.)¹²⁶

The “rules” to which Pitt had referred were those contained in the Assessed Taxes Act of 1798 which applied to “the allowances and abatements ... granted to persons with large families,” and that the rates in the Assessed Taxes Act “should be subject to correction and improvement,” with respect to “establishing a rate of landed property, or what may be the proper average of incomes.”¹²⁷

Pitt, being learned, was not “simply ... a disciple of the liberal political philosophers,”¹²⁸ such as Adam Smith, the Scottish philosopher/economist. As Pitt’s “personal connexions did not lie only with those disciples of Adam Smith who wished to apply the master’s principles in every instance,” Pitt also sought the advice of others.¹²⁹ However, Pitt held Smith in high esteem as can be seen in his direct reference to Smith whom he described on 17 February 1791 as “the author of a celebrated treatise on the Wealth of Nations.”¹³⁰ This raises the question: what would Smith have made of the concept of exempting entities which promoted charitable purposes from their share of the tax burden?¹³¹ Pitt had evidently undertaken research into different forms of taxation, particularly “the first great object of income ... the

¹²³ [Editorial], *The Times* (London), 4 December 1798, 3.

¹²⁴ Adam Smith, *An Inquiry into the Nature and Cause of the Wealth of Nations* (1776; reprinted 1904) 2 vols.

¹²⁵ Adam Smith, above n 124, vol. 2 472.

¹²⁶ *The Parliamentary History*, above n 79, 10.

¹²⁷ *The Parliamentary History*, above n 79, 10.

¹²⁸ Ehrman, above n 1, 167.

¹²⁹ Ehrman, above n 1, 483.

¹³⁰ *The Parliamentary History*, above n 79, 11. See also Ehrman, above n 1, 267n.

¹³¹ I have searched the works of Adam Smith in that context, to no avail.

property derived from land,”¹³² and it was during this part of his presentation to the House of Commons that he had made his reference to Adam Smith. Pitt acknowledged that the concept of a tax on income was not his original idea as, with respect to “the property derived from land”:

[u]pon that point I have consulted the best opinions, and authors of the most acknowledged merit. Upon the subject of the rent of the land of this country, Sir William Petty is the earliest author I have consulted. At the time that he wrote, the rent of the land was stated at eight millions. In a subsequent period, in the beginning of this century, and in the reign of Queen Anne, two writers of credit, Davenant and King, represented the rental of the land to be £14,000,000. ... Posterior to that time it was a received opinion, that a Land Tax of four shillings in the pound was equivalent to about two shillings of what would be collected on the real rents of the kingdom, which were stated to amount to twenty millions. Full twenty years [1778] ago this was said by a writer, who was also a member of this House, and who in a work he wrote, *expressly recommended the very principle which I have submitted to the Committee this day*. (Emphasis added.)¹³³

The Times reported this interesting comment in a slightly different way, by reporting Pitt as having said that:

[20 millions] is also the sum at which it was full 20 years ago valued by an Hon. Gentleman of this House, who wrote a very excellent work recommending a tax of the same description as that which I have now the honour of proposing, in order to raise the supplies requisite for the public service within the year.¹³⁴

I was eventually able to identify the author to whom Pitt was referring, from the reports of the debate on 4 January 1799 in *The Parliamentary Register*¹³⁵ in which Lord Holland had referred:

[to] the work of a noble Lord (Auckland) [whom] he could assure that he by no means quoted “the book” with an intention to throw any slur upon its author ... It might be natural for the noble Lord to have made some changes in his opinions on a subject like the present after a lapse of twenty years ... The words of “the book” were not confined to voluntary contributions¹³⁶

¹³² *The Parliamentary History*, above n 79, 10.

¹³³ *The Parliamentary History*, above n 79, 10.

¹³⁴ ‘Parliamentary Intelligence’, *The Times* (London), 4 December 1798, 2.

¹³⁵ *The Parliamentary Register*, (1799) vol. VII 519, 556 and 557.

¹³⁶ *The Parliamentary Register*, above n 135, 556.

After extensive searching I initially concluded that I had been unable to identify “the book” written by Lord Auckland to which Pitt and Lord Holland had referred, as no such publication is listed for 1778 in the English Short Title Catalogue at the British Library, nor is any reference made to such a book in Eden’s entry in the *Oxford Dictionary of National Biography*.¹³⁷ As Eden was “early recognised as an authority on commercial and economic questions,”¹³⁸ it stands to reason that he would write a book on property derived from land, the work to which Pitt had referred.¹³⁹ In fact he did, but it was published in 1779. The “book” was in fact what is referred to as “Four Letters to the Earl of Carlisle.”¹⁴⁰ It was Eden, or Lord Auckland himself, who led me to his work. In his speech in the House of Lords on 8 January 1799, Lord Auckland had said that:

the Noble Lord has done me the honour to select and read certain passages from a small work which was published by me in the year 1779. ... If however the Noble Lord had adverted with his usual accuracy to the context of the passages he thought proper to cite, he would have found that they related to a voluntary contribution to be dependent on the enthusiasm of the contributors; or if to a forced and general contribution, then to be dependent on a mere voluntary disclosure of income.¹⁴¹

In his third letter, of 29 October 1779, Eden discussed the country’s various sources of revenue from the early history of the nation, such as “the tribunals of justice [which] were for some centuries a source of revenue ... the judges [resembling] tax-gatherers.”¹⁴² Having discussed the necessary expenses of the nation, particularly regarding defence, Eden then progressed to “the art of finance ... [t]his art of drawing money from the pockets of the people, [which] when once introduced into a country, advances most rapidly.”¹⁴³ Eden, after describing Adam Smith as one “whom political science may reckon a great benefactor,

¹³⁷ Eden, William, first Baron Auckland (1744-1814), *Oxford Dictionary of National Biography* (2004) vol. 17, 690. The only works by Eden mentioned in the *ODNB* are: *The Principles of Penal Law* (1771); *Four Letters to the Earl of Carlisle* (1779); *Some Remarks on the Apparent Circumstances of the War in the Fourth Week of October 1795*, (1795). Eden was “raised to the Irish peerage as baron Auckland on 18 November 1789,” and, in May 1793, was “raised to the British peerage as baron Auckland of West Auckland.” In 1798 Pitt appointed him to the position of joint postmaster-general.

¹³⁸ 1st Baron William Eden, Online Encyclopaedia, <http://encyclopedia.jrank.org>. This entry is noted as “[o]riginally appearing in volume 402, 894 of the 1911 Encyclopedia Britannica.”

¹³⁹ *The Parliamentary History*, above n 79, 10.

¹⁴⁰ William Eden, *Four letters to the Earl of Carlisle on certain perversions of political reasoning, and on the nature of party spirit and of parties, on the present circumstances of the war between Great Britain and the combined powers of France and Spain, on the public debts, on the public credit, and on the means of raising supplies, on the representations of Ireland respecting a free-trade* (1779). The letters were dated 19 October, 24 October, 29 October, and 4 November.

¹⁴¹ *The Parliamentary History*, above n 79, 190.

¹⁴² Eden, above n 140, 69.

¹⁴³ Eden, above n 140, 72.

[having] discussed this subject so fully, that it is hardly possible to say any thing new with regard to it, ”¹⁴⁴ took it upon himself:

to consider how the established principles of taxation apply to the situation in which we find ourselves. The equality of taxation consists in the obliging [of] every individual to contribute in proportion to the revenue which he enjoys within the state.¹⁴⁵

Eventually Eden raised the issue of:

a direct aid equal to the public wants; *that aid to be proportioned either to real capital, or to income*. ... Yet it may be doubted whether such an idea would be in any degree practicable, and if it were, whether it would be expedient. Supposing the general income of the kingdom to be 100 millions, or the total capital to be 1,000 millions (which however are points at best very conjectural), it is indisputably clear, that 7½ per cent. collected on the one, or ¾ per cent. collected on the other, must produce 7 millions and a half, which if raised in sterling money within the year, might well be applied towards the support of the war. (Emphasis added.)¹⁴⁶

This particular citation might seem at first to be of no significance to the theme of this Thesis, except that Eden had touched on the income of the nation, but without providing any details of the source of that income. One might expect that a detailed account of the nation’s income and expenditure would include the income that charitable institutions derived from their funds invested in the government stocks, the cost of that income being a charge against the nation’s accounts. Eden intended to exempt no-one from taxation, and opposed voluntary contributions such as those made in Holland, or a conscientious payment as paid in Hamburg, for he said that:

[t][he truth is, that a contribution, which in order to be effective must be so general as to extend even to the daily scrapings of halfpence from the hands of peasants, cannot be the voluntary measure of an extensive empire.¹⁴⁷

Eden did not make a case either for or against the taxing of charitable institutions, therefore I can discount his letters of 1779 as having had any significant influence upon Pitt in his deliberations on the Duties upon Income Bill in that regard at least. However, if one were to read between the lines of his comment about voluntary contributions then, given the

¹⁴⁴ Eden, above n 140, 88.

¹⁴⁵ Eden, above n 140, 88.

¹⁴⁶ Eden, above n 140, 96.

¹⁴⁷ Eden, above n 140, 99.

circumstances of the times, one can speculate that Eden would indeed have been opposed to a charitable purposes exemption from Income Tax.

4 December 1798

The Times of 4 December, in describing the nature of Pitt's "new Plan of Finance," did so in a rather self-congratulatory manner by stating that the tax was, "as we have already observed, .. to be a tax upon income."¹⁴⁸

The *Journals of the House of Commons* recorded that, on 4 December 1798, the additional duties on the Assessed Taxes were repealed. That Resolution was immediately followed by one of considerable length which declared:

[t]hat, towards raising the Supply granted to His Majesty, *there be charged annually*, during a term to be limited, the several Rates and Duties following, *upon all income arising from property in Great Britain*, belonging to any of His Majesty's subjects, although not resident in Great Britain, and upon all income of every person residing in Great Britain, *and of every body politic or corporate, or company, fraternity, or society of persons (whether corporate or not corporate) in Great Britain*, whether such income shall arise from lands, tenements, or hereditaments, wheresoever the same shall be situate, in Great Britain, or elsewhere, or from any kind of personal property, or other property whatever, or from any profession, office, employment, trade, or vocation ... (Emphasis added.)¹⁴⁹

The *Journal of the House of Commons*, after listing the various rate and duties which Pitt had proposed, also ordered on that day:

[t]hat a Bill be brought in upon the said Resolutions: and that Mr Hobart, Mr Chancellor of the Exchequer, Mr John Thomas Townshend, Mr John Smyth, Mr Douglas, Mr Pybus, Mr Attorney General, Mr Solicitor General, Mr Rose, and Mr Long, do prepare, and bring in, the same.¹⁵⁰

According to *The Parliamentary History*, there was little debate in the House of Commons on 4 December. However, it is evident, from *The Times* of 5 December, in its report on the

¹⁴⁸ [Editorial], *The Times* (London), 4 December 1798, 3.

¹⁴⁹ *Journals of the House of Commons*, above n 28, 56.

¹⁵⁰ *Journals of the House of Commons*, above n 28, 56. There appears to be a slight discrepancy between dates, as *The Parliamentary History* reports the rates and duties as having been proposed in the House of Commons on 3 December, whereas the *Journal* records them as having been presented to the House on 4 December.

proceedings in the House of Commons on 4 December, that considerably more was said in the House of Commons that day than that contained in *The Parliamentary History*.

According to *The Parliamentary History*, Hobhouse, who appeared to have been the only person to speak, claimed that:

[u]ndoubtedly there was a clause in all the loan acts, securing to the public creditor his dividends “free from all taxes, charges and impositions whatever.” But from the moment the money had found its way into the pocket of the stockholder, from that moment it became liable to taxation.¹⁵¹

What did Hobhouse mean by his reference to the loan acts having a clause exempting dividends from taxation? Was he asking a question, with his use of the word “undoubtedly,” or was he making a statement of fact? The amounts that Pitt had raised by way of loans was substantial, as between 1793 and 1801 he had “actually raised in money,” through 18 separate loans, the sum of £202,372,000 at a “total annual charge” of £10,851,000, an average rate “exclusive of management [charges]” of £5 5s 9d.¹⁵² To exempt such an amount from taxation, given the pressure on the government to raise much-needed war funds, seems inconceivable. But the reality is that on 22 December 1798, an Act to raise “the sum of three millions by way of annuities,”¹⁵³ provided that “the said annuities shall be free from all taxes, charges, and impositions whatsoever,”¹⁵⁴ and, in June of 1799, a similar Act also contained an identical exemption.¹⁵⁵

That being the case, it would appear that Pitt was intending to over-ride the exemption contained in the loan Acts. Sir John Sinclair’s comment, in the debate on the Duties upon

¹⁵¹ *The Parliamentary History*, above n 79, 26.

¹⁵² William Newmarch, ‘On the Loans Raised by Mr. Pitt During the First French War, 1793-1801’ (1855) 18(3) *Journal of the Statistical Society of London* 242, 246.

¹⁵³ *An Act for raising the sum of three millions by way of annuities* 39 Geo. III c. 7 [22 December 1798].

¹⁵⁴ *An Act ...*, above n 153, s. X.

¹⁵⁵ *An Act for raising the sum of fifteen millions five hundred thousand pounds, by way of annuities* 39 Geo. III c. 60 [21 June 1799] s. XIII. The concept of funding the national debt by way of loans began following the Revolution, with the national accounts in 1689 having an “opening” balance of £664,263 and a “closing” balance of £800,770,238 on 31 March 1862. “With the exception of a trifling sum of £664,000 the National Debt has been wholly contracted since the Revolution, when the unsettled state of the government, and the difficulty of imposing new taxes, compelled recourse to be had to loans.” J.R. McCulloch, *A Treatise on the Principles and Practical Influence of Taxation and the Funding System* (1863; reprinted 1968) 441. The Table from McCulloch’s book (at 446) from which he figures I have quoted do not appear to have been adjusted for inflation.

Income Bill on 14 December 1798, would appear to support my argument, as Sinclair considered that:

[b]y the laws, as they now stand, the interests [sic] or dividends paid to the public creditors, are protected against all charges and taxes whatsoever; but, for the first time, they are now introduced into the budget of the Chancellor of the Exchequer. ... [W]e assured him, when he lent the principal, it was to be exempted from all taxes and charges whatsoever. What a miserable evasion!¹⁵⁶

The origins of the protection from charges and taxes to which Sir John Sinclair had referred is to be found in the first of Pitt's many Acts to raise capital in order to fund the national debt in defending the nation against the French. The first of the loans raised by Pitt was for £4,500,000 in 1793, under the authority of Parliament, in *An Act for raising a certain sum of money, by way of annuities, to be charged on the consolidated fund; and for making perpetual certain duties of excise on British spirits, and certain duties on the amount of Assessed Taxes*.¹⁵⁷ This Act provided, at s. 16, "that the several annuities shall be free from all taxes, charges, and impositions whatsoever." Section 16 also provided that the exemption applied only to those who, having agreed to contribute towards the funds, had paid the whole amount of that to which they had subscribed.

Thus was the eventual inclusion of the charitable purposes exemption in the Duties upon Income Bill intended to ensure that charitable institutions at least continued to benefit from an exemption they had until then enjoyed under the various loan Acts between 1793 and 1799?¹⁵⁸ By removing the exemption, was it Pitt's desire to entrap all income in his net?

Other persons did speak on 4 December, and Sir John Sinclair declared that:

he could not help regretting the thinness of the House that evening. No subject that ever occupied the attention of Parliament involved more important interests, nor more demanded serious and grave discussion. It was due to the people that every attention might be bestowed upon it in its progress; and for that reason he thought it his duty to suggest the propriety of a Call of the House.¹⁵⁹

¹⁵⁶ *The Parliamentary History*, above n 79, 82.

¹⁵⁷ *An Act for raising a certain sum of money, by way of annuities, to be charged on the consolidated fund; and for making perpetual certain duties of excise on British spirits, and certain duties on the amount of Assessed Taxes* 33 Geo. III c. 28 [30 April 30 1793].

¹⁵⁸ See Newmarch, above n 152, 243.

¹⁵⁹ 'Parliamentary Intelligence', *The Times* (London), 5 December 1798, 2.

Sir John Sinclair's request went unanswered. Pitt was evidently present, as in response to Sir John Sinclair's question, "whether the property of foreign creditors in the English Funds would be liable to the new tax upon Income," Pitt tersely replied, "[c]ertainly not."¹⁶⁰

5 December 1798

Debate resumed on 5 December when, as requested:

Mr. Chancellor of the Exchequer presented to the House, according to Order, a Bill to repeal the Duties, imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties; and the same was received; and read the first time. *Resolved*, That the Bill be read a second time. *Ordered*, That the said Bill be read a second time to-morrow morning.¹⁶¹

Before debate on Pitt's proposals had properly begun, an advertisement appeared in *The Morning Chronicle* of 5 December, notifying the public that "[t]his day is published, price 2s, 'Thoughts on Taxation:' in which the policy of a tax on income is impartially considered."¹⁶² *The Morning Chronicle* also began its campaign against the tax, with a quite remarkable assertion that:

Mr Pitt's new Scheme of Finance, if it be calculated to put an end to *swearing*, will not tend very much to put an end to *cursing*. The people of this country will have abundant reason to curse its authors and abettors, if it is not very much improved indeed.¹⁶³

The editorial in *The Times* of 5 December, in a rather self-congratulatory manner, informed its readers that:

[i]n our paper of yesterday we gave a very detailed and, we trust, satisfactory report of Mr Pitt's very eloquent speech on the preceding evening, and also an accurate review of the Budget, in which the Supply and Ways and Means for the ensuing year are placed in the clearest and most comprehensive point of view. In the course of the many discussions which will no doubt take place in the progress of Mr Pitt's Plan of Finance through the Houses of Parliament, we shall have frequent opportunities for offering our observations.¹⁶⁴

¹⁶⁰ 'Parliamentary Intelligence', above n 159, 2.

¹⁶¹ *Journals of the House of Commons*, above n 28, 57.

¹⁶² [Advertisements], *The Morning Chronicle* (London), 5 December 1798, 1.

¹⁶³ [Editorial], *The Morning Chronicle*, above n 162, 2.

¹⁶⁴ [Editorial], *The Times* (London), 5 December 1798, 3. *The Morning Chronicle* did not report the proceedings of the 3 December until the 5 December, a day after *The Times* had done so.

The Times of 6 December reported the proceedings of the House of Commons on 5 December 1798 concerning the “Tax on Income” in less than half a column,¹⁶⁵ whereas the report by *The Parliamentary History* of the proceedings of 5 December is even more concise and to the point, merely recording that “Mr Pitt brought in the [Duties upon Income] Bill [which was] read a first time. On the 6th, it was read a second time, and on the 7th it was committed.”¹⁶⁶

6 December 1798

The *Journals of the House of Commons* record that, on 6 December 1798:

[t]he Bill to repeal the Duties, imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties, was read a second time. *Resolved*, that the Bill be committed. *Resolved*, That the Bill be committed to a Committee of the whole House. *Resolved*, that this House will, to-morrow morning, resolve itself into a Committee of the whole House, upon the said Bill.¹⁶⁷

That the Duties upon Income Bill was read a second time, on 6 December, was the only reference given by *The Parliamentary History* of that day’s proceedings. On the other hand, *The Parliamentary Register* published four and a half pages of debate, followed by nine pages of tables of the net produce of taxes for the year to 10 October 1798, and the duties imposed from 1793 to 1798.¹⁶⁸

On the 6 December *The Morning Chronicle* published the very detailed resolutions of the House of Commons in full,¹⁶⁹ whereas *The Times* chose to publish only a very short but more understandable list of the rates of the proposed tax on different levels of income.¹⁷⁰ The report of Parliamentary proceedings on 6 December in *The Times* of 7 December merely noted that “[t]he Bill for imposing a general tax upon income ... was read a second time, and ordered to be committed to a Committee of the whole House tomorrow.”¹⁷¹

¹⁶⁵ ‘Parliamentary Intelligence’, ‘Tax on Income’, *The Times* (London), 6 December 1798, 2.

¹⁶⁶ *The Parliamentary History*, above n 79, 73.

¹⁶⁷ *Journals of the House of Commons*, above n 28, 58.

¹⁶⁸ *The Parliamentary Register*, above n 135, 136.

¹⁶⁹ [Editorial], *The Morning Chronicle* (London), 6 December 1798, 2.

¹⁷⁰ [Editorial], *The Times* (London), 6 December 1798, 3.

¹⁷¹ ‘Parliamentary Intelligence’, *The Times* (London), 7 December 1798, 2.

7 December 1798

Why so little debate appears to have been conducted in the early days of the Duties upon Income Bill appears to have been due solely to the lack of members being present in the House of Commons. Given the nature of Pitt's proposal, one can only wonder why that was. This was an issue which *The Times* addressed in its edition of 7 December, in agreeing that:

[t]he observations made by Mr Martin in the House of Commons, relative to members absenting themselves from their parliamentary duty, is extremely just. If gentlemen choose to stand forward at the General Elections to represent the people of this country, surely they ought to think it worth their while to do the duty of a Representative, after the trust has been delegated to them.¹⁷²

The *Journals of the House of Commons* recorded that on 7 December the Duties upon Income Bill was read in Committee, with Mr. John Smyth in the Chair and, in his report from the Committee, stated "[t]hat they had gone through the Bill, and made several Amendments thereunto; which they had directed him to report, when the House will be pleased to receive the same. [It was] [o]rdered, That the Report be received to-morrow."¹⁷³

It is interesting to see that on 7 December *The Morning Chronicle* advertised that a publication by an anonymous author, "Observations on the Taxation of Property. With the Outline of the Bill to that Intent," was available to the public at a cost of 1s 6d.¹⁷⁴ The advertisement also had the notation: "NB. A short Postscript has been added on the subject of Income, which may be had gratis by those who purchased the pamphlet previous to its insertion." How the author was able to obtain the details of the Duties upon Income Bill at this early stage of the debate is curious, not to mention that the author was able to publish and sell such a document for his own pecuniary gain.

The Morning Chronicle was, at this time in the passage of the Duties upon Income Bill, of the opinion that:

[t]he plan of the tax upon income is altogether a revolutionary measure. Its principle is French, and all its means of execution are Jacobinical. There is to be a *Public Accuser* in every district - a Citizen Fouquier Tinville [sic], whose office is to receive informations

¹⁷² [Editorial], *The Times* (London), 7 December 1798, 2.

¹⁷³ *Journals of the House of Commons*, above n 28, 62.

¹⁷⁴ [Advertisements], *The Morning Chronicle* (London), 7 December 1798, 1.

[sic], and ferret out the property, or the income of individuals. Thus, in every instance, do we follow the practices that we reprobate, and incorporate into our own system what we are engaging all the Courts of Europe, by subsidies, to destroy!¹⁷⁵

The Morning Chronicle continued with its diatribe against Pitt's plan at great length, with comments such as "[i]t is to be hoped that care will be taken that none of the new Commissioners and Surveyors will be taken from that number who have perjured themselves to evade the Assessed Taxes."¹⁷⁶ The public also joined in, with letters first appearing on this issue in this same edition. One contributor, "A Stockholder," declared that "I should be sorry to take a false oath," and another, "Mercator," objected to Pitt's intention:

[to] embrace every class of individual [such as those] whose income is the entire produce of their industry, arising from salary, weekly wages, &c., and who are to be considered on the same footing, and pay in the same proportions, as persons possessing the same amount of income, arising from rental of an estate, interest on property in the funds, in mortgages, or other securities; whereas the circumstances of each are essentially different.¹⁷⁷

8 December 1798

By now, the public were taking up the invitation by *The Morning Chronicle* to express their opinions of Pitt's plan. On the 8 December, the *Chronicle* published a very lengthy submission of almost half a page of print from "A Labourer in the Vineyard," under the heading "Tax on Income," which described the financial position of the nation in some detail, with comments such as "the volumes of Parliamentary Debates were adorned with the flowers of the Minister's eloquence," and "[h]ow pleasant, Mr Editor, to see the Mansion-House Committee dancing to the tune of the budget."¹⁷⁸ Yet no concerns were being expressed in the daily newspapers regarding the possible impact of Pitt's proposal on charitable institutions, in spite of the public being given the opportunity to do so.

On 8 December, according to the *Journals of the House of Commons*:

Mr John Smyth, according to Order, reported from the Committee of the whole House ... the amendments which the Committee had made to the Bill, and which they had directed him to report to the House; and he read the report in his place, and afterwards delivered the

¹⁷⁵ *The Morning Chronicle*, above n 174, 2.

¹⁷⁶ *The Morning Chronicle*, above n 174, 2.

¹⁷⁷ *The Morning Chronicle*, above n 174, 4.

¹⁷⁸ 'Tax on Income', *The Morning Chronicle* (London), 8 December 1798, 1.

Bill, with the amendments, in at the Clerk's Table: Where the report was read. *Ordered*, That the said report be taken into further consideration upon Friday morning next.¹⁷⁹

Finally, it was "*Ordered*, That such a number of copies of the said Bill, as amended by the Committee, be printed, as shall be sufficient for the use of the members of the House."¹⁸⁰ The *Times* of 10 December, 1798, in its report of the debate in the House of Commons on the 8 December (8 December having been a Saturday) contained only one short sentence on the Duties upon Income Bill, which read: "Mr Smith brought up the report of the Bill imposing a general Tax on Income, which was ordered to be printed, and to be taken into further consideration on Monday."¹⁸¹

The printing of the Duties upon Income Bill

In 1798, the printing of tax Bills was a relatively new concept, as in 1786 the printing of tax Bills had been rejected by Parliament. On 22 May 1786, Sheridan, in referring to:

his intended motion for the printing of Tax Bills, said, that although the subject was of a novel nature, yet he would be as brief as possible. He was convinced that every person would readily coincide with him in opinion, that there were no Bills of more importance than the Tax Bills. *They ought, undoubtedly, to be [?] understood before they were passed; and no mode could [be?] more eligible for diffusing the information, than the printing of every Tax Bill previous to its final discussion.* The practice of printing Bills was of modern date, as might be seen from Mr. Hatsel's *Precedents of the House of Commons*, which he believed to be in possession of every gentleman conversant in parliamentary business. This custom however, had not as yet extended to Tax Bills; ... As the printing of the Tax Bills would be attended with the happiest effects, [he] hoped no gentleman would oppose a measure of such [general] utility to the country. ... He applauded the parliamentary maxim of [not] admitting petitions against a Tax Bill, during the same session in which the law was passed. If such a law were not enforced, there would otherwise arise very unnecessary delays. (Emphasis added.)¹⁸²

Sheridan then moved "that the Bill relative to a tax on perfumery, be printed."¹⁸³ The motion was opposed, but particularly by none other than the Chancellor of the Exchequer, William Pitt, who:

¹⁷⁹ *Journals of the House of Commons*, above n 28, 64.

¹⁸⁰ *Journals of the House of Commons*, above n 28, 64.

¹⁸¹ 'Parliamentary Intelligence', *The Times* (London), 10 December 1798, 1.

¹⁸² *The Parliamentary Register*, (1787) vol XX, 245.

¹⁸³ *The Parliamentary Register*, above n 182, 245.

[expressed] his pleasure at discovering that the days of taxation were now nearly at an end, as the revenue of the country was considerably improved. If any good could be derived from the present motion, he would not on any account oppose it; but from a consciousness of [?] futility, he was of the opinion that it was needless to trouble the House with anything of the kind.¹⁸⁴

The House of Commons then divided and a vote was taken: “Ayes 24 - Noes 199.”¹⁸⁵ Sheridan tried again, on 24 May, when he moved for the printing of a Bill “for better securing the duties on starch.”¹⁸⁶ Pitt again opposed the motion and, the question being called for, was “negatived.”¹⁸⁷ However, by 1798, such Bills were being printed, even if not for the immediate convenience of the members of the House of Commons.

The *Parliamentary History* does not contain a report of the debate on the Duties upon Income Bill in the House of Commons on 7 December 1798, the next report of debate by *The Parliamentary History* on the Bill being on 14 December 1798. An explanation for the omission of the debate on 7 December is to be found in *The Times* of 8 December in which its report of the debate in the House of Commons on 7 December consisted of only three short paragraphs, one of which stated that:

Mr Pitt observed that the only object of the Committee at that time would be to fill up the blanks, in order that the Bill might be printed; and as he believed it would be more satisfactory for gentlemen to debate the clauses after the report should be brought up, he hoped there would be no objection to putting off the discussion till a more convenient opportunity.¹⁸⁸

Thus I construe from this that the members of the House of Commons had not been provided with a draft of the Duties upon Income Bill to peruse on its introduction into the House of Commons by Pitt. There is nothing unusual in that, as such a practice continues today, at least as regards the Opposition. However, I note that a copy of Pitt’s Duties upon Income Bill being the basis for his debate in the House of Commons which began on 3 December 1798 does not appear to exist, as no such copy is listed in the House of Commons Sessional Papers

¹⁸⁴ *The Parliamentary Register*, above n 182, 246.

¹⁸⁵ *The Parliamentary Register*, above n 182, 246.

¹⁸⁶ *The Parliamentary Register*, above n 182, 247.

¹⁸⁷ *The Parliamentary Register*, above n 182, 247.

¹⁸⁸ ‘Parliamentary Intelligence’, ‘Tax on Income’, *The Times* (London), 8 December 1798, 2.

for 1798-99.¹⁸⁹ The first listing in the Sessional Papers concerning Pitt's Duties upon Income Bill recorded the following:

A Bill (as amended by the Committee) to repeal the duties imposed by an Act [38 Geo. III c. 16] ...; to make more effectual provision for like purpose, by granting certain duties upon income, in lieu of the said duties. *Presented by Hon. William Pitt, 1a 5 [sic] December, otbp [ordered to be printed] as amended 8 December 1798 Enacted 39 Geo. III, c. 13 [5 January 1799].*¹⁹⁰

This event was recorded in *The Parliamentary Register*, dated 7 December 1798, in these words:

The Income Bill being in a Committee of the whole House, Mr Chancellor Pitt observed, that perhaps the Committee would dispense with formalities in the present stage of this important proceeding, *as the amendments should be printed*; and that he proposed to have the discussion of the measure on the recommitment of the Bill. The Bill then *pro forma*, passed the Committee, and the report was ordered for tomorrow. (Emphasis added.)¹⁹¹

The curiosity here is that both *The Morning Chronicle* and *The Times* of 10 December reported that it was on 8 December that the Duties upon Income Bill was ordered to be printed, not on 7 December as recorded in *The Parliamentary Register*.

An analysis of the printing of the Duties upon Income Bill

A notation on the title page of the Duties upon Income Bill, printed in accordance with the directions of the House of Commons, recorded that “[t]he Clauses marked (A,) (B,) (C,) and (D,) were added by the Committee.”¹⁹² However, the clause relating to the charitable purposes exemption, the wording of which differed from the Act as passed, is not one of those clauses. The 79-word exempting clause in the Duties Upon Income Bill, as amended by the Committee and ordered to be printed on 8 December 1798, read:

[t]hat where any bodies politic or corporate, companies, fraternities, or societies of persons, whether corporate or not corporate, shall be entitled unto any annual income, to the respective amounts before specified, other than and besides any income applicable to charitable purposes, such annual income not applicable to charitable purposes only shall be

¹⁸⁹ Lambert, above n 55.

¹⁹⁰ Lambert, above n 55, v.

¹⁹¹ *The Parliamentary Register*, above n 135, 153.

¹⁹² Lambert, above n 55, [1].

chargeable with such and the like Rates as any other annual income of the same amount will, under and by virtue of this Act, be chargeable with.¹⁹³

At that stage, the clauses of the Duties upon Income Bill had not being numbered sequentially. Instead, approximately every twelfth row of print was numbered, with the above clause commencing at line 102 of the Bill.¹⁹⁴ On counting the clauses I found that the charitable institutions exemption clause was the 45th clause in the Duties upon Income Bill, yet in the final Duties upon Income Act the exemption was placed at section 87.¹⁹⁵

10 December 1798

The issue of 10 December 1798 of *The Morning Chronicle*, having been inundated with letters, reported to its readers that:

[w]e have been favoured with so many letters on the subject of the tax upon income, as to make it impossible for us to insert them all. They would already fill a folio volume. We shall however pay the most careful attention to the ideas thrown out, and *shall collect the arguments and objections which have been suggested by men in different classes of society*. We shall also, in the progress of the discussion, give such letters at length as may serve to place the proposed measure in the strongest point of view. (Emphasis added.)¹⁹⁶

None of those “men in different classes of society” represented the charitable institutions. After stating further objections to the tax, *The Morning Chronicle* declared that “[n]ay, we have received various statements which clearly prove, that the charges now existing upon all that rank of society denominated manufacturers and tradesmen, will swell the taxes they have to pay to a full fifth of their income.”¹⁹⁷ To demonstrate its interpretation of the proposed Duties upon Income, based on information from the public, *The Morning Chronicle* of 10 December also published the following Table 1 *The Morning Chronicle* 10 December 1798:¹⁹⁸

¹⁹³ Lambert above n 55. *A Bill [As amended by the Committee] to repeal the Duties imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties* (8 December 1798) 28.

¹⁹⁴ Some numbers were entered at every tenth line of print.

¹⁹⁵ *An Act ...* [9 January 1799], above n 63, s. LXXXVII.

¹⁹⁶ ‘Tax upon Income’, *The Morning Chronicle*, 10 December 1798, 3.

¹⁹⁷ *The Morning Chronicle*, above n 196. 3. By my calculation, the sum of £81 15s and £41 16s, that is £123 11s, is 24.7% of £500, or a fourth, not a fifth, of the income in this example.

¹⁹⁸ *The Morning Chronicle*, above n 174, 3.

Table 1 *The Morning Chronicle* 10 December 1798

Thus a person employed in a manufactory near London, the profits of which, after deducting rent and insurance, in the latter of which a half goes to Government, he estimates on an average of the last three years at	£500 0 0
Now he pays an account of the number of windows in his house, the high rent of his premises, and the horses and servants he is obliged to keep, under the name of old Assessed Taxes, which are not to be abolished	27 10 0
Land Tax by a special clause in his lease	10 0 0
Tythes, 14 acres at 7s.	4 18 0
Church Rate	3 10 0
Highway Rate	5 12 0
Poor's Rate	25 0 0
Hair Powder Licenses for his family	4 4 0
Armorial Bearing Licence, having unfortunately his crest, a boar, on his seal	1 1 0
Total Taxes	81 15 0
Neat [sic] income	418 5 0
10 per cent upon this sum will be	41 16 0
[Income after tax]	£376 9 0

The example given by *The Morning Chronicle* also provides an interesting picture of the taxes of the time, including Imperial and Local, and how an individual's Income Tax liability was to be calculated. The point of significance here are the deductions that were allowed for other taxes that an individual had paid, before calculating his Income Tax liability.

11 December 1798

On 11 December *The Morning Chronicle* published an "Abstract of A Bill (as amended by the Committee)," having declared that:

[w]e feel it to be our duty to make every thing give way in this day's publication to an Abstract of the new Bill for a tax upon income; from which the public may see the provisions of the intended law.¹⁹⁹

This is something that *The Times* was not prepared to do, as the editorial board declared, on 12 December, that:

[w]e are led to believe that there will not be any serious opposition made to the new tax Bill on income, the principle of which is generally approved. It is probable, however, that some modifications will be proposed in the Committee, and under these circumstances we rather defer giving the copy or Abstract of the Bill, until all the amendments are made. The Bill is expected to be debated on Friday, on its recommitment.²⁰⁰

¹⁹⁹ 'Abstract of a Bill', *The Morning Chronicle* (London), 11 December 1798, 3.

²⁰⁰ [Editorial], *The Times* (London), 12 December 1798, 4.

The Abstract, as published by *The Morning Chronicle*, included the comprehensive exemption clause for those entities with income applicable to charitable purposes, as well as other requirements applicable to such institutions. The draft clauses, which are identical to those of the Bill as printed, are reproduced in full below.

And be it further enacted, That where any bodies politic or corporate, companies, fraternities, or societies of persons, whether corporate or not corporate, shall be entitled unto any annual income, to the respective amounts before specified, *other than and besides any income applicable to charitable purposes, such annual income not applicable to charitable purposes only* shall be chargeable with such and the like rates as any other annual income of the same amount will, under and by virtue of this Act, be chargeable with.

Provided always, and be it further enacted, That no such bodies politic or corporate, companies, fraternities or societies aforesaid, shall be charged or chargeable, in respect of any income which, according to the rules or regulations of such corporations, companies, fraternities, or societies, shall be applicable to the payment of any annual dividends or interest to arise and become payable to any individual members of such corporations or public companies, or to any other persons or public bodies, having any share, right, or title of, in, or to any capital stock, or other property belonging to such corporations or public companies, nor in respect of which any dividends or interests [sic] shall, according to such rules and regulations, become payable; provided that such person or persons, corporations, companies, fraternities, or societies, to whom such dividends or interest shall be payable, shall be charged and chargeable in respect thereof, according to the amounts thereof, and the rates before specified, as and when the same shall be received by them respectively; and that an account of such dividends and interest “shall” (inserted by *TMC*) be delivered to the Assessors of the parish or place, at the same time, and by the same persons, in the same manner as the statements of the income of such corporations and public companies chargeable upon them are required to be delivered.

And be it further enacted, That the Chamberlain, Treasurer, Clerk, or other officer acting as Treasurer, Auditor, or receiver, for the time being, of every such corporation, company, fraternity, or society, shall, and he is hereby required within twenty-eight days after the publication of such general notices as herein mentioned, in the parish or place wherein the office of such Chamberlain, Treasurer, Clerk, or other officer shall be situate, to make out and deliver to the Assessors acting in and for such parish or place, a statement of the annual income of such corporation, company, fraternity, or society, according to the form specified in the Schedule to this act [sic] annexed, marked () [sic] and shall also specify in such statement *how much and what proportion of such annual income is not chargeable by virtue of this Act upon such corporation, company, fraternity, or society, and for what purposes the income, not chargeable [as] aforesaid, is or shall be applicable*; and such Assessors are hereby required to transmit such statement to the respective assessors in the manner and for the purposes herein directed, as to statements of householders and others charged to the said rates by virtue of this Act. (Emphasis added.)²⁰¹

²⁰¹ *Abstract of a Bill (as amended by the Committee, To repeal the Duties imposed by an Act, made in the last session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties)*, *The Morning Chronicle* (London), 11 December 1798, 2.

These clauses in the Duties upon Income Bill then appeared in the Duties upon Income Act 1799 as sections 87, 88 and 90, respectively. The section V charitable purposes exemption, as it appeared in the Duties upon Income Act 1799, was not included within the Abstract as published by *The Morning Chronicle*. Neither did the five “Rules” and seventeen “Cases” “for estimating the income of persons” as described by *the Morning Chronicle*, appear in the final Act.²⁰² Intentional or not, four Rules and eighteen Cases were published as part of an Act passed on 21 March 1799, entitled *An Act for extending the time for returning Statements under* [39 Geo III c. 13 9 January 1799].²⁰³

The Act of 21 March 1799 to extend the time for returning statements contained a number of Schedules which were omitted from 39 Geo. III c. 13 of 9 January 1799 in the *Statutes at Large* printed in London in 1800.²⁰⁴ Schedule A contained the rules for estimating the income of persons to be assessed under 39 Geo. III c. 13. Schedule B contained the form of statements of income to be made by persons whose income was under £60, between £60 and under £200, and £200 and upwards. The next three forms related to trade, merchandise or manufacture, followed by three forms to be used by the officers of corporations, as required under s. 90 of 39 Geo. III c. 13 declaring income, in accordance with sections 87, 88 and 89 of that same Act, where such income “did not amount to the sum of sixty pounds per annum;” “under two hundred pounds;” or “two hundred pounds or upwards.”²⁰⁵ There was no form in which to describe what portion of income was applied to charitable purposes, and what was not, as was required under those sections.

The Morning Chronicle continued to pour scorn on Pitt’s plan, describing his proposed tax upon income as a “Pandora’s Box,”²⁰⁶ as well as commenting that “[t]he Jews approve highly of Mr Pitt’s intended Tax upon Income. ‘Tene per shent [sic],’ they say, ‘is very fair’.”²⁰⁷

²⁰² ‘Abstract of a Bill’, above n 201, 2.

²⁰³ *An Act for extending the time for returning statements under* [39 Geo. III c. 13], *passed in the present session of Parliament, intituled An Act to repeal the Duties imposed by an Act, made in the last session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties; and to amend the said Act* 39 Geo. III c. 22 [21 March 1799].

²⁰⁴ The *Statutes at Large* edition of 1800 stated, in 30 Geo. III c. 13 [9 January 1799] between s. CXXIV and Schedule F, that “[t]he Schedule to this Act was repealed, and a new one framed in its stead by Cap. 22 of this session; to which latter Schedule all the Notes in this Chapter now refer, except that in s. 52 referring to [Form (F) Precept of Commissioners] for which no substitute is provided in c. 22.

²⁰⁵ *An Act ...* [9 January 1799], above n 63.

²⁰⁶ [Editorial], *The Morning Chronicle* (London), 11 December 1798, 3.

²⁰⁷ [Editorial], above n 206, 4.

13 December 1798

The persistent absenteeism of members from the House, which seems implausible given the seriousness of the situation with which the country was faced, both internationally and domestically, continued to raise concerns. The *Times* made a further comment on the matter, and observed that:

[w]e do not remember, (says an Opposition Paper of yesterday) to have ever seen a greater scarcity of members of the late Opposition in the House of Commons than on Tuesday night. We perceived none but Mr Tierney, Mr Jekyll, and Mr Plomer.” The Party have long been in want of *solid arguments*; they are now deprived even of *pretexts*.²⁰⁸

The contempt with which Pitt’s plan was held by the City may be seen in *The Morning Chronicle* of the 13 December, which published a letter under the pen-name “Brevity,” who asked the editor:

[d]o you think that there exists a Banker or Merchant in London who will (if he could) give in a *fair* statement of the profits of his trade, *alias* his income? If you think so, I do not, and I have put the question to several of both descriptions who *laughed in my face!* N.B. one man shrugged up his shoulders!²⁰⁹

It is interesting to note that *The Morning Chronicle* made much more of an effort to publish the views of its readers than *The Times*, which may say more about the political leanings of the newspaper than its desire for market share. The issue of the 14 December 1798 contained a number of extracts from writers’ letters, as *The Morning Chronicle* had by then, presumably due to the volume of correspondence that it was receiving, set upon the policy of “abridging the opinions [it] had received on the alarming Bill of taxation now in Parliament.”²¹⁰ Of the many extracts published by *The Morning Chronicle*, which are interesting but too lengthy to quote here, none discussed the charitable purposes exemption from the Duties on Income, as described in the Abstract of the Duties upon Income Bill that *The Morning Chronicle* had published on 11 December.

The Oracle and Daily Advertiser noted, in its publication of an “Abstract of the Bill (as amended by the Committee)” on 13 December, that “[t]he income of corporations, societies,

²⁰⁸ [Editorial], *The Times* (London), 13 December 1798, 2 (emphasis as printed).

²⁰⁹ [Letters], ‘Tax on Income’, *The Morning Chronicle* (London), 13 December 1798, 3.

²¹⁰ [Editorial], ‘Tax upon Income’, *The Morning Chronicle* (London), 14 December 1798, 2.

... if not applied to charitable purposes, are to be taxed.”²¹¹ *The Oracle* was referring to the 45th clause of the amended Bill,²¹² but made no further comment on this matter.

14 December 1798

The *Journals of the House of Commons* recorded that on the 14 December 1798 the House was advised “that several other amendments are necessary to be made to the said Bill,”²¹³ following which the Bill was re-committed to a Committee of the whole House with John Smyth as Chair of the Committee. Having considered of the Duties upon Income Bill, once the Speaker had resumed the Chair, Smyth reported to the House of Commons that:

[as] they had made a progress in the Bill ... he was directed by the Committee to move, that they may have leave to sit again. [The House then resolved] “[t]hat this House will, upon Monday morning next [17 December], resolve itself into a Committee of the whole House, to consider further the said Bill.”²¹⁴

Sir John Sinclair declared:

[that he rose] to oppose the motion, from the full conviction, that the present Bill is so exceptionable a measure, that it is impossible, by the efforts of any Committee whatever, to make it entitled to the approbation of the House.²¹⁵

Sir John Sinclair was also concerned that taxes on income might become a permanent feature: “is it possible to imagine, if this tax is once imposed, that we shall ever get rid of it?”²¹⁶ Sir John Sinclair also noted what he considered to be the aggressive nature of Pitt’s proposal which, in his opinion, “establishes a principle, that the government ... is entitled to demand a certain part of the income of each individual, and is also entitled to enforce that compulsive requisition, by the strictest and harshest [of] regulation.”²¹⁷

Mr Simeon, in referring to corporations, made what I suspect is an oblique reference to charitable institutions with his use of the word “corporation.” Kyd, in his 1793 *A Treatise on*

²¹¹ ‘Abstract of a Bill (as amended by the Committee)’, *Oracle and Daily Advertiser* (London), 13 December 1798, Issue 21853.

²¹² Lambert, above n 55, 28.

²¹³ *Journals of the House of Commons*, above n 28, 78.

²¹⁴ *Journals of the House of Commons*, above n 28, 78.

²¹⁵ *The Parliamentary History*, above n 79, 73.

²¹⁶ *The Parliamentary History*, above n 79, 86.

²¹⁷ *The Parliamentary History*, above n 79, 86.

The Law of Corporations,²¹⁸ used the term “corporation aggregate” as in “[a] trust for orphans,”²¹⁹ or in describing the legal basis of an hospital where “the corporate succession is vested in trustees ... [such as] Sutton’s Hospital, commonly called the Charter House.”²²⁰

The Parliamentary History reported that Simeon:

proceeded to take notice of the hints that had been thrown out upon a former occasion [but does not say what that occasion was], relative to the taking [of] the property to be found in corporation and church lands, for the use of the state. He hoped that would never be deliberately proposed in that House. Corporations were extremely useful for the purpose of administering local justice.²²¹

There are two points to be taken from Simeon’s comments. First, it is quite possible that Simeon was referring to the laws of Mortmain. Second, his reference to corporations being used to administer local justice bears a striking resemblance to Andrew’s use of “police” in discussing charitable institutions.²²²

Pitt also referred to “police” but, due to discrepancies between the two publications which reported the debate, *The Parliamentary History* and *The Parliamentary Register*, what Pitt actually said is difficult to ascertain. The report in *The Parliamentary History* is obviously based on the report of the debate in *The Times*, as the extract from *The Parliamentary History* is word-for-word that of *The Times* of 15 December, which both record Pitt as having said that:

[w]e must lay the contribution, then, either on capital or income. From this general operation, however, the hon. gentleman would exempt all those whom he is pleased to call exclusively the useful classes, and lay the whole of the weight on what he calls the useless class. In the class of useless the hon. gentleman has thought proper to rank all the proprietors of land, those men who form the line which binds and knits society together – those on whom, in a great measure, the administration of justice, and *the internal police of the country* depends;- those men from whom the poor receive employment, from whom agriculture derives its improvement and support and to whom, of course, commerce itself is indebted for the foundation on which it rests. Yet this class the hon. gentleman thinks proper to stigmatize as useless drones, of no estimation in the eyes of society. (Emphasis added.)²²³

²¹⁸ Stewart Kyd, *A Treatise on The Law of Corporations* (1793) vol. I.

²¹⁹ Kyd, above n 218, 20.

²²⁰ Kyd, above n 218, 27.

²²¹ *The Parliamentary History*, above n 79, 88.

²²² See Donna T. Andrew, *Philanthropy and Police: London Charity in the Eighteenth Century* (1989).

²²³ *The Parliamentary History*, above n 79, 99.

Was the phrase “the internal police” a reference to charitable institutions? From the research undertaken by Andrew, with her use of the phrase “redemptive police,” in her study of the Eighteenth Century charitable institutions of London, I suggest that is precisely what Pitt was referring to.²²⁴ The report in *The Parliamentary Register* of 14 December recorded Pitt as having said:

[that] in order to ascertain the capital of the country, the only proper criterion that offers itself is that of income. The measure proposed goes to affect, in a just and equal manner, the commerce of the country, all proprietors of land, all to whom the commerce and economy of the country depended, all those through whom the administration of justice took place, all to whom the protection of the poor attached, and all who formed the great and important links in the vast chain of society.²²⁵

The difference between two extracts may have been because of the respective political leanings of the two newspapers, an issue which I have not explored, which is suggestive of a research project in its own right.²²⁶ At the conclusion of the debate of Friday 14 December, a vote “that the said Report be now taken into further consideration” having been moved, the House divided with the resultant votes being “183 ‘Yeas’ and 17 ‘Noes’.”²²⁷

17 December 1798

The *Parliamentary History* recorded that on 22 December 1798, “the Duties upon Income Bill [had been] re-committed [on] the 17 and 19 December [and] in the Committee a variety of amendments and modifications were, after long and desultory conversations agreed to.”²²⁸ Debate on the Duties upon Income Bill then resumed. The *Parliamentary History* did not report the debates of 17 and 19 December, yet those debates were reported in *The Times*, *The Morning Chronicle* and in *The Parliamentary Register*, as well their occurrence having been recorded in the *Journals of the House of Commons*.²²⁹

²²⁴ Andrew, above n 222, 6, 7, 25, 98, 108, 165, 168, 173, and 188.

²²⁵ *The Parliamentary Register*, (1799) vol. VII, 268.

²²⁶ Professor John Cookson, one of my supervisors, has suggested that this might be due to the licence with which parliamentary debates were reported at that time.

²²⁷ *The Parliamentary History*, above n 79, 109.

²²⁸ *The Parliamentary History*, above n 79, 131.

²²⁹ Volume XXXIV of *The Parliamentary History* reported the debate of 5 December 1798, commencing at column 74, followed by the debate of 14 December, 1798, in the same column but continuing through to column 109.

On Monday 17 December, with 119 members of the House of Commons present, John Smyth once again took the Chair. Deliberation on the Duties upon Income Bill followed and, the Speaker having resumed the Chair, Smyth:

reported from the Committee [t]hat they had made a further progress in the Bill; and that he was directed by the Committee to move, that they may have leave to sit again. And the House *having continued to sit till after twelve of the clock on Tuesday morning; Resolved* That the House will, this day, resolve itself into a Committee of the whole House, to consider further of the said Bill. ... And then the House adjourned till this morning, eleven of the clock. (Emphasis added.)²³⁰

Mr William Smith noted that:

[as] the Bill had been printed only a week, consequently the country could not have time to express any opinion as to its details, although they might approve of the principle of raising a part of the supplies within the year.²³¹

During the debate that day Tierney made a direct reference to corporations, and the churches, arguing that:

[regarding] the subject of corporations; their expences [sic] had been termed innocent hospitality; but he would say, the instant the widow's mite was taken away, that innocent hospitality ought to be termed a gluttony. In our present situation, some of the greater emoluments of the Church ought to be taxed.²³²

Shortly afterwards, Tierney threw out an even more threatening challenge, by asking::

whether it would be likely to do good, *to put on record the exact amount of the incomes of the several bodies corporate throughout the kingdom?* He believed they would not be fond themselves of rendering an account of their possessions, lest, in the hour of distress, the Government should know where to lay their hands. *The Church was proverbially jealous*, and he believed, in some Deans and Chapters, [that] the Bursers [sic] were obliged to take an oath not to betray their secrets. This hint he merely gave in kindness and caution [a laugh] [sic].²³³

²³⁰ *Journals of the House of Commons*, above n 28, 80.

²³¹ *The Parliamentary Register*, above n 135, 278.

²³² *The Parliamentary Register*, above n 225, 293.

²³³ *The Parliamentary Register*, above n 225, 294.

The reference to the incomes of bodies corporate brings to mind Gilbert's failed attempts to inquire into charitable donations, of which Tierney may well have been aware. What is surprising is that, in his challenge to the corporations and the churches, Tierney did not raise the issue of the taxation or exemption of charitable institutions. The feasting of charitable institutions was something that Gladstone was also to challenge, over sixty years later in 1863, when he attempted to remove the charitable institutions exemption from Income Tax.²³⁴

Lord Hawkesbury responded to Tierney's challenge to the corporations and churches:

[denying] that the Bill attacked corporations or the Church in a partial manner; he had always held these institutions essential to the safety of the Constitution and Laws; but if they were as injurious as they were useful, he would contend for the preservation of their property, since, if it were seized or invaded, all other property would soon follow; a fact of which we had seen a striking instance in France. He contended that the Bill, instead of being a plan of indiscriminate rapine, as it had been called, spread itself equally over the community as any measure could do, having the same object in view.²³⁵

Sir G.P. Turner, having "just arrived from the country two hours [ago?]", in the few words that he spoke on the Duties upon Income Bill that day was reported by *The Parliamentary Register* as having claimed that:

a tax on income was the best of all taxes: he had long recommended it. He believed that he was the first to propose in that very House this very tax. He had long recommended a tax on the funds; and he thought he need not say [why] he was interested in such a measure: this Bill taxed the funds, and that part of it he also considered as of his originating.²³⁶

18 December 1798

The exertions of the late night sitting on Monday 17 December must have been somewhat of a strain on the members of the House for, on the Tuesday morning following:

[t]he House met, and being counted by Mr Speaker, it appeared that forty Members were not present, yet, it being four of the clock, Mr Speaker took the Chair; and, having again counted the House, and it appearing that forty Members were not present, Mr Speaker adjourned the House, without a question first put, till tomorrow morning, ten of the clock.²³⁷

²³⁴ See Chapter 6 of this Thesis.

²³⁵ *The Parliamentary Register*, above n 225, 295.

²³⁶ *The Parliamentary Register*, above n 225, 297.

²³⁷ *Journals of the House of Commons*, above n 28, 81.

There was no debate in the House of Commons on the 18 December, there being, at four o'clock, not 40 members present, the House of Commons was "adjourned of course to tomorrow."²³⁸

One issue that I had been curious about was the effect of the proposed duties upon income on the value of the investments in the government funds. This was indeed an issue, as *The Times* reported, on 18 December, that "[i]n consequence of the Bill now before Parliament for a tax on income, the Short Annuities have felt a considerable depression. They yesterday fell equal to 1¼ per cent."²³⁹

The *Times* continued in its reluctance to divulge any details of the Duties upon Income Bill, their argument being that:

[a]ll the extracts from the Income Tax Bill as well as observations in what manner the Bill will operate, appear to us premature, and only likely to lead people into error. Hitherto only the principle of the Bill has been discussed, but as it is known that several of the clauses will undergo a material alteration in the Committee, we think it better to defer giving an extract of the Bill until they are definitely settled.²⁴⁰

19 December 1798

"The *sheep* will yield his fleece with placid air, while the *hog* squeaks if you but pluck a hair."²⁴¹ So wrote the editor of *The Morning Chronicle* in the issue of 19 December, followed by: "[t]he tax upon income has an extraordinary fate. We never heard a proposal against which men speak with so much bitterness of hostility out of Parliament."²⁴² *The Morning Chronicle* also reported, the day after *The Times* having done so and in virtually the same words, that "the Short Annuities have felt a considerable depression. They have fallen equal to 1¼ per cent."²⁴³

²³⁸ [Editorial], *The Times* (London), 19 December 1798, 2.

²³⁹ [Editorial], *The Times* (London), 18 December 1798, 3.

²⁴⁰ [Editorial], above n 239, 18 December 1798, 3. The typographical error is most unusual, as I have been very impressed with the accuracy of the type-setters of the *Times*. Type was set by hand and as this was a morning newspaper, the type must have been set by gaslight during the night. I often discussed this with my later father, a tradesman linotype and intertype operator, until the advent of web offset and lithography in which he also trained. It is to my father that I owe a debt for my love of reading, which I acquired from him.

²⁴¹ [Editorial], *The Morning Chronicle* (London), 19 December 1798, 2.

²⁴² [Editorial], above n 241, 3.

²⁴³ [Editorial], above n 241, 3.

On Wednesday 19 December the House again resolved itself into a Committee of the Whole House for the purposes of the Duties upon Income Bill with John Smyth in the Chair.²⁴⁴ The only significant issue, as regards this Thesis, of that day's debate was Mr Tierney expressing his disapproval:

of the new modifications; he rose only to ask if it was [Pitt's] intention to have the [Duties upon Income] Bill reprinted after the new clauses were brought up, or thus he might not have an opportunity of examining them previous to their discussion.²⁴⁵

Pitt assured him that “[i]t was indeed his intention that the Bill should be reprinted, but it was also his wish that no time should be lost, but that the discussion might take place on the report.”²⁴⁶ Once the debate was concluded Smyth reported to the Speaker, who had resumed the chair, that “a further progress was made in the Bill” and requested leave “to sit again.”²⁴⁷ The House, having sat “till near one of the clock on Thursday morning,”²⁴⁸ once again resolved itself into a Committee of the Whole House the next day, 20 December, when a number of clauses were debated at length.

The Court of Common Council

At a Court of Common Council held on 19 December, 1798, at which “the Lord Mayor, nine Aldermen, and a considerable number of Commoners” were present, the proposed tax upon income was debated at length, during which “a variety of arguments to shew [sic] the injustice of the Bill” were made.²⁴⁹ Of the four resolutions adopted by the Common Council, the second resolution, “That this Court do approve the principle of the Bill now pending in parliament, for a tax upon income,” indicated that opposition to Pitt's concept may not have been as great as *The Morning Chronicle* had portrayed. But it was the proposal that incomes from different sources should be uniformly taxed that had caused offence. Pitt had proposed “to tax the precarious and fluctuating income arising from the labour and industry of persons in trade, professions, &c. in the same proportion as the permanent annual income proceeding from landed and funded property,” a proposal that the Common Court considered to be “most partial, cruel, and oppressive.”²⁵⁰ The Common Court also objected to the establishment of

²⁴⁴ *Journals of the House of Commons*, above n 28, 86.

²⁴⁵ *The Parliamentary Register*, above n 135, 315.

²⁴⁶ *The Parliamentary Register*, above n 135, 316.

²⁴⁷ *Journals of the House of Commons*, above n 28, 86.

²⁴⁸ *Journals of the House of Commons*, above n 28, 86.

²⁴⁹ ‘Common Council’, *The Morning Chronicle* (London), 20 December 1798, 3.

²⁵⁰ ‘Common Council’, above n 249, 3.

“an inquisitorial power unknown in this country [which was] inconsistent with the principles of the British Constitution and repugnant to the feelings of Englishmen.”²⁵¹

20 December 1798

One of the clauses debated on 20 December is of particular interest, that relating “to the mode of taxing corporate bodies.” This question had been preceded by an amendment which proposed that all salaries in excess of £200 a year paid to the officers of corporations should be deducted from the income of the corporation. The amendment, “after a few observations from the Chancellor of the Exchequer,” was withdrawn.²⁵² *The Times* of 21 December reported that:

[o]n the question for the clause that relates to the mode of taxing corporate bodies, Mr Tierney said, he thought every man who distributed part of his gross income annually among domestics, in annuities for the education of his children, [was] entitled to the same exemptions as any trading company whatever. By this Bill as it stood, the bank directors would only pay in their individual capacity. He wished to know why they were so highly favoured.²⁵³

What followed might also have been an explanation by Pitt as to why charitable institutions should not pay duties upon their income, that is:

Mr Pitt considered the directors as trustees for the holders of stock, and as the creditor would be liable to pay the tax from his dividend, he was sure the Committee would perceive how just was the distinction between such a body [the Directors of the Bank of England] and individuals in private stations. *Were [Tierney’s] motion adopted, every branch of private expenditure would equally form a ground of exemption* – the payments made annually by a gentleman to his linen-draper; butcher, &c. Indeed the refinement was infinite, and he must think the Hon. Gentleman would, on a moment’s reflexion [sic], see the propriety of not permitting such subtle distinctions to slide into Bills of Finance. (Emphasis added.)²⁵⁴

While it might not be appropriate that private payments for personal expenses should be allowed “to slide” into public finance concepts, conceptually, by deducting all expenses incurred in the provision of charitable activities, and investing surplus funds, charitable institutions would potentially have little or no income left to tax, there being no distinction

²⁵¹ ‘Common Council’, above n 249, 3.

²⁵² ‘Parliamentary Intelligence’, *The Times* (London), 21 December 1798, 2.

²⁵³ ‘Parliamentary Intelligence’, above n 252, 2.

²⁵⁴ ‘Parliamentary Intelligence’, *The Times* (London), 21 December 1798, 2.

between “revenue” and “capital” expenditure at that time in the history of accounting.²⁵⁵ Further, if the trustees of a charity had invested funds in the government stocks, the trustees would be in the same position as the directors of the Bank of England, and the charity, not being a person, would not be liable to tax.

Debate on the 20 December 1798 having concluded for the day and, having “made a further progress in the Bill,”²⁵⁶ the *Journals of the House of Commons* recorded that the Bill would be “further” considered the following day, Friday 21 December.

Corporate personality: Defining “income” in the Nineteenth Century

In the late Eighteenth and early Nineteenth centuries corporate and fiscal concepts such as legal personality and income respectively were yet to be defined. Political science was also a relatively new discipline. It was not until 1897 that the concept of legal personality was defined by the English courts, in *Salomon v Salomon & Co. Ltd* [1897] AC 22, a case known to every *ab initio* student of the law as being one which discusses the very being of a company. Had that concept been defined a century earlier, the concept of *cestui qui trust*²⁵⁷ notwithstanding, I suggest that discussion in the House of Commons on Pitt’s Duties upon Income Bill might have had a different tenor. In 1799, the concept of income was also little understood, neither from an accounting perspective nor a fiscal perspective. Lord Macnaghten is credited with having said, in 1901, that “[i]ncome tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else.”²⁵⁸ As Daunton explains:

[i]n reality, the definition of income was rigorously contested in the Nineteenth and Twentieth centuries. The outcome was not a systemic definition, but that is not really the point. Rather, we should ask what cultural, political and ideological assumptions – often unarticulated and ill-defined – underlay the approach to income of lawyers, economists, civil servants and politicians.²⁵⁹

I suggest that Daunton’s suggestion as contained in the last sentence above can equally be applied to the issue of the charitable purposes exemption from Income Tax, that is until the issue was resolved by Lord Macnaghten in 1891, although *Pemsel* was not a tax case *per se*.²⁶⁰ Even in 1903, Daunton explains, the Lord Chancellor had struggled with the distinction between income and capital.²⁶¹ Yet, in 1887, “the distinction between income and capital receipts [had been] first addressed in a comprehensive way in *Bouch v Sproule*.”²⁶² Thus one can readily appreciate the difficulties that late Eighteenth Century politicians would have had in grappling with the concepts of income and capital as they applied to corporations and trusts.

²⁵⁵ The concept of deductible expenses in preparing the financial statements of an entity liable to Income Tax had not at the point in history evolved to that level of refinement.

²⁵⁶ *Journals of the House of Commons*, above n 28, 90.

²⁵⁷ “*Cestui qui trust*, he that is entrusted for the benefit of another.” E. Coles, *An English Dictionary* (1676; Reprinted 2006).

²⁵⁸ *Law Reports 1901. House of Lords, Judicial Committee of the Privy Council* (London, 1901), HL(E) 1900, *London County Council and others v Attorney General*, p. 35, cited by Martin Daunton, “What is income?” in John Tiley (ed), *Studies in the History of Tax Law* (2004) 4.

²⁵⁹ Daunton, above n 258, 4.

²⁶⁰ *Pemsel*, above n 69.

²⁶¹ Daunton, above n 258, 7.

²⁶² Kevin Holmes, *The Concept of Income: A Multi-Disciplinary Approach* (2001) 179, in discussing *Bouch v Sproule* [1887] 12 App. Cas. 385 and its legal precedents on the subject of the distinction between income and capital receipts, and whether a bonus issue constituted capital accretion or income.

21 December 1798

On 21 December the question of the printing of the Duties upon Income Bill was again raised, but *The Parliamentary Register* merely recorded that “[a]fter some short observations from Mr Chancellor Pitt, Mr Wigley, and the Speaker, respecting the printing of the report on the Bill for a general tax upon income, and the consideration of it on Wednesday next, the House adjourned.”²⁶³ Proceedings that day on the Duties upon Income Bill concerned the 10th, 11th, and 12th clauses, which were mentioned, but without any detail, in *The Parliamentary Register*.²⁶⁴ There was no report of this day’s proceedings in *The Parliamentary History*.

Following the end of proceedings on the 21 December, John Smyth reported to the Speaker that “a further progress” had been made regarding the Duties upon Income Bill, and proposed that the House, “having continued to sit till half an hour after twelve of the clock on Saturday morning,” it was “resolved” that the House of Commons would “this day, ... consider further of the said Bill.”²⁶⁵

According to *The Morning Chronicle* of 21 December 1798, it was not Pitt who had invented the tax upon income, but Henry VIII. In explanation, *The Morning Chronicle* stated:

[t]hat the present Prime Minister may not arrogate to himself the invention of the [tax upon income, as] a correspondent begs leave to refer him to Anderson’s *Origin of Commerce*, in 4 vols. 4to [sic], vol. 2d, page 42:- “A.D. 1523. At this time, through the wicked counsels of Cardinal Wolsey, and King Henry the VIII’s arbitrary disposition, there was little more than a shadow of liberty left to the English people. In Sir Robert Cotton’s Remains, printed in octavo, in 1651, page 177, there is a Record quoted, which is mentioned also in the general history of those times, *that in the fourteenth year of that Prince’s reign, 1523, he enacted, by way of loan, 10 per cent on all goods, jewels, utensils, and lands, to be revealed by the oaths of the possessors*; notwithstanding (says this author) that there was a law of the second year of King Richard II importing, *that none shall be denied in demand of any loan his reasonable excuse*” [sic]. (Emphasis added.)²⁶⁶

As well as suggesting that the concept of a tax upon income was not a new idea, *The Morning Chronicle* also provided evidence that a form of exemption had also been devised in the

²⁶³ *The Parliamentary Register*, above n 135, 359.

²⁶⁴ *The Parliamentary Register*, above n 135, 359.

²⁶⁵ *Journals of the House of Commons*, above n 28, 92.

²⁶⁶ ‘Tax upon Income’, *The Morning Chronicle* (London), 21 December 1798, 3. This would appear to be 14 & 15 Hen. VIII c. 16. Adam Anderson was the author of *Historical and Chronological Deduction of the Origins of Commerce*, which he published between 1764 and 1790. See “Adam Anderson” at <http://estc.bl.uk>.

sixteenth century, that is, any reasonable excuse would release a person from payment of the so-called “loan.”

22 December 1798

Debate on the Duties on Income Bill continued on the 22 December 1798, “Pitt having moved the order of the day for the House to proceed in a Committee on the Income Bill.”²⁶⁷ What happened next, as reported by *The Parliamentary Register* (for this was not reported in *The Parliamentary History*) provides another very interesting insight into how Parliamentary proceedings were undertaken at that time. There are two points of particular interest. First, even after having been under debate for some weeks, the Duties upon Income Bill had yet to be printed for the Members of the House of Commons to study in detail. Second, with Christmas but a few days away, Pitt did not intend to let that interfere with his intentions. These points can be seen, the first in Tierney’s comments, then in Pitt’s somewhat terse reply. Mr Tierney had asked Pitt:

whether it was his intention to bring on the consideration of the report on Wednesday? It could not be in the hands of gentlemen until that day, and therefore there would be no time to consider it until Thursday at the least, for Christmas Day was no day of business. He was not speaking for himself, for he wanted no time, but there were others in a different situation, who had gone into the country, *who did not care to attend the detail of the measure in the Committee, but who waited to see the whole printed*, and who wished to speak upon the subject once for all. An honourable friend of his he knew in particular to have been gone into the country, and who wished to speak upon this subject after the report was made, but he could not be prepared for that purpose without seeing what sort of a thing the Bill was when the Committee had done with it, and which he could not learn by post before Thursday. Under these impressions, he hoped he was not asking too much of the goodness of the Chancellor of the Exchequer when he begged that the report might stand for Friday, and the third reading of the Bill for Monday. It was said indeed, that all the proceedings on the Bill would be ready for delivery on Monday, but that could hardly be the case. *It was now Saturday night, and he did not presume that the printers would labour on Sunday.* He might, indeed, be justified in desiring the Bill to be postponed altogether after the holidays, but that he did not press; he only asked for a day or two, which might very well be granted, especially when the House was so thin. (Emphasis added.)²⁶⁸

In reply, Pitt responded that:

²⁶⁷ *The Parliamentary Register*, above n 225, 396.

²⁶⁸ *The Parliamentary Register*, above n 225, 396.

[he] wished the Bill to be discussed upon the report, or upon the third reading. There was no surprise to be complained of in this case, for it was well known that all the Bill was gone through except the cases annexed to the schedule, which could not be expected to occupy much time; *after which the new clauses were to be produced*, and, as the whole was expected to be printed, there was nothing very remarkable in seeing the House was but thinly attended. He should be happy to accommodate any gentleman, but it must be recollected, not only that the convenience of that House, but also of another House of Legislature, ought to be attended to, and it was now clear *that they could not enjoy the holidays until the Bill was discussed, or else it must be put off till a very inconvenient season*. He stood in the same situation as the honourable gentleman, for he had no personal convenience to accommodate; nor did he see why the honourable gentleman, so laudably diligent himself as a Member of Parliament, could have any fellow feeling for seceders [sic] of any kind; and, indeed, the gentleman to whom he alluded was only a qualified seceder, who, although he did not [choose] personally to attend the House, was yet willing to receive intelligence of its proceedings by post. He expected the Bill and all the clauses to be ready for delivery on Monday. (Emphasis added.)²⁶⁹

This did not satisfy Tierney who argued “that the first payment of the Bill was not until the 5th of June, and therefore there was time for the operation of the Bill.”²⁷⁰ Pitt however, disagreed, there being a number of administrative tasks needing to be accomplished before that date, such as:

appointing first and second Commissioners, making out lists, examining returns, classing them, and various other business preparatory to the first payment, [therefore] the time between that and passing the Bill, would not, with all the diligence the Legislature could use, be thought too long, and therefore he could not agree to any delay in this case.²⁷¹

Having stated his position, the House then returned to the business of the day (or, more correctly, the night). The House, having agreed that the word “stipend” be added to the rules for “estimating income arising from personal property, and from trades, professions, offices, &c.,”²⁷² then entered into a discussion on evasion.²⁷³ Having declared “that tricks which were fair in love were also fair in taxation,” Tierney’s continued by stating “that a very distinguished person thought it neither a sin nor a shame to evade his proportion at the period of the Triple Assessment.”²⁷⁴ After a reasonably lengthy, and probably heated exchange mainly between Pitt, Tierney, and Lord Hawkesbury, with *The Parliamentary History* naming that person as being Lord Auckland (but *The Parliamentary Register* not doing so) John

²⁶⁹ *The Parliamentary Register*, above n 225, 397.

²⁷⁰ *The Parliamentary Register*, above n 225, 397.

²⁷¹ *The Parliamentary Register*, above n 225, 396.

²⁷² *The Parliamentary Register*, above n 225, 398.

²⁷³ *The Parliamentary History* began its report of the proceedings of 22 December from this point.

²⁷⁴ *The Parliamentary Register*, above n 225, 400.

Smyth as the Chair of the Committee “hoped ... that he had not acted improperly in suffering the discussion to proceed to the length it had done ... [but that he] believed, however, it would now be as clear to the Committee, that it was time to resume the original subject before them, and therefore he must recall their attention to the clauses of the Bill.”²⁷⁵

The reason that I have included this incident is that avoidance and evasion were precisely what Pitt was attempting to fight, the Triple Assessment not having been a success “in that the yield was only half that expected.”²⁷⁶ Sabine explained that, although Pitt had attempted to prevent non-compliance in requiring taxpayers to base their 1798 assessments on their 1797 returns, his Triple Assessment had not been a success due to two factors: “the simple expedient of [people] incorrectly returning total income [therefore] many people paid even less than before and [that] there had been no provision for any proper check on their returns.”²⁷⁷

Following the allegations of avoidance, the House of Commons had debated whether traders should have “an option of returning the income of a year, or [of] an average of three years,” and having determined that return should be based on annual income, the debate turned to the question of allowing deductions for traders, particularly “retail shopkeepers.”²⁷⁸ Then Pitt “came now to the new clauses; but as he had already stated the substance of them, and as they seemed to meet the concurrence of the House, he should not enter at any length into them now.”²⁷⁹ There was, however, “one material clause which he had not stated before; the clause for making allowances for children.”²⁸⁰ During the lengthy debate that ensued, the Right Honourable D. Ryder said:

it was extremely painful to his feelings to make the smallest objection to a species of modification which seemed to flow from the principles of humanity; but he was apprehensive [that] the degree to which the Chancellor of the Exchequer had carried it, might prove prejudicial to the principle of the Bill. It was necessary [that] the House

²⁷⁵ *The Parliamentary Register*, above n 225, 402. *The Parliamentary History* concluded its report of the debate of 22 December with the comment that “[t]he other clauses of the Bill were then gone through, and the Bill was reported,” yet *The Parliamentary Register* contains a further seven pages of debate on that day.

²⁷⁶ Sabine, above n 54, 23.

²⁷⁷ Sabine, above n 54, 23.

²⁷⁸ *The Parliamentary Register*, above n 225, 403. The outcome of the debate on that issue was inconclusive.

²⁷⁹ *The Parliamentary Register*, above n 225, 403.

²⁸⁰ *The Parliamentary Register*, above n 225, 404.

should cautiously guard against extending the reductions in such a manner as to defeat the object of the measure.²⁸¹

Pitt's reply, that "he had not proposed the modification but from a firm impression, that it was as much founded in policy as in justice and humanity ... every shilling taken from that class of the public that had families to provide for was taken from those to whom it was for the best interests of society to extend relief."²⁸²

During the course of my research, I have found it necessary to constantly review more than one source of the reports of Parliamentary debates, particularly so regarding the Duties upon Income Bill. By way of example, the following aspects of the debate of 22 December as reported by *The Times*, *The Parliamentary Register*, and *The Parliamentary History*, demonstrate why this is necessary. In response to Pitt having raised the matter of deductions according to the number children supported by the taxpayer, the Speaker, Addington was reported by *The Times* as having said (in part) that:

[t]he principle on which his Right Hon. friend seemed to propose his modifications, was, that children absorbed a larger portion of a small than of a great income; it was certainly true, and it would also be proper for the House to adopt many other *benevolent and charitable modifications*, but particularly with regard to one very valuable description of men, the Clergy who possessed small incomes, and large families. (Emphasis added.)²⁸³

The *Parliamentary Register* recorded Addington thus:

[t]he foundation upon which my right honourable friend has proposed this modification is, that children absorb a larger proportion of a small income than of a large one. This is true in fact; and the adoption of it will not subject the House to any inconveniences. When the Committee consider what is the description of persons to whom this benevolence is proposed to be extended, I am sure that their satisfaction will be equal to my own. It will relieve many gentlemen who live in the country upon small incomes – it will relieve many persons who, with such credit to themselves and such advantage to the country, have formed themselves into yeomanry and volunteer corps – *above all, Sir, it will afford relief to that most valuable and most respectable class of men, the clergy, who live upon small livings and have large families; ...* (Emphasis added.)²⁸⁴

²⁸¹ *The Parliamentary Register*, above n 225, 407.

²⁸² *The Parliamentary Register*, above n 225, 407, 408.

²⁸³ 'Parliamentary Intelligence', *The Times* (London), 24 December 1798, 2.

²⁸⁴ *The Parliamentary Register*, above n 225, 405.

Having reported the exchange concerning Lord Auckland and his alleged evasion of the Triple Assessment, *The Parliamentary History* merely stated that “[h]ere the conversation ended. The other clauses of the Bill were then gone through, and the Bill was reported.”²⁸⁵

Other than that, there was no report of the lengthy discussions which had occurred on that day, unlike the reports in the newspapers of that day’s proceedings.

None of those three sources made any direct reference to charitable institutions and whether or not they should be exempt from the Income Tax. What then did Addington mean when he referred to “other benevolent and charitable modifications?” Although the debate at that point was on deductions from the incomes of individuals with families, why did he not make a specific reference to charitable institutions? This becomes even more bewildering on reading the rest of his contribution to the debate, as Addington had said that:

I should be sorry, Sir, to see this great measure encumbered and frittered away by modifications; for by the adoption of it, the necessity for loans, which operate as a perpetual burden upon the country, will be done away, and the depreciation of public credit prevented. ... *Sir, I should be sorry to see anything adopted to impair the principle of a tax, which, I believe in my conscience, will go farther to animate those whom it is our interest to animate, and to carry dismay into the hearts of the enemy, than even the victories we have gained, or that recent one of which neither we nor our posterity can ever speak without the warmest admiration and applause.* ... Sir, I sincerely rejoice at the modification which has been proposed, because, without infringing the principle of the Bill, it is calculated to diminish the pressure where the pressure is most felt, and to afford relief where relief is most wanted. (Emphasis added.)²⁸⁶

On the one hand, Addington did not wish to impair the amount of revenue that the government would receive from the proposed tax on income, yet on the other hand, he approved the minimisation of the tax where it was necessary to do so. Why then, was there no mention of charitable institutions?

On close examination of the reports of debates by different reports, I found that at times there was confusion as to who said what. The *Times* of Monday 24 December stated that “[t]he Solicitor-General [John Mitford] applauded the modifications, and said they were consistent with the practices of our ancestors.”²⁸⁷ However, *The Parliamentary Register* attributed the reference to “our ancestors” as having been said by the Speaker, Addington, who was

²⁸⁵ *The Parliamentary History*, above n 79, 134.

²⁸⁶ *The Parliamentary Register*, above n 225, 406.

²⁸⁷ ‘Parliamentary Intelligence’, *The Times* (London), 24 December 1798, 2. Ehrman notes that the Solicitor-General, John Mitford, “who was already involved with legal questions affecting recent financial ideas, was also soon drawn in” to provide comments on Pitt’s plan for an Income Tax. See Ehrman, above n 75, 261.

reported in *The Parliamentary Register* as having also given a précis of the history of taxation from the earliest times. The *Times* also reported the Speaker as having referred to the historical precedents of taxation, but in quite different words from those as reported in *The Parliamentary Register*. The *Times* reporter wrote that:

[t]he Speaker said, he was happy to find that the researches of his learned friend into the remote periods of our history were so great; for he must confess, that in all he himself had read concerning the history of this country and the proceedings of Parliament, *he had never been able to find an instance of any modifications having taken place with regard to the levying of taxes*. In all times they had been laid on indiscriminately; and even during the Protectorate, monthly and weekly assignments used to be made at the arbitrary will of Assessors. He highly approved of the wisdom and policy of this modification. (Emphasis added.)²⁸⁸

This comment, attributed to Addington by *The Times*, is interesting from the point of view of Addington having declared that he was not aware of modifications being made to taxes. Why it is interesting is that Addington was considered, by Farnsworth, to have “had an unusual knowledge of the historical development of taxation”²⁸⁹ That being the case, one would suppose that Addington was aware of issues surrounding charitable institutions and exemptions from taxation.

The *Journals of the House of Commons* for 22 December 1798 record that the Speaker, having resumed the Chair as the debate on the Duties upon Income Bill had concluded for the day, received John Smyth’s report that the House of Commons had “made several other Amendments” to the Bill, which was then tabled with its amendments.²⁹⁰ After it was determined that the Report would be considered further on 27 December, it was: “*Ordered*, That such a number of copies of the said Bill, as amended by the Committee, be printed, as shall be sufficient for the use of the Members of the House.”²⁹¹ The Members of the House of Commons now had no excuse for not being fully informed of Pitt’s intentions.

The re-printing of the Duties upon Income Bill

The printing, or more correctly the reprinting of the Duties upon Income Bill of 22 December 1798, the Bill having first been printed on 8 December 1798, revealed that minor amendments

²⁸⁸ ‘Parliamentary Intelligence’, *The Times* (London), 24 December 1798, 2.

²⁸⁹ Farnsworth, above n 19, x.

²⁹⁰ *Journals of the House of Commons*, above n 28, 95.

²⁹¹ *Journals of the House of Commons*, above n 28, 95.

had been made to the exemption clause relating to charitable institutions, with the removal of commas (indicated by square brackets below) and the inclusion of braces thus:

That where any bodies politic or corporate, companies, fraternities, or societies of persons, whether corporate or not corporate, shall be entitled unto any annual income[,] to the respective amounts before specified[,] (other than and besides any income applicable to charitable purposes)[,] such annual income (*not applicable to charitable purposes only*) shall be chargeable with such and the like Rates as any other annual income of the same amount will, under and by virtue of this Act, be chargeable with. (Emphasis added.)²⁹²

The above clause was also moved from the 45th clause to the 76th clause in the re-printed Bill. However, the charitable purposes exemption clause as contained in the final Act, at section V, which is not to be found in the Bill as printed on 22 December, simply read that:

That no corporation, fraternity, or society of persons established for charitable purposes only, shall be chargeable under this Act, in respect of the income of such corporation, fraternity, or society.²⁹³

How the amendments concerning charitable purposes came to be made remains a mystery. In particular, how section V came to be part of the Act of 9 January 1799 is more of a mystery, as nowhere in the debates following the reprinting of the Bill and the Bill becoming law on the 9 January, 1799, was there any discussion about those amendments, as I will show in the following discussion.

25 December 1798

The Christmas Day edition of *The Times*, it being the practice for business to continue as usual in those times (with the exception of the Parliament), apologised to its readers, saying that:

[w]e are sorry that the length of the Gazette, and other articles, prevents us from inserting this day an Abstract of the contents of the Income Bill, as it passed the Committee on Saturday night. In our report of tomorrow we shall give a more full and correct report of the conversation in the House of Commons on Saturday, between Mr Pitt and Mr Tierney, than has yet appeared, with some observations on the subject.²⁹⁴

²⁹² Lambert above n 55, 42.

²⁹³ *An Act ...*, above n 63, s. V.

²⁹⁴ [Editorial], *The Times* (London), 25 December 1798, 3.

This comment from the editor explains why nothing about the Duties upon Income Bill had been published by *The Times* on 24 December. *The Morning Chronicle* had the edge on *The Times*, having published the Abstract on 25 December.²⁹⁵ However, *The Times* published an abstract of the Duties upon Income Bill on 26 December under the title “Abstract of the Amendments and Alterations in the Bill laying a Tax upon Income.”²⁹⁶ While the Abstract did not contain any reference to charitable institutions, Friendly Societies were mentioned regarding an amendment having been made which stated that “[n]othing in this Act shall extend to charge the fund of any Friendly Society established under the 33rd of his present Majesty.”²⁹⁷ The amendment, being a new clause inserted into the Bill, stated in full, that:

[t]hat nothing in this Act contained shall be construed to extend to charge the stock or fund of any Friendly Society established under or by virtue of an Act passed in the thirty-third year of the reign of His present Majesty, intituled, “An Act for the encouragement and relief of Friendly Societies.”²⁹⁸

26 December 1798

The House resumed on Wednesday, 26 December, but there is no record of any debate in *The Parliamentary History* on that day. What debate did take place that day related solely to the Habeas Corpus Act, which was briefly reported in *The Parliamentary Register*.²⁹⁹

27 December 1798

The *Journal of the House of Commons* recorded that on 27 December, the Report on the Duties upon Income Bill was again “taken into further consideration.” And several of the amendments, made by the Committee to the said Bill, being severally read a second time, were, upon the question severally put thereupon, agreed to by the House,” with the debate scheduled to continue the next day.³⁰⁰

The debate on 27 December commenced with Sir W. Pulteney, in a lengthy contribution, declaring “that there were in the measure now before them many points to which he must call

²⁹⁵ The Abstract as published by both papers are identical, including a footnote stating that “[w]e presume a typographical error, and should stand *if*.”

²⁹⁶ ‘Abstract ...’, *The Times* (London), 26 December 1798, 4.

²⁹⁷ ‘Abstract ...’, above n 296, 4. The Act referred to was *An Act for the encouragement and relief of Friendly Societies* 33 Geo. III c. 54 [21 June 1793].

²⁹⁸ Lambert above n 55, [inserted] Clause G.

²⁹⁹ *The Parliamentary Register*, above n 135, 410.

³⁰⁰ *Journals of the House of Commons*, above n 28, 99.

their attention.”³⁰¹ Notably, Pulteney questioned the right of Parliament in levying a tax in the manner proposed by Pitt because:

if the principle of this measure was once established, although the Minister this year only called for one-tenth of the income of the people, next year he might call for two-tenths, then for three-tenths, and so on until the whole was taken away, for the principle being once adopted, would not admit of any limitation; ...³⁰²

Pulteney argued that tax would “soon ruin the middling class of society,” as a person on £200 a year would be at “the highest scale of impost,” while those whose income was under £60 a year were exempted.³⁰³ Yet Pulteney, while referring to exemptions for individuals, made no mention of charitable institutions.

The *Times* of 27 December, being of the opinion that the Bill had been thoroughly reviewed and, its passage to the Lords being imminent, prematurely reported that:

Mr Fox will, it is understood, appear in the House of Commons this day, to oppose the Income Bill. Now that all the provisions of this Bill have undergone a laborious investigation, the Hon. Gentleman’s notion of things leads him to suppose he can benefit his constituents and the country by going down to the House to oppose *in toto* a measure which is in the last stage of its progress before being sent to the Lords. The Income Bill will probably be sent to the House of Lords on Saturday, and by tomorrow se’nnight [sic] it is supposed that it will be ready for the Royal Assent.³⁰⁴

28 December 1798

The *Parliamentary Register* faithfully reported the proceedings in the House of Commons on 28 and 29 December, the next record of any debate in the House of Commons as reported in *The Parliamentary History* being on 31 December 1798.

The 28 December saw the continuance of debate on the Duties upon Income Bill, with Mr Dent observing that there was:

³⁰¹ *The Parliamentary History*, above n 79, 134.

³⁰² *The Parliamentary History*, above n 79, 135.

³⁰³ *The Parliamentary History*, above n 79, 137.

³⁰⁴ [Editorial], *The Times* (London), 27 December 1798, 3.

[a] very thin attendance of Members ... [and] that when a measure, which was to have the effect of disposing of twelve millions of the public money was under discussion the conduct of those who did not attend was most disgraceful.³⁰⁵

The *Parliamentary Register* of 28 December noted that “several” amendments to the Duties upon Income Bill “were read and agreed to.”³⁰⁶ Pitt then announced that he wished to propose a clause which “should even go beyond the object” of a clause that Tierney had proposed “on a preceding evening.”³⁰⁷ This concerned the provision of schedules to surveyors, and need not concern us, except to note the informal way in which clauses were tinkered with. This can be seen in Pitt’s next comment, in that he had “found it necessary to propose several alterations in the clauses, as well as amendments in the body of the Bill.”³⁰⁸ These clauses were in fact new clauses, and concerned deductions for “persons who had children born in wedlock.”³⁰⁹ If nothing else, this is an interesting commentary on contemporary late Eighteenth Century society in England.³¹⁰ The *Times* of 29 December 1798 reported that on 28 December consideration was given to:

the enumeration of the towns where Commercial Commissioners were to be appointed, ... the clauses of exemption in favour of persons having children, [and] [s]everal other clauses and amendments to the body of the Bill [which,] being agreed to, the House was resumed, and the Report ordered to be taken into consideration to-morrow. Adjourned at 2 o’clock this morning till 4 this afternoon.³¹¹

The *Journals of the House of Commons* recorded that on 28 December:

the residue of the amendments, made by the Committee to the said Bill, as far as Clause (Yy) being severally read a second time, upon the Question severally put thereupon, some of them were disagreed to, and the rest were, with amendments to several of them, agreed to by the House.³¹²

That was not all that the *Journals* recorded of the proceedings of 28 December. The record in the *Journals* of the debate that day makes for compelling reading in that, whilst several more amendments were considered and passed, the *Journals* had begun describing the nature of

³⁰⁵ *The Parliamentary Register*, above n 225, 460.

³⁰⁶ *The Parliamentary Register*, above n 225, 461.

³⁰⁷ *The Parliamentary Register*, above n 225, 461.

³⁰⁸ *The Parliamentary Register*, above n 225, 461.

³⁰⁹ *The Parliamentary Register*, above n 225, 462.

³¹⁰ The clause was amended to apply “where such children were principally maintained by a parent.”

³¹¹ ‘Parliamentary Intelligence’, *The Times* (London), 29 December 1798, 2.

³¹² *Journals of the House of Commons*, above n 28, 102.

those clauses, which it had not previously done so, and the sequence of events in the debate. The first amendment was of Clause Yy, “for the appointing Commercial Commissioners in trading towns;” another amendment “[inserted] after the Words ‘*King’s Lynn*,’ the Words ‘*Poole and Dartmouth*’.”³¹³ The latter amendment failed. Then the *Journals* recorded that “subsequent amendments ...with amendments to several of them [were] agreed to by the House.”³¹⁴ However, that was not the end of the matter, as “it appearing that several other amendments were proposed to be made,” it was “*Resolved* [t]hat the said Bill be again re-committed, with respect to the said amendments.”³¹⁵ The Speaker having left the Chair, John Smyth again chaired the Committee of the whole House and again, reported back to the Speaker, on resuming the Chair, that “they had made several other amendments to the Bill,” at which it was ordered, at half past one on Saturday morning, “[t]hat the Report be received this day.”³¹⁶

29 December 1798

The *Journals of the House of Commons* record that on 29 December 1798, the Duties upon Income Bill having been re-committed and tabled, the “amendments were once read throughout; and then a second time, one by one; and, upon the Question severally put thereupon, were agreed to by the House.”³¹⁷ The *Journals* then record how a series of clauses, seven in all, were “offered to be added to the Bill” and, each clause having been “twice read,” were “agreed to by the House, to be made part of the Bill.”³¹⁸ The *Journals* also again record that “several amendments were made to the Bill,” after which the amended Bill was ordered “[to] be engrossed,” and that the Bill was to be read “the third time upon Monday morning next, if the said Bill shall be then engrossed.”³¹⁹

The Parliamentary Register provides an interesting insight into Pitt’s behaviour as, after the amendments having been read and agreed to, Pitt yet again proposed “a number of new clauses.”³²⁰ After a short debate, with “no other clauses offered, the question was put, that the Bill be engrossed.”³²¹ Mr Jones expressed the hope that “time would be allowed between this

³¹³ *Journals of the House of Commons*, above n 28, 102.

³¹⁴ *Journals of the House of Commons*, above n 28, 102.

³¹⁵ *Journals of the House of Commons*, above n 28, 102.

³¹⁶ *Journals of the House of Commons*, above n 28, 102.

³¹⁷ *Journals of the House of Commons*, above n 28, 103.

³¹⁸ *Journals of the House of Commons*, above n 28, 103.

³¹⁹ *Journals of the House of Commons*, above n 28, 103.

³²⁰ *The Parliamentary Register*, above n 225, 463.

³²¹ *The Parliamentary Register*, above n 225, 464.

and the third reading; it ought to have a full, free, and fair consideration after all these clauses were brought in, which, by Monday next, he was sure was quite impossible.”³²² This caused Pitt to respond that there was no motion for a third reading, only that the Bill as amended be engrossed.³²³ Pitt then moved “that this Bill be read a third time on Monday next, if then engrossed.”³²⁴ Mr Jones, observing that:

if [Pitt] said it must be so, there was an end of it; but he really felt it to be quite impossible to understand the clauses produced today, by the time now proposed for the third reading. [Was] it possible for Members to understand a Bill in which there were forty or fifty clauses which none of them had ever read? For that was the case in the present instance.³²⁵

Pitt continued to disagree with Jones, as “he saw no reason for any farther [sic] delay, especially as he had no hope that there would be a fuller attendance on Wednesday than Monday next.”³²⁶ Tierney agreed with both Pitt and Jones, as:

the new clauses added to the Bill were not at present understood by the House; it was impossible they should, and he thought *that some allowance ought to be made on that account ... [particularly as the new clauses] appeared to be clauses materially altering the provisions of the Bill.* He agreed with [Pitt], there was no better hope for a full attendance on Wednesday than on Monday. He was sorry to say that Members of the House neglected their duty in not attending; it was a negligence that was disgraceful to them. (Emphasis added.)³²⁷

The *Times* also reported that Jones was not the only person having difficulty with the intent of the Bill as it then stood, as Tierney had also claimed that:

he did not thoroughly understand all the clauses of the Bill; and it would not be possible for any one to understand or read them before Monday. Perhaps gentlemen would not have gone out of town, had they known of these new clauses being intended to be introduced; and it was still more probable that they would have debated them had they been present. ... he would put it to the Right Hon. Gentleman, whether it would not be better to have the clauses printed, and put off the third reading till Wednesday.³²⁸

³²² *The Parliamentary Register*, above n 225, 464.

³²³ *The Parliamentary Register*, above n 225, 464.

³²⁴ *The Parliamentary Register*, above n 225, 464.

³²⁵ *The Parliamentary Register*, above n 225, 464.

³²⁶ *The Parliamentary Register*, above n 225, 464.

³²⁷ *The Parliamentary Register*, above n 225, 465.

³²⁸ ‘Parliamentary Intelligence’, *The Times* (London), 31 December 1798, 2. This was also reported in *The Parliamentary Register*, in different words but with the same intent.

Pitt was having none of it and finally had his way, as *The Parliamentary Register* recorded “that this Bill [sic] be read a third time on Monday next, if then engrossed.”³²⁹ As well as reporting briefly on the proceedings in the House of Commons on 29 December, including Tierney’s comment “that he did not thoroughly understand all the clauses of the Bill,”³³⁰ *The Times* also observed that “[t]he reading of the Income Bill, and correcting a few literal errors in it, occupied full four hours on Friday night,”³³¹ Friday being 28 December. No explanation was given of what those “literal errors” might have been.

31 December 1798

The 31 December saw the third reading of the Duties upon Income Bill, during which Mr Abbott seemingly questioned the concept of exempting those on low incomes, as he considered that:

[o]ne of the prominent features of the measure was the increasing scale from a low beginning up to a certain amount, by which it was to affect income; *and by the peculiar mode laid down, the poorer classes in society were wholly exempted. To the principle of the Bill, several precedents in the history of the country clearly applied* [exclusive of that generally adopted throughout the Poor’s Law’s]; for instance, the poll tax in the reign of King William; [the tax increased not in proportion to the income of individuals, but to the scale of the rank]. (Emphasis added.)³³²

First Addington, and now Abbot, had made reference to historical precedents, yet still there were no such comments concerning charitable institutions. The *Journals of the House of Commons* for 31 December 1798 record:

[t]hat the Order of the day, for the third reading of the Bill (now ingrossed) to repeal the Duties, imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war, and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties, be now read.³³³

The House of Commons then divided to consider the Question “that the [Duties upon Income] Bill be now read a third time,” with the result being in the affirmative, with 93 Yeas and 2

³²⁹ *The Parliamentary Register*, above n 225, 466.

³³⁰ ‘Parliamentary Intelligence’, above n 328, 2.

³³¹ ‘Parliamentary Intelligence’, above n 328, 3.

³³² *The Parliamentary History*, above n 79, 145. The text inserted in square brackets is taken from the report of the debate in *The Parliamentary Register*.

³³³ *Journals of the House of Commons*, above n 28, 127.

Noes.³³⁴ In spite of the Bill having been engrossed, and the Bill having been read a third time, three engrossed clauses were then “offered to be added to the Bill, by way of ryder [sic],” each being “thrice read” and “agreed to by the House to be made part of the Bill.”³³⁵ The “ryders” added to the Bill related to “the Schedule containing the form of the declaration of the number of children;” “the income of property from the plantations, which shall not have been imported into Great Britain;” and “the appointment of Commissioners in the several divisions of the County of Lincoln.”³³⁶ There was no “ryder” regarding charitable institutions. The debate was then adjourned until Tuesday, 1 January 1799.³³⁷

1 January 1799

The Orlemma of Lord Chancellor Maten [sic]

Chancellor Maten, in issuing his orders respecting the levying of a tax under Henry VII,³³⁸ said that if a person was frugal, he could afford to pay it out of his savings, and if he was prodigal, it was proof of his being rich.
Tierney, ‘Parliamentary Intelligence’, *The Times* (London), 1 January 1799, 4.

There was no report of the proceedings of the House of Commons in *The Parliamentary History* on 1 January 1799, yet the *Journals of the House of Commons* and *The Parliamentary Register* contain details of that day’s debate. The report in *The Parliamentary Register*, while being short and to the point, noted that Pitt had again moved “[a] number of verbal amendments” which were adopted by the House.³³⁹ On the other hand, the *Journals of the House of Commons* contain no less than three and a half columns, printed over three pages, of amendments of which there were no less than 120, none of which need concern us for the purposes of this Thesis, not being amendments which materially altered the principle of the Duties upon Income Bill, nor referred to charitable institutions.³⁴⁰

³³⁴ *Journals of the House of Commons*, above n 28, 127.

³³⁵ *Journals of the House of Commons*, above n 28, 127.

³³⁶ *Journals of the House of Commons*, above n 28, 127.

³³⁷ *Journals of the House of Commons*, above n 28, 127.

³³⁸ ‘Henry VII, 1457-1509’, *Oxford Dictionary of National Biography* (2004) vol. 26 510. The reference to “Lord Maten” is incorrect. In March 1487 John Morton, archbishop of Canterbury 1486-1500, was appointed as chancellor. J.D. Mackie, *The earlier Tudors 1485-1558* (1952) 56 and 684. Morton’s statement became known as “Morton’s Fork,” for the fact that no-one was exempt from its two distinctions. See “John Morton,” <http://en.wikipedia.org> at 12 September 2009.

³³⁹ *The Parliamentary Register*, above n 225, 499.

³⁴⁰ *Journals of the House of Commons*, above n 28, 128.

Amendments to the charitable purposes exemption clause

There was nothing in the debate in the Duty upon Income Bill in the House of Commons that I could identify as being related to the charitable institutions exemption clauses that would explain why or how the wording in the Bill, as printed on 22 December 1798, came to be changed, nor how section V in the Act came to be introduced. A comparison of the clauses in the reprinted Bills of 8 and 22 December indicates the extent to which modifications were made. The clause of 8 December 1798 read:

that no such bodies politic or corporate, companies, fraternities, or societies aforesaid, shall be charged or chargeable, in respect of any income which, according to the Rules or Regulations of such corporations, companies, fraternities, or societies, shall be applicable to the payment of any annual dividends or interest to arise and become payable to any individual members of such corporations or public companies, or to any other persons or public bodies, having any share, right, or title of, in, or to any capital stock, or other property belonging to such corporations or public companies, nor in respect of which any dividends or interests shall, according to such Rules and Regulations, become payable; provided that such person or persons, corporations, companies, fraternities, or societies, to whom such dividends or interest shall be payable, shall be charged and chargeable in respect thereof, according to the amounts thereof, and the rates before specified, as and when the same shall be received by them respectively; and that an account of such dividends and interest be delivered to the Assessors of the parish or place, at the same time, and by the same persons, in the same manner as the statements of the income of such corporations and public companies chargeable upon them are required to be delivered.³⁴¹

The clause of 8 December, as amended on 22 December, then read:

that no such bodies politic or corporate, companies, fraternities, or societies aforesaid, shall be charged or chargeable, in respect of any income which, according to the Rules or Regulations of such corporations, companies, fraternities, or societies, shall be applicable TO CHARITABLE PURPOSES, OR to the payment of any annual dividends or interest to arise and become payable to any individual members of such corporations or public companies, or to any other persons or public bodies, having any share, right, or title of, in, or to any capital stock, or other property belonging to such corporations or public companies, nor in respect of which any dividends or interests shall, according to such Rules and Regulations, become payable; provided that such person or persons, corporations, companies, fraternities, or societies, to whom such dividends or interest shall be payable, shall be charged and chargeable in respect thereof, according to the amounts thereof, and the Rates before specified, as and when the same shall be received by them respectively, OTHER THAN AND EXCEPT DIVIDENDS AND INTEREST THE PROPERTY OF PERSONS NOT THE SUBJECTS OF HIS MAJESTY, AND NOT RESIDENT IN THIS KINGDOM, and that an account of THE AMOUNT OF such dividends and interest be delivered to SUCH INSPECTOR OR SURVEYOR AS SHALL BE

³⁴¹ Lambert, above n 55, *A Bill [As amended by the Committee] ... Duties upon Income othp* 8 December 1798 [un-numbered clause] 46, 29.

AUTHORIZED FOR THAT PURPOSE UNDER THE HANDS OF THREE OR MORE OF THE COMMISSIONERS FOR THE AFFAIRS OF TAXES, UPON DEMAND THEREOF ~~the Assessors of the Parish or Place, at the same Time, and~~ by the same persons, AND in the same manner, as the statements of the income of such corporations, COMPANIES, FRATERNITIES, AND SOCIETIES, ~~and Public Companies chargeable upon them~~ are required to be delivered.³⁴²

None of the above amendments can be found listed in the 120 or so amendments to the Bill noted in the *Journals of the House of Commons* on 1 January 1799, nor of the 20 or so amendments of the following day, nor in the debate in the House of Commons.

2 January 1799

On 2 January, further amendments were recorded in the *Journals of the House of Commons*, but this time significantly fewer, there being only 21, of which two were of some significance as they concerned personal insurance and deductions from income with respect to ecclesiastical matters.³⁴³ The *Parliamentary Register* again noted that “several verbal amendments were agreed to,” after which, the Bill having passed, “John Smith was ordered “[to] carry it to the Lords, and desire their concurrence.”³⁴⁴

That the passage of the Duties upon Income Bill had been no less smooth in the House of Lords than it had been in the House of Commons can be seen from the *Journals of the House of Lords*. The *Journals of the House of Lords* record that, on its receipt from the House of Commons on 2 January 1799, the Bill was read a first time and ordered to be printed, and on 3 January, the Duties upon Income Bill was to be “read a second time to-morrow, and that the Lords [were to] be summoned.”³⁴⁵

3 January 1799

The Times of 4 January reported that on 3 January the Lords were “summoned for tomorrow, on the second reading of the General Income Tax Bill.”³⁴⁶ Having found that there was no report in *The Parliamentary History* of the beginning of the debate on the Duties upon

³⁴² Lambert, above n 55, *A Bill [As amended on re-commitment] ... Duties upon Income otbp* 22 December 1798 [un-numbered clause] 76 p. 43. The text in large capitals was that inserted in the clause of 8 December as amended on 22 December, with the text deleted from the earlier clause being indicated by strike-through markings.

³⁴³ *Journals of the House of Commons*, above n 28, 131.

³⁴⁴ *The Parliamentary Register*, above n 225, 500.

³⁴⁵ House of Lords, *Journals of the House of Lords 1798-1800* vol 42 36.

³⁴⁶ ‘Parliamentary Intelligence’, *The Times* (London), 4 January 1799, 2.

Income Bill in the House of Lords on 4 January 1799, it was to *The Parliamentary Register* that I turned.³⁴⁷

4 January 1799

In the House of Lords on 4 January 1799 Lord Grenville “moved the order of the day for the second reading of the Income Tax Bill.”³⁴⁸ Lord Holland took exception, and:

objected to the Bill’s being then read a second time, urging the necessity of not hurrying a measure of such magnitude through the House, and declaring *that past experience shewed [sic] the impolicy [sic] of precipitately carrying Bills of finance through both Houses of Parliament*; nay, in the very last session they had passed through a finance measure of considerable importance (the Land Tax Redemption Bill) so hastily, that as soon as it came to be carried into execution, it was found to be so imperfect that it had been absolutely necessary to bring in a Bill, as soon as the present session commenced, to amend and correct the Act of last session, so as to give it practicability and effect. (Emphasis added.)³⁴⁹

The Earl of Suffolk supported Lord Holland, particularly as he considered that “the House of Commons had hurried it through with great precipitancy, and had afforded ground for complaint by passing the clauses lately introduced in a very thin House.”³⁵⁰ Lord Grenville, in his rebuttal of the arguments against his motion for a second reading, informed the Lords:

that no preceding Bill of finance had ever experienced so full or so frequent a discussion of all its parts: *neither had any Bill whatever been more scrupulously examined and argued upon than that then under their Lordships’ consideration*. With regard to the debates upon it, it was true they had not been occupied by long speeches, but the Members had been much more usefully employed in modelling, shaping and finishing, the several clauses, so as to render them practicable, and as little objectionable as possible; and in order to effect this no time or pains have been spared. *Even the clauses latterly introduced had been all*

³⁴⁷ There was some uncertainty concerning the right of newspapers to publish Parliamentary reports at all. In an editorial note in *The Times* of 1 January 1799, the editor wrote that: “[a]s proprietors of a very valuable newspaper, we only wish that the House of Commons had come to some distinct decision on which we could regulate our conduct in regard to publishing Parliamentary Reports at all; for the tacit permission to do so is left in the same uncertainty as before. . . . We shall resume the subject of newspapers printing Parliamentary Reports on a future day.” Then, on 3 January *The Times*, under the heading “Parliamentary Reporting,” wrote that: “[i]t is much to be regretted by every Proprietor of a Newspaper, that the House of Commons did not come to some clear and explicit determination on Monday evening, respecting the publication of Parliamentary Reports. As the matter now stands, there is more uncertainty and risk than there was before. . . . as the business now stands, the Proprietors of newspapers are placed in the most painful uncertainty. While they are liable to heavy and almost incredible expence [sic] for reporters, their own personal security is constantly in danger, however careful they may be in selecting men of the best talents that are to be procured. For ourselves, we only wish the House of Commons would lay down some precise rule, and we should bow with respect to its determination.”

³⁴⁸ *The Parliamentary Register*, above n 225, 514.

³⁴⁹ *The Parliamentary Register*, above n 225, 514.

³⁵⁰ *The Parliamentary Register*, above n 225, 516.

fully opened, and the view of them explained in the clearest manner – not perhaps to very full attendances, but to such gentlemen as had turned their minds most to the subject, and had taken a leading share in every proceeding upon the Bill. (Emphasis added.)³⁵¹

The argument continued, and:

[t]he Lord Chancellor left the Woolsack in order to join in, expressing his surprise that there should have arisen a single difficulty about reading the Bill a second time, when their sole object in so doing was the adoption of the principle of it.³⁵²

Lord Holland was not to be dissuaded from his point of view, and he and the Lord Chancellor continued their exchange, until finally the motion that the Bill be read a second time was agreed to, with further debate being set down for the third reading of the Duties upon Income Bill for the following Monday, 7 January 1799. However, it was not until 8 January 1799 that debate resumed.

8 January 1799

The Lords' debate on 8 January 1799 is reported in *The Parliamentary History*, with the Earl of Suffolk having begun the debate by complaining that, with the Income Tax of 10 per cent, the salt tax of 4 per cent, the poor-rates at 3 per cent, and the costs of landed property, "the whole [is] nearly 20 per cent."³⁵³ Lord Auckland observed that the nature of the proposed tax was:

to tax in equal proportions, all the descriptions and classes of income, except those only which belong to the poor and labouring part of the community; and also except that small amount of income which may be presumed to furnish a mere subsistence. ... I [am inclined] to think that the general income of the class exempted from all contribution might be shown to be, at least, as great as that part of the national income on which this Bill will operate.³⁵⁴

Lord Auckland also commented on relief provided from the tax, as:

[L]arge allowances have been made to families and individuals ... [and] the rules for estimating the incomes of farmers, and lessees of land, and more especially of farmers under £300 a year, have also been stated with most liberal modifications and abatements.

³⁵¹ *The Parliamentary Register*, above n 225, 517.

³⁵² *The Parliamentary Register*, above n 225, 518.

³⁵³ *The Parliamentary History*, above n 79, 179.

³⁵⁴ *The Parliamentary History*, above n 79, 195.

*And there appear in the Bill many other indulgences, proceeding certainly from just and wise motives, but tending to diminish the estimated produce. (Emphasis added.)*³⁵⁵

Lord Auckland did not explain what he meant by “many other indulgences, proceeding certainly from just and wise motives,” but one might assume that he was referring to the tax relief provided to charitable institutions. He also recognised that the tax net might be cast so wide that the legislation may need to be revisited, due to the probability that “in a measure so extensive, unforeseen cases may occur, which may hereafter call for parliamentary interference, relief, or explanation. ...Undoubtedly many such cases may, and will occur.”³⁵⁶

On the matter of incomes below £60 being exempt, Lord Auckland considered that:

when the matter is fairly considered, [there is no] inconsistency in the exemption given to incomes below £60. That exemption is only a liberal construction and exercise of the principle, *that in levying a tax upon income, we ought not to extend it to incomes which may be necessary to actual subsistence ...*³⁵⁷

This statement by Lord Auckland is a clear indication of a principle of exempting charitable institutions from Income Tax, in that to tax the funds of such institutions would be to disadvantage those for whom the tax would otherwise have provided assistance. During the debate in the House of Lords on 8 January, the Lord Chancellor, having again left the Woolsack, told an interesting story which emphasised that Pitt’s proposal was a war tax. A barber and hairdresser, in a conversation about the Bill with “a noble person,” had said:

that his income might, he believed, amount to £300 a year, and he thought it hard to have to pay thirty pounds out of it for this tax. [But] upon a little reflection upon the said tax said, “But perhaps if I did not pay the thirty pounds, so many of my present customers would not have their heads upon their shoulders for me to shave and dress.”³⁵⁸

Finally, on 8 January 1799, the Duties upon Income Bill was read a third time after which:

[i]t was moved [t]hat the Bill do pass. Which being objected to; after long debate, the Question was put, [w]hether this Bill shall pass? [i]t was resolved in the affirmative. A

³⁵⁵ *The Parliamentary History*, above n 79, 195.

³⁵⁶ *The Parliamentary History*, above n 79, 195.

³⁵⁷ *The Parliamentary History*, above n 79, 199.

³⁵⁸ *The Parliamentary Register*, above n 225, 573.

message was sent to the House of Commons ... [t]o acquaint them, [t]hat the Lords have agreed to the said Bill without any amendment.³⁵⁹

9 January 1799

On Wednesday, 9 January 1799, the Lords' Messengers, Mr Ord and Mr Wilmot, took the Lords' message to the Speaker of the Commons to inform them that "[t]he Lords have agreed to the Bill ... without any amendment."³⁶⁰ The Duties upon Income Bill had been passed unanimously in the Lords, as "the contents had it without a division," and Royal Assent was given by commission that same day.³⁶¹

Thus it was that Great Britain's second Income Tax Act became law. This event was recorded in *The Times* of 10 January without further comment,³⁶² while *The Morning Chronicle* of 11 January stated that "[t]he Income Bill has received the Royal Assent. It is now a law, and the people have nothing to do with it, but to pay their *ten per cent* [sic]."³⁶³

Legacies

On 12 July 1799 Parliament enacted legislation to exempt legacies bequeathed to "bodies corporate, or other public bodies," specifically the British Museum, with respect to the bequest of the late Reverend Clayton Cracherode being "a very valuable collection of books, drawings, prints, ... gems, coins, medals, and specimens of natural history," from "any duty imposed on legacies by any law now in force."³⁶⁴ This exemption was prescient on that which was to come in 1891, regarding the concept of public benefit laid down by Lord Macnaghten,³⁶⁵ and philanthropic and benevolent gifts, which continue to be the subject of case law today.

Conclusion

The Duties upon Income Act 1799 contains four separate sections specifically devoted to charitable institutions. The first is to found at section V, the other three at sections 87, 88 and 90. The question is, why the separation? I suggest that section V applied to charitable

³⁵⁹ House of Lords, above n 345, 46.

³⁶⁰ *The Parliamentary Register*, above n 225, 576.

³⁶¹ *The Parliamentary Register*, above n 225, 574.

³⁶² 'Parliamentary Intelligence', *The Times* (London), 10 January 1799, 2.

³⁶³ [Editorial], *The Morning Chronicle* (London), 11 January 1799, 3.

³⁶⁴ *An Act for exempting certain specific legacies which shall be given to bodies corporate, or other public bodies, from the payment of Duty; and also the legacy of books and other articles given by the Will of the late Reverend Clayton Mordaunt Cracherode to the Trustees of the British Museum* 39 Geo. III c. 73 [12 July 1799].

³⁶⁵ *Pemsel*, above n 69, 583.

institutions which relied solely on voluntary donations, and that the later sections applied to the endowed charities with funds invested in the government stocks.

Section II of the Duties upon Income Act states that:

there shall be raised, levied, collected, and paid annually ... upon all income ... of every body politic or corporate, or company, fraternity, or society of persons (whether corporate or not corporate) ... whether any such income ... shall arise from lands, tenements, or hereditaments ... or from any kind of personal property, or other property whatever,³⁶⁶

Section II then describes the rates and duties which are to be levied, beginning with:

[o]ne one-hundred-and-twentieth part of the income of every such person, body politic or corporate, company, fraternity, or society, estimated according to this Act, if the same shall amount unto sixty pounds per annum, and shall be under sixty-five pounds per annum ...
³⁶⁷

After listing the various rates and duties in minute detail in a sliding scale, the list concludes with “one tenth part of such income, if the same shall amount to two hundred pounds, or upwards.”³⁶⁸ Section III provides the abatements for families with children “born in wedlock” according to the amount of income received and the number of children.³⁶⁹

Section IV provided the Friendly Societies with an exemption from income earned from their investments in stocks or funds, and section V contained the “charitable purposes only” exemption for the income of corporations, fraternities, and societies so established, but made no proviso regarding being corporate or not corporate.³⁷⁰ Then, at section [87], income applied to charitable purpose by “bodies politic or corporate, companies, fraternities, or societies of persons, whether corporate or not,” is to be exempt income whereas income not applied to charitable purposes was chargeable.³⁷¹

The copy of the Duties upon Income Act 1799 as contained in *The Statutes at Large* noted at the end of the Act that:

³⁶⁶ *An Act ...*, above n 63, s. II.

³⁶⁷ *An Act ...*, above n 63, s. II [9 January 1799].

³⁶⁸ *An Act ...*, above n 63, s. II [9 January 1799].

³⁶⁹ *An Act ...*, above n 63, s. III [9 January 1799].

³⁷⁰ *An Act ...*, above n 63, ss. IV and V [9 January 1799].

³⁷¹ *An Act ...*, above n 63, s. LXXXVII [9 January 1799].

[t]he Schedule to this Act was repealed, and a new one framed in its stead by Cap. 22 of this Session; to which latter Schedule all the Notes in this Chapter refer, except that in §52 [concerning the failure to provide a statement of income to the Commissioners] for which no substitute is provided in Cap. 22.³⁷²

The Duties upon Income Act required, at a margin note to s. XC, a return of income to be filed in accordance with Schedule B, No. 12, 13 or 14 of Cap. 22 as appropriate, “specifying what part of such income is not chargeable.”³⁷³ Likewise, the margin note to the Schedule B, No. 12 of Cap. 22 referred to section XC of Cap 13. However, the content of these forms does not require any details of what income was chargeable, in other words income that was not applied to charitable purposes. Instead, the forms require disclosure of income that is less than £60 (No. 12); income of £60 but under £200 (No. 13); and income of £200 and over (No. 14). It was not until the Duties on Income Act 1803 that a more precise form is to be found.³⁷⁴ Schedule G, at No. 6 *Form of Statement*, required the officers acting for “corporate bodies &c,” to declare that:

the duty chargeable ... estimated according to the directions and rules of [43 Geo. III c. 122] ... contained in the within Account ... are derived from the several sources described, and the annual amount thereof is truly stated in the respective columns ... being applicable to the case of (the body politic, corporate, or collegiate, company, fraternity, fellowship, or society, corporate or not corporate) [as appropriate].³⁷⁵

However, Pitt’s Duties upon Income Act 1799 was only intended as a temporary war-time measure, and in 1802 the Act was repealed by 42 Geo. III c. 42.³⁷⁶ That is, until hostilities broke out afresh in 1803, and once again the nation was in need of funds.

³⁷² *An Act ...*, above n 63, [9 January 1799] in *The Statutes at Large* (1800) [39 Geo. III to 41 Geo. III] 57.

³⁷³ *An Act ...*, above n 63, s. XC [9 January 1799].

³⁷⁴ *An Act for granting to His Majesty, until the sixth day of May next after the Ratification of a definitive Treaty of peace, a contribution on profits arising from property, professions, trades, and offices* 43 Geo. III c. 122 [11 August 1803].

³⁷⁵ *An Act ...*, above n 374, Schedule G [11 August 1803].

³⁷⁶ *An Act for repealing the Duties on Income; for the effectual collection of arrears of the said Duties, and accounting the same; and for charging the Annuities specifically charged thereon upon the Consolidated Fund of Great Britain* 42 Geo. III c. 42 [4 May 1802].

Chapter 5 The Income Tax Acts post-1799

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Part I Introduction

The Corporation of London, in voting large sums for patriotic and charitable purposes, seems to have adopted the untradesman-like sentiments of Charles in Mr Sheridan’s *School for Scandal* – “who could never make Justice keep pace with generosity for the life of him.”

- [Editorial], *The Times* (London), 28 February 1799, 3.

The purpose of this chapter is to explore how the wording of the charitable purposes exemption in the Income Tax Acts of the Nineteenth Century varied from that of Pitt’s Duties upon Income Act of 9 January 1799, through to 1891, the year in which the *Pemsel* case was resolved.¹ That is not to say that the charitable purposes exemption went unchallenged. The most significant event in that regard concerning charities during the Nineteenth Century was Gladstone’s unsuccessful attempt, in 1863, to remove the charitable purposes exemption from Income Tax.² However, three significant changes that were made to the Income Tax legislation must also be considered: the introduction of deduction at source; the introduction of the Schedules; and the creation of the Special Commissioners.

Identifying the various Income Tax Acts of the Nineteenth Century was facilitated through the use of the *Chronological Table and Index to the Statutes (Chronological Table)*, of which Volume I of the *Chronological Table* provided a ready source from which to identify the many Income Tax Acts that were passed in the course of the Nineteenth Century.³ However, the name of the relevant Acts changed over time, as the title used in the *Chronological Table*, from 39 Geo. III (1798-9) to 39 & 40 Geo. III (1799-1800), was “Duties upon Income.” From 42 Geo. III (1801-2) to 50 Geo. III (1810), the title “Income Tax” was used. Then, in

¹ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

² See Chapter 6 of this Thesis.

³ HMSO, *Chronological Table and Index of the Statutes* (13th ed 1896).

55 Geo. III (1814-15) and 56 Geo. III (1816), the term “Duties on Property” appears. Following the hiatus from 1816 to 1842, in 5 & 6 Vict. (1842), “Income Tax” resurfaces. However, in 1863 one finds that “Duties of Income Tax” are to be found in an Act of 26 & 27 Vict. (1863) indexed as “Customs and Inland Revenue.” This is also to be found in 30 & 31 Vict. (1867). The Customs and Inland Revenue Act of 48 & 49 Vict. (1884-85) also contained excise duties and Income Tax, a practice which I also found in 54 & 55 Vict. (1891). I note this merely as an oddity, and have not pursued subsequent Income Tax and Duties of Customs Acts to find at which point in time they were separated into independent Acts with their own unique titles. Many of those statutes were simply stating the rates of Income Tax to be levied for that financial year, as from 1842 onwards the authority for levying the tax in the first place was to be found in the Income Tax Act of 1842.

With respect to the charitable purposes exemption from Pitt in 1799 to Peel in 1842, what is significant is how the wording of the exemption changed between that time. However, this leads to another question – how did those changes eventuate? Were they solely the work of the law draftsmen, based on experiences of the General and Special Commissioners in dealing with claims under the various Acts? As these sections were never debated in detail in public or in the House of Commons, I can only assume that it was the Commissioners who influenced the language used in the charitable purposes exemption.

The evolution of key concepts in the Income Tax Acts

To understand *Pemsel* requires an understanding of the evolution of the charitable purposes exemption in the Income Statutes of the Nineteenth Century, as the central issue in *Pemsel* was that the Income Tax legislation did not provide a definition of “charitable purposes.” The failure to do so ultimately led to a judicial concept in order to settle the matter but that did not happen until nearly a century after Pitt had introduced the Income Tax in 1799. It is also necessary to understand how the Income Tax statutes evolved the way that they did, with respect to deduction at source, the importance of the Schedules, and the role of the Special Commissioners. The two key pieces of legislation that introduced these concepts were the Duties upon Income Act 1799,⁴ and the Income Tax Act 1803.⁵ The systems devised and put

⁴ *An Act to repeal the Duties imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties* 39 Geo. III c. 13 [9 January 1799].

⁵ *An Act for granting to His Majesty, until the sixth day of May next after the Ratification of a Definitive Treaty of Peace, a contribution on the profits arising from property, professions, trades, offices* 43 Geo. III c. 122 [11

into place by Addington in 1803 remained in force through to the Income Tax Act of 1918, were identical to those of 1803,⁶ therefore by deduction the provisions of the Income Tax Act extant in 1891, that is the Act of 1842, were also identical. I propose that if it were not for the [re]-introduction by Addington of taxation at source, then the *Pemsel* case may never have occurred. The reason for my argument lies in the fact that following the introduction of the 1803 Act, charitable institutions were now required to file returns reclaiming the Income Tax deducted at source by the Bank of England through an application to the Commissioners appointed under the Act.⁷

The relevance to this Thesis of discussing the concepts of deduction at source and the Schedules lies in the fact that the *Pemsel* case was based on a claim for a refund of Income Tax deducted under Schedule A of the Income Tax Act 1842.⁸ The introduction to the report of the case explained that:

[b]y 5 & 6 Vict. c. 35, s. 61, No. VI, allowances in respect of the Income Tax imposed by Schedule A are to be granted by the Commissioners for Special Purposes of the Income Tax on (*inter alia*) the rents and profits of lands, tenements, hereditaments, or heritages, vested in trustees for charitable purposes, so far as the same are applied to charitable purposes.⁹

Until 1886, the applications by the Moravian Church, of which *Pemsel* was its Treasurer, had been allowed. However, “in 1886 the usual application for a return of the Income Tax [in respect of rents and profits of lands] for the year ending 5 April 1886 – amounting in this instance to £73 8s 3d – was refused by the Commissioners,”¹⁰ the result eventually being the hearing of the case in the House of Lords. In his historic decision, Lord Macnaghten considered in detail the wording of Schedules A, C and D, noting that “it seems to me to be necessary to go outside of Schedule C in order to understand the Act,” primarily because a special exemption found in Schedule C was not to be found in either Schedule A or Schedule

August 1803]. “The expression ‘Income Tax Act’ was not employed until 1892 when, by the Short Titles Act of that year, this title was given to the Acts of 1842 and 1853 which had imposed a tax upon the profits arising from the same four sources as those detailed in the headnote to the Act of 1803.” Lord Davey in *Attorney-General v London County Council* [1901] AC 26; 4 Tax Cas. 265, 300 as cited in A. Farnsworth, *Addington: Author of the Modern Income Tax* (1951) 3.

⁶ A. Farnsworth, *Addington Author of the Modern Income Tax* (1951) 74.

⁷ *An Act ...*, above n 5, ss. CXC VII, CXC VIII, AND CXC IX.

⁸ *Pemsel*, above n 1; *An Act for granting to Her Majesty Duties on profits arising from property, professions, trades, and offices, until the sixth day of April [1845]* 5 & 6 Vict c. 35 [22 June 1842] s. 61 No. VI Schedule A.

⁹ *Pemsel*, above n 1, 531.

¹⁰ *Pemsel*, above n 1, 533.

D.¹¹ Thus in order to better understand the charitable purposes exemption as provided for in the Income Tax Act 1842, an understanding of the origin of the Schedules is necessary. However, it is also necessary to understand the nature of “deduction at source,” the two concepts being intertwined.¹²

“Deduction at source”

In 1803, two Acts were passed with respect to Duties upon Income. The first was on 27 July 1803, and was a consolidating Act.¹³ The second Act levied Duties upon Income and followed the first by only a matter of weeks.¹⁴ It was in the later Act that Addington not only tidied up Pitt’s general returns, but also made a significant contribution to tax policy through the introduction, as a consequence of his “unusual knowledge of the various modes of taxation employed in the past,”¹⁵ of the concept of “deduction of tax at source.”¹⁶ Deduction at source “was to be applied to interest, dividends, rent, income from the Funds, and the emoluments of Crown servants.”¹⁷

Shehab described the manner in which deduction at source was to be applied, that is:

in the case of income from real property, ... the deduction of the tax was made the responsibility of the tenant; in the case of income from public securities, ... it was the responsibility of the Bank of England; and in the case of incomes from employments or offices, ... it was the responsibility of the employer.¹⁸

However, identifying the authority within the 1803 Act for those deductions is less clear than Shehab proposed.

¹¹ *Pemsel*, above n 1, 589. The special exemption to which Lord Macnaghten had referred was one “in favour of funds dedicated to the repair of cathedrals, colleges, churches, and places of worship.” *Pemsel*, above n 1, 588.

¹² For an outstanding study of deduction at source see Piroška Soos, ‘The origins of taxation at source in England’ in Simon James (ed) ‘Taxation: Critical perspectives on the world economy (2002) vol x 49-59.

¹³ *An Act for consolidating certain of the provisions contained in any Act or Acts relating to the Duties under the management of the Commissioners for the Affairs of Taxes, and for amending the same* 43 Geo. III c. 99 [27 July 1803].

¹⁴ *An Act ...*, above n 5.

¹⁵ Farnsworth, above n 6, 42.

¹⁶ B.E.V. Sabine, *A History of Income Tax* (1966) 35. Addington is often credited with having devised such a mode of collecting tax. However deduction of taxation at source has a long pedigree, as it “could be found in England early in the sixteenth century.” See Piroška Soos, *Origins of Tax at Source in England*, The Chartered Institute of Taxation <http://www.tax.org.uk/showarticle.pl?id=1622> at 6 March 2008, and John F. Avery Jones, ‘The Special Commissioners from Trafalgar to Waterloo’ (2005) 1 *British Tax Review* 40. Soos also distinguishes between “taxation at source” and “taxation at the source.”

¹⁷ Sabine, above n 16, 35.

¹⁸ F. Shehab, *Progressive Taxation A Study in the development of the Progressive Principle in the British Income Tax* (1953) 54.

History corrected

It is also necessary to acknowledge the outstanding study of taxation at source undertaken by Piroska Soos in the late 1990s.¹⁹ Soos' valuable contribution to the history of taxation restates the origins of taxation at the source, a term that was first used in 1919, "now commonly 'taxation at source'", as "[h]istorians have not found taxation at source in England before [1657] and until now it has generally been assumed that taxation at source originated with these Seventeenth Century taxes," that is, the monthly assessment in 1657, and the land taxes in 1688 and 1692.²⁰ Soos concluded "that taxation at source in England originated much earlier than has been thought until now and that it was used throughout the Sixteenth, Seventeenth and Eighteenth Centuries."²¹

Addington's "Schedules"

While deduction of tax at source may not have been entirely Addington's gift to tax policy, certainly the Schedules that he developed, which Sabine referred to as "the well-known five Schedules," have stood the test of time.²² However, the schedular form was not entirely Addington's own work as it was "clearly the work of the tax office experts and [was derived] from Pitt's "Plan for a Contribution" of 1798, Pitt having realised "that some form of schedule system [was] necessary to cover different types of income."²³ The Schedules were:

an adaptation of the nineteen "cases" grouped under the four main headings, covering the nineteen possible sources of earned and unearned income, which had been the basis of the official form for the return of income required in an amendment [39 Geo. III c. 22] to the Act of 1799.²⁴

Schedule A

Duties under Schedule A were levied "throughout Great Britain."²⁵ The duty was levied on "the annual value of lands, tenements, hereditaments, or heritages [which] shall be understood to be the rent by the year at which the same are let at rack rent," at the rate of one shilling for

¹⁹ Soos, above n 12, 50 citing the Royal Commission on the Income Tax *Forty-third Report for the year ended 31 March 1900* (London, 1900) 110.

²⁰ Soos, above n 12, 51. Soos also discusses the distinction between "taxation at source" and "withholding at source," arguing that they "differ conceptually and in the mechanism [used by the government to collect tax with the owner of the income bearing the burden of the tax because it is deducted from his [sic] income]." Soos, above n 12, 54, 55.

²¹ Soos, above n 12, 54.

²² Sabine, above n 16, 35.

²³ A. Hope-Jones, *Income Tax in the Napoleonic Wars* (1939), 15.

²⁴ Hope-Jones, above n 23, 21.

²⁵ *An Act ...*, above n 5, Schedule A. No. II, *Rules for charging the said Duties*.

every twenty shillings of value.²⁶ With respect to Schedule A, the First Rule of the *Rules for charging the said Duties* stated that the duties were “charged annually on, and paid by the occupier or occupiers for the time being of such lands, tenements, hereditaments or heritages.”²⁷ Under the Second Rule, the occupier deducted the duties paid from the rent payable to the landlord, thus deducting the duties at source.²⁸

Schedule B

Duties levied under Schedule B were “in addition to the Duties contained in Schedule A,” with certain exceptions.²⁹ Schedule B levied duties on the occupation of “all dwelling houses, lands, tenements, or hereditaments, in England, Wales, and Berwick-upon-Tweed” at the rate of nine-pence “for every twenty shillings of the annual value thereof,” and in Scotland, at the rate of six-pence “for every twenty shillings of the annual value thereof.”³⁰ The Duties were “subject to the general rule in Schedule A,” that is the valuation rule, as well as the further Rules in Schedule B for estimating the value,³¹ and were “charged annually on, and paid by, the occupier or occupiers for the time being, his, her, and their executor, administrators, and assigns.”³²

Schedule C

Schedule C differed from Schedules A, B, D, and E in that it did not contain its own set of Rules, as it comprised only one paragraph, in spite of the preceding section of the Act which deemed that Schedule C “and the Rules therein contained,” be a part of the Act.³³ Schedule C levied duties “[u]pon all profits arising from annuities, dividends, and shares of annuities, payable to any person or persons, bodies politic or corporate, companies or societies, whether corporate or not corporate, out of any public revenue” at the rate of one shilling in every twenty shillings.³⁴ Payment of the Duty was to be “by the person or persons entitled unto the said annuities, dividends, and shares, his, her, or their executors, administrators, or assigns.”³⁵

²⁶ *An Act ...*, above n 5, Schedule A. No. II, *Rules for charging the said Duties*.

²⁷ *An Act ...*, above n 5, Schedule A, [Preamble].

²⁸ *An Act ...*, above n 5, Schedule A, No. I, *General Rule*.

²⁹ *An Act ...*, above n 5, Schedule B, [Preamble]. The exceptions list was very detailed, and included farms with “tythe or teinds,” and “rents or compositions for tythes or teinds.”

³⁰ *An Act ...*, above n 5, Schedule B, [Preamble].

³¹ *An Act ...*, above n 5, Schedule B, *Rules for charging the said last-mentioned Duties and Rules for estimating the annual value of properties before described in Schedules (A) and (B)*. One set of such Rules applied to properties in England, Wales, and Berwick-upon-Tweed, and a further set to Scotland.

³² *An Act ...*, above n 5, Schedule B, *Rules for charging the said Duties* [First Rule].

³³ *An Act ...*, above n 5, Schedule C, [Preamble].

³⁴ *An Act ...*, above n 5, Schedule C, [Preamble].

³⁵ *An Act ...*, above n 5, Schedule C, [Preamble].

Persons, bodies politic and corporate, company or societies of persons “who shall be entitled unto any shares of such Annuities, shall ... in order to their being assessed before the respective Commissioners, or in order to their being exempted therefrom,” were required to deliver “lists, declarations and statements” specifying the annual profits from the Public Annuities, the stock from which those profits rose, and details of in whose name the Annuities were invested.³⁶

The Act of 1803 required, at section 77, that those persons “having the direction and control of any property vested in the said Public Annuities” were also responsible for “payments on account of the said Duty which they shall respectively make in pursuance of this Act,” for which an indemnity was also provided.³⁷ It is clear that the Duties were not assessed by the investee, but by the Inspectors or Surveyors on assessing the Statements of Income provided by those “persons entitled to dividends or shares of Annuities payable out of the public revenue.”³⁸ However, the intent of this section is confusing, with respect to charitable institutions, as it appears that being exempt from the Duties, the charitable institutions were still required to file a claim for exemption. Deconstructing the section into its key elements, the section then reads:

[t]hat every person ... (*except such persons and such charitable institutions, as are herein exempted from the said Duties*) ... having the direction and control of any property vested in the said Public Annuities, who shall ... be in receipt of dividends payable upon the said Public Annuities, shall be answerable ... in order to their being duly assessed, or to claiming of exemptions from the said Duty in Cases herein allowed ... and every person ... shall be and they are respectively indemnified ... for all payments on account of the said Duty which they shall respectively make in pursuance of this Act. (Emphasis added.)³⁹

It does not appear that the Duties on Public Annuities were deducted at source, but were assessed, and paid or exempted, as the case may be.

³⁶ *An Act ...*, above n 5, Schedule C, s. LXXII.

³⁷ *An Act ...*, above n 5, Schedule C, s. LXXVII.

³⁸ *An Act ...*, above n 5, Schedule C, s. LXXVI.

³⁹ *An Act ...*, above n 5, Schedule C, s. LXXVII.

Schedule D

Schedule D applied to the annual profits or gains “from any kind of property ... or from any profession, trade, or vocation,” with Duties being levied at the rate of one shilling for every twenty “of the amount of such profits or gains.”⁴⁰ Schedule D also applied:

to every description of property or profits which shall not be chargeable or charged to either of the said Duties contained in Schedules (A), (B), or (C), and to every description of employment or profit not chargeable or charged to the Duty here-in-after mentioned, contained in Schedule (E), *and not specially exempted from the respective Duties*, and shall be charged annually on and paid by the person or persons, bodies politic or corporate, fraternities, fellowships, companies or societies, whether corporate or not corporate, receiving or entitled unto the same, his, her, or their executors, administrators, successors, and assigns respectively. (Emphasis added.)⁴¹

Schedule E

Schedule E levied Duties on persons “having, using, or exercising any public office, or employment of profit.”⁴² The Duty levied “[upon] every public office of employment, and upon every annuity, pension, or stipend, payable by His Majesty, or out of the public revenue of Great Britain, except annuities before charged to the Duties contained in Schedule C,” was one shilling in every twenty.⁴³ The Duties were assessed “by the respective Commissioners for all the Offices in each Department,” such Duties being “due and payable from the respective Officers.”⁴⁴ The “Commissioners for Duties on Offices in Public Departments” were appointed by the principal Officer or Officers in each department, “whether the same be civil, judicial, or criminal, ecclesiastical, or commissariat, military or naval.”⁴⁵

Public Annuities and deduction at source

While Duties may have been in effect deducted at source under Schedules A and B with respect to occupiers, that was not the case with the remaining Schedules. “All Trustees” and “all officers of corporations,” that is, corporations, companies, fraternities, and societies, were authorised “by and out of the money which shall come to his or her hands ... to retain so much and such part thereof from time to time as shall be sufficient to pay such assessment,”

⁴⁰ *An Act ...*, above n 5, Schedule D, [Preamble].

⁴¹ *An Act ...*, above n 5, Schedule D, [Preamble].

⁴² *An Act ...*, above n 5, Schedule E, [Preamble].

⁴³ *An Act ...*, above n 5, Schedule E, [Preamble].

⁴⁴ *An Act ...*, above n 5, Schedule E, *Rules for charging the said Duties* Second Rule.

⁴⁵ *An Act ...*, above n 5, Schedule E, s. CLXXVI. Commissioners were also appointed from within the Houses of Parliament, Counties Palatine, the Duchy of Cornwall, the Courts of Law and Equity. *An Act ...*, above n 5.

for which an indemnity was also provided.⁴⁶ Shehab's claim that the Bank of England deducted tax on the dividends of Public Annuities in consequence of the Duties upon Income Act 1803 would at first appear to be incorrect.⁴⁷ Section 170 provides support for my contention, as duplicates of assessments made by the Commissioners, "for the purposes of this Act," with details of the amount assessed on each person, were sent to the tax collectors along with Warrants for the collection of the Duties, which could either be paid to the Collector or into the Bank of England.⁴⁸ However, section 192 stated:

[t]hat such of the said Duties granted by this Act, and the Contributions hereby authorized, which may be detained or stopped, and deducted out of the sums in respect whereof they shall be charged or deducted, shall be respectively detained at such times each year, as the said sums shall be payable to the person or persons entitled thereto.⁴⁹

The margin note to this section noted that "Duty shall be deducted when the principal sums are payable."⁵⁰ This then is the relevant section authorising the deduction of Duties on Public Annuities at source.

"An Exposition"

After Addington's Act of 1803 became law an official guide to the legislation was produced, with the title: *An Exposition of the Act for a contribution of property, professions, trades and offices in which the principles and provisions of the Act are fully considered with a view to persons chargeable, as persons liable, to the tax by way of deduction and the Officers chosen to carry it into effect. (Exposition)*.⁵¹ The object of the *Exposition*, as explained in its first paragraph, was "to point out the principle on which the measure is founded, in agreement with and departure from, the principle of the 'Income Tax'."⁵² Farnsworth explained that the *Exposition*:

then set out the contemporary view of the main principles of Pitt's Income Tax the reasons of its failure, thus: The principle of the Income Tax ... *is an impost on that portion of property, annually acquired, which remains at the discretionary disposal of the ultimate proprietor*. On this idea the Income Tax was formed. It called upon the ultimate proprietor to account for that portion of his property, from all and whatever sources it was

⁴⁶ *An Act ...*, above n 5, s. XCIII.

⁴⁷ Shehab, above n 18, 54.

⁴⁸ *An Act ...*, above n 5, s. CLXX.

⁴⁹ *An Act ...*, above n 5, s. CXCII.

⁵⁰ *An Act ...*, above n 5, s. CXCII [Margin Note].

⁵¹ Farnsworth, above n 6, 74.

⁵² Farnsworth, above n 6, 74.

derived. Comprehending all, *without distinguishing any of the sources*, it laid on an equal contribution ... on the mass of annual acquirement, after making those deductions or allowances necessarily incurred in acquiring or maintaining that property, or which were incidental to it. It involved the whole, however intricate or extensive, in one account, to be furnished by the party. ... *It was imposed, not upon its first acquirement, but after its separation into all the channels to which it was destined, on the ultimate possessor, allowing for all intermediate payments and claims, and laying on all a proportionate charge.* (Emphasis added.)⁵³

According to Farnsworth, “[t]he last paragraph emphasises the great difference between Pitt’s and Addington’s Income Taxes; the former charged profits when they ultimately reached their last proprietor, the latter charged them at the source whence they arose.”⁵⁴ Under Pitt’s exemption, charitable institutions need do nothing further; whereas under Addington, a claim for tax deducted at source was required. Addington’s Act was described, in 1852, as:

[an] Act that made a very material alteration in the principle of the former Acts ... By that Act the principle was first introduced of charging income upon realized property at its source ... It was the first Act which charged property at its source, the date being 1803.⁵⁵

The *Exposition* also stated that:

the distinction between [the 1799 and 1803 Acts] consists in the different modes of imposing Duty [upon Income]. As the former was imposed on the general account of income derived from all sources; the present Duty is imposed on each source by itself, in the hand of the first possessor, at the same time permitting and authorizing its diffusion through every natural channel in its course to the hand of the ultimate proprietor.⁵⁶

The implications for charitable institutions with investments in the government funds can be seen in that, as described in the *Exposition*:

[a]nother original source of annual profit is that which is derived from the Funds composing the national debt. *The charge is imposed on the person entitled to the dividends or shares of those Public Annuities as being the first possessor; ... that charge being in the same manner distributable amongst the several persons who may have a legal claim thereon, to be satisfied out of the profits so charged. ... thus the charge is gradually diffused, from the first possessor to the ultimate proprietor; and one of the greatest causes*

⁵³ Farnsworth, above n 6, 74 citing *An Exposition* p.2.

⁵⁴ Farnsworth, above n 6, 75.

⁵⁵ Farnsworth, above n 6, 76 citing *The First Report from the Select Committee on the Income and Property Tax* Cmd. 354 of 1852, pp 8-9. Between 1801 and 1852 there were only two such Select Committees, the report of the first committee being submitted in 1851 (563) x. 339; and the two reports of the second committee, in 1852, (354) ix. 1 and (510) ix. 463. See *General Index to the Reports of Select Committees 1801-1852* ordered to be printed (hereafter “*otbp*”) 16 August 1853.

⁵⁶ Farnsworth, above n 6, 77.

of defalcation, arising from the necessity of protecting private transactions from exposure, experienced under [Pitt's] Income Act, is avoided; (Emphasis added.)⁵⁷

The Schedules

Another significant distinction between Pitt's and Addington's Income Tax Acts was the sophisticated schedular system that Addington introduced. Addington "[did away] with [Pitt's] general return which was replaced by particular returns of income from particular sources."⁵⁸ The key aspect of Addington's innovation was that:

[t]he tax was for the first time divided up into the well-known five schedules. Schedule A charged tax on the amount of land and buildings; Schedule B covered farming profits; Schedule C taxed fundholders in respect of annuities payable out of any public revenues; persons not British subjects and not resident in Great Britain were granted exemption; Schedule D was divided into the six cases which are still familiar today [1966] and brought into charge various forms of profit and interest. It was, in effect the final Schedule as it contained the "sweep-up" provisions of Case VI; and Schedule E embraced the charge on income from offices and employments of profit and annuities and pensions.⁵⁹

The layout of Addington's Duties upon Income Act 1803 is interesting in that sections 3 to 30 deal with the Commissioners, after which section 31 states "[t]hat the several Schedules, marked (A) and (B), and the several Rules therein contained, shall be deemed and construed to be a part of this Act, as if the same had been inserted herein under a Special Enactment."⁶⁰ Similar sections are to be found at section 66, following the end of Schedule B, in relation to Schedule C; at section 84, following the end of Schedule C, in relation to Schedule (D); at section 175, following the end of Schedule D, in relation to Schedule E.⁶¹

The "Funded Property," the *Exposition* noted, "extended to all annuities, interest, dividends and shares of annuities payable out of the public revenue as contained in Schedule C."⁶² Farnsworth noted that Addington had originally intended that tax be deducted at source from these funds but instead provided that stockholders could pay the tax to the Bank of England once the dividend was received.⁶³

⁵⁷ Farnsworth, above n 6, 78.

⁵⁸ Sabine, above n 16, 35.

⁵⁹ Sabine, above n 16, 35.

⁶⁰ *An Act ...*, above n 5, [43 Geo III c. 122] s. XXXI.

⁶¹ *An Act ...*, above n 5, [43 Geo III c. 122]. ss. XXXI, LXVI, LXXXIV, and CLXXXV.

⁶² Farnsworth, above n 6, 79.

⁶³ Farnsworth, above n 6, 80.

Schedule D applied to all property “except to such property which is particularly exempted from the duties in the foregoing schedule,”⁶⁴ of which the sixth “Case” of the six cases contained in Schedule D applied to “profits of whatever nature not falling under any of the foregoing rules or charged by virtue of any other of the Schedules of the Act.”⁶⁵

The Commissioners for the Special Purposes of the Income Tax

The third significant factor that affected charitable institutions was the creation of the Special Commissioners in 1805.⁶⁶ In his Duties upon Income Act of 1805,⁶⁷ which Farnsworth referred to as “the Income Tax Act, 1805,”⁶⁸ one of Pitt’s innovations was “the introduction of a new administrative body termed the Special Commissioners.”⁶⁹ The 1805 Act provided that the Commissioners for the Affairs of Taxes were also to be Commissioners for certain special purposes, with authority to appoint three other persons as “Assistant Commissioners for such special purposes.”⁷⁰ Hence the term Special Commissioners.

The Commissioners for General Purposes were authorised “to execute [the Act] in all matters and things relating to the Duties in Schedules marked ‘A’ and ‘B’ of the said Act, except such allowances in respect thereof as are directed to be made in Number Five of Schedule A by the Commissioners for Special Purposes.”⁷¹ The same rule with respect to the Commissioners for General Purposes also applied to Schedule C, with the Commissioners for Special Purposes being responsible for the granting of exemptions with respect to Schedule C.⁷² The allowances referred to with respect to Number V of Schedule A of the Duties upon Income Tax Act 1805 concerned exemptions for colleges, hospitals, public schools and almshouses, regarding repairs and maintenance, rents and profits, whereas Schedule C, at s. LXXIV, applied to the exemption provided for “the Stock of charitable institutions.”⁷³ Hope-Jones explained that the role of the Commissioners for Special Purposes was:

⁶⁴ Farnsworth, above n 6, 80.

⁶⁵ Farnsworth, above n 6, 81.

⁶⁶ Avery Jones, above n 16, for an excellent discussion of the role of the Special Commissioners from 1805 to 1816.

⁶⁷ *An Act to repeal certain parts of an Act, made in the Forty-third year of His present Majesty* [43 Geo. III c. 122], for granting a contribution on the profits arising from property, professions, trades, and offices; and to consolidate, and render more effectual, the provisions for collecting the said Duties 45 Geo. III c. 49 [5 June 1805].

⁶⁸ Farnsworth, above n 6, 100.

⁶⁹ Farnsworth, above n 6, 100.

⁷⁰ *An Act ...*, above n 67, s. XXIX.

⁷¹ *An Act ...*, above n 70, s. XXIX.

⁷² *An Act ...*, above n 70, s. XXIX.

⁷³ *An Act ...*, above n 70, s. LXXIV.

[as] specialists solely concerned with the Income Tax. They exercised close supervision over the more important rent returns in Schedule A and over dividends in Schedule C. In all schedules they had power to “ascertain the amount of any duty, exemption or allowance” and make objections to the General Commissioners. They could require bodies of General Commissioners to take affidavits from any taxpayer in their divisions answering questions put by them. The affidavits were then forwarded to the Tax Office for consideration by the Commissioners for Special Purposes.⁷⁴

The Commissioners of Appeal and the Commercial Commissioners, “who had functioned so ineffectively under Pitt’s Income Tax,” were abolished.⁷⁵ However, the General Commissioners remained and became “the supreme appellate and administrative body,” assisted by the Additional Commissioners “who made “assessments [but only under Schedule D] in the first place.”⁷⁶ Farnsworth described how:

[in order] to claim for relief in respect of exemption, abatement and children ... the taxpayer claiming such reliefs had to make a return of his [sic] total income from all sources, [that is], a return [of] all income upon which he had already suffered, or was to suffer, tax either by way of direct assessment under any of the five Schedules or by deduction at the source.⁷⁷

Thus the change by Addington in 1803 in the mode by which tax was deducted at source, coupled with the introduction by Pitt in 1805 of the Commissioners for the Special Purposes, set the stage for the *Pemsel* case in 1891.⁷⁸

Part II Duties upon Income 1799 to 1816

39 Geo. III c. 22 [22 March 1799]

Pitt’s Duties upon Income Act did not have a good start, as on 21 March 1799 the Act was modified by allowing an extension of time for making Returns of Statements as required by ss. 38 and 39 of 39 Geo. III. c. 13.⁷⁹ That was not the only modification that was required, as 39 Geo. III c. 22 contained 34 sections, as well as Schedules A, B, and C. Schedule A being

⁷⁴ Hope-Jones, above n 23, 23.

⁷⁵ Farnsworth, above n 6, 85.

⁷⁶ Farnsworth, above n 6, 85.

⁷⁷ Farnsworth, above n 6, 86.

⁷⁸ *Pemsel*, above n 1.

⁷⁹ *An Act for extending the time for returning Statements under [39 Geo. III c. 13]; and to amend the said Act 39 Geo. III c. 22 [21 March 1799].*

the Rules for estimating income; Schedule B being the forms for the statement of income, and Schedule C being for income to be charged by the Commercial Commissioners.⁸⁰

Three of the Statements in Schedule B, numbered 12, 13 and 14, concerned “Statements of Income by Trustees,” as required by s. 90 of 39 Geo. III. c. 13, and the exemptions as listed at s. 87 and s. 88 concerning charitable purposes, and s. 89 concerning corporate cities and the like with respect to the expenses of governance. Statement 12 declared that “the income does not amount to [£60] per annum; Statement 12 that “the income amounts to [£60] per annum, and is under [£200]; and Statement 14, “where the income amounts to [£200], or upwards.”⁸¹ These Statements and other appendices to 39 Geo. III c. 22 are not to be found in 39 Geo. III c. 13, as the editors of *The Statutes at Large* decided, in their wisdom, to exclude them, but noted their decision, in a footnote to 39 Geo. III c. 13, that:

[t]he Schedule to [39 Geo. III c. 13] was repealed, and a new one framed in its stead by Cap. 22 of this Session; to which latter Schedule all the Notes in this Chapter now refer, except that in [s.] 52, referring to [(F) Precept of Commissioners], for which no Substitute is provided in c. 22.⁸²

However, problems persisted, and in May 1799, another Act was enacted:

to enable the Commercial Commissioners appointed to carry into execution certain Acts for granting Duties upon Income, to extend the time limited by the said Acts for receiving Returns of Income; and for explaining and amending the said Acts.⁸³

Another problem then arose, concerning trustees in those situations “where two or more trustees shall be liable to be assessed for the same income,” and yet another amending Act was promptly passed which provided that upon production of a Certificate from one parish or place of assessment, assessment would be made on one trustee only.⁸⁴

⁸⁰ A footnote to 39 Geo. III c. 13 following the last section of that Act. s. CXXIV, stated that “[t]he Schedule to this Act was repealed, and a new one framed in its stead by cap. 22 of this Session.” The only Schedule published in the *Statutes at Large* in 1800 as part of 39 Geo III c. 13 was Schedule F, “Precept of Commissioners,” requiring persons to file returns of income.

⁸¹ *An Act ...*, above n 79.

⁸² *An Act ...*, above n 4.

⁸³ *An Act to enable the Commercial Commissioners appointed to carry into execution certain Acts for granting Duties upon Income, to extend the time limited by the said Acts for receiving Returns of Income; and for explaining and amending the said Acts* 39 Geo. III c. 42 [10 May 1799].

⁸⁴ *An Act to amend [39 Geo III c. 13] so far as relates to the Assessments made upon trustees, agents, receivers, and guardians* 39 Geo. III. c. 73 [12 July 1799].

39 & 49 Geo. III c. 49 [20 June 1800]

Turner noted that “[d]uring 1800 there were problems with Pitt’s Income Tax, which soon had to be modified”⁸⁵ What those problems were can be seen from the title of the Duties on Income (instead of Duties upon Income as in 1799) Act, *An Act for better ascertaining and collecting the Duties granted by several Acts passed in the last Session of Parliament, relating to the Duties on Income, and to explain and amend the said Acts.*⁸⁶ Consisting of 42 sections, the Act addressed such matters as trade, plantations, amendments to the Rules for ascertaining income, the appointment of General Commissioners or Commissioners of Appeals. The matters addressed also extended “to all bodies, corporations, companies, fraternities, and societies whatsoever,” but no reference was made to such entities as charitable institutions.⁸⁷ Further problems led to the passing one month later of yet a further Act of one section only, concerning the delivery of statements under £20 to the Commercial Commissioners of London.⁸⁸

1801

While a dozen Acts concerning taxation in its different forms were passed during the Forty-first year of the Reign of George III, only one related to Duties on Income, by extending the Act to Ireland.⁸⁹

1802

The Assessed Taxes Acts continued to raise funds for the government, at the same time as Duties on Income, as can be seen in an Act in 1802 which levied “certain additional duties on windows or lights, and on inhabited houses.”⁹⁰ Hospitals, charity schools, and houses that provided for the reception and relief of poor persons were exempted to the extent of those parts of the building applied to charitable purposes (although that phrase was not used in the

⁸⁵ Michael J. Turner, *Pitt the Younger A Life* (2003) 227.

⁸⁶ *An Act for better ascertaining and collecting the Duties granted by several Acts passed in the last Session of Parliament, relating to the Duties on Income; and to explain and amend the said Acts* 39 & 40 Geo. III c. 49 [20 June 1800].

⁸⁷ *An Act . . .*, above n 86, s. XXXVI.

⁸⁸ *An Act for explaining and amending so much of an Act, passed in the present Session of Parliament, relating to Duties on Income, as respect the delivery of the statements to the Commercial Commissioners of London, under the amount of [£20]* 39 & 40 Geo III c. 96 [28 July 1800].

⁸⁹ *An Act for continuing until [25 March 1802] certain Acts of the last Session of the Parliament to Ireland, for granting Duties to His Majesty* 41 Geo. III c. 17 [24 March 1801]. One Act of 1801 which would be unthinkable today was *An Act to exempt elephant oil sold by auction in Great Britain from the Duty imposed on such sales* 41 Geo. III c. 42 [21 May 1801].

⁹⁰ *An Act for granting to His Majesty certain additional Duties on windows or lights, and on inhabited houses; and for consolidating the same with the present Duties thereon* 42 Geo. III c. 34 [15 April 1802].

Act).⁹¹ An assessment was required to be made and on “due proof of the fact before the Commissioners by the Assessors,” the Commissioners were authorised to discharge the entity from the Duties.⁹²

While tax was universally unpopular, that the Duties on Income were not popular can be seen from Tayler’s account of an event in 1802, when:

[o]n the 10th of March 1802, a few days previous to the signing of the Treaty of Amiens, a petition from the City of London for the repeal of the Income Tax was presented; in the resolutions contained *in which the serious evils attending the tax were prominently set forth, as causing a destructive operation on the trading world, and as manifestly unjust, in making no discrimination between fluctuating and certain income.* The petitioners stated that it was hostile to the liberties and morals of the people; that no modification could render it equitable, just or efficient, and that *every exertion should be made to get rid of a tax at once so oppressive and inquisitorial;* affording ample proof, if any were wanting, of the detestation in which it was at the time held. (Emphasis added.)⁹³

The Duties on Income were subsequently repealed on 4 May 1802.⁹⁴ This Act repealed not only 39 Geo. III c. 13, but also 38 Geo III c. 16, that is, the Assessed Taxes Act of 12 January 1798. There were, however, exceptions. It is apparent from the repealing Act that unknown persons and corporations had yet to be assessed by the earlier Acts and, in spite of those Acts having been repealed, if Returns had not been filed in the case of an existing liability as at 5 April 1802, the obligation to do so remained.

43 Geo. III c. 122 [11 August 1803]

The peace, however, was not maintained and a year later England and France were again at war. To raise funds for this purpose, on 11 August 1803 the Parliament passed an Act levying “a contribution on the profits arising from property, professions, trades and offices.”⁹⁵ Optimistically perhaps, the Act was again intended as an annual Act which was to expire no later than 6 May 1804. Thus the Act was yet another war tax, as well as being a tax on property. Both these points were noted by Tayler who observed that the Chancellor of the Exchequer “never considered the Income Tax as anything but a war tax; and that as there had

⁹¹ *An Act ...*, above n 90, ss. VIII and IX.

⁹² *An Act ...*, above n 90, s. IX.

⁹³ William Tayler, *The History of the Taxation of England* (1853) 53.

⁹⁴ *An Act for repealing the Duties on Income; for the effectual collection of arrears of the said Duties, and accounting for the same; and for charging the Annuities specifically charged thereon upon the Consolidated Fund of Great Britain* 42 Geo. III. c. 42 [4 May 1802]. See also Farnsworth, above n 6, 37.

⁹⁵ *An Act ...*, above n 5.

been already such considerable sums raised upon consumption, it was but fair that positive property should be taxed.”⁹⁶ Addington also relabelled his Act as a “Property Tax” [but] [t]he new name did not deceive anyone and “Income Tax” remained its ordinary and popular title.”⁹⁷

The inspiration for Addington’s Act of 1803

In his “Private Memoir on Finance” of June, 1803, Addington wrote: “I propose to take a part of that sum by duties upon property producing income ... I propose a Land Tax and a personal contribution.”⁹⁸ Addington, who was considered to have “had an unusual knowledge of the historical development of taxation,”⁹⁹ may have been inspired by events from [Will. & Anne] of 14 November 1702, when the House resolved that duties be laid on:

the value of stock in trade; ... all monies of interest; ... all salaries, fees and perquisites of office; ...all annuities, pensions and yearly stipends; ...persons exercising any profession whatsoever, ... [as well as] an aid ... upon all lands, tenements and hereditaments. ... There is so much similarity between some of the provisions of the Land Tax Act and the late Property Act (as the Act was then termed) that the former has evidently been the basis of the latter.¹⁰⁰

Farnsworth also observed that:

[t]he lengthy enumeration of specific properties in [the third charging section of the Land Tax Act of 4 Wm. and Mary, c. 1 1692] will be found, on examination, to correspond almost identically with a similar enumeration of properties in the charging section of Schedule A of the 1803 Act [43 Geo. III c. 122 s. 31].¹⁰¹

Farnsworth contends that evidence for Addington’s taxation at source was inspired by the Land Tax Acts of earlier times is to be found in his Private Memoir on Finance of June 1803 in which Addington laid down that “[a]ll lands will be assessed at one shilling in the pound payable by the occupier [sic] but to be charged on the proprietor.”¹⁰² Addington, stated Farnsworth, “with his masterly grasp of the various modes of taxation which had been employed in this country,” was inspired by section 13 of the Land Tax Act 1692, which

⁹⁶ Tayler, above n 93, 55.

⁹⁷ Hope-Jones, above n 23, 20.

⁹⁸ Farnsworth, above n 6, 42.

⁹⁹ Farnsworth, above n 6, ix.

¹⁰⁰ Farnsworth, above n 6, 42.

¹⁰¹ Farnsworth, above n 6, 44.

¹⁰² Farnsworth, above n 6, 46.

provided for tenants chargeable with any pound-rates to recover such rates by deducting them from rent payable to their landlord, to provide in his 1803 Act for all assessable lands to be paid by the occupier but then to be a charge on the proprietor – the application of taxation at source to real estate.¹⁰³ Farnsworth also noted that “[i]ncome arising from the funds ...had from the early days of the old Land Tax been exempt (cf 8 Wm. 3 c. 6 s.3 and annual Land Tax Acts to 38 Geo. III c. 5 s.3) and was, moreover, especially exempted from taxation in the Acts raising the loans.”¹⁰⁴

Farnsworth has provided an excellent précis of the history of Addington’s Act of 1803 by explaining that:

Addington’s new Income Tax was originally contained in two Bills, one “A Bill for granting to His Majesty a contribution on the profits of certain descriptions of property, and on any Public Office, or employment from profit.” known as “The Property Tax Bill;” and the other levying the tax upon “the profits from personal property, trades, professions etc.” and termed “The Personal Property and Income Tax Bill.”¹⁰⁵

Farnsworth also noted that, following the debate on 5 July, “the two Bills were consolidated into a single Bill, ‘The Property and Income Tax Bill’ which ultimately became law in what may be properly termed the Income Tax Act, 1803.”¹⁰⁶ Farnsworth also wrote that “[n]o copies of these Bills exist as they were destroyed, with all other draft Bills, when the Houses of Parliament were burned down in 1834.”¹⁰⁷ However, once again *The Times* has been an invaluable aid to historians, as *The Times* of 28 June 1803 contains what Farnsworth described as “brief Abstracts of the two Bills,” with “[t]he provisions relating to ‘taxation at the source’ being clearly set out.”¹⁰⁸

Debate on Addington’s Bill

Farnsworth found, just as I have, that the official reports of Parliamentary debate at the beginning of the Nineteenth Century were sketchy, if not entirely absent, on some occasions. The report of Addington’s speech in *The Parliamentary Register* in which he introduced the Budget contained only five “meagre” columns, whereas Farnsworth noted that:

¹⁰³ Farnsworth, above n 6, 46.

¹⁰⁴ Farnsworth, above n 6, 47.

¹⁰⁵ Farnsworth, above n 6, 57 citing *The Times* (London), 21 22 23 and 28 June 1803.

¹⁰⁶ Farnsworth, above n 6, 57 and 58.

¹⁰⁷ Farnsworth, above n 6, 57 and 58.

¹⁰⁸ Farnsworth, above n 6, 57.

The Times reported, in greater or less detail, the debates and proceedings on what became the Income Tax Act 1803, on no fewer than sixteen days as compared with the four days' debates very briefly reported in *The Parliamentary History* in only thirteen columns of print.¹⁰⁹

On 13 June Addington opened the debate on the Budget “with a speech of two hours, at the close of which no member offered a single observation.”¹¹⁰ During his opening address, Addington:

briefly outlined his new system of taxation at the source ... [in which he intended] to make a distinction between that species of property, the value of which is in a manner fixed and determined to the proprietor, without depending on skill or industry, and on that species of property which depends upon skill and industry alone for its requirement.¹¹¹

By the first species, Addington meant:

all lands and all heritable property, together with the interest of money placed in the public funds, or funds belonging to corporations. ... The tax which I would propose to affect property should be laid on the rents of land, according to its net value, as far as it can be ascertained.¹¹²

This alone, I consider, must have been a concern to the charitable institutions of London and Great Britain. Yet there was no reaction to Addington's proposal by those bodies. However, the *Hampshire Telegraph and Portsmouth Gazette* reported that on 20 June:

the Chancellor of the Exchequer had great pleasure in relieving any anxiety which might prevail [on the subject of the Income Tax], by stating that the funds of all Friendly Societies and charitable institutions would be exempted from the tax.¹¹³

It was not only the funds that were exempt, as the exemption included “all stock belonging to charitable institutions,” a point made in *The Aberdeen Journal*.¹¹⁴

¹⁰⁹ Farnsworth, above n 6, 51. The sparseness of reporting by the reporters of *The Parliamentary History* was due to their resentment at having been accidentally excluded from the public gallery of the House of Commons on 23 May 1803, the day that Pitt again declared war on France. Farnsworth, above n 6, 51.

¹¹⁰ Farnsworth, above n 6, 51 citing *The Diary and Correspondence of Lord Colchester* vol 1 (13 June 1803) 428.

¹¹¹ Farnsworth, above n 6, 52 citing *The Times* (London), 14 June 1803.

¹¹² Farnsworth, above n 6, 51 citing *The Times* (London), 14 June 1803.

¹¹³ ‘House of Commons’, *Hampshire Telegraph & Portsmouth Gazette* (Portsmouth), 27 June 1803, Issue 194.

¹¹⁴ ‘House of Commons’, *The Aberdeen Journal* (Aberdeen), 29 June 1803, Issue 2894.

When Addington indicated his intention to tax the income from the Public Funds, on the basis “that it cannot be contended that at a time like the present, when every possible exertion must from necessity be adopted, that even that species of property should alone stand exempted,” Pitt responded. Turner has noted that, in response to Addington:

[Pitt] pointed out that [the schedule of] exemptions and abatements did not include people who received interest from the public funds [and that] exemptions and abatements should apply to all types of property, criticism to which Addington responded by altering the Income Tax [Bill.]¹¹⁵

Thus a second threat confronted the charitable institutions. Not only were rents to be taxed, but their investments were now under threat. There was no public clamour, no out-swelling of wounded pride: the charities were silent. Yet the Act provided for the exemptions that the charitable institutions would have expected, as a consequence of the precedent established by Pitt in 1798 and 1799.

On 13 July Pitt, in opposing Addington’s Bill, objected:

to the withholding of exemption and abatement from all income except that acquired by personal industry, secondly to the proposal for deduction of tax at source – at the Bank of England – from dividends in the funds; and lastly, to the new system under which income from the Funds was to be taxed as a separate and distinct source of income. ... Pitt [had] objected to the restricted exemption and abatement on the ground that *it was a fundamental principle that a tax on income should be equal and general* [Parliamentary History, July 13, 1803, pp 1664-1667]. (Emphasis added.)¹¹⁶

Addington capitulated and “[t]he Speaker’s diary [noted that] Mr. Addington gave way to the suggestion of exemptions for land and stocks between £150 and £60 p.a. for the sake of carrying through his Bill with general concurrence.”¹¹⁷

The charitable purposes exemption 1803

The charitable purposes exemption of 43 Geo. III c. 122 [1803], as contained at “[Rule] No. IV Exemptions from the said Duties in Schedule A,” provided an exemption from an interesting assortment of potential sources of taxation. Whereas 38 Geo. III c. 16 (Assessed Taxes Act 1798) had exempted Royal or public hospitals from the additional duty on houses,

¹¹⁵ Turner above n 85, 244.

¹¹⁶ Farnsworth, above n 6, 63.

¹¹⁷ Farnsworth, above n 6, 65.

windows, or lights, as well as “any chambers or apartments therein used or occupied for charitable purposes,”¹¹⁸ and 39 Geo. III c. 13 (Duties upon Income Act 1799) had provided an exemption for corporations, fraternities, or societies of persons “established for charitable purposes only,”¹¹⁹ 43 Geo. III c. 122 provided for quite a different range of potential sources of income to be exempt from the duties levied in that Act. Schedule A, Rule No. IV of 43 Geo. III c. 122 [1803] exempted:

First. – The scite [sic] of any college or hall in any of the universities of Great Britain, and all offices, gardens, walks, and grounds for recreation, repaired and maintained by the funds of such college or hall.

Second.- The scite [sic] of every hospital or public school, or alms house, and all offices, gardens, walks, and grounds for recreation of the hospitallers, scholars, and almsmen, repaired and maintained by the funds of such hospital, schools, or alms house.

Third. – The amount of the rents and profits of messuages, lands, tenements, or hereditaments, belonging to any hospital or alms house, *on proof before the respective Commissioners of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only*; such exemption to be claimed and proved by any steward, agent, or factor acting for such hospital or alms house, or by any trustee of the same, and to be carried into effect either by vacating the assessment made on such messuages, lands, tenements, or hereditaments, or by obtaining a certificate of exemption as here-in after is mentioned [at ss. 197, 8, or 9], and as the case may require. (Emphasis added.)¹²⁰

With Schedule A levying duties of one shilling in every twenty shillings of the annual value of property, the exemption must have provided considerable relief financially and emotionally to the trustees of charitable institutions.¹²¹

Schedule B immediately followed Rule No. IV of Schedule A. That is, there were no interposing sections of the Act providing direction to the charitable institutions regarding how the trustees were required to proceed under the Act, those sections being found at sections 197, 198 and 199 of 43 Geo. III c. 122. Sections 32 to 66 were interposed between Schedule B and Schedule C. There was nothing of concern to charitable institutions in Schedule B. Schedule C, which consisted of one lengthy sentence of twelve lines of print, levied Duties on “profits arising from annuities, dividends, and shares of annuities,” at the rate of one shilling

¹¹⁸ 38 Geo. III c. 16 s. XIX.

¹¹⁹ *An Act ...*, above n 4, s. V.

¹²⁰ *An Act ...*, above n 5, Rule No. IV [of Schedule A]. Section 199 made provision for the Commissioners for the Purposes of this Act ... to grant such Claimant a Certificate ... stating therein the Allowance of such Exemption.”

¹²¹ “Hereditaments” were “all things that descend by way of inheritance, and fall not as chattels, within the compass of an Executor.” Ben Johnson, *An English Dictionary* (1676; reprint 2006).

in every twenty.”¹²² Section 67, which followed Schedule C, exempted “the stock or fund of any Friendly Society,” provided that the Friendly Society had been established during the thirty-third year of the reign of George III, under *An Act for the encouragement and relief of Friendly Societies*.¹²³ Section 68 provided an exemption for the stock of charitable institutions to be exempted from duties under Schedule C, upon proof “before the Commissioners for the purposes of this Act” of the application of those funds “to charitable purposes only.”¹²⁴ The Commissioners were not yet titled the Special Commissioners as “[t]he Act of 1803 still left the Income or Property Tax as a responsibility of the Commissioners for the Affairs of Taxes.”¹²⁵ The charitable purposes exemption under Schedule C, at section 68 read, in its entirety:

[t]hat nothing herein contained shall be construed to extend to charge any corporation, fraternity, or society of persons established for charitable purposes only; nor to charge any funds, which according to the Rules or Regulations of any corporations, companies, fraternities, or societies, or of any trustee or trustees, established by Act of Parliament, Charter, Decree, Deed of Trust, or Will, shall be applicable to charitable purposes only, and in so far as the same shall be applied to charitable purposes only; *provided the application thereof to such purposes shall be duly proved before the Commissioners for the Purposes of this Act*, by any agent or factor on the behalf of any such corporation, fraternity, or society, or trustee or trustees, or by any of the members or trustees. (Emphasis added.)¹²⁶

Notably, the charitable purposes exemption under Schedule C is contained in a specific section of the Act, yet that for Schedule A is to be found in a “Rule.” There is also a link between 39 Geo. III c. 13 [1799] and 43 Geo. III c. 122 [1803], as both Acts required that the application of funds to charitable purposes were to be proved before the Commissioners. Section XC of 39 Geo. III c. 13 [1799] required an apportionment between funds not chargeable to Duties upon Income, whereas section 68 of 43 Geo. III c. 122 [1803] required the application of funds to charitable purposes only to be proved before the Commissioners. Under 39 Geo. III c. 13 [1799] section XC required an officer of the charitable institution claiming exemption to provide a statement of the annual income of the entity which specified “how much and what proportion of such annual income is not chargeable by virtue of this Act

¹²² *An Act ...*, above n 95, Schedule C.

¹²³ *An Act ...*, above n 95, s. LXVII. *An Act for the encouragement and relief of Friendly Societies* 33 Geo. III c. 54 [21 June 1793].

¹²⁴ *An Act ...*, above n 95, s. LXVIII.

¹²⁵ Hope-Jones, above n 23, 21. Pitt introduced the Special Commissioners in 1805 in order ‘to take some of the work away from the General Commissioners by dealing with claims for charitable reliefs under Schedules A and C.’ See also Avery Jones, above n 16, 40.

¹²⁶ *An Act ...*, above n 95, s. LXVIII.

upon such corporation, company, fraternity, or society, and for what purposes the income, not chargeable as aforesaid, is or shall be applicable.”¹²⁷

I suggest that the law draftsmen were grappling with how best to draw up the Act in order to provide for a more efficient means of administering this aspect of the Act, and this was the result. As Lord Macnaghten noted, in 1891, “[w]hat are charitable purposes within the meaning of these Acts the legislature had nowhere defined.”¹²⁸

While Pitt also insisted on “an exemption in favour of foreigners living abroad – in short, for the benefit of foreigners holding Government stock, particularly for the rich Dutch merchants who had been, and might continue to be, considerable subscribers to the English funds,” there is no evidence that he also advocated for an exemption for charitable institutions.¹²⁹ Farnsworth justified the non-resident exemption on the grounds that:

non-resident foreigners were exempt from tax on their income from the Funds ... because they were not charged with any other tax. The principle on which British subjects were taxed in this respect was, because they were liable to all other taxes, and it was [Addington’s] object at present to tax all British property in as equal a degree as possible – “no taxation without representation.”¹³⁰

As Farnsworth has observed:

[i]t was the scheme of the [1803 Act] to look, not as under Pitt’s system at the taxpayer in the first place, but at the source of the income and ... to levy the tax ... at the point where the income first emerged and became visible leaving the first possessors of the income to deduct a proportion of the tax when distributing any part of it among those who had charges upon it.¹³¹

Thus it was that “Addington’s new-modelled Income Tax [Act of 1803] ... was continued until peace came [in 1816], and which was revived in 1842 by Peel, [not Pitt’s Act which had been repealed in 1802].”¹³² Farnsworth did not discuss the issue of exemption and abatement on the grounds that, “[a]lthough by far the greater part of the day’s debate turned upon the

¹²⁷ *An Act ...*, above n 95, s. XC.

¹²⁸ (1891) 3 TC 53 at 90.

¹²⁹ Hope-Jones, above n 23, 20.

¹³⁰ Farnsworth, above n 6, 55. Dowell, believing that the famous quote was made by Pitt, has apparently misled Seligman and Hope-Jones, both also tax historians. Farnsworth, above n 6, 56.

¹³¹ Farnsworth, above n 6, 4.

¹³² Farnsworth, above n 6, 62.

first objection ... [it] did not go in any way to the root of the new system.”¹³³ In due course, “[t]he ‘Property and Income Tax Bill’ became law on 11th August 1803.”¹³⁴ Farnsworth also noted that “[t]he *Exposition* next dealt with [t]he duties in Schedule D [of the Property and Income Tax Act of 1803] ... [which] affects all property ... except ... such property which is particularly exempted from the Duties in the foregoing schedules.”¹³⁵ However, there was precedent for deduction at source as, according to Farnsworth:

[T]he Land Tax Acts ... contained the seeds of the complementary and subsidiary principle of ‘Deduction of Tax at the Source’, as may be seen in from this provision in the original Land Tax Act of 1692, [4 Wm. and Mary, c.1, s. 6] reproduced in absolutely unchanged language in every subsequent Land Tax Act to that of 1797: ‘... it shall be lawful ... for the Landlords, Owners and Proprietors of such Manors, Messuages, Lands, Tenements, Hereditaments and Premises as are charged with the pound-rate ... *to deduct and to retain and keep* in his or their hands four shillings in the pound for every fee-farm rent or other annual rent or payment charged upon or arising out of the premises ... and all and every persons who are ... entitled to such rents and annual payments are hereby required to allow such deductions’. (Emphasis added.) It was not difficult for Addington, with his masterly grasp of the various modes of taxation which had been employed in [England] and his determination to remodel Pitt’s Income Tax, to evolve from the idea inherent in this provision the general principle of ‘Deduction of tax at the source’; and to apply this principle not only to annual charges on real property but also to all types of annual payments, whether interest, annuities, [or] dividends, etc.¹³⁶

43 Geo. III c. 161 [12 August 1803]

On 12 August 1803, the day after Addington’s Income Tax Act had been passed into law, a further Act, 43 Geo. III c. 161, (note that the Chapter sequence in the printed statutes was not strictly maintained) which repealed several duties concerning the Assessed Taxes while at the same time granting new Duties, was passed.¹³⁷ This Act also provided an exemption from the new Duties to:

[a]ny hospital, charity school, or house provided for the reception and relief of poor persons, except such apartments therein as are or may be occupied by the officers or

¹³³ Farnsworth, above n 6, 63.

¹³⁴ Farnsworth, above n 6, 71.

¹³⁵ Farnsworth, above n 6, 80.

¹³⁶ Farnsworth, above n 6, 46.

¹³⁷ *An Act for repealing the several Duties under the management of the Commissioners for the Affairs of Taxes, and granting new Duties in lieu thereof; for granting new Duties in certain cases therein mentioned; for repealing the Duties of Excises on Licences, and on carriages constructed by Coachmakers, and granting new duties thereon under the management of the said Commissioners for the Affairs of Taxes; and also new Duties on persons selling carriages by auction, or on commission* 43 Geo. III c. 161 [12 August 1803].

servants thereof, which shall be severally assessed, and be subject to the said Duties as an entire dwelling-house.¹³⁸

While 43 Geo. III c. 161 was not a Duties upon Income Act, it can be seen that problems were foreseeable regarding the part assessment of such institutions, and that in fact became the case.¹³⁹ Farnsworth considered that:

the traditional view that the *modern* Income Tax owes its origin to Pitt [is] a completely fallacious view, for the system of taxing introduced by Pitt in 1799 was so imperfect, both in its execution and results, that it was never revived after its repeal in 1802 [42 Geo III c. 42] when a brief peace was established between Great Britain and France. ... [T]he defects inherent in Pitt's scheme of Income Tax led to such frauds and evasions that, when the war with Napoleon was renewed in 1803, his system was abandoned and an entirely new plan was devised by his successor, in the Income Tax Act, 1803, which has survived to this very day as the essence of our current [1951] Income Tax law. (Emphasis added.)¹⁴⁰

1804

On 5 January 1804 *The Derby Mercury* carried a notice from the Commissioners of the Property Tax for the Hundred of Morleston and Lichurch, of half a column in length which stated, *inter alia*:

[t]hat the amount of all rents and profits of messuages, lands, tenements or hereditaments, belonging to any hospital or alms-house, and being applied to charitable purposes only, must be claimed and proved before [the Commissioners] by the trustee, steward, agent, or factor, acting for such hospital or alms-house.¹⁴¹

The next paragraph of the notice concerned Friendly Societies, and was followed by a paragraph similar to that above, but with respect to the funds of corporations, fraternities, and societies of persons, “established for and applied to charitable purposes only.”¹⁴² Detailed instructions as to how such institutions should proceed then followed.

¹³⁸ *An Act ...*, above n 137, Schedule (A) Windows, Exemptions, Case II.

¹³⁹ I have not included my research into that issue in this Thesis but I intend to include those issues in a text on the charitable purposes exemption, covering the Imperial Taxes and Rating, at a later date.

¹⁴⁰ Farnsworth, above n 6, 1.

¹⁴¹ ‘Property Tax Office’, *The Derby Mercury* (Derby), 5 January 1804, Issue 3743.

¹⁴² ‘Property Tax Office’, above n 141.

On 30 April 1804 Addington produced another Budget, after having informed Pitt “that his government was dissolved.”¹⁴³ This Budget was merely a formality as, “like Pitt’s in 1801, in very similar circumstances, [it] was voted unanimously.”¹⁴⁴ In his presentation of his Budget, Addington admitted that:

[i]n the course of the discussion [during the passage of the Bill in 1803] *the House determined to grant very considerable exemptions and all income under £150 a year, arising from the public funds, was freed from contribution.* This necessarily involved a large deduction from the produce originally looked for from this tax. I do not mean to question the wisdom of the resolution adopted by this House in that instance, but merely to state, that its practical effect has been to diminish very considerably the produce of the tax, to an amount which, when I state it at one million, I am sure that I state it below rather than above the fact. (Emphasis added.)¹⁴⁵

However, Addington did not propose any changes to the legislation to rectify that matter, and neither was the matter of the charitable purposes exemption, and the loss of income from that source, raised. The Income Tax Act of 1804 was, by all accounts, yet another piece of legislation which made adjustments to the administrative machinery by extending the time allowed for appeals, as well as repealing parts of the Act concerning the responsibilities of attorneys, agents and factors acting for others.¹⁴⁶

45 Geo. III c. 15 [18 March 1805]

In his text *Addington Author of the Income Tax*, Farnsworth wrote that “Pitt’s last Budget was opened on 18 February 1805.”¹⁴⁷ During the course of the debate in the House of Commons on the Budget on 4 March 1805, discussion took place on exempting military officers, and Irish property in the British funds.¹⁴⁸ The *Caledonian Mercury* also reported that “Mr Banks moved a clause, exempting all funds appropriated to charitable purposes, which was received.”¹⁴⁹ *Jackson’s Oxford Journal* provided a more detail commentary on the matter, by reporting that:

¹⁴³ Farnsworth, above n 6, 96. Addington continued to serve his country until his retirement from political life in 1824. He reconciled with Pitt and served in his Cabinet as Lord President of the Council and was raised to the peerage as Viscount Sidmouth.

¹⁴⁴ Farnsworth, above n 6, 96.

¹⁴⁵ Farnsworth, above n 6, 91 citing *Hansard* 30th April 1804 347-348.

¹⁴⁶ *An Act to repeal so much of an Act, passed in the last Session of Parliament, for granting to His Majesty a contribution on profits arising from property, professions, trades, and offices, as requires attorneys, agents, and factors, to retain and pay the Duties chargeable upon Public Annuities; and to extend the time for hearing appeals on assessments or surcharges made in pursuance of the Act 44 Geo. III c. 37 [3 May 1804].*

¹⁴⁷ Farnsworth, above n 6, 99.

¹⁴⁸ ‘Exemption from Property Tax’, *Caledonian Mercury* (Edinburgh), 9 March 1805, Issue 13027.

¹⁴⁹ ‘Exemption from Property Tax’, above n 148.

Mr Banks brought up a clause to exempt from the payment of this tax all lands, money, or other property, vested in trustees for the use of alms-houses, or other charitable purposes only. The Chancellor of the Exchequer said that he should shortly have occasion to move for leave to bring in another Bill, relating to regulations, which would give his Honourable friend and opportunity of submitting this exemption; but, if he thought proper to offer it now, he did not suppose it would meet with any opposition.¹⁵⁰

There being no opposition, “the clause was brought up and agreed to.”¹⁵¹ Pitt was referring to his intention “[t]o establish a separate set of Commissioners for charitable corporations,” with respect to the Property Tax,” which he signalled to the House of Commons on 5 April 1805.¹⁵² Apart from Mr Calvert, who “thought that no duty should be imposed on charitable institutions,” there was no other reaction to Pitt’s suggestion.¹⁵³

The charitable purposes exemption [18 March 1805]

The Act that was the outcome of the Budget in February consisted of primarily of four sections, with a fifth section noted as a footnote that read “Act may be altered or repealed this Session,” and became law on 18 March 1805.¹⁵⁴ The fourth section contained an extensive charitable purposes exemption which provided:

that the amount of rents belonging to any hospital or alms-houses shall be exempt from the Duties charged in Schedule A [of 43 Geo. III c. 122], be it enacted, that the amount of the rents and profits of messuages, lands, tenements, or hereditaments vested in trustees for charitable purposes only, *on proof* before the respective Commissioners, of the due application of the said rents and profits to charitable purposes only, and *in so far as the same shall be applied to charitable purposes only*, shall be in like manner exempt from the Duties imposed by this Act. (Emphasis added.)¹⁵⁵

The distinctive aspect of this exemption clause is the requirement to prove that the income to be exempted was applied to charitable purposes. How that was proven would be interesting to know, given that the same issue, in terms of how a charitable trust provides public benefit

¹⁵⁰ ‘House of Commons’, *Jackson’s Oxford Journal* (Oxford), 9 March 1805, Issue 2706.

¹⁵¹ ‘House of Commons’, above n 150.

¹⁵² ‘House of Commons’, *Caledonian Mercury* (Edinburgh), 8 April 1805, Issue 13040.

¹⁵³ ‘House of Commons’, above n 152.

¹⁵⁴ *An Act for granting to His Majesty additional Duties in Great Britain, on the amount of assessments to be charged on the profits arising from property, professions, trades, and offices* 45 Geo. III c. 15 [18 March 1805].

¹⁵⁵ *An Act ...*, above n 154, s. IV. By this time, the initial decision in *Morice v The Bishop of Durham* 9 Ves. Jun 399 had been handed down, in February 1804, but the case continued until 18 and 20 March 1805 when, in the Lord Chancellor’s Court, Lord Eldon handed down the final judgment in the case in *Morice v The Bishop of Durham* [1805] 10 Ves. 522, 531. Note the coincidence of the date of 18 March concerning both *Morice* and the Income Tax Act of 45 Geo. III c. 15.

in the Twenty-first Century is as confusing in charity law as it must have been in practice in the Nineteenth Century.

45 Geo. III c. 49 [5 June 1805]

Farnsworth also noted that during the closing debate, Pitt announced that he “would shortly be introducing a Bill with new regulations for the Income Tax.”¹⁵⁶ The subsequent debate on that Bill, according to Farnsworth, the consequence of which was the Income Tax Act of 5 June 1805,¹⁵⁷ was not reported by either *The Times*, nor in *Hansard*.¹⁵⁸ This may have been because, as Farnsworth explained, “[t]he Act reproduced in unaltered language and practically unchanged arrangement the provisions of the Income Tax Act 1803.”¹⁵⁹ Was this because there was little commercial merit for *The Times* to report the debate?

This Bill, which was to be Pitt’s final Income Tax Act, was an extensive Act which became “the mode for all subsequent legislation, including Lord Henry Petty’s ‘Property and Income Duties’ of 1806 [46 Geo. III c. 65].”¹⁶⁰ As well as being the model for Petty’s Act of 1806, the Act of 1805 is also significant in that:

[t]he tax remained the responsibility of the Commissioners for the Affairs of Taxes and provision was made for the appointment of not more than three Commissioners for the Special Purposes or Assistants [45 Geo. III c. 49 s. XXX], to be paid by the Treasury and appointed by that department. The Commissioners for Special Purposes were specialists solely concerned with the Income Tax. They exercised close supervision over the more important rent returns in Schedule A and over dividends in Schedule C. In all schedules they had power to ascertain the amount of any duty, exemption or allowance and make objections to the General Commissioners.¹⁶¹

On 5 June 1805, parts of 43 Geo. III c.122 [11 August 1803] concerning certain Duties, were repealed “for any year after 5 April 1805, except as to arrears,”¹⁶² and Duties in England were instead “assessed under the Regulations of 43 Geo. III c. 99 [27 July 1803].”¹⁶³ However, the greater significance of this particular Act is that it was through this Act that Pitt created the Commissioners for Special Purposes to whom were given:

¹⁵⁶ Farnsworth, above n 6, 100, citing *Hansard* 6 March 1805 712.

¹⁵⁷ *An Act ...*, above n 67.

¹⁵⁸ Farnsworth, above n 6, 100.

¹⁵⁹ Farnsworth, above n 6, 100.

¹⁶⁰ Hope-Jones, above n 23, 23.

¹⁶¹ Hope-Jones, above n 23, 24.

¹⁶² *An Act ...*, above n 67, [margin note].

¹⁶³ *An Act ...*, above n 67, ss. 1 and 2.

full authority to execute the several powers given by this Act ... either in relation to the Allowances specified in Number Five, Schedule (A) of this Act, or in relation to the Special Exemptions granted from the Duties mentioned in Schedule (C) of this Act¹⁶⁴

The charitable purposes exemption [5 June 1805]

Section 37 of 45 Geo. III c. 49 [5 June 1805] provided the Rules, which were to be applied to assessments under Schedule (A), to be a part of the Act. The charitable purposes exemption at Rule V *Allowances to be made in respect of the Duties in Schedule A*, was based upon Rule IV of Schedule A as contained in 43 Geo. III c. 122 [1803], but with some significant amendments as can be seen in the following reconstruction:

~~First.—the scite (sic) of~~ FOR THE DUTIES CHARGED ON any college or hall in any of the universities of Great Britain, ~~and all~~ OR THE Offices, gardens, walks, and grounds[,] for recreation, repaired and maintained by the funds of such college or hall[,] AND FOR THE NECESSARY REPAIRS THEREOF:

~~Second.—OR ON the scite (sic) of every hospital[,] or public school, or alms-house, and all~~ OR THE offices, gardens, walks, and grounds[,] for recreation of the hospitallers, scholars, and almsmen, repaired and maintained by the funds of such hospital, schools, or alms-house[,] AND FOR NECESSARY REPAIRS THEREOF:

~~Third.—OR ON The amount of the~~ rents and profits of messuages, lands, tenements, or hereditaments, belonging to any hospital[,] PUBLIC SCHOOL, or alms-house, OR VESTED IN TRUSTEES FOR CHARITABLE PURPOSES: THE SAID ALLOWANCES TO BE GRANTED, on proof[,] before the ~~respective~~ Commissioners TO BE APPOINTED FOR SPECIAL PURPOSES, UNDER THE AUTHORITY OF THIS ACT, of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only[:]

THE SAID ALLOWANCES ~~such exemption~~ to be claimed and proved by any steward, agent, or factor[,] acting for such COLLEGE, HALL, SCHOOL, hospital[,] or alms-house, OR OTHER TRUST FOR CHARITABLE PURPOSES, or by any trustee of the same, BY AFFIDAVIT, TO BE TAKEN BEFORE ANY COMMISSIONER FOR EXECUTING THIS ACT, IN THE DISTRICT, STATING THE AMOUNT OF THE DUTIES CHARGEABLE AND THE APPLICATION THEREOF, and to be carried into effect BY THE COMMISSIONERS FOR SPECIAL PURPOSES TO BE APPOINTED UNDER THE AUTHORITY OF THIS ACT, AND ACCORDING TO THE POWERS VESTED IN SUCH COMMISSIONERS, WITHOUT VACATING, ALTERING, OR IMPEACHING THE ASSESSMENT TO BE MADE, UNDER THIS ACT, ON OR IN RESPECT OF SUCH PROPERTIES; WHICH ASSESSMENTS SHALL BE IN FORCE, AND LEVIED NOTWITHSTANDING SUCH ALLOWANCES[.] ~~either by vacating the assessment made on such messuages, lands, tenements, or hereditaments, or by obtaining a certificate of exemption as here in after is mentioned [at ss. 197, 8, or 9], and as the case may require.~~¹⁶⁵

Section 72 of 45 Geo. III c. 49 [5 June 1805] provided the Rules to applied to the assessment of Duties under Schedule (C), with the Rules also to a part of the Act. Under the heading

¹⁶⁴ *An Act ...*, above n 67, s. XXX. See also Avery Jones, above n 66, 46.

¹⁶⁵ *An Act ...*, above n 67, Schedule A Rule No. V. The text in SMALL CAPS is additional text inserted into the section of the later Act.

“Schedule C,” section 74 of the 1805 Act, which was based on section 68 of the 1803 Act, as reconstructed below, contained the charitable purposes exemption which declared:

That nothing herein contained shall be construed to extend to charge any corporation, fraternity, or society of persons established for charitable purposes only; nor to charge ~~any Funds,~~ THE PROFITS ARISING FROM ANY SUCH ANNUITIES, DIVIDENDS, OR SHARES, which[,] according to the Rules or Regulations ESTABLISHED BY ACT OF PARLIAMENT, CHARTER, DECREE, DEED OF TRUST, OR WILL, SHALL BE APPLICABLE BY THE SAID ~~of any~~ corporations, ~~companies,~~ fraternities, or societies, or ~~of~~ BY any trustee or trustees, ~~established by Act of Parliament, Charter, Decree, Deed of Trust, or Will,~~ shall be applicable to charitable purposes only, and *in so far as the same shall be applied to charitable purposes only*; provided the application thereof to such purposes shall be *duly proved* before the Commissioners for ~~the~~ SPECIAL Purposes ~~of this~~ TO BE APPOINTED UNDER THIS Act, by any agent or factor[,] on the behalf of any such corporation, fraternity, or society, or trustee or trustees, or by any of the members or trustees. (Emphasis added.)¹⁶⁶

Once again the application of funds, in order to benefit from the charitable purposes exemption from Income Tax, were to be proved before the Commissioners for the Special Purposes of the Act. There is also an aspect of the 1805 Act and the charitable purposes “allowances” under Rule No 5 of Schedule A which does not have a counter-part for Schedule C. Section 214 of 45 Geo. III c. 49 stated:

[t]hat where any allowance mentioned in No. V Schedule A shall be granted by the Commissioners for Special Purposes to be appointed under the authority of this Act, it shall be lawful for such Commissioners, or any two or more of them, to certify the same to the Receiver General of the county or place, where the *property* in respect of such allowances shall have been granted is situate, and the certificate of such Commissioners shall be an authority to every such Receiver General to pay the amount so certified to the party entitled thereunto, and shall be a discharge to such Receiver General for such payment. (Emphasis added.)¹⁶⁷

Why there was no such corresponding requirement under Schedule C may be due to the fact that Schedule A applied to land, whereas Schedule C applied to investments, which may have been predominantly held in London, with the exception of money in the country’s savings banks. The complexity of the charitable purposes exemptions with respect to Schedules A and C is not to be understated. Further, without any definition of charitable purposes having been provided in the Act, the task facing the Special Commissioners was daunting to say the least.

¹⁶⁶ *An Act ...*, above n 67, Schedule C, s. LXXIV.

¹⁶⁷ *An Act ...*, above n 67, s. CXXIV.

It is interesting to find advertisements in the newspapers advising taxpayers of their obligations and benefits under the Income Tax legislation, as in *The Times* of 26 October 1805 which, in a notice under the name of M. Winter, of the Office for Taxes, stated that:

His Majesty's Commissioners for the Affairs of Taxes hereby give notice *that all persons claiming exemption* from the Duty in respect of the dividends arising from annuities, dividends, or shares of annuities, out of any public revenue, whether in the books of the Bank of England, or of other public companies, corporate or not corporate, and belonging to any Friendly Societies, *or to any corporation fraternity or society of persons established for charitable purposes only, are required to make their claims to exemption before the Commissioners for the Special Purposes of the Act, and that all such claims must be made in writing, and delivered to the Office for Taxes, in Somerset Place, directed to the Secretary for the Affairs of Taxes.* (Emphasis added.)¹⁶⁸

The notice also advised claimants that the necessary forms were available from “the Office for Taxes, ... the Office of the Inspector for the Duty on Dividends, ... or any Inspector or Surveyor of Taxes.”¹⁶⁹

46 Geo. III c. 65 [13 June 1806]

The year 1806 was to become another significant year in the history of the Income Tax. The Budget of March 1806 was introduced by Lord Henry Petty, and the Income Tax Act 1806,¹⁷⁰ “which endured until the Income Tax lapsed in 1816,” became the basis for the Income Tax Act 1842.¹⁷¹ Once again the Income Tax Act 1806 was an annual Act which was to apply from 5 April 1806 until “the sixth day of April next after the ratification of a Definitive Treaty of Peace, and no longer;”¹⁷² The account by Hope-Jones of the Income Tax Act 1806 provides a detailed description of that Act, as his analysis of the situation was that:

¹⁶⁸ ‘Exemption from Duty on Dividends’, *The Times* (London), 26 October 1805, 1. A more detailed notice appeared in *The Times* of 3 December 1805 as well as *The Morning Chronicle* of 13 December.

¹⁶⁹ ‘Exemption from Duty on Dividends’, above n 168. A similar notice appeared in *The Aberdeen Journal* on 6 November 1805, indicating that notices were placed throughout Great Britain. On 23 November 1805 a very detailed notice, which listed all the circumstances to which the charitable purposes exemption applied, appeared in *Jackson's Oxford Journal*. The same notice was also published in the *Hampshire Telegraph and Sussex Chronicle* on 25 November 1805, and *The Times* on 3 December 1805. Was this because the earlier notices failed to attract a response, necessitating the need for the more detailed notices to be published?

¹⁷⁰ *An Act for granting to His Majesty, during the present war, and until the sixth day of April next after the ratification of a definitive Treaty of peace, further additional Rates and Duties in Great Britain (on the Rates and Duties on profits – query on the profits) arising from property professions trades and offices; for repealing an Act passed in the Forty-fifth year of His present Majesty, for repealing certain parts of an Act made in the Forty-third year of His present Majesty, for granting a contribution on the profits arising from property professions trades and offices; and to consolidate and render more effectual the provisions for collecting the said Duties* 46 Geo III c. 65 [13 June 1806].

¹⁷¹ Farnsworth, above n 6, 101.

¹⁷² *An Act ...*, above n 170, s. CCXXVII Commencement and Continuance of the Act.

[t]he final shape of the War Income Tax was achieved in 1806. Pitt was dead; Grenville, Fox and the Whigs were in. *The general “codification” of the new Government was more a matter of redrafting the Act of 1805, and previous legislation, than an improvement on Pitt’s work.* Indeed, the great Income Tax legislation of Victoria’s reign may have been modelled on the Act of 1806, *but the Act of 1806 was that of 1805 in all essentials.* Certainly the Bill introduced in 1806 was impressive; it was part of the political game for the Whigs to amend their great opponents work. The Bill, according to *Wright’s Leeds Intelligence* of 9 June 1806, contained “300 yards of parchment and if the operation is to be judged by the length the public may dread its effect.” (Emphasis added.)¹⁷³

Hope-Jones made no reference to any debate on the charitable purposes exemption. While the Government “[reduced] the tax-free income allowance from £60 per annum to £50 per annum. ... [with] [t]he result of the change [being] to bring a whole class of new Income Tax contributors within the net,” the charities of Great Britain remained immune.¹⁷⁴ However, the role of the Commissioners for Special Purposes was strengthened in that:

[while] control of the Income Tax, or “Property Tax,” remained with the Commissioners for the Affairs of Taxes ... [o]n the failure of any body of General Commissioners to carry out their duties, two Commissioners for Special Purposes could be nominated by Treasury [under 46 Geo. III c. 65 s. XIII] to do their work.¹⁷⁵

However, “[t]he most important change” to previous Income Tax Acts, according to Farnsworth, was the application of taxation at source to income from the Funds, with the tax “being deducted at the Bank of England when payment was made.”¹⁷⁶ The matter of exemptions was raised, but not with respect to charitable institutions. In his debate on the Income Tax Bill on 31 March, Lord Petty stated that “[t]he only alteration that was made now, was to remove the great difficulty that was created by the exemptions”¹⁷⁷ Petty was referring to “the exemption and abatement for small unearned incomes ... together with the allowances for repairs of property and the relief in respect of children.”¹⁷⁸ The exemptions and abatements were those which Addington “had been induced to grant while the Act of 1803 was passing through the Committee.”¹⁷⁹ If Petty was concerned about exemptions, why then did he not raise the issue of the charitable purposes exemption?

¹⁷³ Hope-Jones, above n 23, 26.

¹⁷⁴ Hope-Jones, above n 23, 27.

¹⁷⁵ Hope-Jones, above n 23, 28.

¹⁷⁶ Farnsworth, above n 6, 102 citing *Hansard* 28 March 1806 577-78.

¹⁷⁷ Farnsworth, above n 6, 103 citing *Hansard* 31 March 1806 617-618.

¹⁷⁸ Farnsworth, above n 6, 102.

¹⁷⁹ Farnsworth, above n 6, 129.

The Duties upon Income Act of 13 June 1806 levied further duties as described in Schedules A to D by increasing the levy on each of the scales previously set under 43 Geo. III c. 122. Once again the charitable purposes exemptions under Schedules (A) and (C) were provided and, once again, the wording was amended.

The charitable purposes exemption [13 June 1806]

Section 31 of 46 Geo. III c. 65 [13 June 1806] made provision for the Commissioners for the Special Purposes of the Act:

to execute the several powers given by this Act to Commissioners for Special Purposes, either in relation to the Allowances specified in Number VI Schedule A [at s. 74], or in relation to the Special Exemptions granted from the Duties mentioned in Schedule C [at s. 103].¹⁸⁰

Section 74 provided that the Duties under Schedule A were to be charged in accordance with certain Rules as described under Schedule A.¹⁸¹ The basis for the charitable purposes exemption was the exemption as contained in 45 Geo. III c. 49 [18 March 1805], with subsequent modifications as reconstructed below. With respect to Schedule (A) Rule No. IV concerning allowances to be made in respect of the Duties in Schedule A, that is, the charitable purposes exemption applied in relation to:

Duties charged on any college or hall in any of the universities of Great Britain, IN RESPECT OF THE PUBLIC BUILDINGS AND OFFICES BELONGING TO SUCH COLLEGE OR HALL, AND NOT OCCUPIED BY ANY INDIVIDUAL MEMBER OR MEMBERS THEREOF, OR BY ANY PERSON PAYING RENT FOR THE SAME, AND FOR THE REPAIRS OF PUBLIC BUILDINGS AND OFFICES OF SUCH COLLEGE OR HALL, AND ~~of the offices,~~ gardens walks and grounds for recreation repaired and maintained by the funds of such college or hall, ~~and for the necessary repairs thereof.~~ Or on ~~the site (sic) of every~~ ANY hospital ~~or~~ public school or alms house IN RESPECT OF THE PUBLIC BUILDINGS AND PREMISES BELONGING TO ANY SUCH HOSPITAL PUBLIC SCHOOL OR ALMSHOUSE, AND NOT OCCUPIED BY ANY INDIVIDUAL OFFICER OR THE MASTER THEREOF, WHOSE PROFITS OR EMOLUMENTS HOWEVER ARISING SHALL EXCEED FIFTY POUNDS PER ANNUM, OR BY ANY PERSON PAYING RENT FOR THE SAME, AND FOR THE REPAIRS OF SUCH HOSPITAL PUBLIC SCHOOL OR ALMSHOUSE AND OFFICES BELONGING THERETO, AND OF THE ~~of the offices,~~ gardens walks and grounds for THE SUSTENANCE OR recreation of the Hospitallers Scholars and Almsmen, repaired and maintained by the funds of such hospital school or alms house ~~and for necessary repairs thereof.~~

[Allowances for cottages]

Or on the rents and profits of messuages lands tenements or hereditaments belonging to any hospital public school or alms house or vested in trustees for charitable purposes: ~~the~~

¹⁸⁰ *An Act ...*, above n 170, s. XXXI [13 June 1806].

¹⁸¹ *An Act ...*, above n 170, s. LXXIV.

~~said allowances to be granted, on proof, before the Commissioners to be appointed for Special Purposes, under the authority of this Act, of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only:~~

~~The said allowances to be GRANTED ON PROOF claimed and proved by any steward, agent, or factor, acting for such college, hall, school, hospital, or alms house, or other trust for charitable purposes, or by any trustee of the same, by affidavit, to be taken before THE any Commissioners APPOINTED AS AFORESAID, OR TO BE APPOINTED UNDER THE AUTHORITY OF THIS ACT FOR SPECIAL PURPOSES, OF THE DUE APPLICATION OF THE SAID RENTS AND PROFITS TO CHARITABLE PURPOSES ONLY, AND IN SO FAR AS THE SAME SHALL BE APPLIED TO CHARITABLE PURPOSES ONLY:~~

~~THE SAID ALLOWANCES TO BE CLAIMED AND PROVED BY ANY STEWARD AGENT OR FACTOR, ACTING FOR SUCH SCHOOL HOSPITAL OR ALMSHOUSE OR OTHER TRUST FOR CHARITABLE PURPOSES, OR BY ANY TRUSTEE OF THE SAME, BY AFFIDAVIT TO BE TAKEN BEFORE ANY COMMISSIONER FOR EXECUTING THIS ACT IN THE DISTRICT WHERE SUCH PERSON SHALL RESIDE, for executing this Act, in the district, stating the amount of the Duties chargeable and the application thereof, and to be carried into effect by the Commissioners for Special Purposes to be appointed under the authority of this Act, and according to the powers vested in such Commissioners, without vacating, altering, or impeaching the assessment to be made, under this Act, on or in respect of such properties; which assessments shall be in force, and levied notwithstanding such allowances.¹⁸²~~

Section 103 of the Property Tax of 1805 also provided the Rules for assessing, as well as exempting, Duties under Schedule C.¹⁸³ Section 74 of 45 Geo. III c. 15 [18 March 1805] provided the basis for the charitable purposes exemption under Schedule (C) which, in the 1806 Act, at the second Rule, stated:

~~That nothing herein contained shall be construed to extend to charge THE STOCK OR DIVIDENDS OF any corporation, fraternity, or society of persons[,] OR OF ANY TRUST, established for charitable purposes only; nor to charge the profits arising from any such annuities, dividends, or shares, OR which according to the Rules or Regulations[,] established by Act of Parliament Charter Decree Deed of Trust or Will, shall be applicable[,] by the said corporations fraternities or societies or by any trustee or trustees, to charitable purposes only, and in so far as the same shall be applied to charitable purposes only; OR THE STOCK OR DIVIDENDS IN THE NAMES OF ANY TRUSTEES APPLICABLE TO THE REPAIRS OF ANY CATHEDRAL COLLEGE CHURCH OR CHAPEL AND TO NO OTHER PURPOSE IN SO FAR AS THE SAME SHALL BE APPLIED TO SUCH PURPOSES, provided the application thereof to such purposes shall be duly proved before the Commissioners for Special Purposes AS AFORESAID OR to be appointed under this Act[,] by any agent or factor on the behalf of any such corporation fraternity or society or trustee or trustees or by any of the members or trustees.¹⁸⁴~~

¹⁸² *An Act ...*, above n 170, Rule No VI.

¹⁸³ *An Act ...*, above n 170, s. CIII.

¹⁸⁴ *An Act ...*, above n 170, Rules for Assessing and charging Duties under Schedule (C).

Section 31 of 46 Geo. III c. 65 also provided for the Special Commissioners, where exemptions with respect to Schedule C under earlier Acts had not been claimed, “to enquire and allow such exemptions.”¹⁸⁵

1807

Sabine has noted that “[i]t is generally agreed that the 1806 Income Tax Act settled the final shape of Income Tax in the Napoleonic Wars.”¹⁸⁶ Sabine also noted that “Income Tax was now settling down and securing a general, if somewhat, reluctant acceptance.”¹⁸⁷ Between 1806 and 1815 Income Tax was rarely debated in Parliament as there are few references to Income Tax in Hansard.¹⁸⁸ There was no need to renegotiate the Income Tax Acts, as the Act of 1806 declared that the tax, which was a war tax, would stay “until the sixth day of April next after the ratification of a definitive Treaty of Peace.”¹⁸⁹ Peace with France was then some years away, in 1815.

There were also very few references to the Property Tax in the newspapers of that year. The one item that I did find was a very strongly-worded notice on 24 June 1807, from the Commissioners of the Property Tax to the public, which appeared in *The Aberdeen Journal* stating that:

[t]he Commissioners of the Property Tax for the City and County of Aberdeen, think it proper to inform the public, that by the late Act of Parliament imposing a Duty of 10 per cent on all property, persons paying any interest, stipend, annuity, feu-duty, school salary, or other annual payment, are bound to retain one tenth of such payment from 5 April 1806, whatever the income of the party may be to whom such payment is made, *and whether for charitable institutions or not*, under very severe penalties on both parties. (Emphasis added.)¹⁹⁰

The implication is that such deductions were not being made. The question is: was that deliberate, or through a lack of knowledge of the legislation?

¹⁸⁵ *An Act ...*, above n 170, s. XXXI.

¹⁸⁶ Sabine, above n 16, 38.

¹⁸⁷ Sabine, above n 16, 38.

¹⁸⁸ Sabine, above n 16, 40.

¹⁸⁹ *An Act ...*, above n 170, [headnote].

¹⁹⁰ ‘Property Tax’, *The Aberdeen Journal* (Edinburgh), 24 June 1807, Issue 3102.

1808

In 1808, certain Assessed Taxes were repealed and new Duties added, with hospitals, charity schools, and houses for the reception and relief of poor persons again exempted.¹⁹¹ Taxation was still a thorn in the side of many as can be seen from Tayler's comment that:

[i]n a debate of the finance committee in the year 1808, one of the members complained how little had been done for the putting the taxation of the country on a better footing; and stated that, notwithstanding the finance committee of 1797 had made no less than twenty-four reports, containing the most valuable suggestions, yet not one single thing was done by the ministers of that day.¹⁹²

1809

The *Caledonian Mercury* of 22 May 1809 carried a lengthy notice from the Office for Taxes in Edinburgh, signed by "Henry Mackenzie" and directed at charitable institutions and Friendly Societies.¹⁹³ The notice made it very clear about what charitable institutions were required to disclose, that is:

[t]hat charitable institutions are entitled to exemption only on such part of their funds as are applied to purposes purely charitable; their appropriation, therefore, to the respective calls of the objects of charity must be distinctly and specifically stated in the claim. Such exemption, moreover, applies only to the funds of the institution arising from the rents of real or heritable property, and the dividends of stock, *and is not claimable for money secured on bonds, promissory notes, or other obligations of that sort.* ... Claims for charitable institutions ... must be renewed annually. (Emphasis added.)¹⁹⁴

This is the first such notice that I have found, and the statement from the Commissioners advising charitable institutions that they cannot claim exemption for income from other forms of investment not stated in the legislation raises another question: why not? Is it purely coincidental that it was the Commissioners in Edinburgh who declined the Moravian's claim for a refund of Income Tax in 1888? I suggest that this was because the Scottish Commissioners took a narrower view of what was considerable 'charitable' than the English Commissioners for the Special Purposes of the Income Tax.

¹⁹¹ *An Act for repealing the Duties of Assessed Taxes, and granting new Duties in lieu thereof, and certain additional Duties be consolidated therewith; and also for repealing the Stamp Duties on Game Certificates, and granting new Duties in Lieu thereof, to be placed under the management of the Commissioners for the Affairs of Taxes* 48 Geo. III c. 55 [1 June 1808].

¹⁹² Tayler, above n 93, 58.

¹⁹³ 'Property Tax. Claims of exemption and abatement', *Caledonian Mercury* (Edinburgh), 22 May 1809, Issue 13641.

¹⁹⁴ 'Property Tax', above n 193.

55 Geo. III c. 53 [12 May 1815]

In 1815, at first it appeared that the Income Tax was not to be renewed. Tayler has described how:

it was with the satisfaction which only a people overburdened with taxation can know, that the Chancellor of the Exchequer mentioned in the session of Parliament in the early part of 1815, *that he did not intend to renew the Property Tax*, the Act as to which expired in the April of that year. [That very night] he stated that [he] would relieve the country of taxation of £9,000,000; and it was with *a joyful unanimity that the House and the people of England looked forward to a lessening of the almost intolerable burthens with which they were overwhelmed in every rank and station*. It was on this occasion that Mr. Tierney made his celebrated peroration, “that he begged pardon of God and of the public for the part he had taken in imposing the Property Tax in 1806.” (Emphasis added.)¹⁹⁵

However, the “joyful unanimity” did not last for very long, as on 17 April 1815:

the Chancellor of the Exchequer came down to the House to re-impose the Property Tax, which he had so recently given notice of his intention to let expire, and which, if ever requisite, was surely so in the then circumstances and position of the nation. After very protracted debates, it was renewed for one year, viz., to 5 April 1816.¹⁹⁶

The Napoleonic Wars traversed two separate periods in history, with the first period being 1793-1802, and the second, 1803-1815.¹⁹⁷ Thus it was that the Preamble to 55 Geo. III c 53 of 12 May 1815 declared that:

Your Majesty’s most dutiful and loyal Subjects ... have freely and voluntary (sic) resolved to revive the said Rates, Duties and Contributions [of 43 Geo. III c. 122, 45 Geo. III c. 15 and 46 Geo. III c. 65] ... for the term of one whole year, to be computed from the fifth day of April [1815], and until the assessments for that year shall be completed.¹⁹⁸

However, the 1815 Act was of only six sections, being intended solely to “revive” the earlier Duties upon Income Acts, as was indicated in the long title to the Act. Section 2 of the Act made the revival clear by enacting:

¹⁹⁵ Tayler, above n 93, 63.

¹⁹⁶ Tayler, above n 93, 64.

¹⁹⁷ Norman J. Silberling, ‘Financial and Monetary policy of Great Britain during the Napoleonic Wars’ (1924) 38 *The Quarterly Journal of Economics* 2 214, 218.

¹⁹⁸ *An Act to revive and continue for one year the Duties and contributions on the profits arising from property, professions, trades and offices, in Great Britain* 55 Geo III c. 53 [12 May 1815] s. I.

that all and every the Acts in force on and immediately before the said 5th day of April [1815] in relation to the said recited Duties so expire, shall severally be continued and remain in full force, and be of like effect in all respects, in relation to the Duties hereby granted, as if the said Duties had not expired.¹⁹⁹

The earlier Acts so enumerated also continued in all other respects. That is, instead of rewriting the Property Tax of 1815, the earlier Acts were deemed to become the new Act. The Acts referred by 55 Geo. III c. 53 [12 May 1815] to as having been in force, and to continue, were enumerated as being 43 Geo. III c. 22 [11 August 1803], 45 Geo. III c. 15 [18 March 1805], and 46 Geo. III c. 65 [13 June 1806]. Therefore, as well as provisions for assessment, the charitable purposes exemption also became part of the Property Tax Act 1815.

Charity accounts in the newspapers

The edition of *Trewman's Exeter Flying Post* of 18 May 1815 contained a very detailed account of the Treasurer for the Episcopal Charity School.²⁰⁰ On the expenditure side of the account is the notation “[T]o assistance in recovering Property Tax £1” and, on the income side, “[B]y return of duties on the Property Tax from the Tax Office, for 1812 and 1813, £57 1s 10d.”²⁰¹ A good return on investment, one might say, given that the repaid Property Tax amounted to about 4 per cent of the school’s gross income! A year later, on 9 May 1816, the account of the Treasurer of the Exeter Episcopal Charity School again appeared in *Trewman's Exeter Flying Post*, and reported payments of “taxes, including Property Duty,” for 1815 of £53 2s 11½d, with a recovery of the Property Tax “from the Government, including a sum received from the Lunatic Asylum, to Lady-Day, 1815,” of £65 19s 6d.²⁰²

56 Geo. III c. 65 [22 June 1816]

Since 1806, Hope-Jones noted, until 1816 there had been “no general overhaul of the Income Tax system.”²⁰³ That was rectified when, on 22 June 1816, 56 Geo. III c. 65 was enacted to ensure that all previous Acts, that is, 43 Geo. III c. 122, 45 Geo. III c. 15, 46 Geo. III c. 65, and 55 Geo. III c. 53, would remain in force in order that outstanding taxes could be collected.²⁰⁴ The Preamble of the thirteen-section Act stated:

¹⁹⁹ *An Act ...*, above n 198, s. II.

²⁰⁰ ‘The Account of Mr Cornelius Tripe’, *Trewman's Exeter Flying Post* (Exeter), 18 May 1815, Issue 2593.

²⁰¹ ‘The Account of Mr Cornelius Tripe’, above n 200.

²⁰² ‘Exeter Episcopal Charity Schools’, *Trewman's Exeter Flying Post* (Exeter), 9 May 1816.

²⁰³ Hope-Jones, above n 23, 29.

²⁰⁴ *An Act to explain and amend the Acts for granting Duties on the profits arising from property, professions, trades and offices, so far as extend to the due assessment and collection of the Duties for past years; for*

that all and every [of] the provisions contained in the said several Acts hereinbefore mentioned, or any of them, or in any other Act or Acts relating to the said Duties, shall continue in force for the purpose of duly charging the said Duties on all persons, bodies politic, corporate or collegiate, and on all companies, fraternities or societies of persons which shall not have been respectively charged to the said Duties before the passing of this Act.²⁰⁵

The implication which I attach to this Preamble is that charitable institutions which had yet to file claims for refunds of Income Tax would be able to continue to submit claims for the duration of this Act.

1816: The repeal of the Income Tax

Notwithstanding peace with France having been restored, on 30 May 1814,²⁰⁶ it was to be another two years before the Property Tax was repealed. The matter was discussed in the House of Commons, on 9 May 1814, when the Chancellor of the Exchequer declared:

that there were many taxes the expiration of which was fixed at 6 months after the termination of the war. As this might happen when Parliament was not sitting, and their modified continuation, though necessary, could be provided for, he moved that the Excise and Custom Duties, excepting those on vessels clearing out, or goods carried coastwise, should continue in force until 10 July 1815.²⁰⁷

This prompted Mr Whitbread to ask whether the Chancellor was inferring “that the Income Tax was to expire on 5 April next?”²⁰⁸ The Chancellor replied “that this was a question which must depend on the progress or result of the war with America.”²⁰⁹ This was because on 18 June 1812 America had declared war against England, a war that did not end until the signing of the Treaty of Ghent on 24 December 1814.²¹⁰ The issue of the Property Tax was again raised in the House of Commons on 8 November 1814 when Mr Tierney said:

confirming certain Abatements already made of the said Duties, and exempting collectors' Bonds from the Stamp Duties 56 Geo. III c. 65 [22 June 1816].

²⁰⁵ *An Act ...*, above n 204, s. I.

²⁰⁶ George H. Townsend, *The Manual of Dates* (1862) 325. The “Definitive Treaty of Peace and Amity” was signed at Paris on 30 May 1814 by Viscount Castlereagh, the Earl of Aberdeen, K.T. General Viscount Cathcart, K.T. and Lieutenant-General Sir Charles William Stewart, K.B. and by the prince de Benevent. ‘The London Gazette Extraordinary’, *The Morning Chronicle* (London), 3 June 1814, Issue 14065.

²⁰⁷ ‘War Tax’, *Lincoln Mercury* (Lincoln), 29 May 1814, Issue 151.

²⁰⁸ ‘War Tax’, above n 207.

²⁰⁹ ‘War Tax’, above n 207.

²¹⁰ Townsend, above n 206, 325.

as the Property Tax was a war tax, and it was plain from the Act of Parliament it was only applicable to the French war, it would be necessary that some communication should be made to the House on the subject.²¹¹

However, Mr Vansittart “had no intention to bring forward either the subject of the Property or war taxes before Christmas.”²¹² The City would have none of that, and on 9 December 1814 the Court of Common Council moved that a petition be presented to Parliament, of which the first resolution declared:

that it appears to this Court that the Tax upon Income, commonly called the Property Tax, was, under circumstances of peculiar national difficulty, resorted to as a war tax only, and its enactment accompanied with the most solemn provisions that the same should finally cease at a limited period after the termination of the then existing hostilities.²¹³

The members of the Court of Common Council were clearly concerned that the government had no intention of repealing the Property Tax, for their next unanimous resolution noted:

that this Court has strong reasons to apprehend that it is in the contemplation of His Majesty’s Ministers to attempt the continuation or renewal of the said tax, after its legal expiration, on the 6th day of April next.²¹⁴

There was an urgency in the matter, in that those opposed to any extension of time for the Property Tax to be levied could only oppose the tax, a point made at the Court of Common Council by the Remembrancer who advised the Court “that no petition against a Money Bill would be received by Parliament after its introduction.”²¹⁵ In its petition to Parliament, the Court of Common Council also invoked “the authority of the author of *Wealth of Nations*” who was opposed to any inquisition into a man’s “private circumstances.”²¹⁶

In January 1815, in a letter from the Earl of Liverpool, “to Mr Gladstone of that town,” the Earl declared that:

²¹¹ ‘Property Tax’, *The Hull Packet* (Hull), 15 November 1814, Issue 1464.

²¹² ‘Property Tax’, above n 211.

²¹³ ‘The Property Tax’, *The Examiner* (London), 11 December 1814, Issue 363.

²¹⁴ ‘The Property Tax’, above n 213.

²¹⁵ ‘Common Council’, *The Morning Chronicle* (London), 10 December 1814, Issue 14228.

²¹⁶ ‘Common Council’, above n 215.

[he] had no difficulty in acquainting Mr G. that it was not the intention of government to propose that the Property Tax should continue beyond the 5th of April, 1816, or that this tax should be resorted to, except in the event of the renewal of war.²¹⁷

The Hampshire Telegraph also reported that Parliament was being petitioned against the Property Tax, with the signatures to the Somerset petition against the tax being so numerous that the petition “actually measures nineteen yards in length.”²¹⁸ Then, on 18 April 1815, the Chancellor of the Exchequer “moved that the different Acts respecting the Property Tax should be entered as read.”²¹⁹ In spite of what the Earl of Liverpool had said, clearly the government intended to re-introduce the Property Tax.

By 1816, the population had grown weary of the Property Tax, as can be seen from the detailed reporting of meetings being held to petition against the tax. On 26 February 1816, “a numerous and most respectable meeting of the inhabitants of Edinburgh and Leith took place in the Merchants Hall, Hunters’ Square, to take into consideration the propriety of petitioning Parliament against the continuance of the Property Tax,” with which the meeting concurred.²²⁰ Late in February, a similar meeting was held in Liverpool.²²¹ On 2 March 1816 *Cobbett’s Weekly Political Register* published a detailed petition in which:

the nobility, gentry, and other freeholders of the County of Northampton ... [expressed] their confident hope that the faith of Parliament will be redeemed by the abolition of the tax upon property, a Duty which has not only been large in its amount, but partial in its operation, and grievous in its collection.²²²

The next week, the *Caledonian Mercury* was reporting almost daily of petitions being presented in the House of Commons against the Property Tax,²²³ with public notices, such as that from the Parish of St. Giles, in Camberwell, Surrey, also appearing.²²⁴ On March 18 1816, the Property Tax was repealed but only by a relatively narrow margin, with 211 for the

²¹⁷ ‘Winchester’, *Hampshire Telegraph and Sussex Chronicle* (Portsmouth), 23 January 1815, Issue 798.

²¹⁸ ‘Winchester’, above n 217.

²¹⁹ ‘Renewal of the Property Tax’, *The Leeds Mercury* (Leeds), 22 April 1815, Issue 2600.

²²⁰ ‘Property Tax’, *Caledonian Mercury* (Edinburgh), 29 February 1816, Issue 14074.

²²¹ ‘Public meeting against the renewal of the Property or Income Tax’, *Liverpool Mercury* (Liverpool), 1 March 1816, Issue 244.

²²² ‘Petition to the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled’, *Cobbett’s Weekly Political Register* (London), 2 March 1816, Issue 9.

²²³ Petitions were reported in the *Caledonian Mercury* and *The Morning Chronicle* on 7 March.

²²⁴ ‘Parish of St. Giles’, *The Morning Chronicle* (London), 15 March 1816, Issue 14633.

resolution for renewing the Property Tax, and 238 against.²²⁵ The following day, the editor of *The Morning Chronicle*:

most warmly congratulate[d] the country on the victory achieved last night in the House of Commons. Ministers were defeated by a majority of 37, in their attempt to impose on us a renewal of that odious measure against which an [sic] universal voice had been so loudly raised from one extremity of the Island to the other. We trust that this event will be a lesson to this and future Governments, and will deter them from any similar effort to thwart the wishes or oppose the interests of the people of England.²²⁶

The Times also took the opportunity, in a lengthy editorial, to voice its abhorrence of the Property Tax, declaring the tax “forever sunk in the catalogue of words be that detestable compound! Perish, if possible, the recollection of its meaning from the minds of freeman.”²²⁷ A letter to the editor of *The Morning Chronicle*, from “A Village Curate,” called for the words “Property Tax” “[to] be erased from the political dictionary, [to] be mentioned only as [an] object of detestation and abhorrence.”²²⁸ Hope Jones declared that “[i]n March 1816 it was the great City petition to abolish the tax that definitely weighted the scale against the Government.”²²⁹ The editor of *The Morning Chronicle*, if given the chance, might have begged to differ, given that the newspaper stated that “[t]he public should remember that it was by their own exertions that the Property Tax was repealed.”²³⁰

The effect of the repeal of the Property Tax on charitable institutions

It was expected that the repeal of the Property Tax would be beneficial to charitable institutions, if the events at the Jews’ Hospital Anniversary on 21 March 1816 was any indication. After having “sat down to an elegant and sumptuous dinner,” the Subscribers and Friends of the Jews’ Hospital for the Aged Poor, the Duke of Sussex, as Patron of the hospital:

adverted to the recent overthrow of the Property Tax, a circumstance which ought to have no inconsiderable effect upon the subscriptions, inasmuch as the benevolent supporters of the institution would be better able to indulge their charitable wishes.²³¹

²²⁵ House of Commons, ‘Income Tax’, *The Times* (London), 19 March 1816, 3.

²²⁶ [Editorial], *The Morning Chronicle* (London), 19 March 1816, Issue 14626.

²²⁷ [Editorial], *The Times* (London), 20 March 1816, 3.

²²⁸ A Village Curate, ‘To the editor’, *The Morning Chronicle* (London), 22 March 1816, Issue 4629.

²²⁹ Hope-Jones, above n 23, 55, citing *Annual Register*.

²³⁰ [Editorial], *The Morning Chronicle* (London), 16 December 1816, Issue 14859.

²³¹ ‘Jews’ Hospital Anniversary’, *The Morning Chronicle* (London), 22 March 1816, Issue 14629.

The Morning Chronicle reported that “[t]his appeal to the feelings of the company met with the warmest applause, and produced subscriptions in the course of the evening of £895 3s.”²³² The newspapers went to great lengths to celebrate the repeal of the Income Tax, going so far as to publish the names of those who voted for, and of those who voted against, the repeal.²³³ The significance of the repeal of the Property tax is brought into perspective on learning the amount of income that the government forgave was of the order of £14,320,000.²³⁴

Taylor has provided a very detailed history of the events leading to the repeal of the Property Tax as follows:

[t]he immediate and primary object at the opening of the session of Parliament, in 1816, was the taxation and financial position of the country; and, above all, to consider the removal of the Property Tax – a tax that had become so odious, that the bare introduction of its name was characterised by one of the members (Mr Grant) as insulting to the sense and feelings of the nation. Petitions from all parts of the country poured into the house for its removal; one of enormous size being presented by Mr. Brougham; one also from the City of London, who, by their sheriffs, presented a petition at the bar of the house, setting forth, “That the petitioners had learnt with the most serious alarm, that it was the intention of his Majesty’s ministers, in violation of their assurances and the solemn faith of Parliament, to propose to the House the continuance or modification of the tax upon income, commonly called the property-tax; and that having so frequently represented to the house their abhorrence of the measure, both with respect to its principle and operation, and the evils it had produced, they trusted it was not necessary to enumerate the grievances resulting from it; and that the partiality and injustice of taxing, in the same proportion, incomes of short duration arising from personal industry and temporary and uncertain sources, and those arising from fixed and permanent property, was, they conceived, too evident to be denied, and that the tax had become altogether insupportable.” ... The above forcible language employed by the petitioner from the city of London, so clearly illustrates the then temper of the times, and so appropriately speaks the prevailing impressions of the present day, *respecting the injustice of taxing uncertain income at the same ratio as realised property*, that it has been here given *in extenso*. Indeed, such was the tide of national opinion on the subject of this odious tax, that the opposition to it by all classes became over-whelming; and the popular voice against it became so determined and unequivocal, and through the various constituencies so acted upon and influenced their representatives in the House, and at length, on 18 March 1816, the Chancellor of the Exchequer and the ministry, on a motion for its continuance, and a reply from Mr. Wilberforce (memorable from the shouts of approbation it elicited), were defeated by a majority of thirty-seven; declared amidst the greatest cheering and the loudest exultation ever witnessed within the walls of the English senate. Such was the fate of a tax odious and unpopular to the last degree, and ever considered and pledged as a war-tax; but which it remained for future history to record among the anomalies of finance and the

²³² ‘Jews’ Hospital Anniversary’, above n 231.

²³³ ‘The Property Tax’, *The Hull Packet and Original Weekly Commercial, Literary and General Advertiser* (Hull), 26 March 1816, Issue 1535.

²³⁴ Taylor, above n 93, 80.

inconsistencies of statesmen, as imposed, ere many years were passed, in a time of profound peace, by a professedly peaceful minister, and afterwards continued by his successors, and submitted to by the public with a patience and even resignation under its present inequitable distribution amounting to absolute indifference. (Emphasis added.)²³⁵

Here, our story might have ended, except for the re-enactment of the Income, or Property Tax, by Peel in 1842. The respite for the charitable institutions of Great Britain was short-lived, and, before the turn of the Nineteenth Century, the issue of charitable purposes and the exemption from Income Tax was to take a dramatic turn.

Part II 1817 to 1841

Having been repealed, a hiatus of some twenty-six years followed before the United Kingdom of Great Britain and Ireland was again to see a tax on incomes. However, the repeal of the Property Tax did not exonerate those persons who had not met their obligations under the legislation. Two years after the Property Tax had been repealed, the following notice from the Secretary for the Affairs of Taxes appeared in *Trewman's Exeter Flying Post*:

[t]he Commissioners for the Affairs of Taxes hereby give notice, that all claims for allowances of Property Tax on rents and profits of messuages, lands, tenements, and hereditaments, belonging to any hospital, school, or almshouse, vested in trustees for charitable purposes, and of the Duties on stock or dividends, belonging to foreigners or Friendly Societies, established and duly enrolled under the Act for the encouragement and relief of Friendly Societies, or on the stock or dividends of any corporation, fraternity, or society, or trust, *established for charitable purposes only*, must be delivered at, or transmitted to this office, on or before the fifth day of April next, when the accounts will be finally closed. (Emphasis added.)²³⁶

An interesting response to such a notice, from the Governor's of George Heriot's Hospital, appeared in the *Caledonian Mercury* of 28 February 1818. The notice from the Governor's of the Hospital, which was addressed to "their tenants and feuars," reveals how deductions at source under Schedule A of the Property Tax operated in practice.²³⁷ The notice explained that "[b]y the Property Tax Act, the managers of hospitals and other charitable institutions are entitled to draw back the Property Tax levied out of the rents and profits of charitable institutions."²³⁸ The Governor's of the Hospital, having been advised in newspaper

²³⁵ Tayler, above n 93, 70.

²³⁶ 'Office for Taxes, Somerset House', *Trewman's Exeter Flying Post*, 19 February 1818, Issue 2737.

²³⁷ 'Property Tax', *Caledonian Mercury* (Edinburgh), 28 February 1818, Issue 15038.

²³⁸ 'Property Tax', above n 237.

advertisements by the Commissioners for the Affairs of Taxes that such claims were to be lodged “at the Tax Office by 1 April next,” responded in turn by giving notice:

to all persons indebted to Heriot’s Hospital, who may have right to deduction of Property Tax from the Hospital, to pay up the sums due by them, and obtain deduction of the Property Tax exigible on or before 20 March next [sic] 1818 to Mr James Denholm, Milne’s Square, the Treasurer, that the claims may be transmitted to the Tax Office, in order to enable the Treasurer to obtain repayment, certifying to such tenants, feuars, and others, who fail to comply with this notice within the time limited, they will not be afterwards entitled to demand from the Hospital deduction of Property Tax after the said 20 March 1818.²³⁹

This notice suggests that unless the Property Tax, for which the deduction certificate was issued, that been deducted by the Hospital’s tenants and feuars had been paid to the Tax Office, the Hospital was unable to claim back such deductions. I wonder to what extent this was a problem, with the temptation being too much for some of the Hospital’s tenants to use the funds deducted for other purposes as is sometimes the case with employers today failing to pass to the Inland Revenue Pay As You Earn (PAYE) Income Tax deducted from wages and salaries.

In May 1818 Winchester College found itself under scrutiny by the inquiry into charitable abuses led by Brougham who had summonsed the College “to produce its Statutes.”²⁴⁰ The schedule of expenditure from December 1816 to December 1817, which was provided to the Committee and was published by *The Morning Chronicle*, is in Latin. This led to the following exchange, also reported by *The Morning Chronicle*: “What does ‘Brasini’ mean?—The brewery. The amount of that is £1,061 7s 10d? – Yes.”²⁴¹ “Solutio forensica,” the Committee were told, referred “to the taxes and tithes paid by the College, Vicar’s pensions, Land Tax of such property as is chargeable with it, repairs for some of the College houses, and other similar expenses.”²⁴² The comment was also made that “[the College’s] fines were also returned to the Property Tax at £3,500” which, from the context of the discussion, would appear to be charges upon leasehold estates.²⁴³ As no return of income was provided, it is not possible to ascertain if the College received a refund of the Property Tax, but it is clear that there was a taxable liability following the repeal of the Income Tax in 1816.

²³⁹ ‘Property Tax’, above n 237.

²⁴⁰ [Editorial], *The Morning Chronicle* (London), 30 May 1818, Issue 15313.

²⁴¹ [Editorial], above n 240.

²⁴² [Editorial], above n 240.

²⁴³ [Editorial], above n 240.

Another example of the Property Tax charitable purpose exemption in operation is to be found in *The Morning Chronicle* of 23 December 1818, in which the author of a letter, addressed to Mr Patrick Drummond, solicitor, and a trustee of the Croydon Charities, asked Mr Drummond if he recollected:

attending at the auditing of the churchwardens' accounts in 1813, and bringing forth an account of £329 0s 7d, as cash received from the Hermitage and Deptford estates, of which the sum of £33 17s was deducted for Property Tax, paid on account of your not being able to swear that the money received by you was duly appropriated to charitable purposes?²⁴⁴

Mr Drummond does not appear to have responded to this allegation.

In spite of the repeal of the Property Tax in 1816, taxation continued to be of concern to charitable institutions. Evidence of this can be seen in a notice in 1830 which appeared in *Freeman's Journal*, which reported the resolutions of a meeting of the parishioners of St. Nicholas Without at the Weavers' Hall in Coombe.²⁴⁵ Amongst the many resolutions, the meeting debated the motion:

[t]hat the contemplated tax upon the charities of a country sunk in so deplorable a state of wretchedness is of a peculiarly heartless, unjust and oppressive character, and is decidedly calculated to destroy the best feelings of the human heart, while it would rob the poor and the destitute of their lawful right.²⁴⁶

The meeting resolved:

[t]hat should His Majesty's Ministers persevere to carry into effect their proposed taxes on this country, we hereby enter our protest against such a measure, and call upon every Irish member of the House of Commons to do the same.²⁴⁷

The Assessed Taxes and charitable purposes

While the Income Tax legislation had been repealed, other forms of taxation that had the potential to affect charities, such as the Window and Inhabited House Duties, that is the Assessed Taxes, remained in force. The extent of taxes collected from this source is evident

²⁴⁴ 'Mr Brougham and the Croydon Charities', *The Morning Chronicle* (London), 23 December 1818, Issue 15490.

²⁴⁵ 'St. Nicholas Without', *Freeman's Journal and Daily Commercial Advertiser* (Dublin), 16 June 1830, Issue N/A.

²⁴⁶ 'St. Nicholas Without', above n 245.

²⁴⁷ 'St. Nicholas Without', above n 245.

as in 1817 “[t]he net produce of income arising from customs, excise, stamps, sugar, houses and windows, inhabited-house duty, servants, carriages, horse for riding, &c., was near £50,000,000 [with] expenditure near £69,000,000.”²⁴⁸ The importance of taxation to England’s economy and the increasing sophistication of the Income Tax legislation was one of the hallmarks of the reign of George III, a point commented on by Tayler who wrote that “[o]n 30 January 1820 George III expired at Windsor, after a long reign, attended with events the most momentous in the history of this kingdom, and in which there had grown up a taxation and expenditure alike unexampled.”²⁴⁹

The attraction of the Property Tax had not faded, as in 1822 the *Glasgow Herald* advised its readers that:

[w]e have good authority for stating that it is not the intention of Ministers to propose a Property Tax, in any shape, but we understand that a Member of the House of Commons, who stands high in the estimation of all parties, intends to bring forward a motion to that effect at a very early period in the next Session.²⁵⁰

As the Nineteenth Century progresses, the Assessed Taxes continued to be a bone of contention and, in 1823:

[c]onsiderable reductions were made ... in taxes pressing heavily on the public, and more especially upon the middling classes, - such as the tax on clerks and shopmen, male-servants, horses for drawing four-wheeled carriages, and (which was especially important as tending to the sanitary condition of dwellings,) a diminution of 50 per cent. from the Window Duties.²⁵¹

With no Property Tax to drain the wallets of the supporters of charitable institutions, the charities appear to have been well supported in 1823. With May being “the month of the year in which the anniversaries of the great public charities in London are generally celebrated,” *The Leeds Mercury* published a list of the receipts of some of those “most valuable institutions.”²⁵² The voluntary donations totalled £328,131 12s 9d, of which the British and

²⁴⁸ Tayler, above n 93, 72.

²⁴⁹ Tayler, above n 93, 74.

²⁵⁰ [Editorial], *Glasgow Herald* (Glasgow), 14 October 1822, Issue 2066 citing the *Bristol Mirror* [date and issue n/a].

²⁵¹ Tayler, above n 93, 76.

²⁵² [Editorial], *The Leeds Mercury* (Leeds), 31 May 1823, Issue 3023.

Foreign Bible Society received £103,802 17s 1d.²⁵³ Of the 22 charitable institutions listed in the notice in the newspaper, sixteen related to missionary or religious purposes, with one identified as the Moravian Church Missionary Society which received £7,192 18s 5d.²⁵⁴

Inquiry concerning charities

During this period, charitable institutions had more pressing matters with which to be concerned, as the Charity Commission inquiry had been well under way, since 1818, with Henry Brougham as chair.²⁵⁵ In 1824 the Commissioners “made a statement to the Secretary of State of their proceedings.”²⁵⁶ *The Times* published details of the Commission’s findings, including the number and income of the charities that had so far been investigated.²⁵⁷ The Commissioners Statement reported that 10,736 “chartered companies and general charities” had been examined, with those charities earning income of £322,709 15s 10d, of which £239,206 15s 9d came from rents, leaving only £83,503 0s 1d “from other sources.”²⁵⁸ In other words, 74 per cent of the income of charities came from rents, which under Schedule A of the Income Tax Act would have been liable to tax, and 26 per cent from (presumably) voluntary donations.

Reductions in the Assessed Taxes

By 1825, with the financial well-being of the country continuing to improve, the government acknowledged that:

[s]o prosperous a state of the revenue enabled the remission of the Duties on coffee, which had been very highly assessed, and the consumption of which in consequence became largely increased; as also the remission of the tax upon houses under £10 per annum, whereby 171,705 houses inhabited by the humbler classes became exempt, *at the sacrifice of £90,000 per annum only of revenue*. A reduction in the Window Tax also took place, to which impost it appeared by the statistics then published, that no less than 973,687 persons were assessed, a large proportion of the houses having no more than seven windows each; and *by the judicious remission of £145,000 of revenue*, no less than 635,936 persons were set free from this tax on light, who not only became thereby exempt from the burthen, *but were also released from the interminable vexation of surcharges, litigation, legal distress, and perhaps also imprisonment*. (Emphasis added.)²⁵⁹

²⁵³ [Editorial], above n 252.

²⁵⁴ [Editorial], above n 240.

²⁵⁵ Richard Tompson, *The Charity Commission and the Age of Reform*, (1979) 98.

²⁵⁶ [Editorial], *The Times* (London), 11 June 1824, Issue 12362.

²⁵⁷ The copious Reports of the Commissioners may also provide details of how the Assessed Taxes affected charities, which suggests a study of this aspect of taxation and England’s charitable institutions.

²⁵⁸ [Editorial], above n 256.

²⁵⁹ Tayler, above n 93, 79.

Another seemingly unimportant event in the history of government financial affairs in Great Britain occurred in 1832, when “Lord Althorp stated [that] the future financial year, which had hitherto been computed from 5 January, would thenceforth begin on 1 April.”²⁶⁰ While the financial position of the government may have been considered satisfactory, the spectre of a Property Tax once again began to raise its head. *The Morning Chronicle* of 20 August 1832 noted that one of the Notices of Motion in the Order Book for the next Parliamentary session was a motion proposed by Mr Hughes Hughes:

to move a resolution to the effect that it is expedient to repeal the present Assessed Taxes and Malt Duty, and to substitute for them a Property Tax (as distinguished from income derived from trade) on a graduated scale.²⁶¹

The Property Tax did not eventuate, as noted by Tayler on the compliment by Sir Robert Peel, to Lord Althorp:

on the non-introduction of the subject of a Property Tax, which ... nothing but a case of extreme necessity could justify Parliament in subjecting the people of this country to in time of peace, and to the inquisitorial process which must be resorted to in order to make that impost productive.²⁶²

Further reductions in the Assessed Taxes were provided for in 1834 when “[a] great and important measure, ... connected with taxation, viz., the repeal of the House Tax, had been carried anterior to Lord Althorp’s resignation in 1834, by which a very large remission of Assessed Taxes was made to the amount of £1,200,000”²⁶³ All was not well with the country and by 1841 the Income Tax was again on the Parliamentary agenda. The weight of the responsibilities carried by Sir Robert Peel led Tayler to exclaim that:

[t]he embarrassments in which the finances of the country had been involved; the importance of the measures before Parliament; the Corn Laws; the Income Tax; the Customs Duties Bill, or new tariff; the extent and bearing of each of these, and the vast mass of details to be entered into, *render this session of Parliament one of the most laborious and memorable which has been hitherto recorded*, and present one of the most masterly displays of comprehensive genius on the part of Sir Robert Peel, on whom it had fallen, that ever has been, or probably ever will be, achieved by any statesman. (Emphasis added.)²⁶⁴

²⁶⁰ Tayler, above n 93, 92.

²⁶¹ ‘Notices of Motion for next Session’, *The Morning Chronicle* (London), 20 August 1832, Issue 19651.

²⁶² Tayler, above n 93, 93.

²⁶³ Tayler, above n 93, 96.

²⁶⁴ Tayler, above n 93, 103.

In the Editor's Preface to Hope-Jones' *Income Tax in the Napoleonic Wars*, Professor J.H. Clapham explained how:

that when the Income Tax was revived by Peel as a temporary tax to meet what was supposed to be a short-period emergency, all that his technical advisers had to do was, so to speak, [to] take down and oil a machine already complete with all its working parts. We knew that the Income Tax Acts of the late Nineteenth Century were almost reprints of those passed during its first decade.²⁶⁵

What also became apparent was "that the machinery of collection set up during the first decade was equally appropriate to the eight or the tenth."²⁶⁶ The work undertaken by Pitt and Addington was to become increasingly important in the collection of revenue.

Charitable institutions and savings banks

Another issue that was raised during the first half of the Nineteenth Century was the ability of charitable institutions to invest funds in savings banks. In 1832 *Jackson's Oxford Journal* reported that there were 284 savings banks with funds of £14,311, which included deposits by charitable societies and Friendly Societies.²⁶⁷ A Parliamentary Paper on the subject reported that as at 20 November 1840, there were 7,988 charitable institutions with savings of £485,908 and 7,693 Friendly Societies with £1,005,345 invested in the savings banks.²⁶⁸ By 1844, the charitable institutions in Devonshire, Lancashire, Middlesex, and Yorkshire, of which there were 8,194, had invested £440,691 in savings banks.²⁶⁹ These figures continued to climb. By 1844 11,301 charitable institutions in England, Scotland, Wales, and Ireland had £593,249 in deposits in savings banks,²⁷⁰ and in 1846 12,168 charitable institutions had

²⁶⁵ Hope-Jones, above n 23, ix. It was Clapham and Hope-Jones who, on realising that copies of all the Income Tax returns, from 1799 to the Peace of Amiens in 1802, which were required to be sent to the King's Remembrancer had been saved from the destruction in the mash tubs that had been ordered following the repeal of the ITA in 1802. "How they were preserved is, perhaps, a matter for speculation." See Hope-Jones, Introduction 1-4. The documents for 1799 to 1816 are now held at the National Archives, E182/630-658 being returns sent to the Receivers General and E181/24-44 being returns for the use of the Commissioners for the Affairs of Taxes and the Auditor General. See Hope-Jones, above n 23, 126-7. See also Norman Gash, *Mr Secretary Peel: The life of Sir Robert Peel after 1830* (1972) at Chapter 9 "The Great Budget" for a discussion of the Income Tax Act of 1842.

²⁶⁶ Hope-Jones, above n 23, ix.

²⁶⁷ 'Savings Banks', *Jackson's Oxford Journal* (Oxford), 17 November 1832, Issue 4151.

²⁶⁸ Parliamentary Papers, *Account of number of deposits, and of charitable institutions and Friendly Societies depositing their funds in savings banks, and sums deposited in continuation of Parliamentary Paper No. 316 of Session 1839* (1841) Session 1 (342)XIII.223. *Freeman's Journal and Daily Commercial Advertiser* (Dublin), 26 March 1841, Issue n/a referred to this return as "a continuation of Parliamentary paper No. 516, of 1819."

²⁶⁹ 'Savings Banks', *Lloyd's Weekly London Newspaper* (London), 13 October 1844, Issue 99.

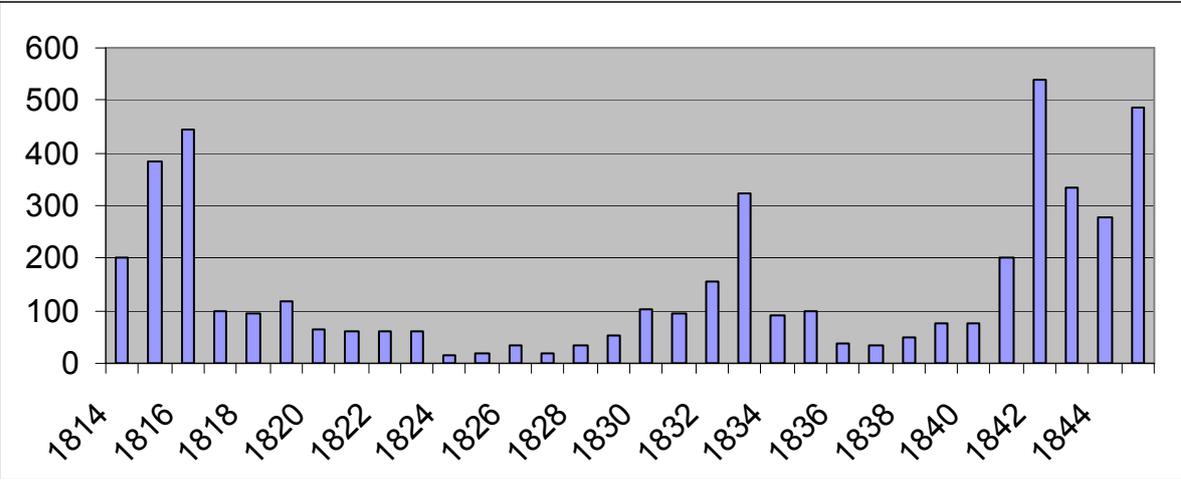
²⁷⁰ 'Revenue', *Daily Weekly News* (London), 26 March 1846, Issue 56.

deposits of £652, 057.²⁷¹ The impression that these figures create is one of the increasing wealth of charities and from a research perspective, suggests a topic for further study.

Part III 1842 to 1891

In spite of the Income Tax Acts having been repealed, the concept was never far from the minds of the politicians, nor the public. As in indication of this, Table 1 British Newspapers: Articles on Property Tax 1814 to 1845 illustrates how interest died slowly way, particularly after the repeal of the Income Tax, and then the resurgence of interest in the 1830’s, peaking in 1842 and later years.²⁷²

Table 1 British Newspapers: Articles on Property Tax 1814 to 1845



5 & 6 Vict. c. 35 [22 June 1842]

In 1841, on taking office, Sir Robert Peel was faced with challenges both at home and abroad.²⁷³ The issues with which he was confronted were described by Gash as “discouraging,” an understatement at best.²⁷⁴ International relations with the U.S.A. and France were strained, while at home the government was faced with “a deficit of £7½ million;

²⁷¹ ‘Savings Banks Returns’, *Freeman’s Journal and Daily Commercial Advertiser* (Dublin), 26 July 1847, Issue n/a.

²⁷² The methodology I used for this crude estimation of comment on the Property Tax, using the British Library database of the British Newspapers, which contains over 3 million pages of historic newspapers, was to run a key-word search on “Property Tax,” which then gave a list of the number of articles for each of the years I selected. While there is some duplication of articles from the same newspaper, and mention of Property Taxes in Europe, the graph gives a reasonably accurate indication of the increasing interest in the Property Tax. The number of newspapers being printed also increased significantly as the century progressed, from 88 newspapers having been established between 1665 and 1800, to 492 between 1855 and 1861. See Aled Jones, *Powers of the Press* (1996) 23.

²⁷³ Norman Gash, *Peel* (1976) 212.

²⁷⁴ Gash, above n 273, 212.

trade was depressed; industry [was] stagnant.”²⁷⁵ With a succession of bad harvests, and an abnormally high cost of living, “[i]n towns like Bolton and Paisley thousands lived on private charity and public subscriptions.”²⁷⁶ Peel’s immediate problem was the lack of government income.²⁷⁷ Gash considered that “[m]ost financial experts would have agreed that an Income Tax alone offered a reasonable prospect of raising the additional revenue needed”²⁷⁸ The Income Tax “had lain unused [since 1816] in the armoury of theoretical policies, unused, repugnant, but not forgotten.”²⁷⁹ While Gash considered that:

[i]t is probable that Peel had made up his mind from the start to reintroduce the Income Tax ... [Peel] knew [that] it would take much persuasion before all the members of his Cabinet could bring themselves to accept it.²⁸⁰

If the Income Tax was to be reintroduced, a measure that Peel considered to be more acceptable than a House Tax, it could only be a temporary medium with the objective of producing a government surplus in order to reduce the duties on “consumer goods.”²⁸¹ On 22 June 1842, in the fifth year of Queen Victoria’s illustrious reign,²⁸² after a hiatus of a quarter of a century, the Income Tax Act was re-entered on the statute books.²⁸³ The year 1842 is also significant with respect to the title of tax statutes as, according to Farnsworth:

[t]he expression “Income Tax Act” was not employed until 1892 when, by the Short Titles Act of that year, this title was given to the Acts of 1842 and 1853 which had imposed a tax upon the profits arising from the same four sources as those detailed in the headnote to the Act of 1803.²⁸⁴

Accordingly, where appropriate, I use the term “Income Tax” to replace the terms previously used, firstly “Duties upon Income,” then “Property Tax,” in spite of the fact that the title to the Income Tax Act 1842 used the term “Duties on Profits,” and that the term “Property Tax”

²⁷⁵ Gash, above n 273, 212.

²⁷⁶ Gash, above n 273, 212.

²⁷⁷ Gash, above n 273, 212.

²⁷⁸ Gash, above n 273, 212.

²⁷⁹ Gash, above n 273, 213.

²⁸⁰ Gash, above n 273, 213.

²⁸¹ Gash, above n 273, 213.

²⁸² Queen Victoria ascended to the throne at the age of 18 on 20 June 1837, three years before the colonization of New Zealand in 1840. [Anonymous], *A synoptical history of England* (1869) 114.

²⁸³ *An Act ...*, above n 8, [22 June 1842].

²⁸⁴ Farnsworth, above n 6, 3. See Lord Davey in *Attorney-General v London County Council* [1901] AC 26; 4 Tax Cas. 265, 300; Farnsworth, above n 6, 3 at fn 11.

continued to be used during the Nineteenth Century, for example in 1844,²⁸⁵ as well as “Duties on Profits” in 1845,²⁸⁶ and later years.

Sir Robert Peel’s Budget of 1842, wrote Sabine, “must still rank as one of the most famous of the Nineteenth Century.”²⁸⁷ In the *Income Tax Codification Committee’s Report* of 1936 it was declared that:

[t]he Income Tax Act 1842 was to all intents and purposes a reprint of the Act of 1806 with a few alterations and additions relating to such novelties as railways, gasworks and tithe commutation rent charge all of which had come into existence in the interval.²⁸⁸

Comment on the origins of the Income Tax Act 1842 had also been made, in 1900, when the Commissioners of Inland Revenue reported that while “the Income Tax Act of 1842 was, in the main, a reprint of the Income Tax Act of 1806,” Hope-Jones noted that “they might have added that the Act of 1806 was a compilation from the Act of 1805 and previous legislation.”²⁸⁹ The Income Tax Act was to be influential well into the Twentieth Century for, “in 1933, the former H.H. Principal Inspector of Taxes, Francis Hole, considered that, “in the main, the principles governing [the Income Tax Act of 1933 were] the same as they were in 1842.”²⁹⁰ What is relevant about the longevity of the Income Tax Act 1842 is that it also carried with it the charitable purposes exemption from Income Tax, as can be seen from the *Pemsel* case of 1891.²⁹¹

Thus it was that on 11 March 1842 Peel proposed, “for a period to be limited, an Income Tax of not more than 7*d.* in the pound, or about 3 per cent., from which he would exempt all incomes under £150;”²⁹² It was not Peel’s intention that the Income Tax become permanent; neither was it a war tax as in the time of Pitt and Addington. Peel intended that the Income Tax was to be for a period of five years, “unless such a revival of commercial prosperity might take place, as should induce Parliament to revise the subject in three

²⁸⁵ *An Act to exempt from the payment of Property Tax the dividends on certain annuities of three pounds ten shillings per centum per annum payable for the quarter of the year ending the tenth day of October [1844]* 7 & 8 Vict. c. 39 [19 July 1844].

²⁸⁶ *An Act to continue for three years the Duties on profits arising from property, professions, trades and offices* 8 & 9 Vict. c. 4 [5 April 1845].

²⁸⁷ Sabine, above n 16, 60.

²⁸⁸ Farnsworth, above n 6, 106 citing *Income Tax Codification Committee’s Report* [1939] Cmd. 5131 9.

²⁸⁹ Hope-Jones, above n 23, 121.

²⁹⁰ Hope-Jones, above n 23, 121.

²⁹¹ *Pemsel*, above n 1.

²⁹² Tayler, above n 93, 104.

years.”²⁹³ The question of the liability of charitable institutions to the Income Tax was resolved in the House of Commons by one short sentence. On 18 March 1842 Mr T Duncombe had asked the question, to which Sir Robert Peel replied “that it was not intended to apply the Income Tax to property devoted to charitable purposes, but the salaries of the officers appointed to administer the property would be taxed.”²⁹⁴ The *Encyclopædia Britannica* of about that time carried an article on taxes on income, in which Pitt was also mentioned in the context of why the Assessed Taxes and Duties on Income Acts were introduced.²⁹⁵ The *Encyclopædia Britannica* explained that:

in order to furnish the means of defraying the enormous cost of the war begun in 1793, Mr Pitt proposed, in 1797, to treble the amount of Assessed Taxes, or Duties on houses, windows, horses, carriages, &c. *This plan, however, did not answer the expectations of its projectors, and next year it was abandoned, and a tax on income substituted in its stead.* According to the provisions of the Act imposing this tax, all incomes of less than £100 a year were exempted from assessment ... and the rate of Duty increased through a variation of gradations until the income reached £200 or upwards, *when it amounted to a tenth part, which was its utmost limit; a variety of deductions being at the same time granted, on account of children, &c. (Emphasis added.)*²⁹⁶

While the entry described the background to the Duties upon Income Act of 1799 nowhere was mention made of the charitable purposes exemption from Income Tax. The author of the entry concluded that the Income Tax “never would have been submitted to [between 1798 and 1816], but for the conviction that it was indispensable for carrying on the desperate struggle in which we were then engaged.”²⁹⁷ In 1842, however, England was at peace with the world, but on 22 June Peel’s Income Tax Act came into force “[with] effect from 5 April 1842” as noted in the preamble to the Act.²⁹⁸

The Income Tax Act 1842 and the charitable purposes exemption

While the charitable purposes exemption sections were brought forward from the Act of 1815, with respect to Schedule A and Schedule C, the law draftsmen made a number of changes to those clauses, as can be seen from the reconstructed sections below. Section LX introduced

²⁹³ Tayler, above n 93, 105.

²⁹⁴ [House of Commons], *The Examiner* (London), 19 March 1842, Issue 1781.

²⁹⁵ ‘Taxes on Income, From an article “Taxation” in the last edition of *Encyclopædia Britannica*’, *The Morning Chronicle* (London), 14 March 1842, Issue 22563.

²⁹⁶ ‘Taxes on Income’, above n 295.

²⁹⁷ ‘Taxes on Income’, above n 295.

²⁹⁸ Tayler, above n 93, 106.

the Duties to be charged under Schedule A, which followed immediately. Rule No VI described the allowances provided for with respect to the Duties in Schedule A, as follows:

For the duties charged on any college or hall in any of the universities of Great Britain, in respect of the public buildings and offices belonging to such college or hall, and not occupied by any individual member ~~or Members~~ thereof, or by any person paying rent for the same, and for the repairs of THE public buildings and offices of such college or hall, and the gardens, walks, and grounds for recreation repaired and maintained by the funds of such college or hall:

Or on any hospital, public school, or almshouse, in respect of the public buildings, OFFICES, and premises belonging to ~~any~~ such hospital, public school, or almshouse, and not occupied by any individual officer or the master thereof, whose ~~profits or Emoluments however arising~~ WHOLE INCOME, HOWEVER ARISING, ESTIMATED ACCORDING TO THE RULES AND DIRECTIONS OF THIS ACT, shall AMOUNT TO OR exceed ONE HUNDRED AND fifty pounds per annum, or by any person paying rent for the same, and for ~~the~~ repairs of such hospital, public school, or almshouse, and offices belonging thereto, and of the gardens, walks, and grounds for the sustenance or recreation of the hospitallers, scholars, and almsmen, repaired and maintained by the funds of such hospital, school, or almshouse; OR ON ANY BUILDING THE PROPERTY OF ANY LITERARY OR SCIENTIFIC INSTITUTION, USED SOLELY FOR THE PURPOSES OF SUCH INSTITUTION, AND IN WHICH NO PAYMENT IS MADE OR DEMANDED FOR ANY INSTRUCTION THERE AFFORDED, BE LECTURES OR OTHERWISE; PROVIDED ALSO, THAT THE SAID BUILDING BE NOT OCCUPIED BY ANY OFFICER OF SUCH INSTITUTION, NOR BY ANY PERSON PAYING RENT FOR THE SAME;

~~[Allowances for Cottages]~~

THE SAID ALLOWANCES TO BE GRANTED BY THE COMISSIONERS FOR GENERAL PURPOSES IN THEIR RESPECTIVE DISTRICTS;

Or on the rents and profits of ~~Messuages~~ lands, tenements, ~~or~~ hereditaments, OR HERITAGES belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same shall be applied to charitable purposes:

The said LAST-MENTIONED Allowances to be granted on proof before the Commissioners ~~appointed as aforesaid, or to be appointed under the Authority of this Act~~ for Special Purposes of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only:

The said LAST-MENTIONED allowances to be claimed and proved by any steward, agent, or factor acting for such school, hospital, or almshouse, or other trust for charitable purposes, or by any trustee of the same, by affidavit to be taken before any commissioner for executing this Act in the district where such person shall reside, stating the amount of the duties chargeable, and the application thereof, and to be carried into effect by the Commissioners for Special Purposes, and according to the powers vested in such commissioners, without vacating, altering, or impeaching the assessments ~~to be made, under this Act,~~ on or in respect of such properties; which assessments shall be in force and levied notwithstanding such allowances.²⁹⁹

²⁹⁹ *An Act ...*, above n 8, No VI. Allowances to be made in respect of the said Duties in Schedule (A).

Duties in Schedule C were assessed and charged under s. LXXXVIII, with the Rules for assessing and charging the Duties under Schedule (C) also having the charitable purposes exemption as previously:

The stock or dividends of any corporation, fraternity, or society of persons, or of any trust established for charitable purposes only[,] or which[,] according to the rules or regulations established by Act of Parliament[,] charter[,] decree[,] deed of trust[,] or will, shall be applicable by the said corporations[,] fraternitiesY[,] or societiesY[,] or by any trustee[,] ~~or trustees~~, to charitable purposes only, and in so far as the same shall be applied to charitable purposes only; or the stock or dividends in the names of any trustees applicable SOLELY to the repairs of any cathedral[,] college[,] church[,] or chapel[,] OR ANY BUILDING USED SOLELY FOR THE PURPOSE OF DIVINE WORSHIP, and ~~to no other purpose~~ in so far as the same shall be applied to such purposes[;] provided the application thereof to such purposes shall be duly proved before the SAID Commissioners for Special Purposes ~~as aforesaid or to be appointed under this act~~, by any agent or factor on the behalf of any such corporation[,] fraternity[,] or society[,] ~~or trustee or trustees~~ or by any of the members or trustees.³⁰⁰

Section C of 5 & 6 Vict. c. 35 also provided that the duties granted under the Act, as were contained in Schedule (D) were to be assessed according to the Rules provided in Schedule (D). For the first time, Schedule (D) included a specific exemption for charitable purposes that was not contained in 46 Geo. III c. 65 of 1806. The preamble to the Rules which applied to Schedule (D) in 46 Geo. III c. 65 declared that:

[t]he said last-mentioned Duty shall extend to every description of property or profits, which shall not be contained in either of the said Schedules (A) (B) or (C) and to every description of employment of profit not contained in Schedule (E) and not specifically exempted from the said respective Duties, and shall be charged annually on and paid by the person or persons bodies politick or corporate fraternities fellowships companies or societies whether corporate or not corporate, receiving or entitled unto the same, his her or their executors administrators successors and assigns respectively.³⁰¹

In 1842, 5 & 6 Vict. c. 35 also contained a new section with respect to Schedule D, at s. CV which provided:

[t]hat any corporation, fraternity, or society of persons, and any trustee *for charitable purposes only*, shall be entitled to the same exemption in respect of yearly interest or other annual payment chargeable under schedule (D) of this Act, in so far as the same shall be applied to charitable purposes only, as is herein-before granted to such corporation,

³⁰⁰ *An Act ...*, above n 8, Schedule (C) Rules for assessing and charging the Duties under Schedule (C), Third [Rule].

³⁰¹ *An Act ...*, above n 170, Schedule (D).

fraternity, society, and trustee respectively in respect of any stock or dividends chargeable under schedule (C) of this Act, and applied to the like purposes; and such exemption shall be allowed by the Commissioners for Special Purposes, on due proof before them; and the amount of the duties which shall have been paid by such corporation, fraternity, society, or trustee in respect of such interest or yearly payment, either by deduction from the same or otherwise, shall be repaid under the order of the said Commissioners for Special Purposes in the manner herein-before provided for the repayment of sums allowed by them, in pursuance of any exemption contained in the said schedule (C). (Emphasis added.)³⁰²

1845

Having been enacted for a period of three years, in 1845:

the great question of the Income Tax had again to be considered, and in fact to be determined whether it was to be permanent or not; ... [Sir Robert Peel] proposed that the Income Tax should be continued for three years; giving at the time an assurance that he felt sure of doing without it in three, certainly five years; and these measures, being supported by a large majority in the house, were accordingly carried.³⁰³

On 5 April 1845 an Act comprised of only five sections provided for the continuance of the Income Tax Act of 1842:

for the term of three years, to be computed from the fifth day of April [1845], and until the assessments made or which ought to be made for the last year of the said term, or for any preceding year, shall be completed, levied, and paid.³⁰⁴

1848

In 1848, with the Income Tax Act of 1845 nearing its expiry date, the matter of the Income Tax was once again back on the Parliamentary agenda. Thus it was that:

[o]n 18 February [1848] Lord John Russell ... proposed the further continuation of the Income Tax for three years, increasing the rate, however, to 5 per cent. The ministerial statement met, as might have been expected, with the most unfavourable reception; ... [I]t was deemed necessary by the government to announce on the 28th a recantation, and that they did not intend to press the proposition for increasing the Income Tax.³⁰⁵

³⁰² *An Act ...*, above n 8, s. CV.

³⁰³ Tayler, above n 93, 110.

³⁰⁴ *An Act ...*, above n 286, [5 April 1845].

³⁰⁵ Tayler, above n 93, 115.

On 13 April 1848, 11 & 12 Vict. c. VIII, also comprised of five relatively short sections, was enacted for a further three years to continue the duties on profits from property, professions, trades, and offices.³⁰⁶

1851 - 52

By 1851, the Income Tax Acts were known as the Income and Property Tax Acts, as can be seen from the title of *The First Report from the Select Committee on the Income and Property Tax*.³⁰⁷ Once again the Income Tax Act was re-enacted but, unlike the precedent which had been set for longer terms was, as with 5 & 6 Vict. c. 35 in 1842, to be for a term of one year.³⁰⁸ The content of the Act now consisted of only three sections. A similar Act of three sections appeared on 28 May 1852, which also levied the Income Tax for a period of a year.³⁰⁹ However, taxation was under review by a Select Committee with two reports on the subject having been tabled in Parliament. Tayler wrote of the importance of these events and commented that:

[t]he eventful measures which occurred in the years 1851 and 1852 are of so recent a date, and which will be so much in the recollection of us all, that a short notice of the financial arrangements of these sessions will suffice. ... [The Chancellors of the Exchequer's] great feature of alteration financially in the present session was, however, the proposition *to relinquish the window duty, and in its place to create a house-tax of uniform rate, which, although not a tax that has been generally esteemed one of strict equality, has ever been considered upon the best authorities both of past and present time as a duty, if justly proportioned, of the fairest and most unobjectionable character*; it nevertheless met with severe criticism in its progress. The proposal was to levy an [sic] uniform rate of 9d. in the pound on the rent of dwelling-houses, and 6d. in the pound on any house a part of which was a shop, or which was occupied by a licensed victualler, or inhabited by a tenant and solely used for the occupation of land. All houses not exceeding £20 per annum in value, were to be wholly exempt from its operations; and the computation was that there were 3,500,000 houses in the kingdom; of which number 3,100,000 would thus be totally exempt, and the tax be consequently paid by the 400,000 most valuable houses in the country. The relief hereby to the tax-payers on the assessment to the window-duty, was estimated at £1,136,000; while the tax retained in its stead by the new charge on houses, was expected to realise £720,000. (Emphasis added.)³¹⁰

³⁰⁶ *An Act to continue for three years the Duties on Profits arising from property, professions, trades, and offices* 11 & 12 Vict. c. 8 [13 April 1848].

³⁰⁷ Farnsworth, above n 6, 76.

³⁰⁸ *An Act to continue the Duties on Profits arising from property, professions, trades, and offices, and to amend the Act imposing the same* 14 & 15 Vict. c. 12 [5 June 1851].

³⁰⁹ *An Act to continue the Duties on Profits arising from property, professions, trades, and offices* 15 & 16 Vict. c. 20 [28 May 1852].

³¹⁰ Tayler, above n 93, 120.

Part IV British Parliamentary Papers

It is not until 1852 that one finds references to exemptions in the House of Commons papers, described in the General Index under the heading “Income and Property Tax” in the following terms:

3. Exemptions:

Capital on which dividends have been paid, and dividends paid thereon to the Public Creditor in Ireland in the year 1851, and which have been exempted from Income Tax ... 1852 (in 555) xlvii 491.

Capital of the National Debt which did not pay the Income Tax for the year 1850 ... 1852 (278) xxviii 495.

Amount of the Capital of the National Debt refunded on account of Property and Income Tax for the year 1850 ... 1852 (362) xxviii 563.

Amount of Property under Schedules A, C, and E, exempted on the ground of the incomes of the parties being under £150 per annum, in the year 1848, ending 5th April 1849 ... 1852 (510) ix 463.

Number of claims of exemption made in the year ended 5 April 1849, for England and Wales, by parties whose incomes were stated to be under £150 a year, on which repayment of duty was granted in that year, and the amount returned; also, of such claims in which the property of the claimant was discharged, and of cases which were sent to the Bank of England in that year, in order that the tax on the dividends of the parties might not be deducted, by reason of having proved their exemption ... 1852 (510) ix 463.³¹¹

The phrase in the last paragraph, “of such claims in which the property of the claimant was discharged, and of cases which were sent to the Bank of England in that year, in order that the tax on the dividends of the parties might not be deducted, by reason of having proved their exemption,” seems to tell a story. Under the subheading 4. *Miscellaneous* there is a reference to the “Number of appeals against Property and Income Tax in 1849-50 ... 1852 (510) ix 463”.³¹²

The papers contained in 1852 (362) xxviii. 563 as above also contain papers relating to the “[a]mount refunded on account of Property and Income Tax for the year ended 1850,”³¹³ and, under the subheading “4. *London District*” one finds:

Number of houses assessed to the Property Tax, 1844, in certain streets, &c. in London; similar Return of the amount of Window Duty paid by the several houses assessed in each of the classes, in the said streets, &c., ... 1845 (259) xxviii 651.

³¹¹ House of Commons, *General Index to the Accounts and Papers, Reports of Commissioners, Estimates, &c. &c 1801-1852*. (otbp 16 August 1853) 467.

³¹² House of Commons, above n 311, 468.

³¹³ House of Commons, 3 *Exemption and Evasion of Duties*, above n 311, 773.

Number of cases relieved from payment of Duty in the City of London, 1849, in pursuance of 5 & 6 Vict. c. 36, 2. 133, and amount of income and Duty so exempted 1852 (510) ix 463.³¹⁴

The General Index contains references to extensive records relating to the House Tax and Windows Duty, but in particular, “Window Duty charged on Hospitals in England, 1840 ... 1841 (198) xiii. 609.”³¹⁵ Then, at p. 438, under “Hospitals,” there are cross-references to: “Green Coat Hospital; Greenwich Hospital; Poor, II.2.xvi; and Small Pox Hospital.”³¹⁶

1853

The year 1853 saw another Income Tax Act introduced, 16 & 17 Vict. c. XXXIV, but instead of re-enacting previous such Acts, a new version was introduced.³¹⁷ The basis of assessment was 5 & 6 Vict. c. 35 of 1842 and the subsequent Acts which were “deemed to have been and to be continued in force from [5 April 1853].”³¹⁸ The oddity with this Act is that while there was a specific mention made to the Friendly Societies with respect to their exemption under Schedules (C) and (D), the Act does not contain any mention of the charitable purposes exemption from Income Tax. The explanation is that as the previous Acts which contained that exemption were still in force, there was no specific need to do so, and the inclusion of the Friendly Societies in this latest Act was merely to tidy-up previous exemptions. The implication then is that the charitable purposes exemption clause was seen as being appropriate for the purposes for which it was intended.

1854 – 1891

The Short Title to the Acts

The Duties upon Income Tax Acts that were enacted over the remaining years of the Nineteenth Century were largely re-enactments of the earlier statutes which had laid down the basis for such taxation and the rules applicable, such as the charitable purposes exemption. I have noted those years of those statutes, accompanied by footnotes which provide the full title and location of each statute, for the benefit of future scholars.

³¹⁴ House of Commons, 4 *London District*, above n 311, 774.

³¹⁵ House of Commons, *House Tax and Window Duty: 1. Generally*, above n 311, 444. This suggests further research into the effect of the Assessed Taxes on charitable institutions.

³¹⁶ House of Commons, *Hospitals*, above n 311, 438.

³¹⁷ *An Act for granting to Her Majesty Duties on Profits arising from property, professions, trades, and offices* 16 & 17 Vict. c. 34 [28 June 1853].

³¹⁸ *An Act ...*, above n 317, s. V.

Additional duties were levied on 12 May 1854,³¹⁹ followed by further increases in the rate of tax on 16 June 1854,³²⁰ and 25 May 1855.³²¹ On 21 March 1857, the rates of duty were reduced,³²² but raised again on 13 August 1859.³²³ Duties on Profits were again provided for, in 1860,³²⁴ 1861,³²⁵ 1863,³²⁶ 1864,³²⁷ 1865,³²⁸ 1866,³²⁹ 1867,³³⁰ 1868,³³¹ 1871,³³² 1873,³³³ 1874,³³⁴ 1875,³³⁵ 1876,³³⁶ 1877,³³⁷ 1878,³³⁸ 1879,³³⁹ 1880,³⁴⁰ 1881,³⁴¹ 1882,³⁴² 1883,³⁴³

³¹⁹ *An Act for granting to Her Majesty additional Duties on Profits arising from property, professions, trades, and offices* 17 & 18 Vict. c. 10 [12 May 1854].

³²⁰ *An Act for granting to Her Majesty an increased Rate of Duty on Profits arising from property, professions, trades, and offices* 17 & 18 Vict. c. 24 [16 June 1854].

³²¹ *An Act for granting to Her Majesty an increased Rate of Duty on Profits arising from property, professions, trades, and offices* 18 & 19 Vict. c. 20 [25 May 1855].

³²² *An Act to reduce the Rates of Duty on Profits arising from property, professions, trades, and offices* 20 Vict. c. 6 [21 March 1857].

³²³ *An Act for granting to Her Majesty additional Rates of Income Tax* 22 & 23 Vict. c. 18 [13 August 1859].

³²⁴ *An Act for granting to Her Majesty Duties on Profits arising from property, professions, trades, and offices* 23 Vict. c. 14 [3 April 1860].

³²⁵ *An Act to continue certain Duties of Customs and Inland Revenue for the Service of Her Majesty, and to alter and repeal certain other Duties* 24 Vict. c. 20 [12 June 1861].

³²⁶ *An Act to grant certain Duties of Customs and Inland Revenue* 26 & 27 Vict. c. 22 [8 June 1863].

³²⁷ *An Act to grant certain Duties of Customs and Inland Revenue* 27 & 28 Vict. c. 18 [13 May 1864].

³²⁸ *An Act to grant certain Duties of Customs and Inland Revenue* 28 & 29 Vict. c. 30 [26 May 1865].

³²⁹ *An Act to grant, alter, and repeal certain Duties of Customs and Inland Revenue, and for other Purposes relating thereto* 29 & 30 Vict. c. 36 [11 June 1866].

³³⁰ *An Act to grant and alter certain Duties of Customs and Inland Revenue, and for other Purposes relating thereto* 30 & 31 Vict. c. 23 [31 May 1867] and *An Act to grant to Her Majesty additional Rates of Income Tax* 31 & 32 Vict. c. 2 [7 December 1867].

³³¹ *An Act to grant certain Duties of Customs and Inland Tax* 31 & 32 Vict. c. 28 [29 May 1868].

³³² *An Act to make provision for the Assessment of Income Tax* 34 Vict. c. 5 [30 March 1871] and *An Act to grant Duties of Customs and Income Tax* 34 Vict. c. 21 [25 May 1871].

³³³ *An Act to make provision for the Assessment of Income Tax, and as to Assessors in the Metropolis* 36 Vict. c. 8 [4 April 1873].

³³⁴ *An Act to grant certain Duties of Customs and Inland Revenue, to repeal and alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 37 Vict. c. 16 [8 June 1874].

³³⁵ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 38 Vict. c. 23 [14 June 1875].

³³⁶ *An Act to grant certain Duties of Customs and Inland Revenue, and to amend the laws relating to Customs and Inland Revenue* 39 Vict. c. 16 [1 June 1876].

³³⁷ *An Act to grant certain Duties of Customs and Inland Revenue, and to amend the laws relating to Customs, Inland Revenue, and Savings Banks* 40 Vict. c. 13 [11 June 1877].

³³⁸ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 41 Vict. c. 15 [27 May 1878].

³³⁹ *An Act to grant certain Duties of Customs and Inland Revenue, and to amend the laws relating to Customs and Inland Revenue* 42 & 43 Vict. c. 21 [3 July 1879].

³⁴⁰ *An Act to repeal the duties on Malt, to grant and alter certain duties of Inland Revenue, and to amend the Laws in relation to certain other duties* 43 & 44 Vict. c. 20 [12 August 1880].

³⁴¹ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 44 Vict. c. 12 [3 June 1881].

³⁴² *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 45 & 46 Vict. c. 41 [10 August 1882].

³⁴³ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 46 Vict. c. 10 [31 May 1883].

1884,³⁴⁴ 1885,³⁴⁵ 1886,³⁴⁶ 1887,³⁴⁷ 1888,³⁴⁸ 1889,³⁴⁹ 1890,³⁵⁰ and 1891.³⁵¹ It can be seen, by reference to the titles of the Acts in the footnotes below, that it was not until 1859 that the term “Income Tax” appeared in the title to such an Act.

“Cases for the Opinion of the Court”

Of the above statutes, there is one particular Act which stands out. The Customs and Inland Revenue Act 37 Vict. c. 16 of 1874 contained, at Part III, a section concerning the Income Tax and Inhabited House Duties, which provided for tax cases to be heard in Court.³⁵² Section 8 of the Act provided an explanation of the development of this new legal procedure, as follows:

[t]his part of this Act applies to Great Britain only; and in the construction thereof the term “the court” means, as to England, the Court of Exchequer at Westminster, until the Supreme Court of Judicature Act comes into operation, and thereafter the Exchequer Division of the High Court of Justice, and, as to Scotland, the Court of Exchequer in Scotland.³⁵³

Section 9 of 37 Vict c. 16 set out, in some detail but not onerously so, the procedure to be followed by the Commissioners concerning stating a case for the opinion of the Court. For the purposes of the Thesis, and to illustrate the historical perspective in which the *Pemsel* case arose, it is worth restating sections 9 and 10 in full, as follows:

9. Immediately upon the determination of any appeal under the Acts relating to Income Tax by the commissioners [sic] for the general purposes, *or by the Commissioners for the Special Purposes*, of such Acts, or any appeal under the Acts relating to the

³⁴⁴ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 47 & 48 Vict. c. 25 [3 July 1884] and *An Act to grant to Her Majesty additional Rates of Income Tax* 48 & 49 Vict. c. 1 [1 December 1884].

³⁴⁵ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 48 & 49 Vict. c. 51 [6 August 1885].

³⁴⁶ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Inland Revenue* 49 Vict. c. 18 [4 June 1886].

³⁴⁷ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Inland Revenue* 50 & 51 Vict. c. 15 [5 July 1887].

³⁴⁸ *An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the laws relating to Customs and Inland Revenue* 51 Vict. c. 8 [16 May 1888].

³⁴⁹ *An Act to amend the Law relating to Customs and Inland Revenue, and for other purposes connected with the Public Revenue and Expenditure* 52 & 53 Vict. c. 42 [26 August 1889].

³⁵⁰ *An Act to grant certain Duties of Customs and Inland Revenue, to repeal and alter other Duties, and to amend the Laws relating to Customs and Inland Revenue* 53 Vict. c. 8 [9 June 1890].

³⁵¹ *An Act to grant certain Duties of Customs and Inland Revenue, and to amend the Law relating to Customs and Inland Revenue* 54 & 55 Vict. c. 25 [3 July 1891].

³⁵² *An Act, ...*, above n 334, Part III *Cases for Opinion of Court* ss. 8-10.

³⁵³ *An Act, ...*, above n 334, s. 8.

inhabited house duties by the commissioners for executing such last-mentioned Acts, the appellant or the inspector or surveyor may, *if dissatisfied with the determination* as being erroneous in point of law, declare his dissatisfaction to the commissioners who heard the appeal (hereinafter called the commissioners), and having done so may, within twenty-one days after the determination, require the commissioners, by notice in writing, addressed to their clerk, *to state and sign a case for the opinion of the court thereon*. The case shall set forth the facts and determination, and the party requiring the same shall transmit the case, when so stated and signed, to the court within seven days after receiving the same, and shall previously to or at the same time give notice in writing of the fact of the case having been stated on his application, together with a copy of the case to the other party, being the inspector or surveyor, or the appellant, as the case may be. (Emphasis added.)

10. In relation to the cases to be so stated, and the hearing thereof, the following provisions shall have effect:

- (1) The party requiring the case shall, before he shall be entitled to have the case stated, pay to the clerk to the commissioners a fee of twenty shillings for and in respect of the case.
- (2) The court shall hear and determine the question or questions of law arising on a case transmitted under this Act, and shall thereupon *reverse, affirm, or amend* the determination in respect of which the case has been stated, or remit the matter to the commissioners with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to (sic) the court may seem fit, and all such orders shall be final and conclusive on all parties. (Emphasis added.)
- (3) The court shall have power, if they think fit, to cause the case to be sent back for amendment, and there-upon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.
- (4) The authority and jurisdiction hereby vested in the court shall and may (subject to any rules and orders of the court in relation thereto) be exercised by a judge of the court sitting in chambers, and as well in vacation as in term time.
- (5) The court may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to cases stated under this Act.³⁵⁴

The above sections are also to be found in the Taxes Management Act 1880, but with some changes having made, both minor and major. A minor change was that “court” became “High Court.”³⁵⁵ The major change was that instead of “[causing] the case to be sent back for amendment,” with judgment being delivered after amendment, a new sub-section concerning appeals was added. The new sub-section provided that:

³⁵⁴ *An Act, ...*, above n 334, ss. 9-10.

³⁵⁵ *Taxes Management Act*, 43 & 44 Vict. c. 19 [6 August 1880] s. 59.

[a]n appeal shall from the decision of the High Court, or of any judge thereof, upon any case stated under the above provisions to Her Majesty's Court of Appeal, and from thence to the House of Lords, and from the decision of the Court of Sessions, as the Court of Exchequer in Scotland, upon any case so stated to the House of Lords.³⁵⁶

Until 1874 there was no official record of the claims against assessment by charitable institutions. Occasionally these were reported in the newspapers, as in 1843 when the Guardians of the Plomesgate Union Workhouse appealed against an assessment of £300 under Schedule A of the Property and Income Tax Act.³⁵⁷ Mr Dallenger, Clerk of the Board, was interrogated over the appeal against assessment and, in defence, argued that his claim was based “under the 6th Rule of the 61st section of the Act.”³⁵⁸ The Surveyor of Taxes challenged Dallenger, “[u]pon what ground?” to which he responded, “upon the ground that it is a public building, in fact, a hospital.”³⁵⁹ This was met with “[l]oud laughter from the Assistant Clerk and Assistant Surveyor, in which the Clerk and Surveyor of taxes also joined [in].”³⁶⁰ Not to be outdone, Dallenger responded that:

[g]entlemen may laugh if they please, but I am not to be laughed down. I say a workhouse is an [sic] hospital. The famous lexicographer's (Dr Johnson) definition of the word hospital is “a place built for the reception of the sick or support of the poor.” Now, gentlemen, pray what else is a workhouse?³⁶¹

Dallenger was to be disappointed, for the Clerk to the Commissioners:

read from a book (supposed to contain the report of the famous trial of *Bullum v Boatum*) that a workhouse is not an hospital, public school, or almshouse, but in fact, my Luds, nothing more nor less than a workhouse. *The Surveyor (to Commissioners)*: You will, of course, confirm this assessment? *Chairman*: Yes.³⁶²

Thus the scene was set for *Pemsel*.³⁶³

³⁵⁶ *Taxes Management Act*, above n 355, s. 59 (3).

³⁵⁷ ‘Assessing Union Workhouses to the Property Tax’, *The Ipswich Journal* (Ipswich), 7 January 1843, Issue 5412.

³⁵⁸ ‘Assessing Union Workhouses to the Property Tax’, above n 357.

³⁵⁹ ‘Assessing Union Workhouses to the Property Tax’, above n 357.

³⁶⁰ ‘Assessing Union Workhouses to the Property Tax’, above n 357.

³⁶¹ ‘Assessing Union Workhouses to the Property Tax’, above n 357.

³⁶² ‘Assessing Union Workhouses to the Property Tax’, above n 357.

³⁶³ *Pemsel*, above n 1.

London's Charities and their wealth

A letter in 1850 to the editor of *The Times* reveals further information on the wealth of London's charities, of which the author claimed that there were 491 charities, as "parent societies, and is quite exclusive of the numerous 'auxiliaries,' &c."³⁶⁴ The author of the letter, under the anonymity of "S.L.," claimed that:

these charities annually disburse in aid of their respective objects the extraordinary amount of £1,764,733 of which upwards of £1,000,000 is raised annually by voluntary contributions [with] the remainder from funded property, sale of publications, &c.³⁶⁵

"S.L." raised a number of concerns about the activities of these charities, their activities and the accumulation of wealth, but made no mention of the exemption of the income from funded property from Income Tax.

Conclusion

This chapter discussed the history of the Income Tax Acts in the post-1799 era. The importance of this chapter is that it explains the concept of deduction at source, introduced by Addington in 1803,³⁶⁶ which caught charitable institutions in the tax net for the first time. Until then, charitable institutions had little to be concerned about with respect to Income Tax. As the Income Tax Acts were only intended as temporary war-time measures, once the Income Tax had been removed from the statute books on 18 March 1816,³⁶⁷ that appeared to be the end of the matter. However, on Income Tax being reintroduced in 1842,³⁶⁸ based on the earlier Income Tax Act of 1806, once again charitable institutions were faced with a reduction in income due to the effect of the tax being deducted at source.

Charitable institutions were also again required to submit their claims for Income Tax to the Special Commissioners for consideration, which this chapter also discusses. However, all was not well, due to there being no definition of charitable purposes in the Income Tax Act of 1842 and its predecessors, and the issue of such claims was eventually to be confronted, not only by Gladstone, but also by his officials as well as a Member of Parliament as the

³⁶⁴ 'London Charities', *The Times* (London), 11 December 1850, Issue 20669.

³⁶⁵ 'London Charities', above n 364.

³⁶⁶ *An Act ...*, above n 5.

³⁶⁷ See above n 226.

³⁶⁸ See above n 288.

Nineteenth Century progressed.³⁶⁹ Finally, the chapter also discussed the various Schedules, which Addington had introduced, and which were later to feature in *Pemsel* in 1891. While the Schedules themselves were not problematic for charitable institutions, it was the issue of the phrase ‘charitable purposes’ that was to be the predicament for the courts with respect to the Income Tax legislation.

³⁶⁹ See Chapters 6 and 7 of this Thesis.

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Part I The Eighteenth Century

In exemption from taxes, we [the University of Dublin] enjoy much the same privileges with the universities of England, and however flattering it might be to obtain their smaller exemptions and privileges, while we rival them in sound learning and useful science, we have little to envy or to lament.

- Arthur Browne, *A Compendious View of the Civil Law* Vol. I. (1798) 125

Introduction

With the threat of war with France again a possibility in the closing years of the Eighteenth Century, Pitt was also in a predicament because of the failure of the harvest and rioting in the

streets. With the introduction of the Duties upon Income Act of January 1799¹ I had expected to find, in the immediate period before the tax was passed into legislation, concerns being expressed by charitable institutions about the possible implications of the legislation with respect to their invested funds. However, my research did not locate any petitions that give any indications of charities concerns regarding Income Tax. The only documents of any significance from the Eighteenth Century that I have been able to locate, that argued the case of exempting charities from Income Tax, was that of Highmore's *Mortmain* of 1787,² and a small number of letters and publications concerning the Income Tax.

Correspondence and pamphlets prior to the Duties upon Income Act 1799

In 1798 Arthur Young made an isolated comment concerning the income of charities. Young had written a letter to Wilberforce, in which he argued that:

[b]ut well ought [the poor and profligate] to be instructed in the almost incalculable, and to them, incredible sums which they receive in payment of their labour, and in the receipt of legal and voluntary charity. I have calculated, and with some attention, the amount of what is paid for *labour* of all sorts in England; and it is not, probably, less than one hundred millions sterling – Poor Rates, and charities of every sort, cannot amount to less than seven millions.³

The importance of Young's letter is that as Wilberforce and Pitt were friends, such an argument would have borne considerable weight in any discussions on the economic contribution by charities to the welfare of those less fortunate, therefore to tax charitable institutions would have been an abomination. In the late Eighteenth Century, in spite of the exemption from doing so, it appears that some charities had paid Income Tax, as can be seen from Day's study of the Grey Coat Hospital in which he noted a payment in 1799 of duties on the school's income, being "an unforeseen levy of £6 6s 'in aid of the prosecution of this present war'."⁴ Day also observed that the school had that year also invested £216 in a 5 per cent "Loyalty Loan."⁵ In his study of the Minute Books, Day did not identify any complaints by the Governor's of Pitt's levy upon the hospital. Neither did Day comment on any refund

¹ *An Act to repeal the Duties imposed by an Act, made in the last Session of Parliament, for granting an Aid and Contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties*, 39 Geo. III c. 13 [9 January 1799].

² Anthony Highmore, *A Succinct View of the History of Mortmain* (1787). See Chapter 3 of this Thesis.

³ Arthur Young, *An Enquiry into the State of the Public Mind amongst the Lower Classes: And on the means of Turning it to the Welfare of the State* (1798) 15.

⁴ E.S. Day, *An Old Westminster Endowment, being a history of the Grey Coat Hospital as recorded in the Minute Books* (1902) Ch VII "The Grey Coat Hospital under George III" 118.

⁵ Day, above n 4, 118.

of the “unforeseen levy.” How the charitable purposes exemption operated can be seen when, on 29 October 1818, the Treasurer of the Grey Coat Hospital, George Ellis, stated to the enquiry into the Parochial Charities of Westminster that in July 1816 the school had received “[a] return of property tax on lands [of] £461 10s 4d.”⁶ While the accounts for 1817 disclosed income of £1,457 5s 0d from rents, and £429 1s 4d from dividends on stock, refunds of Property Tax deducted and refunded were not identified.⁷ As Addington’s concept of deduction at source had been in force since having been introduced by him in 1803,⁸ I expected to see refunds disclosed in financial statements such as these, but that was not so in this case.

In spite of comments such as those from 1799 as cited by Day, I have been unable to find any petitions from charities, or letters from individuals on behalf of charities, raising concerns about Pitt’s Duties upon Income Bill. I had expected that concerns would have been expressed, at least in the early stages of the Bill until it became clear that a clause exempting charities from duties upon income was to be included. Concerns were expressed about exemptions, but not with respect to charities, as in James Foster’s letter to Pitt about the plight of curates, in which he argued that:

[f]rom a desire of promoting the public good and of alleviating individual pressure I presume with all due deference for such a liberty to propose for your consideration the propriety and necessity of inserting in the present Income Tax Bill an exemption clause in favour of resident-stipendiary curates [sic]: and hope you will have the goodness to excuse me for thus increasing the weight of your Parliamentary duties by writing to you upon a subject which in spirit and was so kindly and I may add charitably attended to last year in the 18th section of the bill for the increase of the Assessed Taxes.⁹

Foster proceeded in some detail to explain to Pitt what the effect on the clergy would be, if his proposal were to be adopted. In particular, Foster was concerned that:

in every case in which the Rector or Vicar of any parish-church shall employ a Curate to perform divine service therein, which Curate shall reside in the rectorial or vicarial house, then the stipend of such Curate shall not be deducted from the income of such Rector or

⁶ Day, above n 4, 266.

⁷ Day, above n 4, 265.

⁸ A. Hope-Jones, *Income Tax in the Napoleonic Wars* (1939) 22.

⁹ James Foster, PRO 30/8/136/240-1 [December 1798; letter not precisely dated].

Vicar in the estimate thereof, but shall without any charge upon the Curate for the same be subject to the rates or duties imposed by this Act to be defrayed by the Rector or Vicar.¹⁰

After a lengthy explanation of the effect of his proposal on the Government's revenue, "which would considerably gain by it," Foster concluded his letter with the wish that Pitt would "do all [he could] for [the Curates] in the present conjuncture."¹¹ Another author, the Rev. Dr Hill, also reflected more of a concern for the clergy than for institutions of a charitable nature. On 10 December 1798 Rev. Dr George Hill wrote, not to Pitt but to Henry Dundas MP,¹² expressing the concerns of the Masters of St. Mary's College that the "Property-Tax Bill" would be detrimental to their welfare, as well as that of the college and its students. Dundas who, along with Lord Grenville were Pitt's two closest colleagues, would have been an influential person to whom to write.¹³ Dr Hill expressed the concerns of the Masters of the College thus:

St Mary's College
St. Andrews
Dec 10 1798

Sir,

I have the honour of addressing you at the desire of my Brethren, the Masters of this College. I approve most cordially of the principle of the Property-Tax Bill, I flatter myself that what I have to state on the part of the College, altho [sic] it may be unnecessary, will not appear to you unreasonable.

We did not [perceive?] in the perspicuous and [eloquent?] speech of Mr Pitt, any distinction made between that portion of cultivated [land?], of tithes, and of interest in the [funds?], which is held by corporations, and that which is held by individuals. In corporations, where the common fund is destined merely for public purposes, and, excepting some particular officers, the members derive their maintenance from other sources, there may be [indecipherable] reason for the common fund being charged with the Property Tax, as with the Land Tax. But the case is different in corporations such as colleges, where the common fund is the estate from which the members receive their stipends. If the common fund is taxed as belonging to the corporation and the individuals are also required to assess themselves according to their income, the same property is taxed twice. In both of the colleges of this university, the funds are destined for the maintenance of Bursars, as well as of the Professors.

¹⁰ Foster, above n 9.

¹¹ Foster, above n 9.

¹² Professor John Cookson, one of my supervisors, informs me that Dundas was the "uncrowned King of Scotland" who managed government interests and patronage in Scotland. Henry Dundas (Viscount Melville) is described in *Britain in the Hanoverian Age 1714-1837* as "Harry the Ninth, uncrowned King of Scotland." Gerald Newman (ed), *Britain in the Hanoverian Age 1714-1837* (1997) 209.

¹³ Michael Duffy, *The Younger Pitt* (2000) 233.

The incomes of the Bursars are too low to fall under the operation of the Bill: But if the common fund is diminished by one tenth, it will not afford the Bursars their present allowance without a considerable encroachment upon the incomes of the Professors; and unless a special provision is made in the Act, these abridged incomes would be subject to its operation. The hardship would fall with peculiar severity upon this college which is appropriated to the study of Divinity, both because the number of Bursars bears a large proportion to the extent of the funds; and because students of Divinity pay no fees to the Masters.

*I have the honour to be, with the highest respect and esteem, Sir,
Your most obliged and most devoted servant,
[Rev. Dr George] Hill*

*Right Honourable
Henry Dundas.¹⁴*

This letter from Hill is one of only two letters that I have been able to find that addressed the likely effect of the Duties upon Income Bill, should it become law, on an institution with charitable purposes. It was in the Pitt Papers that I found one letter the significance of which, when I first read it, was not apparent as I had not at that time discovered the works of Anthony Highmore. The significance of Highmore's letter is that he did not mention the taxation, or exemption, of charitable institutions. As Highmore later stated, in his *Pietas* of 1810, that he had in 1786 argued that charitable institutions should be free from all forms of taxation, to have found a letter written in 1798 by Highmore in response to Pitt's Duties upon Income Bill that made no mention of charities whatsoever is all the more perplexing.

Sir,

It is with the utmost deference that I presume to offer suggestions to your capacious mind, on the subject of your new mode of Taxation on Income.

The modifications from £60 to £200 will no doubt be wise when detailed in the intended Bill – but it appears that [£10. 0s. 6d] is to attach on all incomes of £200 upwards; permit me to state that it will be found far more difficult, at least painful, in its operation beginning at so small a sum, & therefore less productive, than it would be if the proportional modifications were extended to £500; for there are a large class of persons viz. widows, spinsters, old men retired, chief clerks, bookkeepers, & underacting partners receiving stipulated incomes of £200 without the possibility of increase, and the latter with dependent families, to whom comforts, are, by the advance of every necessary article, scarcely possible! All those are far less able to pay a tax of £10 6d than those whose incomes are £500; for tho' the tax may be equal, yet their wants are equal, & the residue of their resource considerably less by taking £20 from these persons, they will be reduced to distress, whereby the lustre of your great scheme will be tarnished.

¹⁴ PRO 30/8/145/1/11-12.

In pursuing the progress of your Outline, you propose Commissioners; it is presumed that care will be taken that Commissioners of Appeals will not be taken from the same body as those for Assessment, I hope to be excused for such a suggestion. But there is a point of far more moment which deserves mature consideration.

The Commissioners who are to examine and the Surveyor who is to make enquiry & report, may probably be – creditors of the person taxed. This does not form a part of your Outline: it is well known that in a commercial country, a person may be able to pay a debt in time, or to take up a Bill at maturity, this may not be able to pass such an examination in the interval as to his fixed property or income, as shall wholly [ease?] his creditors mind from anxious fears on that head; & if the debt be of a different nature, not limited to time, the probable consequence would be that the Commissioner or Surveyor would feel it a duty be owed to his family to arrest the debtor whose trade or avocation might thereby be destroyed, and Government would by his insolvency lose the future payment of the tax – a clause should therefore be added to their oath, that they would not avail themselves of any information they [should] acquire.

But as you propose these Commissioners to be appointed by Grand Juries, it offers a fair suggestion for the security of the subject, that if a person taxed sees a creditor in the person of a Commissioner or Surveyor, he should have a right to challenge him, and decline examination in his presence, this might be cause of appeal, and if he then finds [indecipherable] some difficulty, let his [appeal - Latin?] be to the Lords of the Treasury:- the Commissioners being sworn to secrecy, is by no means in this case a sufficient security to the public.

I trust and humbly conceive that I shall be pardoned for this intrusion, and that you will accept as well intended the remarks of one who loves his country and its constitution, and writes, Sir, most sincerely with yourself in lamenting the heavy burdens laid upon the people,

*I have the honor to be,
Sir,
Your obedient and humble servant,
A Highmore
Bury Court St Mary [Axe?]
5 December 1798¹⁵*

The date of Highmore's letter is noteworthy, as it was written only two days after Pitt had introduced his proposal in the House of Commons for "a tax upon the whole of the leading branches of income."¹⁶ Therein lies the curiosity, as Highmore's letter mentioned an amount of tax, that is £10 0s 6d, that is nowhere mentioned in the report of the debate of that day by *The Times*.¹⁷ *The Times* of 4 December reported that "persons not paying Assessed Taxes or possessing incomes under £60 are not to be liable to any charge,"¹⁸ and that in his calculation of income liable to the duty of £102 millions, Pitt "[had] not included any sums under

¹⁵ Anthony Highmore, PRO 30/8/267 Part 1 (93-94).

¹⁶ Parliamentary Intelligence, *The Times* (London), 4 December 1798, 2.

¹⁷ The first report of the debate in the *Parliamentary Register* is on the 5th of December.

¹⁸ Parliamentary Intelligence, above n 16, 2.

£200.”¹⁹ According to the *Parliamentary History*, Pitt’s resolution that day included the scale of duties that would be levied,²⁰ but that table was not published in *The Times* until 6 December.²¹ *The Times* obviously had access to details of the Bill in spite of the fact that it had not yet been printed for the members of the House as, in an editorial comment, it was reported that “the man enjoying £60 a year is to pay the 120th part of his income, and this proportion will rise gradually to an income of £200 when the contribution will be 1-10th part.”²² Nowhere in the report of the debate is it stated that £10 6*d* is to be levied on incomes of £200 upwards, as one-tenth is £20, not the figure that Highmore quoted. The rate levied on £200 and upwards under the Assessed Taxes Act of 1798 was also “a sum not exceeding one tenth of the part of the same,”²³ whereas under the Duties upon Income Act of 1799, the duty was levied at a rate of “one tenth of [£200 or upwards].”²⁴

I found a third letter concerning charitable institutions in the Chatham Papers. This very interesting, but undated, letter argued the case for the exemption of the Royal and public hospitals. For some reason, the letter is not listed in Volume 238 of the List & Index Society’s catalogue of the Chatham Papers which contain the PRO records 30/1/101 to 193 from 1795 to 1806. Because of the relevance of the letter to this Thesis, it is also transcribed in full.

In the Income Bill now depending is a clause

That where any bodies politic or corporate [indecipherable] shall be intitled unto any annual income to the respective amounts before specified other than and besides any income applicable to charitable purposes such annual income not applicable to charitable purposes only shall be chargeable with the like rates as any other annual income of the same amount will under and by virtue of this Act be chargeable with.

The words applicable to charitable purposes only leave an opening for a great deal of unnecessary and improper investigation with respect to Suttons Hospital commonly called the Charter House and to other hospitals. The whole revenues of Suttons Hospital have been and will be for some years to come expended in the necessary purposes of the hospital. The expenditure consists of payments for the maintenance of and stipends to the old men – the maintenance of the scholars – exhibitions to scholars at the two universities – the salary of the Master Officers Schoolmaster Usher [indecipherable] and the wages to the servants fuel repairs of the buildings repairing farm houses and improvements on the

¹⁹ Parliamentary Intelligence, above n 18 3.

²⁰ Parliamentary History, (1819) vol XXXIV 20.

²¹ [Editorial], *The Times* (London), 6 December 1798, 3.

²² [Editorial], *The Times*, above n 18, 3.

²³ *An Act for granting to His Majesty an aid and contribution towards the prosecution of the war* 38 Geo. III c. 16 [12 January 1798] s. IV.

²⁴ *An Act ...*, above n 1, s. II.

estates. None of the above Articles of expenditure appear to come within the meaning of the foregoing clause as they are all applicable to charitable purposes except such as relate to repairs and improvements which by the Act are to be allowed for. But in the [Assessed Taxes] Act of 38 Geo. III intituled “An Act for granting to His Majesty an aid and contribution for the prosecution of the war” Sect. 19 there is a proviso that nothing therein contained should be construed to extend to charge the additional Rate or Duty therein mentioned on the amount of the Duties payable on houses windows or lights in respect of any of the Royal or public hospitals or any chambers or apartments therein used or occupied for charitable purposes. The Commissioners under the Act held that the apartments of the Master Preacher Register and other Officers altho’ in the hospital and most of them part of the Great Building of the hospital and appropriated to the respective Officers for carrying on the purposes of the charity yet were to be considered as [distinct?] houses and the Officers in respect of the same assessable and accordingly assessed them for the same under that Act. Possibly the determination was right in the particular case. But if the same principle is to govern under the proposed Income Act it seems to follow that so much of the income of the hospital as shall be paid in salaries to the Master and other Officers will be considered as income not applicable to charitable purposes consequently assessable under the Act at the same time that the Master and Officers in common with their fellow subjects will be charged for their incomes of which their salaries are part and the same property will by this means be taxed twice over. It is submitted that the Royal and public hospitals be wholly excepted with a declaration that such exception shall not extend to any of the officers of or belonging to the said hospitals.²⁵

There are a number of points of interest within this letter. The first relates to the clause recited by the anonymous author, as the clause as recited is virtually word-for-word that of the clause in the Bill as printed on 8 December 1798, but with the words “companies, fraternities, or societies of persons, whether corporate or not corporate” having been omitted.²⁶ In order to compare the text of the two phrases, I have amended the text in the letter by inserting, in SMALL CAPS, the additional words from the Bill as it stood on 8 December 1798:

That where any bodies politic or corporate[,] COMPANIES, FRATERNITIES, OR SOCIETIES OF PERSONS, WHETHER CORPORATE OR NOT, shall be entitled unto any annual income[,] to the respective amounts before specified[,] other than and besides any income applicable to charitable purposes[,] such annual income not applicable to charitable purposes only shall be chargeable with SUCH AND the like rates as any other annual income of the same amount will[,] under and by virtue of this Act[,] be chargeable with.

The key difference is the insertion of the words “companies, fraternities, or societies of persons, whether corporate or not.” The second point in the letter relates to what, at that time, was considered to be expenditure relating to charitable purposes. The clause first refers to

²⁵ PRO 30/8/311/1/35.

²⁶ Sheila Lambert (ed), *House of Commons Sessional Papers of the Eighteenth Century (1798-99)* vol 120 George II Bills 28.

“charitable purposes,” then “charitable purposes only.” More importantly is the fact that, rather than stating that income applicable to charitable purposes shall be exempt from duties upon income, the clause stated that “annual income not applicable to charitable purposes only” was to be assessed for Income Tax. This clause ultimately appeared in section 87 of the Duties upon Income Act 1799.²⁷

The Bill required an apportionment between income applied and income not applied to charitable purposes and this clause appeared as section 90 of the Duties upon Income Act 1799, but no mention of that was made by the anonymous author of the letter. The draft clause in the Bill as cited above must also be considered from another perspective as neither the Bill, nor the final Act, provided an interpretation or definition of what was considered to be, *for the purposes of a fiscal statute*, a charitable purpose.²⁸ While there was by 1798 a body of centuries-old charity case law, as can be seen in Duke’s 1676 publication *The Law of Charitable Uses*,²⁹ it is interesting to note that at no time was the question raised regarding what were then considered to be charitable purposes in relation to Pitt’s proposal. Neither would case law have been of any assistance for, as Picarda has stated, “[c]ertainly there is no case in which the fiscal implications of a determination in favour of charity have been expressly considered.”³⁰

At some time in 1798, presumably during December, Benjamin Kingsbury,³¹ who described himself as “formerly a Dissenting Minister at Warwick” published, for purchase at the cost of one shilling, a very emotional³² 47-page document with the title of *An Address to the People of Great Britain on the subject of Mr Pitt’s proposed Tax on Income, in which it’s [sic] Partial Operation, it’s Rank Injustice, and it’s Dreadful Consequences, are demonstrated; together with the propriety of an early and a strenuous opposition to this unprecedented scheme, previous to its passing into a law*. Kingsbury accused Pitt:

²⁷ *An Act ...*, above n 1

²⁸ It was not until the [UK] Charities Act 2006 that charitable purposes were given a statutory definition; a definition which includes 13 charitable purposes.

²⁹ George Duke, *The Law of Charitable Uses, revised and much enlarged, with many Cases in Law both Antient and Modern: Whereunto is now added, the Learned Reading of Sr. Francis Moor, K^t, Upon the Statute of 43 Eliz. concerning Charitable Uses (Who was a Member of that Parliament when that Statute was made, and the Penner thereof)* (1676).

³⁰ H. Picarda, *The Law and Practice relating to Charities* (3rd ed, 1999) 25.

³¹ Benjamin Kingsbury, *An Address to the People of Great Britain... on the subject of Mr Pitt’s Proposed Tax on Income* (1798). At page 39, Kingsbury uses data relating to the “produce of all the taxes [for the year] ending 10th of October, 1798.”

³² “Oh, inhabitants of England! If one spark of that sacred flame which animated the breasts of your ancestors yet glowed within your bosoms, no minister would bring forwards (sic) with impunity a scheme of taxation so inhuman, so oppressive, so base, as this.” Kingsbury, above n 31, 27.

[of having felt] his ground and prepared his way by his late system of finance, of doubling, trebling, quadrupling, and quintupling the Assessed Taxes; and now, having procured the adoption of that principle by means of his majority in Parliament, though in direct opposition to the declared and loud voice of the people, he assumes courage to advance a step farther, and doubts not that, by means of the same majority, he shall impose on you a species and extent of taxation which no minister a short time since would have dared to recommend.³³

While Kingsbury pointed out that the tax will be levied on “every body politic or corporate, or company, fraternity, or society of persons (whether corporate or not corporate),”³⁴ he did not mention the effect of the tax on charitable institutions, nor did he mention the exemption ultimately granted to them.

Post-enactment publications on Pitt’s Duties Upon Income

Today it would be unlikely that something as important as a clause exempting charitable institutions from Income Tax would not be debated in Parliament, yet that does not appear to have been the case with respect to the Assessed Taxes Act 1798.³⁵ Neither was there any discussion on the charitable purposes exemption from Income Tax, at least in the early years of the Duties upon Income Act 1799.³⁶ Shortly after the Duties upon Income Bill had been sanctioned by Parliament, a number of publications appeared which explained the new Act, but, as with the period prior to the introduction of the Act, once again little comment was made on the exemption, apart from explaining its nature. One such publication, *Tax on Income, Trades, &c.* (hereafter “*Abstract*”)³⁷ provided an abstract of the changes to the Bill and as such gives an interesting perspective into the Parliamentary process at that time. The *Abstract* contained the clause with which we are now familiar, that is:

[t]hat where any bodies politic or corporate, companies, fraternities, or societies of persons, whether corporate or not, shall be entitled unto any annual income, to the respective amounts before specified, other than and besides any income applicable to charitable purposes, such income not applicable to charitable purposes only shall be chargeable with such and the like rates as any other income of the same amount will, under and by virtue of this Act, be chargeable with.³⁸

³³ Kingsbury, above n 31, 7.

³⁴ Kingsbury, above n 31, 16.

³⁵ *An Act ...*, above n 23.

³⁶ *An Act ...*, above n 1.

³⁷ [Anonymous], *Tax on Income, Trades, &c. An Abstract of the Alterations and Amendments in the Act For Repealing the Duties [and for] granting to His Majesty certain Duties Upon the Income of all Persons, With the Bill, (at length as amended by the Committee of the House of Commons* (4th ed, 1799).

³⁸ [Anonymous], above n 37, [page] 34. The clauses were not numbered.

The possibility of disputes arising between such entities and the assessors of the Duties upon Income, in determining what income was applied to charitable purposes and what was not, was highly likely. How such disputes might have arisen can also be seen from the clause that described how “the chamberlain, treasurer, clerk or other officer acting as treasurer, auditor, or receiver, for the time being, of such corporation, company, fraternity or society,” was required, 28 days after notice having been published:

to make out and deliver to the Assessors ... a statement of the annual income ... according to the form specified in the schedule to this Act and shall specify ... how much and what proportion of such annual income is not chargeable ... and for what purposes the income, not chargeable as aforesaid, is or shall be applicable.³⁹

The *Abstract* also contained the primary charitable purposes exemption as it appeared in the Duties upon Income Act, that is:

[t]hat no corporation, fraternity or society of persons established for charitable purposes only, shall be chargeable under this act [sic] in respect of the income of such corporation, faternity [sic] or society.⁴⁰

Considering the secondary charitable purpose exemption clauses, at sections 87, 88 and 90 of the Duties upon Income Act 1799 the focus of the exemption moved from the nature of the entity, as expressed in the charitable purposes exemption at section 5, to the nature of the income as applied to charitable purposes. While the *Abstract* contained notes commenting on many of the changes made to the Bill, it is significant that there was no note appended to the exemption clause.

A number of authors commented on the charitable purposes exemption clause in their publications, but in the briefest of notes. Kyd merely stated that:

[c]orporations ... shall not be chargeable in respect of any income, which according to their respective regulations, shall be applicable to charitable purposes ... [p]rovided that an account of every such exemption claimed shall be made up in the usual form and allowed by the Commissioners.⁴¹

³⁹ [Anonymous], above n 37, [page] 35.

⁴⁰ [Anonymous], above n 37, [page] 41.

⁴¹ Stewart Kyd, *The Substance of the Income Act* (1799) 7.

Withers' guide to the Act only noted that "charitable societies", that is "corporations and fraternities established for charitable purposes only," were exempt from Income Tax.⁴² A 31-page pamphlet published anonymously by Charles Jenkinson, Earl of Liverpool, in 1799, purported to review the arguments in the House of Commons during the progress of the Bill.⁴³ Lord Liverpool did indeed do just that but, in spite of having stated at the beginning of his pamphlet that "[i]n the course of the progress of the [B]ill through the House of Commons many useful observations were suggested, and some important amendments were adopted,"⁴⁴ he made no mention of charitable institutions and the charitable purposes exemption clause. Lord Liverpool's only reference to exemption was in the context:

of persons possessing less than sixty pounds a year [who] are entirely exempted from the operation of the tax. ... There is a class of the community who possess only the absolute necessities of life; and this class has always been considered by the legislature differently from the class of proprietors in general. The poor-laws are founded on this very distinction.⁴⁵

While Lord Liverpool declared that he had stated "*all* the objections that have been made to the principle of the Bill,"⁴⁶ he did not write of any objections concerning charities being liable to the tax, therefore one must assume that there were none. Neither did Callender's *Abridgement* of the Act discuss the charitable purposes exemption, merely noting that the "[i]ncome of bodies politic, or corporations, &c (not applicable to charitable purposes), shall be chargeable as other annual income,"⁴⁷ and that "[the] income of bodies politic, or corporations, &c. applicable to charitable purposes, or to the payment of any annual dividends or interest, shall not be chargeable."⁴⁸ Meyler's *Correct Abridgement* recited the exemption clause as contained in the Act, also without further comment.⁴⁹ However, in his Index, Meyler listed "charitable corporations, &c" under "Abatements", along with those for children, instead of under "Exemptions," for which there is no listing.⁵⁰

⁴² William Withers, *A Digest of the Income Tax* (1800) 49.

⁴³ [Charles Jenkinson, Earl of Liverpool,] *Review of the arguments advanced in the House of Commons in support of the Bill for granting an Aid and Contribution for the Prosecution of the War, by imposing certain Duties Upon income* (1799).

⁴⁴ Jenkinson, above n 43, 1.

⁴⁵ Jenkinson, above n 43, 21. The poor laws were developed through a series of Acts in 1495, 1531, 1536, 1547, 1552, 1563, 1572, 1576, 1598, 1601 and as late as 1834. See A.G.R. Smith, *The Government of Elizabethan England* (1967).

⁴⁶ Jenkinson, above n 43, 24.

⁴⁷ William Callender, *Income Act Abridgement and Explanation* (1799) 16.

⁴⁸ Callender, above n 47, 16.

⁴⁹ Meyler, *Tax on Income A Correct Abridgement of the Act for imposing a Tax on all Income* [1799].

⁵⁰ Meyler, above n 49, [35].

Summary

Having exhaustively researched the issue, I must conclude that for reasons which I am unable to explain, charitable institutions did not appear to have had any concerns, at least publicly, regarding Pitt's proposal for a new form of taxation that may potentially have had implications for them. I have not been able to identify how it was that the text of the exemption clause was changed, and at whose behest those changes were made. For this particular period in the history of the charitable purposes exemption from Income Tax, the explanation of those events must await the efforts of another researcher, if indeed any documents exist that can offer such an explanation. However, the charitable purposes exemption from Income Tax was to come under close scrutiny later during the Nineteenth Century. But for now, in the first few years of the Nineteenth Century the charitable institutions of England had little with which to be concerned regarding the taxation of their income.

Part II The Nineteenth Century

Introduction

When compared with the Eighteenth Century, the Nineteenth Century has proved to be a veritable gold-mine of resources concerning the charitable purposes exemption from taxation, both Imperial (in the form of Income Tax) and local (in the form of rates). Even the years following the repeal of the Income Tax Act in 1816, and before its restitution in 1842, have revealed documents concerning taxation of relevance to this Thesis. As will be seen, Gladstone's challenge of the charity exemption from Income Tax in 1863 was not the first time that the issue of charitable institutions and exemption from taxation had been raised in the House of Commons during the course of the Nineteenth Century. However, charitable institutions and their exemption from Income Tax did not feature in the Nineteenth Century publications on finance and Income Tax.

1800: Beeke

Beeke's comprehensive study, published in 1800, *Observations on the Produce of the Income Tax*,⁵¹ considered all sources of income yet omitted the charity sector entirely from his

⁵¹ Henry Beeke, *Observations on the Produce of the Income Tax, and on its Proportion to the whole Income of Great Britain* (1800). The "most material parts of the substance of this pamphlet are taken from three letters which I sent to a friend, of eminent talents and respectability, on the 7th, 15th, and 19th of December 1798."

calculations, having made no mention of charitable institutions whatsoever. Beeke mentioned exemptions, but only in relation to tithes:

since a very considerable portion of the kingdom is now, either only subject to small money payments in lieu of tithes, by way of *modus, &c;*; or else has long been totally exempted, as having once belonged to the religious houses dissolved by the statute of the 31st H. VIII; since also a still greater portion, probably not less than one tenth, has been exonerated during the present century by commutation; these various deductions must collectively extend to a little less than a seventh part of the whole country. (Emphasis added.)⁵²

In a footnote to the above, described by Beeke as “these ancient exemptions,” is his explanation that:

[p]ayments by *modus* scarcely amount, on an average, to a fifteenth part of the tithes for which they are substituted; in some counties they are very general, and extend to a considerable part of the produce. *The estates also which are exempted by the 31st of H. VIII must be far more considerable than is, I believe, generally imagined.* The revenues of the greater abbies (sic) only were returned at more than £100,000 a year, which was then more than equivalent to a rental of one million a year now. (Emphasis added.)⁵³

Beeke progressively built up a picture of the various sources of income against which the tax was to be levied, which he considered to be “subject to no other diminution than the general deductions for children, Assessed Taxes, &c.”⁵⁴ By 1799, with a population of 1,000,000 people in London and Middlesex,⁵⁵ the number of charities in those towns must have been extensive. The income of families living in South Britain, some 1,500,000 people, was estimated by Beeke to be “about £45 a year for one family,” a figure in which Beeke also included “parochial relief” but without stating how much each family received on average.⁵⁶ Why then did Beeke not include charitable relief as well? Beeke compounded his error by excluding charitable institutions from his Table which was:

formed upon nearly the same plan as that of Mr Pitt, [which] contains, in the first column, the whole income of Great Britain; in the second, the gross assessment, ... and in the third,

Beeke, 174. This was not Pitt, as the only letter from Beeke listed in the Chatham Papers was dated 24 September 1795. There is no correspondence from Beeke dated 1798.

⁵² Beeke, above n 51, 33.

⁵³ Beeke, above n 51, 34.

⁵⁴ Beeke, above n 51, 112.

⁵⁵ Beeke, above n 51, 119.

⁵⁶ Beeke, above n 51, 122.

the reduction from 10 per cent. in consequence of the scale of abatement, and the exemption of all incomes below sixty pounds a year.⁵⁷

Details extracted from Beeke's study are listed in Table 1 Extract from "Observations on the Produce of the Income Tax" as follows:⁵⁸

Table 1 Extract from "Observations on the Produce of the Income Tax"

[Source]	Clear Income £000	Gross Assessment £000	About per Cent. [of Clear Income]	Exempted or Abated £000	About per Cent [of Clear Income]
Land rents	20,000	1,500	7.5	500	2.5
Farming profits	15,000	220	1.4	1,280	8.6
Tithes	2,500	225	9.0	25	1.0
Mines, &c.	4,500	300	6.6	150	3.4
Houses	10,000	500	5.0	500	5.0
Scotland	8,500	450	5.2	400	4.8
Foreign	4,000	400	10.0	0	0
Funds	15,000	1,200	8.0	300	2.0
Foreign trade	8,000	750	9.3	50	0.7
Shipping	2,000	180	9	20	1.0
Home Trade	18,000	800	4.4	1,000	5.6
Labour	110,000	500	0.4	10,500	9.6
[Totals]	£217,500	£7,025	[3.23]	£14,725	[6.77]

Of the exempted or abated income, the highest was that from farming profits, at 8.6 per cent of clear income, followed by houses at 5 per cent, with only 2 per cent of income from the funds being exempt. The third column of the Table, according to Beeke, "contains ... the reduction from 10 per cent. in consequence of the scale of abatement, and the exemption of all incomes below sixty pounds a year."⁵⁹ The question is, does the first column contain charity income or not? Beeke however, made a major mistake with his figures, which brings his pamphlet into credibility, by then stating that "[i]f I am correct in estimating the whole income of Great Britain at £218,000,000 it follows, that more than two-thirds of it are at present exonerated by the exemptions and abatements."⁶⁰ However, two-thirds of £218,000,000 is £145,000,000, not £14,725,000 as calculated by Beeke.

⁵⁷ Beeke, above n 51, 135.

⁵⁸ Beeke, above n 51, 136.

⁵⁹ Beeke, above n 51, 135.

⁶⁰ Beeke, above n 51, 137.

Beeke also took into account only the “abatements depending on the number of children”⁶¹ and, in expressing his avowal of “the exemptions and allowances that have been adopted in the present instance,”⁶² considered that “the humane and benevolent spirit which suggested them cannot be too much praised.”⁶³ The picture he thus presented, of the sources of income that Pitt was drawing upon, and that which was taxable and that which was exempt, is very much incomplete.

1804: Sinclair

Sir John Sinclair’s 1804 publication, *The History of the Public Revenue of the British Empire*,⁶⁴ contains, in the third volume, an excellent précis entitled *Of Exemption from Taxes*.⁶⁵ Public teachers, for example, were exempted by Constantine the Great from taxes, and Bacchus exempted musicians. But Sinclair made no mention of charitable institutions. He did, however, answer one question to which I had been seeking an answer: that of the definition of “income” in the late Eighteenth and early Nineteenth Centuries. “Property,” according to Sinclair, was defined as:

the capital stock which any individual possesses: Whereas income, is the stock that he acquires within any particular space of time, as a month or a year. Income may be derived from the following sources: 1. From real or personal property, as land, money, &c. 2. from the exercise of any profession; and 3. [F]rom the revenues of the public.⁶⁶

Sinclair gives the impression that he might not have agreed with charitable institutions being exempt from Income Tax for he said, in relation to the poor, that:

[a] total exemption from taxes in favour of the poor, is a system impracticable in a country so loaded as we are at present; and, in a free state, perhaps would be unjust: for there the poor have rights to which they are entitled as well the rich; and they ought to pay for the privileges they enjoy.⁶⁷

1833: Sayer

In 1833 the charitable purposes exemption came under attack by Benjamin Sayer who considered that:

⁶¹ Beeke, above n 51, 137.

⁶² Beeke, above n 51, 153.

⁶³ Beeke, above n 51, 153.

⁶⁴ John Sinclair, *The History of the Public Revenue of the British Empire* (3rd ed, 1804) vol III.

⁶⁵ Sinclair, above n 64, App. 1, 61.

⁶⁶ Sinclair, above n 64, App. 1, 62.

⁶⁷ Sinclair, above n 64, (1803) vol II (3rd ed.) 368.

[i]n case of an Income or Property Tax upon a high scale, it might become a question whether the funded property of foreigners, also the property of charitable institutions, &c, should be exempted.⁶⁸

Later in his document, Sayer further developed his argument in considering that:

[w]ith respect to charitable institutions, hospitals, &c. it may be alleged on one hand, as their expenditure is subject to the present taxes, that the abolition of them to a large amount might be ground for rendering the property liable in some degree to a substituted Income or Property Tax; on the other hand, it might be the greatest satisfaction that such an impost existed as admitted the possibility of relieving their funds wholly from taxation.⁶⁹

In calculating the likely funds of a future Income or Property Tax, Sayer included a series of schedules based on “the late Property Act,” that of 1814 which expired on 5 April 1815, being “the last year for which Returns and Assessments” were made under that Act.⁷⁰ Under “Deductions, Exemptions and Allowances,” the amount of rents and profits of lands which were exempt “as belonging to charities” were stated at “ $3/5^{\text{ths}}$ of a million pounds”.⁷¹ The amount of dividends of funded property exempted as belonging not only to charities but also to friendly societies, without a breakdown of that figure, was stated at $2/5^{\text{ths}}$ of a million pounds.⁷² To this, we can add “an allowance of Duty to Foreigners, Charities and Friendly Societies.” In another schedule, Sayer stated that the dividends payable to charities, friendly societies and foreigners in 1814 was £1 [and] $1/5^{\text{th}}$ of a million pounds.⁷³ Unfortunately Sayer, who was a civil servant in the Inland Revenue,⁷⁴ did not provide a detailed analysis of those figures.

⁶⁸ Benjamin Sayer, *An Attempt to Shew the Justice and Expediency of substituting an Income or Property Tax for the Present Taxes* (1833) 187.

⁶⁹ Sayer, above n 68, 188.

⁷⁰ Sayer, above n 68, 204.

⁷¹ Sayer, above n 68, 205. Sayer used fractions in order “to avoid a multiplicity of figures and unnecessary precision.” Sayer then contradicts himself by stating that “the fractions used sometime express rather more, sometimes rather less, than the stated amounts.” In avoiding “unnecessary precision,” Sayer’s comment suggests instead imprecision. Sayer, above n 68, 204.

⁷² Sayer, above n 68, 206.

⁷³ Sayer, above n 68, 212.

⁷⁴ Preface to Sayer’s sole work, of 360 pages, of which the first part was also reprinted in D.P. O’Brien, *The History of Taxation* (1999) vol IV 286. In 1845 J.R. McCulloch wrote that Sayer’s work was considered to be “a valuable work.” O’Brien, *ibid* 286.

1863: Hare

In 1863, Thomas Hare, an “Inspector of Charities,”⁷⁵ presented a paper to the National Association for the Promotion of Social Science.⁷⁶ In his paper, Hare argued that it was appropriate that “income from voluntary gifts [being] contributions of mere bounty” should not be taxed.⁷⁷ Neither should the buildings of “Heriot’s Hospital or Donaldson’s Hospital” be taxed.⁷⁸ However, Hare argued:

if one side of Princes Street, or £100,000 in the funds belonged to Heriot’s or Donaldson’s hospitals, in that case, without some special exemption, the collector of taxes would gather the Income Tax from the hospitals’ tenants, and the bank clerk would deduct it from the dividends. *It is property of this kind which in justice it is argued should be dealt with like all other of the same nature.* (Emphasis added.)⁷⁹

The question that Hare then asked was “[w]hy has it not been so dealt with?”⁸⁰ Hare answered his own question, by saying that this was because that “[a]t the time of the introduction of the Income Tax by Pitt, *very little was known of the vast extent of charitable estates.* (Emphasis added.)”⁸¹ If Gilbert’s Returns, although being “imperfect,” had been “digested,” “they would have shown an aggregate gross income, amounting to no more than about half the sum which the State at this day grants yearly for education.”⁸² Because the State did not fund education in 1799, and as it was “the grammar and free schools throughout the country [which] were doing almost the entire work of popular education, ... *it was natural and reasonable in such a state of things to exempt the income of these estates.* (Emphasis added.)”⁸³ This opinion was later echoed by Owen, in 1965, when he wrote that “[w]e can only guess as to the motives that inspired Pitt to include in his Income Tax Act of 1799 a clause exempting charitable organisations, *but it was a natural enough decision.* (Emphasis added.)”⁸⁴ Coincidentally, Owen also used the example of “grammar schools and free schools ... carrying the entire burden of popular education [thereby performing] a public

⁷⁵ ‘The Schools’ Commission’, *The Times* (London), 15 February 1866, Issue 25422 in which Thomas Hare was described as an “Inspector of Charities.”

⁷⁶ Thomas Hare, ‘The injustice and impolicy of exempting the income of property, on the grounds of its charitable or meritorious employment, from the taxation to which other like property is subject’, in George W. Hastings (ed), *Transactions of the National Association for the Promotion of Social Science* (1864) 733.

⁷⁷ Hare, above n 76, 733.

⁷⁸ Hare, above n 76, 733.

⁷⁹ Hare, above n 76, 733.

⁸⁰ Hare, above n 76, 734.

⁸¹ Hare, above n 76, 734.

⁸² Hare, above n 76, 734.

⁸³ Hare, above n 76, 734.

⁸⁴ David E. Owen, *English Philanthropy 1660-1960* (1965) 330.

function of incontestable value.”⁸⁵ Therefore, argued Owen, “[i]t would have been *preposterous* to tax the income of such quasi-public agencies. (Emphasis added.)”⁸⁶ It was arguments such as this that I have been seeking during the Pitt era, but to no avail.

Hare also made further objections to exempting the endowed funds of charitable institutions from tax. First, Hare considered that it was “unjust” that a share of the public tax which properly falls on the estates [of charitable institutions] set apart for their maintenance” should be “throw[en] upon other persons.”⁸⁷ Secondly, Hare argued that “[t]he claimants of [the charitable purposes] exemption ... think they are justly entitled to it, because the State exempts from the tax persons of small incomes [who] are the recipients of these charities.”⁸⁸ “The analogy,” claimed Hare, “wholly fails both in fact and in principle.”⁸⁹

Hare also demonstrates a preference for direct funding by government of charitable activity, as he considered that “if it be proper that the State should contribute of its funds to the establishment of great hospitals, ... let the public aid be given rather to the poorest than to the richest institutions.”⁹⁰ Hare’s greatest objection, and one that was also echoed by Gladstone, was that “[i]t is the constitutional policy of the country that the expenditure of the public money, the produce of general taxation, shall be under the control of Parliament. (Emphasis added.)”⁹¹

By 1863, following the inquiries into charities earlier that century, Parliament finally had at hand detailed information of the resources that the country’s charitable institutions had at their disposal. Hare’s argument that “it is not possible that Parliament, in the conscientious performance of its duties, as the guardian of the public from unnecessary and improper taxation, *can escape the deliberate consideration of this important subject.* (Emphasis added.)” was about to bear fruition.⁹² This statement by Hare indicates that his paper was probably written before April 1863 when, in the House of Commons, Gladstone announced

⁸⁵ Owen, above n 84, 330.

⁸⁶ Owen, above n 84, 330.

⁸⁷ Hare, above n 76, 736.

⁸⁸ Hare, above n 76, 736.

⁸⁹ Hare, above n 76, 736.

⁹⁰ Hare, above n 76, 738.

⁹¹ Hare, above n 76, 739.

⁹² Hare, above n 76, 734.

his challenge on the charitable purposes exemption from Income Tax.⁹³ Is it possible that Hare knew of this forthcoming challenge? If Hare did not, then his premonition was uncanny.

Parliamentary challenges to the charitable purposes exemption from Income Tax

In the debate on the Property Tax Bill on 5 March 1805:

Mr Bankes brought up a clause, to exempt from the payment of this tax all lands, money, or other property, vested in trusts for the use of almshouses, or other charitable purposes only. The Chancellor of the Exchequer said, that he should shortly have occasion to move for leave to bring in another Bill relating to regulations which would give [Bankes] an opportunity of submitting the exemption; but, if he thought proper to offer it now, he did not suppose it would meet with any opposition. The clause was then brought up and agreed to, and the Bill having passed the committee, was ordered to be reported tomorrow.⁹⁴

Banke's proposal was, in the event, adopted as such an exemption is to be found in the Property Tax Bill of that year.⁹⁵ A question was raised by Lord Henry Petty, on 3 June 1806, on the matter of exemptions from taxes, but that was in relation to "persons having small incomes and large families."⁹⁶ In the short debate that ensued, there was no reference to charities. On 17 May, 1811, the question of exemptions to foreigners from the Property Tax was discussed following which a motion was proposed by Mr Howarth on the matter. His objection was that as property which was taxed while in English hands was exempt when transferred to that of foreigners, this situation needed to be rectified.⁹⁷ Howarth avowed that, "so long as he had a seat in the House, he would bring the business forward year after year, till redress was obtained."⁹⁸ Then, on 26 June 1811, Sir Thomas Turton moved a motion that was ultimately lost, "[t]hat this House will, early in the next session of Parliament, take into consideration so much of the Property Tax as relates to contributions and exemptions."⁹⁹ There was no mention of the charity exemption in the ensuing short debate in which Sir

⁹³ 'House of Commons', *Daily News* (London), 17 April 1863, Issue 5285.

⁹⁴ *Cobbett's Parliamentary Debates*, (1805) vol III 711.

⁹⁵ *An Act to repeal certain Parts of an Act, made in the Forty-third Year of His present Majesty, for granting a Contribution on the profits arising from property, professions, trades, and offices; and to consolidate, and render more effectual, the provisions for collecting the said Duties*, 45 Geo. III c. 49 Schedule A No. V [5 June 1805].

⁹⁶ *Cobbett's Parliamentary Debates*, (1806) vol VII 514.

⁹⁷ *Cobbett's Parliamentary Debates*, (1811) vol XX 205.

⁹⁸ *Cobbett's Parliamentary Debates*, above n 97, 206.

⁹⁹ *Cobbett's Parliamentary Debates*, above n 97, 747.

Thomas' concerns were of the "oppressive [nature of the Income Tax] on many classes of society."¹⁰⁰

During his debate in 1863, Gladstone had made two references to the matter of the exemption of charities from Income Tax having been raised in the House in the past. First, Gladstone mentioned Sir John Newport, who, on 23 January 1812, "moved for leave to introduce a Bill to exempt all bequests for charitable purposes from that duty."¹⁰¹ Gladstone considered this to have been "the only declaration that I have been able to find, although others may possibly have been more fortunate in their researches."¹⁰² Sir John had indicated his intentions:

for leave to bring in a Bill to exempt from payment any duty on legacies on all [sic] bequests for the education or maintenance of any poor children, or for the support of widows or other poor persons, or for the support of any charitable institution, within the United Kingdom; and also from the payment of duty on advertisements any advertisement or notice of any meeting to be held for such charitable purposes, or of the receipt of subscriptions or donations on such an account.¹⁰³

After the Chancellor of the Exchequer had expressed his disapproval of "[recognising] the policy of encouraging bequests of the description alluded to, because any person on his death-bed might give to a charity that portion of his property which his immediate relations were entitled to,"¹⁰⁴ the motion was lost. As for the issue of the advertisements, the Chancellor considered that to do as Sir John had suggested would have been an interference with their business activities of the publishers of such advertisements.¹⁰⁵

In 1830 the rating of charities was raised during the debate on the Charitable Institutions Bill.¹⁰⁶ Alderman Thompson, in moving the second reading of the Bill, argued:

that charitable institutions were exposed to very great hardships, and the designs of the benevolent were defeated to a very great extent, in consequence of the right assumed by parochial authorities, of making an assessment for Poor Rates upon property that was, and ought to be, exclusively devoted to charitable purposes.¹⁰⁷

¹⁰⁰ *Cobbett's Parliamentary Debates*, above n 97, 747.

¹⁰¹ Hansard, *Parliamentary Debates*, (1863) vol CLXX 1074

¹⁰² Hansard, above n 101, 1074.

¹⁰³ *Cobbett's Parliamentary Debates*, (1812) vol XXI 319.

¹⁰⁴ *Cobbett's Parliamentary Debates*, above n 103, 319.

¹⁰⁵ *Cobbett's Parliamentary Debates*, above n 103, 319.

¹⁰⁶ Hansard, *Parliamentary Debates* (1830) (3rd Series) vol 1 809.

¹⁰⁷ Hansard, above n 106, 809.

Bethlehem Hospital was quoted as an example of a charity being charged to Poor Rates, at a rate of “£2,500 a year,” but the trustees, having appealed first to the Magistrates in Quarter Session, and then “to the humanity and justice of the Parochial Authorities,” found that no remission from the rate would be provided.¹⁰⁸ While the Alderman denied that “the charity in question had accumulated property to the amount stated in the petitions presented against the Bill,” to which Mr Calvert, the presenter of the petition, argued that the hospital’s trustees “had realised property from their surplus income to the amount of £14,000.”¹⁰⁹ With the rate being 9*p* in the pound, which both Guy’s and St. Thomas’s hospitals paid, Calvert “did not see why Bethlehem was to be excepted.”¹¹⁰ Sir R. Wilson opposed the Bill as being “unjust in its principles.”¹¹¹ But with the comment that thirty of the 130 acres, or nearly a quarter of the land area which comprised the district of St. George’s, being attributed to him, therefore the rating burden would have to be spread very heavily on the remaining tenants, did not seem to have concerned him. Calvert had based his argument on the fact that, “[as] so large a portion of the parish was occupied by hospitals, that unless they were rated the rates collected would be trifling.”¹¹² Mr Wilks believed “that all charitable institutions should be liable to pay rates, and he did not see any good reason why the hospitals in St. George’s parish should be exempted from that rule.”¹¹³ The vote on the Charitable Institutions Bill having been taken, with a majority of 34 against, it was lost on its Second Reading.¹¹⁴

In his research into debate on the charitable purposes exemption from Income Tax, Gladstone also seems to have overlooked a question in the House on 18 March 1842, when Mr T. Duncombe had stated that:

[he] was aware that in the metropolis, and throughout the country, persons possessed funded or landed property, derived from bequests, on which 10 per cent of duty had already been paid. [Would] income arising from such sources be liable to [Peel’s] proposed Income Tax?¹¹⁵

One can only surmise as to what Gladstone would have made of Peel’s reply, which was:

¹⁰⁸ Hansard, above n 106, 809.

¹⁰⁹ Hansard, above n 106, 809.

¹¹⁰ Hansard, above n 106, 809.

¹¹¹ Hansard, above n 106, 809.

¹¹² Hansard, above n 106, 809.

¹¹³ Hansard, above n 106, 810.

¹¹⁴ Hansard, above n 106, 810. The votes were: “For,” 36; “Against,” 70.

¹¹⁵ Hansard, *Parliamentary Debates* (1842) (3rd Series) vol LXI 838.

that it was not intended that the incomes of charitable institutions, whether derived from rents of land, or from dividends payable by the public securities, should be subjected to the Income Tax, provided always such incomes were applied to strictly charitable purposes. He apprehended, however, that salaries of officers attached to charitable institutions would be subject to the proposed impost. But when the money was applied to *bonâ fide* charitable purposes, then no Income Tax would be exigible (sic) on revenue derived either from the funds or rents of land.¹¹⁶

The issue of the rating of charities was raised again in 1858. During the debate of 4 May 1863 on Gladstone's proposal to remove the charitable purposes exemption Mr Locke informed the House that:

this was not the first attempt to tax charities, for in 1858 the then President of the Poor Law Board, (Mr Sotheron Estcourt), *proposed to rate charities to the poor and other parish rates*, and that proposal was supported by [the] Hon. Gentleman opposite. He thought, therefore, that [the] Hon. Gentleman opposite need not express quite so much indignation against the present proposal. *Charities might, he thought, be properly subject to the Income Tax; but there was great difficulty in distinguishing between those which ought to pay it in full and those which should only be liable to a diminished rate*; and as the Chancellor of the Exchequer's present proposition did not do that, he was not disposed to support it. (Emphasis added.)¹¹⁷

The debate on 4 May was not the first instance that Gladstone had intimated to the House of Commons that he intended to challenge the charitable purposes exemption from Income Tax. On 17 April 1863, the date that Gladstone brought forward his financial statement, Gladstone advised the House that with respect to charitable institutions:

[t]he duty on charitable legacies in Ireland would be assimilated to that of England, [and that] *he proposed to do away with the exemption from Income Tax of endowed charities*, though it would be continued so far as buildings and sites were concerned. The income of voluntary societies would not be in the least affected by the proposed change. It was calculated that this change would produce £75,000 on the revenue of the present year which, with other items, would be added to the surplus. (Emphasis added.)¹¹⁸

The report of Gladstone's speech in the *Daily News* noted that Gladstone "concluded [his speech] amidst loud cheers, having spoken nearly three hours."¹¹⁹ What then followed is interesting to read, so many years later. I expected to find expressions of disagreement about

¹¹⁶ Hansard, above n 115, 838.

¹¹⁷ Hansard, above n 115, 1134.

¹¹⁸ 'House of Commons', above n 93.

¹¹⁹ House of Commons', above n 93.

Gladstone's intention to tax charitable institutions, but instead "a desultory discussion followed," during which a number of the members of the House of Commons took part.¹²⁰ Then, "a resolution relating to the duty on chicory was put and agreed to, and the House resumed."¹²¹ Not one word was spoken against the proposal to tax charitable institutions.

Gladstone's challenge to the charitable purposes exemption from Income Tax

The Taxation of Idiots

Speaking of the proposed extension of the Income Tax to the revenues of public charities, the Chancellor of the Exchequer is reported to have said:- "as regards voluntary subscriptions, these are entirely outside the proposals of the government, and will be unaffected by them." So the incomes of charitable institutions will be exempt from Schedule D. The funds destined to succour the sick, the halt, and the blind, are to be taxed without mercy, but not without justice. The precarious income of an infirmary supported by voluntary contributions is not to be subjected to the same subtraction as the revenue of an endowed hospital. We spy amendment of principle in Mr Gladstone. It is, however, very cruel to impose any Income Tax whatever on the means of relieving indigent misery. As The Times, with just indignation asks:- "Are we to tax the cure of typhus and small-pox, and levy an impost on every case of cancer or consumption? Are we to make the blind pay, the deaf and the dumb pay, the idiots pay?" The question last-quoted relates of course to idiots confined in an asylum for them. Those who are at large do not need to be made to pay. They pay their Income Tax – though levied on their earnings – willingly. They are the only people to do so.

Punch, or The London Charivari

9 May 1863, 195.

The most significant challenge to the charitable purposes exemption from Income Tax during the Nineteenth Century was that of William Ewart Gladstone, the Chancellor of the Exchequer, during May 1863. The reason for his attempt to remove the charitable purposes exemption from Income Tax is all the more astounding once one realises that it was not for the want of more revenue for the Government. As the Government's revenue for 1862-63 had been estimated at £70,190,000, with expenditure of £70,040,000, the editors of *The Times* considered that they were "justified in the belief that the Chancellor of the Exchequer will, after all, have an excess of revenue over estimated expenditure for the year 1863-4 of about £3,000,000 available for the reduction of taxation."¹²²

'Taxation of charities' – the deputation of 4 May 1863

Gladstone's attack on the charities was without precedent. While he ultimately failed in his attempt to have the charitable purposes exemption from Income Tax removed, he put up a

¹²⁰ House of Commons', above n 93.

¹²¹ House of Commons', above n 93.

¹²² [Editorial], *The Times* (London), 3 April 1863, 6.

strong case in the face of a well-orchestrated campaign by the charities of London which was as unprecedented as his own behaviour. Neither did Gladstone find support for his position in the House of Commons. The measure of the mood of the charities is to be found in *The Times* of Monday 4 May 1863, in which a notice was published by the deputation who appeared before Gladstone, justifying the continuation of the charitable purposes exemption from Income Tax.¹²³ The deputation was comprised of at least eighty-one persons, headed by the Lord Bishop of London and the Lord Bishop of Bath and Wells, with members of Parliament acting in their own right as well as members representing charities, and representatives of the charities. From what we know of the size of the charity sector at that time, this does not appear to be a great number. There may well have been many others who had intended attending as the notice in the newspaper stated that apologies, due to “unavoidable engagements,” had been received. The notice of the deputation and the justification for the continuation of the exemption was published as follows:

TAXATION OF CHARITIES – A Deputation will wait This Day, May 4th, on the Right Hon. the Chancellor of the Exchequer, at 3 o’clock precisely, at his official residence, in Downing-street, respectfully to urge the withdrawal of his proposed measure for extending the Income Tax to Charities. F.M. H.R.H. the Duke of Cambridge, K.G., President of Christ’s Hospital, &c., has graciously consented to head the deputation; and will be supported by His Grace the Lord Archbishop of Canterbury and the Archbishop of York. The following noblemen, gentlemen, clergymen of the Established Church, ministers of various denominations, and representatives of charities have also intimated their intention to attend, and it is confidently expected that many other gentlemen will be present on an occasion in the successful result of which so deep an interest is felt.

[Names of the members of the Deputation.]

Several communications have been received from noblemen and gentlemen, regretting that unavoidable engagements alone prevent them from accompanying the deputation.

By Order, J. Gurney Hoare, Chairman of Committee

No. 7, Whitehall, S.W., May 2, 1863.

EXTENSION OF INCOME TAX TO CHARITIES

REASONS AGAINST THE MEASURE

1. Because the charitable institutions of the country, whether founded for the relief of the sick, the support of the widow and orphan, the education of the young, or the religious instruction of the untaught and neglected, are of inestimable value to the community.
2. They have their source in that Christian religion which is engrafted into, or rather forms the basis of, the Constitution of the kingdom, and, independently of the benefits which they confer upon the hundreds or thousands, or, more correctly perhaps, the millions upon whom their revenues are expended, they conduce to draw down the blessing of God upon the whole nation.
3. These institutions have consequently uniformly enjoyed the patronage of our Sovereigns, to whom a large portion of them are indebted for their origin, and they have always heretofore had the support and encouragement of the Legislature.

¹²³ ‘Taxation of Charities – A Deputation’, *The Times* (London), 4 May 1863, 5.

4. **The origin of the exemption of charity property from Income Tax is accordingly contemporaneous with the origin of the tax itself. The exemption was maintained by Pitt during the severest pressure of war, was renewed by Peel when combating with the embarrassments of financial reform; and has been cheerfully acquiesced in, during the hardest of times, by all classes of the peoples [sic].**
5. The exemption in question would, therefore, be as wise as it is humane, even if it were the only one that existed. But, when other exemptions of a similar but less urgent character are not merely maintained but extended, the withdrawal of this exemption from charities would be a measure not simply of much hardship, but of great injustice. Yet such is the purport of the Bill before the House, which, whilst in other cases it exempts altogether from taxation incomes from property under £100 a year, and imposes a reduced charge up to £200, subjects to taxation at the highest rate every dole or allowance, however small, which is received through the channel of a charitable endowment.
6. The hardship and injustice of the case are obviously the same, whether the income of the charity is distributed in money or in money's worth; whether, that is, the money is expended by the recipients, or laid out for them by the distributor.
7. It is the same, also, whether the result of the imposition of the tax upon a charity be to diminish the amount of aid to each recipient, the number assisted remaining unchanged, or to diminish the number of persons relieved, the amount of the individual assistance being kept up; whether, that is, the pressure be spread over the whole, or concentrated upon a part.
8. If it be urged that direct taxation is a substitute for indirect, and that recipients of charitable relief, having the benefit of a reduction in the latter, ought to be subject to the imposition of the former, the answer is, that, by the admission of the promoters of the Bill themselves, this argument is not allowable in the case of persons having less than £100 per annum; clearly, then, it ought not to be listened to, when urged against the unfortunate objects of charitable institutions.
9. The like answer applies to arguments founded upon the protection afforded by the state to the properties of charities, and upon the improvement which such property is alleged to have derived from the recent course of financial legislation. In all other cases, however improved and however protected the property of an individual may be, so long as it yields an income below £100 per annum, it is conceded that these benefits afford no sufficient ground for the imposition of Income Tax. The same plea is urged in favour of the more needy recipients of charitable relief.
10. In fact, the augmentation of the income of charitable institutions, to whatever cause it be attributable, is not proportionate to the extension of the demands upon that income arising out of the increase in the population.
11. To sum up the whole case, *the exemption contended for is founded upon principles of humanity and policy*, which the very Bill by which it is proposed to be taken away emphatically maintains. It is sanctioned by long usage and by the authority of the most distinguished statesmen. Its withdrawal is required by no State necessity, and is not demanded by the voice of public opinion. It cannot be carried out under the existing Bill without a manifest and cruel inconsistency, and, whilst causing a large amount of individual suffering, it will bring in an insignificant gain to the national treasury. (Emphasis added.)¹²⁴

¹²⁴ *The Times*, above n 123, 5.

These “Reasons against the Measure” explain very clearly the basis on which the charities justified their exemption from Income Tax. Their reasons can be seen as a continuum ranging from a Christian perspective to that of social policy, as well as having an over-lying historical basis through long useage and the support of the likes of Pitt, Addington, and Peel, as well as Royal patronage through the granting of charters, for example to the Royal hospitals. While the “Reasons against the Measure” do not directly discuss the historical origins of the charitable purposes exemption, the fourth clause which states that charitable institutions have always had the support and encouragement of the legislation, indicates a strong precedent for the continuation of the exemption.

What the petition did not mention was the practice of the Special Commissioners, in particular Mr Fuller, in dealing with claims for refunds and the basis of his decisions in those applications. On 26 June 1851 Fuller had informed the Select Committee on the Income and Property Tax that in the course of the year the Special Commissioners had dealt with 3,334 cases,¹²⁵ which had resulted in refunds of the Income and Property tax of £24,960.¹²⁶ Perhaps the deputation did not want to remind the Chancellor of the Exchequer to the extent to which refunds were made by the Special Commissioners.

The *Times* of 5 May 1863 filled almost two columns with petitions from charities against the proposal,¹²⁷ and also ran an editorial of the same length, in which the deputation was described as being “one of the most influential deputations, and certainly one of the most numerous that have ever attended at any official residence.”¹²⁸ Gladstone remarked, “in his brief reply to the arguments of the various speakers, [that] the whole proceeding more resembled a public meeting than any deputation he had ever seen or heard of.”¹²⁹ The room was so densely crowded with members of the deputation such that “the Right Hon. Gentleman never succeeded in penetrating [past the doorway] during the remainder of the rather brief proceedings.”¹³⁰

¹²⁵ British Parliamentary Papers, *Select Committee on the Income and Property Tax* First Report 354, 592.

¹²⁶ British Parliamentary Papers, above n 125, 592.

¹²⁷ *Parliamentary Intelligence*, House of Commons, ‘Petitions,’ *The Times* (London), 5 May 1863, 7.

¹²⁸ [Editorial], ‘Proposed Taxation of Charities,’ *The Times* (London), 5 May 1863, 10.

¹²⁹ [Editorial], above n 128, 10.

¹³⁰ [Editorial], above n 128, 10.

The Duke of Cambridge, as president of Christ's Hospital, explained that the hospital would be liable to a tax of "nearly £2,000 a year," should the Bill become law.¹³¹ The *Daily News* also carried a report of the deputation, and credited the Duke as having said to Gladstone that:

[w]e would further venture to remind you *that this is the introduction of a new principle*. When the Income Tax was first established by Pitt charities were exempt, and the tax was many years afterwards re-introduced by Peel, *that exemption was recognised and continued*. We cannot forget, likewise, *that Mr Pitt's time was one of great financial pressure, and as we do not think that any such pressure [now] exists*, and as the introduction of this entirely new principle seriously affects us as regards our power for usefulness, we believe that we are justified in making a straight remonstrance against it, and earnestly hope that you will take the matter into your favourable consideration. (Emphasis added.)¹³²

Mr Turner, Treasurer of Guy's Hospital, who read out the memorial which had been published in *The Times* of that day, was followed by the Archbishop of Canterbury, who expressed his concerns over the proposal, then Mr Cubitt "on behalf of that great charity, St. Bartholomew's Hospital."¹³³ Mr Cubitt held that St. Bartholomew's "would have to pay Income Tax on £34,000 or £36,000 a year."¹³⁴ Other speakers also argued their respective cases, and in his reply, Gladstone:

said that he was not quite sure he entirely understood the purpose of that public meeting, rather than deputation, with the attendance of which that day *he had been honoured beyond all precedent in the history of the high office he unworthily filled*. As far as it was a meeting for reasoning, he thought they would quite agree with him that it was essentially a meeting for reasoning only on one side, and the circumstances of the case made it almost impossible for him to state to them the reasons which had induced Her Majesty's Government to frame the proposal which it would be his duty that night to submit to the House of Commons as strongly as he could. ... But he might also frankly state that Her Majesty's Government were persuaded *that the whole case had not been brought before the public mind; nor, judging from the address he had heard that day, and the memorial which had been read to him, had it been fairly brought before the minds of those present*. His conviction was, in fact, increased that the question had not been fully understood. (Emphasis added.)¹³⁵

After leaving the presence of the Chancellor, "many of the members ... adjourned to the Westminster Palace Hotel to consider what further steps it might be expedient to take to

¹³¹ [Editorial], above n 128, 10.

¹³² 'The proposed taxation of charities', *Daily News* (London), 5 May 1863, Issue 5300.

¹³³ [Editorial], above n 128, 10.

¹³⁴ [Editorial], above n 128, 10.

¹³⁵ [Editorial], above n 128, 10.

prevent the passing of the Bill.”¹³⁶ After discussing a question that Gladstone had put to the deputation, and not being able to arrive at a decision as to what Gladstone had meant, they agreed “that, in the event of the Bill not being withdrawn, they should meet again at 3 o’clock on Wednesday at the Westminster Palace Hotel to consider what ought to be done under the circumstances.”¹³⁷ The question which Gladstone had asked, and which had so perplexed the deputation, was:

whether he was to understand that what the deputation desired was that, with respect to the infinite diversity of bequests of different kinds [as Gladstone had described them], hospitals, or others falling within the category of charities for the purposes of the Income Tax, it was their desire that Parliament should continue the present exemption from Income Tax of all kinds, and so make itself a partner in the wants at the present, and maintenance in the future, of all such so-called charities[?]¹³⁸

In the event, the deputation did not need to meet again, as Gladstone was ultimately unsuccessful in his challenge, as we shall shortly see.

Gladstone’s challenge as reported by his biographers

Gladstone’s challenge to the charitable institutions was described by Reid in these words:

But there was another and more serious item in the Budget [of 1863]. An end was to be put to the exemption hitherto granted to charities under the Income Tax Acts. When it became obvious that a serious blow would be levelled at comfortable dinners and social functions and pleasant privileges and family patronage, a great outcry was raised. Virtuous and aristocratic indignation swelled and swelled until at last it burst upon the devoted head of the Chancellor of the Exchequer in a deputation headed by a Royal Duke, an Archbishop, many peers, temporal and spiritual, and other ornaments of society. Mr Gladstone, however, was convinced, not that he was wrong, but that he was unappreciated and misunderstood: and that same night he determined to persuade the House:-

“One of the great evils of the present system with respect to charities is, that while we bestow public money on these establishments, we dispense with all public control over them; and we thus annul all effective motives for economical management. Endowed institutions laugh at public opinion. There is no public opinion brought to bear upon them. The Press knows nothing of their expenditure. Parliament knows nothing of it. It is too much to suppose that hospitals are managed by angels and archangels, and that their governors do not, like the rest of humanity, stand in need of supervision, criticism, and occasional rebuke. I do not speak of malversation and corruption. I speak of the innumerable shades which separate good and thrifty from bad and wasteful management. Therefore, even in the case of St. Bartholomew’s, I object to an

¹³⁶ [Editorial], above n 128, 10.

¹³⁷ [Editorial], above n 128, 10. Gladstone had asked “whether he was to understand that what the deputation desired was that, with respect to the infinite diversity of bequests of different kinds [as Gladstone had described them], hospitals, or others falling within the category of charities for the purposes of the Income Tax, it was their desire that Parliament should continue the present exemption from Income Tax of all kinds, and so make itself a partner in the wants at the present, and maintenance in the future, of all such so-called charities[?]”

¹³⁸ [Editorial], above n 128, 10.

exemption which by its very nature at once removes the principal motives for economical management. When the managers tell me that the exaction of £850 will compel them to dismiss 500 patients, I am entitled to ask: Why then do you expend £220 in a feast? Your 'cases' of patients are estimated to cost some thirty shillings each; what right have you to eat up in an hour 150 beds?"¹³⁹

Reid considered that Gladstone had proceeded on the basis that:

a State exemption is equivalent to a State donation, and that charities controlled by private corporations are not proper objects for contributions from the taxes. ... what a man can afford to give in charity, he ought to give during his lifetime. "What a man gives on his death-bed is not charity in a high sense ... it is not wise for the State to encourage death-bed bequests."¹⁴⁰

Gladstone, realising that he had lost his challenge, having seen that "the House was against him, and knowing that most of his colleagues were lukewarm or hostile, withdrew his proposal."¹⁴¹ However, Gladstone had made his point, as Reid observed that "[a] notice had gone out that institutions which would not reform themselves would soon be reformed in spite of themselves."¹⁴² It must also be kept in mind that this event occurred only ten years after the passing into law of *An Act for the better administration of Charitable Trusts*.¹⁴³

Morley's 1903 bibliography on Gladstone also referred to the issue of the charitable purposes exemption from Income Tax, noting that Gladstone's attempt to remove the exemption was "[o]ne of the few failures of this active and fruitful period."¹⁴⁴ Morley wrote that Gladstone, in his diary, spoke of "his deadly encounter with the so-called charities. I was endeavouring to uphold the reality of truth and justice against their superficial and flimsy appearances. Spoke from 5.10 to 8.20, with all my might, such as it was."¹⁴⁵ Gladstone's speech was considered:

by good judges who heard it, to be among the two or three most powerful that he ever made, and even today [wrote Morley] it may be read with the same sort of interest as we give to Turgot's famous disquisition on Foundations. It turns a rude searchlight upon illusions about charity that are all the more painful to dispel, because they often spring

¹³⁹ Sir Wemyss Reid, *The Life of William Ewart Gladstone* (1899) 439.

¹⁴⁰ Reid, above n 139, 440. Reid's footnote states: "Cf. Hansard, 4 May 1863, and for a corrected version – many of the corrections and additions are curious and interesting – 'Gladstone's Financial Statements,' pp. 426-462."

¹⁴¹ Reid, above n 139, 440.

¹⁴² Reid, above n 139, 440.

¹⁴³ *An Act for the better administration of Charitable Trusts* 16 & 17 Vict. c. 137 [20 August 1853].

¹⁴⁴ John Morley, *The Life of William Ewart Gladstone* (1903) 65.

¹⁴⁵ Morley, above n 144, 65.

from pity and from sympathy, not the commonest of human elements. It affects the jurist, the economist, the moralist, the politician. The House was profoundly impressed by both the argument and the performance, but the clamour was too loud, all the idols of the market-place and the tribe were marched out in high parade, and the proposal was at last dropped. (Emphasis added.)¹⁴⁶

Gladstone's speech, however, is worthy of a much closer examination, for it contains elements which are as applicable today as in 1863. There are two sources of the speech, that in the *Hansard* of the day, and another version published in Gladstone's *Financial Statements*.¹⁴⁷ It is apparent that Gladstone's intentions were well known before he gave his speech in the House on 4 May as, on 23 April, Sir Henry Willoughby had stated in the House that:

there was a question of some importance to which he wished to call the attention of the Chancellor of the Exchequer. *The Right Hon. Gentleman proposed to obtain a proportion of his revenue for the year by a tax on charitable institutions.* Having been applied to for information by persons connected with some of those bodies, [Willoughby] wished to know in what shape the Right Hon. Gentleman proposed to raise that question. The matter was a serious one to those institutions, many of which were not in a very flourishing state, owing, among other causes, perhaps, to the diversion of the stream of charity to the cotton districts. He was told that the new impost would take yearly no less a sum than £1,500 or £1,600 from the funds of one at least of the larger hospitals. Their case ought, therefore, to be fairly considered. (Emphasis added.)¹⁴⁸

In reply, the Chancellor of the Exchequer stated that:

in answering the question of the hon. Baronet he should not enter into any of the particulars to which he had referred. Further than to say than an institution which would have to pay £1,500 or £1,600 a year must be in the receipt of between £50,000 and £60,000 annually, and therefore was not entirely without the means of taking some share in the public burdens. *His proposal was a proposal which would go in modification of certain clauses of the Income Tax Act, and he had no choice but to raise the question by Bill.* He would seek to pass a general Resolution that night, and to have it reported on the following night. If that were done, the Bill would be in the hands of Members and open to the view of the public on Saturday morning. The hon. Baronet could then gather from the clauses, which would not be very long or very complicated, the nature and effect of the enactments

¹⁴⁶ Morley, above n 144, 65. Anne Robert Jacques Turgot, Baron de L'Aulne (1727-1781). Turgot's "disquisition," *On Foundations*, written in 1757, is as relevant to charities today as it was then and in 1863. See Keith Michael Baker (ed.), *The Old Regime and the French Revolution* (1987) 89.

¹⁴⁷ See Reid, above n 139, 440; "Gladstone's Financial Statements," [year?] 426-462.

¹⁴⁸ *Hansard*, above n 101, 600.

contemplated by the Government, and in Committee or at any subsequent stage of the Bill he would be ready to answer specific questions. (Emphasis added.)¹⁴⁹

Later that same sitting the matter of the Income Tax was raised, by way of resolution, resulting in lengthy debate concerning the nature of the tax. It was a Mr Hubbard who raised the issue of the taxing of charities, in a lengthy and emotional response to the Chancellor's intentions. It is obvious that Hubbard had heard, or read, of Gladstone's opinions regarding charities as Hubbard did not consider that Gladstone was:

fairly depicting the origin and nature of these charitable endowments. The description which [Gladstone] had given of the vanity of those who made charitable bequests, desiring to have their names painted up in big letters, and the selfishness of the administrators who feasted in the name of charity, was not at all true of either class.¹⁵⁰

It is notable that Gladstone did not make such comments in the House until 4 May, when he referred to those who left death-bed bequests as endeavouring "to immortalize themselves as founders,"¹⁵¹ and to the managers of St. Bartholomew's with their feasting.¹⁵² Hubbard continued his objections to the proposal by providing an example of how the tax would affect the Patriotic Fund, a fund of £1,500,000 which provided revenue from securities of £75,000 a year which it expended in full for "the maintenance of the widows and the education of the orphans of the brave soldiers and sailors who fell in the Crimea."¹⁵³ The tax would "entail a loss of £1,500 a year upon the annual interest of its property ... [with] a further tax of £800 [being] levied [on] terminable securities."¹⁵⁴ Having been "mulcted by the Chancellor of the Exchequer," the trustees would have no option but to "dismiss children from the schools, deprive widows of their pensions, or ask the Queen to allow subscriptions to be recommenced under her patronage for the purpose of restoring the amount so abstracted from the fund."¹⁵⁵ Hubbard was not concerned with the £2,300 mentioned above, but that "no less than a sum of £50,000 would be taken, prospectively, by the repeal of this exemption, supposing the Income Tax to endure for a certain number of years."¹⁵⁶ Before addressing other matters of finance that concerned him, Hubbard concluded that "[h]e really must submit that charities were not

¹⁴⁹ Hansard, above n 101, 601.

¹⁵⁰ Hansard, above n 101, 630.

¹⁵¹ Arthur Tilney Bassett, *Gladstone's Speeches* (1916) 317.

¹⁵² Bassett, above n 151, 337.

¹⁵³ Hansard, above n 101, 631.

¹⁵⁴ Hansard, above n 101, 631.

¹⁵⁵ Hansard, above n 101, 631.

¹⁵⁶ Hansard, above n 101, 631.

fitting subjects for taxation, and that the operation of the proposed change, as illustrated in the case of the Patriotic Fund, could not be satisfactory to this House or to the country.”¹⁵⁷

Gladstone was not a lone voice on the issue of the taxation of charities for another member of the House, Mr Marsh, said that:

[h]e was sorry to differ from his hon. Friend opposite (Mr Hubbard). It was right that [charities] should be taxed. Some of them were founded many years ago by men, who, at that time, were in advance of their age; but in process of time these charities became behind the age, and in many instances they were not only useless but positively hurtful.¹⁵⁸

Gladstone’s reply was that:

[w]ith regard to the subject of charities, the proposal of the Government was not as yet before the House; and when it was, he would venture to say that it could be shown that the case of the Patriotic Fund was totally beside the general question; nor was there any parallel to it in the whole range of the charities of the country.¹⁵⁹

Colonel Sykes stated that “[h]e regretted that [Gladstone] proposed to tax the charities of the country,” while Lord Robert Cecil desired to know “whether the charitable clauses would be included in the one tax Bill,” to which Gladstone replied that “they all belong to the Income Tax Act.”¹⁶⁰ That was not the end of questions about Gladstone’s intentions regarding charities as, when the debate had moved on to the tax on individuals, the questions continued. Mr Henley wanted to know what was the case with a master of a grammar school, who received a salary of £100 or £150 a year and who also took in boarders:

[which would] thus ... increase his income to an amount above £200 a year; how could [the master] escape paying Income Tax twice over? [Unless] a charity whose income was under £100 a year [was] exempt from Income Tax altogether ... a charity would be placed on a worse footing than an individual person.¹⁶¹

¹⁵⁷ Hansard, above n 101, 631.

¹⁵⁸ Hansard, above n 101, 633.

¹⁵⁹ Hansard, above n 101, 635.

¹⁶⁰ Hansard, above n 101, 635.

¹⁶¹ Hansard, above n 101, 645.

Gladstone replied that “he did not look upon charities as persons. He did not see that a charity had any analogy whatever to a person, and therefore would not be treated as such.”¹⁶² Gladstone considered that, as the smaller charities “imposed a great deal of trouble and expense on the State ... he was of the opinion that it was upon them [that] it was most fair that the tax should fall.”¹⁶³ Mr Henley then introduced another issue into the debate, that of the Charity Commissioners:

[who] were forcing all the charities to regulate their affairs ... Those [small] charities did not possess large balances in hand ... and if [Gladstone] were to put his claw into the dish, as he proposed, he would be subjecting them to a great burden.¹⁶⁴

Gladstone’s response was two-fold: that “the charities in question were not by any means a special object of taxation, [and,] he might add, [he] was disposed to put his claws into their till, not their dish.”¹⁶⁵ Gladstone differentiated between small, medium and large charities, as well as death-bed bequests, and the thrust of his argument was related to each of those. This is more apparent in his speech on 4 May, but, even though other issues were under discussion, the matter of the charities was raised, it would appear, at every opportunity by members of the House. Even the “smallness” of a charity would not exempt it from the tax, Gladstone explained, when he was asked whether “small parochial charities left for the benefit of the poor” would be subject to Income Tax.¹⁶⁶ Sir Stafford Northcote attempted to come to Gladstone’s rescue, by suggesting that Gladstone’s “proposals ... could be more conveniently discussed when the Bill in which they were embodied came before the House.”¹⁶⁷ Gladstone “promise[d] that ample opportunity for the discussion of those provisions at the proper stage should be afforded.”¹⁶⁸ But still the terriers would not let up. Mr Lygon wanted to know:

in what form the questions of those exemptions would be raised. ... what was the amount which would be derived from the non-exemption of these charities. ... [As] nine-tenths of the charities belonged to the Church of England, ... that was a signal proof of the benefit conferred on the Church of England by [Gladstone.]¹⁶⁹

¹⁶² Hansard, above n 101, 646.

¹⁶³ Hansard, above n 101, 646.

¹⁶⁴ Hansard, above n 101, 646.

¹⁶⁵ Hansard, above n 101, 646.

¹⁶⁶ Hansard, above n 101, 647.

¹⁶⁷ Hansard, above n 101, 647.

¹⁶⁸ Hansard, above n 101, 647.

¹⁶⁹ Hansard, above n 101, 647.

Gladstone was later to take exception to the inference that he favoured the Church of England over the State, but for now he replied that:

[Lygon] would excuse him if he made no reply to the last observation [but] as to the amount to be derived from the abolition of the exemption, he estimated it at about £100,000 a year [and] there would be ample opportunities of discussing the question on the clauses of the Bill.¹⁷⁰

It was now the turn of Mr Ayrton, who likened the charities to “railway companies, [which] were corporations, and their aggregate revenue did not affect individual exemptions. If that were so, the propositions to tax charities came to nothing, and would add nothing to the revenue.”¹⁷¹ Mr Selwyn considered that charities could be divided into three classes:

[small] charities, ... almshouses [for which] [b]y the present law the Income Tax was first paid, and then returned, upon showing that no single person received £100 a year. The third class included hospitals, where all the benefit was in goods, and no-one received anything like £100 a year. [Did Gladstone intend] to include in the withdrawal of exemption either or all of these classes?¹⁷²

Gladstone “thought that he had made his meaning clear, and he was reluctant to restate what he had before said on the subject. ... For further explanations he hoped hon. Members would wait until the clauses had been printed.”¹⁷³ But still the questions came, next from Mr Henley, followed by Mr Baring after Gladstone had replied to Henley, on the tax liability of trustees.¹⁷⁴ Finally the resolution was agreed to and the debate on the matter ended for that day at least, for by then it was past midnight. However, on 27 April, being “only a few minutes from midnight,”¹⁷⁵ on the Second Reading of the Customs and Inland Revenue Bill No. 91, Gladstone stated “that the novelty in the Bill had reference to charities and by all means ought to be fully discussed.”¹⁷⁶ Apart from the time, and objections to debating such an important issue at that hour, there was another problem. This was drawn to the attention of the House by Lord Robert Cecil who, in objecting to proceeding with the Second Reading, considered that “the print of the Bill had not been sufficiently long in the hands of

¹⁷⁰ Hansard, above n 101, 647.

¹⁷¹ Hansard, above n 101, 648.

¹⁷² Hansard, above n 101, 648.

¹⁷³ Hansard, above n 101, 648.

¹⁷⁴ Hansard, above n 101, 648.

¹⁷⁵ Hansard, above n 101, 850.

¹⁷⁶ Hansard, above n 101, 850.

Members.”¹⁷⁷ Commonsense prevailed and the Second Reading was deferred until the following day.

However, it was not until 30 April that the Bill was read a second time.¹⁷⁸ It was during the debate on that day that it became apparent that concerns about Gladstone’s intentions were wide-spread, as the debate was dominated by the issue of the taxation of charities. Gladstone had yet to describe his proposal to the House in detail, yet the members of the House persisted in raising questions about the matter. Lord Robert Cecil lead the charge, with an attack on the procedural methods he alleged that Gladstone had employed to have the clauses included in the Bill, in spite of having had “an intimation from the highest authority that [his] objection would not hold.”¹⁷⁹ Cecil observed that:

the extreme importance of a measure which proposed for the first time in our history to tax charitable funds devoted to the sustenance of the poor ... was not a mere removal of an exemption, but a measure that would have a most serious effect upon the interests of those who derived the benefit from the charities of this country. ... *There was no precedent of such legislation* – it was the first time that any political economist had attempted to wring a revenue from the relief afforded to those struck down by accident or disease. (Emphasis added.)¹⁸⁰

Cecil was concerned that Gladstone was not allowing the public the opportunity to consider his proposal, an argument that was supported by Sir Henry Willoughby, who also pointed out “the constitutional importance of allowing full information to the country as to any new tax which was proposed.”¹⁸¹ Somewhat curiously, Willoughby also mentioned, in the same breath, “[t]he proposed tax on charities, and that upon clubs,”¹⁸² which rather smacked of self-interest. Mr Clay referred to Gladstone’s “disastrous proposition – as he would call it - for taxing charities,”¹⁸³ while Sir James Fergusson asked if Gladstone intended to treat, as income liable to the tax, the income of hospitals “from annual subscriptions, fees from students attending lectures, funded property, and extensive buildings used for hospital purposes, but produced no revenue.”¹⁸⁴ Mr Baines objected to Gladstone “sweeping into his net the three

¹⁷⁷ Hansard, above n 101, 851.

¹⁷⁸ The report of the debate on 30 April is also to be found in *The Times* of 1 May 1863. See ‘Customs and Inland Revenue Bill’, *The Times* (London), 1 May 1863, 6.

¹⁷⁹ Hansard, above n 101, 995.

¹⁸⁰ Hansard, above n 101, 995.

¹⁸¹ Hansard, above n 101, 996.

¹⁸² Hansard, above n 101, 998.

¹⁸³ Hansard, above n 101, 1002.

¹⁸⁴ Hansard, above n 101, 1002.

objects of education, religion, and benevolence, and imposing a tax upon them.”¹⁸⁵ The Lord Mayor, who considered himself “connected, for a period at least, with more charities than any other Member of that House,” stated that [i]f these charitable institutions were taxed, the effect would be that their utility would be *pro rata* diminished. ... the amount that these charities could be made to yield would not compensate for the mischief that would follow.”¹⁸⁶ Gladstone’s response was to say that “[a]lthough there is no *omnibus* Bill before the House, I fear I must make an *omnibus* speech in answering all the various questions that have been addressed to me,” and proceeded to do so.¹⁸⁷ After dismissing Cecil’s complaint, Gladstone, in addressing the main question, “[took] notice of the tone of exaggeration which marks a few of the statements which have just been made.”¹⁸⁸ St. Bartholomew’s Hospital came in for particular attention, the Treasurer of the hospital having stated to Cecil, rather naively perhaps, “that the inevitable result of this proposal will be that several hundred in, and several thousand out-patients, must annually be excluded from the benefits of St. Bartholomew’s Hospital,”¹⁸⁹ to which Gladstone replied that “[w]hat compensation they will receive for that increased taxation, [he] would show on a future occasion.”¹⁹⁰

On the question of what Gladstone called “charities with mixed receipts,” that is, endowments, voluntary subscriptions, and fees from students, it was the endowments that Gladstone had in mind to tax: “it is to them that the proposal of the Government refers.”¹⁹¹ Finally, we see the beginnings of a policy statement, rather than debate in an emotive manner. “Fees,” Gladstone stated, “are not the subject of any exemption at present and they will be dealt with on the same principle as other revenues.”¹⁹² Voluntary subscriptions were seen by Gladstone as having been already taxed therefore would not be taxed again. Gladstone explained his views on this thus:

[a]s regards voluntary subscriptions, these are entirely outside the proposals of Government, and will be unaffected by them. The machinery and terms of the law would not give us the means of getting at these voluntary subscriptions, and would require fresh and separate legislation, if such legislation were desirable - which, in my opinion, is far

¹⁸⁵ Hansard, above n 101, 1003.

¹⁸⁶ Hansard, above n 101, 1004.

¹⁸⁷ Hansard, above n 101, 1004. See also ‘House of Commons 30 April’, *Daily News* (London), 1 May 1863, Issue 5297.

¹⁸⁸ Hansard, above n 101, 1005.

¹⁸⁹ Hansard, above n 101, 1005.

¹⁹⁰ Hansard, above n 101, 1006.

¹⁹¹ Hansard, above n 101, 1012.

¹⁹² Hansard, above n 101, 1012.

from being the case. *Every shilling of these voluntary subscriptions, in the hands of the persons from whom they come, has been already subjected to taxation.* (Emphasis added.)¹⁹³

Then Gladstone, echoing the concept of taxation at source, declared that “[t]he machinery of the Income Tax enables us, with regard to property, to go to the source, and levy the tax before the income reaches the receiver;”¹⁹⁴

One of the arguments put up against Gladstone was that the smaller charities would be worse off than a person earning under £100 a year, to which Gladstone replied that “the property of [such] charities will not be upon a worse, but upon a better footing as to taxation [in such cases].”¹⁹⁵ He then admitted to the complexity of the situation, as he considered that “[t]he case is a very complicated one, and I own I have had myself considerable difficulty in acquiring the requisite knowledge with respect to it.”¹⁹⁶ Sir Stafford Northcote stated Gladstone’s intentions succinctly, that is “[w]e propose to lay [a tax] on the revenue from endowments, and not on the revenue from voluntary subscriptions.”¹⁹⁷ Then Northcote described how in effect voluntary subscriptions would be taxed, in cases such as:

the Lancashire Distress Fund, where a large voluntary subscription was raised; there being more than could be expended at once, with a view to economy and profit a portion of it was put into the funds for a short time to be drawn out by degrees; a dividend was paid upon it, and upon those dividends he supposed the tax was to be deducted. *Now were these contributions to be treated as voluntary contributions (which they really were), and to be exempted from the tax, or were they not to be exempted from the tax?* (Emphasis added.)¹⁹⁸

Gladstone reaffirmed his intention “that the principle on which the Bill proceeded was to lay a tax on the great mass of endowments ... [but] they should introduce a provision for the purpose of distinguishing such cases from others”¹⁹⁹ Gladstone had foreseen that in doing so at that stage of the debate would have complicated the Bill, therefore he chose to leave such issues “until after the principle [of the Bill] had been discussed.”²⁰⁰ It is clear that Gladstone was attempting to develop a new principle of taxation, yet his opponents were

¹⁹³ Hansard, above n 101, 1012.

¹⁹⁴ Hansard, above n 101, 1012.

¹⁹⁵ Hansard, above n 101, 1013.

¹⁹⁶ Hansard, above n 101, 1013.

¹⁹⁷ Hansard, above n 101, 1014.

¹⁹⁸ Hansard, above n 101, 1014.

¹⁹⁹ Hansard, above n 101, 1015.

²⁰⁰ Hansard, above n 101, 1015.

arguing from a defensive stance in order to protect their favoured charities. I consider that the principle that Gladstone was proposing was that funds donated to a charity, regardless of the source, that were invested in the funds at interest and were not being immediately applied to charitable purposes, and without any evidence of plans to do so either in the short or long term, should bear their share of the incidence of the tax. Endowments to charities were at that time liable to legacy duty: Mr Walpole –“Everybody knows that the legacy duty is applicable to charities when property is given to charities generally, but not if it is given to individual recipients.”²⁰¹

The frustration which some members of the House felt towards Gladstone’s proposal is evident in Mr Bagwell’s argument that Gladstone:

ought to put his proposition into print, and give time to the House and the country to understand exactly what it is we are called to vote. We have the Bill to look at, and we try to form the best opinion that we can upon it; but it is like looking into a thick hedge – no man can get his eyes through it, much less his head and body.²⁰²

Sir John Pakington’s contribution to the debate evoked an interesting response from Gladstone. Pakington had commented that the proposal to tax charities “was of a somewhat complicated and difficult nature,” to which Gladstone had replied: “[n]o, not the proposal, *but the present law.*” (Emphasis added.)²⁰³ *The Times* reported Gladstone as having only said: “[t]he present law is.”²⁰⁴ The question: to what law was Gladstone referring? Did he mean the existing Income Tax statute, or did he mean the law relating to charitable purposes? Pakington’s response, that: “[h]e feared that the law would not be simplified by the addition that [Gladstone] proposed to make to it,” does not clarify this exchange, and I suggest that the two Members may have been talking at cross-purposes.

Mr Malins asked, “[w]hat was the amount of revenue which it was supposed would be derived from this novel principle, which was repugnant to the feeling of the whole country?”²⁰⁵ But no reply was forthcoming from the Chancellor of the Exchequer. Malins also castigated Gladstone for attempting to do “that which neither Pitt nor Peel had ventured

²⁰¹ Hansard, above n 101, 1015.

²⁰² Hansard, above n 101, 1017.

²⁰³ Hansard, above n 101, 1021.

²⁰⁴ *Parliamentary Intelligence*, House of Commons, *The Times* (London), 1 May 1863, 7.

²⁰⁵ Hansard, above n 101, 1022

to do; and [that he] had violated *the sacred principle* that the property of charities should be kept intact.” (Emphasis added.)²⁰⁶ Malins did not say whether or not he agreed with the trustees of St. Bartholomew’s Hospital feasting at the expense of the patients, and whether that violated the sacred principle he referred to. Finally, the Bill was read a second time and set down for the following Monday, the day on which Gladstone had said he would explain his intentions to the House.

On 30 April *The Times* published a lengthy letter from William Helps, who described himself “as a governor of more than one of these [charitable] institutions.”²⁰⁷ Referring to Gladstone’s use of the word “novelty,” Helps wrote that “this novelty [was] the imposition of the Income Tax upon charities,” and he was particularly concerned that there was “some danger of a very injurious misapprehension [which] turns upon the sense in which the word ‘exemption’ is used.”²⁰⁸ Then Helps proceeded to describe the principle of the exemption, in that:

[w]hen the Chancellor of the Exchequer declines to follow the example of his predecessors from Pitt’s time to the present, it may be supposed that he is standing up for the principle of his Bill, and declining to concede an exemption from the fair operation of that principle. In my humble opinion this is not so; *for the Bill now before the House is founded upon the principle, be it right or wrong, that exemption is to be the rule for the great mass of people; entire exemption for all persons possessing an income of less than £100 a year, partial exemption for all possessing and income of less than £200 a year. And the exemption claimed for charitable institutions is so far from being inconsistent with this principle that it is, on the contrary, a consequence which a man acting loyally and reasoning logically upon it must, in my opinion, admit.* (Emphasis added.)²⁰⁹

The point that Helps was attempting to make was that it was “in reality persons who are taxed ... and persons to whom exemption is granted” and, as the trustees of charities administered revenues “in trust for persons whose incomes are far below [£100 a year], ... the exemption is equally valid, whether such funds arise from funds in possession of the recipients or from funds held in trust for them.”²¹⁰ Helps argued that the issue was the incomes of those with a beneficial interest in the funds of a charitable trust, in that the exemption applied to such persons provided their total income was less than £100 a year. Helps did not consider the

²⁰⁶ Hansard, above n 101, 1022.

²⁰⁷ William Helps, ‘The Income Tax on Charities,’ *The Times*, (London), 30 April 1863, 7.

²⁰⁸ Helps, above n 207.

²⁰⁹ Helps, above n 207.

²¹⁰ Helps, above n 207.

charitable purposes of such institutions, as he focussed solely on the persons for whom such institutions were established in the first place. Such was the confusion, in 1863, regarding an understanding of charitable purposes in accordance with the fiscal statutes of the day.

***The Times* editorial of 1 May 1863**

In the same edition of *The Times* in which the opening debate on the Customs and Revenue Bill for 1863 was reported, an extensive editorial was published opposing Gladstone's intention to remove the charitable purposes exemption from Income Tax. It is apparent that the author or authors of the editorial were intimate in their knowledge of the issue, as well as of Gladstone himself. Their opinion of Gladstone is clearly stated in the opening sentence in which Gladstone is described as being "a daring pilot in extremity, [who] is dangerous in a calm."²¹¹ Gladstone's proposal to tax clubs was preposterous enough, being "an example of the restlessness of [his] mind, but it hardly shows what we may call its perverse boldness so much as the plan of imposing the Property Tax on public charities."²¹² The editorial argued that the tax "on all their income that is derived from any other source than annual subscriptions or donations," was a "change in the principles of our finances and public policy [that] can hardly pass without warm discussion."²¹³ Then the editors laid down an argument that:

[i]t is so contrary not only to the natural feelings we entertain with regard to these beneficent institutions, but to what seems the common sense of the matter, that it is difficult to imagine that even Mr Gladstone will induce a House of Commons to assent to it. *The reasoning on which the proposal is founded is, or course, that all the property of the country ought to share its burdens, and that an annual income available for the setting of broken legs, or the teaching of little boys, or the maintenance of blind old women, ought no more to be exempted than a clergyman's or an officer's income.* (Emphasis added.)²¹⁴

The next point that was made in the editorial is very important, as it declared what was then considered to be the rationale for the exemption. It also suggests that the law as it related to charities must have been well understood by Parliamentarians. To continue:

But, as was shown by more than one speaker, and as obviously occurs to anyone who thinks on the subject, *the law has already sanctioned the principle of exemption.* It is not the theory of the Income Tax, or, indeed, of our taxation at all, that every human being,

²¹¹ [Editorial], *The Times* (London), 1 May 1863, 8.

²¹² [Editorial], above n 211, 8.

²¹³ [Editorial], above n 211, 8.

²¹⁴ [Editorial], above n 211, 8.

high and low, should pay strictly according to his or her means. It has been recognised that some are too poor to pay, and that it would be both unkind and useless to try and screw an infinitesimal portion of the public revenue out of them. That the poor are more highly taxed on commodities than the rich, inasmuch as they spend a larger proportion of their incomes on articles liable to Excise and Customs, has been recognized as a ground for exempting them from direct taxation. This principle has been acted upon by every Chancellor of the Exchequer during the existence of Income Tax, and has been actually extended by Mr Gladstone, who wholly or partially exempts all persons whose incomes are under £200. It need not be mentioned that when the Income Tax was first imposed Ireland was exempted expressly on the ground of great and long continued national suffering. *Thus the principle of exempting those whom it is unjust, or unmerciful, or contrary to the public advantage to tax is one of the best established of our system.* The bare sharp proposition that all property must pay in proportion to its amount, without reference to its source or destination, is not, and never has been, accepted among us. So we are quite at liberty to ask whether the taking away sevenpence in every pound from all the hospitals, colleges, schools, and other charitable institutions throughout the three kingdoms will do more good to the national revenue than harm to national interests concerned in these institutions. (Emphasis added.)²¹⁵

In developing their argument, the editors were using the analogy of the poor to justify the charitable purposes exemption from Income Tax. Further evidence of this is to be found in the editorial when it was argued that:

[w]e have said that the principle of this new scheme is, though not theoretically unsound, at least opposed to the well-defined practice in such matters in England. Not only is there exemption when exemption is useful, but small incomes are systematically spared on the principle that to tax them equally with the larger ones is unjust. *Apply this principle to charities, and the scheme of Mr Gladstone is at once condemned.* Not only are the incomes which individuals receive from them far smaller than would warrant the imposition of any such tax, but the revenues of most charitable institutions are really spent on works on which it would be too ridiculous to impose a tax. (Emphasis added.)²¹⁶

The editorial concluded with the assertion that:

in reality ... the working of the new law ... enacts that out of every £100 given for the endowment of institutions for the help of the human mind or body, a certain definite proportion shall be annually taken for the State. Why should we thus give with one hand and take away with another!²¹⁷

²¹⁵ [Editorial], above n 211, 8.

²¹⁶ [Editorial], above n 211, 8.

²¹⁷ [Editorial], above n 211, 8.

The editor of *The Times* restated the newspaper's opinion on why charities should not be required to pay tax when, in the issue of 7 May, he wrote that:

[Gladstone's] proposition jarred upon the humane feeling of the country. We could not have said "*Non olet*" to money thus raised. To excuse a class from paying Income Tax on account of their poverty, and then to impose the Income Tax upon the charity which is, or ought to be, the alleviation of a much lower grade of poverty, is a paradox which could only have commended itself to a mind so subtle and ingenious as that of our great financier. *To put a tax upon all charity funds, and to defend it upon the ground that some charity funds are misappropriated, was a rhetorical enterprise which wounded common feeling even more than it shocked common sense.* It was a blunder, and it became more conspicuous as a blunder the more brilliantly it was embellished by Mr Gladstone's eloquence. (Emphasis added.)²¹⁸

In commenting on the behaviour of certain charities, such as Jarvis' Charity of £100,000 which had caused more social problems than it had solved, the editor also argued that the problems thus created were not proof:

that all charities ought to be taxed, but it proved that all charitable funds ought to be made the agents of *a really useful charity*. ... The true moral of all Mr Gladstone's striking facts is, not that we should tax our charities, endowed or unendowed, but that we should make them do the work of real charity. (Emphasis added.)²¹⁹

Later that month, in an editorial on St. Thomas's Hospital concerning issues relating to the administration of the hospital, the editor made the point that the exemption was provided because of the contribution of such entities to public policy. In the editor's opinion:

[t]he moment we get rid of the notion that [the] property of [charitable foundations] is sacred, and appreciate the fact that [the charity] receives an exceptional protection from the law only because and so far as it contributes to objects of public policy, every charity is put on trial.²²⁰

Opposition to the proposed removal of the charitable purposes exemption was mounting, as the *Times* of 1 May also recorded that petitions had been presented to the House of Commons

²¹⁸ [Editorial], *The Times* (London), 7 May 1863, 10. *Pecunia non olet* – Latin for “money does not smell. “The Roman Emperor Vespasian reintroduced a urine tax on public toilets within Rome's now famous Cloaca Maxima (great sewer) system. When his son Titus criticized him, he supposedly pointed out that a coin did not smell, even though it came from urine.” (Dio Cassius, *Roman History*, Book 65, Chapter 14.)” See <http://en.wikipedia.org/>.

²¹⁹ [Editorial], above n 218, 10.

²²⁰ [Editorial], *The Times* (London), 28 May 1863, 10.

from a number of charities, such as: the Bluecoat School; the Provident Clerks' Association; the Lord Mayor on behalf of the trustees of the Blind Man's Friend Charity; the Society for the Propagation of the Gospel in Foreign Parts; the Ironmongers' Company; and the Middlesex and London hospitals.²²¹

The House resumes ... and adjourns

In spite of the urgency of the matter, the House did not sit on Friday, 1 May, as the Speaker, having taken the chair at 4 o'clock, advised the House that "there being only 36 members present, the House stood adjourned till Monday."²²²

As a precursor to a discussion of the debate the following Monday, it is of interest to note that the issue of *The Times* of 4 May reported extensively on the Charity Commissioners, "who have been accustomed to refer annually above 200 applications to the Court of Chancery and other courts, last year sent only 19."²²³ The purpose of those applications was "for the appointment or removal of trustees, or the establishment of schemes for the government of charities," of which the Commission had itself made "no less than 280 orders under the Act of 1860."²²⁴ However, what is significant is that the report also contained information concerning the funds of charities:

[held] in the name of the official trustees [which] amounted to the large sum of £1,379,227 ... apportioned among 2,647 charities, for each of which a separate account is kept. 19,010 returns were made in 1862 of the annual income and expenditure of charities, and considerable progress has been made in the compilation of the general digest of endowed charities.²²⁵

'A Correspondent' opposes the taxation of charities

It is interesting that I found a detailed list of reasons, submitted by "A Correspondent," why endowed charities should continue to be exempt from Income Tax that was published in *Jackson's Oxford Journal* of Saturday 2 May 1863.²²⁶ While the contents of this item, and that of the deputation as published in *The Times* of 4 May bear a striking resemblance, who inspired whom is not clear. However, the anonymous Correspondent provided very clear historical reasons, as well as reasoning based on social policy, as to why charitable

²²¹ *Parliamentary Intelligence*, House of Commons, 'Petitions', *The Times* (London), 1 May 1863, 6.

²²² *Parliamentary Intelligence*, House of Commons, *The Times* (London), 2 May 1863, 9.

²²³ Charity Commission, *The Times* (London), 4 May 1863, 9.

²²⁴ Charity Commission, above n 223, 9.

²²⁵ Charity Commission, above n 223, 9. What a goldmine for research into the charities of the time!

²²⁶ 'Charities and Income Tax', *Jackson's Oxford Journal* (Oxford), 2 May 1863, Issue 5740.

institutions should not be liable to Income Tax. The second clause of the list of nine stated that:

[t]he benefits conferred by endowed charities have been repeatedly recognised by Parliament in the exemption of hospitals and other buildings, where their beneficent operations are carried on, from Poor Rates and Land Tax; and thus the Legislature has encouraged the establishment of many institutions having for their object refugary or other forms of aid.²²⁷

The Correspondent then argued, at the third clause, that:

[o]n the imposition of the Income Tax in the last century, endowed charities were exempted from it; and Mr Pitt, and those who succeeded him *did not deem it necessary to inflict this impost on them during the whole continuance of the Great Continental War* [sic].²²⁸

Neither did Peel see fit to impose the Income Tax on charitable institutions, for:

[t]he late Sir Robert Peel, when re-instituting the Income Tax in 1842, *in the face of an important deficit, and of the peril involved in the great changes then initiated in the commercial policy of Great Britain* [sic], did not find it necessary to make charities bear the Income Tax.²²⁹

The Correspondent had not finished, and in his most powerful condemnation of Gladstone's plan wrote that:

[i]t is submitted, therefore, that the whole tenour [sic] of Parliamentary proceedings on this subject has, from time immemorial, been to treat charities *as exempt from Income Tax on principle* [sic]; and that to subject them to it in 1863, when the wealth of the nation has reached an amount never before attained, would be both unjust and cruel, and would necessarily diminish their usefulness, as it would be difficult, if not impossible, to adjust and re-adjust their several spheres of usefulness, *to meet the varying rate of a tax altered 10 times in the last 21 years, and ranging from 5d to 1s 4d in the £* [sic].²³⁰

Here then is an explanation for the exemption of charitable institutions from Income Tax. That is, they should be exempt “on principle,” but not “on the principle of” some basis in

²²⁷ ‘Charities and Income Tax’, above n 226.

²²⁸ ‘Charities and Income Tax’, above n 226.

²²⁹ ‘Charities and Income Tax’, above n 226.

²³⁰ ‘Charities and Income Tax’, above n 226.

fiscal policy. Charitable institutions, therefore, should be exempted purely because of what they are and for what they do. The taxation of charities, the Correspondent argued, “would be equivalent to a gift of that sum to the public coffers *from the heritage of the poorer classes* [sic].”²³¹

‘A Whig, and yet a reformer’

On 8 May *The Times* carried a lengthy letter under the nom-de-plume “A Whig, and yet a reformer,” on the subject of alleged financial abuses at Greenwich Hospital with which we need not concern ourselves.²³² However, the author ended his letter with information taken from a work which he stated had been published in 1850 entitled *The Charities of London*, and which contained details of the finances of the London hospitals in 1849, that is:

of the 12 general medical hospitals of the metropolis, including, among others, St. Bartholomew’s, Guy’s, St. Thomas’s, and St. Georges, amounted to nearly £143,000, of which £31,265 consisted of voluntary contributions. The income of Greenwich Hospital, ten years later, from landed and funded property, was more than £148,000. Out of the smaller income the London hospitals maintained 12 establishments, made up permanently 3,326 beds, and gave relief during the 12 months to 329,606 patients. Out of the larger income Greenwich Hospital maintained one establishment, 1,676 pensioners, 780 schoolboys, and about 30 officers, and gave no relief to man, woman, or child beyond its walls.²³³

Greenwich Hospital was a Government-funded establishment, for which, in 1863, the sum of £214,000 was voted to provide “Greenwich out-pensions for more than 12,500 sailors” while at the same time, “the hospital with £148,000 gave in-pensions to less than 1,700.”²³⁴ The writer’s intentions in drawing this anomaly to the attention of the Parliament was to ensure that the “lavish endowments, provided by Parliament for a great national charity, should, in the words of the Admiralty, be well and wisely applied for the purposes for which the Hospital was founded.”²³⁵ It would seem that while on the one hand Gladstone was intent on challenging the extravagance of certain charities, on the other hand the Government’s own house might not have quite been in order with its own charity hospitals.

²³¹ ‘Charities and Income Tax’, above n 226.

²³² A Whig, and yet a reformer, ‘The Admiralty and Greenwich Hospital,’ *The Times* (London), 8 May 1863, 5.

²³³ A Whig, above n 232, 5.

²³⁴ A Whig, above n 232, 5.

²³⁵ A Whig, above n 232, 5.

The book to which the editor had referred was the earlier edition of Samson Low's *The Charities of London in 1861* which was published in 1862.²³⁶ This work of nearly 400 pages contains details of the income of charities "averaging the year ending September 30, 1861."²³⁷ Low's figures reveal that, for the 640 charities which he had studied, the total income was as follows:

Voluntary Donations	£1,600,594
Dividends, Property or Trade	£ 841,373
<i>Aggregate Income of</i>	<i>£2,441,967</i> ²³⁸

From Low's figures, the income of the General Medical Hospitals, which included St. Bartholomew's Hospital, from dividends, property, and trade, was £126,809, or 15 per cent of the total income from those sources. The next closest category were the professional and trade provident and benevolent funds, of £117,058 or 14 per cent of total income. The relevance of the figures for the general hospitals is that there appears to have been only a small increase in their income from dividends, property and trade when compared with voluntary donations over the twelve years from 1849 to 1861, as can be seen from Table 2

General medical hospitals: Sources of income:

Table 2 General medical hospitals: Sources of income

Type of Income	1849	1861	Change	%
Voluntary Donations	£ 31,265	£ 58,049	+£26,784	85.7
Dividends, Property or Trade	£111,735	£126,809	+£15,074	13.5
<i>Total Aggregate Income</i>	£143,000	£184,858	+£41,858	

As there had also been a change in the price index over those years, from 8.9 in 1849 to 9.5 in 1861, the impact of inflation although slight would have nevertheless lessened the purchasing power of the hospitals' income.²³⁹

Low also made the comment that while the net increase, after amalgamations and closures, in the number of charities in London had increased by a quarter in the previous ten years, the

²³⁶ Samson Low, Junior, *The Charities of London in 1861* (1862).

²³⁷ Low, above n 236, vi. In his own footnote, Low wrote "As this Analysis is the result of original and painstaking calculation, the Author respectfully requests that, when quoted from, the source may be acknowledged."

²³⁸ Low, above n 236, xi.

²³⁹ Research Paper 06/09, Economic Policy & Statistics Section, House of Commons, *Inflation: The value of the pound 1750-2005* (2006) 14.

amount of income those charities had received had increased by one third.²⁴⁰ While the figures for the earlier period were not provided, I have calculated that the total income would have been approximately £1,831,475.²⁴¹

The Liverpool Mercury

On the same day that the deputation from the charities of London waited on Gladstone, *The Liverpool Mercury* published an editorial which provided arguments both for and against the taxation of charities.²⁴² Arguing for the taxation of charities, the *Mercury* claimed that:

[t]here is a good deal to be said in favour of the principle, not exactly of “taxing charity,” as it is called, *but of putting the invested property of charitable corporations on the same footing as all other invested property*. . . . Bequests to charities pay the maximum legacy duty of 10 per cent, and why, therefore, should the yearly proceeds of such bequests be relieved from Income Tax? (Emphasis added.)²⁴³

The *Mercury* also considered that as the legislation:

has, from the Middle Ages down to our own day, placed all sorts of impediments and difficulties in the way of the endowment of benevolent and religious corporations, it must be owned that it seems a little inconsistent to enact that property held for benevolent and religious purposes shall be relieved from burdens borne by all other property.²⁴⁴

Thus the Mortmain Acts, according to the *Mercury*, “were diametrically contrary to the exceptional privilege which Mr Gladstone now asks Parliament to abolish,” yet the Mortmain Acts were not to be challenged.²⁴⁵ Then the *Mercury* declared that Gladstone “simply proposes to subject to ordinary taxation a description of property which the legislature of this country has always viewed with jealousy *on the grounds of public policy*.” (Emphasis added.)²⁴⁶ Therein lies the problem with which I have been confronted throughout my research for this Thesis, for nowhere have I found a specific statement or description of such a public policy. That is, until the events of May 1863.

²⁴⁰ Low, above n 236 xi.

²⁴¹ £2,441,967/4 = £610,492; £2,441.967 – £610,492 = £1,831,475.

²⁴² ‘The tax on charities’, *The Liverpool Mercury* (Liverpool), 4 May 1863, Issue 4752.

²⁴³ ‘The tax on charities’, above n 242.

²⁴⁴ ‘The tax on charities’, above n 242.

²⁴⁵ ‘The tax on charities’, above n 242.

²⁴⁶ ‘The tax on charities’, above n 242.

The *Mercury* also argued against the taxing of charities on the grounds that “an impost which will appreciably curtail the resources of every hospital, endowed school, and almshouse in the kingdom ... is clearly at variance with the humane and considerate policy which dictates the exempting clauses [concerning families] of Mr Gladstone’s own Income Tax Bill.” But on balance the *Mercury* decided that:

it may be open to controversy whether an exemption which has been invariably maintained in all our Income Tax Acts, and which neither Pitt nor Peel ever thought it wise to disturb, *was originally justifiable on the strictest principles of economical science*; but there can, we think, be very little doubt that it would have been prudent to respect an immunity which has so long existed unquestioned, and which confessedly opposes [?] itself to the general sentiments of mankind. (Emphasis added.)²⁴⁷

Whether the charitable purposes exemption from Income Tax was ever justified, as the *Mercury* suggested, “on the strictest principles of economical science” by those to whom the exemption owes its existence, is the question to which I have unsuccessfully sought the answer, for it was not until the Twentieth Century that attempts to justify the exemption were made, not in England, but in North America.

Two days later, on 6 May, the *Liverpool Mercury* argued even more vehemently for the taxing of charities.²⁴⁸ “Never was an abler or more gallant fight made for a manifestly hopeless cause than that waged by Mr Gladstone on Monday in defence of one of the most unpopular and formidably opposed propositions ever presented in a budget,” thundered the *Liverpool Mercury*.²⁴⁹ Even if Gladstone’s proposition “could have been proved to be theoretically faultless, [it] would have been still regarded as by a large proportion of the public as practically oppressive and inexpedient,” the editor of the *Liverpool Mercury* suggested.²⁵⁰ Referring to the newspapers earlier comments about the Mortmain legislation, the *Liverpool Mercury* declared that:

[t]hat charitable bequests should be subject, just like other bequests, to the payment of legacy duty, is certainly a proof that the exemption of charities from taxation is *by no means a fundamental principle of English legislation*; while the policy of the Mortmain Act is, so far as it goes, directly hostile to charitable endowments ... there can be no doubt as to the inconsistency of going out of our way to exempt the revenues of these same

²⁴⁷ ‘The tax on charities’, above n 242.

²⁴⁸ ‘The argument for taxing charities’, *Liverpool Mercury* (Liverpool), 6 May 1863, Issue 4754.

²⁴⁹ ‘The argument for taxing charities’, above n 248.

²⁵⁰ ‘The argument for taxing charities’, above n 248.

charitable endowments from a tax imposed on all other revenues above a certain standard without distinction. (Emphasis added.)²⁵¹

Once again the matter of a principle of taxation policy is referred to but, once again, no further comment was made, other than in the context of the statutes of Mortmain. That is, not until later in that same article when the editor declared that:

[t]he fact is, every principle of taxation, driven to its extreme logical limits, will lead us into a *reduction ad absurdum* in one direction or another; and we must ultimately find ourselves compelled in such matters to reason on grounds *not so much of rigid abstract principle as of convenience and expediency*. (Emphasis added.)²⁵²

Were taxation policy that simple today! I can only wonder at what rigid abstract principles might have been argued, had there been a debate on the taxation or otherwise of charitable institutions in Pitt's time, or that of Gladstone. The editor concluded his article with the words that:

[o]n the whole, however true may be some portions of his speech, we cannot think that Mr Gladstone showed sufficient reason for imposing, in a time of peace and prosperity and peace, an onerous tax on institutions which were exempted by Pitt and Peel in the midst of our greatest national difficulties. Public opinion will undoubtedly approve the relinquishment of this item of the Budget.²⁵³

The Preston Guardian of 9 May, in an editorial commenting on Gladstone's proposal, also made references to principles of taxation.²⁵⁴ The editor considered that Gladstone:

saw in the exemption an interference with the harmony of his financial system, so it must be remedied. He looked to the principles of finance, and while he beat the deputation in logic, the feelings of the appellants for his mercy could not be moved; it mattered little whose views were most consistent with sound political economy so long as the trustees of important charities were so strongly averse to allowing the tax-gatherer to put his hands into their purses.²⁵⁵

The *Preston Guardian* concluded that:

²⁵¹ 'The argument for taxing charities', above n 248.

²⁵² 'The argument for taxing charities', above n 248.

²⁵³ 'The argument for taxing charities', above n 248.

²⁵⁴ 'The tax on charities', *The Preston Guardian* (Preston), 9 May 1863, Issue 2678.

²⁵⁵ 'The tax on charities', above n 254.

it is a new feature in the science of taxation to use the tax-gatherer as a means of moral reformation. Were this principle acknowledged we should have to inflict one poundage on the industrious and another on the idle; one on the moral and one on the dissolute.²⁵⁶

Gladstone had certainly managed to arouse feelings to fever pitch, for a week later the *Birmingham Daily Post* reported that:

the agitation caused among the trustees and recipients of charities by [Gladstone] ... has scarcely yet subsided. Petitions are still coming in from Sleepy Hollow, Magna, and Parva, and governors of hospitals and schools are still inveighing against Mr Gladstone with inveterate hostility.²⁵⁷

The *Glasgow Herald* also took a swipe at the charities, in particular “*post mortem* benevolence.”²⁵⁸ In support of its argument against death-bed bequests, the *Glasgow Herald* quoted Jonathan Swift who, “true to the sarcastic humour which was the prevailing feature of his character, avowed to the Irish in the lines ‘on his own death,’ that:

He left the little wealth he had
To build a house for fools and mad:
And showed by one satiric touch,
No nation needed it so much.²⁵⁹

The *Glasgow Herald* was not so much opposed to death-bed bequests – “[i]t is best not too look a gift horse in the mouth” – as “the mal-administration of these charities is a fair subject of inquiry.”²⁶⁰ The editor of the *Glasgow Herald* considered that the country owed a debt “to the courage of the Chancellor of the Exchequer for his scathing exposure in the House of Commons last week, when he made his proposal to tax the income of these fat institutions.”²⁶¹ Gladstone’s revenge against the deputation which had attended upon him on 4 May was:

his speech, in introducing the measure, [which] was the most terrific onslaught the pampered charities of England have ever sustained. He had the temerity to speak out on the abuses which had grown round them in wild luxuriance in the course of the years, till, in fact, the original institutions, as established by their founders, can in very few cases be

²⁵⁶ ‘The tax on charities’, above n 254.

²⁵⁷ ‘Private correspondence’, *Birmingham Daily Post* (Birmingham), 11 May 1863, Issue 1494.

²⁵⁸ [Editorial], *Glasgow Herald* (Glasgow), 12 May 1863, Issue 7281.

²⁵⁹ [Editorial], above n 258.

²⁶⁰ [Editorial], above n 258.

²⁶¹ [Editorial], above n 258.

identified with the overgrown palaces, the enormous revenues, the overpaid officials, and the existing gentlemanly recipients of the bounty of the founders.²⁶²

The *Glasgow Herald* also agreed with Gladstone's assertion "that an exemption from taxation was equivalent to an annual grant from the country, and there can be little doubt about the truth of the statement."²⁶³ However, there were some charities in Scotland:

that were so fat and flourishing that their health would not suffer in the least by an annual puncture from the Exchequer, such as Heriot's Hospital, and some other Edinburgh institutions, which have a considerable resemblance to the notorious Blue Coat School.²⁶⁴

What was it then that Gladstone had said to raise such a force against him?

Gladstone's justification for the taxation of charities

On Monday 4 May Gladstone finally had the chance "to redeem the pledge" that he had given to the Committee of the House of Commons, to explain his reasons why charities should share the burden of the costs of the State, an explanation that occupies 31 columns of the *Hansard* report of that day's debate. Gladstone considered the question to be "one of quite sufficient difficulty, magnitude, and importance to justify a separate discussion," which is why he had deflected the many questions that had previously been raised in the House until such time as he could address this issue solely. What Gladstone wished to raise, in the debate on the third clause of the Bill, was:

[w]hether the law shall be modified which at the present moment extends to bequests for charitable uses an immunity ... from all direct taxation whatever, while, at the same time, very heavy charges have been undertaken on behalf of those charities by the State. ... *This is a question upon which, up to the present time, no verdict of Parliament has been taken.* (Emphasis added.)²⁶⁵

Gladstone's reference to bequests was with respect to the 10 per cent legacy duty paid on charitable bequests, and whether the exemption from Income Tax should also be extended to such bequests (a question that is discussed later in this chapter). Gladstone continued by stating that:

²⁶² [Editorial], above n 258.

²⁶³ [Editorial], above n 258.

²⁶⁴ [Editorial], above n 258.

²⁶⁵ *Hansard*, above n 101, 1071.

[he had been told] here and elsewhere, that the authority of Mr Pitt and of Sir Robert Peel can be quoted against me. I demur to that assertion. The Income Tax of Mr Pitt was a personal Income Tax, and it was hardly possible, by its machinery, for him to have got at the revenues of corporations.²⁶⁶

In so saying, Gladstone made a clear distinction between Pitt's and Addington's schemes for the Income Tax. While Addington's period of administration from 1801 to 1804 was short-lived as, being unable to control Parliament, he had been replaced by Pitt on his reappointment as Prime Minister by George III in May 1804, Addington had made a major contribution to the machinery of the Income Tax.²⁶⁷ During his time as Prime Minister, Addington had introduced two significant changes into the Income Tax legislation: a system of five schedules, and deduction at source, "which was to be applied to interest, dividends, rent, income from the Funds and the emoluments of Crown servants."²⁶⁸ Addington's "machinery" which, by Gladstone's day was well entrenched in the Income Tax legislation, was able to "[get] at the revenues of corporations" through the concept of taxation at source, the tool which distinguished Addington's property tax from that of Pitt. In Gladstone's opinion, "[i]t was by Lord Sidmouth [Addington], and not by Mr Pitt, ... that authority was first given for the exemption of charitable institutions from taxation."²⁶⁹ Gladstone had astutely observed that Pitt's exemption in effect had no teeth, whereas the teeth in Addington's exemption was the deduction at source which required charitable institutions to submit a claim for a refund.

Gladstone was also very clear about the fact that "upon the point of charitable institutions little or nothing was known, except one thing indeed, and that is that their state was one shameful to their administration,"²⁷⁰ a point, he observed, that was noted by Lord Eldon who, in 1807, had declared that "[i]t is necessary to be perfectly understood that the charity estates all over the kingdom are dealt with in a manner most grossly improvident and of a most direct breach of trust."²⁷¹ These were the matters that Gladstone was attempting to address, as by bringing the charities under the umbrella of Government, in return for the privilege of

²⁶⁶ Hansard, above n 101, 1073.

²⁶⁷ Michael J. Turner, *Pitt the Younger: A Life* (2003) 205

²⁶⁸ B.E.V. Sabine, *A History of Income Tax* (1966) 35.

²⁶⁹ Hansard, above n 101, 1074.

²⁷⁰ Hansard, above n 101, 1074.

²⁷¹ Hansard, above n 101, 1074. Lord Eldon's exact words were: "It is absolutely necessary, that it should be perfectly understood, that Charity Estates all over the kingdom are dealt with in a manner most grossly improvident; amounting to the most direct breach of trust:" *Attorney-General v. Griffith* 13 Ves. Jun. 565, 580.

exemption from Income Tax, the trusts would be administered according to the settlor's intent. By being required to file claims for refunds of Income Tax, an opportunity to scrutinise the activities of charities in order to ensure that their activities were in fact charitable was made available. The problem, however, was in determining what was understood by the term "charitable purposes" with respect to the Income Tax Act.

It is apparent that Gladstone had endeavoured to locate Parliamentary debate on the matter of the charity Income Tax exemption for, after citing Lord Eldon, he stated that:

I must avert to another point for a moment. *It is very difficult to assert a negative as to the voluminous records of Parliament, and therefore I should be slow to say that the matter never has been discussed; but the only discovery that I have made of any discussion upon the subject is one of a very short debate in 1812, when Sir John Newport proposed to repeal a tax upon charities, which has, in certain cases, a limited bearing upon them, but which, as a general rule, is not felt to be a tax upon charities, for it is a tax upon estates – namely the 10 per cent paid upon legacies bequeathed to charities. On 23 January 1812, Sir John Newport moved for leave to introduce a Bill to exempt all bequests for charitable purposes from that duty. ... That is the only declaration I have been able to find, although others may possibly have been more fortunate in their researches [sic]. (Emphasis added.)*²⁷²

Not only did Sir John Newport wish to exempt from such duties legacies "for the education or maintenance of any poor children, or the support of widows or other poor persons, or for the support of any charitable institution within the United Kingdom,"²⁷³ he also desired to remove the duty paid on advertisements published in newspapers, such advertisements being the notification of "any meeting to be held for such charitable purposes."²⁷⁴ In reply, the Chancellor of the Exchequer and Prime Minister, Spencer Perceval, in disagreeing with Sir John, had argued that to encourage death-bed bequests for charitable purposes was to deny the rights of relations in their entitlement to such property.²⁷⁵ The matter of duties on advertisements was also dismissed by the Chancellor, as being an improper interference in the business matters of the newspapers.²⁷⁶ After Sir John's reply, that he "did not wish to pertinaciously [sic] press a measure which he had thought it his duty to bring forward,"²⁷⁷ the motion was voted upon, and lost.

²⁷² Hansard, above n 101, 1074. It would seem that Highmore's works were unknown to Gladstone.

²⁷³ *Cobbett's Parliamentary Debates*, above n 103, 319.

²⁷⁴ *Cobbett's Parliamentary Debates*, above n 273, 320.

²⁷⁵ *Cobbett's Parliamentary Debates*, above n 273, 320.

²⁷⁶ *Cobbett's Parliamentary Debates*, above n 273, 320.

²⁷⁷ *Cobbett's Parliamentary Debates*, above n 273, 320.

From my own research, it would seem that as I had looked beyond the Parliamentary debates, I had been more fortunate than Gladstone but, as he had noted, material on the subject is scanty. Gladstone did find, however, that in 1845 a tax on charities of 6*d* in the pound had been proposed by Sir Robert Peel's Government, on which Gladstone declared that "[t]he same objections were made then as now. The objection, in point of fact, is not so much the paying much or little as to paying anything."²⁷⁸

Gladstone then advised the House that "[i]t is to the principle, in working, of that exemption, and to the nature in general of exemptions, that I wish to call the attention of the Committee."²⁷⁹ The first question Gladstone asked concerned the nature of charities. He began by stating that:

in the first place, it is hardly possible to overrate the consequences of the misuse of words; [he ventured], with the greatest respect, to suggest that there can hardly be an instance more marked of the truth of that proposition than the magic charm carried by the term "charities," as exempted from Income Tax.²⁸⁰

"What are these charities?" he asked, then answered his own question in that:

nineteen-twentieths of them at least – and I believe that to be an understatement – consist of death-bed bequests [of which in this country] no attempt has been made to limit the amount of choice, of discretion, or of indiscretion, with which individuals may bequeath property to what is termed charitable uses.²⁸¹

In Gladstone's opinion, such bequests were not charitable in nature, it being the case that:

what a man wills on his death-bed, when he can no longer keep it in his own hands, is not charity in the same high fixed sense; nor, will I venture to say, in the only legitimate sense which it is when he gives what is his own to give or to enjoy.²⁸²

Then Gladstone declared that "[t]here is not a quarter of the charities of the country properly so called that is not taxed."²⁸³ Gladstone was referring to voluntary giving which was "out of

²⁷⁸ Hansard, above n 101, 1075.

²⁷⁹ Hansard, above n 101, 1075.

²⁸⁰ Hansard, above n 101, 1075.

²⁸¹ Hansard, above n 101, 1075.

²⁸² Hansard, above n 101, 1076.

²⁸³ Hansard, above n 101, 1076.

an income which the giver might have enjoyed – all is taxed, and taxed without the smallest favour or regard.”²⁸⁴ There were no fiscal benefits to donors in those days, and voluntary donations were paid from after-tax income. Thus, Gladstone declared:

[t]he charities of England are taxed, and bequests in England for charitable uses are relieved from taxation. Those two things are totally different. For charity, properly so called, you must have a giver as well as a receiver; and where there is a giver as well as a receiver taxation is imposed without mercy or remission; but where there has been a death-bed bequest, in the over-whelming majority of instances, whatever may be the testamentary disposition, the law steps in and accords a preference that would more naturally be due to the alms of the living. I have already said that I do not admit that the 10 per cent charged upon legacies is a tax upon charities. I conceive that in every case (except where the whole estate is bequeathed for charitable purposes) it is a tax upon the estate itself.²⁸⁵

Gladstone also asserted “that an exemption is a gift. ... [W]hat the State remits to a man it gives to him.”²⁸⁶ In so saying, Gladstone demonstrated an understanding of the charitable purposes exemption that even today many in the charity sector in New Zealand would deny.²⁸⁷ Gladstone did not suggest any form of tax relief, for example by way of rebate or tax credit, to those who gave voluntarily to charity. Apart from the complexities of such a system and the possibility of fraud, that was not in his thinking. A donor had two choices, according to Gladstone. A gift could be made during the donor’s lifetime free of the duty on legacies or, on his death, a legacy would be subject to the 10 per cent duty, “therefore it is his intention to give 10 per cent less than the sum he names.”²⁸⁸ Gladstone considered that, as an exemption was a levy on a man’s neighbour; and “a payment of public money ... which payment can only be obtained by levying it off the rest of the community, [it] appears to me and to my colleagues to be wrong in principle and dangerous in its consequences.”²⁸⁹

The reason that Gladstone had referred to the exemption as being “a payment of public money” lay in the Income Tax statutes of the day, which required charities to apply for a refund of tax deducted at source.²⁹⁰ Gladstone, in emphasising his position with respect to

²⁸⁴ Hansard, above n 101, 1076.

²⁸⁵ Hansard, above n 101, 1076.

²⁸⁶ Hansard, above n 101, 1076.

²⁸⁷ I am well aware of this, from my experience as the general manager of the Pacific Leprosy Foundation (1989 – 2007), a charitable trust with international purposes.

²⁸⁸ Hansard, above n 101, 1076.

²⁸⁹ Hansard, above n 101, 1077.

²⁹⁰ The *Pemsel* case of 1891 was just that – a claim by the Treasurer of the Moravian Church for a refund of £73 8s 3d being the tax assessed on the Church.

bequests, argued that “[t]he case then, of the ‘charities’ of England as they are called, that is to say, of endowments for charitable uses, is that they are generally untaxed.”²⁹¹ The exception to the case was that of bequests for religious uses which were taxed, but “[o]n what principle of consistency such a difference is justified I do not know,” said Gladstone.²⁹² It is surprising that Gladstone would have said this, as he must have been aware of Mortmain, for he then said that:

[t]he State has, however, long thought that with respect to religious endowments it was desirable, owing to their nature, to pass laws with a view to limit their growth – such laws, for instance, as those for the emancipation of leaseholds and for the commutation of tithe. [But] [t]here have been no such enactments with regard to charitable bequests.²⁹³

Gladstone also observed that:

no proof whatever of monies expended in charity by the living is admitted as a ground of exemption from Income Tax, while proof of monies so expended, if under the disposition made in a will by the dead, is received as ground of exemption.²⁹⁴

Gladstone also identified another issue – that of the intermingling of bequests with voluntary subscriptions and donations – and he argued that many bequests were not retained as an endowment, but instead “pass[ed] away with the annual expenditure of the institutions in whose favour they had been made.”²⁹⁵ Many of those charities, Gladstone claimed, “almost the whole of which [had] come down from times remote, [were by then] comparatively insignificant. They are charities in the nature of death-bed bequests, and as such they have enjoyed an entire immunity from taxation.”²⁹⁶

Gladstone had failed, said Disraeli:

because he was actuated by the fallacy that exemption from taxation was equivalent to a subversion from the State. If the arguments of the Chancellor of the Exchequer were good

²⁹¹ Hansard, above n 101, 1078.

²⁹² Hansard, above n 101, 1078.

²⁹³ Hansard, above n 101, 1078. England’s *Mortmain* legislation was repealed in total on the enactment of the *Charities Act* 1960 8 & 9 Eliz. II c.58.

²⁹⁴ Hansard, above n 101, 1079.

²⁹⁵ Hansard, above n 101, 1079.

²⁹⁶ Hansard, above n 101, 1079.

for anything, they required the confiscation – not merely the taxation – of the class of charities alluded to by [Gladstone.]²⁹⁷

The *Belfast News*, in rather more romantic language, described Gladstone's efforts as being “the remedy of the schoolmaster, who threatens to flog a whole class if some unknown offender is not delivered up to him.”²⁹⁸ However, “the voice of the country was against [Gladstone, as] [i]t could not accept as sound his proposition that exemption from [taxation by] charit[ies] is equivalent to a subsidy from the government.”²⁹⁹

“There must be taxes ...”

According to *The Era*, two years later in 1865, Gladstone had not given up on his belief that charities should contribute to the revenue of the country.³⁰⁰ In an editorial *The Era* wrote that “[t]he Chancellor of the Exchequer will probably consider, in the present recess, the advisability of taxing the enormous charities of this country in order to relieve the pressure of taxation from the general public.”³⁰¹ “There must be taxes,” declared the editorial:

and the Chancellor of the Exchequer will, probably, renew the subject of [the taxation of charities] ... Confident hopes are entertained that the Income Tax will be further reduced, and the way to effect reductions will be to make haste to tax the income, whether charitable or otherwise, that can *bear* [sic] to be taxed.³⁰²

In the event, charitable institutions remained immune from the Income Tax, but the issue had far from died for, in 1889, Addington was to argue, in an extensive letter in *The Times*, that:

[a]n authoritative definition of charities and their liability to either rates or taxes are matters of Imperial importance which demand a careful consideration and settlement, and in the interval it remains to be seen whether the Board of Inland Revenue will, as advised by the Treasury in 1863, follow the practice which has hitherto prevailed.³⁰³

However, by 1889 Addington had been overtaken by events beyond his control, as in 1888 the Moravians had commenced proceedings claiming a refund of Income Tax. These proceedings lead to Lord Macnaughten's judgment in *Pemsel* in the House of Lords in 1891,

²⁹⁷ ‘House of Commons 4 May 1863’, *The Belfast Newsletter* (Belfast), 5 May 1863, issue n/a.

²⁹⁸ [Editorial], *The Belfast News* (Belfast), 6 May 1863, Issue 15583.

²⁹⁹ [Editorial], above n 298.

³⁰⁰ ‘Taxation of charities’, *The Era* (London), 5 November 1865, Issue 1415.

³⁰¹ ‘Taxation of charities’, above n 300.

³⁰² ‘Taxation of charities’, above n 300.

³⁰³ Addington, ‘Taxation of charities’, *The Times* (London), 9 March 1889, 16.

by which the issue was resolved without the need for Parliamentary intervention.³⁰⁴ This was in spite of the fact that Mr Goschen considered that “fourteen judges took the view that the Income Tax Commissioners were right, seven that they were wrong, but the decision of the House of Lords would regulate other cases.”³⁰⁵ In the latter, Goschen has been proved correct.

The cost to the State of the exemption

Gladstone then turned to the question of the cost to the State of the charities exemption. In his comments, the extent of the benefit to charities from the exemption can be seen. From the Returns for Income Tax, after allowing for deductions under Schedule D “for whatever is derived from manufacturing or professional skill and enterprise as apart from capital,”³⁰⁶ Gladstone held that:

the income of the United Kingdom may be stated at from £180,000,000 or £190,000,000 a year. *Of that about a sixtieth part, or £3,000,000 a year, is possessed by charities, so called in the legal sense.* The taxation imposed by our fiscal system on property, with the Income Tax at 7d in the pound, amounts to about £13,000,000 a year. Of that the principal item is the Income Tax, yielding somewhat more than one-half. The next is that cluster of duties which, for convenience, may be called death duties – succession, probate, and legacy duties. The remainder is the [Inhabited] House Tax. From all these, charities are entirely exempt. *The value of that exemption from the taxation laid upon other property, taking the proportion between the income of charities and the total income of the United Kingdom, is about £216,000 a year.* (Emphasis added.)³⁰⁷

There appears to have been some uncertainty as to what the cost of removing the exemption would mean to charities or alternatively what the direct benefit to the State would be. The figure quoted above is less than the figure quoted by *The Times* on 7 May when the editor wrote that: “[n]o one, we believe, regrets that Mr Gladstone failed in his attempt to extract £250,000 a year out of the charities.”³⁰⁸

However, Gladstone was also acutely aware of other costs borne by the State because, as well as the exemption from Income Tax, he advised the House that “there is a large and growing

³⁰⁴ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

³⁰⁵ ‘Another late sitting of the Commons’, *The Pall Mall Gazette* (London), 1 August 1891, Issue 8246.

³⁰⁶ Hansard, above n 101, 1079.

³⁰⁷ Hansard, above n 101, 1080.

³⁰⁸ [Editorial], *The Times* (London), May 7, 1863, 10.

charge imposed upon the public for the sake of charities.”³⁰⁹ As well as the amount voted for charity issues in the Estimates, of £18,000, there was:

[a further sum of] £500,000 which the State has been compelled to lay out within the last fifty years in order to examine into the state of things described by Lord Eldon as “a gross and general breach of trust,” and, if possible, to bring about an improved condition of affairs.³¹⁰

Gladstone was referring to the inquiries into charities which had commenced earlier that century which lead, ultimately to the creation of a permanent Board of Charity Commissioners.³¹¹ These costs, it is clear, were costs that Gladstone intended to lay at the feet of the charities which, in order to recover these costs from charities, “would require an annual charge upon them from £40,000 to £45,000 a year.”³¹² In addition to the amount of the exemption, which Gladstone considered to be £216,000 which amounted “to about 7 per cent of their income,” a further 1½ per cent was to be added for the latter charge, thereby making the total exemption “enjoyed” by the charities of 8½ per cent, with the cost to the State being “fully £250,000 per annum.”³¹³ Gladstone was not only concerned about the cost of the Income Tax exemption to the State, but also that the true cost was hidden from public scrutiny. His concern was that:

[i]f this money is to be laid out upon what are called charities, *why is that portion of the State expenditure to be altogether withdrawn from view, to be shrouded within the folds of the most complicated sections of our Acts of Parliament, and to be so contrived that we shall know nothing of it and have no control over it; so that, while to every other object recognised by the State as fit to be provided for out of the public funds, we apply every year a vigilant eye with a view to modification or retrenchment, here we continue an exemption, and, pluming ourselves upon our liberality, we leave this great expenditure entirely in the dark, and waive in favour of these institutions, not only the receipt of a certain sum of money, but the application of all those principles of philosophical administration and constitutional control which we consider necessary for the general government of the country and the management of our finances?* This is an important question. I should like to know what would have happened if, in 1842, when Sir Robert Peel proposed the Income Tax, he had proceeded thus:- For convenience sake, and for the sake of knowledge and supervision, we think it wise that the eye of the State should be kept upon the administration of charitable bequests. *The Income Tax, therefore, will be levied upon all their property irrespective of their charitable character. But we think the*

³⁰⁹ Hansard, above n 101, 1080.

³¹⁰ Hansard, above n 101, 1080.

³¹¹ See also an excellent paper on this subject by James J. Fishman, “Charity scandals as a catalyst of legal change and literary imagination in nineteenth century England,” (2005) *Michigan State Law Review* 369.

³¹² Hansard, above n 101, 1080.

³¹³ Hansard, above n 101, 1080.

fund a sacred one, and are not disposed to interfere with it. The estimated amount of the Income Tax leviable from these sources would be £100,000. A levy will be made upon the property of the respective institutions, but we shall propose, as part of our miscellaneous expenditure, to vote annually £100,000 on behalf of these charities.’ ... Why, every man knows that such a Vote would not stand the scrutiny of a single year. It would be pulled to pieces more relentlessly and more mercilessly than the present proposal of Her Majesty’s Government has been. (Emphasis added.)³¹⁴

In making this suggestion, Gladstone demonstrated his intense grasp of the matter of the taxation of charities. It is true to say that in present-day New Zealand, in the year 2009, one hundred and forty-six years after Gladstone spoke those words, we have no knowledge of the true cost to the State of the charities exemption from Income Tax, nor of the true savings to the Government through the provision of public benefit as a consequence of the activities of those charities. This in itself is yet another area in which research is required.

In his speech, Gladstone declared that he would divide charities into three classes: small, middle, and large, of which the small charities received his especial attention. In bestowing a public endowment on the small charities, which had been the subject of three separate enquiries, that is, Lord Brougham and the Charity Commissioners (1818), the Poor Law Commissioners (1834), and the Education Commissioners (1860), all of which had condemned the activities of those charities, was to do them “a greater amount of evil than of good.”³¹⁵ In Gladstone’s opinion, “[bestowing] upon the [small charities] a public endowment [was] as gross an act of injustice as could well be committed by the Legislature.”³¹⁶ The injustice was clear, according to Gladstone, who wished to know, “upon what ground [are the parishes of Scotland and Ireland] which have no such charities for the poor ... to be called upon to enlarge the endowments of those favoured parishes in England?”³¹⁷

Gladstone was also challenged by:

an hon. Friend ... [who] said that [he had] betrayed [his] duty as a Member for the University of Oxford because [he] proposed a tax on charities, by far the greater portion of which belonged to the Church of England – thus propounding the doctrine that [he], as Chancellor of the Exchequer, am under an obligation, before proposing a financial

³¹⁴ Hansard, above n 101, 1081.

³¹⁵ Hansard, above n 101, 1084.

³¹⁶ Hansard, above n 101, 1084.

³¹⁷ Hansard, above n 101, 1085.

measure, to ascertain whether the fiscal incidence of that measure would be favourable or otherwise to the communion to which [he] belong[ed], and to adopt or reject it accordingly.³¹⁸

Gladstone asserted once again that the small charities “have no claim whatever to any indulgence or endowment beyond the toleration and protection which are afforded to property in general. ... [T]hey have no claim whatever upon the public purse [being already] saddled on the public purse ... to the extent of £125,000 a year.”³¹⁹

The middle charities were those “which may be said to be distributed in money – the smaller charities being distributed sometimes in money and sometimes in kind.”³²⁰ As these charities are “distributed – not uniformly, but usually in incomes under £100 a year,” it was argued against Gladstone that, as possessors of incomes under that sum did not pay tax, neither should the middle charities.³²¹ Gladstone refuted that argument on the basis that in order to be logically consistent then “you must make people in the enjoyment of these incomes from charities pay not single, but double Income Tax.”³²² Gladstone based his reasoning on the grounds that:

[he drew] a broad distinction between exemptions which are partial and are made in favour of particular persons, places, or classes, and exemptions which relate to the entire mass of the community, and preserve a perfect equality between one man and another.³²³

Gladstone divided the larger charities into two classes, “one represented by Christ’s Hospital, a great charity of education, and the other consisting of what I frankly admit to be the best of these charities – namely, the great endowed hospitals.”³²⁴ As the public contributed “about £2,000” each year to Christ’s Hospital, Gladstone did not believe that Christ’s was entitled “upon any ground of right or public policy, to receive a single shilling.”³²⁵ The founding

³¹⁸ Hansard, above n 101, 1085.

³¹⁹ Hansard, above n 101, 1086. Gladstone described how Jarvis’ Charity, endowed with £100,000 in 1793, “absolutely forbade building.” The population of the three parishes to whom the money was left grew from 860 in 1801 to 1,222 in 1851, because of the people who flocked there to benefit from Jarvis’ benevolence in the form of doles. By 1852 the funds in the hands of the trustees had grown to such an extent that they were “at their wits end to know what to do with it.” Gladstone objected to “every £11 of Mr Jarvis’ [having] a twelfth pound added to it by the State, which is to be taken out of the pockets of the taxpaying community!”

³²⁰ Hansard, above n 101, 1088.

³²¹ Hansard, above n 101, 1089.

³²² Hansard, above n 101, 1090.

³²³ Hansard, above n 101, 1089.

³²⁴ Hansard, above n 101, 1091.

³²⁵ Hansard, above n 101, 1091.

document of the hospital provided for “the sick, the sore, and the impotent” yet, asked Gladstone, where are these people?³²⁶ The wealth of the hospital had grown and the children being educated were “the children of people with £200 a year, with £300 a year, with £400 a year, and in some cases with £500 a year.”³²⁷ Gladstone denied “that such people are for one moment entitled to call upon Parliament for a vote of public money in aid of the education of their children ... [at] an institution with an income of nearly £70,000 a year.”³²⁸

Gladstone then laid down another principle of the exemption in that: “it is essential to the definition of a charity, so as to exempt it from the Income Tax, that the recipients should do nothing whatever in return for what is given to them.”³²⁹ By way of illustration, Gladstone described how the 500 Governors of Christ’s Hospital, who pay £500 for that privilege, provided “a vested right in 1,600 presentations – presentations to some £70,000 of endowed property.”³³⁰ Once again Gladstone argued that “instead of compelling [the House] to deal in the dark by way of exemptions, you [should] come honestly forward and make your appeal to Parliament for a grant to these charities as a legitimate portion of the public expenditure.”³³¹ It is apparent that Gladstone was appealing for transparency in the operations of charities, an appeal that he was unable to sustain.

The case of the hospitals, that is, those institutions established for mental health, medical and surgical purposes or, as Gladstone put it, “everything which embraces the relief of involuntary ailments – dispensaries, infirmaries, and lunatic asylums,” represented:

by far the best ... hospitals probably amount to nearly one-fourth of the whole of the charities, and they give the best case, because they involve so little of the vicious and corrupting element of patronage. ... [T]heir doors are open to all who suffer from poverty, misery, and disease, and patronage does not exist. There is no fear of stimulating disease by a multiplication of hospitals, and there is no waste in canvassing [therefore] ... there is no expectancy, there is no fraudulent pretence, there is no ill-will.³³²

³²⁶ Hansard, above n 101, 1091.

³²⁷ Hansard, above n 101, 1091.

³²⁸ Hansard, above n 101, 1091. Having been told that if Christ’s were taxed, it would cost the hospital £2,000 a year, Gladstone inferred from that, that “the income of the institution must be something like £70,000 a year.”

³²⁹ Hansard, above n 101, 1092.

³³⁰ Hansard, above n 101, 1092.

³³¹ Hansard, above n 101, 1092.

³³² Hansard, above n 101, 1095.

Having lavished praise on hospitals generally, Gladstone then turned his attention to one in particular, St. Bartholomew's, "in respect of which this proposal to impose the Income Tax is thought to be very cruel."³³³ After describing in detail the financial position of the hospital, which Gladstone considered that while it would receive a "direct pecuniary benefit" from Income Tax and duties of £3,307, the hospital would be liable to a charge of £850 under his proposal to remove the exemption from Income Tax, with "the only argument against taking that £850 is that the Hospital deserves a grant."³³⁴ Gladstone was concerned with what he saw as the lack of public accountability of such institutions, in that:

[o]ne of the great evils of the present system ... [was that] *while you bestow money on these establishments, you dispense with all public control over them, and thus annul all effective motives for economical management. Endowed institutions laugh at public opinion. There is no public opinion brought to bear upon them. The press knows nothing of their expenditure; Parliament knows nothing of it. It is too much to say that hospitals are managed by angels and arch angels, and do not, like the rest of humanity, stand in need of supervision, criticism, and rebuke. Therefore, even in the case of St. Bartholomew's, I object to an exemption, which, by its very nature, at once removes the principal motives for economical management.* (Emphasis added.)³³⁵

Gladstone then went to the heart of the matter, as far as he was concerned, when he asked:

[w]hen the managers tell me that the exaction of £820 will compel them to dismiss 500 patients, I am entitled to ask, "Why, then, do you spend £220 in a feast; what right have you to eat up in an hour 150 cases?"³³⁶

The managers of St. Bartholomew's Hospital were not the only ones to feel Gladstone's heat, for he also challenged the managers of Guy's Hospital and St. Thomas' Hospital, who:

[e]very year, are able to place out £3,000 or £4,000 each in reproductive investments in land. They are thinking not merely of the sick, *but of their own future aggrandisement and extension.* ... St. Thomas' spends 15 per cent of its income in improvements on its land. Well, then, it is a matter for the State to consider whether the indefinite enrichment of such corporations – even of those instituted for the best of purposes – when entirely removed from the control of public opinion, the press, or Parliament, is to go on without limit, and is to be augmented by contributions from the public. ... [A] *public grant to such an establishment as St. Bartholomew's would be ten times better than an exemption like the*

³³³ Hansard, above n 101, 1095.

³³⁴ Hansard, above n 101, 1097.

³³⁵ Hansard, above n 101, 1097.

³³⁶ Hansard, above n 101, 1097.

*present. When there is a public grant we know what we are about – we let in the light of day. (Emphasis added.)*³³⁷

Thus Gladstone laid down yet again a clear fiscal policy against exemptions to such institutions, by suggesting that grants be provided by the State to such institutions to ensure public accountability and, in his choice of words, pre-empted a quote from a judge many years later, that “sunlight is ... the best of disinfectants.”³³⁸ Gladstone also considered that “[t]he effect of the present exemption is, that to those who have, more is given, while from those who have not, something is taken away.”³³⁹ The cost of the exemption to the State, Gladstone believed, would in time increase from “a quarter of a million ... to half a million a year.”³⁴⁰

By challenging the charities exemption, Gladstone had drawn the attention of the public “to ground hitherto almost untrodden.”³⁴¹ In closing his speech, Gladstone submitted his proposal to the will of the House, as “[t]he House must be responsible for its rejection. We desire to defer to the opinion of the House.”³⁴² However, Gladstone also made it clear that he would have his way if the proposal was rejected, as he stated that:

[w]e do not wish to show any undue obduracy. [But] we will reserve to ourselves the right to consider in what way the subject ought hereafter to be dealt with if the House should not now wish to accept this proposal at our hands.³⁴³

While Gladstone considered that his proposal was “a just measure ... a measure of justice ... a measure sound in principle ... a measure just to the taxpaying community,”³⁴⁴ he was to never see his proposal implemented, as the opposition to it was too strong. Sir Stafford Northcote quoted historical precedent in stating that:

[t]he truth was, that there existed the authority of all previous Finance Ministers against the extension of the Income Tax to charities. ... The principle upon which Mr Pitt, or Lord

³³⁷ Hansard, above n 101, 1098.

³³⁸ “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” Justice Louis Brandeis, *Other People’s Money, and How the Bankers Use It* (1933). Source www.brandeis.edu/investigate/sunlight.

³³⁹ Hansard, above n 101, 1099.

³⁴⁰ Hansard, above n 101, 1101.

³⁴¹ Hansard, above n 101, 1101.

³⁴² Hansard, above n 101, 1102.

³⁴³ Hansard, above n 101, 1102.

³⁴⁴ Hansard, above n 101, 1102.

Lansdowne, or Lord Sidmouth, or whoever altered the form of the Income Tax, went, was that of exempting all charities, and the same principle was followed by Sir Robert Peel when he renewed the tax, and the course which [Gladstone] proposed to adopt was altogether founded on a fallacy. (Emphasis added.)³⁴⁵

The curiosity of Northcote's statements is that as there had never been any Parliamentary debate in the past on the charitable purposes exemption from Income Tax during the Budget debates, one presumes that, as an exemption for charitable institutions had been included in past Income and Property Tax statutes, Northcote assumed that previous ministers of finance had given their tacit approval to the principle. Northcote may have overlooked the fact that the Income and Property Taxes of the early Nineteenth Century, as war taxes, were only intended as short-term measures, therefore the trouble of taxing charities might not have been worth the effort. Northcote also asked, had the Charity Commissioners, who "had made many suggestions for the improvement of charities," gone so far as to recommend "that they should be made to pay Income Tax?"³⁴⁶ His answer to his own question was: "[n]othing of the kind."³⁴⁷ Northcote also disagreed with Gladstone's assertion that the exemption was a State subsidy, as he considered that "[i]t was a fallacy to suppose the State was making a present to charitable institutions when it abstained from taxing them."³⁴⁸ Lord Harry Vane asked:

was it desirable that [charities] should, for the first time, be subjected to taxation? ... In a capital, then, like London, teeming with wealth of every kind, was it wise, contrary to all precedent, all authority, and the practice of every other country, to submit charity to taxation?³⁴⁹

Mr P. Wykeham Martin proposed an Amendment "to exempt from the measure rents and dividends belonging to hospitals for sick and diseased persons."³⁵⁰ Martin considered, in a prescient manner, for this is the model by which public hospitals in the Twenty-first Century are funded, that:

[n]o doubt the present exemption of hospitals from taxation resembled a gift from the public purse; but this technical difficulty should be overlooked, and that it was for the interest of the taxpayer that a slightly increased tax should be paid, and these establishments exempted, in order that the poor might, in their greatest extremity, be able

³⁴⁵ Hansard, above n 101, 1104 and 1105.

³⁴⁶ Hansard, above n 101, 1111.

³⁴⁷ Hansard, above n 101, 1111.

³⁴⁸ Hansard, above n 101, 1115.

³⁴⁹ Hansard, above n 101, 1118.

³⁵⁰ Hansard, above n 101, 1119.

to receive in public buildings as much attention as the rich did in their private houses. In the case of the poorer hospitals the burden upon the taxpayer was, in point of fact, very slight.³⁵¹

Lord Robert Cecil considered Gladstone's speech to be:

sophistry ... The whole of [Gladstone's] speech was a long indictment against charities, the benevolent, and the poor ... [Gladstone] threw the whole of his impassioned eloquence in an invective against those who gave and those who received. He spoke with great bitterness of many of the existing charities ... [and] with like bitterness of those who subscribed to the funds of Christ's Hospital and other charities. ... *But if [Gladstone] spoke with bitterness against the living, he raved with absolute fury against the dead.* (Emphasis added.)³⁵²

Such was the emotive nature of the issue. Lord Robert Cecil rose to the occasion by beginning his argument against Gladstone's case by observing that:

[no-one] who sat behind the Treasury bench was inclined to advance an argument in favour of [Gladstone's] proposal; for although four opponents to the measure had followed in succession, there had been no appearance of a rise on the Ministerial side of the House to defend the proposition of the Government.³⁵³

After Cecil had finished Gladstone, in a rather convoluted manner, in withdrawing his proposition argued that:

[t]his debate having been brought to a close, we have no further means of ascertaining the opinion of the Committee upon the proposal submitted to them. It was certainly not the intention of the Government to press this as a merely official proposal on the part of the Executive upon the notice of the House, unless the House itself showed a disposition to receive it. Our opinions are fixed and clear; but as the debate has come to a close without any independent Member having declared himself in the same sense, I am bound to say that I think the case has arisen which I contemplated earlier in the evening as not impossible, and that it would not be consistent with what I have already said if we were to take the sense of the Committee upon the clause.³⁵⁴

What was it that Gladstone meant by this? To discover the answer it is necessary to return to the commencement of the debate on the contentious Clause 3 to which the editors of *Hansard*

³⁵¹ Hansard, above n 101, 1119. Except that the rich do not today receive treatment in their homes, as was the practice in the 19th century.

³⁵² Hansard, above n 101, 1120.

³⁵³ Hansard, above n 101, 1119.

³⁵⁴ Hansard, above n 101, 1125.

had appended the note “Certain exemptions not continued except as herein mentioned.”³⁵⁵ After acknowledging the opposition outside the House, and fully expecting to find “abundant expression” inside the House, Gladstone had proceeded to say that:

[t]he conviction of the Government is, that the proposal they make is a wise one – that they are offering a mild and temperate compromise, equitable, and even lenient in a high degree, as respects the mass of charitable property, and, moreover, *that they are offering a compromise upon a matter which is quite certain to grow to such urgency before any very great length of time as almost by compulsion to invite the attention of Parliament, probably for purposes, in many respects, much more stringent than any to which the assent of Parliament is now invited.* Having that opinion, I at once, on the other hand, make the admission to the Committee that this is not a proposal which either can be or ought to be carried – if, indeed, it could be carried – unless with the free and deliberate sanction of this House. It is not a proposal in respect to which the influence of an Administration to any greater or lesser degree ought to be brought to bear. This, which is obvious to all in regard to this subject, is freely admitted by the Government; but they are under the belief that this is a new question, and that the facts which it contains, and the reasons which can be brought to bear upon it, ought to be brought out into the light of day; and I have that confidence in the fairness and justice of the House which induces me fearlessly to appeal to them for a candid hearing of the statement which I am about to submit to them. (Emphasis added.)³⁵⁶

This part of Gladstone’s speech is highly significant with respect to three points that he made. Firstly, that if the issue of the charitable purposes exemption from Income Tax were not resolved then, Parliament would have to do so a later time. That was not to be, as ultimately it was the House of Lords as a Court of Appeal that resolved the issue. Secondly, that unless the House concurred, I presume with no less than a majority vote, the proposal would die. Thirdly, that the Administration, by which I presume Gladstone meant the Board of the Inland Revenue, would not have any influence in the matter. Thus it was to be that Gladstone did not have the support of the House, but that did not mean that he did not have the support of his colleagues, a point that was made by Lord Palmerston. How this came to be, is as follows.

After Gladstone had to all intents and purposes admitted defeat in acknowledging that the House had not shown a disposition to receive his proposal,³⁵⁷ Disraeli noted, after Gladstone had made his case, that he did not appear to have had the support of his colleagues, and proposed that the House should “attempt to obtain some evidence that [Gladstone’s] opinions

³⁵⁵ Hansard, above n 101, 1072.

³⁵⁶ Hansard, above n 101, 1073.

³⁵⁷ Hansard, above n 101, 1125.

were at least shared in by his colleagues, and especially by the First Minister of the Crown.”³⁵⁸ Neither, Disraeli observed, had anyone risen:

on the part of the Government to answer the objections which had been made to [Gladstone’s] proposition. ... [S]ome answer should have been made to the objections urged to a proposition put forward with so much confidence – I will not say with so much dictation.³⁵⁹

Viscount Palmerston rose to Gladstone’s defence and assured Disraeli that:

[he was] happy to be able to assure [Disraeli] that the course pursued by [Gladstone], and the proposal he made, were entirely concurred in by all his colleagues; and as none of those colleagues rose for some time to support him, it was entirely because they felt that his admirable and most convincing speech was both unanswerable and unanswered. At all events, for some period of the debate, it required no support from any of his colleagues or [Disraeli’s friends] who sat near him.³⁶⁰

Palmerston concluded his speech by concurring with Gladstone, whom he considered:

[had] exercised a very wise discretion in not pressing upon the House – as he had stated at the outset he did not mean to do – a proposal which, upon discussion, should appear to be adverse to its general opinion. ... [Gladstone] has exercised a sound discretion in withdrawing the proposition.³⁶¹

After brief comments from Mr Henley and Mr Locke, the contentious clause was “negatived,”³⁶² and the matter came to an end. For now.

A Footnote

Almost, that is. On 7 May 1863 Gladstone’s proposal to tax clubs came under discussion. Lord Robert Cecil declared that:

[a] horrible doubt had crossed his mind, whether public dinners would not be clubs for the purpose at which [Gladstone] aimed. The stewards of a dinner were an assemblage of gentlemen who bought wine of the dealer, and then retailed it again to the guests at one guinea a head. He was afraid the stewards of every public dinner under the Bill would

³⁵⁸ Hansard, above n 101, 1126.

³⁵⁹ Hansard, above n 101, 1126.

³⁶⁰ Hansard, above n 101, 1132.

³⁶¹ Hansard, above n 101, 1133.

³⁶² Hansard, above n 101, 1135.

have to pay £17 10s. *Perhaps [Gladstone's] intention was that that should be another form of taxing charities – only in that case the impost would fall upon voluntary contributions.* (Emphasis added.)³⁶³

A case of not letting sleeping dogs lie?

In spite of Gladstone having been unsuccessful, it is interesting to note that *The Times* continued, until at least 3 June 1863, to publish the names of those whose petitions against the taxing of charities had been tabled in the House of Commons. Over the weeks, however, the lists became noticeably shorter, with only one petition, that of Sir Fitzroy Kelly, being tabled on 3 June.³⁶⁴

The growth of the charity sector

Gladstone had also observed that there had been considerable growth in the number of charities, as it appeared to him “that the property of the charities is increasing in value more rapidly than the property of the community at large.”³⁶⁵ Using data from the earlier inquiries concerning charities, Gladstone advised the House that the income of charities between 1818 and 1837 had increased from £1,209,000 in 1818 to £3,000,000 in 1862.³⁶⁶ That is an increase of approximately 148 per cent. The figure that Gladstone used in his debate was “an increase in value of 250 per cent,”³⁶⁷ a figure that I am unable to verify from the figures in *Hansard*. Gladstone had stated that:

[b]y our remissions we can trace and verify the estimate to £2,666,000, but there is other property which brings the value up to the amount I have named. Consequently, if the charity property has increased in value by 250 per cent, it has increased in an exceptionally rapid manner. How is this to be accounted for? I believe that it may be accounted for in this way. The chief donors of charities have been citizens, and the great bulk of land which they have bestowed, being in the neighbourhood of towns, has shared in a pre-eminent degree in the general rise in the value of landed property.³⁶⁸

Had Gladstone referred to the debate in the House of Commons on 5 June 1829, the income returned under what was referred to as “Gilbert’s Act,” was £258,000 for the English charities, and £6,000 for the Welsh Charities,³⁶⁹ he might well have wondered at the disparity

³⁶³ Hansard, above n 101, 1366.

³⁶⁴ *Parliamentary Intelligence*, House of Commons, ‘Petitions,’ *The Times* (London), 3 June 1863, 6. The list of petitioners on 6 May occupied at least a third of a column.

³⁶⁵ Hansard, above n 101, 1099.

³⁶⁶ Hansard, above n 101, 1099.

³⁶⁷ Hansard, above n 101, 1099.

³⁶⁸ Hansard, above n 101, 1099.

³⁶⁹ Hansard, *Parliamentary Debates* (1829) New Series vol XXI, 1758.

in the figures over the years. It would be an interesting exercise to use data from the charity inquiries of the early to mid-nineteenth century to calculate what the effect on the funds of those charities would have been had they been subject to Income Tax. Conversely, those figures would also provide an indication of Income Tax forgone by the Government. The question that leads from these points is: which provides the greater net benefit, economically, fiscally and socially, to the country – the provision of an exemption from Income Tax, or the levying of Income Tax on charitable institutions coupled with grants by Government to charities, as Gladstone had desired?

Conclusion

Gladstone's challenge of the charitable purposes exemption from Income Tax was without precedent. It is apparent that he knew that he was unlikely to succeed in the House, as even his own Parliamentary colleagues largely deserted him in his hour of need. Never before had such a challenge been seen. The power and influence that London's charities wielded was clear to see, and the voting bloc was not one which a career-minded politician would ignore, then or now, in the face of such emotional opposition to Gladstone's intentions. What my research uncovered was the details of the deputation which confronted Gladstone, reported for all to see in *The Times* on 4 May 1863. This proved to be the first evidence, from either the Eighteenth or Nineteenth Centuries (with the exception of Highmore),³⁷⁰ of an attempt to rationalise the exemption of charitable institutions from Income Tax. However, there is also strong evidence that it was not only Gladstone who felt discomfort with the fiscal privilege Pitt had extended to charitable institutions in 1798 and 1799.³⁷¹

No doubt Gladstone would approve of the extent to which governments in the Twenty-first Century provide funding to charitable institutions,³⁷² but he would also, I suggest, be perplexed that the charitable purposes exemption from Income Tax persists along side such funding. Gladstone, who finally retired from political life in 1897, may well have noted the spasmodic attempts to raise the question of charities and taxation in the years following his unsuccessful bid to have the exemption replaced with government grants. He may also have taken note of the case in 1891 that was to become the basis of charitable purposes in charity law to the present day, but I have not found evidence of either case.

³⁷⁰ See Chapters 3 and 4 of this Thesis.

³⁷¹ See Chapter 7 of this Thesis.

³⁷² See Robert Whelan, *The Corrosion of Charity: From Moral Renewal to Contract Culture* (1996).

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Part I British Parliamentary Papers: Accounts of exemptions granted to charities

The *British Parliamentary Papers* contain a wealth of information, in the form of the Parliamentary Returns on the taxation of charities. On 8 February, 1819, John Watkins, of the Offices of Taxes, presented a Return to the House of Commons following an order from the House to do so on 25 January that year.¹ The Returns consisted of two parts: the first part

¹ 'Charitable Donations No. III', Return to an Order of the Honourable House of Commons, dated 25 January 1819, for an Account of the Amount of Rents and Profits of Messuages, Lands, Tenements and Hereditaments, belonging to any Hospital, School or Almshouse, or vested in Trustees for Charitable Purposes; and also, of the

concerning rents and profits of messuages, lands, tenements and hereditaments; and the second part, the amount of stock held by charities and the income derived from them. The Returns are of interest for three reasons. First, they detail the income of each charity from those two sources. Second, the Returns describe the title of the officer of the charity who claimed the allowances on behalf of the charity. Third, and most importantly, the Returns detail the investments held by every charity. In the following Table I have provided totals of each item. To obtain the total income and investments for each charity, I used an Excel spreadsheet to aggregate the data, as those totals were not provided in the Return, and created Table 1 Examples of exempt income for which Allowances were claimed, and Table 2 Dividends received by London Hospitals.²

Table 1 Examples of exempt income for which Allowances were claimed under 46 Geo. III c. 65 [1806] in the year ending 5th April 1815

Charity	Rents and Profits £ s d	“Whether claimed by Corporation, or Trustee”
St. Bartholomew’s Hospital	22,372 14 3	Receiver
Bethlem Hospital	10,730 3 0	Receiver
Bridewell Hospital	6,888 7 6	Receiver
Christ’s Hospital	32,014 4 11	Clerk to the hospital
Sutton’s Hospital	20,797 11 4½	Receiver
Foundling Hospital	4,352 17 8	Secretary
St George’s Hospital	160 10 0	Secretary
St Katherine	99 3 0	Receiver
London Hospital	1,109 7 6	Secretary
St. Margaret’s Hospital	487 6 0	Trustee
Grey-Coat Hospital	1,176 16 0	Treasurer
Emanuel Hospital	3,100 11 0	Corp. of City of London (principal clerk)

Amount of Stock or Dividends belonging to any Corporation or Society of Persons, or of any Trust established for Charitable Purposes; which have Claimed to be Exempted from the Duties granted by the Act 46 Geo. III c. 65 [1806] in the year ending 5 April 1815; distinguishing the County and Parish in which such Lands, and Charitable Foundations or Institutions, are situate; and whether the Allowances have been claimed by Corporations or Trustees (presented 8 February 1819. *Report from Commissioners; &c* [sic] *Charitable Donations* (1820) vol VI.

² With thanks to Bob Phillips who, in 2005, had provided a formula to add pounds shillings and pence in response to another person’s request, which I found at www.pcreview.co.uk via Google.

Table 2 Dividends received by London Hospitals

Charity	Stock £ s d	Dividends £ s d	“Whether claimed by Corporation, or Trustee”
St. Bartholomew’s Hospital	93,876 4 11	1,966 15 2	Receiver
Bethlem & Bridewell Hospitals	125,612 10 2	2,699 7 6	Receiver
Christ’s Hospital	561,968 8 11	12,194 10 0	Clerk
London Hospital	110,889 19 1	3,482 14 0	Governors by their Secretary (except Trustee for an amount of £450)
Total amount of annual dividends: City of London		£35,896 19 8	
Sutton’s Hospital	2,847 4 11	85 8 2	Receiver
Foundling Hospital	128,231 17 1	2,842 6 7	Secretary
St George’s Hospital	76,769 18 6	3,588 4 2	Secretary
City of London Lying-in Hospital	49,300 0 0	739 10 0	Trustee and Treasurer
St Luke’s Hospital	134,260 0 0	4,082 16 0	Trustee (except agent for an amount of £1,200)
Magdalen Hospital	40,374 14 0	1,236 4 8	Secretary
Middlesex Hospital	39,121 5 2	1,080 7 2	Treasurer
Small-pox Hospital	23,149 15 9	579 7 10	Trustee and Secretary
The Vaccine Pock Institution	750 0 0	22 10 0	Trustee
Royal Hospital [unnamed]	220,000 0 0	6,600 0 0	Deputy Treasurer
Total amount of annual dividends: County of Middlesex		£135,962 3 11	
Blue-Coat School	5,505 0 0	175 0 0	Governor
St. Margaret’s Hospital	2,275 0 0	68 5 0	Governors
Lying-In Hospital	27,000 0 0	810 0 0	Governor
Emanuel Hospital	5,400 0 0	162 0 0	Accountant
Total amount of annual dividends: City of Westminster		£4,919 5 0	

From the Tables it can be seen that those particular charities had considerable amounts invested in stocks, that is, the Government funds. From a further Return filed in the House of Commons in 1843, following an Order to do so on 31 March 1840, I have extracted data with respect to the income of the Royal Hospitals as in Table 3 Other income earned by the Royal Hospitals of London:³

³ Reports from Commissioners, Public Charities, *Analytical Digest of the Reports made by the Commissioners of Inquiry into Charities*, Part I (1843), pursuant to an Order of the House of Commons on 27 March 1835.

Table 3 Other income earned by the Royal Hospitals of London

Royal Hospital	Rent £ s d	Rent Charges £ s d	Investments (classified "Personal property") £ s d	Interest from investments £ s d
St. Bartholomew's	23,275 12 6	1,620 5 10	169,898 13 7	5,236 11 4
Christ's or Blue Coat School	32,516 2 7	678 12 11	530,411 17 5	16,027 9 10
Bridewell	7,825 16 8	Nil	26,679 15 0	808 8 4
Bethlem	12,170 1 3	Nil	114,356 10 6	3,647 18 0
St Thomas'	24,051 12 9	104 2 9	21,654 9 11	808 0 8
Totals	£99,839 5 9	£2,402 1 6	£863,001 6 5	£26,528 8 2

The income from investments in 1835 averaged 3.1 per cent, whereas in the previous table the average return was 2.2 per cent. Part II of the same Return contained a summary of the Charity Commissioners findings with respect to the funds invested by charities and the income received from those funds. The figures are impressive, as can be seen from Table 4 Aggregate income of the charities of England following:⁴

Table 4 Aggregate income of the charities of England

Charities of London	Rent £ s d	Rent Charges £ s d	Investments £ s d	Interest from investments £ s d	Average rate % of interest
London:					
Royal Hospitals	99,840 5 9	2,395 1 6	863,001 6 9	26,528 8 2	3.1%
Chartered	55,153 6 0	6,655 6 7	744,194 12 9	23,877 6 1	3.2%
Parochial Charities	28,890 11 9	1,616 8 7	221,074 10 0	8,196 8 2	3.7%
Westminster	13,629 10 4	294 7 8	134,275 16 2	4,633 17 7	3.5%
Middlesex	17,293 12 9	1,340 17 10	368,893 9 8	12,806 16 4	3.5%
Aggregate of all charities	874,313 16 0	79,930 5 3	6,668,528 9 0	255,151 11 5	3.8%

It is the aggregate data of the charities to which I draw your attention to, as the data that is available to researchers in these records suggests a research project on the investment strategies of the London charities. The cost to the Government of the exemption from Income Tax would also be able to be compiled from the comprehensive information contained in Returns such as these. At a rate of 10 per cent, the tax liability on the gross income of £1,209,395 from all sources would be a mere £120,939. Any allowable deductions would reduce that sum further. The question that follows is: what would the purpose be in taxing

⁴ Reports from Commissioners, Public Charities, *Analytical Digest of the Reports made by the Commissioners of Inquiry into Charities*, pursuant to an Order of the House of Commons on 27 March 1835 (1843) Part II.

these funds, other than as a punitive measure to discourage the Governors' charity feasts at the expense of those for whom the charity was established in the first place?

Income Tax on charities: Return No. 289 (1888)⁵

The *Journals of the House of Lords* record that, on the 3 August, 1888, Lord Addington moved:

That there be laid before this House-

1. Correspondence in 1863 between the Inland Revenue and the Treasury (reprint from "Charities," 1865 [Return no 382]);
2. Statement of amounts on which Income Tax was refunded in 1886-87, specifying the various classes, as educational, religious, hospitals, doles, &c.;
3. Statement of claims for restitution of Income Tax rejected since August 1887, specifying the nature of the charity and the reason for the rejection;
4. Any correspondence between the Inland Revenue and trustees of charities and the Charity Commissioners bearing on the new procedure of the Inland Revenue.

The same was agreed to.⁶

The reason for Lord Addington's involvement in this event becomes clear once it is known that in 1861 he had been appointed as chairman of a Select Committee on ... Income and Property Tax.⁷ On the 26 November 1888, Return No. 289 "Income Tax on Charities" (hereafter "Return No. 289") was "laid before the House by the Lord Chancellor"⁸ and, the following day, was ordered to be printed with the title "Income Tax on Charities (No. 289)."⁹

As I had been unable to find a copy of this particular document in New Zealand, having thoroughly checked the microfiche files of the Parliamentary Papers held at the University of Canterbury, and having paid a visit to investigate the matter further at the Parliamentary Library in Wellington, Professor Cookson suggested that I contact the House of Lords Records Office who very promptly replied to say that a copy was held there.¹⁰ However, my

⁵ The Return is also discussed in more detail later in this chapter.

⁶ *Journals of the House of Lords*, (1888) vol CXX 367.

⁷ H.C.G. Matthew and Brian Harrison (eds), *Oxford Dictionary of National Biography* (2004) vol 28 551. The report of the committee was "Select Committee on ... Income and Property Tax," *Parl. Papers* (1861), 7.1, no. 503; 7.339. no. 503-I. *ODNB*, *ibid* 551.

⁸ *Journals*, above n 6, 426.

⁹ *Journals*, above n 6, 427.

¹⁰ I owe a debt of gratitude to Rosemary Morgan and Mary Cain, librarians at the School of Law Library, University of Canterbury, and Felicity Rushbrooke, of the Parliamentary Library, Wellington, for their

research had also identified a letter by Lord Addington in *The Times* of the 9 March 1889 on the subject of the taxation of charities, which I found to be a detailed description of Return No. 289 itself.¹¹

The background to Lord Addington's motion was a case being heard before the Lords as, "at the close of a statement of the case of the Incorporated Society for Building, Enlarging, and Repairing Churches and Chapels," Lord Addington had moved for the Returns, as described above.¹² Having been published, Lord Addington was able "to present to [the readers of *The Times*] the position of this important question illustrated from the information in the [R]eturns."¹³ Before I review Lord Addington's letter, it is important to comment on the debate on the House of Lords on 3 August 1888, when Lord Addington proposed his motion. Lord Addington had desired "to call the attention of the House to the action of the Inland Revenue in refusing to refund to charitable societies the Income Tax previously levied, and from the payment of which they had always been exempt."¹⁴ Whereas Gladstone had "signally failed in his crusade" to tax charities in 1863, "the Inland Revenue Department was now endeavouring to attain the same object by a *coup de main*, and without any legislative sanction whatever."¹⁵ Addington took exception "to the Inland Revenue acting upon its own interpretation, and making a rule of action which involved a breach of a practice which had been observed for 45 years."¹⁶ Having "made representations" to the Inland Revenue on behalf of the Church Building Society requesting a refund of Income Tax, which was rebuffed, Lord Addington declared that:

[he] was utterly unable to appreciate the principles of interpretation applied by the Department to the exemption clauses of the Income Tax Act 1842, and he found it especially difficult to understand why there should be special exemption in the case of repair and not in the building and enlargement of churches.¹⁷

What Lord Addington had particularly objected to was that the Inland Revenue "[had taken] upon itself to make new rules of interpretation of an Act of Parliament, and to constitute itself

professionalism and interest in assisting me to find scarce materials for my dissertation. Professor John Cookson, one of my three PhD Supervisor's, has also provided invaluable advice to me on this historical study.

¹¹ Lord Addington, 'Taxation of Charities', *The Times* (London), 9 March 1889, 16.

¹² Addington, above n 11. Lord Addington also had an interest in churches, having "built and endowed St. Alban the Martyr in Holborn." *ODNB*, above n 7, 551.

¹³ Addington, above n 11.

¹⁴ Hansard, *Parliamentary Debates* (1888) vol CCCXXIX, 1384.

¹⁵ Hansard, above n 14, 1385.

¹⁶ Hansard, above n 14, 1385.

¹⁷ Hansard, above n 14, 1385.

the dispenser or non-dispenser of Income Tax.”¹⁸ Neither did the decision in the Scottish case *Trustees of the Baird Trust*¹⁹ “govern the judgment of an English Court.”²⁰ Lord Addington then moved his detailed motion, as recited above.²¹ During the ensuing debate, the Prime Minister, the Marquess of Salisbury, declared that he considered the matter to be:

truly nothing but a question of dry law [as] [b]y the Income Tax Act [1842] the property of charitable institutions is exempt from Income Tax, but the question is what does ‘charitable’ mean? One definition was given and prevailed for a great number of years. It was never challenged in a Court of Law, and the Inland Revenue was guided, as it is bound to be guided, by the decisions of its official superiors.²²

The Prime Minister, seemingly ignoring the fact that the Scottish Courts had no jurisdiction over the English Courts, and in support of the decisions of the Inland Revenue Department, informed the House of Commons that:

when Judges pronounce a decree, what we have to do is not criticize, but to obey. *We have no power to refuse to obey the decision which the Judges have given; and the Inland Revenue Department was not only within its right, but was acting within the bare lines of its absolute duty*, when, having got an Act of Parliament interpreted by a Court of competent jurisdiction, it henceforward acted upon that interpretation and not upon the interpretation which it had previously given. That decision of the Courts of Scotland is not final. It can be taken up in this House. It never has been. If it is, it will be submitted to the judicial action of this House, and we should know finally what the law is upon this point. (Emphasis added.)²³

The Prime Minister, before repeating his remarks about “bare law” (instead of “dry law”) and having to “obey the law,” stated that he did “not know enough of the technical circumstances of one of these fiscal suits to say how far it would be in our power to meet [his] noble Friend on that point.”²⁴ He then begged Lord Addington “not to run away with the idea that this is any question of policy, or that it argues any opinion on questions of policy on the part of Her Majesty’s Government.”²⁵ Therein lay the complication. On the one hand the issue was about the definition of charitable purposes, whereas on the other the underlying theme was that of fiscal policy. With respect to charitable purposes and the exemption from Income Tax,

¹⁸ Hansard, above n 14, 1385.

¹⁹ *Trustees of the Baird Trust v The Lord Advocate* (1888) 15 Sc. Sess. Cas. 4th series 682.

²⁰ Hansard, above n 14, 1385.

²¹ Hansard, above n 14, 1386.

²² Hansard, above n 14, 1386.

²³ Hansard, above n 14, 1387.

²⁴ Hansard, above n 14, 1387.

²⁵ Hansard, above n 14, 1387.

the two are inextricably linked. Ultimately the *Pemsel* case laid down the basis on which fiscal policy with respect to charities was to be applied and in doing so made a most significant contribution to social policy, not only in England but also in other common law jurisdictions, in that regard than any charity law case before or since.²⁶

Addington's request for the Return "Income Tax on Charities"

Therein lay, at that time, the problem which was ultimately to be resolved by *Pemsel* in 1891.²⁷ The Prime Minister, in declaring that the concept of "charitable" had "never [been] challenged in a court of law, and [that] the Inland Revenue was guided, as it was bound to be guided, by the decision of its official superiors,"²⁸ had hit the nail on the head. The problem only became compounded upon their Lordships delivering their judgment in *Trustees of the Baird Trust*,²⁹ a situation Lord Addington clearly wished to resolve.

Lord Addington, having been successful in his motion requesting that the correspondence of 1863, and reports of refunds of Income Tax refunded, and claims rejected since August 1887, be tabled, then took the matter outside the House as, in *The Times* of 28 August 1888, his extensive letter on the matter was published. Before we give further consideration to the contents of Lord Addington's letter, and his subsequent correspondence on the matter of the taxation of charities, we must take further note of aspects of the *Pemsel* case. It is not commonly known that the *Pemsel* case, so well known by students and practitioners of the law, is a Scottish case, of which judgment was passed in 1891.³⁰ What also might not be so well known is that while the legal genesis of the case was on 27 October 1888,³¹ the source of the issue was a gift by deed dated 11 February 1813 when Elizabeth Mary Bates (d. 1835) provided for "two fourths of the income [of the gift to be] applied towards maintaining,

²⁶ The *Baird Trust* case, above n 19, had implications beyond Scotland. On the 7 August 1888 the Lords debated the question of the Royal University of Ireland having had a request for a refund of Income Tax amounting to £583 6s 8d declined by the Inland Revenue. The Chancellor of the Exchequer advised the House that "the Courts have decided that the clauses in the Income Tax Acts, on which the Royal University bases its claim for repayment, do not cover funds devoted to educational purposes, but apply only to the relief of the poor. The Inland Revenue is, of course, bound by this decision." Hansard, above n 14, 1829.

²⁷ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

²⁸ Parliamentary Intelligence, *The Times* (London), 4 August 1888, 6. The *Hansard* report of that debate is virtually identical to the report in the *Times*, as was so often the case during the nineteenth century.

²⁹ *Trustees of the Baird Trust*, above n 19.

³⁰ *Pemsel*, above n 27.

³¹ See *The Queen on the prosecution of J.F. Pemsel v The Commissioners of Income Tax* 22 QBD [21 December 1888] 296, 298.

supporting and advancing overseas missions of the Protestant Episcopal Church.”³² Is it merely coincidence that the claim for a refund of that church’s Income Tax, which had been rejected by the Commissioners in 1888, also involved a religious charity, just as the Church Building Society was? Is it also coincidence that Lord Addington was raising questions about the decisions of the Commissioners at the time that the *Pemsel* case was in its infancy, or was it because he was knowledgeable of the Moravians’ claim for a refund of Income Tax having also been rejected?

Addington’s lengthy letter of 28 August 1888, with its heading “Taxation of charities,” began with the profound statement that “England is distinguished for her charities.”³³ Within that same paragraph is the statement that “[t]he principle of fostering charity has been conspicuously displayed in its exemption from taxation generally, and specifically from the incidence of Income Tax.”³⁴ Thus a principle of social policy is laid down: to exempt charities from taxation is to encourage their growth and development. Addington was not, however, writing from that perspective but rather from the point of view that the very nature of charities was under threat by the unilateral decisions of the officials of Inland Revenue who had, since “the autumn of 1887,” employed “an entirely new line ... in reply to the habitual application for the restitution of Income Tax to charities whose receipts had been previously charged, [and] required fresh statements of claim for reconsideration.”³⁵ Having declined the claim from the Incorporated Society for Promoting the Enlargement, Building, and Repairing of Churches and Chapels on the basis that such an activity was not a charitable purpose under section 88 of the Income Tax Act 1842, which exempted all dividends chargeable under Schedule O that are applicable to charitable purposes, the Inland Revenue, on being “[r]eminded that the exemption [had] been admitted for 45 years,” replied that “they [had] only now discovered the defects of title.”³⁶ Addington, in his letter, then proceeded to “examine their argument.”³⁷ In doing so, Addington posited what was meant by “charity” by reference to Dr Johnson’s Dictionary, as he considered that:

³² UK Charity Finder, www.charities-database.co.uk (downloaded 24 November 2006). Details of the gift are also contained in the case law concerning the exemption of the income from tax in the later years of the 19th century.

³³ Addington, ‘Taxation of charities’, *The Times* (London), 28 August 1888, 8.

³⁴ Addington, above n 33.

³⁵ Addington, above n 33.

³⁶ Addington, above n 33.

³⁷ Addington, above n 33.

it would be strange indeed to find that 82 years after its introduction into Pitt's Income Tax Acts as a virtue to be fostered and protected, charity could be legislatively degraded to the narrow interpretation of the Scotch Courts [in *Trustees of the Baird Trust* case].³⁸

Addington also brought Gladstone's speech of 4 May 1863 back to life, in which he had challenged the notion of death-bed bequests for charitable purposes and the consequences arising from such dispositions, of which Gladstone had painted a notorious picture. This was a view that neither Addington, nor the House of Commons agreed with, considering Gladstone's attack not to be "a fair or veracious representation" of charities.³⁹ The correspondence of 1863 between the Board of Inland Revenue and the Treasury was also cited by Addington in his argument, the practice of the Board having been "to grant the return of duty in respect of all charitable purposes within the statute of 23 [sic] Eliz. I cap. 4," until being called into question in 1856 on the matter of whether "a trust conveying rent of lands at Richmond applied in aid of the Poor Rates [was] a charitable trust."⁴⁰ The outcome of that correspondence was a call for a legislative definition of charitable purposes, a call that went unanswered until the Charities Act 2006⁴¹ included, for the first time in the law of England and Wales, such a definition. In applying the narrow definition of charity as laid down in *Trustees of the Baird Trust* case in 1888,⁴² that is, "charity as represented by alms," Addington believed that the Board had adopted a definition "which would effectively cancel the remission of Income Tax on charity revenues, estimated by Mr Gladstone in 1863 at £3,000,000 annual value,"⁴³ and one that had the potential to cause "serious injury to the civilization of the country."⁴⁴

Addington's letter did not go unnoticed as, on 4 September 1888, G.A. Cross, Honorary Secretary of the Charities' Rating Exemption Society, responded in *The Times* by asking if Addington was aware:

that owing to a "departmental proceeding," analogous to that against which he now protests, charities in many parts of England have been, during the last 22 years, made to pay all taxes except Income Tax, after the previous exemptions of such institutions for two

³⁸ Addington, above n 33. *Trustees of the Baird Trust*, above n 19.

³⁹ Addington, above n 33.

⁴⁰ Addington, above n 33.

⁴¹ *Charities Act 2006* c. 50 [England and Wales] s. 2(2), which contains a list of 13 statutorily defined charitable purposes.

⁴² *Trustees of the Baird Trust*, above n 19.

⁴³ Addington, above n 33.

⁴⁴ Addington, above n 33.

centuries and a half by common, judicial, and undisputed interpretation of the statute of 43 Elizabeth I [1601]?⁴⁵

According to Cross, Addington appeared “to share the impression of most people in England, that a thing so advantageous to the community, so economical to the country, and so beneficial to the poor, *as voluntary charity is entirely free from Imperial and local imposts.* (Emphasis added.)”⁴⁶ So it was, “according to the spirit of legislation and to specific enactments whenever Parliaments have expressed their will; but so it is not as an actual fact according to a ‘departmental proceeding’.”⁴⁷ Cross was making reference to the fact that charities were now being assessed to local rates, a situation that was about to be addressed by the introduction into the House of a Bill “to remedy this erroneous state of things.”⁴⁸ Cross was taking advantage of the matter that Addington had raised in order to pursue the interests of the Charities’ Rating Exemption Society, and used the columns of *The Times* to make the point that:

the rating of London hospitals, for instance, is peculiar. St. Mary’s, with 245 beds and a yearly expenditure of £18,000, pays £52 a year; Charing-cross, with 150 beds and a yearly expenditure of £12,000, pays £432; the London Hospital, with 790 beds and a yearly expenditure of £48,000, pays £56; Guy’s, with only 700 beds and a yearly expenditure of £34,000, pays £1,400; St. Thomas’s, with only 590 beds and a yearly expenditure of £38,000, pays £2,133 annually.⁴⁹

This situation had arisen in 1866 and, until then, “the charities of England were as free from the Poor Rate, and those local rates which were assessed after its model, as they have been, and still are, from the several income taxes.”⁵⁰ In a case concerning St. Luke’s Hospital for Lunatics, Lord Mansfield decided “that the only occupiers of charitable buildings are the poor themselves, who are not liable” and, since then, Cross wrote, “[n]o further question was raised as to the liability of the occupiers of charitable buildings.”⁵¹ The situation had changed when, in 1865, “there came about the great case of the *Mersey Docks and Harbour Board.*”⁵² This confounded Cross, who proposed that “[a]s to the connexion between the *Mersey Docks* and the voluntary charities of Great Britain, I apprehend that not the acutest lawyer at the Bar nor

⁴⁵ G.A. Cross, ‘Taxation of Charities’, *The Times* (London), 4 September 1888, 5.

⁴⁶ Cross, above n 45.

⁴⁷ Cross, above n 45.

⁴⁸ Cross, above n 45.

⁴⁹ Cross, above n 45.

⁵⁰ Cross, above n 45.

⁵¹ Cross, above n 45.

⁵² Cross, above n 45.

any learned Judge upon the bench could point it out.”⁵³ It was this case, Cross stated, and the decision in the House of Lords, that “is the foundation relied upon, and the only one relied upon, for imposing on the generosity of England the burden of local taxes.”⁵⁴

The problems for charities appear to have begun when, in appearing before their Lordships to argue their opinions on the *Mersey Docks* case, one of the Judges, Lord Westbury, had stated that:

the Act of Elizabeth contained no specific exemptions whatsoever. This general expression, entirely incidental to that case, was applied in the following year in the case of *The British Orphan Asylum v The Parish of Stoke*. Since that time the case of St. Thomas’s Hospital has been tried and decided on the same unfortunate reference to the *Mersey Docks* case, and in both these charitable cases the vital distinction between municipal bodies for public services and voluntary charities for public benevolence to the poor seems to have been altogether left out of sight. (Emphasis added.)⁵⁵

Lord Westbury’s “hint,” as Cross put it, regarding the lack of an express or implied exemption in the Statute of Elizabeth, prompted local rating authorities to:

[awake], and forthwith proceeded to claim rates from charitable institutions. There was no contesting the accuracy of the hint itself, because the very primitive and rudimentary Act of Elizabeth neither stated definitely who were to be rated nor who were to be exempted.⁵⁶

Cross also noted that “while Lord Westbury pointed out that charities were not expressly exempted by [the Statute of Elizabeth], his Lordship omitted to add that they were also expressly named as eligible for part of the Poor Rate received.”⁵⁷ To address this wrong, Cross wrote that a Bill was “to be introduced next Session ... to restore the exemption which charities enjoyed from time immemorial.”⁵⁸ The Bill was to provide that:

⁵³ Cross, above n 45.

⁵⁴ Cross, above n 45.

⁵⁵ Cross, above n 45.

⁵⁶ Cross, above n 45.

⁵⁷ Cross, above n 45. *An Act for the relief of the poor* 43 Eliz. c. 2 [1601] provided, at s. XIV, that poor prisoners, hospitals, and almshouses, were to be sent money each quarter, such sums to be set by the justices of the peace. “Twenty shillings at the least” was to be sent to the “prisons of the King’s bench and marshalsea,” but no sums were specified in the statute for hospitals and almshouses. By s. XV, surplus money was to be sent “for the relief of the poor hospitals of the county, a those that shall sustain losses by fire, water, the sea or other casualties, and to such other charitable purposes, for the relief of the poor, as to the more part of the said justices of peace shall seem convenient.”

⁵⁸ Cross, above n 45.

[a]ll buildings or parts of buildings used exclusively for charitable purposes, the funds for the maintenance of which are exempted from the payment of the Inhabited House Duty, under the provisions of the Act 48 George III cap. 55 (Sch. B) [of 1808], or which are exempted from the payment of income taxes by the Commissioners for Special Purposes, Inland Revenue, shall be exempted from the payment of all local rates.⁵⁹

Cross considered that such an Act was justified on the grounds that “[t]here is much reason for reliance on the Legislature. Many existing Acts secure the exemption of charities from taxation – some local, some special, some general. All these Acts except one bear dates anterior to the *Mersey Docks* case.”⁶⁰ Churches and chapels, Sunday and ragged schools, literary and scientific institutions were:

all free from local rates; but the hospital, the orphan asylum, the incurables’ home, the asylums for the blind, for the idiotic, for the afflicted, the freedom of which was the precedent for the freedom of the others, and for the support of which the charitable tax themselves to the extent of millions annually, these are now, more or less, subjected to the demands of the local rate collector.⁶¹

Cross then recited the Acts to which he referred: “... churches and chapels, by 3 & 4 William cap. 30, 1833[;] charitable buildings in Ireland [under a new Poor Law Act][;] Sunday and [R]agged [S]chools, 32 & 33 Vict. cap 40 1869[;] literary and scientific institutions by 6 & 7 Vict. cap. 36 1843.”⁶² It is apparent that the impetus for this initiative was two-fold: that charities had been exempt firstly, from Income Tax since 1799; and secondly, since the Statute of 43 Eliz. I c. 2 from rating, until, in the latter case, the *Mersey Docks* case of 1865. Cross probably did not live to see this situation finally addressed when in 1900 a Select Committee was appointed:

to consider the operation of the law by which hospitals and other institutions for the care and treatment of the sick, or of those afflicted in mind or body, are liable to local rates, and to report whether under any and what conditions it is for the public interest that such hospitals and institutions, or any of them, should be exempted wholly or in part from such liability in future.⁶³

Needless to say, but with reservations, the Select Committee agreed that:

⁵⁹ Cross, above n 45.

⁶⁰ Cross, above n 45.

⁶¹ Cross, above n 45.

⁶² G.A. Cross, above n 45.

⁶³ House of Commons, *Report from the Select Committee on Hospitals (Exemption from Rates)* 13 July 1900 iii.

[t]here can be no doubt as to the force of the claim for exemption set up by the hospital authorities when viewed from a philanthropic standpoint. ... Your Committee recommend that the principal of exemption from rates should be applied to all medical hospitals, infirmaries, or other institutions for the care and treatment of persons suffering from sickness or injury, or afflicted in mind or body, not carried on for gain or profit, and supported wholly or in part by voluntary contributions or endowments, and directly benefiting the rates in the county or district in which they are located to a greater extent than they pay rates; ...⁶⁴

The reservations that the Select Committee expressed were that:

if relief were granted to hospitals and similar institutions, it would be impossible to resist the claims of other charitable institutions of a different kind, and that consequently there would be no logical stopping-place short of the principle adopted by the Legislature in [Roman Catholic] Ireland by which relief is granted to all charitable institutions as well as hospitals.⁶⁵

Given that statutes had been passed in 1833 and 1843, for example, providing for such exemptions, and the body of case law that had arisen on the subject, this comment by the Select Committee warrants further investigation at a later date.⁶⁶ By 1888, two other charity cases had been decided on the basis of the precedent laid down by Lord Westbury in the *Mersey Docks* case. The evidence for this is to be found in Cross' letter of 4 September in which he stated that:

[i]f the President of the Local Government Board were asked on what the assumed right to rate charities is based, he would refer the inquirer to the case of the *Mersey Docks* and the cases of the British Orphan Asylum and St. Thomas's Hospital, which were both decided on the supposed precedent afforded by the famous case of the docks.⁶⁷

While I was able to locate the case concerning St. Thomas's Hospital without difficulty, the case involving the British Orphan Asylum has proved elusive, and I can only conclude that this was an unreported case.

⁶⁴ House of Commons, above n 63, iv. The various statutes from past years relating to the rating of institutions other than hospitals were: *An Act to exempt from Poor and Church Rates all Churches, Chapels, and other Places of Religious Worship* 3 & 4 Will. IV c. 30 [24 July 1833]; *An Act to exempt from County, Borough, Parochial, and other local Rates, Land and Buildings occupied by Scientific or Literary Societies* 6 & 7 Vict. c. 79 [28 July 1843].

⁶⁵ House of Commons, above n 63, iii.

⁶⁶ Two statutes in particular from past years relating to the rating of institutions other than hospitals were: *An Act to exempt from Poor and Church Rates all Churches, Chapels, and other Places of Religious Worship* 3 & 4 Will. IV c. 30 [24 July 1833]; *An Act to exempt from County, Borough, Parochial, and other local Rates, Land and Buildings occupied by Scientific or Literary Societies* 6 & 7 Vict. c. 79 [28 July 1843].

⁶⁷ Cross, above n 45.

In 1874, the judges of the Court of Exchequer Chamber hearing the *St. Thomas's Hospital* case affirmed the judgment of the Court of Queen's Bench⁶⁸ and held "that the hospital was liable to be rated [to the poor rate], and not at a merely nominal sum."⁶⁹ On appeal, it was held "that the rule laid down in the cases of *The Mersey Docks v. Cameron*,⁷⁰ and *Greig v. The University of Edinburgh*,⁷¹ applied here; and that *St. Thomas' Hospital* was liable to be rated to the relief of the poor of the parish."⁷² That is, that an exemption was expressly provided by Statute or, being the property of the Crown, was so exempted.

On 4 September 1888, in the same issue in which Cross' letter appeared, *The Times* published a lengthy commentary on the matter of the taxation of charities, both Imperial and local, commenting on the letters which Addington and Cross had each submitted on those matters respectively. Their letters contained, in the opinion of the Editor, "an interesting review of the history of the taxation of charities."⁷³ The commentary is significant for, as well as discussing the issue of the exemption of charities, it raises the real problem, that of a workable definition of charity for tax purposes. *The Times* considered that "[t]he present legal definition of 'charity' is such that fund devoted to housing lost dogs or feeding sparrows might be a charity, and lay claim to all the privileges and exemptions with which charities are clothed,"⁷⁴ and, later, that "some intelligible classification or other is needed."⁷⁵ "Charity," argued *The Times*, "sorely needs a new definition for all purposes, and the duty of making one ought to be committed to no tribunal short of Parliament."⁷⁶ The Editor would have been surprised to learn that it would not be until 2006 that such a definition was included in statute, in England and Wales at least, if not Great Britain or the United Kingdom.⁷⁷ The only interpretation of "charity" which was available to lawyers was, until 2006, for them to rely:

entirely upon an enumeration of charitable objects contained in the preamble to an Act passed in the 43rd year of Elizabeth. How absolutely antiquated this enumeration has

⁶⁸ That case also appears to have been unreported as I was unable to identify it in the LR QB volumes at the University of Canterbury.

⁶⁹ *Governors of St. Thomas's Hospital v. The Churchwarden and Overseers of Lambeth* XXX LT NS 37 [1874].

⁷⁰ *The Mersey Docks v Cameron* 11 HLC 443.

⁷¹ *Greig v The University of Edinburgh* Law Rep. 1 HL Sc. 348.

⁷² *The Mayor and Corporation of London as Governors of St. Thomas's Hospital v. Stratton and Another*, VII LR 477 [1875].

⁷³ [Editorial], *The Times* (London), 4 September 1888, 7.

⁷⁴ [Editorial], above n 73.

⁷⁵ [Editorial], above n 73.

⁷⁶ [Editorial], above n 73.

⁷⁷ *Charities Act* 2006, above n 41.

grown will be shown by culling a few of the instances which still govern the legal conception of a charity.⁷⁸

The newspaper then related some of the objects from the Preamble, for example, “marriages of poor maids, ... relief or redemption of prisoners or captives,” objects which the Editor considered to be “obsolete and fantastic dispositions, and dispositions which are no longer commonly regarded as charitable,”⁷⁹ being also dispositions which continue to cast their shadow over charity law over four hundred years later in the countries of the Commonwealth. The Editor concluded his well-researched commentary with a justification of the stance taken by the Commissioners of the Inland Revenue, as:

[t]here is no doubt that the Income Tax Commissioners would have been glad to accept for their purposes and intelligible classification of bounteous objects according to their deserts [sic] which they could have extracted from our law. It is because they could find no such classification that they felt bound to adopt or invent another, which Parliament may sooner or later have to review.⁸⁰

Why it took until 2006 for the Editor’s vision to be fulfilled would of itself be an interesting study in the development of charity law in England and Wales up until that time. While the *Trustees of the Baird Trust* case was referred to in the commentary,⁸¹ the Editorial did not see that it was its place to “question” the “three Scotch Judges [reasoning] that ‘charity’ as used in the Income Tax Acts, means relief of the poor.”⁸² Instead, *The Times* argued that:

[n]or is it absolutely conclusive against their interpretation of the word that, in the Statute of Elizabeth, by which, down to this day, on this side of the Tweed, the question of charity or no charity is tried for all *except Income Tax purposes*, the relief of the poor is only one of many uses defined as charitable.⁸³

Significantly, *The Times* then stated what is arguably a principle relating to the exemption from Income Tax, that “[t]o make good its claim to immunity from public burdens, a charitable institution ought to be able to show that, directly or indirectly, it confers some

⁷⁸ [Editorial], above n 73.

⁷⁹ [Editorial], above n 73.

⁸⁰ [Editorial], above n 73.

⁸¹ *Trustees of the Baird Trust*, above n 19.

⁸² [Editorial], above n 73.

⁸³ [Editorial], above n 73.

benefit upon the community.”⁸⁴ The significance of this statement is that, in stating such a principle, the Editor pre-dated Lord Macnaghten and *Pemsel* by three years.

The influence of the *Mersey Docks* case on the rating of charities also came in for a scathing mention in that in the *obiter* utterances of a judge “by a pure accident, the practice of three centuries was revolutionised.”⁸⁵ The result, argued the Editor, that institutions such as churches and ragged schools were freed from local rates, while hospitals and asylums became “more or less subjected to the demands of the local rate collector,” is “an inequality gross, open, and palpable, and the sooner it is redressed the better.”⁸⁶ What was it, then, that had been said by Lord Westbury in 1865 that led to such a situation arising in the first place? Lord Westbury, as Lord Chancellor,⁸⁷ in *Jones and Others v The Mersey Docks and Harbour Board* and *The Mersey Docks and Harbour Board v Cameron and Others*,⁸⁸ had made two specific references to the lack of exemptions in 43 Eliz. I c. 2, the first being that:

[t]here is nothing in the Act of Elizabeth, or in the reason of the thing, to warrant [that if valuable property be in the possession of trustees, who are bound to apply the whole of the proceeds to public but not Government purposes, that is, in works or purposes for the better accommodation or use of the public, they are not liable to be rated]. No exemption is thereby given to charity or to public purposes, beyond that which is strictly involved in the position that the Crown is not bound by the Act.⁸⁹

Then, with reference to the case of *The Tyne Commissioners v Chirton*,⁹⁰ Lord Westbury argued that:

the Court of Queen’s Bench recurred to that which is, in my opinion, the true principle, namely, that the only exemption from the statute of Elizabeth is that which is furnished by the rule, that the Sovereign is not bound by that statute; ... If this be the true criterion of exemption from rateability where the property is valuable, it is clear that the *Mersey Docks* are liable to be rated ... [as] the *Mersey Docks and Harbour Board* are occupiers of the

⁸⁴ [Editorial], above n 73.

⁸⁵ [Editorial], above n 73.

⁸⁶ [Editorial], above n 73.

⁸⁷ See Van Vechten Veeder, ‘Lord Westbury’ (1900) 13 *Harvard Law Review* 7, 557-569 for an excellent article on Lord Westbury, a man who, it would appear, had a rather acerbic nature. Lord Westbury is reputed to have “once asked Sir William Erle why he did not attend the sessions of the Privy Council. ‘Because I am old and deaf and stupid,’ replied Erle. ‘But that’s no reason at all,’ said Westbury, ‘for I am old and Napier is deaf and Colville is stupid, and yet we make an excellent Court of Appeal.’” Ibid 560.

⁸⁸ *Jones and Others v The Mersey Docks and Harbour Board; The Mersey Docks and Harbour Board v Cameron and Others* XXXV LJ NS [1865] 1.

⁸⁹ *Jones and Others*, above n 88, 23. *An Act ...*, above n 57.

⁹⁰ 1 El. & El. 516, s.c. 28 Law J. Rep. NS MC 131.

docks and the harbour within the true meaning of the word “occupier” in the Act of Elizabeth.⁹¹

As has already been noted, prisons, hospitals, and almshouses as institutions of charity were to be the beneficiaries of the funds raised under Elizabeth’s statute to relieve the poor. While no exemption from the rate was provided in the statute, it would be illogical to rob Peter to pay Paul, a point that Lord Westbury did not make but possibly considered that it did not need to be made in the first place.

The Times was also of the opinion that “[p]eople who pay rates and taxes will insist that their burdens shall not be unjustly added to by shirking on the part of institutions which are only technically charities.”⁹² That argument is a variation on another, one that considers that exemptions only lay burdens on others. Interestingly, but without any detail to support their assertion, the editorial argued that “[i]n point of fact, that is just the principle upon which the Inland Revenue Commissioners are acting.”⁹³

An anonymous author, who signed himself “J.G.F.,” questioned, in *The Times* of 6 September 1888, “[w]hy should any charities be exempted from taxation at all?” J.G.F argued that:

to exempt [property-owning charities] from taxation is therefore to cast *pro tanto* a heavier burden on the rest of the property of the place, and, in effect, to levy on the rate-payers an enforceable contribution for its support. . . . [Charities] are on a false and indefensible basis when they claim any part of their revenue from public funds, whether parochial or imperial. The truth is that the trustees and administrators of charitable funds – whether the product of endowments or of voluntary subscriptions – ought, if they possess property, to discharge all the obligations which the law has imposed on the owners of property.⁹⁴

Thus J.G.F. also made a case for the public accountability of charities in having “to substantiate stronger claims on public benevolence,”⁹⁵ not through donations, but because of their exemption from taxation. Public accountability would also be satisfied, considered J.G.F, because “it would then become incumbent on all charities – good and bad, prosperous

⁹¹ *Jones and Others*, above n 88, 24.

⁹² [Editorial], above n 74.

⁹³ [Editorial], above n 74.

⁹⁴ J.G.F., ‘Taxation of charities’, *The Times* (London), 6 September 1888, 6.

⁹⁵ J.G.F., above n 94.

and unprosperous [sic] alike – to have their accounts properly audited and to let their income and resources be publicly known.”⁹⁶

A fortnight later, on 22 September 1888, a further letter from Addington on the subject of the taxation of charities, appeared in *The Times*. Addington’s letter commenced with his assertion that:

[y]our article of 4 August reviewing my letter upon the taxation of charities and Mr Cross’s letter upon the rating of charities has provoked criticism in various quarters to which, with your leave, I shall be glad to reply in the columns of *The Times*.⁹⁷

There are two apparent inconsistencies in this paragraph. Firstly, Addington’s reference to 4 August and, secondly, did he mean that the editor was writing a review of the letters by Addington and Cross, or did he mean the review was of his letter, and that both that letter and the comments by Cross had provoked criticism? Addington further confuses the issue by concluding his letter with a reference to Cross’ letter of 4 August when in fact it was published on the 4 September. Those issues aside, Addington stated that he had been “challenged to show cause why charity funds should not be charged with Income Tax rather than be allowed to enjoy an exemption which aggravates the burden of the taxpayer generally.”⁹⁸ Addington’s response was simply that:

[c]harity funds ... should be exempt from taxation because that exemption conduces to the welfare of the whole community. ... If Income Tax is levied upon the revenues of hospitals, schools, and missions, the numbers of those who would be healed and taught and evangelized must be proportionally diminished.⁹⁹

After explaining how, in 1863, Addington had “helped to extinguish Mr Gladstone’s assault on charities ... by quoting the balance sheet of the Royal Patriotic Fund, which would have been practically broken up had its revenues (largely vested in Terminable Annuities) been charged with Income Tax,” he concluded his letter with a challenge to the actions of the Inland Revenue in its arbitrary decision-making, by stating that:

⁹⁶ J.G.F., above n 94.

⁹⁷ Addington, ‘Taxation of charities’, *The Times* (London), 22 September 1888, 7.

⁹⁸ Addington, above n 97.

⁹⁹ Addington, above n 97.

[t]here are charitable purposes of unimpeachable utility which are beyond the province of the State, and which are, and ever have been, fulfilled by private benevolence to the great advantage of the whole community. Is it desirable that the immunity from taxation hitherto awarded to them by the law should be cancelled by the arbitrary procedure of the Inland Revenue Department?¹⁰⁰

On further investigation into the matter of rating of charities, I discovered an article published in *The Times* on 18 February 1886 which reported on the presentation of a paper to the Social Science Association, by J.S. Wood, entitled “Should Public Charities Pay Local Rates?”¹⁰¹ Wood considered that “the obtaining from Parliament of a Bill of Exemption would be in the best interests of all *bonâ fide* public charities.”¹⁰² Wood then stated what was a summation of the history of the exemption from rating of charities to that time, beginning with the statement that:

the first Act which had any bearing on the subject dated back as far as 1601. By the Act of 43 Eliz. I cap. 2 [1601], it was directed that the poor rates should be levied on occupiers of personal property. *It was clear by inference and by the practical working of this Act of Elizabeth that public charities were excluded from the operations of the Poor Rate, for the 14th clause required that a certain proportion of the money raised should be devoted to hospitals and workhouses.* [The statute] not only did not compel charities to pay the rate, but compelled the rate to contribute to the charities. (Emphasis added.)¹⁰³

Wood then explained how the charities had, until the *Mersey Docks* case in 1865, benefited from this privilege for nearly three centuries, as:

[d]uring the 264 years in which the charities were free there were many legal cases tried to determine what occupations were beneficial, and it was not until 1865 that an opinion which upset the practice of two-and-half centuries was given. In that year the case of *Jones v The Mersey Dock and Harbour Board* came before the House of Lords, upon the question whether trustees for public purposes – not charitable purposes – were rateable. The Law Lords decided that *the true test of rateability was no longer whether the property to be rated was beneficial to the actual occupier but whether the occupation was not beneficial to somebody.* (Emphasis added.)¹⁰⁴

Then, continuing on, Wood described how “[i]n 1866, in the case of *The British Orphan Asylum v the Parish of Stoke*, the Court of Queen’s Bench applied the rule made by the judges

¹⁰⁰ Addington, above n 97.

¹⁰¹ ‘Rating of Public Charities’, *The Times* (London), 18 February 1886, 10.

¹⁰² ‘Rating of Public Charities’, above n 101.

¹⁰³ ‘Rating of Public Charities’, above n 101.

¹⁰⁴ ‘Rating of Public Charities’, above n 101.

to all charities.”¹⁰⁵ At that point, the trail runs cold as, in spite of extensive searching, I have been unable to find the British Orphan Asylum case. This case was also referred to by Cross in his letter in *The Times* of 4 September 1888, in which he re-stated Lord Westbury’s comment that “the Act of Elizabeth contained no specific exemptions whatsoever, [a] general expression, entirely incidental to that case, was applied the following year in *The British Orphan Asylum v the Parish of Stoke*.” Cross also wrote that the “general expression” had been applied in the case of St. Thomas’s Hospital which was:

[also] decided on the same unfortunate reference to the *Mersey Docks* case ... All this was most unfortunate for the charitable institutions. They had been dragged into the matter to support a weak case which, neither in circumstance nor in principle, bore the slightest analogy to them whatever.¹⁰⁶

Wood’s presentation at the rooms of the Social Science Association contained an element of fiscal policy in that “[c]haritable institutions were supported from free gifts out of the incomes of the benevolent who had already paid rates and taxes.”¹⁰⁷ In effect what Wood was saying was that to tax such charities was to tax their income twice. If it were not for the charity hospitals, Wood argued, “the sick poor would have to be received into parish infirmaries, and the Poor Rate would, in consequence, be greatly increased.”¹⁰⁸ Exemption was provided by statute to certain charities, but those Acts, Wood claimed, “stopped short at charities which had even stronger claims than those which were exempted.”¹⁰⁹ Wood then described how:

[a]s a matter of principle, and to be consistent, all *bonâ fide* charities should be treated alike. Either all or none should be exempt. Why should St. Thomas’s Hospital, with 590 beds, pay £2,133 yearly, and the London Hospital, with 700 beds, only £55? Again, the National Hospital for Paralysis, with 180 beds, pays £700 yearly, while St. Mary’s Hospital, with 245 beds, but £52. The Brompton Hospital for Consumption, with 321 beds, pays £597, while Westminster Hospital, with 200 beds, pays £94.¹¹⁰

In 1872 St. Thomas’s Hospital had been subjected to a rate “that from the income of the charity a sum approaching £3,000 must be annually contributed to the rates of the parish of Lambeth.”¹¹¹ Francis Hicks, the Treasurer, was of the opinion that, due to the amount the

¹⁰⁵ ‘Rating of Public Charities’, above n 101.

¹⁰⁶ Cross, above n 45.

¹⁰⁷ ‘Rating of Public Charities’, above n 101.

¹⁰⁸ ‘Rating of Public Charities’, above n 101.

¹⁰⁹ ‘Rating of Public Charities’, above n 101.

¹¹⁰ ‘Rating of Public Charities’, above n 101.

¹¹¹ Francis Hicks, ‘St. Thomas’s Hospital’, *The Times* (London), 25 July 1872, 6.

hospital was required to pay in rates, “[a]n immediate curtailment of the good work of the hospital is inevitable.”¹¹² Was it just, Hicks asked:

that a charity, thus freely relieving and treating the sick and injured poor of a parish, should be required to make such an additional payment to its rates and for their relief; and can it be just that, with the ratings of the new Albert Hall reduced to £1,250, the rating of this hospital should by the same tribunal be fixed at £10,900?¹¹³

The situation that Wood described also existed in the provinces where, he explained, “some of the charities went scot-free at the mere caprice or kindness of the local assessment body.”¹¹⁴ This situation is akin to that as identified by Addington in his letter of the 22 September 1888 on the taxation of charities in which he asked, “[i]s it desirable that the immunity from taxation hitherto awarded to [charitable institutions] by the law should be cancelled by the arbitrary procedure of the Inland Revenue Department?” Arbitrary decisions, without any basis in fiscal policy, create inequalities such as those described by Wood.

The *Pemsel* case of 1891, while not being concerned with fiscal policy on the one hand, nevertheless created on the other a case-law based fiscal policy that has no statutory authority which declares that if an entity has charitable purposes as defined in charity case law, then such an entity shall be exempted from the payment of Income Tax. Following the *Pemsel* case, in order for an entity with charitable purposes to benefit from the exemption from Income Tax it became necessary to marry or, contemporaneously, to declare an unassailable union, between the charitable purposes of that particular entity, charity case-law, and the statutory provision of the exemption as provided in the taxing statutes.

The Times of 9 March 1889 contained a letter from Lord Addington of one and half columns in length under the heading “Taxation of charities.”¹¹⁵ Referring to his letter of 28 August 1888, which had began with the inspiring words “England is distinguished for her charities,”¹¹⁶ Addington described how he called for the papers which were tabled as Return No. 289, on 26 November, 1888.¹¹⁷ He had done so, in his closing comments in the House of

¹¹² Francis Hicks, above n 111.

¹¹³ Francis Hicks, above n 111.

¹¹⁴ ‘Rating of Public Charities’, above n 101.

¹¹⁵ Addington, ‘Taxation of charities’, *The Times* (London), 9 March 1889, 16.

¹¹⁶ Addington, above n 33.

¹¹⁷ *Journals of the House of Lords*, (1888) vol CXX 426.

Lords in the case of the Incorporated Society for Building, Enlarging, and Repairing Churches and Chapels.¹¹⁸

Addington's letter of 9 March 1889, "Taxation of Charities"

Addington's letter of 9 March 9 1889 contains a concise history of the Income Tax Acts from the time of Pitt. By Pitt's Act of 1799, the Income Tax was a personal tax and this was also the intention in 1889. Exemptions were provided for "incomes under £60 a year, and the funds of all corporations or societies established for charitable purposes only."¹¹⁹ Under Pitt, "income applicable to 'charitable' purposes was therefore never returned for assessments, or charged with tax."¹²⁰ In 1803, under Addington, "for greater convenience, incomes were divided into five schedules, and the receipt of each class of revenue, so far as possible, was made leviable at its source."¹²¹ This had a profound effect on charities, as:

this change of system involved the levy of tax upon some revenues which were exempt in virtue of their purpose or the poverty of the owner, [therefore] provision was made that the Inland Revenue as the first receiver should restore the amount of the exempted tax to the trustees or administrators of the funds.¹²²

The exemption clauses were repeated in the Income Tax Act 1842,¹²³ which followed that of 1806 and its predecessors,¹²⁴ and also included an exemption for "the stock in the names of any trustees applicable solely to the repairs of any cathedral, college, church, or chapel of any building used solely for the purposes of Divine worship."¹²⁵ Lord Addington, in criticising the Commissioners for their behaviour, stated that:

[t]his being the state of the law, the Inland Revenue in 1887 deviate from the practice of 45 years, and propose at their own discretion to retain the moneys which they have received as Income Tax, to be refunded to their true owners.¹²⁶

¹¹⁸ Addington, above n 115. The details of Return No. 289 are discussed at *Return No. 289* (1888) "Income Tax on Charities" of this Chapter.

¹¹⁹ Addington, above n 115.

¹²⁰ Addington, above n 115.

¹²¹ Addington, above n 115.

¹²² Addington, above n 115.

¹²³ *An Act for granting to Her Majesty Duties on profits arising from property, professions, trades, and offices, until the sixth day of April [1845]* 5 & 6 Vict. c. 35 [22 June 1842].

¹²⁴ See Chapter 5 of this Thesis.

¹²⁵ Addington, above n 115.

¹²⁶ Addington, above n 115.

Lord Addington then questioned the legality of the actions taken by the Inland Revenue, as he declared that:

[i]t would be difficult to acquit this action of the Department of illegality in view of the Minute of the Treasury (30 September 1863) establishing “that the actual administration of the tax has acquired so much of prescription as ought to stand good at least against any interposition by an authority purely administrative.” So much for the legality of the change of procedure.¹²⁷

Turning to the administrative practices of Somerset House, Lord Addington argued that “[t]he Inland Revenue, who appropriate these moneys without previous notice, commit a breach of trust.”¹²⁸ The Income Tax refunds for 1886-87 were not insignificant as, according to the figures in Addington’s letter, they totalled “£2,051,962.”¹²⁹ In addition Lord Addington claimed that “[t]he revenues attacked must be considerable, if we add to the £2,051,962, exempt by the Inland Revenue in 1886, the stock exempted from charge by the Charity Commissioners.”¹³⁰ This may explain why the total in Lord Addington’s letter differs from those contained in the Commissioners’ Report for 1887-87 by some £363,000.¹³¹ The effect of the Commissioners’ rulings was also of concern to Lord Addington, to whom it was “obvious that to cancel the immunity from taxation hitherto granted to charitable institutions may seriously impair their beneficent operation, to the detriment of the entire community.”¹³² Return 3 [sic], being “a statement of claims for restitution of Income Tax rejected since August 1887,” reported that “about 260 cases of claims” had been refused, with details of the trusts, their activities, as well as why their claims had been rejected, was a paper of considerable importance “that [deserved] the attention of all persons interested in the charities mentioned.”¹³³

The influence of the decision in *Trustees of the Baird Trust*¹³⁴ assisted the Commissioners in “their aggressive policy,” and was one of the reasons used by them in rejecting claims for failing to meet the poverty test, as “‘charity’ means alms, and that ‘charitable uses’ is

¹²⁷ Addington, above n 115.

¹²⁸ Addington, above n 115.

¹²⁹ Addington, above n 115.

¹³⁰ Addington, above n 115.

¹³¹ Commissioners of Inland Revenue, “Thirty-first Report for the year ended 31st March 1888,” (1888) xxi.

¹³² Addington, above n 115.

¹³³ Addington, above n 115.

¹³⁴ *Trustees of the Baird Trust*, above n 19.

relieving poverty.”¹³⁵ At this point Lord Addington raised the matter of the Moravians, whose claim in the Court of Appeal in December 1888 for a refund of their Income Tax “detained by the Inland Revenue” had been successful.¹³⁶ “The decision,” he wrote:

was unanimous, and those who heard or may read the official reports of the judgments, especially that of Lord Justice Fry, will have no doubt that an appeal to the House of Lords will only complete the discomfiture of the Board of the Inland Revenue.¹³⁷

Lord Addington also warned the “small and weak” charities, who “may think the Income Tax on their income from investments not worth fighting for; ... [and who] should recollect the consequence of their submission.”¹³⁸ Any charity that did so was, in effect, “resign[ing] its character of a charity” and would thereby be liable to the corporation duty of 5 per cent.¹³⁹ Lord Addington informed the charities that “[t]he combined burdens would be disastrous, and it behoves the managers of charities to take defensive measures.”¹⁴⁰ But Lord Addington had not yet finished with his attack on the officials at Somerset House, as he considered that:

[t]he policy at Somerset House is inexplicable. The undoubted zeal and ability of its officials, instead of preparing the long-promised adjustment of the Income Tax, have been directed to aggravate its oppression by eliminating its few mitigating features. *The arbitrary construction of the statutes and the capricious verbal definitions in which the Inland Revenue have distinguished themselves, startling though they be, are not, after all, so amazing as the unwisdom [sic] with which this war against charity has been devised and waged.* (Emphasis added.)¹⁴¹

There had always been exceptions to the paying of Income Tax, in that it was to be “borne ... by those able to bear it.”¹⁴² Those exceptions included “poverty in the person owing the revenue, charity in the character of the purposes to which the revenue is to be applied.”¹⁴³

¹³⁵ Addington, above n 115. Other reasons cited by Lord Addington concerned the repair of churches, which the Commissioners did not consider to be a charitable purpose, and other activities which were disallowed, such as “the prevention of cruelty to animals, the provision of marriage portions, the relief of the Poor rates, and making loans to young tradesmen,” - all but the cruelty to animals being consistent with 43 Eliz c. 4.

¹³⁶ Addington, above n 115.

¹³⁷ Addington, above n 115.

¹³⁸ Addington, above n 115.

¹³⁹ Addington, above n 115.

¹⁴⁰ Addington, above n 115.

¹⁴¹ Addington, above n 115.

¹⁴² Addington, above n 115.

¹⁴³ Addington, above n 115.

“Why,” asked Lord Addington, “were charitable purposes exempt from taxation?”¹⁴⁴ The reason, he suggested, was that charitable purposes were:

the spontaneous relief of man’s physical and spiritual necessities, where the State cannot be the agent, [and] is a work carrying not only blessings to the necessitous but material advantage to the whole community, whose liability to rates and taxes is sensibly diminished by successful efforts to remedy the evils flowing from disease, ignorance, idleness, and vice among the poor. This movement can be in no degree an answer to public desire. *No subject of the Queen, however stingy, selfish, and grudging, can be damaged by exempting charities from taxation.* The relief to his own Income Tax through the taxation of charities would be infinitely outweighed by his share in the costliness of demoralisation shown in the public expenditure. (Emphasis added.)¹⁴⁵

Lord Addington’s concluding comment was that:

[a]n authoritative definition of charities and their liability to either rates or taxes are matters of Imperial importance which demand a careful consideration and settlement, and in the interval it remains to be seen whether the Board of the Inland Revenue will, as advised by the Treasury in 1863, “follow the practice which has hitherto prevailed.”¹⁴⁶

Return No. 382 (1865) “Charities”

Return No. 382 of 1865 was a document of considerable length because, as well as containing copies of “[c]orrespondence between the Treasury and the Board of Inland Revenue, in August and September 1863, respecting the exemption from Income Tax of rents and dividends applied to charitable purposes,” the Return also included copies of “[c]orrespondence between the Treasury, the Home Office, and the Charity Commissioners, respecting an Inquiry into the management of certain charitable institutions together with the Reports of the Charity Inspectors by whom such Inquiry was conducted.”¹⁴⁷ Because of those reports, the Return ran to a total of 266 pages. The charities inquired into, and the page numbers on which the respective reports commenced (in order to provide an appreciation of the lengths of the individual reports) were:

Lord Crewe’s Charity	11 pages
Christ’s Hospital	30 ditto

¹⁴⁴ Addington, above n 115.

¹⁴⁵ Addington, above n 115

¹⁴⁶ Addington, above n 115.

¹⁴⁷ House of Commons, *Accounts and Papers: Charitable Funds; Charities; Ecclesiastical* (7 February – 6 July 1865) vol XLI.

Bethlem Hospital	87 ditto
Magdalen Hospital	104 ditto
Morden College	162 ditto
St. Thomas's Hospital	170 ditto
London Hospital	233 ditto ¹⁴⁸

For the purposes of this Thesis, in my discussion of the reports which follows I have commented on the references to taxation to indicate that charities were indeed subjected to both Imperial and local charges. It was very convenient for my research that each of the charities under investigation were required to supply, to the Charity Commissioners, financial accounts detailing their sources of income and expenditure.

Lord Crewe's Charity

The 19-page report on Lord Crewe's Charity by Mr Martin, who began his inspection on 14 May 1863, contains little detail of financial activity. Under the heading "Outgoings, Charges, and Agency," the trustees reported that they had expended £1,486 10s 11d on "Taxes and cesses" over a ten year period. However, the author of the report, Mr Martin, stated that, of the taxes and cesses [sic] of £1,734 19s 0¼d:

£145 17s 1½d was for Assessed Taxes for the Trustees, paid out of the Trust funds, and £102 11s was for rates on the castle. Of this last sum, one-half is here charged to the Trustees, one-quarter charged to agency, and one-quarter to the school.¹⁴⁹

Apart from being unable to reconcile the figures, there is no mention of claims for refunds of taxes paid. Was this because the Trustees, or staff, were deemed to be occupiers, therefore liable to the Assessed Taxes? This may have been the case, as Martin observed that:

... the most remarkable branch of expenditure is that of the Trustees themselves. It was never contemplated by Lord Crewe that they should reside at the Castle at all, much less that an establishment of servants should be kept there throughout the year, and the trust be made subject to rates, taxes, wages, and other expenses of a furnished residence. With the exception of the Rev. J. Dixon Clarke, who has visited the Castle on business at all seasons, and who has never resided there for any lengthened period, the Trustees have selected the summer, and once or twice the early autumn, for their residence. In these

¹⁴⁸ House of Commons, above n 147.

¹⁴⁹ House of Commons, above n 147, *The Charities of Nathaniel Lord Crewe, Bishop of Durham, and Dr John Sharp*, 20.

months wrecks seldom happen, and indeed any supposed connection between the “protested” residence of the Trustees, as it is called, and the casualties on the coast, is altogether imaginary. *It is difficult to conceive what good has been effected by this residence, which, if it ever were a duty, has long become a privilege.* (Emphasis added.)¹⁵⁰

Christ’s Hospital, Otherwise called “The Blue Coat School,” in the City of London¹⁵¹

The very comprehensive report by Mr Hare on Christ’s Hospital,¹⁵² dated February 12, 1864, contains 56 pages in total. While the report, at page 41, contains a set of financial accounts the author, in a rather novel manner, both described the various sources of the charity’s income at that time and produced a cumulative total in a column on either the left or right-hand side of each page. Having described and listed accumulated gross income of £64,473 the author then listed items of expenditure, deducting each item in turn as he progressively wrote his report. The first item of deduction related to taxes of £2,984 but no breakdown is provided of the various taxes. The financial summary that Hare produced also described this amount inaccurately as being “[r]ents, rent charges, &c.”¹⁵³ With respect to the taxes, Hare wrote that:

Land Tax and taxes and rates on the impropriate tithe, rent charges, drainage, rates on feu [sic] lands, repairs of chancels of churches, tombs, monuments, almshouses, &c., and other payments which, *whether for charitable purposes or not*, are monies which the Governors have neither power to withhold nor authority to administer. (Emphasis added).¹⁵⁴

Hare also recorded that:

[t]he local rates payable on the Hospital premises are municipal and parochial. Of the former there are the police, consolidated, sewers, ward rate, militia or trophy rate, and main drainage; of the latter, tithes, church and poor rates. *There are some general taxes, as the Land Tax and the House and Income Tax on the houses occupied by the masters and officers of the Hospital.* ... The premises in St. Bartholomew the Less are rated at £15 a year; the great hall, wards, schools and cloisters occupied by the boys and domestic servants are not included in these ratings, being exempted. The total amount on an average

¹⁵⁰ House of Commons, above n 147, *Lord Crewe’s Charity*, 26.

¹⁵¹ The Hospital was a school for boys only, divided into the Upper Grammar School Middle or Latin School, and Lower Grammar School. There was also a Mathematical School, divided into Upper, Lower, Royal or Naval, schools; as well as French, English, Commercial, and Reading and Writing schools. Children who were “lame, crooked, or deformed, so as not [to] be able to take care of themselves, or who have any infectious distemper, as leprosy, scald-head, itch, scab, evil; or have rupture, or distemper which shall be judged incurable” were denied admission. If such a child was admitted then on discovery were to be sent back to their parents or parish. House of Commons, above n 147, see Appendices to Report on Christ’s Hospital.

¹⁵² House of Commons, above n 147, *Lord Crewe’s Charity*, 26.

¹⁵³ House of Commons, above n 147, *Christ’s Hospital*, 41.

¹⁵⁴ House of Commons, above n 147, *Christ’s Hospital*, 36.

of the last seven years has in London been £820, and in Hertford £77, making together £897 (Emphasis added.)¹⁵⁵

Curiously, Hare noted that the report of the charity's income "does not include legacies nor sums received from the Donation Governors."¹⁵⁶ These were not insignificant sums, as Hare reported that the "occasional receipts . . . if added to the produce of the endowments would form an aggregate income of about £70,000 a year."¹⁵⁷ The information on legacies and donations was obviously available, as Hare wrote that:

[t]he legacies during the last thirty years amount on average to £900 15s 10d. per annum, and the payment of Donation Governors during the last ten years on the average to the sum of £4,700; but the latter, taking only the last four years, have not amounted to more than £3,000 a year.¹⁵⁸

As the legacies were "constantly funded as capital,"¹⁵⁹ this raises a question about tax on the income from those investments, a question Hare answered with the explanation that:

[t]he application of the additional fund not included in the above recapitulation is explained by the sums which have for many years past been applied in buildings, draining and other extensive improvements on the Hospital estates . . . and in the purchase of some additional real estate . . . as well as in addition to the funded property. The dividends of the building funds now amount to £539 a year and are annually added to the capital.¹⁶⁰

Hare did not discuss anything about tax on the dividends of the building fund, nor is there any disclosure of what those funds were. At a return of £539, assuming the funds were invested in the 3 per cent "consols. [sic]," the capital of the building fund would be approximately £18,000.

While there is no discussion on Income Tax, Hare made a particularly strong point about rates, as he considered that:

[i]n respect to local rates the Hospital has been unjustly treated. An Act was passed in 1795 enabling the Governors to purchase property and make improvements in the Hospital

¹⁵⁵ House of Commons, above n 147, *Christ's Hospital*, 37.

¹⁵⁶ House of Commons, above n 147, *Christ's Hospital*, 42.

¹⁵⁷ House of Commons, above n 147, *Christ's Hospital*, 42.

¹⁵⁸ House of Commons, above n 147, *Christ's Hospital*, 42.

¹⁵⁹ House of Commons, above n 147, *Christ's Hospital*, 42.

¹⁶⁰ House of Commons, above n 147, *Christ's Hospital*, 42.

in the neighbourhood of Newgate Street, and the influence of the city, or of the parishes in which it was situated, seems to have compelled the insertion of the clause “that the proportion charged at the time of the purchase or taking thereof, upon the houses so to be acquired, for Land Tax, orphan tax, London workhouse tax, and all other parish and ward rates and taxes whatsoever, should for ever afterwards be paid by the Governors, and should be charged upon the possessions of the Hospital in respect of the premises so purchased and pulled down, and that the proportion for which the Governors should be liable for all other rates and taxes in respect of the premises should be ascertained by the sum to be charged upon them as their proportion of the Land Tax for the same respectively.” The effect of the enactment is that the Hospital is rated to the extent of nearly £500 a year for uncovered ground, such, for example, as the space occupied by the great gates in Newgate Street, which is still assessed as if the shops and buildings formerly thereon were standing. *This is an example of the absence of any fixed principle in dealing with charitable endowments, sometimes, oppressively to the rest of the community exempting their property altogether from public rates and charges, and in other cases, such as this, imposing upon them burdens which no private person could be called to bear.* (Emphasis added).¹⁶¹

Hare’s last sentence, which I have emphasised, is the strongest evidence in support of what I have found, that is, there were no fiscal principles at that time nor indeed at any time in the nineteenth century which argued for the exemption or otherwise of charities from taxation, be it Imperial or local taxation.

Bethlem Hospital

Bethlem Hospital, founded in 1247, was a hospital for curable and incurable lunatics, as well as criminal lunatics.¹⁶² Mr Martin’s 17-page report of his inspection of the hospital, which commenced on the 29 November, 1863, contained, in the schedule of receipts over a ten year period, details of Property Tax returned. Of the income to the Curable Fund of £131,212 1s 0d, £4,223 18s 0d was for a repayment of Property Tax and, of the Incurable Fund of £69,798 11s 2d, £3,171 16s 2d was also for Property Tax.¹⁶³ Martin also includes two tables of the average expenditure over ten years but these figures are difficult to reconcile to his other account of income and expenditure. In his first table, Martin records outgoings of rates and taxes as follows: General Fund £275 10s 11d; Incurable Fund, £2,244 6s 2½d, and presumably the Curable Fund as there is no heading for the third nor the fourth column,

¹⁶¹ House of Commons, above n 147, *Christ’s Hospital*, 45.

¹⁶² House of Commons, above n 147, *Bethlem Hospital*, 87.

¹⁶³ House of Commons, above n 147, *Bethlem Hospital*, 91.

£2,519 17s 1½d.¹⁶⁴ The second table records rates, taxes and insurance under the heading “Fabric,” which appears to mean new buildings and repairs to existing buildings.¹⁶⁵

The Magdalen Hospital

Mr Skirrow’s 58-page report on Magdalen Hospital, dated 4 March 1864, provides an excellent history of the hospital as well as comprehensive details of the rules and bye-laws of the institution. The hospital was founded in 1758 by Robert Dingley, assisted by others, in order to form “a society for establishing, by means of voluntary contributions, a house for the reception, maintenance, and employment of penitent prostitutes.”¹⁶⁶ The institution was given statutory recognition under “The Magdalen Hospital Act, 1768,” which was amended by “The Magdalen Hospital Amendment Act 1848” in order to form a corporation.¹⁶⁷ Skirrow provided extracts from the Articles, two of which make an interesting statement of *The Times*. The twenty-second Article states “that no prostitute should be admitted exceeding thirty years of age” and, under the twenty-third Article, “that no pregnant women should be admitted.”¹⁶⁸ It also appears from Skirrow’s report that from 10 August 1758, those “tainted with venereal disease” were also excluded and sent off to London Hospital for treatment, a practice that continued at the time of his report.¹⁶⁹

From the time of its foundation in 1758 to 31 December, 1863, the hospital received 339 bequests totalling £100,047 5s 6¼d.¹⁷⁰ Skirrow provided detailed ten-year tables of receipts and disbursements, supplemented by a summary of each of those tables. A total of £27,737 17s 8d was received from dividends on stocks and shares, and £5,247 0s 11d from interest on mortgages.¹⁷¹ Rates and taxes paid for the ten years amounted to £1,196 1s 10d.¹⁷² Unfortunately there is no breakdown of the figure for rates and taxes but it is apparent that the amount paid against potentially taxable income is only some 3.6 per cent. There is no reference, in the income table, of refunds of Property Tax. It might be possible that the figure for rents and taxes is a net figure, thus part the amount shown as a disbursement might have been the subject of a claim for restitution with the Special Commissioners.

¹⁶⁴ House of Commons, above n 147, *Bethlem Hospital*, 92.

¹⁶⁵ House of Commons, above n 147, *Bethlem Hospital*, 93.

¹⁶⁶ House of Commons, above n 147, *The Magdalen Hospital*, 105.

¹⁶⁷ House of Commons, above n 147, *The Magdalen Hospital*, 106.

¹⁶⁸ House of Commons, above n 147, *The Magdalen Hospital*, 106. For the ten years ended 31st December, 1862, 1,437 women were admitted to the hospital. House of Commons, above n 147, 133.

¹⁶⁹ House of Commons, above n 147, *The Magdalen Hospital*, 106.

¹⁷⁰ House of Commons, above n 147, *The Magdalen Hospital*, 113.

¹⁷¹ House of Commons, above n 147, *The Magdalen Hospital*, 140.

¹⁷² House of Commons, above n 147, *The Magdalen Hospital*, 143.

Morden College

Mr Hare was also responsible for an inspection of Morden College, which led to his brief 8-page report of 30 March 1864. Founded in 1702 the College, which was to be established in the parish of Charlton, was to provide for:

as many poor, honest, sober, and discreet merchants as the rents of the estates would maintain; to be of fifty years of age at least, and such as should have lost their estates by accidents, dangers, and perils of the seas, or by any other accident, ways, and means in their honest endeavour to get a living by way of merchandizing, each to have at least £20 a year.¹⁷³

Taxes paid were: the water-rate of £26; Charlton Rectorial tithes for college and land £3 1s 4d; Assessed Taxes on the treasurer, chaplain and two servants residences of £12; Charlton rates on the College of £16 13s 4d; the Church rate of £6 5s 0d; the Sewers rate of £16 13s 4d; and the Charlton Poor Rate of £49 6s 5d.¹⁷⁴ Other rates and taxes totalling nearly £50 were also paid from the charity's funds, against an income of £6,727 6s 10d. Thus nearly \$900, or 13.3 per cent, was paid for rates and taxes from the income of the charity.

St. Thomas's Hospital

Mr Skirrow's 97-page report on St. Thomas's Hospital, dated 17 June 1864, provides another detailed history and study of the activities of a nineteenth century charity. The Hospital can trace its origins back to the year 1213, having been founded by Richard, Prior of Bermondsey, "for converts and poor children."¹⁷⁵ On 12 August, 1551, Edward VI provided by his Charter that the Hospital would be exempt from "accompts, firstfruits, or tenths."¹⁷⁶ Skirrow's Report also provided details of the redemption of Land Tax between 1838 and 1861, the Hospital having redeemed Land Tax of £148 12s 5d for consideration of £5,059 19s 4¾d, but Skirrow made no other comment about Land Tax.¹⁷⁷

The gross income of the Hospital "from property" took nearly 50 years to double, from £23,907 14s 9d in 1814 to £42,281 11s 9d in 1863,¹⁷⁸ yet patient numbers had increased by

¹⁷³ House of Commons, above n 147, *Morden College*, 162.

¹⁷⁴ House of Commons, above n 147, *Morden College*, 165.

¹⁷⁵ House of Commons, above n 147, *St. Thomas's Hospital*, 171.

¹⁷⁶ House of Commons, above n 147, *St. Thomas's Hospital*, 172.

¹⁷⁷ House of Commons, above n 147, *St. Thomas's Hospital*, 181.

¹⁷⁸ House of Commons, above n 147, *St. Thomas's Hospital*, 202.

372 per cent from 9,994 to 47,171 in that same period.¹⁷⁹ Total receipts from 1852 to 1861 increased more slowly, from £32,716 9s 0d in 1852 to £37,108 18s 6d in 1861, but then jumped to £46,716 6s 7d in 1862 and £69,523 8s 5d in 1863.¹⁸⁰ The increase was due to substantial earnings in the last two years from dividends on the “Consols.” Of the total income for the twelve year period to 1863 of £469,703 15s 4d, 74.5% (£349,830 8s 7d) came from rents and 3.7 per cent (£17,449 11s 2d) from dividends.¹⁸¹ Expenditure from 1852 to 1861 totalled £353,464 0s 4d of which £8,733 11s 2d was for rates and taxes for the Hospital, £2,584 17s 1d was for rates and taxes for the estates, and £2,589 11s 0d for Income Tax.¹⁸² Expenditure for 1862 of £46,716 6s 7d exceeded the average expenditure of £36,346 8s 0½d of the previous ten years and even further to £69,523 8s 5d in 1863, while rates and taxes, and Income Tax, paid in 1862 and 1863 were consistent with the average of the previous ten years.¹⁸³

What is noticeable in the detailed schedules of income and expenditure is that there is no mention of the Hospital having being claimed refunds of Income Tax. Yet the Income Tax must have been reclaimed and I suspect that amount of the tax paid as disclosed in the schedule of expenditure is the net amount after refunds. Initially I believed that support for my theory was to be found in another table in Skirrow’s report which states that the average Income Tax “not returned” for the ten years to the 31 December 1861 was £258 19s 1d.¹⁸⁴ Then I discovered that when the word “returned” was used it meant not that a claim had not been filed, but that the tax had not been paid, as the Income Tax not returned “applied to the officers’ salaries, the Income Tax upon which is paid by the Hospital, and not by themselves.”¹⁸⁵

The London Hospital

The index to Mr Martin’s 34-page report of 30 June, 1864, on the London Hospital contains two references to the income and expenditure of the hospital during the Eighteenth Century. From income received of £298 14s 6d in 1742, rent and taxes of £19 10s 0d were paid. The income did not include any funds which might be considered taxable as the only sources were

¹⁷⁹ House of Commons, above n 147, *St. Thomas’s Hospital*, 203.

¹⁸⁰ House of Commons, above n 147, *St. Thomas’s Hospital*, 216.

¹⁸¹ House of Commons, above n 147, *St. Thomas’s Hospital*, 216.

¹⁸² House of Commons, above n 147, *St. Thomas’s Hospital*, 217.

¹⁸³ House of Commons, above n 147, *St. Thomas’s Hospital*, 217.

¹⁸⁴ House of Commons, above n 147, *St. Thomas’s Hospital*, 219.

¹⁸⁵ House of Commons, above n 147, *St. Thomas’s Hospital*, 221.

Governors' subscriptions (£267 15s 0d), other subscriptions (£9 15s 0d), and from the poor-box (£21 4s 6d).¹⁸⁶ Benefactions and legacies were also received, as two Minutes in 1742 and 1743 record that these were to be invested to form a capital stock. No details of those funds at that time are provided in the report.

In 1781, however, the hospital received legacies of £66,479 11s 0d and donations of £8,219 5s 0d “from the foundation,” of which no information is provided.¹⁸⁷ A footnote records that the average income from legacies and donations since the founding of the hospital 41 years earlier was £1,773 therefore it seems that these funds were held separately from the hospital until at least 1781.¹⁸⁸ The investments of the hospital grew steadily, with “about £64,500” having been donated between 1814 and 1830, and £46,366 18s 10d between 1831 and 1839.¹⁸⁹ In 1841 an appeal raised about £12,500 then from 1841 to 1853 benefactions and legacies of £65,200 9s 7d were contributed.¹⁹⁰ Funds continued to pour in, with a bequest of £21,320 18s 3d from the estate of Benjamin Thomas Crichton, and another appeal in 1860 raising £26,000 and, from the appeal of 1864, £25,000.¹⁹¹ By about this time the hospital held stock of £241,017 10s 7d which produced dividends of £9,361 11s 10d, and was receiving income from property of £11,981 6s 7d.¹⁹²

Later in the report a table “compiled from the printed accounts,” appears.¹⁹³ From 1740 to 1863, the hospital had received £141,491 9s 0d in donations and £322,296 11s 7d in legacies, a grand total of £463,788 0s 7d.¹⁹⁴ From 1854 to 1863, other income that may have been liable for tax under the Income Tax Act 1842,¹⁹⁵ including that from rents, dividends and interest of £23,998 7s 4d, £88,569 10s 8d and £327 2s 4d respectively, as well as annuities of £9,983 13s 11d, totalling £205,931 2s 6d.¹⁹⁶ The following page in the report contains a table headed “Total Expenditure,” but does not state for which period, of which “Taxes” comprised only £19 5s 0d of the total of expenditure of £206,441 1s 9d.¹⁹⁷

¹⁸⁶ House of Commons, above n 147, *The London Hospital*, 234.

¹⁸⁷ House of Commons, above n 147, *The London Hospital*, 236.

¹⁸⁸ House of Commons, above n 147, *The London Hospital*, 236.

¹⁸⁹ House of Commons, above n 147, *The London Hospital*, 237.

¹⁹⁰ House of Commons, above n 147, *The London Hospital*, 238.

¹⁹¹ House of Commons, above n 147, *The London Hospital*, 238.

¹⁹² House of Commons, above n 147, *The London Hospital*, 240.

¹⁹³ House of Commons, above n 147, *The London Hospital*, 258.

¹⁹⁴ House of Commons, above n 147, *The London Hospital*, 258.

¹⁹⁵ *An Act ...*, above n 123.

¹⁹⁶ House of Commons, above n 147, *The London Hospital*, 258.

¹⁹⁷ House of Commons, above n 147, *The London Hospital*, 259.

Mr Martin concluded his report by giving his approval of the trustees' governance, and the staff's management, of the hospital with the following observations:

The fixed income of the charity is wholly inadequate to the calls upon it, and the prosperity, it may indeed be said the existence, of the Hospital depends on the confidence of the public, which would certainly be lost by inefficiency or mismanagement. ... *The management of landed property even by private persons, deeply and directly interested, requires habits of business and economy and great knowledge of country matters, qualifications not always found in the trustees of charities, who, when they possess them, have rarely time or perhaps inclination to make use of them.*¹⁹⁸ It thus not unfrequently [sic] happens that an undue proportion of income is devoted to unprofitable improvements. From this danger the London Hospital is exempt. Were the estates of other great institutions gradually sold to advantage and the proceeds invested in the funds, a large increase of income and a still greater annual saving would in most cases be effected; and it seems fully proved by this Hospital that, in the event of the future depreciation of the income of *a really useful charity*, the deficiency would speedily be made up by the benevolence of the public. (Emphasis added.)¹⁹⁹

Part II Income Tax on Charities: Return No. 289 (1888)

As previously discussed in this Chapter, on 26 November, 1888, the "Return respecting Income Tax on Charities (hereafter "Return No. 289")" was laid before the House of Lords and, the following, day, ordered to be printed.²⁰⁰ The Return comprised, as requested by Lord Addington:

1. Correspondence in 1863 between the Inland Revenue and the Treasury (reprint from "Charities," 1865 [Return No. 382]);
2. Statement of amounts on which Income Tax was refunded in 1886-87, specifying the various classes, as educational, religious, hospitals, doles, &c;
3. Statement of claims for restitution of Income Tax rejected since August 1887; specifying the nature of the charity and the reason for the rejection;
4. Any correspondence between the Inland Revenue and trustees of charities and the Charity Commissioners bearing on the new procedure of Inland Revenue.²⁰¹

¹⁹⁸ See also M.J. Gousmett, "Governance of charities," (2008) *New Zealand Law Journal* 109-112. In this respect, some charities today suffer the same deficiencies.

¹⁹⁹ House of Commons, above n 147, *The London Hospital*, 265.

²⁰⁰ *Journals of the House of Lords*, above n 117, 426 and 427.

²⁰¹ Return of Income Tax on Charities, *otbp* 27 November 1888, cover sheet.

The correspondence of 1863

The timing of the correspondence between the Inland Revenue and the Treasury is interesting, given Gladstone's attempt to remove the charities exemption from Income Tax only three months previously. On 22 August 1863, the Commissioners of Inland Revenue ("CIR") wrote to the Lord Commissioners of Her Majesty's Treasury, as they had "[found] it necessary to ask ... for directions respecting the allowance of Income Tax on rents and dividends applied to charitable purposes."²⁰² The letter refers to allowances for charitable purposes being provided under ss. 61 and 88 of 5 & 6 Vict. c. 35 of 1842.²⁰³ That is incorrect. Section 61, or LXI as it is in the Act, describes the "[m]ode of proceeding in order to obtain certain allowances granted under schedule A [Rule] No. V."²⁰⁴ Rule No. V does not contain any mention of charitable purposes. The correct section is s. 62, "Special Commissioners to certify allowances granted under schedule A [Rule] No. VI and order payment thereof."²⁰⁵ Rule No. VI, "Allowances to be made in respect of the said Duties in Schedule A," provides for allowances to be made regarding Duties charged on colleges, halls in universities, hospitals, public schools, almshouses, literary institutions, and "rents of lands belonging to hospitals, public schools, and almshouses, or vested in trustees for charitable purposes."²⁰⁶ With respect to the latter, Rule VI states: "Or on the rents and profits of lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes."²⁰⁷

The letter then declares that section 88 of the 1842 Act provides for an exemption for stocks and dividends relating to charitable purposes.²⁰⁸ That is also incorrect, as s. 88 provides for "[d]uties in [S]chedule C to be charged under the following rules," the third rule being the rule referred to in the CIR letter regarding charitable purposes. Having set the record straight, we can now proceed. Having recited the third rule as it applied to Schedule C, the CIR wrote that "[y]our Lordships will observe that the allowance of the duty in the cases above mentioned rests entirely with the Special Commissioners."²⁰⁹ The authors of the letter than make another mistake, by referring to the Income Tax "on its "first introduction ...in

²⁰² Return, above n 201, 3.

²⁰³ *An Act for granting to Her Majesty Duties on Profits arising from property, professions, trades, offices, until the sixth day of April [1845]* 5 & 6 Vict. c. 35 [22 June 1842].

²⁰⁴ *An Act ...*, above n 203, s. 61.

²⁰⁵ *An Act ...*, above n 203, s. 62.

²⁰⁶ *An Act ...*, above n 203, Schedule A Rule VI [margin note].

²⁰⁷ *An Act ...*, above n 203, Schedule A, Rule VI.

²⁰⁸ *An Act ...*, above n 203, s. 88.

²⁰⁹ Return, above n 201, 3.

1843,²¹⁰ instead of 1842. It was either in 1842, or 1843, that “it was arranged among the acting Special Commissioners that the superintendence of the business relating to the claims of charities for exemption should be assigned to Mr Fuller,²¹¹ a role he held until his retirement “at the beginning” of 1863. What Mr Fuller had not done was to keep the Board informed on a regular basis of difficult cases with which he had to deal as:

[a]lthough he frequently consulted the Board, and applied through them for the advice of their Solicitor, he was not bound to do so, and it was therefore only partially and occasionally that the Board were made acquainted with the points of difficulty which arose in the administration of the above-quoted provisions in the Income Tax Act.²¹²

Once Mr Fuller had retired, his duties with respect to “charitable claims” were assigned to a member of the Board, all of whom were *ex-officio* Special Commissioners. Because of this, and also Gladstone’s challenge to the exemption in May of 1863, the Commissioners had been asked, I presume by Gladstone, “to consider more closely the principles on which the exemption has heretofore been allowed.”²¹³ While the screw had been loosened, in Gladstone’s failure to remove the exemption, it had not been loosened entirely. He might have lost the battle but he did not intend to lose the war. It now transpired that the interpretation “adopted and acted upon by Mr Fuller, by the Board, and by their Solicitor, up to the present time” was “erroneous, and that no other definite interpretation has been assigned to [the term ‘charitable purposes’].”²¹⁴ One can almost hear Yum-Yum, Nanki-Poo, and Ko-Ko, singing “Here’s a pretty state of things! Here’s a pretty how-de-do!”²¹⁵ The Commissioners now found it “necessary to have recourse to your Lordships for directions as to our future proceedings.”²¹⁶

The first problem, according to the CIR, was “the expediency of now abandoning the principles on which these exemptions have been allowed during the last 20 years.”²¹⁷ As there was no definition of “charitable purposes” in the Income Tax Acts, the CIR considered

²¹⁰ Return, above n 201, 3.

²¹¹ Return, above n 201, 4.

²¹² Return, above n 201, 4.

²¹³ Return, above n 201, 4.

²¹⁴ Return, above n 201, 4.

²¹⁵ “The Mikado, or the Town of Titipu,” with apologies to Gilbert and Sullivan. I wonder indeed what that great dramatist, W.S. Gilbert (1836 – 1911), would have made of this situation! Gilbert did indeed write a play on charity, called “Charity,” which ran for only eighty nights in 1874. See Earl F. Bargainnier, ““Charity”: W.S. Gilbert’s “Problem Play”” (1977) 42(4) *South Atlantic Bulletin* 130, 130. Bargainnier described “Charity” as being “perhaps the most un-Gilbertian play in his entire corpus.”

²¹⁶ Return, above n 201, 4.

²¹⁷ Return, above n 201, 4.

that Mr Fuller may have consulted the Board on the meaning of the words, but there was no evidence on record that he had done so. However, the CIR held the opinion that:

from the outset [Mr Fuller] considered the words to bear the same sense as that in which the Court of Chancery would understand them in a deed or will; that is to say, such purposes as come within the meaning or purview of the statute of 43 Eliz. I [c. 4 1601].²¹⁸

In 1850, in one case that the Board was asked to consider, concerning “a claim in respect of rents vested in trustees for the maintenance of one staith lying, &c., and one clough lying, &c., and for the maintenance of two highways within the lordship of Cawood, and for the relief of the poor of Cawood,” a Mr Timm, presumably one of the Special Commissioners, said that:

*I beg to observe that there is no definition given by the Property Tax Act of what are strictly charitable purposes; and, therefore, for want of some limitation the practice has been to grant the return of duty in respect of all charitable purposes within the statute of 43 Eliz. I c. 4. I do not know what a church staith or a clough is, but I presume that the money laid out upon them, like that laid out upon the highways, is expended for the public benefit, and assuming that to be the case, I am of the opinion that all these are charitable purposes within the statute before mentioned, and that the trustees are entitled to a return of the tax upon the money expended upon them. (Emphasis added.)*²¹⁹

Mr Fuller was advised of the decision, which the Board intended was to be used by him for guidance from that time forward until, that is, in 1856 when Mr Fuller rejected a claim by a trust for parochial purposes, which led the Master of the Rolls, when the case was brought before him:

[to express] some surprise that anyone should doubt that such a trust would be charitable and within the meaning of the Charitable Trust Act. ... In fact, the relief of public burdens is one of the branches of charity specified in the Preamble of the Statute of Elizabeth [43 Eliz. I c. 4 1601].²²⁰

Mr Fuller refused to accept the judgment and took the matter to the Attorney General, A.E. Cockburn, and the Solicitor General, Richard Bethel who, on 24 August 1856, declared that there was, “in [their] opinion, a plain distinction between parochial purposes and charitable

²¹⁸ Return, above n 201, 4.

²¹⁹ Return, above n 201, 4.

²²⁰ Return, above n 201, 5.

purposes in the sense in which this last phrase is used in the Income Tax Acts,”²²¹ and rejected the claim for a repayment of the duty. Mr Fuller then, without having abandoned his “former principle, ... appears to have relied upon it less than formerly, and to have occasionally refused relief in cases which would clearly have been entitled to it if the statute of Elizabeth had continued to be his guide.”²²² This disregard for the Statute of Elizabeth by Mr Fuller, declared the CIR, resulted in “[t]he difficulty which Mr Fuller, whether designedly or not, [has] thus ignored, [and] has now come to dealt with by us.”²²³

The CIR proposed “that there were three courses open, any one of which may be adopted under your Lordship’s authority.”²²⁴ Those were: To “at once act upon the opinion of [the Attorney and Solicitors Generals] and revise all the exemptions hitherto allowed,”; to “act upon that opinion in all new cases which arise, leaving those to which exemption has already been given in the enjoyment of that privilege,” or, “we may continue the practice which the Board in 1843 established with the concurrence of their solicitor, and which has been for the most part in force up to the present time.”²²⁵ The difficulties with the first two proposals being obvious, the CIR observed that “if we abandon the received interpretation of the term ‘charitable purposes,’ illustrated by a long series of decisions in the Court of Chancery, and by the comments of numerous text-writers, we find ourselves in complete uncertainty as to their meaning.”²²⁶

The CIR then proposed their own solution. The Charity Commissioners had their own power of exemption provided by an 1855 amendment to the Charitable Trusts Act of 1853, by which the Inland Revenue Department provided an exemption to dividends on stock in the public funds belonging to charities that had been vested in the Secretary to the Commissioners, the exemption being granted by the Department “without further enquiry.”²²⁷ The Charity Commissioners certified “to the Governor and Company of the Bank of England” that dividends arising were to be “exempt from such tax, [and] shall be paid without any deduction thereof.”²²⁸ The CIR argued that:

²²¹ Return, above n 201, 5.

²²² Return, above n 201, 5.

²²³ Return, above n 201, 5.

²²⁴ Return, above n 201, 5.

²²⁵ Return, above n 201, 5.

²²⁶ Return, above n 201, 6.

²²⁷ Return, above n 201, 6.

²²⁸ Return, above n 201, 6.

the Legislature would not have made such a provision, giving to the Charity Commissioners the power of declaring charitable funds exempt from Income Tax, if the term “charity” were, for all the purposes of their jurisdiction, to be understood in a sense widely different from that which it bears in the clause exempting charities in the Income Tax Act.²²⁹

If that had been the case, the CIR argued, then “in the view of those who framed and passed the Act, the natural course would have been to require a certificate from this Department, in order to authorise the Bank of England to pay the dividends without deducting tax.”²³⁰ The Charity Commissioners were exempting “the very same charities that [the Department], under the present reading of the law, may declare to have no claim to exemption, and that an unseemly conflict of authorities may thus be occasioned.”²³¹ To emphasis their point, the CIR pointed out that “[t]he amount actually exempted by the Charity Commissioners at the present time exceeds a million and a half [pounds].”²³²

After “[h]aving thus laid before your Lordships all the facts which occur to us as necessary, in order to form a judgment on the propriety and expediency of departing, either wholly or partially, from the course hitherto pursued in this Department in the general application of exemption,” the CIR also sought the advice of the Lords “on some minor points not entirely dependent on the question which we have hitherto been discussing.”²³³ The first question concerned hospitals and whether “the allowance of charges of management as a part of the expenditure for which exemption may be claimed,” having been advised by the Board’s solicitor “that such charges are not within the exemption.”²³⁴ In spite of that advice, and due to the decision having “been received with a strong protest against its legality,” such claims were allowed but other claims yet to be decided upon were being held until the CIR had received instructions from the Lords.²³⁵ In 1804 the Attorney General, Mr Percival, had supported the view “that all charges should be allowed which are necessary for the purpose of maintaining the charity in such a state as to effect the object for which the funds are provided.”²³⁶

²²⁹ Return, above n 201, 6.

²³⁰ Return, above n 201, 6.

²³¹ Return, above n 201, 6.

²³² Return, above n 201, 6.

²³³ Return, above n 201, 6.

²³⁴ Return, above n 201, 6.

²³⁵ Return, above n 201, 6.

²³⁶ Return, above n 201, 6.

The second issue on which the CIR sought advice concerned “the exemption of funds re-invested for accumulation.”²³⁷ While an exemption had been allowed to Pembroke College, Cambridge, on the reinvested dividends “since 1843,” the CIR “were now advised that, as the exemption is to be given only so far as the funds *are applied* to charitable purposes, we are not at liberty to give it to dividends re-invested in order that they may at some future time be so applied.”²³⁸ The CIR proposed that the practice of exempting the dividends should continue as before. After raising other matters that need not concern us, the CIR concluded their letter with a statement of their intentions, that is:

Should your Lordships inform us that it is your desire that there should be no material alteration of the practice originally adopted in 1843 by this Department in dealing with the exemption of charities from Income Tax, we shall have no difficulty in disposing of the cases which may occur.²³⁹

However, there was some urgency in the matter as, in the final paragraph of their letter, the CIR:

[begged] leave to request your Lordships’ early consideration of the subject of this Report, as we are at present unable to come to any decision upon the large accumulation of claims caused by the circumstances in which the Special Commissioners’ office has been placed for some time past.²⁴⁰

Their Lordships did indeed consider the matter immediately as their reply was dated 1 October, 1863. Their Lordships concurred with the report of 22 August, 1863, declaring “that in [their] judgement the present administration of the Income Tax Act, with respect to charities, is in its details certainly unsatisfactory.”²⁴¹ In particular, their Lordships considered that:

[w]here an exemption from [Income] Tax is granted, nothing can be more clearly requisite than that the limits of such an exemption should be well considered and defined, in order that the principle on which it is presumed to rest may come clearly into view.²⁴²

²³⁷ Return, above n 201, 7.

²³⁸ Return, above n 201, 7.

²³⁹ Return, above n 201, 7.

²⁴⁰ Return, above n 201, 7.

²⁴¹ Return, above n 201, 8.

²⁴² Return, above n 201, 8.

After debating the issue of parochial purposes, but ignoring the other matters raised by the CIR, their Lordships reached the conclusion that:

the subject is one which should be reserved *to be dealt with by the Legislature*, and that in the meantime the practice which has hitherto prevailed should be followed, while [the Commissioners of Inland Revenue] would do well, at the same time, to guard as far as may be against any further extension of the inconvenient latitude which already exists. (Emphasis added.)²⁴³

That was in 1863. I have not found any evidence that the matter was “dealt with by the Legislature.” If it had, arguably the *Pemsel* case of 1891 may never have arisen.²⁴⁴

Refunds of Income Tax

The details of refunds for the years 1886-87 as contained in Return No. 289 of 1888 are those that were published in *The Times* on 1 January 1889. While no further detail of the refunds were provided in Return No. 289, the Return does, however, contain 13 pages of “Statements of Claims for Restitution of Income Tax rejected since August 1887, specifying the nature of the charity and the reason for the exemption.”²⁴⁵ I compiled an analysis of the rejected claims, as in Table 5 Income Tax claims rejected:

²⁴³ Return, above n 201, 8.

²⁴⁴ *Pemsel*, above n 27.

²⁴⁵ Return, above n 201, 10-22.

Table 5 Income Tax claims rejected

Reason for Rejection of Claim	Number of claims rejected	Per cent
Not within the scope of any exemption	149	47.3
Purposes not “charitable”	97	30.8
No exemption under Schedules A and B in favour of trusts for religious purposes	1	0.3
No exemption under Schedule A in favour of income applied	16	5.1
No exemption under Schedule A in favour of church repairs	7	2.2
No exemption under Schedule B in favour of hospitals	1	0.3
No exemption under Schedule D in favour of income applied	6	1.9
Not a public school under 5 & 6 Vict. c. 35, s. 61, Schedule A, No. VI.	1	0.3
No exemption under Schedules C and D in favour of public schools	4	1.3
No evidence adduced that the income is not applied in aid of the poor rates	1	0.3
Allowance restricted to the tax on pensions paid to persons whose income were less than £150 per annum	7	2.2
Mission work not “charitable”	1	0.3
Rules provide for payments being made	2	0.6
Income not subject to any binding trust for charitable purposes	5	1.6
Not a charity within the UK	2	0.6
Application of funds is outside UK	1	0.3
No exemption in favour of charities outside UK	3	1.0
Not a charitable institution	1	0.3
Church repairs allowable only under Schedule C	1	0.3
Funds form part of private income of a patient	1	0.3
Income not applied to any specific purposes	1	0.3
No exemption under Schedule B in favour of income applied to charitable purposes	1	0.3
No provision under which the hall could be exempted	1	0.3
Refused except as regards income chargeable under Schedule C applied to repairs of church and income applied to relief of poor	1	0.3
School premises being occupied by head master are excluded from the public school exemption	1	0.3
Ease of poor rates not a charitable purpose.	1	0.3
No exemption under Schedule D in respect of income applied to church repairs	1	0.3
No deed of trust	1	0.3
Rounding		0.3
Total	315	100.0

Table 5 above makes for interesting reading, particularly that “the ease of poor rates” in being considered not to be a charitable purpose is contrary to 43 Eliz. I c. 4 [1601] which describes “the aid or ease of any poor inhabitants concerning payment of fifteens,²⁴⁶ setting out of soldiers and other taxes” in its Preamble as charitable purposes.²⁴⁷ What are also of interest are the rejections concerning mission work as not being charitable, and the application of

²⁴⁶ “A Parliament tribut[e] on every City or Borough in the Realm.” E. Coles, *An English Dictionary* (2006; Reprint of 1676 edition).

²⁴⁷ *The Charitable Uses Act* 43 Eliz. I c. 4 [1601].

funds outside the UK. One might assume that either, or both, of these rejections were as a result of claims by the Moravians. That was not so, as on page 16 of the Statement of Claims for Restitution, the “Morvians [sic], or United Brethren, Mrs Bates’ Gifts,” were described as having been rejected due to “[t]he maintenance of choir-houses, schools and missions” being “[p]urposes not ‘charitable’,” which are included as one of the 97 rejections so classified.

What is most obvious, in the above listing, is the high number of rejections due to not being within the scope of any exemption, followed by those of which their purposes were not considered to be “charitable.” Examples of not being within the scope of any exemption were: providing surplices for choir; expenses of religious worship; general purposes of the chapel; maintenance of the coffee-room; poor rates of Barcheston; expense of lighting the roads; maintenance of Kingston Bridge. It is clear to see that the CIR were indeed faced with a problem, as some of those purposes are clearly within 43 Eliz. I c. 4 while others were just as clearly not.

Correspondence between the Inland Revenue, the trustees of charities and the Charity Commissioners

The next fifteen and a half pages of Return No. 289 contain “Correspondence between the Inland Revenue and the Trustees of Charities and the Charity Commissioners.”²⁴⁸

The Trustees of Boxmoor (7 March 1887 – 30 May 1888)

It is apparent from the very first that there was disagreement between the Charity Commissioners and Inland Revenue regarding claims lodged by the Boxmoor Trust.²⁴⁹ The Inland Revenue did not consider that the use of rents and profits from properties held in trust for the drainage and improvement of the moor and “to the use and advantage of [the] inhabitants of Hemel Hempstead and Bovington” fell “within the scope of any exemption granted by Income Tax Acts,” whereas the Charity Commissioners insisted that the trust was “a permanent endowed charity within the meaning of the Charitable Trusts Act.”²⁵⁰

Eventually the Charity Commissioners entered the fray, writing to Inland Revenue to inform the Department that “[t]he Commissioners see no reason to doubt that the word ‘charitable,’ as used in 5 & 6 Vict c. 35 [1842] is to be construed in the sense adopted by the Courts of

²⁴⁸ Return, above n 201, 23.

²⁴⁹ Return, above n 201, 23. 1. Correspondence relative to a Claim for Repayment of Income Tax, preferred by Mr L. Smeathman on behalf of the Trustees of Boxmoor.

²⁵⁰ Return, above n 201, 24.

Equity and by reference to the Statute of Uses.”²⁵¹ What is important to note is that “the [Charity] Commissioners are not aware upon what authority it is now proposed to vary this practice, which was directly sanctioned by a Treasury Minute of 30 September 1863.”²⁵² That particular Minute is not contained within Return No. 289, but the Charity Commissioners letter made reference to parts of it. This is significant, as a direct comment on the financial implications of the definition of charitable purpose is made in the Minute. Quoting the Treasury Minute, the Charity Commissioners stated that:

[the] Minute, which was addressed to the Commissioners of Inland Revenue, after commenting upon the operation of the wide construction of the word charitable ... and intimating that a narrower construction of the word was desirable *on financial grounds*, proceeded as follows:-

“This state of things must be regarded as one that, upon some suitable occasion, should be considered with a view to a remedy. But my Lords conceive that it would not be expedient to apply such a remedy by any instruction from the Executive Government, founded upon the opinion of the Law Officers of 1856. The actual administration of the tax has acquired, it may be held, so much of prescription as ought to stand good at least against any interposition by an authority purely administrative, and there is additional reason for embracing such a view at a time *when the principle of the exemption of charities at large has recently been called in question by Her Majesty’s Government*.

My Lords therefore conclude *that the subject is one which should be reserved to be dealt with by the Legislature, and that in the meantime the practice which has hitherto prevailed should be followed*, while the Board would do well at the same time to guard as far as may be against any further extension of the inconvenient latitude which already exists. (Emphasis added.)²⁵³

This extract from the Charity Commissioners letter is in fact that as cited above, but the date of the Treasury Minute, which also forms part of Return No. 289 of 1888 and Return No. 265 of 1865, is 1 October 1863, not 30 September 1863. The Charity Commissioners conclude their letter with the note that “[y]ou are doubtless aware that no such variation of the law as is contemplated in this Minute has as yet been effected.”²⁵⁴ Notwithstanding the support of the Charity Commission, the Special Commissioners continued to refuse the refund of Income Tax, on the grounds that, based on *Trustees of the Baird Trust*:

[i]t was perfectly right to give a wide interpretation to the words charitable uses in the Statute of Elizabeth, looking at the object of the Statute, yet the very opposite mode of

²⁵¹ Return, above n 201, 25.

²⁵² Return, above n 201, 25.

²⁵³ Return, above n 201, 26.

²⁵⁴ Return, above n 201, 26.

interpretation ought to be given in regard to an exemption contained in a Statute imposing a general tax borne by the whole community who are able to bear it.²⁵⁵

While the Special Commissioners thought that it was likely that an appeal against the decision in *Trustees of the Baird Trust* would be lodged,²⁵⁶ nevertheless they “[adhered] to their refusal to admit the claim, inasmuch as such refusal is in accord with the decision of a competent legal tribunal, which decision they must follow so long as it be not reversed by a higher tribunal.”²⁵⁷

The Trustees of the Gilligate Church Charity (4 June 1887 – 26 January 1888)

After having had refunds of Income Tax approved “for upwards of six years,” the trustees of the Gilligate Church Charity found their claim rejected in 1887.²⁵⁸ Once again, the Charity Commissioners supported another charity in its claim against the Department, with the same argument they had used in the Boxmoor claim. The issue, once again, was the interpretation of the word “charitable,” one with which the Charity Commissioners had no difficulty, there being “[a] principle ... established and acted upon now for nearly three centuries that the whole jurisdiction of Courts of Equity over Charitable Trusts is based.”²⁵⁹ The Charity Commissioners clearly wished to resolve the issue as, in their final sentence, the Charity Commissioners suggested that “[i]n the taking of any steps to obtain a legal decision on the construction of the provisions of the Income Tax Acts now in question the Charity Commissioners will willingly co-operate.”²⁶⁰ The Secretary of Inland Revenue, in concurring with that suggestion, wrote to the Secretary of the Charity Commissioners on 26 January 1888 stating that:

[i]n reference to the concluding paragraph of your letter, the Board desire me to observe that they are as anxious as the Charity Commissioners to obtain a judicial decision upon the extent of the exceptions in the Income Tax Act of 1842 in favour of charities, and that they are hopeful that such a decision may shortly be obtained.²⁶¹

With that, the correspondence on the matter of the Gilligate Church Charity came to an end. It was to be another three years before a judicial decision was reached on the matter.

²⁵⁵ Return, above n 201, 26. *Trustees of the Baird Trust*, above n 19.

²⁵⁶ *Trustees of the Baird Trust*, above n 19.

²⁵⁷ Return, above n 201, 26.

²⁵⁸ Return, above n 201, 27.

²⁵⁹ Return, above n 201, 29.

²⁶⁰ Return, above n 201, 30.

²⁶¹ Return, above n 201, 30. There appears to be some confusion about the dates of letters, as the Secretary referred to the Charity Commission letter of the 16 August 1888, whereas in fact it was the letter of the 17 December which contained the paragraph he had referred to.

The French Protestant Church of London and its charities (12 May 1887 – 30 May 1888)

On 12 May 1887, the Secretary of Inland Revenue wrote to a Mr G.A. Shoppee, with respect to a claim for the repayment of Income Tax which had been submitted by the French Protestant Church of London, requesting that “a copy of the revised scheme of the Charity Commissioners, whereby the funds in respect of which relief is sought are regulated and managed,” be submitted to the Board of the Inland Revenue (“the Board”) “for their inspection.”²⁶² The document, as requested, was supplied by Mr Shoppee the following day. That did not satisfy the Board as, on 25 May, Mr Shoppee was asked “to furnish [the Board] with a detailed account, specifying the particular purposes to which the income of [the Church] was devoted during the period in respect of which relief from Income Tax is sought.”²⁶³ The very next day Mr Shoppee wrote to say that:

I can only inform you that the particular purposes to which the income of the above charities is applied fully appears in the revised scheme under which the trustees act. The detailed accounts of receipts and expenditure have been duly filed with the Charity Commissioners to the 31st December last.²⁶⁴

Having considered the case, a letter dated 12 July 1887, informed Mr Shoppee that the Board considered:

that the whole of the expenditure of the trust does not fall within the scope of the exemptions granted by the Income Tax Acts, and the detailed accounts requested by the Board are required in order that it may be ascertained to what extent precisely relief can be granted.²⁶⁵

Two months later, on 17 September 1887, the statement of accounts for the year 1886 were sent to the Secretary of the Board which, ten days later, informed Mr Shoppee:

that the claim for repayment of Income Tax ... is inadmissible, in so far as regards the rents applied to the Church and School Funds. The Board are, however, prepared to admit a claim in respect of so much of the rents as are applied to the poor fund, and I have

²⁶² Return, above n 201, 30.

²⁶³ Return, above n 201, 31.

²⁶⁴ Return, above n 201, 31.

²⁶⁵ Return, above n 201, 31.

accordingly returned the form of claim herewith, in order that the necessary alterations may be made.²⁶⁶

Mr Shoppee did not, however, accept this as a *fait accompli*. In his letter of 27 October Mr Shoppee wrote that he would:

be glad if [the Board] will reply definitely stating whether (as is the case) in the event of none of the rents shown upon the accompanying Income Tax claim having been applied to the poor fund, but wholly divided between school and church funds *any claim for the return of Income Tax in respect of those rents will be allowed, and if not, under what authority is the tax disallowed, the income from the rents of all funds having hitherto been free from Income Tax*. The dividends upon the various stocks have, up to the present time, been transmitted free of Income Tax, whichever fund they respectively belong to, as all monies are applied for charitable purposes. (Emphasis added.)²⁶⁷

The Board “carefully reconsidered” the Church’s application and decided that “the school may fairly be considered as an institution for the education of the poorer classes,” therefore the claim in respect of the school was acknowledged.²⁶⁸ With his letter the Secretary enclosed “a money-order for £17 0s 6d being the Income Tax on the rents of the Albemarle-street and Kingsland properties at the rate of 6d in the pound for the year 1884-5 and 8d in the pound for 1885-6.”²⁶⁹ However, the Board disallowed the claim regarding religious purposes, on the grounds that:

the Income Tax Acts contain no exemption in favour of income applied to religious purposes except in respect of dividends chargeable under Schedule C, which are applicable and applied solely to the repairs of places of Divine worship ... and therefore they have no power to continue the relief which has been granted in error in past years in respect of the rents applied to the purposes of the Church fund.²⁷⁰

The trustees of the Church, having considered their position, in a letter dated 13 January 1888, challenged the Board by arguing that the provisions for the exemptions the Church claimed were to be found “in section 61, with respect to Schedule A; section 88, with respect to Schedule C; and section 105, with respect to Schedule D, of the Income Tax Act 1842.”²⁷¹

The trustees also argued that support for their claim was to be found in the Bank of England,

²⁶⁶ Return, above n 201, 32.

²⁶⁷ Return, above n 201, 32.

²⁶⁸ Return, above n 201, 32.

²⁶⁹ Return, above n 201, 32.

²⁷⁰ Return, above n 201, 32.

²⁷¹ Return, above n 201, 33.

as “the whole of the dividends upon stock held by the trustees both for church and school purposes [was] regularly paid to their account free of tax.”²⁷²

The Secretary’s reply to Mr Shoppee, on 26 January, was that the Board maintained its stance, “that such purposes as those of the Church Fund in question do not fall within either exemption.”²⁷³ The trustees had also been in communication with the Charity Commissioners on the matter and, on 27 March, sent a letter from the Charity Commissioners, dated 19 March, in which the Commissioners stated:

that the Commissioners are of [the] opinion that the income of all branches of this charity is exempt from Income Tax as has been hitherto admitted by the practice of the Inland Revenue Office under the provisions of 5 & 6 Vict. c. 35.²⁷⁴

More importantly, the Commissioners stated that:

*[t]he Commissioners see no reason to doubt that the word ‘charitable’, as used in that Act, is to be construed in the sense adopted by the Courts of Equity, and by reference to the Statute of Charitable Uses. It has long been the practice of the Board of the Inland Revenue to adopt this construction of the term, and the Commissioners are not aware upon what authority it is now proposed to vary this practice, which was directly sanctioned by a Treasury Minute of 30th September 1863. (Emphasis added.)*²⁷⁵

This Minute, with its conclusion “that the subject is one which should be reserved to be dealt with by the Legislature,” had not been acted upon, a point that the Charity Commission noted in closing their letter, “that no such variation of the law as is contemplated ... has as yet been effected.”²⁷⁶

In spite of the letter from the Charity Commissioners, on 30 May the Board advised Mr Shoppee “that it appears the Board have the misfortune to differ from the Charity Commissioners as to the proper interpretation which [the Board] ought to give to the expression ‘charitable purpose’ in their administration of the Income Tax Acts.”²⁷⁷ The Board also referred to:

²⁷² Return, above n 201, 34.

²⁷³ Return, above n 201, 34.

²⁷⁴ Return, above n 201, 34.

²⁷⁵ Return, above n 201, 34.

²⁷⁶ Return, above n 201, 35.

²⁷⁷ Return, above n 201, 35.

the recent case of [*Trustees of the Baird Trust*] [which] will doubtless be the subject of appeal to the higher legal tribunals, and the Board look forward to an ultimate decision which will be an authoritative guide to them in the administration of the Income Tax Acts in relation to the expression “charitable purposes” as therein used.²⁷⁸

Once again Mr Shoppee was told that the Board “adhere to their refusal to admit the claim, inasmuch as such refusal is in accord with the decision of a competent legal tribunal, which decision they must follow so long as it be not reversed by a higher tribunal.”²⁷⁹ There, the matter ended, at least for the meantime.

The Trustees of Dr Daniel Williams’ Trust (13 September 1887 – 31 May 1888)

The trustees’ claim for a refund of Income Tax amounting to £51 14s 7d, had been disallowed by the Board of Inland Revenue (“the Board”), “on sums applied to the maintenance of the library, and to the distribution of books, &c,” on the basis that “the purposes to which the income in question is applied do not bring it within the scope of any exemption granted by the Income Tax Acts.”²⁸⁰ That was in spite of the Board having granted relief in past years, which they now considered to have been “in error.”²⁸¹ Not being satisfied, the trustees wrote to their solicitors, who sought the advice of the Charity Commissioners who, in their reply, were “of the opinion that the income of all branches of this charity [are] exempt from Income Tax, as has been hitherto admitted by the practice of the Inland Revenue Office under the provisions of 5 & 6 Vict. c. 35.”²⁸² Once again, the Charity Commissioners cited the Treasury Minute of 30 September 1863. The Secretary of Inland Revenue, having considered the correspondence from both the firm of solicitors and the Charity Commissioners, made direct reference to *Trustees of the Baird Trust* and, in declining part of their claim, stated that that:

your claim for a return of the Income Tax on the sums applied to the maintenance of the library, and to the distribution of books, must be considered in relation to the principle laid down in that case [in which the Lord Advocate declared that] “Charity has the restricted sense of liberality to the poor, ‘alms,’ as given by Dr. Johnson.”²⁸³

²⁷⁸ Return, above n 201, 35. *Trustees of the Baird Trust*, above n 19.

²⁷⁹ Return, above n 201, 35.

²⁸⁰ Return, above n 201, 36.

²⁸¹ Return, above n 201, 36.

²⁸² Return, above n 201, 37.

²⁸³ Return, above n 201, 38. *Trustees of the Baird Trust*, above n 19.

Trustees of the Baird Trust v The Lord Advocate²⁸⁴

The last document in Return No. 289 consists of a copy of five and a half pages of the judgment, given on 14 March 1888, by Lord Fraser, the Lord Ordinary in Exchequer Causes, Scotland, in *Trustees of the Baird Trust*.²⁸⁵ The judgment in *Trustees of the Baird Trust* was that:

[t]he words “charitable purposes,” as used in the exempting clauses of the Income Tax Act 1842, are to be interpreted in their ordinary and popular signification as meaning the relief of poverty, and do not cover purposes of general benevolence and of public utility.²⁸⁶

The case as reported in the Court of Session reports is to all intents and purposes the same as that as contained in Return No. 289. There is one minor exception, however. The Court of Sessions report omits the following exchange: “Mr *Young*. And find the defender entitled to additional expenses? *Lord President*. Additional expenses.”²⁸⁷ Thus the final insult was that not only was a trust fund of £500,000 “for the promotion of religion and the mitigation of the ‘spiritual destitution’ which prevailed ‘among the poor and working population of Scotland’,” the income of the funds being “principally applied towards the building and endowment of churches,” held “not exempt from the payment of Income Tax as a ‘trust established for charitable purposes only’ in the sense of [section] 105 and [section] 88 schedule C of the Income Tax 1842,” salt was rubbed into the wound through the imposition of expenses in this matter.

Rather than being seen as a case of ascertaining the approach to be taken regarding public and fiscal policy, and the role of charitable trusts in society, the trust bore the brunt of the costs. The consequences of the decision of the Court would no doubt act as a deterrent to others to establish trusts of a like nature. One presumes that the decision of the *Pemsel* case in 1891 would have allowed the Trustees of the Baird Trust to benefit from the exemption from Income Tax from that time onwards, as well as being able to claim back the Income Tax refund that had been disallowed by the judges of the Session Court.

²⁸⁴ *Trustees of the Baird Trust*, above n 19.

²⁸⁵ *Trustees of the Baird Trust*, above n 19.

²⁸⁶ *Trustees of the Baird Trust*, above n 19, 682.

²⁸⁷ Return, above n 201, 43.

Part III **A footnote to *Pemsel***

On 25 July 1891, Montague Crackanthorpe's letter in *The Times* declared that the judgment in the *Pemsel* case, reported in the newspaper on that day, "revives the old controversy as to the policy of exempting charities from Income Tax."²⁸⁸ Montague, "[h]aving been counsel in the case," stated that "it would not be becoming in me to comment" on the judgment.²⁸⁹ However, Crackanthorpe proceeded to point out that "had the view of the minority prevailed, a construction would have been put on the exemption clause of Sir R. Peel's Act of 1842 opposed to that which has been adopted by the Treasury for some 45 years."²⁹⁰

While not being expressly named in the Income Tax Act 1842, "endowed religious bodies have been treated as entitled to the benefit of the exemption clause ...as are [also] hospitals, public schools, and almshouses."²⁹¹ Crackanthorpe, after claiming that "[t]he policy of the clause, as distinguished from its construction, is a matter on which a layman may, of course, have as sound an opinion as a lawyer," wrote that, in writing in his "private, not ... professional capacity," he was "concerned with the policy only." Crackanthorpe then wrote of Gladstone who, in the House of Commons on 4 May, 1863, had asked:

[w]hether any modification would be made in the law which extends to bequests for charitable uses an immunity from all direct taxation, while heavy charges have been undertaken on behalf of these charities by the State.²⁹²

In Crackanthorpe's opinion, "[t]he form of the question plainly showed what [Gladstone] thought the answer should be."²⁹³ The policy at issue was that, according to Gladstone:

the immunity given was ... *nothing short of a subsidy by the State*, and a State encouragement of death-bed gifts which frequently did injustice to the relatives of the testator, besides tending to pauperize the objects of his bounty. (Emphasis added.)²⁹⁴

It was not only the charities who opposed Gladstone, wrote Crackanthorpe, as:

²⁸⁸ Montague Crackanthorpe, 'The Taxation of Charities', *The Times* (London), 25 July 1891, 16.

²⁸⁹ Crackanthorpe, above n 288.

²⁹⁰ Crackanthorpe, above n 288.

²⁹¹ Crackanthorpe, above n 288.

²⁹² Crackanthorpe, above n 288.

²⁹³ Crackanthorpe, above n 288.

²⁹⁴ Crackanthorpe, above n 288.

[s]o formidable was the opposition that when Mr Gladstone resumed his seat that night, after speaking for two hours and a half, *not a single member rose to support him*, and the motion was, by leave, withdrawn. (Emphasis added.)²⁹⁵

Since then, “[n]o politician of high rank has ventured to reopen the discussion,” except, that is, “Mr Butler-Johnstone, the MP for Canterbury who “succeeded, indeed, in April 1871, in carrying a resolution based on Mr Gladstone’s lines. But this was a very thin house; no division was taken and no opposition offered.”²⁹⁶

Crackanthorpe proceeded to discuss the effect of an exemption to religious charities, as:

[i]t may be thought strange in these days that any denominational charity should be exempt from Income Tax when the effect of the exemption is to impose a greater burden on other Income Tax payers, who may not accept the particular religious tenets with which that charity is identified.²⁹⁷

The costs of the Charity Commissioners

Crackanthorpe then turned his attention to the issue of whether or not charities should carry the costs of their over-sight by the Charity Commissioners, as not one charity contributed “a penny to its costs.”²⁹⁸ He considered that:

it [was] a much greater anomaly that the State should, in Mr Gladstone’s language, undertake on behalf of all charities alike heavy charges which ought *primâ facie* to be defrayed by them out of their own funds, as being part of their working expenses.²⁹⁹

The Bills which were introduced in the House “in 1844, 1845, and 1846, ... all contained clauses for taxing charity income to the extent necessary to cover the expenses of the new Department.”³⁰⁰ Further Bills, in 1851, 1852, and 1853 being the year in which the Charity Commissioners were finally established, contained “[a] similar provision.”³⁰¹ The latter Bill proposed a tax at the rate of 2*d* in the pound, but it “was struck out by the Select Committee

²⁹⁵ Crackanthorpe, above n 288.

²⁹⁶ Crackanthorpe, above n 288.

²⁹⁷ Crackanthorpe, above n 288.

²⁹⁸ Crackanthorpe, above n 288.

²⁹⁹ Crackanthorpe, above n 288.

³⁰⁰ Crackanthorpe, above n 288.

³⁰¹ Crackanthorpe, above n 288.

on the ground that the good and well-conducted charities ought not to pay for the bad.”³⁰² Between 1864 and 1879 debate was held on whether the Consolidated Fund should continue bear the costs of the Charity Commissioners, or instead whether the costs should be “on the charities under the jurisdiction of the board, by either doing away with their exemption from Income Tax, or imposing on them a tax corresponding to succession duty.”³⁰³ Nothing came of that proposal. An attempt in 1879 to “impose an *ad valorem* tax of 1 per cent on all charity accounts rendered to the Commissioners” also failed, largely due to “a deputation from the great London hospitals.”³⁰⁴ “In vain,” wrote Crackanthorpe:

did Sir S. Northcote [Chancellor of the Exchequer] point out the distinction between a tax on charities for State purposes, such as the Income Tax, and a charge on charity funds for the purposes of their control and regulation. The “Sons of Zeruiah” were much too strong for him, and the Bill had to be abandoned.³⁰⁵

In 1888, a further attempt also failed “and for all practical purposes we stand in 1891 exactly where we stood in 1853,” wrote Crackanthorpe.³⁰⁶ In Crackanthorpe’s closing comments, it is apparent that he considered that the working costs of the Charity Commissioners should be borne by the charities “out of their settled property ... [for] the busy department at Whitehall ... is at once their master and their servant.” Unless the charities accepted a compromise, Crackanthorpe suggested, Gladstone’s “vigorous but abortive attempt of 1863” would continue to be “more than a disquieting menace.”

Conclusion

This chapter attempts to draw together the significant events concerning the exemption of charities from Income Tax that took place from the time of Peel’s 1842 Act to the closure of *Pemsel* in 1891. At the heart of the issue was the differing views of the Scottish and English Law Lords. In *Trustees of the Baird Trust* the Scottish Lords applied a narrow view of charity, as described in layman’s language, that is, the relief of poverty, or almsgiving. The English Lords looked to their long history of cases in Chancery as the basis for a broader interpretation, which ultimately prevailed. The stumbling block that remains today concerns the issue of public benefit, but in the Twenty-first Century, while the menace of charities

³⁰² Crackanthorpe, above n 288.

³⁰³ Crackanthorpe, above n 288.

³⁰⁴ Crackanthorpe, above n 288.

³⁰⁵ Crackanthorpe, above n 288.

³⁰⁶ Crackanthorpe, above n 288.

being subject to Income Tax has largely been settled since 1891, increasingly concerns are being voiced as to whether charitable institutions are providing public benefit in return for that exemption.

The issue has not been debated in New Zealand but my prediction is that in the not too distant future it will become a subject of discussion, a concern to those charities which cannot demonstrate, in both quantitative and qualitative terms, the provision of public benefit “incidentally to the poor as well the rich, as every charity that deserves the name must do either directly or indirectly.”³⁰⁷

In New Zealand in 2008, the Law Commission announced that it was to undertake a review of the law of trusts and of charitable trusts. On 25 May 2008 I wrote to the President of the Commission, Sir Geoffrey Palmer, to suggest that the review concerning charitable trusts should incorporate a review of the concept of public benefit.³⁰⁸ This is particularly important, given that in New Zealand, unlike in England and Wales, the Charities Commission has yet to consider this issue. The Charity Commission for England and Wales, on the other hand, has issued a draft supplementary guidance document, “Public Benefit and fee-charging,”³⁰⁹ which requires that there must be “an identifiable benefit or benefits ... to the public, or a section of the public,” without geographical or ability-to-pay restrictions, nor must those in poverty be excluded “from the opportunity to benefit.” It is to *Pemsel* that we now turn, to examine the case in more detail.

³⁰⁷ Michael Gousmett. With acknowledgment, and apologies, to Lord Macnaghten.

³⁰⁸ On 14 March 2009 the Law Commission entered the Review of the Law of Trusts in its list of projects for the 2009/2010 year. At the time of writing the Law Commission was seeking comments from “a range of individuals and organisations to identify particular areas of the law that require examination.” Law Commission, “Review of the Law of Trusts,” www.lawcom.govt.nz/ProjectGeneral.aspx?ProjectID=160. Downloaded 8 September 2009.

³⁰⁹ Charity Commission for England and Wales, “Public Benefit and Fee-charging,” March 2008. Available at www.charity-commission.gov.uk/publications/.

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Part I An introduction to the issue being contested

The fiscal implications of *Pemsel*

“Certainly there is no case in which the fiscal implications of a determination in favour of charity have been expressly considered.”¹ This erudite statement by Hubert Picarda is to be respected, coming from one as eminent in the legal profession. I respectfully suggest, however, that on a close reading of *Trustees of the Baird Trust* of the 1 June 1888,² the decision of which was disapproved in *Pemsel*, Picarda may have overlooked a footnote of the opinion of the Lord Ordinary given on the 14 March 1888 which might bring into question his assertion regarding fiscal implications. In referring to the payments made from the income of the trust by the Trustees of the Baird Trust, that is, “towards church building £14,350 and towards church endowing £3,292,”³ being funds applied to charitable purposes on which duty

¹ Hubert Picarda, *The Law and Practice relating to Charities* (3rd ed, 1999) 25.

² *The Trustees of the Baird Trust v The Lord Advocate* (1888) 15 Sc. Sess. Cas. 4th series 682.

³ *The Trustees of the Baird Trust*, above n 2, 684.

had been paid and was now being reclaimed in the sum of £644 18s 8d from the Lord Advocate as representing the Inland Revenue,⁴ the Lord Ordinary stated that:

[t]he Income Tax plainly was not intended to be diminished by payments such as these. It is a tax upon everyone having a certain income, and it is only when the clamant calls of poverty and distress render it expedient to relax the incidence of that duty that such relaxation will be given. It was perfectly right to give a wide interpretation to the words ‘charitable uses’ in the statute of Elizabeth [43 Eliz. c. 4], looking at the object of that statute – to repress frauds that had grown very much in the application of trust-funds left for the purposes of public utility. *But the very opposite mode of interpretation ought to be given in regard to an exemption contained in a statute imposing a general tax borne by the whole community who are able to bear it.* (Emphasis added.)⁵

Thus the Lord Ordinary stated that a wide interpretation of “charitable purposes” would have fiscal implications, the effect of which would be to shift the burden of taxation to those already laden to a greater or lesser degree by Income Tax, hence the need for a narrow interpretation of the concept of charitable purposes. The Scottish Court argued that “charitable purposes in the sense of the Income Tax Acts meant eleemosynary uses; the element of giving to those who had not must be present,”⁶ and disagreed with the Court of Chancery which:

[had] extended the use of the word ‘charity’ to very different purposes – to purposes of general benevolence and public utility – but I think it is quite impossible, where we are applying the proper rule of construction of a taxing Act, to give it any such meaning here.⁷

Three years later, in 1891, *Pemsel* resolved the issue and, in overturning the judgment of the Scottish Law Lords, provided a wide concept of charitable purposes based on what are now referred commonly to as the four heads of charity, whereas Lord Macnaghten had described “[c]harity in its legal sense [as being comprised of] four principal divisions.”⁸ The decision in *Pemsel* was to have fiscal implications not only in England and Scotland, but also in those countries whose legal system was, and is today, based on the English model.

⁴ *The Trustees of the Baird Trust*, above n 2, 683.

⁵ *The Trustees of the Baird Trust*, above n 2, 685.

⁶ *The Trustees of the Baird Trust*, above n 2, 687.

⁷ *The Trustees of the Baird Trust*, above n 2, 688.

⁸ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531, 583.

“The old controversy”

I was intrigued to find a letter, written by Montague Crackanthorpe, Counsel for *Pemsel*, the day after judgment had been delivered and published in *The Times* four days later, commenting on *Pemsel* which Crackanthorpe declared had “revive[d]the old controversy as to the policy of exempting charities from Income Tax (sic).”⁹ For forty-five years, since Peel’s Income Tax Act of 1842, “endowed religious bodies have been treated as entitled to the benefit of the exemption clause, though not expressly named in it, as are hospitals, public schools and almshouses.”¹⁰ What is so significant about *Pemsel* is that this was the first time that this right had been challenged, wrote Crackanthorpe.¹¹ The focus of Crackanthorpe’s letter was “with the policy [of the clause] only,” and Crackanthorpe’s opinion was given in his “private, not ... professional, capacity.”¹² What then was that policy? After elucidating on Gladstone’s failed challenge of the exemption in 1863, the discussion on which “[n]o politician of high rank has ventured to reopen,” Crackanthorpe declared that:

[i]t may be thought to be strange in these days that any denominational charity should be exempt from Income Tax when the effect of the exemption is to impose a greater burden on other Income Tax payers, who may not accept the particular religious tenets with which that charity is identified.¹³

Crackanthorpe then turned to the work of the Charity Commissioners, which was costing the country “about £40,000 a year.”¹⁴ Attempts to pass those costs on to the charities having failed, Crackanthorpe suggested that “we stand in 1891 exactly where we stood in 1853.”¹⁵ Thus, declared Crackanthorpe, “[e]ndowed charitable institutions have, owing to the pressure they have been able to bring to bear on the Executive, succeeded hitherto in preventing the vigorous but abortive attempt of 1863 from being more than a disquieting menace.”¹⁶ Not only had they avoided contributing to the cost of the Charity Commission, a cost that the State had to bear but, as a consequence of *Pemsel*, the State-provided charitable purposes

⁹ Montague Crackanthorpe, ‘The Taxation of Charities’, *The Times* (London), 25 July 1891, 16.

¹⁰ Crackanthorpe, above n 9.

¹¹ Crackanthorpe, above n 9.

¹² Crackanthorpe, above n 9.

¹³ Crackanthorpe, above n 9.

¹⁴ Crackanthorpe, above n 9.

¹⁵ Crackanthorpe, above n 9.

¹⁶ Crackanthorpe, above n 9.

exemption had been affirmed in effect as being “nothing short of a subsidy by the State,” as Gladstone had described it.¹⁷

The reason for Crackanthorpe having used the phrase “the old controversy” becomes clear on reading, in *The Times* of 25 March 1890, the ‘Law Report’ of the proceedings in *Pemsel* in the House of Lords on 24 March 1890, in which it was stated that:

[o]n behalf of the Crown it was urged that it was desirable that their Lordships should lay down the principle that should be a guide in the future as to what societies were and what were not liable to pay Income Tax upon their incomes. It was contended that in order to be exempt the income must be appropriated for and solely applied to the relief of the physical wants of poor people in the United Kingdom.¹⁸

At the conclusion of the reports of the case in the *Reports of Tax Cases* and the Appeal Court report, on 24 March 1890, it is noted that the Solicitor General, Sir E. Clarke Q.C for the appellants, replied, except that his reply is not to be found in either report.¹⁹ I suggest that what Clarke had said was that which had been reported as above in *The Times*; it was Clarke who had urged “on behalf of the Crown” for their Lordships to provide a clear guide concerning the charitable purposes exemption from Income Tax. Ultimately, Lord Macnaghten granted the Solicitor General his request.

Thus *Pemsel* was also a test case, in that the necessity for clarifying the confusion surrounding the use of the phrase charitable purposes in the Income Tax Acts was long overdue. It was time, once and for all, for the old controversy to be resolved.

Other attempts to tax charities

Why Crackanthorpe had referred, in 1891, to “the old controversy as to the policy of exempting charities from Income Tax,” becomes clear once one appreciates that not one but several attempts had been made to tax charities during the Nineteenth Century.²⁰ After Gladstone’s unsuccessful attempt in 1863 to tax charities one might have assumed that the matter had been put to rest once and for all. Somewhat surprisingly, that was not the case at all. On the 22 April, 1871, *The Times* reported that:

¹⁷ Crackanthorpe, above n 9.

¹⁸ ‘Law Report’, *The Times* (London), 25 March 1890, 8.

¹⁹ 3 TC 53, 64; [1891] AC 531, 538.

²⁰ Crackanthorpe, above n 9.

Mr A. Johnston called attention to the expense imposed on the public by the expenses of the Charity Commission, and, after relating some instances of flagrant abuses of charities, moved a resolution in favour of imposing an Income Tax on charity funds to defray these expenses. After some remarks from Sir F. Goldsmid, *the Chancellor of the Exchequer cordially agreed in the propriety of taxing charities*, and consented to the motion with the omission of the words specifying the Income Tax as the particular mode of putting them under contribution. (Emphasis added.)²¹

The response by charities was not as vehement as that of 1863 but nevertheless a response was not long in coming, but from only one charity. The *Times* of the 4 May, 1871, carried a lengthy letter from Thomas Turner, the Treasurer of Guy's Hospital, who wrote that the proposal to tax charities "[presented] so threatening an aspect towards the charitable institutions of the country that I trust you will enable me, in the interests of one of the most important of those institutions, to make some observations on the subject."²²

Turner acknowledged that while there was indeed abuse by some charities, those instances were "comparatively limited," but where the funds of a charity were "jobbed, or where their application [was] found to be useless or prejudicial, the management ought to be placed in more trustworthy hands, or the funds devoted to more worthy objects."²³ Turner then argued that "the principle of exempting small incomes" applied equally to charities as to the poor.²⁴ The "memorable struggle of 1863," Turner claimed, "would seem to have been forgotten or ignored" by the House of Commons in its recent debate on Johnston's proposal.²⁵ On the question of the endowed funds of charities, Turner argued that "[t]o tax existing endowments themselves would be, in the main, simply to diminish the incidence of taxation in one quarter at the cost of increasing it in another."²⁶

Johnston informed the House of Commons that in 1852 the Government had inserted, into the Charitable Trusts Bill, clauses to cover the expenses of the Charity Commission, to be funded by "an Income Tax of 2*d* in the pound on all endowed charities."²⁷ The Charitable Trusts Bill failed and the matter of taxing charities rested until 1863 and Gladstone's failed attempt. The issue regarding the expenses of the Charity Commission was also raised in 1866, 1867, 1868,

²¹ News, *The Times* (London), 22 April 1871, 9.

²² Thomas Turner, 'Charities and the Income Tax', *The Times* (London), 4 May 1871, 7.

²³ Turner, above n 22.

²⁴ Turner, above n 22.

²⁵ Turner, above n 22.

²⁶ Turner, above n 22.

²⁷ Hansard, *Parliamentary Debates*, (1871) vol CCV 1505.

and yet again in 1869 when the Chancellor of the Exchequer “admitted ... that nothing but an Income Tax on the endowed charities would meet the case.”²⁸ Even an attempt to insert taxing clauses into the Charitable Trusts Act of 1869 failed, because, Johnston suggested, “the idea was rotten from the beginning.”²⁹ While there may well have been abuse, Johnston argued, there was less harm done to the community by the trustees “who [ate], drank or pocketed the funds than by those who scrupulously applied them in accordance with what were miscalled ‘founders’ intentions’.”³⁰

While fiscal policy had yet to be conceived that explained the exemption of charities from Income Tax Johnston, when he informed the House of Commons that “excusing Income Tax was a grant of public money,”³¹ he was also describing an element of fiscal policy in that the exemption was an indirect subsidy by the taxpayer towards the activities of charities. Such comments are rare in any of the debates or writings that I have researched on the subject. As well as being exempt from the Income Tax, charities were also by that time exempt from legacy or succession duty, while at the same time “the State kept up the Charity Commission ... at an expense nominally of £18,000 per annum;”³²

Since 1863, Johnston “fearlessly asserted” that public opinion had changed, as “[o]n that occasion no less than 19 hon. Members opposed [Gladstone’s] proposal while the single supporter of it was ... now Secretary of State for War.”³³ Johnston declared that while he had taken part “in the agitation out-of-doors,” which he admitted “with shame,” he had done so “through ignorance,” and had since “looked into the matter and altered his opinion.”³⁴ His involvement was in support of “one of those noble charities which were the pride and blessing of the country [which was to be discriminated from] those which were mere festering heaps of abuse.”³⁵ Johnston then proposed an amendment to the motion by the addition of the words, “discontinuing the exemption of Endowed Charities from Income Tax is the only method of

²⁸ Hansard, above n 27, 1506.

²⁹ Hansard, above n 27, 1506.

³⁰ Hansard, above n 27, 1507. One example of abuse that Johnston cited concerned two hospitals, one founded for the sick and the other for lepers [sic] which “were, or were recently found to be, turned into superannuation asylums for the servants and dependants of the trustees and their friends.”; Hansard, *ibid* 1507.

³¹ Hansard, above n 27, 1510.

³² Hansard, above n 27, 1510. Johnston stated that the expenses of the Charity Commission included “superannuation allowances and interest on the £500,000 spent on inquiries of from £40,000 to £50,000 per annum.” Hansard, *ibid* 1510.

³³ Hansard, above n 27, 1510.

³⁴ Hansard, above n 27, 1511.

³⁵ Hansard, above n 27, 1511.

carrying out the decision of this House against the payment of the expenses of the Charity Commission out of public funds.”³⁶

In reply, Sir Francis Goldsmid considered that 2*d* in the pound was a sufficient tax for these purposes, instead of the 4*d* or 5*d* that Johnston had proposed, particularly as “[h]e believed the charges made did not apply to many hospitals and other charities that were doing good.”³⁷ The Chancellor of the Exchequer, in an eloquent reply, pointed out the obligations that charities had to the law, as it was through the law that they were created. What is of particular interest in the Chancellor’s reply is that he voiced what might also be seen as a policy that justified the taxation of charities. The Chancellor declared that:

[T]he question was not under what circumstances ought taxes to be paid, but under what circumstances ought the country to be called upon to make certain contributions. In order to demand a tax from a man, it was not necessary to impugn his character, or to say that he should violate any of the Ten Commandments or any moral duty. ... You get the advantages of settled government, and you are bound to contribute your share to its support. The taxes, like rain, fell on the just and on the unjust. Apply this to all charities, of which some were exempt from taxation, which meant that poor working men, small tradesmen, and hard working professional men were made contributors of the amount from the payment of which the charities were exempted. Be it observed *that the charitable corporations were more indebted to the law than any other part of the community*. The law protected the lives and property of others; it did not create us or call us into being; but *the law made these charities*; these corporations were creatures of the law; they existed only by its creation; therefore *they owed a double debt to the law, which not only protected them in the enjoyment of their funds, but which called them into existence, and gave them, contrary to the ordinary laws of nature, perpetual succession, while freeing them from Income Tax and probate and legacy duty*. Was it not unfair that these creatures of the law should be exempted from contributing towards the maintenance of the law a the institutions of the country? Not only had these institutions their Income Tax paid for them at the expense of the community, but they derived special benefits without paying anything for them, because £18,000 a year was placed in the Estimates to maintain an establishment specially instituted to enable them to obtain law and justice more easily, and on cheaper terms than others; who, if they had wrongs to get redressed, were compelled to go into the Chancery Court. (Emphasis added.)³⁸

After further debate, and an amendment to the motion that the discontinuation of the exemption of endowed charities was a “suitable,” rather than “the only” method of meeting the expenses of the Charity Commission, and an argument over procedure, the House resolved itself into the Committee of Supply. The Members then turned their attention to the

³⁶ Hansard, above n 27, 1511.

³⁷ Hansard, above n 27, 1511.

³⁸ Hansard, above n 27, 1512.

Colonial Governors' Pension Act, without having resolved the issue of taxing charities in order to meet the expenses of the Charity Commission.³⁹ On the 1 May 1871, Mr Cubbitt enquired of the Chancellor of the Exchequer as to:

[whether he could] give any estimate of the annual income arising from the endowments of charities in Great Britain, and what addition would consequently be made to the yield of the Property Tax if the Motion of the honourable member for South Essex carried on Friday, April 21st, were put into operation?⁴⁰

The Chancellor's reply is intriguing, to say the least, as:

he was sorry to say that he could not give as satisfactory an answer to the Question of the hon. Member as he could wish. He had obtained Returns from the Inland Revenue and the Charity Commissioners which substantially coincided. The income of the charities was £2,120,000 per annum, and on that sum the Income Tax, at 4*d* in the pound, would be £35,332, and at 6*d* would be £53,000. *But these Returns were very defective.* They did not include any Roman Catholic or Jewish charities; they did not include the metropolitan and other hospitals throughout the City; and they did not include the Universities, or the Colleges in the different Universities. (Emphasis added.)⁴¹

No further debate on the matter was reported in Hansard for that day and, at that point, we can leave the matter behind us, but not without referring to an incident in 1879 on this matter. On the 4 July, 1879, the House of Commons tabled a Return entitled "Charity Commission Expenses (hereafter "Return No. 272")."⁴² Return No. 272 contained copies of correspondence between the Charity Commissioners and the Treasury concerning the taxation of charities in order to meet the expenses of the Charity Commission. Return No. 272 contains items dating between the 30 April 1868 and the 23 June 1879. The correspondence considered "whether by a stamp, or charge upon orders, or other proceedings, and by a charge for the management of the accounts of sums invested, a fund could not be created towards the co the Commission."⁴³ What is significant, however, is that at that time, under the Charitable Trusts Act 1860, "the total amount of stock of various kinds vested in the official trustees [was] £2,686,564, held upon 4,099 accounts."⁴⁴ Because these funds were under the management of the trustees of the fund, the activities of those charities were not questioned as

³⁹ Hansard, above n 27, 1513.

⁴⁰ Hansard, above n 27, 1936.

⁴¹ Hansard, above n 27, 1937.

⁴² "Charity Commission Expenses," Parliamentary Papers 1878-79, vol LVII.

⁴³ Extract from Treasury Minute, 30 April 1868, above n 42, 3.

⁴⁴ Extract, above n 43, 3.

regards their charitable purposes, therefore there was no question of the exemption being honoured by a return of Income Tax paid. However, it is also important to note that the charities that the Board of the Inland Revenue had its eye on were those that were not under the management of trustees under the Charitable Trusts Act 1860.

The reporting of Tax Cases

While it was not until 1874 that there was a specialist tax court in England,⁴⁵ tax cases, as can be seen from Highmore's works on *Mortmain* in 1787 and 1809,⁴⁶ had been heard in the courts long before then. However, the cases which Highmore had cited referred to land tax, poor rates, the rateability of hospitals, Assessed Taxes, and the repair of highways, but not to Income Tax.

The hearing of tax cases in court from 1875 led to the publication, by Her Majesty's Stationery Office, of a specialised report of those cases entitled, appropriately enough, *Reports of Tax Cases*, commencing with Volume I containing the tax cases from 1875 to 1883; Volume II, the tax cases for 1883 to 1890; and Volume III the tax cases for the period 1890 to 1898.⁴⁷ According to Grout and Sabine, "[t]ax cases could be and were brought before the courts before the Customs and Inland Revenue Act 1874 but they were few and far between."⁴⁸ Between 1875 and 1894, of a total of 113 cases, 29 went to the Court of Appeal, and from the Court of Appeal 12 went to the House of Lords - 4 cases between 1875-1884, and 8 cases between 1885 and 1894.⁴⁹

Grout and Sabine explain the problem that the House of Lords was faced with, regarding the charitable purposes exemption from Income Tax, was that:

[t]he courts during the century [1875 to 1975] have been forced not only to investigate the principles inherent in the stark language of the Income Tax Acts, *but also to try and deduce the axioms which, although unexpressed, lie behind the whole scheme of the Acts from 1799 onwards.* (Emphasis added.)⁵⁰

⁴⁵ B.E.V. Sabine, *A History of Income Tax* (1966) 123.

⁴⁶ Anthony Highmore, *A Succinct View of the History of Mortmain* (1787) Chapter 3 159 and (1809) Chapter 3 478. See Chapter 3 of this Thesis for discussion on Highmore's chapter *Of Taxes and Exemption from them*.

⁴⁷ Her Majesty's Stationery Office (HMSO), *Reports of Tax Cases* (reprint 1981). The *Reports* are still published annually.

⁴⁸ Victor Grout and Basil Sabine, 'The First Hundred Years of Tax Cases' (1976) *British Tax Review* (Part I) 75, 75.

⁴⁹ Grout and Sabine, above n 48, Table I 77,

⁵⁰ Grout and Sabine, above n 48, (Part II), 240.

Interestingly, Grout and Sabine continued by saying that:

It is a truism that nowhere does statute define, for example, the balance of profits and gains, capital expenditure, residence, trade or allowable expenses. There have indeed been a long series of cases where the courts have attempted to define such expressions, just as there are nearly 300 cases concerned with whether the question at issue was one of fact or law. The courts have tried to make the dry bones of statute live ...⁵¹

The parallel with defining charitable purposes, in which Lord Macnaghten finally succeeded in 1891, is only too clear, in that nowhere in the Income Tax Acts had the concept of charitable purposes been defined. The *Pemsel* case did not discuss earlier tax cases, as the judges were primarily concerned with what was understood by “charitable purposes.” They were not alone. It was Lord Halsbury who, in delivering his judgment in *Pemsel*, declared:

[t]hen it is said that these exemptions have been allowed for a long period; that is true, but I am not able to assent to the view that the course pursued by the executive officers of the Crown is one which, under the circumstances of this case, could afford any clue to the true construction of the statute.⁵²

The establishment of a specialist court to address tax disputes had arisen through dissatisfaction with decisions by the General Commissioners, but the Board of Inland Revenue only allowed cases where they concurred with the General Commissioners views, “or the matter involve[d] doubt or [was] of sufficient importance.”⁵³ The Special Commissioners, who were a creation of Pitt’s in 1805⁵⁴ “to take some of the work away from the general commissioners by dealing with claims for charitable reliefs under Schedules A and C,”⁵⁵ had become something of a law unto themselves. It was the Special Commissioners’ determination to decline *Pemsel*’s claim of £73 8s 3d that ultimately lead to the House of Lords hearing of the case in 1891 and the refinement of concept of “charitable purposes” for tax purposes, a concept that has pervaded charity law ever since that time.

⁵¹ Grout and Sabine, above n 48, (Part II), 240.

⁵² *Pemsel*, above n 8, 546.

⁵³ Sabine, above n 45, 123.

⁵⁴ *An Act to repeal certain parts of an Act, made in the Forty-third Year of His present Majesty, for granting a Contribution on the profits arising from property, professions, trades, and offices; and to consolidate, and render more effectual, the provisions for collecting the said Duties*, 45 Geo. III c. XLIX [5 June 1805] ss. XXIX and XXX.

⁵⁵ John F. Avery Jones, ‘The Special Commissioners from Trafalgar to Waterloo’ (2005) 1 *British Tax Review* 40, 40.

A study of the work of the Special Commissioners regarding charity issues from 1805 up to 1891 would complement this Thesis, but, “[u]nfortunately there seems to be no information about how the exemptions were administered before 1816; although assessment records have survived, there are no other records as Treasury decreed they should be destroyed.”⁵⁶ It appears that there was not a repeat of the actions of the bureaucrat who, on the repeal of the Income Tax, overlooked the duplicate copies of tax returns which, along with the originals, were supposed to have been burnt but were not and were discovered many years later, having “been bundled into sacks and sent to the Public Records Office.”⁵⁷ There would, however, be the problem of finding old appeal cases, as Avery Jones has noted that:

[t]hree surveyors giving evidence to the 1852 Select Committee (which was before the start of appeals to the courts in 1874 and before an earlier procedure introduced by The Queen’s Remembrancer Act 1859 of a special case-stated procedure for revenue appeals to the Court of Exchequer) said that *fewer than 1 in 2,000 cases goes to the judges from which it would seem that there were some appeals*. The Solicitor’s Office advised on December 17, 1842 that there was no such appeal. (Emphasis added.)⁵⁸

Most texts on charity law cite the report of the Appeal Court hearing of *Pemsel*, that is [1891] AC 531,⁵⁹ yet there is another report of the case, the contents of which are largely ignored. For the purposes of this Thesis, that report is invaluable as it contains content which was not reported in the Appeal Court report. The report to which I refer is also to be found in the *Reports of Tax Cases*.⁶⁰

The report of the proceedings in the House of Lords in March 1890 and July 1891, cited as *Special Commissioners of Income Tax v Pemsel* 3 TC 53, is less of a report of a case than an attempt to record the exchanges and discussions between the Lords, and consequently is more of a report of a Parliamentary debate. On the 26 October, 1888, the Special Commissioners, through their counsel, in response to an order applied to and obtained from the Queen’s Bench

⁵⁶ 1852 Select Committee, n.14 at qq.14, 1274 as cited by Avery Jones, above n 55, 53.

⁵⁷ Sabine, above n 45, 46. Sabine also recounted the “legend that Brougham himself helped to stoke a bonfire of the hated records in the Old Palace Yard, Westminster; Gray, the Deputy Auditor, whose office windows overlooked Old Palace Yard, must have smiled a very sardonic smile at the thought of the duplicates safe in the keeping of the Exchequer Court.” Sabine described Henry Brougham as “a lawyer with a restless talent and an all-pervading energy.” Sabine *ibid* 42. Sabine’s source was none other than J.H. Clapham and A Hope-Jones who discovered the sacks and bundles containing the copies of the Income Tax returns, a few years before Hope-Jones published his ‘Income Tax in the Napoleonic Wars’ in 1939.

⁵⁸ The National Archives (TNA): Public Record Office (PRO) IR99/102 p. 59 as cited by Avery Jones, above n 55, fn34, 46.

⁵⁹ See for example, Picarda, above n 1, in which the Appeal Court case is cited 11 times.

⁶⁰ HMSO, above n 47.

by John Frederick Pemsel, the Treasurer of the trusts of the Moravian Church, responded to the demand:

to show cause why a writ of mandamus should not issue directed to them, commanding them to grant the allowance of £73 8s 3d and to give a certificate of such allowance, together with an order for the payment of the same as provided by section 62 of the Act 5 & 6 Vict. c. 35.⁶¹

An order in favour of Special Commissioners having been made on the 27 October, Pemsel appealed, and the Queen’s Bench Division order was reversed, by the Court of Appeal, on 23 December 1890. The Special Commissioners then appealed to the House of Lords where, in due course on the 20 July 1891, judgment was passed in favour of Pemsel. The case resolved around three issues: firstly, the meaning of the words “charitable purposes”; secondly, the intention of Parliament regarding the exemption clause itself; and thirdly, whether the definition of charitable purposes as understood and applied in England was also applicable in Scotland.

The commonly-used report from the House of Lords, sitting as the Appeal Court, does not contain the basis of the arguments put forward by each side as was reported in the Tax Case report. It is useful to include those submissions as they provide a clearer picture of the complexity of the issues involved in this case. While Lord Macnaghten considered “the question itself” to be “important,” he did not think that it involved “serious difficulty,”⁶² but, given the extensive debate that had already taken place in lesser courts, Lord Macnaghten’s comments, in my opinion, rather understate the matter. The Special Commissioners submission considered that:

the order of the Court of Appeal ought to be reversed, altered, or varied for the following (among other) reasons:

1. Because a mandamus does not lie against the Appellants.
2. Because the lands conveyed under the indentures of the 11th day of February 1813 and the 25th day of July 1815 respectively are not vested in trustees for “charitable purposes” within the meaning of 5 & 6 Vict. c. 35 s. 61.
3. Because the rents and profits in respect of which the Income Tax claimed to be returned to the Respondent has been paid are not applied to “charitable purposes” within the meaning of 5 & 6 Vict. c. 35. s. 61.

⁶¹ *Special Commissioners of Income Tax v Pemsel* [1891] 3 TC 53, 54.

⁶² *Special Commissioners*, above n 61, 90.

4. Because the term “charitable purposes,” being used in an Act applying to the whole United Kingdom, is to be construed in reference to the ordinary or popular use of the word “charity,” and not with reference to decisions of the English Court of Chancery in cases coming within 43 Eliz. c. 4.
5. *Because no purpose is “charitable” which does not include within it the relief of poverty.*
6. Because the charitable purposes intended to be promoted or benefited by the allowance or exemption granted under 5 & 6 Vict. c. 35 s. 61 No. VI of Schedule A are charitable purposes carried into effect within the United Kingdom or for the benefit of inhabitants of the United Kingdom or of some part of such inhabitants.
7. *Because none of the allowances or exemptions contained in 5 & 6 Vict. c. 35 s. 61 No. VI of Schedule A are intended to benefit foreign charities.*
8. Because the judgment of the Court of Appeal is erroneous in law. (Emphasis added.)⁶³

Pemsel’s response was that the judgment of the Court of Appeal should be affirmed:

1. Because the meaning of the words “charitable purposes” as employed in the exemption clauses of the Income Tax Acts is to be gathered from their use in a series of statutes passed prior to the Act of 1885 (under which the return in question is claimed) as interpreted by judicial decisions.
2. Because whether the words “charitable purposes” in the said exemption clauses be interpreted according to their statutory and legal meaning, or according to their so-called popular meaning, the purposes to which the rents and profits of the hereditaments comprised in the trust deeds of 1813 and 1815 are applicable and have been applied are charitable within the meaning of these clauses.
3. *Because the judgment of the Court of Appeal was right and consistent with the dealings of the Commissioners of Income Tax with the Moravian Brotherhood during the whole time the tax has been in force.* (Emphasis added.)⁶⁴

While the ensuing debate considered the distinctions between 43 Eliz c. 4 and the exemptions as provided in the Income Tax Acts, a comment was also made that specific exemptions had been provided for the British Museum,⁶⁵ as well as a provision “in favour of dividends applicable solely to the repairs of any cathedral, college, church, or chapel or any building used solely for the purpose of divine worship.”⁶⁶ This, according to Crackanthorpe, Q.C for Pemsel, was not the first time that tautology had been seen in an Act of Parliament, as “[w]hen the Act was introduced in 1842 its passage would be much facilitated by the Church

⁶³ *Special Commissioners*, above n 61, 55.

⁶⁴ *Special Commissioners*, above n 61, 55.

⁶⁵ *An Act for granting to Her Majesty Duties on Profits arising from Property, Professions, Trades, offices, until the Sixth Day of April One thousand eight hundred and forty-five*, 5 & 6 Vict. c. 35 [22 June 1842] s. 149; *Special Commissioners*, above n 61, 57.

⁶⁶ *An Act ...*, above n 65, s. 88; *Special Commissioners*, above n 61, 57.

party seeing that repairs of churches and cathedrals were in terms exempted. The insertion of those clauses arose simply from abundant caution.”⁶⁷ Not only does this resonate with my comments in the Introduction to this Thesis, concerning the role of the established Church in influencing social policy as well as policy for its own ends, one might also argue that here is another rationale for providing the charitable purposes exemption clause within a taxing statute – as an insurance policy to ensure that such institutions were not to be considered liable to the Income Tax levied on other persons and institutions.

Crackanthorpe also drew a parallel with section 28 of the Charitable Trusts Act 1855 which provided that:

all dividends on stock standing in the name of the official trustees ... shall be certified by the Commissioners to be exempt from Income Tax [and] shall be paid without deduction of such tax, and dividends on stock in any other names which shall be certified to be subject only to charitable trusts and to be exempt from Income Tax are likewise to be paid without deduction.⁶⁸

The question was whether the Moravian trust funds were of a charitable nature, and in so determining, notice also had to be taken of the 1853 statute which created the Charity Commissioners who, under s. 51, provided for “the appointment of official trustees ... [as] the legal owners of charity funds.”⁶⁹ Funds in their hands were of necessity and by definition “charity funds.”⁷⁰ Funds not transferred to the Charity Commissioners were dealt with by reference to the Act of 1853 “which constituted the Charity Commissioners,”⁷¹ and “which defines what charity means,” to determine if those funds were “impressed with a charitable trust or not within [43 Eliz. c.4].”⁷² Such was the confusion as to whether funds were of a charitable nature or not. Crackanthorpe also considered the wording of the Customs and Inland Revenue Act of 1885 to contain “enumeration more specific than necessary ... [being] redundant enumeration which we are all familiar with in Acts of Parliament.”⁷³ Therefore, on the one hand exemptions are provided by way of “abundant caution,” while on the other hand, so much detail is provided that it becomes superfluous. I suggest that the reason for such a

⁶⁷ *Special Commissioners*, above n 61, 61.

⁶⁸ *Special Commissioners*, above n 61, 61.

⁶⁹ *Special Commissioners*, above n 61, 61.

⁷⁰ *Special Commissioners*, above n 61, 61.

⁷¹ *Special Commissioners*, above n 61, 61. The Act referred to was *An Act for the better administration of Charitable Trusts* 16 & 17 Vict. c. 137 [20 August 1853].

⁷² *Special Commissioners*, above n 61, 61.

⁷³ *Special Commissioners*, above n 61, 62.

situation was simply because of the difficulty in clearly defining the concept of charitable purpose.

The Income Tax Act 1842 and Lord Macnaghten

An observation that I have made is the extent to which Lord Macnaghten referred to the Income Tax Act of 1842 in his judgment.⁷⁴ He first mentioned the Income Tax Act 1842 in the third sentence of his judgment when he stated that:

Income Tax Acts have been in force in this country without any intermission since 1842, and, with one long interval, ever since the close of the century. Every Act has contained an exemption in favour of property dedicated to charitable purposes. What are charitable purposes within the meaning of these Acts the legislature has nowhere defined; but from the very first it was assumed, as a matter not open to controversy, that the exemption applied to all trusts known to the law of England as charitable uses or trusts for charitable purposes.⁷⁵

The Income Tax Act 1842 is then mentioned briefly by Lord Macnaghten⁷⁶ before he began a detailed examination of the Act which he began with the words: “[h]aving attempted to clear the ground so far, I come to the words of the enactment on which the question before the House depends.”⁷⁷ However, Lord Macnaghten addressed only the question of law, as he also declared that “[w]ith the policy of taxing charities I have nothing to do.”⁷⁸ That may have been so, but at the end of the day, the nexus between charitable purpose as a concept in law, and the exemption from Income Tax of entities established for charitable purposes, has been effectively enshrined in the fiscal policies of common law countries ever since that day in 1891 when Lord Macnaghten made his pronouncement on the four principal divisions of charity.⁷⁹

Part II An analysis of *Pemsel*

The history of *Pemsel*

The end-point of the research for this Thesis centres on the Scottish case of 1891, *The Commissioners for Special Purposes of the Income Tax v. John Frederick Pemsel* (hereafter

⁷⁴ *Pemsel*, above n 8, 531.

⁷⁵ *Pemsel*, above n 8, 574.

⁷⁶ *Pemsel*, above n 8, 579.

⁷⁷ *Pemsel*, above n 8, 584.

⁷⁸ *Pemsel*, above n 8, 591.

⁷⁹ Judgement was passed, in the House of Lords, on 20 July 1891.

“*Pemsel*”).⁸⁰ I suspect that *Pemsel* is rather like Adam Smith’s two-volume work from 1776, *An Inquiry into the Nature and Causes of the Wealth of Nations*,⁸¹ often cited but never read. An in-depth reading of *Pemsel* and a study into its background, which lead to Lord Macnaghten’s momentous decision in charity law, has revealed hitherto unappreciated material central to the theme of the case, the issue of the concept of “charitable purposes” and its nexus with the charity exemption from Income Tax.

The well-known and oft-cited 1891 case, *The Commissioners for Special Purposes of the Income Tax v Pemsel*,⁸² was an appeal against an 1888 Queen’s Bench Division, first reported as *The Queen on the Prosecution of J.F. Pemsel v The Commissioners of Income Tax*.⁸³ Having filed an application for *mandamus*, requiring the Commissioners for the Income Tax to grant an allowance in respect of the rents and profits on which Income Tax had been paid, on 21 December 1888 the Court of Appeal held that the allowance of £73 8s 3d in respect of Income Tax for the year ending on the 5 April 1886, in accordance with 5 & 6 Vict. c. 35 s. 62, be allowed.⁸⁴ At the hearing of the case, which began on the 27 October 1888, Lord Coleridge stated that “the exemption is claimed under 5 & 6 Vict. c. 35 s. 61,”⁸⁵ specifically “s. 61 Sched[ule] A No. VI,” and that:

the expression ‘charitable purposes,’ in the year 1842, when the Act in question was passed, had received in the Court of Chancery a well-known interpretation in the cases decided upon the statute of 43 Eliz. c. 4 ... and that the decisions on that statute are authorities which govern the interpretation of the Act of 1842.⁸⁶

The complexity of what was the proper interpretation to be placed on the words relating to the allowances under the various Income Tax statutes is seen in the opinion of Fry LJ. At the appeal hearing on 21 December 1888 Fry LJ stated the dilemma with which he was confronted, in that:

⁸⁰ *Pemsel*, above n 8.

⁸¹ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776; reprinted edition ‘The World’s Classics’ 1904).

⁸² *Pemsel*, above n 8, 531.

⁸³ *The Queen v The Commissioners of Income Tax* [1888] 22 QBD 296.

⁸⁴ *The Queen*, above n 83, 297.

⁸⁵ *The Queen*, above n 83, 299.

⁸⁶ *The Queen*, above n 83, 300. It would be more correct to say that “by the year 1842” rather than “in the year 1842.” There is no mention in the *Pemsel* cases of either 1888 or 1891 of a case concerning charitable purposes that was decided in 1842.

[t]he question before us arises upon an application for allowances under the Income Tax Act of 1842, which permits allowances upon the rents and profits of lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes. *Very similar words are found in the earlier Acts, from that of 1799 onwards.* In 1842 was passed the general statute regulating the Income Tax. ... In 1885 was passed the particular statute, incorporating that of 1842, under which the charge in question was made. *We have, therefore, four points in time at which it might be argued that the proper interpretation then current should be put on the words.* We may look either to 1799 when the words were first introduced, to 1842, when we find the words in the guiding Act; to 1853, when for the first time the Act was applied to all the three kingdoms; or to the year 1885, when the particular Income Tax Act was passed under which the duty is claimed. (Emphasis added.)⁸⁷

Fry LJ did not think that it was material which period was applied, as in his opinion “the meaning was the same in each period,” and that it was more of a case of statutory construction as “the words of a statute are to be taken in their primary, and not in their secondary, signification.”⁸⁸ Lopes LJ commented further on the Court of Chancery cases, and their influence on the extent of the exemption from income, when he declared that:

[t]he interpretation given by the Court of Chancery to the words “charitable uses” would clearly indicate [the Moravians to be a] society. But I cannot think that the legislature intended, in an Act of Parliament which was to apply to England, Ireland and Scotland, and having for its object the taxation of the people of England, Ireland and Scotland, to affix a special or technical meaning to these words – *a meaning adopted by the Court of Chancery in England in construing instruments containing charitable gifts, and derived from the Statute of Elizabeth, which was a statute relating to England alone.* ... Again I cannot think that the legislature intended the exemption to be so comprehensive as the adoption of the Chancery interpretation of charitable uses would make it. (Emphasis added.)⁸⁹

Lopes LJ also considered that the application of the Court of Chancery decisions regarding charitable purposes was being applied inappropriately, as they applied to the construction of wills, “but they do not, in my opinion, give us any guide as to the meaning of ‘charitable purposes’ mentioned in an Imperial Taxing Act.”⁹⁰ In the opinion of Lopes LJ, it was the “ordinary and popular meaning ... in which the expression ‘charitable uses’ is used [in the 1842 Act].”⁹¹ At that point, Lopes LJ turned his mind to that vexing question. The appeal being allowed, there the case rested until a further appeal was filed by the Special Commissioners when the House of Lords argued the case, on 20, 21 and 24 March 1890, with

⁸⁷ *The Queen*, above n 83, 309.

⁸⁸ *The Queen*, above n 83, 309.

⁸⁹ *The Queen*, above n 83, 315.

⁹⁰ *The Queen*, above n 83, 316.

⁹¹ *The Queen*, above n 83, 316.

judgment being delivered on 20 July 1891 when it was finally decided in favour of the Moravians.⁹²

On reading the Appeal Court decision of 1891, one does not immediately perceive how long it took, from the time of the initial claim having been submitted by John Frederick *Pemsel*, the treasurer of the Moravian Church, to the Commissioners for the Special Purposes of the Income Tax, for the recovery of Income Tax amounting to £73 8s 3d.

Having read the lengthy report of the case, a student might then be inspired to read the judgment of 21 December 1888 of the action brought by *Pemsel* against the Commissioners of Income Tax.⁹³ The case was first heard on the 27 October 1888, in the Queen's Bench Division, as *The Queen v The Commissioners of Income Tax*, and was reported in *The Times* on the 29 October.⁹⁴ The *Times* concluded its short report of the case with the statement that "judgement was accordingly for the Crown."⁹⁵ The *Times* of 8 December, 1888, notified the public that the Supreme Court of Judicature, Court of Appeal, would that day consider the "*The Queen v. Income Tax Commissioners (Crown Side)*, [being the] appeal of [the] prosecutor (J.F. *Pemsel*, treasurer of Moravians,) part heard (14)."⁹⁶ A similar notice appeared in *The Times* of 11 December 1888,⁹⁷ which also reported that day on the Appeal Court proceedings of 10 December,⁹⁸ as well as the continuation of those proceedings on 11 December.⁹⁹

During those proceedings, the question was raised of how many charities benefited from the exemption from Income Tax. The Master of the Rolls asked of the Solicitor-General (for the Crown), "[h]ow many institutions which have hitherto been free from taxation will be brought in by your argument?" to which the Solicitor-General replied, "I really cannot say, but the argument on the other side would exempt an enormous number."¹⁰⁰ Mr Dicey (for the Crown) considered that "[t]he remission of the tax is practically an endowment."¹⁰¹ At this

⁹² See also *Special Commissioners*, above n 61, and below.

⁹³ *The Queen*, above n 83.

⁹⁴ Law Report, *The Times* (London), 29 October 1888, 3.

⁹⁵ Law Report, above n 94.

⁹⁶ Law Notices, *The Times* (London), 8 December 1888, 16.

⁹⁷ Law Notices, *The Times* (London), 11 December 1888, 3.

⁹⁸ Law Report, *The Times* (London), 11 December 1888, 3.

⁹⁹ Law Report, *The Times* (London), 12 December 1888, 10.

¹⁰⁰ Law Report, above n 99.

¹⁰¹ Law Report, above n 99.

point, the implications of the outcome of the case regarding the revenue of both the country and the charities is apparent, as a narrow definition, such as that of poverty as applied in *Trustees of the Baird Trust* case of 1888,¹⁰² would see relatively few charities benefiting from the charitable purposes exemption.¹⁰³

The hearing having reached its conclusion, the judges retired to consider their decision, with judgment being given on 21 December 1891.¹⁰⁴ In its issue of 25 December, on Christmas Day, the Editor of *The Times* commented extensively on the case. While the Editor considered that the Special Commissioners now had, as a consequence of the *Pemsel* case, “a rule to guide them ... the Commissioners [were] very properly becoming alive to the fact that not every institution which calls itself a ‘charity’ is entitled to the benefit of the exemption.”¹⁰⁵ While “[a]ll that the [Court of Appeal] had to decide was the meaning of the words ‘charitable purposes’ in the Income Tax Acts,”¹⁰⁶ it was not that simple, a fact that the Editor acknowledged with the comment:

[b]ut what a world of perplexity was in those two simple words! There were three competing interpretations of them. There was the Commissioners’ interpretation – itself based on a Scotch decision – of “the purpose of relieving physical poverty.” Next came the interpretation contended for by the Moravian Brotherhood, and this was the same as the meaning which the words have acquired in Courts of Chancery ... [by which] the word “charity” [has acquired a “technical” meaning] *so wide as to cover every benevolent gift which purports to confer public benefit or relieve private poverty.* Midway ... there is a third; and this was selected by the Court of Appeal. ... “The best paraphrase,” said Lord Esher, “of the term ‘charitable purpose,’ is the purpose of assisting people to something which the donor intends should be given to people who, in the opinion of the donor, cannot from poverty obtain it without his assistance, and when the donor’s desire to assist them to obtain it is the main motive of the gift.” (Emphasis added.)¹⁰⁷

While the Editor considered Lord Esher’s attempt to define charitable purpose as being “somewhat elephantine,” it did, in his opinion, provide “a common-sense criterion of charity for purposes of taxation,”¹⁰⁸ but it must not be overlooked that he at least would not be called upon to make decisions in such cases! Rather astutely, the Editor commented that:

¹⁰² *The Trustees of the Baird Trust*, above n 2.

¹⁰³ However, being a Scottish case, the English judges were not about to have Scottish laws being applied in English cases.

¹⁰⁴ *The Queen on the Prosecution of J.F. Pemsel v The Commissioners of Income Tax* 22 QBD 296 [1888].

¹⁰⁵ Editorial, *The Times* (London), 25 December 1888, 7.

¹⁰⁶ Editorial, above n 105.

¹⁰⁷ Editorial, above n 105.

¹⁰⁸ Editorial, above n 105.

[p]ossibly the importance of the case will carry it to a higher tribunal. According to Lord Addington, the charity revenues affected by the action of the Charity Commissioners amount to several millions of money. Regarded as an authoritative interpretation of an Act of Parliament, the judgment of the Court of Appeal seems eminently sensible.¹⁰⁹

How significant the decision arising from *Pemsel* was seen at that time can be seen from the Editor's closing comments, in which he stated that:

*[p]ending the intervention of the Legislature, the decision of the Court of Appeal supplies an intelligible guide to the exemption of charities, and there is reason to hope that the rating of charities, which has been conducted on exceedingly disorderly principles, will, in the course of the next Session, be placed upon the same basis. But we continue to think that a new definition of charity is needed for all purposes, and that this will have in the end to be manufactured by Parliament. (Emphasis added.)*¹¹⁰

Lord Addington responded to *The Times* Editorial in a short but powerful letter which indicated that the flood-gates were about to be opened. After denouncing the approach taken by the Scotch (sic) Judges whose "one form of charity" was "precisely that which, in 1863, Mr Gladstone denounced with all his energy,"¹¹¹ Lord Addington informed the reader that "the definition furnished by the Appeal Court" may have left the Church Building Society and other similar charities "out in the cold," but that while the Society "has been patient ... it has now resolved to assert its rights by process of law, with a firm expectation of success."¹¹²

Lord Addington has emerged, I have discovered, as a champion of charities and their right to the exemption from Income Tax. The *Times* has proven to be a treasure-trove of information regarding the Nineteenth Century charities, not the least Lord Addington's detailed letter published in *The Times* of the 9 March, 1889 in which he commented on the papers that he had called for in the House of Lords on the 3 August 1888.¹¹³ His extensive letter of 9 March 1889 provides a history of the Income Tax since Pitt's time, in particular that the Income Tax Act of 1842:

[p]ractically [repeats] the exemption clauses of 1799, 1803 and 1806. This being the state of the law, the Inland Revenue in 1887 deviate from the practice of 45 years, and propose

¹⁰⁹ Editorial, above n 105.

¹¹⁰ Editorial, above n 105.

¹¹¹ Lord Addington, 'Taxation of Charities', *The Times* (London), 29 December 1888, 7.

¹¹² Lord Addington, above n 111.

¹¹³ *Journals of the House of Lords*, (1888) vol CXX 367.

at their own discretion to retain the moneys which they have received as Income Tax, to be refunded to their true owners.¹¹⁴

While *Pemsel* had been successful in his appeal, the Special Commissioners were not to be outdone. The Journals of the House of Lords record the progress of the case, with the first mention of a further appeal being on the 24 June 1889, when the *Journals* recorded:

that the Cause Commissioners for Special Purposes of the Income Tax against *Pemsel* be heard, ex-parte, by Counsel at the Bar, on the first vacant day for causes after those already appointed, unless the Respondent do lodge his printed Case in the meantime.¹¹⁵

However, it was not until the 3 March 1890 that *Pemsel* was once more mentioned, when the Lords “Ordered, that the Cause Eno against Dunn, and the Cause Commissioners for Special Purposes of the Income Tax against *Pemsel*, be heard, by Counsel at the Bar, tomorrow.”¹¹⁶ The next day “Eno against Dunn” was part heard, but *Pemsel* was “put off *sine die*.”¹¹⁷ On the 18 March 1890 it was ordered that *Pemsel* be heard “on Thursday next.”¹¹⁸ At last the appeal began but, being only part heard, was put off “till tomorrow,”¹¹⁹ when, on the 23 March 1890, it was again “further heard, and the further hearing thereof was put off to Monday next.”¹²⁰ On the 24 March 1890, while the case was “fully heard,” the Lords decided that “the further consideration thereof” should be deferred “*sine die*.”¹²¹ Nearly a full sixteen months later, on the 13 July, 1891, the *Journals* record “[t]hat the Cause Commissioners for Special Purposes of the Income Tax against *Pemsel*,” and two other causes both against the Lord Bishop of London, were to “be taken into further consideration on Monday next.”¹²²

The conclusions reached on the matter, as recorded in the *Journals*, provide further insight into the case than can be found from the report of the case itself. The *Journals* record that, on the 20 July, 1891:

¹¹⁴ Lord Addington, ‘Taxation of Charities’, *The Times* (London), 9 March 1889, 16.

¹¹⁵ *Journals of the House of Lords*, (1889) vol CXXI 209.

¹¹⁶ *Journals of the House of Lords*, (1890) vol CXXII 50.

¹¹⁷ *Journals*, above n 116, 53.

¹¹⁸ *Journals*, above n 116, 84.

¹¹⁹ *Journals*, above n 116, 86.

¹²⁰ *Journals*, above n 116, 88.

¹²¹ *Journals*, above n 116, 202.

¹²² *Journals*, above n 116, 331.

[t]he House (according to Order) proceeded to take into further consideration the Cause Commissioners for Special Purposes of the Income Tax against *Pemsel*. And consideration being had thereof accordingly; The following Order and Judgment was made: After hearing Counsel as well on Thursday the 20th, as Friday the 21st, and Monday the 24th days of March 1890, upon the Petition and Appeal of the Commissioners for Special Purposes of the Income Tax, Somerset House, Strand, in the county of Middlesex, praying, “That the matter of the Order set forth in the Schedule thereto, namely, an Order of Her Majesty’s Court of Appeal, of 21 December 1888, might be reviewed, before Her Majesty the Queen in Her Court of Parliament, and that the said Order might be reversed, varied, or altered, or that the Petitioners might have such other relief in the premises as to Her Majesty the Queen in Her Court of Parliament might seem meet;” as also upon the printed Case of John Frederick *Pemsel*, lodged in answer to the said Appeal; and due consideration had this day of what was offered on either side in this Cause: *Judgment*. It is *Ordered* and *Adjudged*, by the Lords Spiritual and Temporal, in the Court of Parliament of Her Majesty the Queen assembled, *That the said Order of her Majesty’s Court of Appeal, of 21 December 1888, complained of in the said Appeal, be, and the same is hereby Affirmed, and that the said Petition and Appeal be, and the same is hereby dismissed this House: And it is further Ordered, That the Appellants do pay or cause to be paid to the said Respondent the Costs incurred in respect of the said Appeal, the amount thereof to be certified by the Clerk of the Parliaments.*¹²³

In what can only be described as an under-statement, having heard both sides of the argument, the Appeal Court report of the *Pemsel* case stated that “[t]he House took time for consideration.”¹²⁴ In fact, the delay in the delivery of the Lords’ judgment prompted Cobb to enquire of the Secretary of State for the Home Department, in the House of Commons on the 26 June 1891:

whether he was aware that the arguments in the appeal of the *Commissioners for Special Purposes of the Income Tax v Pemsel* [which] were concluded in March, 1890, and *that the delay in delivering judgment was causing great inconvenience in the administration of a number of charities, the trustees of which were waiting the judgment in order to know whether they were entitled to a return of Income Tax; and whether he would ascertain from the Lord Chancellor and state a date before the Long Vacation when judgment would be delivered. [Mr Matthews replied that he was] informed by the Lord Chancellor that the judgment will be delivered before the House rises. (Emphasis added.)*¹²⁵

Finally, on 20 July 1891, their Lordships delivered their decisions, beginning with that of Lord Halsbury.¹²⁶ I had supposed that the reason for the delay in the Lords delivering their judgment was due to the complexity of the issues involved. However, the delay was for quite a different reason altogether. Lord Halsbury, the Lord Chancellor, who “used the political

¹²³ *Journals*, above n 116, 356.

¹²⁴ *Pemsel*, above n 8, 539.

¹²⁵ House of Commons, ‘The Income Tax Commissioners v. *Pemsel*’, *The Times* (London), 27 June 1891, 9.

¹²⁶ *Pemsel*, above n 8, 539.

power of his office to influence judicial decisions most actively” had, according to Stevens, held up the decision “[i]n the important tax and charity case of *Inland Revenue Commissioners v Pemsel*, ... for sixteen months in an effort to break the majority against his position.”¹²⁷

Paterson described Lord Halsbury as having the “ability to procrastinate,” which, with respect to the *Pemsel* case, he did so “in the vain hope that one of the majority against him would change his position.” Paterson noted that:

Halsbury would not have triumphed even then in the normal course of events since in the eventuality of a tied vote the lower court judgment (of which Halsbury disapproved) would by tradition have been upheld. Judging by his reaction in *Allen v. Flood* it seems likely that Halsbury would have ordered a re-hearing if there had been a tied vote.¹²⁸

It is interesting to note also that the Lords approach to taxation cases appears to have been in its infancy at the time of the *Pemsel* case. There were a number of reasons for this, which Stevens identified when he described the “‘balanced’ approach” taken by the Lords to the early taxation cases as being characteristic of their decisions due to:

[t]he rate of Income Tax [being] low; ... tax statutes [having] to be treated like any other statute; the overall approach not [seeming] to favour one side or the other, a tradition [which] carried over into related decisions, like Macnaghten’s reworking of the concept of charity in the *Pemsel* case.¹²⁹

Finally, on the 20 July 1891, the Lords delivered their long-awaited and much anticipated judgment. To put the matter into perspective for the reader, the extent of the Income Tax refunds being made to charities at about that time will be beneficial. The *Times* of the 1 January 1889 reported that a Parliamentary paper had been issued the previous day which contained matters relating to charities, the Charity Commissioners and Inland Revenue.¹³⁰ The papers contained what was described as being “a statement ... of amounts on which

¹²⁷ Robert B. Stevens, *Law and Politics The House of Lords as a Judicial Body, 1800-1976* (1979) 87 citing A.A. Paterson, “Judges: A Political Élite?” (1974) 1 *British Journal of Law and Society* 118, 122.

¹²⁸ Paterson, above n 127, 122 at fn 42.

¹²⁹ Stevens, above n 127, 170. Stevens describes the “open-minded” efforts of the Lords in their attempts to interpret the Workmen’s Compensation legislation as being “a laudable effort to give legal meaning and actual efficacy to legislation foreign to the law lords’ previous experience.” Stevens, above n 127, 169. Presumably the Lords were attempting to apply the same open-mindedness to the implications, both for charities and the revenue of the country, that would arise from their final decision in the *Pemsel* case. Professor Adrian Sawyer informed me that in the Nineteenth Century, tax statutes were treated by their Lordships as penal statutes.

¹³⁰ ‘Income Tax on charities’, *The Times*, (London), 1 January 1889, 9.

Income Tax was refunded in 1886-7.”¹³¹ The details published were as in Table 1 Income Tax refunds 1886-87:

Table 1 Income Tax refunds 1886-87

Classes	£
Educational trusts	778,528
Religious trusts	103,232
Hospitals	534,701
Pension funds	236,523
Almshouses	157,101
Doles	193,834
Miscellaneous	48,043
Total refunded	£2,051,962

The total refunded is the equivalent of approximately £181 million in 2005, a not insignificant sum.¹³² It is obvious that the outcome of the *Pemsel* case would directly affect many of those charities as, if the decision in *Trustees of the Baird Trust* case were followed, (in that case charity applied only to the relief of poverty), then many charities would be placed in a very precarious financial position. However, to put the above figures into perspective, a similar Return was tabled in the House of Commons in 1852, detailing refunds of Income Tax for 1850 as in Table 2 Income Tax refunds 1850.¹³³

Table 2 Income Tax refunds 1850

Classes	£
On incomes under £150 per annum	65,002 1 11
On Dividends on Foreign and Colonial Funds, the Property of Foreigners	616 10 1
On Errors and Double Assessments	1,675 10 5¼
On Hospitals, Schools, &c.	11,327 14 7
On Ecclesiastical Bodies under Schedule A	4,618 12 3
On Friendly Societies	19,863 11 5
On Diminution of Income	2,707 0 11½
On Over-payments by Collectors	148 14 5
Total refunded	£105,959 16 0¾

Noticeably, the refunds to hospitals and schools in 1850 was 2 per cent of those in 1886-87. On the 23 June, 1862, the House of Commons ordered that another Return concerning Income Tax be printed. This Return was that “of every Income Tax Act from the Year 1798, to the

¹³¹ ‘Income Tax on charities’, above n 130.

¹³² House of Commons Library, *Inflation: the value of the pound 1750-2005*, Research Paper 06/09, 13 February 2006. 1887: 8.6; 2005: 757.3 = a price index factor of 88.06. This Research Paper is the most recent publication by the House of Commons Library containing price indices for this period.

¹³³ Inland Revenue Office, *A Return of the Amount refunded on Account of Income Tax, for all the Schedules for the Year 1850; distinguishing the amount of the different Schedules*, [pursuant] to an Order of the Honourable The House of Commons, dated 26 April 1852, British Parliamentary Papers, (1852) 362 XXVIII 563.

present time; distinguishing respectively the various Rates, Exemptions, Annual produce, and Dates of each.”¹³⁴ Unfortunately, while the six-page Return has a column headed “Exemptions,” unlike the adjacent column “Amount of Duty Assessed” the amount of the exemptions under each of the many Income Tax Acts from 1798 to 1862 was not listed. Instead, descriptions of the various forms of exemptions are provided. What is significant with respect to the Return is that, as it is entitled “Income Tax,” the first Act listed in the Return is that of 38 Geo. III c. 16 of 12 January, 1798, otherwise known as the Assessed Taxes Act. It is also significant that the Return makes no mention of the provision of an exemption for charitable institutions with respect to that particular Act. A further observation that I have made concerns the amount of duty assessed in each of the years in which the Income Tax Acts were in force, as listed in Table 3 Amount of Duty Assessed.

Table 3 Amount of Duty Assessed

Year of Assessment	Amount of Duty Assessed £ xxx (indecipherable)
1798	1,855,9xx
1799	6,04x,xxx
1800	6,244,xxx
1801	5,628,xxx
1803	5,341,907
1804	4,111,924
1805	6,429,599
1806	12,822,056
1807	11,905,858
1808	13,482,294
1809	13,631,922
1810	14,453,320
1811	14,462,776
1812	15,488,546
1813	15,795,691
1814	14,188,037
1815	15,642,333
1842	5,60x,548
...	
1853	7,133,039
1854	14,358,090
...	
1857	7,905,525
...	
1859	10,424,887
1861	11,594,002

¹³⁴ British Parliamentary Papers, *Accounts and Papers* (1862) vol XXX 346.

The curiosity in these figures is the rapid (non-adjusted for inflation) change in the amount assessed between those years. In particular, the amount assessed in 1806 increased by almost exactly 100 per cent on the previous year. It is however the non-disclosure of the amount on which duty was exempted that is all the more frustrating! While there were different classes of exemption, at least an aggregate figure would have been interesting to say the least, at least from 1803 when Addington's schedular system had been introduced.

An analytical review of *Pemsel*

1. The concept of 'charitable purpose'

For the purposes of this Thesis, I have analysed the *Pemsel* case under a number of headings. It is clear from the case that the Lords had to deal with not one, but two significant issues, that of defining "charitable purposes" and, by implication, the fiscal implications arising from the case. Whether the Lords wished it or not, the winner would be either the government, or the charities, but not both, at least from a financial perspective.

While "the main debate," according to Lord Halsbury, "turns upon whether the lands here are vested in trustees for charitable purposes," the more significant issue was the nature of "charitable purposes" as understood in the laws and cases of the various parts of the United Kingdom, namely, England, Ireland, and Scotland. At issue was whether a technical meaning, or the popular meaning, was to be applied to the words "charitable purposes." Lord Halsbury considered that the answer lay "between the popular and ordinary interpretation of the word 'charitable,' and the interpretation given by the Court of Chancery to the use of those words in the statute of 43 Elizabeth [c. 4]."¹³⁵ The question was, what was it that Parliament intended when the Act was passed? Once that was known, then "[t]he only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act."¹³⁶ To assist in that understanding, argued Lord Halsbury:

[i]f any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble which, according to Dyer C.J. (*Stowel v. Lord*

¹³⁵ *Pemsel*, above n 8, 542.

¹³⁶ *Pemsel*, above n 8, 543.

Zouch Plow at p. 369) is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress.¹³⁷

I have not been able to discover what was in the minds of Pitt and his contemporaries at the time of his Duties Upon Income Act of 1799, nor what the mischief, if any, it was that he intended to address through the provision of the clause for the charitable purposes exemption from Income Tax. Nowhere in the *Pemsel* case was this considered. Instead, Lord Halsbury turned his mind to 43 Eliz. c. 4 being “An Act to redress the misemployment of lands, goods, stocks of money heretofore given to charitable uses.”¹³⁸ The intent of Parliament was, in this case, clear to see. Lord Halsbury declared that “any Court should have given the widest possible interpretation to an Act intended to remedy such abuses.”¹³⁹ Lord Halsbury informed the Lords that the Court of Chancery considered that “[w]here a purpose by analogy was deemed to be within the spirit and intendment [of 43 Eliz c.4] it was held to be ‘charitable’ within the meaning of the statute.”¹⁴⁰ The problem then, [and to this day I would submit], explained Lord Halsbury, was:

that the distinction between what is charitable in any reasonable sense, and that to which trustees for any lawful and *public* purpose may be compelled to apply funds committed to their care, has been – I will not say confused – *but so mixed that where it becomes necessary to define what is in its ordinary and natural sense “charitable” what is merely public or useful is lost sight of ...* if all public purposes whatsoever which the law would support and the Court of Chancery enforce are all in statutes to be comprehended within the phrase ‘charitable,’ then the question is easily resolved; but I do not think any statute or any decision has ever countenanced such a proposition. (Emphasis added.)¹⁴¹

Therein lies the problem, one that has not been helped by Lord Macnaghten’s fourth head of charity given in his judgment, “trusts for other purposes beneficial to the community, not falling under any of the preceding heads,”¹⁴² which has left the question wide open, even today.¹⁴³ Statutes may be interpreted, according to Lord Halsbury, by a standard established over time through the exposition of the law by judges, “or a settled course of practice or

¹³⁷ *Pemsel*, above n 8, 543.

¹³⁸ *Pemsel*, above n 8, 543.

¹³⁹ *Pemsel*, above n 8, 543.

¹⁴⁰ *Pemsel*, above n 8, 543.

¹⁴¹ *Pemsel*, above n 8, 544.

¹⁴² *Pemsel*, above n 8, 583.

¹⁴³ See Michael Gousmett, “The public benefit test,” (2006) *New Zealand Law Journal* 57-61 and M.J. Gousmett, “A legislative definition of ‘charitable purpose’,” (2003) *New Zealand Law Journal* 78-84.

understanding of the law among legal practitioners.”¹⁴⁴ The latter approach seems to me to be a potentially dangerous method. Over time, this may lead to a “Chinese whispers” situation where the message at the end is completely different from that at the start. The standard [of statutory interpretation], according to Lord Ellenborough (as cited by Lord Halsbury,) might be said to be at a higher level “where the general understanding of the law has not been speculative and theoretical, but where it has been made the groundwork and substratum of practice.”¹⁴⁵

According to Lord Watson, “[h]ad 5 & 6 Vict. c. 35 [1842] been an English statute the present controversy would, in all probability, never have arisen.”¹⁴⁶ The reason, Lord Watson explained, was that:

[t]he expression ‘charitable purposes’ is commonly, if not invariably used, both in English law and English legislation, in a sense wide enough to include the missionary enterprises and the choir houses of the *Unitas Fratrum*, as well as the maintenance and education of the children of its missionaries. But the Act applies to Scotland as well as to England ... [and] in Scotch (sic) law the expression cannot, according to any legitimate construction, include the objects of Mrs Bates’ Trust settlements ... hence the difficulty which the Courts below have experienced in dealing with the present case.¹⁴⁷

How the concept of charitable purpose had evolved separately in England and Scotland in the years following 43 Eliz c. 4 can be seen in Lord Watson’s exclamation later in his judgment that:

[i]f the Income Tax statute of 1842 had been enacted by the Scottish Parliament in 1633, I do not think that the Lords of Session would at that time have adopted the narrow construction put upon the word ‘charitable’ by their successors in 1888.¹⁴⁸

As in England, neither had “the meaning of the word ‘charitable’, in Scottish law, [become] an issue distinctly raised for the determination of the House.”¹⁴⁹ Lord Watson described how in other statutes, such as that in 1832, *An Act for the better securing the charitable donations*

¹⁴⁴ *Pemsel*, above n 8, 546.

¹⁴⁵ Lord Ellenborough, *Isherwood v Oldknow* 3 M & S 397, cited by Lord Halsbury in *Pemsel*, above n 8, 547.

¹⁴⁶ *Pemsel*, above n 8, 555.

¹⁴⁷ *Pemsel*, above n 8, 555.

¹⁴⁸ *Pemsel*, above n 8, 559.

¹⁴⁹ *Pemsel*, above n 8, 561.

and bequests of His Majesty's subjects in Great Britain professing the Roman Catholic Religion:

[the word] 'charitable' is used in the same comprehensive sense with reference to England and Scotland alike. ... Roman Catholics in Scotland are, so far as concerns property held for 'charitable purposes,' entitled to have as wide a construction put upon these words as Protestant Dissenters in England.¹⁵⁰

Lord Watson concluded his judgment with the profound statement that:

whilst in litigated cases there has been no occasion to determine, and, therefore, no determination of the precise import of the word "charitable" into Scotch law; it has been employed, in the legislative language of the Scottish Parliament, the British Parliament when legislating for Scotland, in substantially the same sense in which it has been interpreted by the English Courts. It must, therefore, in my opinion, receive that interpretation in the Income Tax Act of 1842.¹⁵¹

Lord Herschell observed that the question of determining the construction to be placed on the words "charitable purposes" in a taxing statute was "consequently one of far reaching importance."¹⁵² It may be said that he was not to know just how far reaching the decision in this case was to be. Lord Herschell considered that as the phrase had "a clearly defined meaning which has been recognised and adopted by the Legislature in numerous enactments ... that same meaning ought to be attributed to it in the Income Tax Act."¹⁵³

The nexus between "charitable purposes" and the Income Tax exemption was clearly shown by Lord Macnaghten in his lengthy judgment. Lord Macnaghten began by noting that "Income Tax Acts have been in force in this country without any intermission since 1842, and, with one long interval, ever since the close of the last century."¹⁵⁴ Lord Macnaghten also observed that while "[e]very Act contained an exemption in favour of property dedicated to charitable purposes," the meaning of "charitable purposes" has "nowhere [been] defined" legislatively.¹⁵⁵ However, it was not necessary to do so as, "from the very first it was assumed, as a matter not open to controversy, that the exemption applied to all trusts known

¹⁵⁰ *Pemsel*, above n 8, 562.

¹⁵¹ *Pemsel*, above n 8, 563.

¹⁵² *Pemsel*, above n 8, 570.

¹⁵³ *Pemsel*, above n 8, 570.

¹⁵⁴ *Pemsel*, above n 8, 574.

¹⁵⁵ *Pemsel*, above n 8, 574.

to the law of England as charitable uses or trusts for charitable purposes.”¹⁵⁶ This situation had prevailed, “without inequality and apparently without difficulty,” in firstly England and Scotland and, later, Ireland.¹⁵⁷ However, this situation changed, said Lord Macnaghten:

about three or four years ago, [when] the Board of the Inland Revenue discovered that the meaning of the legislature was not to be ascertained from the legal definition of the expressions actually found in the statute, but to be gathered from the popular use of the word “charity.” Proceeding on this view they refused remissions in cases in which the remission had been claimed and allowed as a matter of right for more than forty years continuously.¹⁵⁸

According to Lord Macnaghten the change in policy by the Board of the Inland Revenue “was confirmed in Scotland by the Court of Session, in *Trustees of the Baird Trust*.¹⁵⁹ In *Trustees of the Baird Trust* case, it was declared that:

[t]he words “charitable purposes,” as used in the exempting clauses of the Income Tax Act, 1842, are to be interpreted in their ordinary and popular signification as meaning the relief of poverty, and do not cover purposes of general benevolence and public utility.¹⁶⁰

However, nowhere in *Trustees of the Baird Trust* is there any reference, directly or indirectly, to the interpretation then being placed on the phrase “charitable purposes” by the Board of the Inland Revenue. Were the Scottish Courts influenced by the behaviour of the Board of the Inland Revenue? Without further investigation I am not able to say one way or the other. If it did not “confirm” the change in policy, the Scottish Courts at least agreed with it. The end result was that the Scottish Courts left the matter in what Lord Macnaghten described as “[a] state of perplexity,” leaving the question still to be determined by the Lords in the *Pemsel* case.¹⁶¹ A solution was to be found, Lord Macnaghten argued, in the Succession Duty Act of 1853 which:

[being] a taxing act ... extends to the three kingdoms. No statute was ever drawn with more care. Studiously and with great skill it avoids technical expressions wherever they would be likely to create confusion. Yet there we find the very word “charity,” which has given rise to all this argument, used in its technical sense according to English law, and

¹⁵⁶ *Pemsel*, above n 8, 574.

¹⁵⁷ *Pemsel*, above n 8, 574.

¹⁵⁸ *Pemsel*, above n 8, 574.

¹⁵⁹ *Pemsel*, above n 8, 574. *The Trustees of the Baird Trust*, above n 2.

¹⁶⁰ *The Trustees of the Baird Trust*, above n 2, 682.

¹⁶¹ *Pemsel*, above n 8, 576.

applied to property belonging to public trusts in Scotland as well as to property dedicated to charitable purposes in England.¹⁶²

Lord Macnaghten, in explaining how words were to be interpreted, also pointed out the nature of 43 Eliz c. 4 as being an Act to address abuses relating to charities, a point that is often little understood in the Twenty-first Century, that is, it was not an Act that defined “charitable purposes” *per se*. Where an Act contained a definition with respect to a particular word in that Act, explained Lord Macnaghten:

[the Courts] must abide by that meaning in constructing the Act – you cannot add to it or take away from it – nor can you substitute anything else for it. ... In construing Acts of Parliament, it is a general rule ... that words must be taken in their legal sense unless a contrary intention appears. ... That according to the law of England a technical meaning is attached to the word “charity,” and to the word “charitable” in such expressions as “charitable uses, “charitable trusts,’ or “charitable purposes,” cannot, I think, be denied. ... [N]o-one who takes the trouble to investigate the question can doubt that the title was recognised and the jurisdiction established before the Act of 43 Eliz and quite independently of that Act. *The object of that statute was merely to provide a new machinery for the reformation of abuses in regard to charities.* (Emphasis added.)¹⁶³

Lord Macnaghten explained that while in Ireland the legal and technical meaning of the term “charity” was precisely the same as in England, that was not the case in Scotland.¹⁶⁴ Yet, said Lord Macnaghten, Lord Chelmsford, “[could not] discover that there is any great dissimilarity between the law of Scotland and the law of England with respect to charities.”¹⁶⁵ That being the case, while the earlier decisions in *Pemsel* appear all the more unusual, this may be explained by the fact that in a variety of cases, observed Lord Macnaghten:

the words “charity” and “charitable” are used sometimes in the sense which they bear in English Law, sometimes in a sense hardly distinguishable from it. ... No doubt the popular meaning of the words ‘charity’ and ‘charitable’ does not coincide with their legal meaning; ... [b]ut it still is difficult to fix the point of divergence, and no-one as yet has succeeded in defining the popular meaning of the word “charity.”¹⁶⁶

¹⁶² *Pemsel*, above n 8, 577. *Succession Duty Act* 16 & 17 Vict. c. 51 [4 August 1853]. Lord Macnaghten then referred to s. XVI which provided for the situation “[w]here property shall become subject to a trust for any charitable or public purposes,” and made provision “for the trustee of such property to raise the amount of any duty ... upon the security of the charity property,”

¹⁶³ *Pemsel*, above n 8, 578.

¹⁶⁴ *Pemsel*, above n 8, 582.

¹⁶⁵ *Pemsel*, above n 8, 582. Lord Chelmsford in *Magistrate of Dundee v Morris* 3 Macq. 154.

¹⁶⁶ *Pemsel*, above n 8, 583.

It was at this point in his judgment that Lord Macnaghten enumerated the principle divisions of charity when, in reflecting on the question, he asked:

[h]ow far then, it may be asked, does the popular meaning of the word “charity” correspond with its legal meaning? “Charity” in its legal sense comprised four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.¹⁶⁷

In general, those are the “heads” which are most often cited. But what Lord Macnaghten next said relates to the question that I have raised in a paper regarding fee-charging charity hospitals in New Zealand, in which I argue that the wealthy are benefiting from such institutions, but the poor are not.¹⁶⁸ What is often omitted, or indeed forgotten, is that Lord Macnaghten also stated that:

trusts [for other purposes beneficial to the community] are not the less charitable in the eye of the law, because *incidentally* they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly. (Emphasis added).¹⁶⁹

There is another aspect of Lord Macnaghten’s contribution to the issue of charity that is worth pondering over. That is his use of the words “four *principal* divisions (emphasis added).”¹⁷⁰ Why did Lord Macnaghten use the word “principal”? Does he infer that there are other subdivisions of charity under those which he had named that would embrace a broader concept of charity, particularly under the fourth division?

2. The rationale for the charitable purposes exemption from Income Tax

The *Pemsel* case was, ostensibly, not about fiscal policy regarding the taxation, or exemption from tax, of charities. This point was emphatically made by Lord Macnaghten near the end of his judgment when he stated that “[w]ith the policy of taxing charities I have nothing to do.”¹⁷¹ However, the case is lightly peppered with references to the exemption but tantalisingly not one of their Lordships delved into its history or rationale, apart from when Lord Halsbury declared that:

¹⁶⁷ *Pemsel*, above n 8, 583.

¹⁶⁸ Michael Gousmett, ‘Fee-Charging Charity Hospitals: An Abuse of Fiscal Privilege or Merely Pragmatism?’ (2006) *New Zealand Journal of Taxation Law and Policy* vol 12 141-180.

¹⁶⁹ *Pemsel*, above n 8, 583.

¹⁷⁰ *Pemsel*, above n 8, 583.

¹⁷¹ *Pemsel*, above n 8, 591.

it is said that these exemptions have been allowed for a long period; that is true, but I am not able to assent to the view that the course pursued by the executive officers of the Crown is one which, under the circumstances of this case, could afford any clue to the true construction of the statute.¹⁷²

Once again, I find that the words of exemption may have been included as a precaution to ensure that particular entities were not unfairly disadvantaged by the imposition of the Income Tax, as Lord Halsbury declared that:

I admit the justice of the criticism which suggests that words are sometimes put into an Act *ex abundanti cautelâ*, and would not therefore rely upon mere redundancy of expression, which I agree may be inserted for securing some particular institution which it is thought might otherwise be deprived of such statutable [sic] exemption; ...¹⁷³

Lord Halsbury considered that while the purpose of a Taxing Act was “but to raise money,” exemptions only placed “an additional burden on the rest of the community.”¹⁷⁴ However, the reason for the exemption, he suggested:

may be that *the public nature of the interest is that which may justify the exemption* [but] I cannot find any trace of such a principle in the statute, and I do not think it is borne out by decisions where the incidence of rates has been in question. (Emphasis added.)¹⁷⁵

It was at this juncture that the *Mersey Docks* case is first mentioned, along with two other ratings cases.¹⁷⁶ Lord Halsbury, in citing these cases, stated that “[i]t was undoubtedly thought that property held for public purposes was not rateable; but this is clearly not the law. It is settled that no such exemption applies.” Thus in attempting to understand that nature of the exemption from Income Tax, Lord Halsbury had turned to the rating of charities for inspiration.

The *Pemsel* case was not the first in the United Kingdom to explore the nature of the exemption from Income Tax as provided in the taxing statutes of the Nineteenth Century. It was Lord Watson who observed that:

¹⁷² *Pemsel*, above n 8, 546.

¹⁷³ *Pemsel*, above n 8, 550. *Ex abundanti cautelâ* – “from abundant caution.”

¹⁷⁴ *Pemsel*, above n 8, 551.

¹⁷⁵ *Pemsel*, above n 8, 552.

¹⁷⁶ *Pemsel*, above n 8, 552. The cases cited were: *Mersey Docks v Cameron* 11 HLC 443; *Clyde Navigation Trustees v Adamson* 4 Macq. 931; and *Commissioners of Leith Harbour and Docks v Inspector of the Poor Law Rep.* 1 HL Sc. 17.

[t]he statutory words of exemption upon which the result of this appeal depends were, for the first time, made the subject of judicial interpretation in *Baird's Trustees v Lord Advocate*¹⁷⁷ which was decided by the First Division of the Court of Session in 1888.¹⁷⁸

There are two significant elements to *Trustees of the Baird Trust* which had a bearing on the *Pemsel* case. First, the Scottish judges “refused to attach to ‘charitable purposes’ the comprehensive meaning which the words admittedly bear in English law,” and held that “in the Act of 1842, which is an Imperial statute, the words must be read in their ordinary and popular acceptance.”¹⁷⁹ That is, according to Lord President Inglis, “[c]harity is relief of poverty, and a charitable act or a charitable purpose consists in relieving poverty, and whatever goes beyond that is not within the meaning of the word ‘charity’ as it occurs in this statute.”¹⁸⁰ Secondly, the only dissenting voice amongst the four judges was that of Grantham J, on the grounds “that the Government by which the Act was introduced, and its successors in office, had, for more than forty years, invariably construed the words in the sense of English law, and allowed the exemptions now in dispute.”¹⁸¹ Grantham J was ultimately over-ruled, but *Trustees of the Baird Trust* was then later overturned by the *Pemsel* decision, Grantham J having been proved correct. In Lord Watson’s opinion, the Act of 1842 had to be interpreted in such a way “as to make the incidence of its taxation the same in both countries.”¹⁸² It is also noticeable that nowhere in the case, particularly associated with Lord Watson’s comment about the incidence of taxation is there any reference to the science of political economy as espoused by Adam Smith in his *Wealth of Nations* with respect to his tenets of taxation, particularly of equality and fairness.¹⁸³

Lord Halsbury was followed by Lord Bramwell who, in delivering his judgment, declared that the Moravians were only entitled to one-half of the tax paid, but otherwise agreed with the Lord Chancellor, Lord Halsbury.¹⁸⁴ Lord Bramwell’s principal contribution to this Thesis, and an invaluable one at that, was his statement that:

[w]hat was the intention, and why the exemption is made in the Act, is of course very much guess-work. But something like a reasonable ground may be suggested in this: that when a

¹⁷⁷ *The Trustees of the Baird Trust*, above n 2, 682.

¹⁷⁸ *Pemsel*, above n 8, 555.

¹⁷⁹ *Pemsel*, above n 8, 556.

¹⁸⁰ *Pemsel*, above n 8, 556.

¹⁸¹ *Pemsel*, above n 8, 556.

¹⁸² *Pemsel*, above n 8, 557.

¹⁸³ Smith, above n 81, 472.

¹⁸⁴ *Pemsel*, above n 8, 563.

gift is of such a character ... *to tax the charity is to tax the poor, or take from the poor who would otherwise get the amount of the tax.* It is to be remembered ... *that to exempt any subject of taxation from a tax is to add to the burthen on taxpayers generally,* and a very large exemption must be made ... for the benefit of so-called charities, many of which are simply mischievous. (Emphasis added.)¹⁸⁵

Lord Bramwell had made two significant points. The first is that of a lack of knowledge surrounding the inclusion of the charitable purposes exemption in the Income Tax Acts in the first place. The second point is the recognition that exemptions have far-reaching consequences in that the tax must still be collected from elsewhere.

It is obvious from another comment made by Lord Bramwell that, in spite of the work of the Charity Commissioners whose role had been formalised in 1853 by *An Act for the better administration of Charitable Trusts*,¹⁸⁶ there were still concerns about the activities of certain charities. This can be seen in Lord Bramwell's statement, which has also been made by others elsewhere, that:

[i]t is to be remembered ... that to exempt any subject of taxation from a tax is to add to the burthen on taxpayers generally, and a very large exemption must be made if the respondent is right for the benefit of so-called charities, many of which are simply mischievous.¹⁸⁷

It was "on [those] considerations [that Lord Bramwell held] that the natural meaning of the words 'charitable purposes' exclude[d] one-half of the income of these funds."¹⁸⁸ The problem for Lord Bramwell was that "[t]here is a very difficult and embarrassing matter to be considered. Every one admits, I believe, that the construction of the Income Tax Act ought to be the same in Scotland as in England."¹⁸⁹ The problem, once again, was the different interpretation placed on the words "charitable purposes" by the English and Scottish Courts. It is in this difference that we see the interaction of the concept with the issue of the

¹⁸⁵ *Pemsel*, above n 8, 566.

¹⁸⁶ *An Act* .., above n 71. The Act did not establish a Commission *per se* but instead provided for the appointment of four commissioners, one secretary and two inspectors, under the style "The Charity Commissioners for England and Wales." Section IX of the Act required the Commissioners, sitting as a Board, to inquire into the condition and management of charities in England and Wales, as well as being empowered to request accounts and statements relating to the funds, estates, property, income or monies thereof, or the administration, management and application of those funds.

¹⁸⁷ *Pemsel*, above n 8, 566.

¹⁸⁸ *Pemsel*, above n 8, 566.

¹⁸⁹ *Pemsel*, above n 8, 567.

exemption, as the two concepts, that of charitable purpose and that of the exemption, are inextricably linked.

The only question to be resolved was which was the more correct definition in law, that of the Scottish Courts, or that of the English? If the Scottish Courts were right the ramifications for English charities would have been disastrous, as many would have been excluded from the exemption. However, Lord Bramwell was clearly of a mind that if the case for the Moravians was proven, then “the State will be a subscriber of £17 a year to supporting, maintaining, and subsidising ‘the missionary establishment among heathen nations of the Protestant Episcopal Church known by the name of the Unitas Fratrum, or United Brethren’.”¹⁹⁰

Lord Bramwell made another invaluable contribution to this Thesis when he continued to say that “[w]hether this was meant by the authors of the Income Tax, if it was, why, and whether it will be continued, are not questions before us.”¹⁹¹ His comment demonstrated all too clearly the lack of understanding of whatever it was that Parliament intended when it included the charitable purposes exemption clause in the Income Tax statute of 1842 and later statutes. Indeed, Parliament had included the charitable purposes exemption clause in all of the Income Tax statutes since 1799, or 1798 if we consider the Assessed Taxes Act of that year to also have been an Income Tax Act.

Lord Herschell was of a view that the exemption in the Income Tax Act, which applied to Scotland and Ireland as well as to England, “must have been intended to be co-extensive in the three countries, and therefore a meaning of the words must be sought for which obtains in all.”¹⁹² According to Lord Herschell, prior to *Trustees of the Baird Trust*, there had not been a narrower interpretation applied to the concept of “charitable purposes.”¹⁹³ Therefore, Lord Herschell proposed, “the proper course is to interpret the words in the Income Tax Act in the sense in which they have been used alike in the law of both countries.”¹⁹⁴ But Lord Herschell had not quite finished with the matter, as he concluded his judgment with the statement that:

I think that an argument derived from the specific mention of certain subjects in the exemptions found in a taxing statute is of little weight. Such specific exemptions are often

¹⁹⁰ *Pemsel*, above n 8, 568.

¹⁹¹ *Pemsel*, above n 8, 568.

¹⁹² *Pemsel*, above n 8, 571.

¹⁹³ *Pemsel*, above n 8, 573.

¹⁹⁴ *Pemsel*, above n 8, 573.

introduced *ex majori cautela* [sic]¹⁹⁵ to quiet the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution, and who are apprehensive that it may not be held to fall within a general exemption.¹⁹⁶

After Lord Macnaghten’s pronouncement of “the four principal divisions” of charity as understood in its legal sense and, considering that he had “attempted to clear the ground so far, Lord Macnaghten then turned his attention to the Income Tax Act of 1842 and “the words of the enactment on which the question before the House depends.”¹⁹⁷ This is where the Income Tax Act of 1842 differs from Pitt’s Duties upon Income Act of 1799 with respect to the exemption for charitable purposes.¹⁹⁸ Firstly, section LX of the 1842 Act declared the duties described in Schedule A were to “assessed and charged” under certain rules “which shall be deemed and construed to be part of this Act.”¹⁹⁹ Secondly, section LXI described how the allowances provided for “in the next preceding rule,” that is, Rule VI, were to be claimed, that is:

any person entitled to any of the allowances ... shall claim such allowance at any time after the expiration of the year of assessment before the commissioners for general purposes of the district in which the property charged with the payments and charges shall be situate ... [who] upon due proof [of entitlement] shall certify the particulars and amount thereof *to the commissioners for special purposes at the head office for stamps and taxes in England* ... [who] shall grant an order for payment ... to the receiver-general ... [who] on production and delivery of such order [shall] pay the amount of the allowance ... taking the receipt of the party entitled ... by endorsement on such order. (Emphasis added.)²⁰⁰

It is significant, as Lord Macnaghten pointed out, that it was the Commissioners for Special Purposes in England who granted the order for payment, as their decision would have been based on English, not Scottish law. Rule VI of Schedule A provided for allowances “in respect of” the duties in Schedule A. The third unnumbered part of Rule VI provided for allowance to be made “on the rents and profits of lands, tenements, hereditaments, or heritages belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes.”²⁰¹

¹⁹⁵ Should this be “cautela”? I presume that this phrase means as a “major caution.”

¹⁹⁶ *Pemsel*, above n 8, 574.

¹⁹⁷ *Pemsel*, above n 8, 584.

¹⁹⁸ Sir Robert Peel’s [Income Tax] Act of 1842 “followed the general principles laid down in [the Income Tax Act] of 1806.” See British Parliamentary Papers, *First Report of the Commissioners of His Majesty’s Inland Revenue on Inland Revenue* (1857) Session 1, IV [2].

¹⁹⁹ *An Act* ..., above n 65.

²⁰⁰ *An Act* ..., above n 65, s. LXI.

²⁰¹ *An Act* ..., above n 65, Rule VI.

Lord Macnaghten then referred to section LXXXVIII of the Income Tax Act 1842 which provided for exemptions for duties levied under Schedule C, that is:

[t]he stock or dividends ... of any trust established for charitable purposes only, or which, according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, shall be applicable ... to charitable purposes only, and in so far as the same shall be applied to charitable purposes only.²⁰²

Section XCVIII of the Income Tax 1842 provided clear instructions regarding “all claims of exemption” which were required to be made to the “commissioners for special purposes (sic).” Claims were also to be made under s. CV respecting “yearly interest or other annual payment chargeable under Schedule D ... in so far as the same shall be applied to charitable purposes only,” as provided for under Schedule C for “stock or dividends chargeable.”

Then Lord Macnaghten returned to the question:

[w]hat is the meaning of the expression ‘charitable purposes,’ as used in the Act of 1842? In order to determine that question, it is necessary, I think, to consider *what* the Act is speaking about, and *whom* it is speaking to. It does not help one much to take the word “charity” nakedly, and in the abstract, and then turn to dictionaries for its meaning. (Emphasis added.)²⁰³

Lord Macnaghten then proceeded to ‘tell the story’ of the French priest, “so miserly in his habits that he went by the name of ‘The Griper’,” who, instead of giving his money away in alms, saved and then paid for an aqueduct thereby “doing the poor more useful and lasting service than if he had distributed his whole income in charity every day at his door.”²⁰⁴ In continuing, Lord Macnaghten answered his first rhetorical question, what was the Act about, by declaring that:

the Act of 1842 has nothing to do with casual almsgiving or charity of that sort. Nor indeed has it anything to do with charity *which is not protected by a trust of a permanent character*. The provisions of the Act which your Lordships have to consider are concerned with the revenues of established institutions – *the income of charitable endowments*. Such endowments ... form, according to English law, a distinct class of trusts, standing by

²⁰² *An Act ...*, above n 65, Schedule C Rule the Third.

²⁰³ *Pemsel*, above n 8, 585.

²⁰⁴ *Pemsel*, above n 8, 586. The parallel story often told by modern day charities, in explaining their social policies, is that of teaching a man to fish, rather than giving him money to buy fish.

themselves, and owe their validity in each case, *if the trust is a perpetuity*, to the fact that *the purposes are charitable in the eye of the law*. (Emphasis added.)²⁰⁵

The text which I have emphasised is the crux of the whole rationale for the exemption of charities from Income Tax as it stood in 1891. That is, the trust must be of a permanent character, that is, it exists in perpetuity. It is the income from the endowments of such trusts which are to be exempt from the Income Tax, provided that the purposes of those trusts are charitable, not in the eye of the law,” in the eye of “the English law” of charities.

Lord Macnaghten then answered the second part of his rhetorical question: to whom is the Income Tax Act 1842 speaking? It was speaking “to all concerned.”²⁰⁶ By that Lord Macnaghten did not mean only charities, but in particular “that body under whose ‘cognizance and jurisdiction,’ to use the words of the Act, these particular allowances and exemptions are placed.”²⁰⁷ The body to whom Lord Macnaghten was referring was, not the General Commissioners, “but to the Special Commissioners, and ‘at the head office for stamps and taxes in England’.”²⁰⁸ The significance of this can be seen in Lord Macnaghten’s profound exposition that:

in no case can the question come before any board or any commissioners in Scotland. Practically the Special Commissioners are identical with the Board of the Inland Revenue, who now represent the Commissioners of Stamps and Taxes named in the Act of 1842. How are the authorities at Somerset House to determine what constitutes a trust for charitable purposes? The majority of the Court of Appeal tell them they must be guided by the popular meaning of “charity,” and that “each individual case must be decide on its own facts.” *There is certainly no indication in the Act that such a hopeless task was laid on the Special Commissioners*. They have to satisfy themselves that the income in respect of which exemption is claimed is applied solely to charitable purposes, and they are told how that is to be proved. ... *I have come to the conclusion that the expression “trust for charitable purposes” in the Act of 1842, and the other expressions in the Act in which the word “charitable” occurs must be construed in their technical meaning according to English law*. (Emphasis added.)²⁰⁹

While the Return to the House of Lords in 1888 on the Income Tax of Charities was an authoritative document,²¹⁰ Lord Halsbury confessed that he “should regard with very great

²⁰⁵ *Pemsel*, above n 8, 586.

²⁰⁶ *Pemsel*, above n 8, 586.

²⁰⁷ *Pemsel*, above n 8, 586.

²⁰⁸ *Pemsel*, above n 8, 586.

²⁰⁹ *Pemsel*, above n 8, 587.

²¹⁰ See Chapter 7 of this Thesis for a detailed discussion on this and other related Returns.

hesitation any inference derivable from the parliamentary paper in question, except the inference which negatives a universal and adopted practice as expounding the law.”²¹¹ Neither did Lord Halsbury agree “that the statute receives any exposition from the fact that the practice has been such as has been described.”²¹² The “practice” to which Lord Halsbury had referred was that adopted by Mr Fuller who, from the time of his appointment in 1843 to superintend the charities claims relating to the exemption until his retirement in 1863 had, with the Board, made their own decisions regarding such claims without any statutory basis on which to rely.

Because there was no definition of charitable purposes to which he or the Board could turn, it was the decisions of the Court of Chancery with respect to 43 Eliz c.4, as was stated in the Return of 1865, upon which they placed their reliance.²¹³ The Return of 1865 contained the correspondence to which Lord Halsbury referred, namely the opinion of the Law Officers who, in 1856, had written that:

[w]e understand that by the judgment of the Master of the Rolls the lands in question were held to be the property of the parish of Richmond, to be applied to parochial purposes, and that in point of fact they are so applied. The result is that the houses of the wealthier inhabitants within the parish are assessed to a less amount of poor rate than would have been levied but for the application of the income of these lands and tenements. There is in our opinion a plain distinction between parochial purposes and charitable purposes in the sense in which this last phrase is used in the Income Tax Acts, and we are consequently of the opinion that the vestrymen of Richmond are not entitled to repayment of the duty.²¹⁴

(Signed) A.E. Cockburn

August 24, 1856

[Lord Westbury] Richard Bethell

Mr Fuller appears to have been unfairly criticised for his work under what must have been difficult and confusing conditions. As the Commissioners of Inland Revenue had stated in their letter of the 22 August 1863 to the Lords Commissioners of the Treasury, “[t]he difficulty which Mr Fuller, whether designedly or not, thus ignored, has now come to be dealt with by us.”²¹⁵ Ultimately, it was the *Pemsel* case of 1891 which resolved the matter.

²¹¹ *Pemsel*, above n 8, 548.

²¹² *Pemsel*, above n 8, 548.

²¹³ Return to an Order of the Honourable The House of Commons, “Charities,” 19 June 1865, 2.

²¹⁴ Return, above n 213, 2. Richard Bethel (sic) (1800-1873) became Lord Chancellor on the 1 June 1861 with the title of Baron Westbury of Westbury. See Van Vechten Veeder, “Lord Westbury,” (1900) 13(7) *Harvard Law Review* 557-569.

²¹⁵ Return, “Charities,” above n 213, 3.

Lord Watson provided, in his judgment, a history of the exemption with respect to the Moravians, explaining that “[d]own to the year 1886,”²¹⁶ the Income Tax paid had been successfully reclaimed until their claim for the tax year ending on the 5 April 1886 had been rejected “upon the ground that the purposes to which the trust income is appropriated and applied did not bring it within the scope of these exemptions.”²¹⁷

Having in effect delivered his judgment, in stating that the technical meaning of “charitable purposes” was to be construed in accordance with English law and, after a brief comparison of the 1842 Act with that of 1806, followed by a discussion of Scottish versus English law, Lord Macnaghten turned his attention to the Board of the Inland Revenue and the Parliamentary Papers of 1865 on charities. This concerned the correspondence “between the Board of the Inland Revenue as Special Commissioners of Income Tax, and the Treasury, on the subject of the Income Tax of charities.”²¹⁸ The practice of the Board was confirmed and carried further by s. 28 of the Charitable Trusts Amendment Act of 1855 which enacted that:

all dividends arising from any stock in the public funds standing in the names of the official trustees of charitable funds, and which shall be certified by [the Charity Commissioners] to the Governor and Company of the Bank of England to be exempt from the property or Income Tax ... shall be paid without any deduction thereof.²¹⁹

The effect of that enactment, explained Lord Macnaghten, was to withdraw, in 1865, in excess of £1.5 million from “the cognizance and jurisdiction of the Board of the Inland Revenue,” an amount that by 1891 was “probably much larger.”²²⁰ Consequentially, and for the removal of any further doubts, one might say, Lord Macnaghten explained that:

for the purposes of the Income Tax Acts, as well as for the purposes of administration, that income has been under the jurisdiction of a body bound in law to construe the expression “charitable trusts” according to its legal meaning, and to give certificates of exemption in accordance with that construction. The obligation is clear. The Charitable Trusts Amendment Act 1855 is to be construed as one Act with the Charitable Trusts Act 1853, and the Act of 1853 contains a definition of “charity” by reference to the Act of Elizabeth, and the practice of the Court of Chancery. *I may add that sect. 28 of the Act of 1855 has always formed part of the Income Tax Code whenever the tax has been re-imposed,*

²¹⁶ *Pemsel*, above n 8, 554.

²¹⁷ *Pemsel*, above n 8, 555.

²¹⁸ *Pemsel*, above n 8, 590.

²¹⁹ *Pemsel*, above n 8, 590.

²²⁰ *Pemsel*, above n 8, 590.

carrying with it into the Code, to a certain extent at least, the legal definition of charity. (Emphasis added.)²²¹

Lord Macnaghten had not yet finished and one can see, on a close reading, why the *Pemsel* case has become so significant to charity law and the issue of the charity exemption from Income Tax. The Income Tax, he stated:

is not a statute which was passed once for all. It has expired, and been revived, and re-enacted over and over again; every revival and re-enactment is a new Act. *It is impossible to suppose that on every occasion the Legislature can have been ignorant of the manner in which the tax was being administered by a department of the State under the guidance of their legal advisers, especially when the practice was fully laid before Parliament in [the Parliamentary Papers of 1865, "Charities"].* ... [W]hen you find legislation following a continuous practice and repeating the very words on which that practice was founded, it may perhaps fairly be inferred that the Legislature in re-enacting the statute intended those words to be understood in their received meaning. And perhaps it might be argued that the inference grows stronger with each successive enactment. (Emphasis added.)²²²

That the Board of the Inland Revenue had acted unilaterally was something that Lord Macnaghten had trouble accepting. Lord Macnaghten had strong words for the Board of the Inland Revenue, as he found that it was:

rather startling to find the established practice of so many years suddenly set aside by an administrative department of their own motion, and after something like an assurance given to Parliament that no change would be made without the interposition of the Legislature.²²³

This was particularly so as, in 1865, the officers of the Treasury had informed Parliament of “the fact that they had come to the conclusion that the subject was ‘one which should be reserved to be dealt with by the Legislature, and that in the meantime the practice which has hitherto prevailed should be followed’.”²²⁴ The ramifications, had the Scottish decision in *Trustees of the Baird Trust* case been applied, were significant, as according to Lord Macnaghten, “a change in practice, established by judicial decision only, would leave the bulk of the charitable foundations in this country exposed to liabilities appalling in amount.” With that, the Moravians had, at long last, won the right to their claim for a refund of Income Tax

²²¹ *Pemsel*, above n 8, 590.

²²² *Pemsel*, above n 8, 591.

²²³ *Pemsel*, above n 8, 591.

²²⁴ *Pemsel*, above n 8, 591.

in the amount of £73 8s 3d, as the Lords' Journals of the 20 July 1891 recorded the final decision of the case with the words: "Order appealed from affirmed, and appeal dismissed with costs."²²⁵ With those few words, history was made. Lord Macnaghten might well have left the matter at that point, but he had not quite finished with the Board of the Inland Revenue.

3. The role of the Board of the Inland Revenue

Lord Halsbury did not consider that there was "anything in the history of the administration of the Income Tax" that brought it up to the standard required, "even apart from the history of how the practice of allowing the exemption in debate had grown up."²²⁶ Further, the practice of the Board of the Inland Revenue was:

directly in conflict with the opinion given by the law officers of the Crown, Sir Alexander Cockburn and Lord Westbury, when respectively Attorney [General] and Solicitor General, in the year 1856, who advised that "charitable purposes" were plainly distinguishable from "parochial purposes" in the Income Tax Acts, and accordingly advised against the exemptions which certainly in the Court of Chancery would have been considered "charitable."²²⁷

Then, much to my surprise, reference was made to Mr Fuller, as Lord Halsbury "[knew] also that the origin of the allowance was founded on the opinion of Mr Fuller, to whom was assigned the duty of superintending the business relating to the claims of charities for exemption in the year 1843."²²⁸ It is indeed curious why the opinion given by the Attorney General and Solicitor General in 1856 was ignored, as:

by a letter from the Treasury to the Commissioners of Inland Revenue, dated October 1, 1863, it was laid down that, notwithstanding the opinion of the law officers, the administration of the tax ought not to be altered by a purely administrative authority. All this appears from a Return made to an order of the House of Lords, dated August 3, 1888.²²⁹

The House of Lords had asserted its authority over the Board of the Inland Revenue, and its officers, who now had, for the first time, a definitive guideline concerning the charitable

²²⁵ *Pemsel*, above n 8, 592.

²²⁶ *Pemsel*, above n 8, 547.

²²⁷ *Pemsel*, above n 8, 547.

²²⁸ *Pemsel*, above n 8, 548.

²²⁹ *Pemsel*, above n 8, 548.

purposes exemption from Income Tax which had been lacking ever since Pitt had made such a provision nearly one hundred years previously. No longer did the Inland Revenue need to rely on the concept that had been developed in the Courts of Chancery, for Lord Macnaghten had cleared the pathway henceforth. However, as noted by Chesterman:

Pemsel's case effectively took the lead in extending the general law definition of 'charitable' to the context of taxation. This was a major step because both the range of taxes from which charities are exempted and the rates at which some of the relevant taxes are levied have increased substantially. In interpreting all the taxing statutes concerned, the *Pemsel* decision has been applied without being seriously questioned.²³⁰

I wish to add to Chesterman's last sentence by adding the words "with respect to the fiscal implications of such decisions," in spite of the fact that it is not the role of the Courts to agree or disagree with the intent of Parliament.

Reaction to *Pemsel*

On 27 July 1891 *The Times* published a letter signed "Francis and Calley, Solicitors to the Moravian Brethren."²³¹ Francis and Calley wrote that:

The [Moravian] Brethren claimed the return of a sum of £73, paid in April, 1886, and this sum has been adjudged to have been improperly withheld for a period now exceeding over five years. *The decision affects an immense number of charities which for the last five years have been unlawfully taxed, and the total sum which the Government will have to return to them has been estimated from a quarter to a half a million sterling.* However this may be, the estimates show no provision has been made for its recoupment, and unless a supplementary estimate be passed, the charities will still remain unable to recover what is due to them. (Emphasis added.)²³²

Francis and Calley also commented on the relentless manner in which the case had been litigated, as:

[i]n Lord Macnaghten's elaborate judgment ... will be found some weighty remarks on the course pursued by the Crown with regard to the taxation of charities which will not prove to be pleasant reading for those responsible for this litigation.²³³

²³⁰ Michael R. Chesterman, *Charities, Trusts and Social Welfare* (1979) 61.

²³¹ Francis and Calley, 'The Income Tax Special Commissioners v *Pemsel*', *The Times* (London), 27 July 1891, 11.

²³² Francis and Calley, above n 231.

²³³ Francis and Calley, above n 231.

What was particularly pleasing to the Moravians was that their trust was now placed on the same footing as trusts in the hands of the Charity Commissioners:

as the Charity Commissioners have all along succeeded in claiming exemption for funds vested in them in their official names, though the purposes of the trusts may be of the same character as those attaching to lands vested in trustees.²³⁴

The impact of the decision in the *Pemsel* case becomes even clearer on reading the last paragraph of Francis and Calley's letter, as it was their opinion that "[b]ut for this circumstance the country would now have to recoup the charities whose funds are held by the Commissioners the further sum of £75,000 for each of the five years since April, 1886."²³⁵

The *Pemsel* case did not go unnoticed on the other side of the Atlantic as, in a note on the case in the *American Law Review*, the anonymous author wrote that:

[t]he English public have been stirred up on the subject of the taxation of the so-called charities by a decision in the House of Lords in the case of *The Income Tax Commissioners v Pemsel*. The decision has again drawn public attention to the question to what extent shall remote generations be burdened in order to keep up silly "charities?"²³⁶

What did the anonymous writer mean by the public having been "stirred up?" I did not find any evidence, other than that by Lord Addington, of public concerns about charities and taxation. However, that is a research question which I shall leave for another day, or another student, along with the question of what happened after the *Pemsel* decision. That question is, was the Inland Revenue bombarded with requests from charities for refunds for the years 1886 to 1891, as Francis and Calley had suggested? If so, what was the cost to the country and how were those refunds funded? My analysis of the *Pemsel* case indicates that from an historical perspective, many questions remain unanswered.

Methods of statutory interpretation

On reading cases from the Nineteenth Century, it is important to remember that the methods of statutory interpretation used by the Courts of this time also played a significant role in

²³⁴ Francis and Calley, above n 231.

²³⁵ Francis and Calley, above n 231.

²³⁶ [Anonymous,] 'The Taxation of So-Called Charities,' (1891) 25 *American Law Review* 964.

defining charitable purposes.²³⁷ I suggest that the judicial interpretation of the tax statutes might be said to have evolved in line with the increasing sophistication of the Income Tax Acts themselves. While it was the case that “the judges themselves are limited in their approaches by the decisions of their predecessors ... judges had major opportunities to formulate approaches to the interpretation of tax legislation long before they had to tackle modern revenue statutes.”²³⁸ Those early experiences were gained in cases concerning “the stamp duties and with penalty cases.”²³⁹ Lord Ellenborough enunciated the principal of strict interpretation in 1807: “where the subject is to be charged with a duty, the cases in which it is to be attached ought to be fairly marked out.”²⁴⁰ In a comment in the 1809 edition of *Blackstone*, which Williams noted was removed from the subsequent edition, the editor commented that:

it is considered to be a rule of construction of revenue acts (sic), in ambiguous cases, to lean in favour of the revenue. This rule is agreeable to good policy and the public interest, but, beyond that, which may be regarded as established law, no one can ever be said to have an undue advantage in our courts.²⁴¹

In an 1817 case, “one of the earliest reported Income Tax cases,” Garrow B. held that “[i]n the exigencies of this country this tax was imposed ... and its object was to relieve the subject by throwing the great weight of it on those who are most capable of sustaining it.”²⁴² On that basis one might argue that it was, and is, entirely appropriate that charities benefit from the charitable purposes exemption from Income Tax.

In 1833, wrote Williams, “[a] new basis for the rule of strict interpretation was given strong backing by Lord Wynford who held that:

[i]n all revenue cases, let the officers of the government take care that the legislature is made to speak plain and intelligible language. If the legislature is not made to speak plain

²³⁷ See also, for example, William N. Eskridge, ‘All about Words: Early Understandings of the “Judicial Power” in Statutory Interpretation 1776-1806’ (2001) 101 *Columbia Law Review* 990 for a detailed discussion on statutory interpretation. I suggest that an interesting research project for a student of jurisprudence would be the application of the concepts of judicial power, as suggested by Eskridge, to the *Pemsel* case: Ameliorative Power; Suppletive Power; and Voidance Power.

²³⁸ David W. Williams, ‘Taxing Statutes are Taxing Statutes: The Interpretation of Revenue Legislation’ (1978) 41(4) *The Modern Law Review* 404, 408.

²³⁹ Williams, above n 238, 409.

²⁴⁰ *Warrington v Furber* 8 East 242, 245 (103 ER 334, 335) cited in Williams, above n 238, 409.

²⁴¹ *Blackstone*, vol 1, p. 323 cited in Williams, above n 238, 409.

²⁴² *Att.-Gen. v Coote* (1817) 4 Price 183, 189 (146 ER 433, 435) cited in Williams, above n 238, 409.

and intelligible language, let not individuals suffer, but let the public ... if there is any doubt about these words, the benefit of the doubt is given to the subject.²⁴³

It was not the practice, in 1842, for statutes to contain a section devoted to definitions, therefore the drafters of the Income Tax Act 1842 would not have seen any need to define “charitable purposes” with respect to that Act, in spite of Lord Wynford’s comments. In the event, it might be said that Lord Macnaghten did indeed give the benefit of the doubt to the Moravians in the *Pemsel* case in 1891.

In 1855 Parke B maintained that “it was ‘a well established rule that the subject is not to be taxed without clear words for the purpose, and also, that every Act must be read according to the natural construction of the words’.”²⁴⁴ Williams also noted that “[t]his rule was repeatedly confirmed through that decade, being given final authority by the House of Lords in *Partington v Attorney-General*, a case still [in 1978] regularly cited.”²⁴⁵ However, by 1874 judges were applying “the dual doctrine that clear authority was needed to tax, and that the statutes should be given their ‘natural’ meaning to see if such clear authority existed.”²⁴⁶

Interestingly, Williams also noted that, as the need to finance major wars no longer existed, the rate of Income Tax was, in the later years of the Nineteenth Century, very low, from less than 1 per cent and “generally below 5 per cent.”²⁴⁷ Regardless, that was income that charities could ill afford to lose.

While it had become accepted that “clear words were needed,” the problems of deciding “whether the words were clear,” as well as “recognising the objects of a tax statute,” remained.²⁴⁸ Crucially, Williams considered that:

[t]he economic effects of taxes were rarely of concern. The standard of draftsmanship of Victorian tax statutes was high. And little of the social and economic overtones that mark our modern [1978] revenue law had crept into the legislation. Tax statutes were still passed simply to collect revenue.²⁴⁹

²⁴³ *R v Winstanley* 1 C.J. 434, 435 (148 ER 1492, 1496) cited in Williams, above n 238, 410.

²⁴⁴ *In re Mickelthwaite* 11 Ex. 452, 456 (156 ER 908, 910) cited in Williams, above n 238, 410.

²⁴⁵ *Partington v. Att. Gen* (1869) LR 4 HL 100 cited in Williams, above n 238, 410.

²⁴⁶ Williams, above n 238, 410.

²⁴⁷ Williams, above n 238, 411.

²⁴⁸ Williams, above n 238, 411.

²⁴⁹ Williams, above n 238, 411.

Or, as Lord Halsbury declared, “[c]ases ... under the taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation.”²⁵⁰ Such was the rarefied environment within which Lord Macnaghten made his insightful judgment in *Pemsel*.

Farnsworth’s comment that “[t]he Courts ... have been forced not only to seek out the principles inherent in the stark words of the Income Tax Act 1842, [they have also had] to deduce those principles which, though unexpressed, lay behind the whole scheme of the statute,” and that “[t]he Courts ... have evolved from a long series of decisions the principles that they considered were inherent in such expressions and ideas,” requires a closer examination with respect to *Pemsel*.²⁵¹ Farnsworth made this observation in 1942. Wilberforce, writing in 1881, had a different perspective.²⁵² Wilberforce wrote that:

Acts which impose taxes are to be imposed strictly,²⁵³ and so are such as impose charges,²⁵⁴ duties,²⁵⁵ or any other burdens upon the public, the Acts themselves being construed strictly, while any exception which confines the operation of such charges or duties is to be construed liberally.²⁵⁶ Clear language is necessary in Acts which infringe the legal rights of subjects or impose taxes.^{257 258}

Thus Wilberforce provides an explanation regarding Lord Macnaghten’s judgment in *Pemsel*, his definition of charitable purposes having been construed liberally, in contrast to the narrow interpretation placed on the concept in *Trustees of the Baird Trust* of 1888. In *Trustees of the Baird Trust*, which was the first case to interpret the words “charitable purposes” in the Income Tax Act 1842,²⁵⁹ the Lord President held that:

²⁵⁰ *Tennant v Smith* [1892] AC 150, 154 cited in Williams, above n 238, 411.

²⁵¹ A. Farnsworth, ‘The Income Tax Act 1842 – A Century of Judicial Interpretation’ (1942) 58 *The Law Quarterly Review* 314, 314.

²⁵² Edward Wilberforce, *Statute Law: The Principles which Govern the Construction and Operation of Statutes* (1881).

²⁵³ *Daines v Heath* 3 C.B. at 941.

²⁵⁴ *Burder v Veley* 12 A & E 247; *Gosling v Veley* 12 QB 407; *Attn.-Gen. v Lord Middleton* 3 H. & N. 138; *Caswell v Cook* 11 CBNS 637.

²⁵⁵ *Williams v Sanger*, 10 East, 66; *Denn d. Manifold v Diamond* 4 B. & C. 243; *Tomkins v Ashby*, 6 B & C 542; *R. v Barham* 8 B & C 99,104; *Cockburn v Harvey* 2 B & Ad. 797; *Dickson v. R* 11 HLC 184.

²⁵⁶ *Warrington v Farbour* 8 East, 242; *Gildart v Gladstone* 11 East, 675.

²⁵⁷ *Shaw v Ruddin* 9 Ir. CLR 214; *R v Mallow Union* 12 Ir. CLR 35.

²⁵⁸ Wilberforce, above n 252, 244.

²⁵⁹ Lars G. Gustafsson, ‘The Definition of ‘Charitable’ for Federal Income Tax Purposes: Defrocking the Old and Suggesting some new Fundamental Assumptions,’ (1996) 33(3) *Houston Law Review* 587, 620.

[while] the Court of Chancery has extended the use of the word ‘charity’ to very different purposes – to purposes of general benevolence and of public utility - ... I think it is quite impossible, where we are applying the proper rule of construction of a taxing Act, to give it any such meaning here.²⁶⁰

Lord Shand, who agreed with the Lord President:

recognized that this definition would go too far in the tax exemption context and exempt not only “institutions founded for the relief of the poor, but schools and educational institutions of every kind, and even funds left for the repair of bridges, ports, havens, causeways, seabanks, highways, and the like.”²⁶¹

The resultant narrow interpretation of charitable purposes produced, according to Gustafsson, “a case [which] had placed limits on the definition of charitable in the Income Tax exemption ... in the name of public policy.”²⁶² The “distinction [of having the] final word regarding the definition of charitable purposes under the [Income Tax Act 1842]” was, however, to be given to *Pemsel*.²⁶³

Wilberforce, in explaining the imposition of taxes on the public, cited Lord Cairns,²⁶⁴ who had said that:

[a]s I understand the principle of fiscal legislation it is this. If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law the subject is free, however apparently within the spirit of the law the case might otherwise be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.²⁶⁵

The problem for Lord Macnaghten was that he could not “simply adhere” to the words of the Income Tax Act 1842 regarding the charitable purposes exemption. Cases concerning charitable trusts have a long history in the Court of Chancery dating back to Duke’s *Law of Charitable Uses* of 1676 which in turn dates back to 1601 and the Statute of Charitable Uses

²⁶⁰ *The Trustees of the Baird Trust*, above n 2, 688.

²⁶¹ Gustafsson, above n 259, 621 citing *The Trustees of the Baird Trust* 689.

²⁶² Gustafsson, above n 259, 622.

²⁶³ Gustafsson, above n 259, 623.

²⁶⁴ *Partington v Att.-Gen* LR 4 HL 122.

²⁶⁵ Wilberforce, above n 252, 248.

of that year.²⁶⁶ At issue in *Pemsel* was the definition of charitable purposes in the context of the Income Tax Act 1842. In accordance with the methods of statutory interpretation of those times, Lord Macnaghten applied a liberal construction to the phrase. It was accepted, then as now, that “Acts of Parliament ‘are always construed and expounded according to the intent and meaning of the parties thereto, and not by any strict or strained construction’.”²⁶⁷ It was also accepted at that time that “the best way to construe an Act of Parliament is according to the intent rather than the words.”²⁶⁸ That is, according to Wilberforce:

it is a general rule that when the Legislature uses technical language in its statutes, it is supposed to attach to it its technical meaning, unless the contrary manifestly appears. Such language is no doubt employed for the purpose of escaping the difficulties caused by the use of merely popular expressions in regard to matters precise and technical in their nature.²⁶⁹

This concept provided Lord Macnaghten with a solution as can be seen in *Pemsel* where he discussed the distinction of the term “charity” as it was understood in Ireland and England, but which differed in Scotland. Both “the technical and legal meaning of the term ‘charity’ is precisely the same as it is in England,” Lord Macnaghten argued, “[but] [a]s regards the law of Scotland, the case is somewhat different.”²⁷⁰ It was during this part of his judgment that Lord Macnaghten made the statement with which all first-year students of law are no doubt familiar:

[i]f a gentleman of education, without legal training, were asked what is the meaning of “a trust for charitable purposes,” I think he would most probably reply, “That sounds like a legal phrase. You had better ask a lawyer.”²⁷¹

How would a Nineteenth Century lawyer have responded? He would probably not have turned to Duke’s 1676 work on the law of charitable trusts but to work similar, for example, to *The Law and Practice relating to Charities*.²⁷² Or, if he were Counsel for the Moravian Church in the *Pemsel* case, as a scholar of legal history as well as a practitioner of the craft, his depth of learning would have stood him in good stead in a case as challenging to the

²⁶⁶ George Duke, *The Law of Charitable Uses* (1676).

²⁶⁷ Wilberforce, above n 252, 100 citing *Butler and Baker’s Case*, 3 Rep. 27b.

²⁶⁸ Wilberforce, above n 252, 101 citing *Eyston v Studd* Plowd. 464.

²⁶⁹ Wilberforce, above n 252, 124 citing *Burton v Reeve* 16 M & W 309, per Parke, B.; 1 Kent’s Com. 462.

²⁷⁰ *Pemsel* above n 8, 582.

²⁷¹ *Pemsel* above n 8, 584.

²⁷² Picarda, above n 1.

intellect as it was to the law, as was indeed the case. For it was none other than Montague Crackanthorpe, Counsel for the Moravians, who had written that:

[w]ith the aid of historical research, what at first sight seemed dead will kindle into life, and even [if] old and withered ... will revive and blossom as the rose. [The attitude of a student] of legal history should essentially be a neutral one. He must shake himself free from all modern preconceptions. He must be prepared to throw himself into the remote past by an effort of imagination. He must realize, as intensely as he can, the scenes [with] which the drama of humanity was then unfolding to the world – scenes on which the great stage-manager, Time, has long let the curtain fall.²⁷³

A modern-day lawyer may well respond, just as Crackanthorpe had suggested:

that they want to know the law of to-day and do not care to trouble themselves about the law as it was centuries ago. Well, but is not our legal system, a system of government of the living by the dead, and is it possible fully to understand the law of to-day without some knowledge of ancient law?²⁷⁴

Crackanthorpe is correct on both counts. Through my Thesis, I have attempted to create a picture of the events surrounding the charitable purposes exemption, from the time of Pitt to *Pemsel*. The subject is huge but of necessity this Thesis is constrained, as it is but a part of a much larger canvas. While *Pemsel* is not yet “ancient” law, I have also attempted to bring the *Pemsel* case alive, because over one hundred years later, the dead do indeed continue to govern the living.

Gustafsson’s excellent paper on the definition of “charitable” for Federal Income Tax purposes also discusses statutory interpretation in the *Pemsel* case.²⁷⁵ Noting that “[t]he language of the Income Tax Act 1842 spawned different statutory interpretation arguments in favour of each of the two choices of a definition of charitable,” Gustafsson provides a compelling argument of the distinctions between that adopted in *Trustees of the Baird Trust* and Lord Macnaghten’s view.²⁷⁶ More importantly, Gustafsson observed that:

Lord Halsbury believed that a tax Act’s only purpose was to raise money [whereas] today, tax systems have much broader functions, which include the furtherance of particular social and economic policies. Thus, Lord Halsbury’s rejection of the notion that the

²⁷³ Montague Crackanthorpe, ‘The Uses of Legal History’ (1896) 12 *Law Quarterly Review* 337, 340.

²⁷⁴ Crackanthorpe, above n 273, 350.

²⁷⁵ Gustafsson, above n 259, 587.

²⁷⁶ Gustafsson, above n 259, 631.

exemption in the Income Tax Act of 1842 could be justified on the basis of the ‘public nature of the interest’ would not be a sufficient basis today for disallowing an exemption.²⁷⁷

Lord Halsbury had declared that:

*[i]t is suggested, indeed, that the reason for an exemption may be that the public nature of the interest is that which may justify the exemption. I cannot find any trace of such a principle in the statute, and I do not think it is borne out by decisions where the incidence of rates has been in question. It was undoubtedly thought that property held for public purposes was not rateable; but this is now clearly not the law. It is settled that no such exemption applies. (Emphasis added.)*²⁷⁸

The question then is what was the purpose, in 1842, of the Income Tax Act and in particular, of the charitable purposes exemption within that Act? The Income Tax Acts of the Napoleonic era and Pitt were War Taxes. One can only imagine the horrors of those years, in the way in which military men who survived those battles on land and at sea were treated, as well as the families who were left without an able breadwinner to provide for them. Logically, one can see the importance of the social role of charities at that time, and that to exact taxes from them would have been unthinkable.

Having been repealed in 1816, Income Tax was reintroduced in 1842 by Sir Robert Peel “[whose] Budget of 1842 must still rank as one of the most famous in the Nineteenth Century.”²⁷⁹ In 1841, “[w]hen Peel undertook the Government ... it was a period of confusion and darkness ... the new Minister found an empty Exchequer, a growing deficit.”²⁸⁰ Supported by what Sabine described as “a growing body of opinion,” the Income Tax was reintroduced, once again as a temporary measure.²⁸¹ This took place during a time of peace, and the Income Tax Act of 1842 was “justly called a ‘reprint’ of the Act of 1806.”²⁸² One significant change that was made was a “considerable enlargement of the powers of the Special Commissioners who had been instituted in Pitt’s Act of 1805. ... Now a person chargeable under Schedule D could make his returns and be assessed by these Special

²⁷⁷ Gustaffsson, above n 259, 635.

²⁷⁸ *Pemsel*, above n 8, 552. For his authority Lord Halsbury cited *Mersey Docks v Cameron* 11 HLC 443; *Clyde Navigation Trustees v Adamson* 4 Macq. 931; *Commissioners of Leith Harbour and Docks v Inspector of the Poor* Law Rep. 1 HL Sc 17. See also above n 176.

²⁷⁹ Sabine, above n 45, 60.

²⁸⁰ Sabine, above n 45, 60.

²⁸¹ Sabine, above n 45, 60.

²⁸² Sabine, above n 45, 62.

Commissioners.”²⁸³ As Lord Halsbury had observed, the Income Tax Act 1842 did not contain a principle for the charitable purposes exemption; the exemption was adopted as readily and without debate as it had been between 1799 and 1815.

Charity law has, over the centuries, responded to the ever-changing needs of society through the Courts adapting to those changes, albeit slowly. Brady’s argument that “the law of charity has developed its own internal logic and dynamic which have, arguably, over the past three centuries roughly coincided with social need,” is clearly evident in Lord Macnaghten’s decision in *Pemsel*.²⁸⁴ Lord Macnaghten recognised that the legislature had not provided a definition of charitable purposes with respect to the Income Tax Acts, as had been recommended in the Treasury Minute of 30 September 1863 which recorded that “[m]y Lords therefore conclude that the subject is one which should be reserved to be dealt with by the Legislature.”²⁸⁵ Picarda, citing Bromley, considers that it is appropriate for the Courts, and not the Legislature, to define charitable purposes, as “[t]he merit of the present common law definition ... [being] based on a rich legal heritage of case law ... [therefore] judge-made and not driven by government and fiscal considerations, has its own in-built protections.”²⁸⁶ The question that arises from that assumption is how responsive are the Courts to the changing needs of society?

It may be argued that the Courts have been too slow to respond as, for the first time in charity law, the concept of charitable purpose has been enshrined in legislation in the Charities Act [England and Wales] 2006 in the form of 12 specific charitable purposes, with the thirteenth being the catch-all “any other purposes.”²⁸⁷ It took almost 150 years, since 1863, for the Legislature in London to finally act. As Brady noted (I suggest erroneously):

[t]he Courts would rightly take the view that it is not the business of the Legislature to mediate social policy and it is not without significance that our law of charity remains [in 1976] firmly rooted in the last legislative attempt to do so in the early Seventeenth Century.²⁸⁸

²⁸³ Sabine, above n 45, 62.

²⁸⁴ J.C. Brady, ‘The Law of Charity and Judicial Responsiveness to changing Social Needs,’ (1976) 27 *Northern Ireland Legal Quarterly* 198, 210.

²⁸⁵ House of Commons, “Charities,” *Return to an Order of the Honourable The House of Commons*, 19 June 1865.

²⁸⁶ Picarda, above n 1, 14 citing Blake Bromley, ‘Answering the Broadbent Question: The Case for a Common Law Definition of Charity’ (1999) 5 CL & PR 207-217.

²⁸⁷ Charities Act [England and Wales] 2006, c. 50 [8 November 2006].

²⁸⁸ Brady, above n 284, 201.

“Judicial pragmatism,” wrote Brady, “has always been strongly tempered by judicial timidity and conservatism, and this has been demonstrably so in the development of our law of charity.”²⁸⁹ Were it not then for Lord Macnaghten the role of charities may never have progressed to the point that in the Twenty-first Century they are an intrinsic, and in many cases an indispensable, part of society and the economy through their activities in support of and in complementing government policies, in which they are supported by a fiscal privilege of historical proportions. Lord Macnaghten may well have only had charity law in mind, and one can only speculate as to what he would think if could see what he had in fact created, not only in Great Britain, but also internationally.

One must also remember that in many respects Lord Macnaghten was restating a concept of charitable purposes which had been declared by Lord Eldon in 1804 in *Morice v The Bishop of Durham*.²⁹⁰ Lord Eldon had stated that:

[t]here are four objects, within one of which all charity, to be administered in [the Court of Chancery] must fall: 1st, relief of the indigent; in various ways: money: provisions: education: medical assistance; &c.: 2dly, the advancement of learning: 3dly, the advancement of religion; and, 4thly, which is the most difficult, the advancement of objects of general public utility.²⁹¹

John Scott, first Earl of Eldon (1751-1838), and Lord Chancellor, was one who as a Member of Parliament, “made his impact through reasoned argument and legal authority.”²⁹² He supported Pitt’s Income Tax Bill in December 1798 but while “[h]e was listened to with respect on legal questions ... his complexity of style and his rigidly conservative views

²⁸⁹ Brady, above n 284, 203.

²⁹⁰ *Morice v The Bishop of Durham* 10 Ves. Jun. 522.

²⁹¹ *Morice*, above n 290, 532. *Morice* continues to be cited, not with respect to the concept of charity which Lord Eldon stated, but in regard to trusts established by bequest, and uncertainty or validity. See Nicky Richardson, *Nevill’s Law of Trusts, Wills and Administration* (9th ed, 2004).

²⁹² *Oxford Dictionary of National Biography [ODNB]*, (2004) vol 49 417, 418. See also Horace Twiss, *The Public and Private Life of Lord Chancellor Eldon* (1844) vols I-III. In vol III Twiss mentions *Morice v The Bishop of Durham* 10 Ves. 541 [sic] in discussing Lord Eldon’s private charitable activities. “[i]ndependently of private benevolence, and donations to public institutions, and exclusively of the contribution of £2,500 per annum to the Vice-Chancellor’s salary ... there were sums voluntarily given or remitted by Lord Eldon out of his judicial income, on official and public accounts [sic], amounting in the course of his Chancellorship, to nearly £30,000.” Twiss, *ibid* vol III 482. I have been unable to find any comment by Lord Eldon on the taxation of charities. However, Twiss commented, with respect to “the still greater odium of unremitted, nay increasing, taxation,” that “[a]s Mr Pitt had thought, so thought Lord Eldon and his colleagues” Twiss, *ibid* vol III 498. Horace Twiss (1787-1849), “[L]awyer and politician; ... practiced in the equity courts; ... spoke in the House of Commons on various legal topics, particularly those affecting the court of chancery.” Horace Twiss, *ODNB* (2004) vol. 55 734.

limited his effectiveness.”²⁹³ Lord Eldon, dubbed “Lord Endless’ by Jeremy Bentham, “was not only a prominent political figure for over forty years but [was] also the greatest lawyer of his time [known for] his excessive scrupulosity in coming to a decision between competing parties that was entirely correct.”²⁹⁴ However, Lord Eldon “is regarded as one of the principal architects of equity jurisprudence.”²⁹⁵ The evidence of this is in having been cited by another eminent member of the legal profession, Lord Macnaghten in *Pemsel* in 1891, in a decision which continues to resonate. However, Lord Macnaghten had faced an obstacle that Lord Eldon had not; a strong and unyielding opponent in the form of Lord Halsbury, which makes Lord Macnaghten’s judgment all the more authoritative. The significance of Lord Eldon’s judgment is seen in a comment by Lord Evershed, in discussing England’s judicial process, when he declared that:

[s]omething of the essential composition of the judge-made law of charities in England, including the speech of that great judge, Lord Macnaghten in *Pemsel’s Case* in 1891, may also be said to reflect the argument of the same Sir Samuel Romilly in the earlier case of *Morice v The Bishop of Durham*, decided in 1804.²⁹⁶

The importance of Lord Eldon’s judgment in *Morice* is often overlooked. Jones succinctly describes why it must not be forgotten:

[as] [i]t was not until the decision of the Master of the Rolls, Sir William Grant, and the Lord Chancellor, Lord Eldon, in *Morice v The Bishop of Durham* in 1805 that the decisive step was taken to enshrine the Preamble [of 43 Eliz. I c. 4] as the *fons et origio* of all charity²⁹⁷

Lord Macnaghten’s judgment raises the question: was he applying precedent, or was he legislating social policy? I suggest that Lord Macnaghten, knowingly or otherwise, was legislating social policy, or at least the encouragement of it. Laski suggested, in 1926, that:

[t]he fiction that judges do not legislate has long since been abandoned by all who care for a conscious and realistic jurisprudence. To apply precedent and principle to new systems

²⁹³ ODNB, above n 292, 420.

²⁹⁴ ODNB, above n 292, 423.

²⁹⁵ ODNB, above n 292, 420.

²⁹⁶ Lord Evershed, ‘The Judicial Process in Twentieth Century England’ (1861) 5 *Columbia Law Review* 761, 763.

²⁹⁷ G. Jones, *History of the Law of Charity 1532-1827* (1969) 122. Jones cited both *Morice v The Bishop of Durham* (1804) 9 Ves. 399; (1805) 10 Ves. 522. Jones, *ibid* 122.

of fact is inevitably to extend their boundaries; and the men who interpret the meaning of clauses in a constitution or a statute are, in truth, bound to be masters of them.²⁹⁸

Lord Macnaghten was indeed a master of the Income Tax Act 1842, as is evident in his judgment which had the effect, if not of shaping social policy, certainly reinforced it, by confirming that the boundaries of charitable purpose extended beyond the relief of poverty. One of the duties of a judge, explained Laski, was “to be confident that he has taken pains to realize the implications of the environment about him.”²⁹⁹ Quoting Cardozo,³⁰⁰ Laski suggested that:

[s]omething of Pascal’s spirit of self-search and self reproach must come at moments to a man who finds himself summoned to the duty of shaping the progress of the law. This ‘spirit of self-search and self-reproach’ is especially urgent where the policy of an elected legislative body is in question.³⁰¹

In making made it quite clear that he had nothing to do with the policy of taxing charities, Lord Macnaghten demonstrated that he was well aware of the environment in which the issue of charitable purposes, which was his sole focus, was being discussed.³⁰² However, the implications of his judgment, one of far-reaching consequences beyond the shores of Great Britain, was that henceforth entities with charitable purposes would be exempt from Income Tax.

Edward Macnaghten, Baron Macnaghten, Bart., GCB, GCMG

The stage having been set, the actors were in the wings waiting to change the course of the history of charity law. Lord Macnaghten, in the leading role, conceptualised the concept of charitable purpose as social policy in the context of fiscal policy. Since 1601 the Statute of Charitable Uses had existed as social policy. However, it was not until 1798 that the role of charitable purposes became crystallised as a fiscal policy in support of social policy, but it took 1891 for that fiscal policy to be ratified in charity law, not through the Legislature, but through the Courts.

²⁹⁸ Harold J. Laski, ‘Judicial Review of Social Policy in England: A Study of *Roberts v Hopwood et al*’ (1926) 39(7) *Harvard Law Review* 832, 832.

²⁹⁹ Laski, above n 298, 832.

³⁰⁰ Cardozo, *The Nature of the Judicial Process* [year not cited] 172.

³⁰¹ Laski, above n 298, 832.

³⁰² *Pemsel*, above n 8, 591.

On his death in 1913, Macnaghten, Edward, Baron Macnaghten, (1830-1913),³⁰³ was described as “one of the most learned and distinguished barristers in England, having been a Lord of Appeal-in-Ordinary [sic] since 1887.”³⁰⁴ In 1880, Lord Macnaghten was elected as a Conservative MP for county Antrim and it was on Irish matters that he “generally, but by no means always, spoke.”³⁰⁵ An Anglo-Irish barrister, and Conservative-Unionist politician,³⁰⁶ he was described “[a]s a judge [who] listened with patience and decided without hesitation [and one who used] simple yet exact terms. [He possessed the] ability to produce a literary essay from a dry and technical discussion.”³⁰⁷ It was these qualities which he brought to the *Pemsel* case and in so doing, created legal history.

A curious irony

It is ironic that during debate on the Assessed Taxes Bill in December 1797 Wilberforce “proposed a clause to exempt the Moravians” from the Bill.³⁰⁸ The Moravians were, Wilberforce explained:

a quiet set of people who lived in societies, the men employing themselves as artisans and the women with tambour work. They supported their aged by charity, and were otherwise exemplary in their morals. They dwelt together in large houses instead of cottages, which they were enabled to do by their mutual industry and economy, but [Wilberforce] believed their institution must be given up if they were not exempted, while the Revenue would receive rather less than more by forcing them to such a measure.³⁰⁹

The rather impassioned plea by Wilberforce on behalf of the Moravians was not accepted, and Pitt, “in a strain of irony, ridiculed the romantic idea of such a clause being added.”³¹⁰ In attempting to justify his comment, Pitt expressed his opinion that “these good people were very economical; and in these houses they must live much cheaper than if each individual kept house himself.”³¹¹

³⁰³ H.C.G. Matthew and Brian Harrison (eds), 35 *Oxford Dictionary of National Biography* [ODNB] (2004) 926.

³⁰⁴ [Obituary], ‘England’s Great Judge Dead’, *The New York Times* (New York), 18 February 1913, (page not cited).

³⁰⁵ ODNB, above n 303, 927.

³⁰⁶ See http://en.wikipedia.org/wiki/Lord_Macnaghten.

³⁰⁷ DNB, above n 303, 927.

³⁰⁸ [Untitled], *Evening Mail* (London), 29 December 1797, [unpaginated].

³⁰⁹ [Untitled], above n 308.

³¹⁰ Parliamentary Intelligence, ‘Assessed Taxes’, *Whitehall Evening Post* (1770) (London), 30 December 1797, Issue 7978.

³¹¹ Parliamentary Intelligence, above n 310.

How ironic then that nearly one hundred years later the Moravians were to have the last laugh, when Lord Macnaghten gave his judgment in *Pemsel*.³¹² How ironic also that in 1798, not being excused the Assessed Taxes, a community of Moravians “of Fulneck, near Leeds,” in an example of turning the other cheek, made a “voluntary contribution for the defence of the country [by way of a] free gift of £125.”³¹³

Conclusion

The *Pemsel* case continues to resonate nearly 120 years since Lord Macnaghten pronounced the four principal divisions of charity in “*its legal sense* (emphasis added.)”³¹⁴ In so doing, Lord Macnaghten provided the nexus between charitable purposes and exemption from Income Tax. My analysis of the issues surrounding the case will fill a gap which until now has existed in understanding *Pemsel* from a perspective other than a solely legal point of view. A letter such as that by Crackanthorpe, who acted for the Moravians, in which he commented on the case in *The Times* of 25 July 1891, would be unheard of today.³¹⁵ However, with his reference to “the old controversy,” Crackanthorpe demonstrated that the issue of the charitable purposes exemption from Income Tax was not new.³¹⁶ While calls had been made in previous decades for Parliamentary intervention in determining what was a charitable purpose with respect to Income Tax,³¹⁷ both the House of Commons and the House of Lords remained silent on the matter. Ultimately, it was the House of Lords sitting as a Court of Appeal that was to provide the necessary guidance to the Special Commissioners. The contribution that Lord Macnaghten made to the charity sector, of those common law countries that followed England’s lead in adopting its laws, is one that has stood the test of time.³¹⁸

³¹² *Pemsel*, above n 8.

³¹³ ‘Voluntary Contributions’, *True Briton* (London), 10 April 1798, Issue 1652.

³¹⁴ *Pemsel*, above n 8, 583.

³¹⁵ Crackanthorpe, above n 9.

³¹⁶ Crackanthorpe, above n 9.

³¹⁷ See Chapters 6 and 7 of this Thesis.

³¹⁸ In North America, the concept of the exemption of charitable institutions from taxation has been under scrutiny by a number of leading academics. I also wrote a chapter on those developments in North America but, due to the size of this Thesis, that chapter has also been omitted from the final document.

Chapter 9 The nature of charitable activity in Eighteenth and Nineteenth Century England

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Part I Introduction: England in Crisis – The Napoleonic Wars 1793-1815

A secure provision for the indigent is to the philanthropist what a pineapple is to the epicure.

Jeremy Bentham (1796)¹

Social welfare, as it is known in the Twenty-first Century, did not exist in England during the Eighteenth and Nineteenth centuries. Instead, government relied solely on England’s charitable institutions to undertake activities which ensured that the populace had access to

¹ John Poynter, *Mr Felton’s Bequests* (2003) 536. In 1796, Poynter explains, “pineapples were rare and the poor short on bread.”

services such as health and education.² However, at the turn of the Eighteenth and Nineteenth centuries, England was in turmoil, particularly because of the long drawn-out war with France, at considerable expense to the governments coffers. The role of charities in keeping the peace was as important as it had ever been, if England was to avoid the bloody uprising as was occurring in France at that time. This chapter provides a discussion of the nature of such charitable activity, and the key people and events of the late Hanoverian and Victorian eras that shaped charity in a way never before seen. From a focus of religious fervour, charitable activity eventually gave way to a more pragmatic approach to the social issues of the late Victorian period.

O’Gorman has summed up what I have found for myself, in writing this chapter, in that it is “abnormally difficult to discern the character of the long Eighteenth Century [1688-1832] in all its complexity. ... to examine the political and social history of the period is to be struck with the complexity of its values and practices.”³ At the beginning of what O’Gorman has described as “the crisis of the Hanoverian regime,” between 1798 and 1820, O’Gorman stated that “[t]he French Revolution presented Britain with the most serious challenge to her social and political structure since the Glorious Revolution [1688-1714].”⁴ Britain faced threats at three levels: the military level; the political level; and the social level.⁵ At the social level, “the threat to social cohesion [was] posed by over two decades of warfare, accompanied by rapid economic change and by occasional, and extremely potent, crises of subsistence.”⁶

In *Trusting Leviathan*, Daunton entitled the second chapter “‘The great tax eater’: the limits of the fiscal-military state, 1799-1842”.⁷ A key point that Daunton made in that chapter was that “the ‘fiscal-military’ state of the Eighteenth Century came under renewed pressure with the unprecedented demands of war with revolutionary and Napoleonic France between 1793

² For an excellent discussion on philanthropy, volunteerism, and charity in England between the late Sixteenth and early Eighteenth Centuries, see Ilana Krausman Ben-Amos, *The culture of giving: Informal support and gift-exchange in Early Modern England* (2008).

³ Frank O’Gorman, *The Long Eighteenth Century: British Political and Social History 1688-1832* (1997) xii. O’Gorman explains that the “long Eighteenth Century” encompasses the origins of political structures and religious order in 1688 through to the Reform Act of 1832 which, to historians, “was a sign that [the] older order was coming to a close. O’Gorman, *ibid* xi-xii.

⁴ O’Gorman, above n 3, 233.

⁵ O’Gorman, above n 3, 233.

⁶ O’Gorman, above n 3, 233.

⁷ Martin Daunton, *Trusting Leviathan* (2001) 32. See also M.J. Daunton, *Progress and Poverty: An Economic and Social History of Britain 1700-1850* (1995) for a discussion on poor relief and charity (Chapter 17), and taxation and public finance (Chapter 19).

and 1815, when taxation reached 20 per cent of the national income of England.”⁸ With the failure of the Assessed Taxes of 1798 in providing the funds that Pitt desperately needed (a yield of £2m instead of the expected £4.5m),⁹ Pitt’s Duties upon Income Act of 1799 “provided 28 per cent of the additional tax revenue needed to pay for the war with [France].”¹⁰

Pitt’s Budget’s were not oriented towards social welfare policies, being primarily war Budgets. The debate on the Budget for 1798 began in the House of Commons on 24 November 1797.¹¹ The main heads of Pitt’s Budget were for the military, with far lesser sums being appropriated “for the reduction of the national debt,” and “deficiencies of grants.”¹² The total that Pitt required was the sum of £25,500,000.¹³ Part of this sum was to be funded from “the growing produce of the consolidated fund, and the land and the malt.”¹⁴ That still left “the sum of twenty-two millions [sic] to be supplied by some other means,” said Pitt, adding that “[t]he mode by which this sum is to be raised forms the great object of consideration.”¹⁵

A year later, on 3 December 1798, Pitt informed the House of Commons that the total supply he required for the “navy and transport services, ... the army, ... extraordinaries, ... unforeseen expenses, ... [and] extraordinary services ... swell the total supply to £29,272,000.”¹⁶ After allowing for income from “the land and malt ... the lottery ... the growing produce of the consolidated fund ... [and] a tax ... upon the exports and imports,”¹⁷ Pitt required a further £23,000,000 to balance the books, for which he proposed the Duties upon Income Bill which then became the Duties upon Income Act in January 1799.¹⁸ Taxes posed a major problem for Pitt as, with “80 per cent of total public revenue [sourced] from customs and excise duties, *which fell disproportionately upon the poor*, Pitt was forced to

⁸ Daunton, above n 7, 33 citing figures quoted by O’Brien and Hunt, *The Rise of the Fiscal State in England* (year not cited) 53-100.

⁹ Daunton, above n 7, 44. See also L.D. Schwarz, ‘Social Class and Social Geography’ (1982) 7(2) *Social History* 167-185 for a discussion on the Assessed Taxes returns for 1798 and “a general outline of the social structure and distribution of incomes in London.” Schwarz *ibid* 167.

¹⁰ Daunton, above n 7, 45 citing O’Brien and Hunt 89.

¹¹ Hansard, *Parliamentary History* (1818) vol XXXIII, 1036.

¹² Hansard, above n 11, 1039.

¹³ Hansard, above n 11, 1039.

¹⁴ Hansard, above n 11, 1039.

¹⁵ Hansard, above n 11, 1039.

¹⁶ Hansard, *Parliamentary History* (1819) vol XXXIV 1.

¹⁷ Hansard, above n 16, 2.

¹⁸ Hansard, above n 16, 2.

expand the tax base [which he did so] by introducing the Income Tax in 1799.”¹⁹ (Emphasis added.)

Pitt’s Budgets were clearly War Budgets.²⁰ While there was no evidence of expenditure on education, the poor, or for government agencies such as the Poor-Law Board, as Gladstone was to observe in 1863,²¹ Pitt relieved the pressure of taxes on individuals and corporations *indirectly* through exemptions. Gladstone was aware of the effect of this practice for, according to Disraeli, the Chancellor of the Exchequer “assumes that the exemption from taxation is the same as a contribution from the State of an equivalent amount of money to the person exempted,” a principle which Disraeli denied.²² This concept is, in the Twenty-first Century, described as Subsidy Theory.²³

However, by 1815, following the cessation of hostilities with France:

for all the money lavished on charity and the Poor Laws, something was fundamentally wrong. The streets were full of beggars, the victims of the peace. The hospitals and schools were only the tip of British munificence: the most generous givers of money were the poor themselves.”²⁴

The hard years following the end of the Napoleonic Wars, with the numbers of beggars being swelled by the veterans of Trafalgar and Waterloo, and the number of prostitutes being considered “a national disgrace,” saw a “sudden rush of philanthropic activity [which] was motivated by a belief that Britain could go on to greater heights ... by [conquering] her own bad habits and [building] an improved, modern society.”²⁵ Britain’s social problems did not end with the coming of peace in 1815 which instead “created severe economic dislocation which found expression both in political and in economic protest.”²⁶ The economy of the time, as is usual in war time, had been artificially stimulated.²⁷ The industrial recession of 1816 “coincided with a poor harvest,” which was compounded by “the Corn Law of 1815 ...

¹⁹ O’Gorman, above n 3, 241.

²⁰ During the period of the Napoleonic Wars, from 1793 to 1815, “the British Government collected approximately £1,028 million in revenue.” P.K. O’Brien, *Government Revenue, 1793-1815 A Study in Fiscal and Financial Policy in the Wars against France*, (Unpublished Thesis, University of Oxford, March 1967) 482.

²¹ See Chapter 6 of this Thesis.

²² ‘Microscopic Taxation’, *Lloyd’s Weekly Newspaper* (London), 10 May 1863, Issue 1068.

²³ Harvard Law Review (ed), ‘Developments in the Law - Non-profit Corporations’ (1992) 105 *Harvard Law Review* 1579-1699 (HLR Developments).

²⁴ Ben Wilson, *Decency and Disorder: The Age of Cant 1789-1837* (2007), 230.

²⁵ Wilson, above n 24, 225.

²⁶ O’Gorman, above n 3, 251.

²⁷ O’Gorman, above n 3, 267.

[which] had as its object [the protection] of the landed interest against falling prices.”²⁸ Earlier, in 1795, “[t]he grain crisis ... [had] led to a 70 per cent increase in the price of wheat compared to 1791, to trade depression, to unemployment and to a rash of strikes which raised the temperature of radical agitation.”²⁹ Then, in 1800, the grain crisis led to “extensive food shortages and a severe trade depression [and] unemployment, riots, and strikes.”³⁰ O’Gorman argues that during the Hanoverian period, the possibility of a revolution in Britain, like that in France, “might have occurred.”³¹ Why it did not, O’Gorman suggests, was that:

[p]olitical consolidation was matched by social consolidation. The social and propertied elite closed its ranks, in the loyal associations, in the army and navy, in the volunteer regiments, on the bench, in the professions, *in local and national voluntary and charitable bodies* and, of course, in the church. (Emphasis added.)³²

Why then would Pitt have taxed the charitable institutions? While the Poor Law “did much to stabilize” the problems created by the “terrible human distress” created by food shortages (“in 1802-3 no less than 90 per cent of those dependent on the Poor Law were also in receipt of outdoor relief”),³³ “what is not to be underestimated [was the] immense expansion in private charity and relief. In 1795-6 the poor received more money in charitable gifts than they did from the Poor Law.”³⁴ By the end of the Nineteenth Century, observed Adams in his *Notes on the Literature of Charities*, “over nine hundred charitable institutions existed in London alone, and in that single city five millions sterling were annually distributed by private munificence ... in addition to the Poor Rates.”³⁵ (Emphasis added.)

The changing nature of charitable activity

The nature of charitable activity changed dramatically between the late Eighteenth and the late Nineteenth centuries. From the religious influence of the Evangelicals, such as Hannah

²⁸ O’Gorman, above n 3, 251. The Corn Law provided that “no foreign corn could be sold in Britain until the domestic price had attained 80s. a quarter. Its consequence was to keep the price of bread unnecessarily high – by the new year of 1817 the price had reached 100s a quarter.” O’Gorman, above n 3, 251. According to Selley, “[t]he objects of the Corn Laws were plain. Their chief motive was to stabilise prices by excluding foreign corn in years of plenty and by prohibiting export of home supplies in years of scarcity.” W.T. Selley, *England in the Eighteenth Century* (1934; reprint 1952) 211.

²⁹ O’Gorman, above n 3, 267. See also Susan E. Brown, “‘A Just and Profitable Commerce’: Moral Economy and Middle Classes in Eighteenth Century London’ (1993) 32(4) *The Journal of British Studies* 305-332 for a discussion of the grain crises at the end of the Eighteenth Century.

³⁰ O’Gorman, above n 3, 267.

³¹ O’Gorman, above n 3, 268.

³² O’Gorman, above n 3, 271.

³³ O’Gorman, above n 3, 272.

³⁴ O’Gorman, above n 3, 272.

³⁵ Herbert B. Adams, *Notes on the Literature of Charities* (1887) 47.

More and William Wilberforce in the late Eighteenth and early Nineteenth Centuries, by the time of the Victorian era charitable activity began to change to an approach based on pragmatism, recognising the failures of earlier approaches to social problems. Adams, writing in 1887, stated that:

[i]f one would really understand the [movements of social science and organized charities in the Nineteenth Century, he [sic] should at the outset grasp the fundamental fact that, *for eighteen centuries, the charitable and legislative efforts of society have been pauperizing instead of elevating men* [sic]. (Emphasis added.)³⁶

“Christian charity,” argued Adams, which was “often given at the entrance of church-doors, [had] produced professional beggars and systematic frauds.”³⁷ However, progress was eventually made, as “in the great work of organizing charity into self-help, the Nineteenth Century has surely made some progress beyond the wasteful and pauperizing methods of previous ages.”³⁸ Adams credited Gladstone, Ruskin, and Cardinal Newman, guided by “that universal society, St. Vincent de Paul,”³⁹ with “bringing order out of the chaotic mass of English charities [by] systematizing benevolence [through charity organization].”⁴⁰ Adams considered that England’s system of charity organization, “which so unifies and directs the forces of public and private charity ... afford[ed] a working model for most of the countries of the world.”⁴¹ The “model” to which Adams referred was the London Charity Organisation Society, which “aimed at nothing less than bringing all the charities of London, whether State, corporate or individual, into correspondence and concert of administration.”⁴² “Co-operation,” wrote Adams, “is certainly the law of the new and coming charity ... [by preventing] ‘over-lapping’ of relief ... while the careful investigation stops imposition by making it possible to discriminate between real and merely alleged destitution.”⁴³

The significance of changes in society’s approach to charitable activity during the Nineteenth Century is also summed up very concisely by Roberts’ question:

³⁶ Adams, above n 35, 43.

³⁷ Adams, above n 35, 44.

³⁸ Adams, above n 35, 44.

³⁹ Adams, above n 35, 47.

⁴⁰ Adams, above n 35, 45.

⁴¹ Adams, above n 35, 45.

⁴² Adams, above n 35, 47.

⁴³ Adams, above n 35, 48.

[t]o what extent is it plausible to identify the rise of the voluntary association for the relief of distress as a modernizing agency in the transition from an age of charitable pity for Christ's poor to an age of philanthropic concern for the social rehabilitation of marginalized subjects/citizens of the state?⁴⁴

The role of philanthropic activity, which metamorphosed dramatically during the Nineteenth Century, cannot, however, be seen in isolation from the one significant issue with which charitable institutions had to deal, more so from 1842, that is the charitable purposes exemption from Income Tax. The question for the Special Commissioners, between 1842 and 1891, was what was a charitable activity with respect to refunds of Income Tax for which claims had to be submitted to those Commissioners? Social historians have largely ignored the relevance of the charitable purposes exemption from Income Tax, and few tax historians have commented on the issue.⁴⁵

It was not until the *Pemsel* case of 1891 that the nexus between the charitable purposes exemption from Income Tax and the Income Tax legislation was finally settled, almost one hundred years after Pitt's Duties upon Income Act of 1799.⁴⁶ However, *Pemsel* did not lay down a fiscal rationale for the charitable purposes exemption – “[w]ith the policy of taxing charities, I have nothing to do,” said Lord Macnaghten.⁴⁷

Although the charitable purposes exemption was laid down in the Duties upon Income Act 1799, it was not until 1863 that a rationale emerged which explained the concept of the charitable purposes exemption. This was neither an academic, nor a government fiscal or public policy response, being as it was a reaction by charitable institutions to Gladstone's unsuccessful attempt to remove the charitable purposes exemption from the Income Tax legislation.⁴⁸ In other words, by attempting to remove the charitable purposes exemption

⁴⁴ Michael J.D. Roberts, 'Head versus Heart? Voluntary Associations and Charity Organization in England, c. 1700-1850' in Hugh Cunningham and Joanna Innes (eds), *Charity, Philanthropy and Reform: From the 1690s to 1850* (1998) 66.

⁴⁵ The most significant contribution by an historian of taxation policy is that of Martin Daunton, *Trusting Leviathan* (2001). Unknowingly, my Thesis has elaborated on a number of points mentioned by Daunton, whose work I had not read until near the end of my research.

⁴⁶ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] A.C. 531; *An Act to repeal the Duties imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties* 39 Geo. III c. 13 [9 January 1799].

⁴⁷ *Pemsel*, above n 46, 591.

⁴⁸ See Chapter 6 of this Thesis.

from Income Tax, Gladstone was attempting to modify a fiscal policy that had been laid down by Pitt, first in the Assessed Taxes Act 1798,⁴⁹ then in the Duties upon Income Act 1799.⁵⁰

The influence of the Evangelicals

I propose that two of England's prominent Evangelicals in the late Eighteenth Century were well placed to advise Pitt regarding the taxation of charitable institutions. These were Hannah More and William Wilberforce who had both the opportunity and passion to argue a case for the exemption of charitable institutions from Income Tax. More and Wilberforce were friends of Pitt's, and both were deeply involved in charitable works through their religious convictions. No doubt Pitt would have respected their opinions which, I propose, may well have been an influencing factor in ensuring that charitable institutions were provided with exemptions from taxes on their income in Pitt's Income Tax legislation.

Hannah More

*For I was hungred [sic], and ye gave me meat: I was thirsty, and ye gave me drink:
I was a stranger and ye took me in ...
Verily I say unto you, inasmuch as ye have done it unto one of the least of my brethren, ye
have done it unto me.*

Matt. XXV. 34-5, 40.⁵¹

As well as Anthony Highmore and his writings on charity from a legal and fiscal perspective, a person has emerged as someone who may have had a direct influence on Pitt and his plans of taxation in 1797 and 1798. While I have been unable to find a link, direct or tenuous, between Pitt and Highmore, that is not the case with respect to Pitt and Hannah More (1745-1833), a writer and philanthropist of considerable prominence in the Pitt era.⁵² Stott has described More as being:

part of the new puritanism steadily gaining ground in the wake of the French Revolution, which urged women to turn their backs on the allurements of the ball and the pleasure garden and find their vocations in the duties of the home and the expanding world of philanthropy.⁵³

⁴⁹ *An Act for granting to His Majesty an aid and contribution for the prosecution of the war* 38 Geo. III c. 16 [12 January 1798].

⁵⁰ *An Act ...*, above n 46.

⁵¹ Roberts, above n 44, 66.

⁵² 'Hannah More', *Oxford Dictionary of National Biography* (2004) vol 39, 39. Coincidentally, More died in the same year as Wilberforce.

⁵³ Anne Stott, *Hannah More: The First Victorian* (2003) 260.

Although she often pleaded poverty, More “was to earn more than any other woman writer of her day.”⁵⁴ More was “a firm friend and a valued correspondent of [William] Wilberforce,”⁵⁵ (another of Pitt’s friends), whom she had met in the summer of 1787.⁵⁶ Wilberforce assisted the sisters Hannah and Martha More with their Sunday school, “[both] financially and in counsel.”⁵⁷ Both Wilberforce and Pitt subscribed to More’s publications, such as *Cheap Repository*, their subscriptions thereby “defray[ing] the expenses of printing and distribution, helping More to compete with the cheapest publications.”⁵⁸ Stott has noted that Pitt’s 3-guinea contribution to the *Cheap Repository* tracts, as well as Pitt being “the only member of the government [of Cabinet rank] to subscribe, was a measure of his appreciation.”⁵⁹ According to Wilberforce:

[d]edicating one’s life to philanthropy and public work was the rational part of evangelicalism, the only way to make sure that religious excitement was not hypocritical or a trick of the mind. It brought the animated heart of the evangelical into harmony with worldly actions.⁶⁰

Such an opinion would have resonated with More, a person who was committed to deeds, not words. More, who held Pitt in high esteem,⁶¹ had a strong connection to Pitt, as:

[More] also tried to encourage government action. During her visit to London in the spring of 1796 she spent five hours with Pitt’s adviser and former secretary, the Bishop of Lincoln, with a copy of the Prime Minister’s proposed Poor Law Bill in front of her, making “pretty free use of our pencils in the margin.”⁶²

“Bills,” wrote Innes, “were *sometimes* printed to facilitate their circulation to a wider audience. (Emphasis added.)”⁶³ This raises an interesting question. Did More do the same for Pitt’s Duties upon Income Bill of 1798, by asking either More or Wilberforce to comment

⁵⁴ Stott, above n 53, 1.

⁵⁵ ‘Hannah More’, above n 52, 42.

⁵⁶ Stott, above n 53, 90.

⁵⁷ B. Kirkman Gray, *A History of English Philanthropy* (1905) 247.

⁵⁸ Charles Howard Ford, *Hannah More: A Critical Biography* (1996) 128.

⁵⁹ Stott, above n 53, 145. Fourteen MP’s also subscribed. In all 760 people subscribed to *Cheap Repository*. See Stott, above n 53, 177.

⁶⁰ Wilson, above n 24, 82 citing William Wilberforce, *A Practical View of the Prevailing Religious System of Professed Christians, in the Higher and Middle Class of this Country, Contrasted with Real Christianity* [1797] 168-9 [?].

⁶¹ Stott, above n 53, 100.

⁶² Stott, above n 53, 183 citing *Gambier*, More to Elizabeth Bouverie, Friday, 1796, 310.

⁶³ Joanna Innes, ‘Parliament and the Shaping of Eighteenth-Century English Social Policy’ (1990) 40 *Transactions of the Royal Historical Society* 63, 88.

on his Bill? The fact that More was able to comment on Pitt's Poor Law Bill echoes the comment by Innes that:

[f]rom the beginning of the Eighteenth Century, and indeed from a much earlier date, [Members of Parliament] had no doubt been in the habit of seeking opinions from friends, acquaintances, neighbours, constituents and other interested parties as to the merits and limitations of measures they were currently considering.⁶⁴

Elizabeth Bouverie, who died in September 1798, left More "a legacy of £300 and an annuity of £100 ... which came as a relief to More, who knew that she would feel the pinch when Pitt's novel Income Tax came into being."⁶⁵ Did More also think the same about charities? More was not happy with Pitt's Income Tax:

[as] it was all very well for her sisters, she told Wilberforce crossly, for once not at all pleased with her idol. Because their Bath house was already highly rated by the Assessed (Property) [sic] Taxes, they would not notice the change, "but to me whose Little Cowslip, was so little taxed, it will make the difference from about £5 a year to nearly [£]50."⁶⁶

There is also an interesting connection between More and Highmore, as More "subscribed to the African Institution, which replaced the Society for the Abolition of the Slave Trade in 1807."⁶⁷ Quite serendipitously, I had also found that Highmore was involved with the management of the funds of the African Institution, as his name appeared in the Institution's Statement of Funds of 1823.⁶⁸ Not only were More and Highmore involved with the African Institution, so also was Wilberforce, whose diary of 12 November 1807 recorded "[t]o African Institution meeting, and back to dinner."⁶⁹ This raises yet another interesting question: did the involvement of Highmore, Wilberforce and More, as members of the African Institution, extend beyond their involvement with the Institution?

"On Charity"

The nature of Hannah More's personality and religious fervour can be seen in an extract from her writings, in which she expressed her opinion that:

⁶⁴ Innes, above n 63, 88.

⁶⁵ Stott, above n 53, 214.

⁶⁶ Stott, above n 53, 214 citing Bodleian, MS c. 3, fo. 45. More to Wilberforce, 18 December 1798.

⁶⁷ 'Hannah More', above n 52, 42.

⁶⁸ 'Hume Tracts', *Eighteenth Report of the Directors of the African Institution: Read at the annual general meeting, held on the 11th day of May, 1824, with an appendix and supplement* (1824) page unnumbered.

⁶⁹ Robert Isaac Wilberforce and Samuel Wilberforce, *The Life of William Wilberforce* vol III (1838) 103, 348.

though nothing is formally efficacious but the blood and merits of Christ, yet charity, as a divine grace, and one that will never cease, shows that our interest in Him and union with Him, are real and genuine. But to descend to the particulars of charity, and apply the different branches of it to the common purposes of life [sic]. *Whenever we are promoting the good of mankind, either by assisting public institutions, or relieving individuals, we are obviously helping on [sic] the cause of charity ...* On the other hand, the purse may sometimes be open when the heart is shut. (Emphasis added.)⁷⁰

This expression of charity harks back to that of Wilberforce, who considered that “philanthropy and public work was the rational part of evangelicalism.”⁷¹ More can thus be seen as being of a highly religious disposition, yet a pragmatic person who practised what she preached.

More also discussed “pecuniary charity ... [which] must be governed by the law of justice.”⁷² When “inquiring into the duties of charity,” More wrote, “we must not overlook the use to be made of riches, one of the talents implied in the parable.”⁷³ Quoting Lord Bacon’s remark that “riches, when kept in a heap, are corrupt like a dunghill, but, when spread abroad, diffuse beauty and fertility,” a quote which “has been more admitted than acted upon,” More then declared that:

[h]appily the age in which we live is so generously disposed to acts of beneficence, that there never was a period which less imposed the necessity to press the duty, to enforce the practice, or to point out the objects. A thousand new channels are opened up, yet the old ones are not dried up; the streams flow in abundance, as if fed by a perennial foundation.⁷⁴

More provides a very clear picture of her philosophy concerning charity, particularly the use and practice of the “special endowments and opportunity” bestowed on each person by God.⁷⁵ “Charity,” wrote More, “is a virtue of all times and all places.”⁷⁶ Then: “One Christian grace is never exercised at the expense of another, nor is it perfect, unless it promotes that other. This charity enjoys abstinently that she may give liberally.”⁷⁷ “Above *all* [sic] things,” said

⁷⁰ Hannah More, “On Charity” *Works of Hannah More* (1843) vol IX 101, 103.

⁷¹ Wilson, above n 24, 82.

⁷² More, above n 70, 105.

⁷³ More, above n 70, 105.

⁷⁴ More, above n 70, 106.

⁷⁵ More, above n 70, 101.

⁷⁶ More, above n 70, 101.

⁷⁷ More, above n 70, 102.

St. Peter, “have fervent charity.”⁷⁸ The inclusion by More of this advice from St. Peter emphasises the evangelical’s focus on conversion (see below) – “faith precedes works.”⁷⁹

More’s religious fervour can also be seen in that she “stressed that a Christian commonwealth required much more than charitable works and reasonable ethics. ... Works without faith led to social disorder, while sending well-meaning donors to Hell.”⁸⁰ More’s own commercial success allowed her to “fund a bevy of causes,”⁸¹ thus putting into practice what she preached to others. In More’s opinion, “the many striking acts of public bounty ... justly entitl[ed] the present age to be called ... the Age of Benevolence.”⁸²

With such a forceful personality, one can appreciate that More would not have hesitated to speak her mind to Pitt, either directly or through an intermediary, of her opinions regarding the proposed Duties upon Income Bill of 1798 and the potential threat to charities.

William Wilberforce

Another link in the chain to Pitt is provided by William Wilberforce (1759-1833), politician, philanthropist, and slavery abolitionist.⁸³ Wilberforce was also an Evangelical, evangelicalism being “a passionate and emotional religion of personal salvation through ‘conversion’.”⁸⁴ As White explains:

[a]t the end of the Eighteenth Century, with the stagnation and decline of Methodism, [evangelicalism] was a minority belief at its liveliest in Anglicanism. Its most powerful advocates were the so-called “Clapham Sect” of wealthy laymen and clerics led by William Wilberforce, a Tory MP who lived in a mansion on Battersea Rise from 1795 to 1808.⁸⁵

Whelan explains that “[t]he motivating factor which propelled the charitable bandwagon was a deep religious faith and, in particular, the great evangelical revival which began towards the

⁷⁸ More, above n 70, 102.

⁷⁹ My thanks to Professor John Cookson for clarifying this point for me.

⁸⁰ Ford, above n 58, 106.

⁸¹ Ford, above n 58, 106.

⁸² Ford, above n 58, 106 citing More, *The Works of Hannah More* (1832) 279.

⁸³ ‘William Wilberforce’, *Oxford Dictionary of National Biography* (2004) vol 58, 879.

⁸⁴ Jerry White, *London in the Nineteenth Century ‘A Human Awful Wonder of God’* (2007) 420. According to Heasman, by the middle of the Nineteenth Century, possibly as many as three out of four voluntary charitable organisations can be regarded “as Evangelical in character and control.” Kathleen Heasman, *Evangelicals in Action: An appraisal of their social work in the Victorian era* (1962) 14.

⁸⁵ White, above n 84, 420. In the first decade of the Nineteenth Century, the Clapham Sect was “the driving force” of an awakening “social conscience [concerning] the outstanding social problems of the era.” Heasman, above n 84, 20.

end of the Eighteenth Century.”⁸⁶ “The Evangelicals,” wrote Dr Cornish, “are known to the world, not by their writings, which are forgotten, but by their lives, which can never be forgotten.”⁸⁷ For Wilberforce, “salvation was based upon the individual’s rejection of sin and turning to God.”⁸⁸ This required that issues of poverty, unemployment and a lack of education be addressed, as “these often gave rise to, or were the result of, personal moral failings, such as alcoholism, idleness, criminal activity, and neglect of hearth and home.”⁸⁹ Unless the Evangelicals addressed these matters, “men would go to Hell ... and they themselves would go to Hell if they neglected to do everything in their power to save sinners.”⁹⁰ The influence of the Evangelicals was such that by the second half of the Nineteenth Century, “three quarters of all voluntary organisations ... [were] run by evangelical Christians.”⁹¹

Wilberforce, as a close friend of Hannah More, (who was “the [Clapham Sect’s] chief propagandist,”⁹²) was also a philanthropist with a strong interest in the works of charities. Wilberforce’s relationship with Hannah More was significant in that as well as being a life-long friend, he funded More’s work “in promoting moral and social improvement [in the Mendips], and maintained a long-term commitment to supporting her work.”⁹³ The esteem in which Wilberforce held Hannah More can be seen in a letter to her, in 1824, following a period of ill health that Wilberforce had suffered. “My dear friend,” he wrote:

I should disobey conscience alike and feeling, if I were not to assign to you the priority over all my numerous correspondents, and except a few lines to our sweet Lady Olivia ... this is the first of my epistolary performances since my long disuse of my pen. ... I do not even yet open my own letters, much less do I read, or rather hear them.⁹⁴

Wilberforce and More have both been described by Roberts as “paternalists who were not hostile to philanthropy ... [having been able to combine] very effectively both outlooks.”⁹⁵

⁸⁶ Robert Whelan, *The Corrosion of Charity: From Moral Renewal to Contract Culture* (1996) 15.

⁸⁷ F.W. Cornish, *History of the English Church in the Nineteenth Century* (1910) vol I 15 cited by Heasman, above n 84, 15.

⁸⁸ Whelan, above n 86, 15.

⁸⁹ Whelan, above n 86, 16.

⁹⁰ Whelan, above n 86, 16.

⁹¹ Whelan, above n 86, 16 citing Heasman, above n 84, 14.

⁹² White, above n 84, 420.

⁹³ ‘William Wilberforce’, above n 83, 883.

⁹⁴ Robert Isaac Wilberforce and Samuel Wilberforce, *The Life of William Wilberforce* vol V (1838) 219.

⁹⁵ David Roberts, *Paternalism in Early Victorian England* (1979) 34. Paternalism consisted of “a rich, complex, and varied set of attitudes.” Roberts, *ibid* 6.

Wilberforce, a generous man who in 1798 “gave away more than £2,000,”⁹⁶ supported charities “not only in London and Yorkshire, but all over the country.”⁹⁷ He would even “tear fifty-pound notes in half and send them, by different posts, to Hannah More for her schools.”⁹⁸ In 1830, in his later years, Wilberforce wrote to his eldest son, saying that:

I never intended to do more than not exceed my income, Providence having placed me in a situation, in which my charities of various kinds were necessarily large. But believe me there is a special blessing on being liberal to the poor, and on the family of those who have been so; and I doubt not my children will fare better even in this world, for real happiness, than if I had been saving £20,000 or £30,000 of what has been given away.⁹⁹

When he could not spend time on his charitable activities, “he liked to be the conducting rail for the charitable sparks of others.”¹⁰⁰ “Factories did not spring up more rapidly in Leeds and Manchester than schemes of benevolence under [Wilberforce’s] roof,” declared James Stephen the Younger.¹⁰¹ According to Brown, Wilberforce subscribed to 69 societies, was patron of one, vice-president of 29, treasurer of one, a governor of five, and served on five committees.¹⁰² Any attempt by Pitt to tax charities would have found him confronted by yet another formidable opponent.

Wilberforce and the Assessed Taxes Bill 1798

While taxation was one of Pitt’s strongest points, that was not the case with Wilberforce.¹⁰³ However, according to Furneaux, during the winter of 1797-1798 Wilberforce continued “to [support] and [lobby] for the Taxation Bills [as well as] pressing Pitt to allow exemptions.” However, Furneaux provided no further detail on what those exemptions were, nor did he cite the source of that information. Wilberforce recorded in his diary that on Saturday 2 December 1797 he “[d]ined at the Speaker’s – large party, talked much with Pitt.”¹⁰⁴ On 7 December 1797 Wilberforce dined at home with “Morton, Pitt, Colquhoun and others – *much talk about police and Assessed Taxes* – storm louder and louder. (Emphasis added.)”¹⁰⁵

⁹⁶ ‘William Wilberforce’, above n 83, 883.

⁹⁷ Robin Furneaux, *William Wilberforce* (1974) 177.

⁹⁸ Furneaux, above n 97, 177.

⁹⁹ Wilberforce and Wilberforce, above n 94, 313.

¹⁰⁰ John C. Pollock, *Wilberforce* (1977) 170.

¹⁰¹ Pollock, above n 100, 223.

¹⁰² Ford K. Brown, *Fathers of the Victorians* (1961) 357.

¹⁰³ Furneaux, above n 97, 175.

¹⁰⁴ Robert Wilberforce and Samuel Wilberforce, *The Life of William Wilberforce* vol II (1838) 246.

¹⁰⁵ Wilberforce and Wilberforce, above n 104, 246.

In a letter to Lord Muncaster on 10 November 1797 Wilberforce wrote that he was “clear [that] there must be an exception in favour of those with families above a certain number, and income below a certain sum.”¹⁰⁶ On 21 December 1797 Wilberforce wrote to Muncaster “about Lord Duncan,” and in the same letter declared that “[o]ur plan of finance is on its passage through the committee. We have already granted great exemptions ... ,” but Wilberforce did not explain the nature of those exemptions.¹⁰⁷ Then, during the debate on the Assessed Taxes Bill on 30 December 1797, Wilberforce “spered with Pitt and he negatived several exemption clauses,” which caused Wilberforce to feel “much cut and angry.”¹⁰⁸ However, one comment by Lord Rosebery about Wilberforce’s letters to Pitt stands out with its explanation of the close relationship between Pitt and Wilberforce. “These letters,” wrote Lord Rosebery:

however, are scarcely worth printing, *though they show the active philanthropy and religious zeal of Mr Wilberforce*, and prove that he was not afraid of wearying the minister by constant and animated representations on subjects *which it might fairly be inferred appealed to the consciences of both*. (Emphasis added.)¹⁰⁹

Even while the Assessed Taxes Bill progressed in the House of Commons, Wilberforce, in a letter to W. Hey Esq, stated that he was “exerting himself to prevail upon the merchants and bankers in the City, to bring forward in the commercial world a proportionate impost upon all property.”¹¹⁰ Wilberforce also told Lord Muncaster that he feared that “there is not public spirit enough to make his endeavours [to attempt the plan of a tax on all property of every income] to make my endeavour of any avail.”¹¹¹ Wilberforce preferred a tax on income to the Assessed Taxes, as he “dread[ed] the venomous ranklings which it will produce, during the three years of its operation.”¹¹²

Wilberforce and the Duties upon Income Bill 1799

Wilberforce, as an active Parliamentarian, “held ... a conspicuous place in the concluding debates of [1798],” predominantly that on the Habeas Corpus Act.¹¹³ In a letter to Hannah More dated 15 December 1798 (during the debate on the Duties upon Income Bill)

¹⁰⁶ Wilberforce and Wilberforce, above n 104, 244.

¹⁰⁷ Wilberforce and Wilberforce, above n 104, 248.

¹⁰⁸ Furneaux, above n 97, 175.

¹⁰⁹ Lord Rosebery, *Pitt and Wilberforce* (1897) iii.

¹¹⁰ Wilberforce and Wilberforce, above n 104, 247.

¹¹¹ Wilberforce and Wilberforce, above n 104, 248.

¹¹² Wilberforce and Wilberforce, above n 104, 249.

¹¹³ Wilberforce and Wilberforce, above n 104, 320.

Wilberforce declared that he “[pleaded] with Pitt the cause of poor clergymen and other small life-income persons and large families: for the latter I think successfully; for the former I doubt.”¹¹⁴ Apart from a comment about the “tolerable account” in *The Times* of 28 December 1798, “of one of the most masterly pieces of reasoning I ever heard, when Pitt contended at large with a view to prove the impracticability and injustice of taxing capital rather than income,”¹¹⁵ there is no further reference of any comment made by Wilberforce with respect to Pitt’s Duties upon Income Bill of 1798. While Wilberforce even welcomed the Income Tax, for “[a]mbition, vanity, and the love of display ... made men greedy,”¹¹⁶ and Lord Rosebery’s text on Pitt and Wilberforce made one or two casual references to taxation, there was no discussion recorded concerning the charitable purposes exemption as contained in the Duties upon Income Act 1799.¹¹⁷

To tax charities would have been anathema to Wilberforce when, with the failure of the harvests of 1798 and 1799, the Great Hunger of 1799-1800 fell upon the country.¹¹⁸ Why there is no evidence of Wilberforce being concerned with the possibility of charities being taxed is a mystery. It is, however, conceivable that Wilberforce did discuss the matter with Pitt, given that Pitt would seek out “the advice of colleagues and experts” on matters he was contemplating.¹¹⁹

Wilberforce was intimately concerned with the welfare of charitable institutions as can be seen from an incident in 1796 when “[p]rivate information led [Wilberforce] to believe that great abuses secretly existed in some of [London’s ?] hospitals.”¹²⁰ After meeting with the officers of St. Bartholomew’s Hospital, Wilberforce’s “suspicions were confirmed, [and] he gave up much time [that] winter to the business, with eminent success.”¹²¹ Surely Wilberforce would have been as concerned in December 1798 about the financial position of such hospitals as he was of their management, should Pitt have attempted to impose a tax on the income of such institutions.

¹¹⁴ Wilberforce and Wilberforce, above n 104, 323.

¹¹⁵ Wilberforce and Wilberforce, above n 104, 324.

¹¹⁶ Pollock, above n 100, 170.

¹¹⁷ Lord Rosebery, *Pitt and Wilberforce* (1897).

¹¹⁸ Pollock, above n 100, 170.

¹¹⁹ Michael J. Turner, *Pitt the Younger: A Life* (2003) 73.

¹²⁰ Wilberforce and Wilberforce, above n 104, 180.

¹²¹ Wilberforce and Wilberforce, above n 104, 180.

In 1803 Wilberforce wrote in his diary of 8 June, that he had “heard it rumoured that government meant to tax the funds. This is said to be Tierney’s Plan. Pitt decidedly against it.”¹²² Then, on 13 June 1803: “House. Budget. I had heard of great objections to taxing the funds. This is done by the present plan to 5 per cent., yet no objection was urged.”¹²³ As the Duties upon Income Act had been repealed on 4 May 1802,¹²⁴ and was not reintroduced until 11 August 1803,¹²⁵ the investments of charitable institutions may have been exposed to Tierney’s plan, but this does not appear to have concerned Wilberforce. Wilberforce was not inhibited in opposing taxes he did not agree with, such as Lord Petty’s proposed iron tax in 1806 in which Wilberforce “was a principal instrument in defeating.”¹²⁶

On 1 January 1812, Wilberforce wrote to Dr Coulthurst to inform him that he would pass Dr Coulthurst’s suggestions on the Charitable Donations Bill to Mr Lockhart, who had brought in a Bill “much the same as that which [Wilberforce] had brought in two years ago, to render all donations public, in the hope of preventing thereby their being alienated or abused.”¹²⁷ Wilberforce’s earlier attempt, he wrote, had been “foiled by the lawyers.”¹²⁸ Lockhart had also tried, unsuccessfully, in 1811, but “[t]his year he put the draught [sic] into the hands of Sir Samuel Romilly, desiring him to modify and correct it.”¹²⁹ Clearly Wilberforce did all that was within his powers to foster the work of charitable institutions. He worked tirelessly, as in 1812 “[h]e was now leading his usual London life; constant in the House, full of plans for public or private charity, and showing to others no symptom of the decay which he suspected in himself.”¹³⁰ Curiously, (for the Moravians play a central role in this Thesis), Wilberforce’s diary of 26 March 1812 recorded that he wrote “to Rose at the Council Office ... about the Moravian missionaries in Greenland.”¹³¹

¹²² Wilberforce and Wilberforce, above n 69, 103.

¹²³ Wilberforce and Wilberforce, above n 69, 104.

¹²⁴ *An Act for repealing the Duties on Income; for the effectual collection of arrears of the said Duties, and accounting for the same; and for charging the Annuities specifically charged thereon upon the Consolidated Fund of Great Britain* 42 Geo. III c. 42 [4 May 1802].

¹²⁵ *An Act for granting to His Majesty, until the sixth day of May next after the ratification of a definitive Treaty of Peace, a contribution on profits arising from property, professions, trades, and offices* 43 Geo III c. 122 [11 August 1803]. This Act contained Addington’s five Schedules.

¹²⁶ Wilberforce and Wilberforce, above n 69, 264.

¹²⁷ Robert Wilberforce and Samuel Wilberforce, *The Life of William Wilberforce* vol IV (1838) 2.

¹²⁸ Wilberforce and Wilberforce, above n 127, 2.

¹²⁹ Wilberforce and Wilberforce, above n 127, 2.

¹³⁰ Wilberforce and Wilberforce, above n 127, 17.

¹³¹ Wilberforce and Wilberforce, above n 127, 17.

Wilberforce had a clear vision of what “charity” was, as can be seen from his statement in 1818, “that charity ought to be allotted to the decrepitude of age, or sickness, or the weakness of infancy.”¹³² The responsibility for the welfare of the poor was that of the parishes through the Poor Rate, but government also had a role to play. “Great and numerous as are the objections,” Wilberforce wrote to Hey in 1801, “against granting public money for the relief of individual distress, yet on full consideration, and after weighing all other schemes which have been devised and suggested, I find it indispensable to resort to the national purse.”¹³³ “Pitt,” Wilberforce wrote, “has been compelled to consent to this mode of relief. Mr Addington is likewise, I trust, nearly convinced of the necessity of this measure.”¹³⁴

Wilberforce died in July 1833, “only days after the abolition of slavery in the British empire, ... [and was laid to rest in Westminster Abbey] close to the tombs of his great Parliamentary contemporaries, Pitt, Fox, and Canning.”¹³⁵ Wilberforce’s legacy was twofold as, having been “emboldened and legitimised” by the abolition of slavery, philanthropists “now had a power in society that was scarcely to be countenanced before.”¹³⁶

The Political Economists

While the political economists of the early Nineteenth Century “stressed the sad futility of indiscriminate charity, benevolence and humanitarian relief as zealously as any evangelical,”¹³⁷ I have not found any evidence of their thoughts on Pitt’s charitable purposes exemption from Income Tax. According to the Rev. Thomas Chalmers, “[p]olitical economy is but one grand exemplification of the alliance, which a God of righteousness hath established, between prudence and moral principle on the one hand, and physical comfort on the other.”¹³⁸ Why political economists may not have contributed to the debate on Pitt’s charitable purposes exemption from Income Tax may be explained by Wilson’s comment that it was not until the mid-1820’s, when J.R. McCulloch, a student of Dugald Stewart, “began a series of lectures on the science that it became so central to public debate.”¹³⁹

¹³² Wilberforce and Wilberforce, above n 104, 392.

¹³³ Robert Wilberforce and Samuel Wilberforce, *The Life of William Wilberforce* vol I (1838) 224.

¹³⁴ Wilberforce and Wilberforce, above n 133, 225.

¹³⁵ Stott, above n 53, 331.

¹³⁶ Wilson, above n 24, 226.

¹³⁷ Wilson, above n 24, 376.

¹³⁸ Wilson, above n 24, 376 citing Thomas Chalmers, *The Christian and Civic Economy of Large Towns* (1821) vols 1-3 [page not cited].

¹³⁹ Wilson, above n 24, 376.

Robert Hamilton

Robert Hamilton (1743-1829) was another person who may have contributed privately to any debate in 1798 on Pitt's proposed Duties upon Income Bill and the taxation or exemption of charities. Hamilton, Professor of Mathematics at Aberdeen University, "wrote extensively on topics of political economy, especially on pauperism, being 'on strong grounds, always hostile' to Poor Rates."¹⁴⁰ "Despite this," wrote Hilton, "[Hamilton] was highly philanthropic – 'in his charities, which were as extensive as his circumstances permitted, he was solicitous that his left hand should not know what his right hand did'."¹⁴¹ Hamilton was also a member of the Anti-Slavery Society.¹⁴² In Hamilton, here was another person who had the expertise, as well as the connection through Wilberforce, to advise on the appropriateness of the charitable purposes exemption from Income Tax from the perspective of political economy.

Part II Charitable activity in late Eighteenth Century England

I am somewhat reassured regarding the difficulty, over two hundred years later, of locating debate on the charitable purposes exemption in the Pitt era, by O'Brien's comment that:

[i]t would be extremely difficult to decide whether the methods used to finance the war seriously retarded the country's longer term development. *Empirically, such questions are probably unanswerable for remote historical periods* and in any case, given the need to find money to pay for the war, *the question would involve speculation* about alternative taxes or methods of finance, which may possibly have had a more favourable impact on the course of economic change or the welfare of the population. (Emphasis added.)¹⁴³

However, taxes, stated O'Brien:

were regarded as payments for State protection ... [*Eighteenth Century*] *opinion favoured exempting the poor from taxation as far as possible* and taxes which fell upon their necessities were regarded with antipathy and required special defence in Parliament when introduced or increased by the Chancellors of the Exchequer. (Emphasis added.)¹⁴⁴

Underlying this concept was the understanding by the propertied classes of "how much the rich owed the poor," declared Langford.¹⁴⁵ "There is nothing more clear, than that we owe all

¹⁴⁰ Boyd Hilton, *The Age of Atonement: The influence of Evangelicalism on social and economic thought 1785-1865* (1988) 233 citing Robert Hamilton, *The Progress of Society* (1830) xiii.

¹⁴¹ Hilton, above n 140, 233 citing Hamilton, above n 140, xviii.

¹⁴² Hilton, above 140, 233.

¹⁴³ O'Brien, above n 20, 32.

¹⁴⁴ O'Brien, above n 20, 327.

¹⁴⁵ Paul Langford, *Public Life and the Propertied Englishman 1689-1798* (1991) 458.

to the labour of the lower class of people; it is this that supports all that deem themselves above work,” trumpeted the *London Magazine*.¹⁴⁶ On the other hand, “taxes on luxuries or superfluities usually received wide approbation,”¹⁴⁷ and as such were unlikely to be of concern to the poor. Extending O’Brien’s argument, had he considered the issue, he may well have concluded that the taxation of charitable activities would have been contrary to public opinion, as well as public policy, in Eighteenth Century England. Why the taxation of the income of charities may have been contrary to public policy was because of the importance of their role as a policing function.

The policing function of charitable activity

Charitable activity in Eighteenth Century London, as has been described by Andrew, had a policing function in the sense of maintaining social order.¹⁴⁸ According to Langford:

[t]he prime expression of middle-class determination to control the forces as well as alleviate the suffering created by the expansion of urban society was organized philanthropy. It was a frequent observation of the late Eighteenth Century that the age was peculiarly one of charitable endeavour.¹⁴⁹

“As [Prochaska] has said of philanthropy,” wrote Wilson, “[f]ew subjects bring out so well the differences between ourselves and our ancestors.”¹⁵⁰ Thus through philanthropy, and charitable activity, public order was able to be maintained in a way not previously possible.¹⁵¹ This was through the concept of “police,” in the sense that in Britain:

[p]hilanthropy and religion were ways of obviating the need for an interfering police force by providing other means of regulating the masses. Charity was a way of clearing a path for better reception of the word of God. But it also had a fundamental interest in revolutionising society.¹⁵²

¹⁴⁶ Langford, above n 145, 458 citing *London Magazine* (1760), 32.

¹⁴⁷ O’Brien, above n 20, 351.

¹⁴⁸ See Donna T. Andrew, *Philanthropy and Police: London Charity in the Eighteenth Century* (1989).

¹⁴⁹ Langford, above n 145, 491. Philanthropy was not unique to Christian societies. Herbert Spencer, discussing warlike societies compared to peaceful societies, wrote that “Hunter tells us of the Santál that he thinks ‘uncharitable men’ will suffer after death. ... [T]he Lepchas are ‘ever ready to help, to carry, to encamp, collect, or cook’.” Herbert Spencer, *Principles of Sociology* (1876, 1893, and 1896: reprint 1969) 561. Spencer: “Certain uncultured peoples whose lives are passed in peaceful occupations proved to be distinguished by independence, resistance to coercion, honesty, truthfulness, forgivingness, kindness.” Spencer *ibid* 570.

¹⁵⁰ Wilson, above n 24, 79 citing F. K. Prochaska, ‘Philanthropy’, in F.M.L. Thompson (ed) *Cambridge Social History* vol 3 [year not cited] [page not cited].

¹⁵¹ See Donna T. Andrew, above n 148.

¹⁵² Wilson, above n 24, 79. It was not until 1828 that Sir Robert Peel founded the Metropolitan Police Force, or “Peelers.” Asa Briggs, *A Social History of England* (1983) 228.

White considers that “[t]he first beginnings of a ‘missionary police’ probably went back to the closing years of the Napoleonic Wars.”¹⁵³ The kind of activity undertaken by such as the British and Foreign Bible Society, which was established in 1804, was to visit house-to-house “in parts of Southwark and Bloomsbury ... to discover who had Bibles (just thirty in one population of 3,600 apparently).”¹⁵⁴ Not all appreciated such efforts: “Charles Dickens,” noted White, “was instinctively hostile to Evangelicals of every stripe.”¹⁵⁵

Voluntary work was also “the point at which the well-off and the poor met.”¹⁵⁶ But, “[m]ost importantly, philanthropic experiments, theorising, and the vast literature they generated, were the focal point of debate about how society flourished.”¹⁵⁷ However, Pitt’s charitable purposes exemption from Income Tax does not seem to have been considered a “philanthropic experiment” which warranted debate, as I have been unable to locate any debate on that fiscal initiative at that time, with the exception of Highmore’s *Mortmain* and his chapter ‘Of taxes and exemption from them’.¹⁵⁸

The manner in which philanthropic activity was used to manipulate society was by varying the conditions under which it was provided, thus “the philanthropist could change the environment in which the poor had to live and in doing so [could] radically alter and amend the very nature of mankind.”¹⁵⁹ Wilson explains that “[t]he people could be made diligent workers, more abstemious in their appetites, provident in habit and restrained in conduct.”¹⁶⁰ This was, “in the later years of the Eighteenth Century, [to become] a duty for Evangelicals and also for people motivated by other reasons, most prominently Jeremy Bentham.”¹⁶¹

¹⁵³ White, above n 84, 423.

¹⁵⁴ White, above n 84, 423.

¹⁵⁵ White, above n 84, 427.

¹⁵⁶ Wilson, above n 24, 79.

¹⁵⁷ Wilson, above n 24, 79.

¹⁵⁸ Anthony Highmore, *A Succinct View of the History of Mortmain* (1809) 478. The 1809 edition was a fuller version of Highmore’s first edition which he published in 1787.

¹⁵⁹ Wilson, above n 24, 80.

¹⁶⁰ Wilson, above n 24, 80.

¹⁶¹ Wilson, above n 24, 80. See Jeremy Bentham, *A Fragment on Government with an Introduction to the Principles of Morals and Legislation* (1789; 1823); Blackwell’s Political Texts (1948; reprinted 1967). Jeremy Bentham (1748-1832), a “philosopher, jurist, and reformer,” does not appear to have concerned himself with the issue of charities and the Income Tax. As he was also a philanthropist, this is somewhat surprising, given his philosophical nature, as he “opposed proposals to abolish poor relief and replace it with private charity; for bentham, a reliance on private charity would almost certainly lead to the death of many impoverished people.” ‘Jeremy Bentham’, *Oxford Dictionary of National Biography* (2004) vol 5, 221.

Prochaska has proposed a different, but equally valid, perspective of the role of charitable institutions as a policing function. “The concept of ‘social control’,” Prochaska argued:

which has been introduced to explain charitable action is rather murky and reductionist, for the wish to make others conform to the same values and speak the same language is implicit in social relations generally, from family life to national politics.¹⁶²

Prochaska also questions “whether there was a revolutionary proletariat in need of control.”¹⁶³ “Fear of social unrest,” Prochaska argued, “cannot explain the persistence of charitable subscriptions through changing political circumstances.”¹⁶⁴ In support of that argument, Prochaska claims that “Sunday schools, visiting charities and the Bible and tract societies did not lose support after 1815 or 1848.”¹⁶⁵

The charities of London

The City of London boasted charities of two distinct types: those of the Livery Companies, and private charities founded by bequests of voluntary donations. Given the wealth possessed by these charitable institutions, I expected my research to discover evidence of protests levelled at Pitt’s government, in 1797 and 1798, during the passage of the two Bills of taxation. My expectations, after considerable time and energy expended on my research, were not fulfilled. Whether such evidence exists must be left for another day, or another researcher, to discover.

The Livery Companies of London

It is entirely conceivable that the powerful guilds and their charities in the City of London would have expressed their concerns to Pitt, on learning during December of 1798 that he intended to introduce an Income Tax to raise the funds that Assessed Taxes Act 1798¹⁶⁶ had failed to produce. The fact that the Assessed Taxes Act 1798¹⁶⁷ contained a limited charitable purposes exemption that applied only to the Royal and public hospitals may have reassured the Livery Companies that Pitt would not tax other charities in the Duties upon Income Bill of December 1798. Nevertheless, as the charitable purposes exemption clause was not introduced into the Duties upon Income Bill of 1798 until later in the proceedings in the

¹⁶² Prochaska, above n 150, 370.

¹⁶³ Prochaska, above n 150, 371.

¹⁶⁴ Prochaska, above n 150, 371.

¹⁶⁵ Prochaska, above n 150, 371.

¹⁶⁶ *An Act ...*, above n 49.

¹⁶⁷ *An Act ...*, above n 49.

House of Commons,¹⁶⁸ one might surmise that the reason for its late inclusion was due to Pitt having been lobbied by the guilds of the City of London. If they did so, it was done in private, for no report of that is to be found in the many newspapers, nor in the Parliamentary debates, of the time. The guilds' Court of Common Council were opposed to the Income Tax, as can be seen from the resolutions that the Court sent to Pitt in late December 1798, the resolutions having been published in *The Times* the day after they were adopted by the Council.¹⁶⁹ Of the four resolutions, which were proposed by "Mr Waithman [who] spoke with great violence against the tax on income," none related to the taxing of charities.¹⁷⁰

Robert Waithman was a person of some influence in the politics of London in the late Eighteenth and early Nineteenth centuries.¹⁷¹ As a draper, Waithman would have been a member of the Drapers' Guild which, after the Mercers' and Grocers' Guilds, ranked third in order of seniority.¹⁷² The livery companies were "politically quiescent" during the years 1790 to 1794, there having been no resolutions in their records at the Common Hall relating to national politics during that period.¹⁷³ In 1795 that changed, with a petition to "the House of Commons in January for peace, and in November instructing the City's representatives in Parliament to oppose the Treason and Seditious Bill."¹⁷⁴ At that time, the Common Council was "firmly loyalist and Pittite" and was to be so for at least a further ten years.¹⁷⁵ Clearly that did not prevent Waithman from speaking out against Pitt's Duties upon Income Bill. Dinwiddy has observed that "in the City the only subject on which Waithman could rouse opposition to the government was the Income Tax, against which the livery registered protests in 1802 and 1803."¹⁷⁶

The guilds and their charities were not to be ignored. In particular, Pitt was a member of a guild himself – the Grocers' Guild, second only to the Mercers in order of precedence – as in 1784 Pitt had been granted the Freedom of the City and the Company.¹⁷⁷ On 11 February

¹⁶⁸ See Chapter 4 of this Thesis.

¹⁶⁹ 'Court of Common Council', *The Times* (London), 21 December 1798, 4.

¹⁷⁰ Court of Common Council, above n 169.

¹⁷¹ J.R. Dinwiddy, 'The Patriotic Linen-Draper: Robert Waithman and the Revival of Radicalism in the City of London, 1797-1818', (1973) 46 *Bulletin of The Institute of Historical Research* 72-94.

¹⁷² See William Herbert, *The History of the Twelve Great Livery Companies of London* (1834) volumes I and II.

¹⁷³ Dinwiddy, above n 171, 74.

¹⁷⁴ Dinwiddy, above n 171, 74.

¹⁷⁵ Dinwiddy, above n 171, 74.

¹⁷⁶ Dinwiddy, above n 171, 76.

¹⁷⁷ The Grocers' Company of the City of London, *A Brief History* www.grocershall.co.uk/comphistory.html at 14 April 2004. "As [Pitt] returned from the ceremony his carriage was attacked opposite Brooks's, the club

1784 the *Morning Chronicle and London Advertiser* reported that at a Court of Common Council held the previous day:

[t]he Court ... unanimously voted the freedom of the City to be presented to Mr Pitt, in a gold box of the value of one hundred guineas, as a mark of gratitude for and the approbation of his zeal and assiduity in supporting the legal prerogatives of the Crown and the constitutional rights of the people, and appointed a Committee to wait on him therewith.¹⁷⁸

Another report of this occurrence described Pitt in “his able, upright, and disinterested conduct as First Lord of the Treasury, and Chancellor of the Exchequer.”¹⁷⁹ Ultimately, however, it was not the Goldsmiths who waited on Pitt, but the Grocers’ Company, which invited Pitt to dine at their hall, as “[t]he Goldsmith’s Company intended to have done the above honour to Mr Pitt but were too late in waiting on him.”¹⁸⁰ On Saturday 28 February 1784, Pitt was duly entertained by the Grocers, in a lavish affair which saw the populace of London turn out in support of the occasion, an event which was described in detail in the papers of the day, such as the *Whitehall Evening Post*.¹⁸¹

At a meeting of the Court of Assistants of the Grocers’ Company on 26 March 1799, under the heading “Return of Income,” the Grocers’ Committee Book recorded the following item:

[t]hen the Court proceeded to examine the Account drawn out of the Company’s income in order to make a statement of the sum to be delivered in to the Commissioners with which the Court mean the Company shall be charged under the Acts of the 39th year of His present Majesty for granting an aid and contribution for the prosecution of the war, Cap. 13 and 22 – And after having examined the Account it appears to this Court that the sum to be delivered in to the Commissioners to be paid as this Company’s contribution under the said Acts should be six hundred pounds as *not being less than one tenth of their income* made out according to the directions of the said Acts – And on the Question being put it was so resolved. (Emphasis added.)¹⁸²

frequented by his opponents, and he escaped with difficulty. This outrage caused much indignation against the opposition politicians and Fox’s majority sank to twelve on 1 March. The following month Pitt won the general election to retain his position as Prime Minister and also won one of the seats for Cambridge University, a constituency that he represented for the rest of his life.” A Web of English History, *William Pitt the Younger (1759-1806)* <http://dSPACE.dial.pipex.com/town/terrace/adw03/pms/pitt.htm> at 23 March 2004.

¹⁷⁸ [Editorial], *Morning Chronicle and London Advertiser* (London) 11 February 1784, Issue 4598.

¹⁷⁹ [Editorial], *Morning Herald and Daily Advertiser* (London), 24 February 1784, Issue 1038.

¹⁸⁰ [Editorial], above n 179.

¹⁸¹ ‘London’, *Whitehall Evening Post* (1770) (London), 28 February 1784, Issue 5724. The day was not without violence for, at about midnight, as Pitt and his friends left the Grocers’ Hall, political affiliations became apparent and Pitt was besieged by friend and foe alike: “A flambeau was thrown into [Pitt’s] carriage, upon which Mr Pitt and the other gentleman got out and retreated into White’s.”

¹⁸² *Grocers’ Company Committee Book 1789-1801* 499 MS 11589/5 Guildhall, London.

This payment of tax, which concerned corporate, not trust income, indicates the significant level of corporate income that the Grocers' Company had received in that tax year. However, the records provided no indication of the amount of trust income earned. The tax paid on corporate income must have related to more than one fiscal year, as the Company's records indicate that on 3 November 1797 there was a total of £54,607 16s 6d to hand, of which £51,509 15s 3d consisted of "Stock."¹⁸³ Owen has observed that the City's parochial endowments "by no means exhausted the charity resources of the City, for the Livery companies also held massive funds in trust for charitable purposes."¹⁸⁴ By way of example, the Grocers' Company funds and income and expenditure between 23 December 1796 and 3 November 1797 are detailed in Table 1 Grocers' Company Funds as at 3 November 1797:

Table 1 Grocers' Company Funds as at 3 November 1797¹⁸⁵

Charity to M:M:1797	£128 13 8	
Salary	46 10 0	
Annuity	5 13 4	
Legacy	55 0 0	
Gift	2 15 0	
Rent for lights	1 11 4	
Exhibitions	6 5 0	
By amount brought forward from Folio 22		246 8 4
By Dame Margaret Staynes Gift Account		2,831 9 7
By Discharge of Prisoners		2 4 4
By Christ Hospital Charities		17 19 0
[Subtotal]		£3,098 1 3
By Stock		51,509 15 3
[Total]		£54,607 16 6
To amount brought forward from Folio 22		49,693 10 6
To arrears of rent due at Michmas	27 10 0	
[Ditto]	17 11 0	
[Ditto]	3 0 0	
[Ditto]	6 0 0	54 1 0
To Edward Spencer for law charges		18 9 10
To John Ash 2¼ year rent due at Michmas		90 0 0
Rich: Whalley Bridgman for balance due as approved under his Com [sic]		2,176 3 5
To Henry Nettleship for balance due for furniture in Clerk's House		385 5 0
To cash for balance in Bankers and Clerks hands		2,190 6 9
[Total]		£54,607 16 6

¹⁸³ *Journal 1785-1803*, 797 MS 11573/3 [No.] 29 Folio 23, Guildhall, London.

¹⁸⁴ David Owen, 'The City Parochial Charities: The "Dead Hand" in Late Victorian London,' (1962) 1 *The Journal of British Studies* 2 115,116.

¹⁸⁵ *Journal*, above n 183.

A year later, on 2 November 1798, the Grocers' Company held £55,596 2s 9d in funds, providing further proof of the wealth of this organisation.¹⁸⁶ However, the separation between corporate and trust funds is unclear.

In 1834, twelve years after Highmore had published *Philanthropia Metropolitana*, William Herbert, librarian to the Corporation of London, published the first of two volumes (the second being published in 1837) entitled *The History of the Twelve Great Livery Companies of London*.¹⁸⁷ Each separate history contains its own section on the trust estates and charities of the respective guilds, with details, for example, of “exhibitions or temporary pensions to poor scholars at the universities of Oxford and Cambridge,” “almshouses,” “bequests and gifts of estates for different purposes,” “pensions, gifts, loans, &c.; otherwise called ‘money legacy charities’.”¹⁸⁸

London's private charities

According to Wilson, “[f]ew other peoples lavished so much money on charity as the British.”¹⁸⁹ “London,” wrote Wilson:

boasted large and impressive institutions dedicated to the relief of the unfortunate and supported by private money. Prominent among them were endowed schools, public hospitals, refuges for prostitutes and many houses where poor women could give birth; there was the Bethlehem Lunatic Asylum (Bedlam), Coram's Foundling Hospital, the Magdalene Hospital for prostitutes, the Locke [sic] Hospital for venereal disease, the Cancer Institution, the London Fever Hospital and the School for the Indigent Blind, among the more famous private charities.¹⁹⁰

Many charities, however, no longer had objects towards which to apply their rapidly increasing wealth. Owen provides an impression of the extent of the number of charities in London, and the problems they faced, as:

for the connoisseur of obsolete charities the mid-Victorian City of London offered an incomparable museum ... Within the three miles between Temple Bar and the Tower lay the heaviest concentration of charitable endowments in the Kingdom. *Their incomes had risen as their legal objects diminished or vanished altogether until the disparity became so*

¹⁸⁶ *Journal*, above n 183.

¹⁸⁷ Herbert, above n 172, vol I.

¹⁸⁸ Herbert, above n 172, 348-365 for details concerning the Grocers' Company. William Pitt Earl of Chatham, and his son William Pitt the Younger, were both given the freedom of the City by the Grocers' Company.

¹⁸⁹ Wilson, above n 24, 80.

¹⁹⁰ Wilson, above n 24, 80.

*marked that trustees found themselves suffering, in a literal sense, from an embarrassment of riches. (Emphasis added.)*¹⁹¹

Highmore also provided extensive details of the extent of London's charities in his *Pietas Londinensis* of 1810,¹⁹² and later, in 1822, in *Philanthropia Metropolitana*.¹⁹³ In his dedication in *Philanthropia Metropolitana* to the Duke of York and Albany, Highmore explained that his *Pietas Londinensis* offered "a concise history ... of more than four hundred and fifty institutions of charity in and near London," to which *Philanthropia Metropolitana* added:

a review of more than sixty additional societies, which, in the short interval of twelve years, have emanated from the same active benevolence of my fellow citizens; the whole together forming a standard record to the honour of my native city, too nearly allied to the national character to be suffered to pass unregistered to posterity!¹⁹⁴

White also provides an interesting comment on the growth in London's charities as, during the early years of the Nineteenth Century, observers:

witness[ed] a quickening of the charity impulse. ... Of the 911 London charities active at the end of the century ... 169 were established before 1800. The first decade of the new century saw twenty-four formed, from 1810-19 thirty-six, in the 1820s thirty-eight, and in the 1830s sixty-nine.¹⁹⁵

The extent of charitable activity can also be seen in the increasing numbers of advertisements that appeared in the British newspapers of the Eighteenth and Nineteenth Centuries. This is detailed in Table 2 "Donations" – British Newspapers of the Eighteenth and Nineteenth Centuries.¹⁹⁶

¹⁹¹ Owen, above n 184, 116.

¹⁹² Anthony Highmore, *Pietas Londinensis: The History, Design, and Present State of the Public Charities in and near London* (1810).

¹⁹³ A[nthony] Highmore, *Philanthropia Metropolitana: A View of the Charitable Institutions established in and near London chiefly during the last twelve years* (1822).

¹⁹⁴ Highmore, above n 193, iv.

¹⁹⁵ White, above n 84, 422. White notes that "the charity count is from Low's Handbook to the Charities of London ... 1896-97. These figures are indicative only, based on charities for which dates of foundation are given. They probably over-represent newer charities, some older institutions having fallen by the wayside or been subject to merger by the Charity Commission after 1853." White, *ibid* 544 at fn14.

¹⁹⁶ See also Donna T. Andrew, 'To the Charitable and Humane: Appeals for Assistance in the Eighteenth-Century London Press' in Hugh Cunningham and Joanna Innes (eds), *Charity, Philanthropy and Reform: From the 1690s to 1850* (1998) 87.

Table 2 “Donations” – British Newspapers of the Eighteenth and Nineteenth Centuries

Fiscal Period	Years	British Newspapers	Average per Year	<i>The Times</i>	Average per Year	Aggregate	Aggregate Per Year
1786-1797	12	1,744	145.3	195	16.3	1,939	161.6
1798-1816	19	840	44.2	216	11.4	1,056	55.6
1817-1841	25	3,897	155.9	1,354	54.2	5,251	210.0
1842-1891	50	26,197	523.9	15,706	314.1	41,903	838.1
	106	32,678	308.3	17,471	164.8	50,149	473.1
Regnal Period	Years	British Newspapers	Average per Year	<i>The Times</i>	Average per Year	Aggregate	Aggregate Per Year
Geo 3 1760-1820	61.0	7,032	115.3	612	10.0	7,644	125.3
Geo. 4 1821-1830	10.0	977	97.7	522	52.2	1,499	149.9
Wm. 4 1831-1837	6.5	1,086	167.1	292	44.9	1,378	212.0
Vic. 1837-1901	64.5	31,899	494.6	21,345	330.9	53,244	825.5
	142.0	40,994	288.7	22,771	160.4	63,765	449.0

The number of advertisements placed during the various fiscal periods does not suggest that the charitable purposes exemption from Income Tax influenced charitable activity. Almost four times as many advertisements appeared during the hiatus between 1817 and 1841, when there was no Income Tax, as in the preceding years from 1798 to 1816. However, it is apparent that charitable activity increased significantly during the Victorian era with the number of advertisements increasing substantially on the previous fiscal and regnal periods.¹⁹⁷ This is consistent with the contemporary understanding of charitable activity during that period.

Voluntary charitable relief

Voluntary charity relief is to be distinguished from the charitable activities undertaken by endowed charities, that is, charities established by bequests. Since the Seventeenth Century voluntary societies had:

float[ed] entirely free of any local-government body ... [C]haritable and other voluntary bodies were set up without any formal links to local government ... [and] some of these

¹⁹⁷ The methodology I used to generate these tables was to use “donations” as the key word to search the Classified Advertisements placed in all British Newspapers, excluding *The Times*, then to search *The Times* separately. My technique was not precise as there was evidence of duplications in issues of newspapers in the database. However, the trend is nevertheless apparent, and the data suggests that a study of the correlation between the number of advertisements placed and the factors that may have influenced those placements is warranted. I acknowledge the foresight of the Christchurch City Libraries in acquiring the licence for the GALE databases for public use which has allowed me to undertake research for this Thesis that would otherwise have been impossible.

bodies, indeed, helped to address problems which the local government framework had produced.¹⁹⁸

In the England of the late Eighteenth Century, voluntary charitable relief in the rural areas came from the likes of the landlord, who often provided the only assistance beyond “legal limits,” the landed interests having involved themselves with “local ‘improvement’ and industry.”¹⁹⁹ The source of such benevolence was the prosperity of the agricultural sector which “allowed [the landlord] very often to indulge his benevolence without undue strain, as it also provided much of his capital for the profitable stimulation of other interests.”²⁰⁰ That was while times were relatively good, for “when times were bad ... the dispenser of charity himself might be retrenching at [the recipient’s] expense.”²⁰¹ Meanwhile, the growth of the populations of the towns and cities, especially London, through migration from the countryside, created enormous social problems for which the Poor Law system was devised.²⁰²

In the Eighteenth Century, voluntary activity resulted in “an efflorescence of voluntary bodies intended to aid the sick poor [and] the schooling of the poor similarly provided a focus for voluntary effort, most notably in the century’s opening and closing decades.”²⁰³ Royal hospitals had been established by royal charter in the Sixteenth Century and, in the Seventeenth Century, “Parliament authorised the formation of what were in effect new hospital boards, charged with establishing workhouses for the metropolitan poor.”²⁰⁴ Many other hospitals had been founded by philanthropists, such as Guy’s Hospital (1726)²⁰⁵ and the London Hospital (1740).²⁰⁶ Charitable activity, however, was not confined to England, and examples of voluntary welfare were to be found throughout the United Kingdom. In Scotland, for example:

voluntary charities, the general hospitals or infirmaries ... sprang up early in the Eighteenth Century, and then towards the end of [that century] and the beginning of [the

¹⁹⁸ Joanna Innes, ‘Managing the Metropolis: London’s Social Problem’s and their Control, c. 1660-1830’ in Peter Clark and Raymond Gillespie, *Two Capitals London and Dublin 1500-1840* (2001) 53, 75.

¹⁹⁹ John Ehrman, *The Younger Pitt: The Reluctant Transition* (1986) 166.

²⁰⁰ Ehrman, above n 199, 166.

²⁰¹ Ehrman, above n 199, 166.

²⁰² As advised to the author by one of his supervisors, Professor John Cookson.

²⁰³ Innes, above n 198, 53.

²⁰⁴ Innes, above n 198, 68.

²⁰⁵ See H.C. Cameron, *Mr Guy’s Hospital 1726-1948* (1954).

²⁰⁶ See A.E. Clark-Kennedy, *The London: A study in the voluntary hospital system* (1962) vol 1.

Nineteenth Century], the dispensaries and relief societies [appeared]. Of these, many were in Glasgow.²⁰⁷

Gray also described the extent of voluntary activity involving not only the special and fever hospitals, but also the activities “of the philanthropists of the Eighteenth Century [who] were quite sufficiently conscious of the importance of their deeds of benevolence.”²⁰⁸ Immigrants, such as Jews and French Protestants, while initially being “dependent on English hospitality, ... quickly began to organise their own charities for their own poor.”²⁰⁹ Other societies sprang up, such as the Westmoreland Society’s School for orphans in 1746,²¹⁰ and in 1775 the Royal Humane Society was founded, which “[fused] scientific interest with philanthropic efforts.”²¹¹

The extent to which voluntary assistance supported nearly 10 percent of England’s population was described by Colquhoun in 1806 when, in *A Treatise on Indigence*, he explained that “from a population of eleven million, 1,040,716 men, women, and children, received £4,267,985 from parish relief and £3,332,035 from private charities.”²¹² What is striking about these statistics is that “the million or so who made up the ‘phalanx of paupers in the pay of the country’ lived on handouts contributed by a mere 700,000 industrious taxpayers.”²¹³ However, according to Wilson:

as the revenues of charities increased, so did vice. There seemed to be something grievously amiss. The act of giving [benevolence; the philanthropic impulse] was enough for [people such as William Allen, a prosperous chemical engineer whose factory was in the East End of London]. *What happened with the money was a minor consideration.* (Emphasis added.)²¹⁴

²⁰⁷ C.S. Loch, ‘Poor Relief in Scotland: Its Statistics and Development, 1791 to 1891’ (1898) 61(2) *Journal of the Royal Statistical Society* 271, 303.

²⁰⁸ Gray, above n 57, 153.

²⁰⁹ Gray, above n 57, 157.

²¹⁰ Gray, above n 57, 159.

²¹¹ Gray, above n 57, 166.

²¹² Wilson, above n 24, citing Patrick Colquhoun, *A Treatise on Indigence* [1806] [page not cited].

²¹³ Wilson, above n 24, 67.

²¹⁴ Wilson, above n 24, 84.

According to Malthus, “the benevolent instinct, like the impulse to eat, drink, have sex and all of the other ‘natural propensities’, had to be strictly governed or it would be fatal to the individual and society.”²¹⁵

“Pleasing spectacles and elegant dinners”

Lloyd reinforces the picture that I have sketched of London’s charities by describing the events surrounding charity anniversaries in Eighteenth Century London.²¹⁶ Charity anniversaries were a significant part of the social calendar, as “[b]y the mid-Eighteenth Century, charitable events in London had settled into an annual pattern linked to the urban social and political calendar, with anniversaries in [the] first half of the year, especially April-May, and theatrical performances around Christmas.”²¹⁷ The importance of these events as social spectacles is evident, as “in another sign that this activity mattered, charities had to compete to get the most advantageous and clement day and attract the most eminent patrons and desirable company.”²¹⁸ Lloyd argues:

that anniversaries and feasts were not simply a remnant of older religious, charitable, county and civic traditions, [as] [n]ew, entrepreneurial institutions adopted and revitalized these practices, a habit that suggests their utility in attaching supporters and fundraising: “it is natural upon such occasions, to break bread together,” said Jonas Hanway, pioneer of new philanthropic causes.²¹⁹

Significantly, Lloyd notes that sermons were used “as occasions for presenting arguments,” such as “the vital interconnections between the policies of individual charities and broader patterns of social and economic thought.”²²⁰ Yet I have not been able to identify any sermons which spoke of the threat of taxation to charities should an exemption not have been provided for their income applicable and applied to charitable purposes.

²¹⁵ Wilson, above n 24, 84 citing T.R. Malthus, *An Essay on the Principles of Population, as It Affects the Future Improvement of Society* (1803) 558.

²¹⁶ Sarah Lloyd, ‘Pleasing Spectacles and Elegant Dinners: Conviviality, Benevolence, and Charity Anniversaries in Eighteenth Century London’ (2002) 41(1) *The Journal of British Studies* 23-57.

²¹⁷ Lloyd, above n 216, 24.

²¹⁸ Lloyd, above n 216, 24.

²¹⁹ Lloyd, above n 216, 25.

²²⁰ Lloyd, above n 216, 28. Lloyd cites works by Donna Andrew, ‘On Reading Charity Sermons: Eighteenth Century Solicitation and exhortation’ (1992) 43 *Journal of Ecclesiastical History* 581-91, and David E. Owen, *English Philanthropy 1660-1960* (1965).

Part III Public Policy and the Poor Laws

The origin of the Poor Laws

The Poor Laws had their origins in two Acts of Parliament, in 1531 and 1536, which “developed the first comprehensive English system of poor relief.”²²¹ However, it is the Act of 43 Elizabeth c. 2 (1601) that has been called “the foundation and text book of English Poor Law [as it] provided the framework for the Poor Law for the next 350 years.”²²² “Poverty in England,” it has been said, “is a social condition; in France it is an accident.”²²³

From the time of Elizabeth I, “the poor had been ... a charge on the community; they were maintained by compulsory parish rates that amounted at the end of Anne’s reign [1714] to a million pounds a year, then regarded as a heavy national burden.”²²⁴ Under the old Poor Law (as distinct from the New Poor Law of 1834)²²⁵ the Poor Rate was a pauper tax levied per [parish] [by which] all persons of sufficient means thereby contributed to assisting the needy.”²²⁶

Pitt and the Poor Laws

Near the turn of the Eighteenth Century, the Poor Laws, “held in the frame of Elizabethan and Carolean tenets,” were “increasingly under strain.”²²⁷ By 1783-85, income from the average annual Poor Rate was £1,912,000, rising to £4,077,000 in 1803, and £5,724,000 in 1815.²²⁸ Cowherd noted that “[d]uring the same period the rental of real property, as recorded by the national Tax Office, had increased from £38,000,000 to £51,000,000.”²²⁹ Both landlord and

²²¹ William P. Quigley, *Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor* Loyola University School of Law www.uakron.edu/lawrev/quigley1.html at 16 November 2004 (unpaginated).

²²² Quigley, above n 221. See also Sir George Nicholls, *A History of the English Poor Law* (1904) 189: “The 43 Elizabeth, cap. 2 is still the foundation and text-book of English Poor Law.”

²²³ Timothy B. Smith, ‘The Ideology of Charity, the Image of the English Poor Law, and Debates over the Right to Assistance in France, 1830-1905’ (1997) 40(4) *The Historical Journal* 1001.

²²⁴ G.M. Trevelyan, *English Social History: A Survey of Six Centuries Chaucer to Queen Elizabeth* (1942) 434.

²²⁵ It was not until 1948 the the Poor Law was finally removed from England’s statute books. See George Boyer, *English Poor Laws* (undated) Cornell University <http://eh.net/encyclopedia/article/boyer.poor.laws.england.at.31.December.2008>. See also George R. Boyer, *An Economic History of the English Poor Law, 1750-1850* (1990, reprint 1993) for a detailed discussion of the Poor Laws from an economic perspective.

²²⁶ Marco H.D. van Leeuwen, ‘Logic of Charity: Poor Relief in Pre-industrial Europe’ (1994) 24(4) *Journal of Interdisciplinary History* 589, 600. See also A.W. Coats, ‘Economic Thought and Poor Law Policy in the Eighteenth Century’ (1960) 13(1) *The Economic History Review* for a discussion on “the change in economic thought and the change in the predominant tone of English Poor Law legislation in the period from the Workhouse Test Act of 1723 to Gilbert’s well-intentioned Act of 1782.” Coats, *ibid* 40.

²²⁷ Ehrman, above n 199, 448.

²²⁸ W.T. Selley, *England in the Eighteenth Century 1689-1815* (1934; reprint 1964) 256.

²²⁹ Raymond G. Cowherd, *Political Economists and the English Poor Laws: A Historical Study of the Influence of Classical Economics on the Formation of Social Welfare Policy* (1977) 68.

tenant “were paying heavier Poor Rates” and, after war broke out with France, with the “bad harvest, restricted grain imports, and inflation [leading] to soaring food prices,” the problem of poverty was “greatly intensified.”²³⁰ While the rich amongst the landed gentry “[u]ndoubtedly could have afforded greater generosity” towards the poor, even in difficult times charities continued to benefit from their modest generosity.²³¹ However, Trevelyan considered that:

*[t]he chief sufferers by the war were the working classes, for whom little was done except the general adoption of the policy originated by the Berkshire magistrates at Speenhamland, for granting rates in aid of wages to prevent families from positively dying of starvation. But the better policy of an enforced minimum wage, though discussed, was unfortunately rejected as old-fashioned and unscientific. (Emphasis added.)*²³²

By 1795 England was in crisis, due to the ongoing war with France, and a succession of poor harvests.²³³ On his way to the new session of Parliament on 29 October 1795 “Pitt was surrounded on his way by a cursing mob; ... shouting ‘No Pitt, No war, bread, bread, peace, peace’ ... and a missile broke against a window of the state coach as it neared the House of Lords.”²³⁴ Over a year later, on 22 December 1796, Pitt was given “leave to introduce a Bill ‘for the better support and maintenance of the poor,’ [which] on 28 February 1797 was brought before the House.”²³⁵ Pitt suggested that:

relief should, as far as possible, be given in the way of employment, *that Friendly Societies should be encouraged* [but not charities?], that schools of industry should be established, (and after making some other suggestions of minor importance), ... that an annual report should be made to Parliament, which should take upon itself the duty of tracing the effects of its own system from year to year, till [sic] it should be fully matured - that, in short, there should be an annual Poor Law Budget, by which the legislature would show that they had a watchful eye upon the interest of the poorest and most neglected part of the community.²³⁶

²³⁰ G.E. Mingay, *English Landed Society in the Eighteenth Century* (1963) 272.

²³¹ Mingay, above n 230, 274.

²³² G.M. Trevelyan, *Illustrated History of England* (1962) 583.

²³³ Ehrman, above n 199, 444.

²³⁴ Ehrman, above n 199, 455.

²³⁵ Ehrman, above n 199, 472.

²³⁶ Nicholls, above n 222, 119.

Pitt's efforts failed, and he did not attempt to reintroduce the Bill.²³⁷ This was partly due to a question of priorities, "for neither in 1796 nor 1797 did circumstances easily favour such an effort."²³⁸ Ehrman sums up the situation by explaining that:

while relief schemes might have been expected in any case from the scale of dearth and discontent, the discontent was now directly linked with the state of the war. It was no longer possible to separate the two: by the autumn of 1795 the petitions for aid were also containing urgent pleas for a return to peace. That hope had not diminished a year later: very far from it. The war was going ever more badly and had become a target for abuse. *If its demands hindered a sustained effort to tackle the effects of poverty, it also raised the need for moves, in this respect as in others, to try to calm and reassure.* (Emphasis added.)²³⁹

Pitt, who was blind "[t]o the terrible and growing evils of the English Poor Law system,"²⁴⁰ also faced a problem with the Poor Rate as, "[being] local in incidence [the Poor Rate] was unequal geographically as well as socially."²⁴¹ The landed interests were also aggrieved, claiming "that trade, manufacturing and 'the funds' should share the burden of relieving pauperism."²⁴² However, while Pitt's "Income Tax was more vexatious, ... rent and tithe had risen with the price of corn, so that landowners did well upon the balance ... [with] their pockets filled by the labour [of] the ill-fed workers of the field."²⁴³ An artificiality existed between town and country, as while:

[t]he poor suffered by the war ... at no period had the landed gentry been wealthier or happier, or more engrossed in the life of their pleasant country houses. The war was in the newspapers, but it scarcely entered the lives of the enjoying classes.²⁴⁴

²³⁷ Ehrman describes at length the reason for the failure of Pitt's Bill, not the least being Pitt's lack of knowledge of the "condition of the poor," a point made by Pitt, "who did not pretend to personal expertise." Ehrman, above n 199, 472. Whitbread also unsuccessfully attempted to reintroduce the Bill, in 1807, a year after Pitt's death. Ehrman, above n 199, 474. See also J.R. Poynter, *Society and Pauperism English Ideas on Poor Relief, 1795-1834* (1969) 62-76 for a detailed discussion of Pitt's Poor-Law Bill; Raymond G. Cowherd, 'The Humanitarian Reform of the English Poor Laws from 1782 to 1815' (1960) 104(3) *Proceedings of the American Philosophical Society* 328-342 for discussion on the opposing philosophies of the natural law theorists and the humanitarian reformists; and Raymond G. Cowherd, *Political Economists and the English Poor Laws: A Historical Study of the Influence of Classical Economics on the Formation of Social Welfare Policy* (1977) for a study of the application of economic thought to social policy, especially to the reform of the old Poor Law.

²³⁸ Ehrman, above n 199, 475.

²³⁹ Ehrman, above n 199, 475.

²⁴⁰ William Lecky, *History of England in the Eighteenth Century* (1913) vol V 347.

²⁴¹ Poynter, above n 237, 19.

²⁴² Poynter, above n 237, 19.

²⁴³ G.M Trevelyan, *English Social History* (1944; 1978 ed) 412.

²⁴⁴ Trevelyan, above n 243, 412.

The importance of private charity and why Pitt may not have wished to discourage voluntary activity can be seen in Sir Francis Eden's observation that "the Poor Law did not make private charity unnecessary [as] charities disbursed some [£6,000,000] over and above the rates."²⁴⁵ Philanthropists were active in devising new schemes to cope with the lack of food, "especially in the extreme scarcity of 1800-01 [when] the drive for economy and substitute foods continued."²⁴⁶ The deficiencies in the age-old Poor Law legislation meant that private charity was essential to Pitt, in order to shore up the failings of the Poor Laws. Paley, however, insisted that "the existence of the Poor Law did not excuse men from the obligation of private charity," whereas yet other persons asserted "that the [Poor Law] impeded rather than advanced the cause of charity on which Paley so firmly insisted."²⁴⁷

By the beginning of the Nineteenth Century, the Poor Law "had become the worst abuse of society."²⁴⁸ The east and south fared worse than the north, with the Poor Rates before the war being "rather under [£2,000,000]," which, by the end of the war had increased to nearly £7,000,000.²⁴⁹ The extent of the demand for the Poor Rate is seen in that the county of Sussex spent more than Wales, with the "burden of the rate-aid [breaking] down many a small employer."²⁵⁰ The scale of the problem can be seen in that of a population of 8,872,980 in England and Wales in 1801, 419,667, or 47.29 per 1,000 of population were classed as "permanent poor."²⁵¹ By contrast, Sir John Sinclair's statistical account for Scotland for the period 1791-98 discloses a ratio of 18.16 per 1,000 of population.²⁵²

Further evidence of the burden of the Poor Law can be seen in Isaac Wood's letter to Sir William Pulteney, which Pitt presented to the House of Commons in support of his Bill in 1797.²⁵³ Wood wrote that:

[t]he great grievance under which the public groans, and cries aloud for redress, is, the very heavy, and continually increasing burden, of the Parochial Taxes; and the misapplication,

²⁴⁵ Poynter, above n 237, 114.

²⁴⁶ Poynter, above n 237, 86.

²⁴⁷ Poynter, above n 237, 35 citing W. Paley, *Principles of Moral and Political Philosophy* (1843 ed) 555. See also Poynter, above n 237, 39-43 for debate on private charity and public relief.

²⁴⁸ Keith Feiling, *A History of England from the coming of the English to 1918* (1950; reprinted 1975) 799.

²⁴⁹ Feiling, above n 248, 799.

²⁵⁰ Feiling, above n 248, 799.

²⁵¹ Loch, above n 207, 282.

²⁵² Loch, above n 207, 280.

²⁵³ Isaac Wood, A Letter to Sir William Pulteney, Bart. Representative in Parliament for the Borough of Shrewsbury, containing some observations on the Bill for the better support and maintenance of the poor, presented to the House of Commons by the Right Hon. William Pitt (23 January 1797).

or, to speak more correctly, the *ill* [sic] application, of a great part of the money annually expended in the support of the poor. The former evil is the consequence of the latter; and will undoubtedly continue, *until some effectual remedy is provided*. (Emphasis added.)²⁵⁴

Pitt's efforts in 1796 having failed, once again the charitable institutions were left to fill the void, there being no other "effectual remedy."

Part IV Charitable activity in Nineteenth Century England

The profession of philanthropy, like every other, can be safely and serviceably practised only by those who have mastered its principles and graduated in its soundest schools. It is as dangerous to practice charity, as [it is] to practice physic, without a diploma.

W. R. Greg, 'Charity, Noxious and Beneficent', 59 *Westminster Review* (1853) 81.²⁵⁵

Charity, in the Nineteenth Century, played a pivotal role in society in that "the place of charity then was as partner to state welfare rather than the subordinate position it has assumed during the [following] centuries."²⁵⁶ By the 1860s, Christian social workers were beginning to realise "that alms-giving was not merely self-defeating but somehow contrary to the spirit of Christ."²⁵⁷ Consequently, "by the end of the decade it was an orthodoxy of advanced social work."²⁵⁸ According to Kidd, in Nineteenth Century Britain government-provided social welfare obligations "were limited to assisting the destitute and much was expected of voluntary welfare services and agencies operating outside the sphere of state competence."²⁵⁹ Until 1865, finance for local, rather than national action, was provided through the Poor Rate that was collected in each parish.²⁶⁰ After 1865, funding became the responsibility of the Poor Law union,²⁶¹ and government fiscal policy dictated that low taxation was "the key tenet."²⁶²

The role of government in the Victorian era was "to provide a basic framework within which civil society could function freely."²⁶³ To that end, "[g]ood government was limited

²⁵⁴ Wood, above n 253, 7.

²⁵⁵ Roberts, above n 44, in Hugh Cunningham and Joanna Innes (eds), *Charity, Philanthropy and Reform: From the 1690s to 1850* (1998) 66.

²⁵⁶ Alan Kidd, *State, Society and the Poor in Nineteenth-Century England* (1999) 65.

²⁵⁷ White, above n 84, 434.

²⁵⁸ White, above n 84, 434.

²⁵⁹ Kidd, above n 256, 1.

²⁶⁰ Kidd, above n 256, 1.

²⁶¹ Kidd, above n 256, 1.

²⁶² Kidd, above n 256, 1.

²⁶³ Kidd, above n 256, 1.

government.”²⁶⁴ “Solutions to social problems,” according to Finlayson, “were ... seen to lie in voluntary and local initiative rather than statutory and centralised agencies.”²⁶⁵ It was not until the 1880s and 1890s that “alternative visions of welfare began to gain credibility,” and, in the early years of the Twentieth Century, “central governments increasingly intervened in fields formerly confined to the ‘private sphere’.”²⁶⁶ As Whelan put it:

for hundreds of years the state had accepted the ultimate responsibility for the relief of poverty through the Poor Law, with the uninviting prospect of the workhouse to discourage what the Elizabethans called ‘lustie beggars’, and what we would call welfare scroungers. However, there was another, far more important source of relief coming not from the state, but from charity.²⁶⁷

“Philanthropy,” wrote Porter, “blossomed in Victorian London. (Great was the need for it) [sic].”²⁶⁸ By the later years of the Nineteenth Century, England had a “vast network of charitable societies which had been formed to supply every imaginable need [and that] represented a sort of private-sector welfare state.”²⁶⁹ While the majority of these charities were “the expression of religious faith,” for others the motive was “the simple humanitarian urge to relive suffering.”²⁷⁰ What united these philanthropists “was the belief that people in need should be helped in ways which did not undermine their dignity and self-respect.”²⁷¹ Arnold Toynbee “begged the forgiveness of the poor of London for the remissness of the élite.”²⁷² “Instead of Justice,” said Toynbee, “we have offered you charity, and instead of sympathy, we have offered you hard and unreal advice, but I think we are changing”²⁷³ How Toynbee encouraged that change was to turn “guilt into institutions – the Whitechapel Library, the Whitechapel Art Gallery, and Toynbee Hall itself, that mission to the poor, symbol of the white man’s burden in darkest Stepney.”²⁷⁴ Toynbee’s success inspired others, such as Oxford House (1884) and the Canning Town Women’s Settlement (1892).²⁷⁵

²⁶⁴ Kidd, above n 256, 1 citing P. Thane, ‘Government and society in England and Wales, 1750-1914’, in F.M.L. Thompson (ed), *The Cambridge Social History of Britain, 1750-1950* vol 3 (1990) 1-2; J. Harris, ‘Society and state in Twentieth Century Britain’, in Thane, *ibid* 67-8.

²⁶⁵ Kidd, above n 256, 1 citing G. Finlayson, *Citizen, State, and Social welfare in Britain, 1830-1990* (1994) 98.

²⁶⁶ Kidd, above n 256, 2.

²⁶⁷ Whelan, above n 86, 1.

²⁶⁸ Roy Porter, *London: A Social History* (1994; reprinted 2000) 332.

²⁶⁹ Whelan, above n 86, 1.

²⁷⁰ Whelan, above n 86, 1.

²⁷¹ Whelan, above n 86, 1.

²⁷² Porter, above n 268, 370.

²⁷³ Porter, above n 268, 370.

²⁷⁴ Porter, above n 268, 370.

²⁷⁵ Porter, above n 268, 370.

The Financial Reform Association

The objects of the Financial Reform Association (FRA) were expressed at a preliminary meeting to form the FRA in Liverpool on 14 April 1848.²⁷⁶ The intention of the FRA was “[to direct] public opinion in the following principles:

- 1st. A general retrenchment in the national expenditure.
- 2nd. The revision of the Assessed Taxes – of the Malt Tax, and of the Excise and Stamp Duties.
- 3rd. The transfer to direct taxation of those imposts which interfere with the industry and limit the subsistence of the people.
- 4th The equitable apportionment of all needful taxation.²⁷⁷

However, it was not until 1885 that the FRA focussed its attention on charitable institutions. In a “memorial” to Mr Childers, Chancellor of the Exchequer, the FRA expressed its hope that the Chancellor would “realise how disastrous might be the effect of any considerable addition to the national burden unless most wisely adjusted.”²⁷⁸ The FRA remonstrated “against further increase of indirect taxation ... whilst other and direct means of reaching the taxpayers are at hand, [which] would in our judgment be a preference of wrong over right principles of taxation.”²⁷⁹ “Moreover,” stated the FRA, “the continued exemption of taxation of some £60 millions of capital value in Mortmain ... [is] annually given from the consolidated fund.”²⁸⁰ Then, in July 1885, the FRA presented a petition to the House of Commons, in which the petitioners declared “*that they are unable to find a reason for the exemption from taxation of corporate property and religious and charitable trusts in Mortmain, while all other classes of landed property are assessed to the Income and Property Tax. (Emphasis added.)*”²⁸¹ This statement by the FRA supports my own findings, that during the Nineteenth Century there was very little debate on the rationale for the charitable purposes exemption, with the exception of Gladstone’s challenge in 1863, and the debate between the Lords of the Treasury and the Charity Commissioners in 1863 and 1888.²⁸²

²⁷⁶ ‘Economical government - freedom of industry - just taxation’, *The Liverpool Mercury* (Liverpool), 18 April 1848, Issue 1979.

²⁷⁷ ‘Economical government - freedom of industry - just taxation’, above n 276.

²⁷⁸ ‘The Financial Reform Association and the Budget’, *The Liverpool Mercury* (Liverpool), 1 April 1885, Issue 11614.

²⁷⁹ ‘The Financial Reform Association and the Budget’, above n 278.

²⁸⁰ ‘The Financial Reform Association and the Budget’, above n 278.

²⁸¹ [Editorial], *The Liverpool Mercury* (Liverpool), 10 July 1885, Issue 11700. *Tracts of the Financial Reform Association*, which was published by the Association in 1885, contains 32 *Tracts* published between 1848 and 1851. I had requested an interloan of the 1885 edition, in the expectation that it would contain more detail on the exemption of charitable institutions from taxation.

²⁸² See Chapters 6 and 7 of this Thesis.

The petitioners also considered that “[t]here are many exemptions which it would be very difficult to explain.”²⁸³ However, their main concern was that “[b]y allowing the greater part of the revenue to be drawn from trade and industry, the Exchequer is constantly meeting with embarrassments, because there is a point beyond which no further weight can be imposed without producing an outcry.”²⁸⁴ The only remedy was “a radical reorganisation of the whole edifice of taxation.”²⁸⁵ This was because, in addition to the points the petitioners had already made, they considered that “[t]he privileges enjoyed by certain classes and interests, *which are abuses*, ought to be extinguished as soon as possible, and economy substituted wherever there is extravagance. (Emphasis added.)”²⁸⁶ Until that happened, “the problem of how to find enough of [sic] money will continue to worry every Administration.”²⁸⁷

While the FRA was unable to find a reason for the exemption of charitable institutions from Income Tax, neither did the Association argue for or against such an exemption, in spite of having had opportunities to do so. In 1848, Babbage had published his “Thoughts on the Principles of Taxation, with reference to a Property Tax, and its exceptions.”²⁸⁸ Babbage proposed that “[t]wo questions of great importance arise in contemplating a tax upon income.”²⁸⁹ The first question concerned “the amount of tax on a given amount of income,”²⁹⁰ and the second “[t]he amount of income which shall be exempted from Income Tax.”²⁹¹

Concerning the amount of income which Babbage considered should be exempt from Income Tax, Babbage argued two positions. First, Babbage considered that “it is obviously impolitic to allow any tax to descend below the point at which the cost of collection exceeds the produce.”²⁹² It is also hopeless,” Babbage argued, “to attempt to collect it from those whose entire income just enables them to exist. The remission of tax might in the latter case be looked upon as *an act of charity*. (Emphasis added.)”²⁹³ Babbage then argued the importance of a police force in maintaining public order. Babbage considered that:

²⁸³ [Editorial], above n 281.

²⁸⁴ [Editorial], above n 281.

²⁸⁵ [Editorial], above n 281.

²⁸⁶ [Editorial], above n 281.

²⁸⁷ [Editorial], above n 281.

²⁸⁸ Charles Babbage, *Thoughts on the principles of taxation, with reference to a Property Tax* (1848).

²⁸⁹ Babbage, above n 288, 11.

²⁹⁰ Babbage, above n 288, 11.

²⁹¹ Babbage, above n 288, 11.

²⁹² Babbage, above n 288, 13.

²⁹³ Babbage, above n 288, 13.

the importance ... [of] the *economical* [sic] ground of national charity, of Poor Rates, *and of other similar institutions* [sic], [concerning] the operation of the principles of morals and of economy should be investigated separately, before their united action in any system of government is examined.²⁹⁴

In the situation in which in society there was to be found “a class so miserable as to be in want of the common necessities of life, a new principle must be taken into consideration.”²⁹⁵ “The usual restraints,” wrote Babbage, “which are sufficient for the well-fed are often useless in checking the demands of hungry stomachs.”²⁹⁶ Therefore, argued Babbage:

[o]ther and more powerful means must then be employed; a larger array of military *or of police force* must be maintained. Under such circumstances it may be found considerably cheaper to fill empty stomachs up to the point of ready obedience, than to compel starving wretches to respect the roast-beef of their more industrious neighbours: and it may be expedient, in a mere economical point of view, *to supply gratuitously the wants even of able-bodied persons, if it can be done without creating crowds of additional applicants.* (Emphasis added.)²⁹⁷

Babbage did not specifically discuss the charitable purposes exemption from Income Tax but I consider that, given his arguments regarding the role of police, I suggest that Babbage would have seen the exemption as a form of assistance to charitable institutions in order that their role as a policing function would be enhanced.

The FRA responded to Babbage’s tract in a letter in 1852, but made no comment on police, or the role of charitable institutions in supplementing the work of a police force.²⁹⁸ However, the FRA complimented Babbage on his denunciation of “the *large exemptions* [sic] from the tax ... as leading directly towards *socialism* [sic],” by saying that “we shall heartily join in your endeavours to remove, as far as may be practicable, all exemptions from taxation.”²⁹⁹ All exemptions? If that were the case, then why is there no reference to the charitable purposes exemption in the FRA’s letter to Babbage? The exemptions referred to by the FRA concerned unproductive land, and wages: “[w]e are quite prepared to exempt no property,

²⁹⁴ Babbage, above n 288, 13.

²⁹⁵ Babbage, above n 288, 13.

²⁹⁶ Babbage, above n 288, 13.

²⁹⁷ Babbage, above n 288, 13.

²⁹⁸ Financial Reform Association, “A letter to Charles Babbage in reply to his ‘Thoughts on the principles of taxation, with respect to a Property Tax, and its exceptions’” (1886).

²⁹⁹ Financial Reform Association, above n 298, 4.

however small, and no wages or other income exceeding £40 per annum, or even less, if the collection be found practicable”³⁰⁰

The FRA’s letter to Babbage does, however, provide a clue as to what the FRA might have considered a justification for the charitable purposes exemption from Income Tax. The person with “a fixed and perpetual income ... is expected to pay and *does pay* [sic], more in charity and voluntary benefactions.”³⁰¹ In so doing, he is “reliev[ing] the necessities of the state.”³⁰² It follows then that if donations and benefactions to charitable institutions relieve the necessities of the state, it would be incongruous to tax such bodies.

In 1852 Joseph Hume published his draft report on the Income and Property Tax under the auspices of the FRA.³⁰³ Nowhere in the twenty-four page draft report did Hume discuss the charitable purposes exemption from Income Tax. That is not to say that the Select Committee did not consider exemptions in general, for Babbage stated:

[t]hat your committee have given much consideration to the exemptions that are, or may be allowed in the assessment of a Property Tax. Upon general principles, no valid reasons can be shown why any considerable part of the property of the country, whether productive, or in the form called by some unproductive, should be exempted from taxation, *as the effects of such exemptions is to throw an undue share of the public burthens upon the owners of property in another form.* (Emphasis added.)³⁰⁴

That being the case, why did the Select Committee not argue the exception to the rule, being the charitable purposes exemption from Income Tax? In the meantime, in 1851, the Tracts of the Liverpool Financial Reform Association were published.³⁰⁵ In all, there were 35 Tracts, with tracts 27 to 35 being a continuous series as part of an “Historical Review of the Fiscal System.”³⁰⁶ However, while the Tracts covered a wide range of subjects, the issue of the charitable purposes exemption from Income Tax was not discussed. Yet in Tract No. 18 the FRA:

³⁰⁰ Financial Reform Association, above n 298, 21.

³⁰¹ Financial Reform Association, above n 298, 24.

³⁰² Financial Reform Association, above n 298, 24.

³⁰³ Joseph Hume, “The Draft Report proposed by Joseph Hume, The Chairman of the Select Committee on the Income and Property Tax,” *Financial Reform Tracts New Series No. IV* (1852).

³⁰⁴ Hume, above n 303, 21.

³⁰⁵ Liverpool Financial Reform Association, *Tracts of the Liverpool Financial Reform Association* (1851).

³⁰⁶ Liverpool Financial Reform Association, above n 305.

would also remind the public of the vast amount of property in educational and charitable endowments throughout the kingdom, which are calculated to be worth £19,604,150 and produce an annual income of £784,178, in a great degree now misapplied to private purposes, and such as are alien to the intentions of the donors. These funds duly applied would in a great degree reduce the public charges for education.³⁰⁷

Tract No. 18 made no mention of the exemption of these funds from Income Tax which, given the intense interest that the FRA had in taxation, is surprising to say the least. Then the FRA expressed its displeasure in noting that:

[b]y our mischievous policy we reduce [Ireland] to pauperism, and then are obliged not only to send over our £10,000,000 to prevent the utter extinction of life in the country, but have to extend the hand of *charity* [sic] from year to year to maintain those institutions which, in this country, are freely supported by voluntary contributions.³⁰⁸

Why there was no discussion on the fiscal issues underlying the charitable purposes exemption from Income Tax is inexplicable. However, this is consistent with other discussions by the FRA on taxation matters concerning charitable institutions.

In a letter written in 1886 under the auspices of the FRA to Hugh Childers, Chancellor of the Exchequer, on the subject of death duties, the author made no reference to charitable institutions with respect to probate, legacy, or succession duties.³⁰⁹ In 1890 the “Report of the Finance and Compensation Committee of the Conference on the Housing of People,” the FRA being one of the delegates at the conference, merely noted that “charities” were exempt from corporation duty under “48 & 49 Vict. c. 51.”³¹⁰ Notably, no reference was made to the FRA’s declaration in 1885 “*that they are unable to find a reason for the exemption from taxation of corporate property and religious and charitable trusts in Mortmain, while all other classes of landed property are assessed to the Income and Property Tax.*”³¹¹ (Emphasis added.)

³⁰⁷ Liverpool Financial Reform Association, above n 305, *Financial Reform Tracts* No. 18 ‘Estimates for Civil services for 1849-50’, 10.

³⁰⁸ Liverpool Financial Reform Association, above n 307, 15.

³⁰⁹ Joseph Dodds, “Death duties: probate, legacy, and succession duties. Letter addressed by permission [of the Financial Reform Association] to [the] Right Hon. Hugh C.E. Childers,” (April 1886).

³¹⁰ Conference of Delegates on questions concerning the housing of the people, *Report of the Financial and Compensation Committee*, (1890) 14 and 16.

³¹¹ [Editorial], above n 281.

London's parochial charities

The City of London's endowments comprised "[in the main] the parochial charities, [or] trusts administered by the City parishes."³¹² As well as the parochial endowments, the City's Livery Companies "also held massive funds in trust for charitable purposes."³¹³ Owen explained that "[p]arochial endowments fell into two broad categories, the ecclesiastical and the general. The former were intended for the upkeep of the church fabric, for the clergy and other functionaries, and for expenses connected with the services."³¹⁴ Civil charitable endowments comprised "those given for education and the much greater total for eleemosynary purposes, of which doles (outright gifts in money or kind) represented the largest element."³¹⁵ However, as Wilson has noted:

[i]n the Nineteenth Century, the very meaning of charity would be revolutionised. It was so important because it seemed to be the crucial question regarding social policy. The generosity of the British was threatening to destroy their country. ... Reform, not relief, should be the motive and end of charity. *Although philanthropy had always had a reformative aspect, the Evangelicals made its policing role more systematic, not to say ruthless.* (Emphasis added.)³¹⁶

The process of reform is evident in the passing of the Parochial Charities Act 1882, "[i]ts essential purpose [being] to broaden what, in charity law, [was] called the 'beneficial area' of City endowments beyond the old London within the Walls to the new metropolis and to adapt them to modern requirements."³¹⁷ Thus while philanthropy was "always utilitarian," the charity of the Evangelicals metamorphosed into the "scientific charity" of the Victorian era, and in so doing "produced a doctrine to make private benevolence efficient, and spawned the profession of social work."³¹⁸ In addition, charity case law, with respect to the charitable purposes exemption from Income Tax, was to eventually epitomise the broader view of the role of charitable institutions. This is seen in the late Nineteenth Century in Lord Macnaghten's pronouncement of the four principal divisions of charity: "trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion;

³¹² Owen, above n 184, 116.

³¹³ Owen, above n 184, 116.

³¹⁴ Owen, above n 184, 119.

³¹⁵ Owen, above n 184, 119.

³¹⁶ Wilson, above n 24, 85.

³¹⁷ Owen, above n 184, 125.

³¹⁸ Poynter, above n 1, 536.

and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.”³¹⁹

Voluntary giving

While according to Kidd statistics on charitable giving in the Nineteenth Century are lacking, “gross expenditure on state poor relief in 1870 came to £7.7 million [which] compares with a contemporary estimate [of the time] that the annual sum devoted to charity in London alone lay somewhere between £5 and £7.5 million.”³²⁰ While the sums donated were impressive, the disorganization of the charitable institutions led to the formation of the London Charity Organisation Society, founded in 1869, with none other than William Gladstone being one of the Society’s early Vice-Presidents.³²¹ The full title of the Society was “the Society for Organising Charitable Relief and Repressing Mendicity.”³²² Gladstone’s involvement with the Charity Organisation Society is, on one hand, all the more surprising, yet on the other it is not. For it was only six years prior to the establishment of the Charity Organisation Society that Gladstone had vehemently attacked the endowed charitable institutions of Britain, in particular those in London, for their extravagance, as well as the encouragement of death-bed bequests which Gladstone considered inappropriate in the extreme. As a newly formed entity which relied on donations rather than bequests for its work,³²³ Gladstone may have been naturally attracted to such a society.

The purpose of the Charity Organisation Society, which had the sanction of government, was “[to co-ordinate] the activities of the many disparate charities in London ... so as to work effectively with the local Poor Law authorities in improving the conditions of the poor.”³²⁴ However, according to Harris:

[o]rganized charity, frequently instanced as the characteristic medium for Victorian upper-class dealings with the poor, in fact represented only a tiny part of the spectrum of late

³¹⁹ *Pemsel*, above n 46, 583.

³²⁰ Kidd, above n 256, 67.

³²¹ Robert Humphreys, *Poor Relief and Charity 1869-1945* (2001) 24.

³²² White, above n 84, 434. *The New Oxford Dictionary* defines “mendacity” as “the conditions or activities of a beggar.” Judy Pearsall (ed), *The New Oxford Dictionary of English* (1998) 1156.

³²³ Humphreys, above n 321, 56. Advertisements appeared in the morning papers of 14 May 1874 in which the Society appealed for the “considerable funds” which were needed, particularly for its work in the poorer parts of London. Humphreys, above n 321, 56.

³²⁴ Humphreys, above n 321, 24.

Nineteenth Century philanthropy, and was constantly at loggerheads with other, more ambitious and disorganized charitable schemes.³²⁵

The extent of philanthropic activity in late Nineteenth Century Britain can be seen from a comment in *The Times* of 1885, which stated that “[p]hilanthropic receipts for London alone were greater than the budgets of many European states.”³²⁶ As the editor of *The Times* said, “[a]n income of £4,447,436 for the charities of London alone seems magnificent.”³²⁷ Such largesse created problems of its own. At “more than a thousand in number,” said the editor, “[o]ften they wage wars, and sometimes they make alliances.”³²⁸ The Charity Organisation Society, “a body often typecast as the last bastion of *laissez-faire* individualism,” was itself at loggerheads internally with “a striking contrast between the atomistic philosophy of older members like Thomas Mackay and a younger generation who supported the organic ‘social collectivism’ preached by Bernard and Helen Bosanquet and Thomas Hancock Nunn.”³²⁹

The question of the role of the state and private charity in providing relief to the poor, and the policing function, was also questioned in 1888 by Farnam who, in a very comprehensive paper on the issue, asked “[w]hat should be the relation of public relief to private charity?”³³⁰ “Private charity,” Farnam argued, “is something which exists and which could not easily be eradicated, even if it were desirable to do so.”³³¹ Echoing the concept of utilitarianism, Farnam maintained:

that the sentiment which leads to the exercise of private charity is one of social utility: kindness, benevolence, an interest in our fellow-men ... without which the world would be, not only much more dreary than it is, but less productive.³³²

Those sentiments, Farnam wrote, also “furnish the social cement which prevents society from being engaged in a constant war of all against all, and make the individual agglomeration of men which we call states better able to live without breaking to pieces.”³³³ What then is the

³²⁵ Jose Harris, *Private Lives, Public Spirit: A Social History of Britain 1870-1914* (1993) 39.

³²⁶ Prochaska, above n 150, 358 citing David Owen, above n 220, 469. The article referred to by Owen was an editorial on Britain’s metropolitan charities.

³²⁷ [Editorial], *The Times* (London), 9 January 1885, 9.

³²⁸ [Editorial], above n 327.

³²⁹ Harris, above n 325, 231.

³³⁰ Henry W. Farnam, ‘The State and the Poor’ (1888) 3(2) *Political Science Quarterly* 282, 306.

³³¹ Farnam, above n 330, 306.

³³² Farnam, above n 330, 306.

³³³ Farnam, above n 330, 306. In the Twenty-first Century, not-for-profit organizations are often referred to as the glue of civil society.

role of government, if private charity plays such an important role in society? Farnam considered that:

*[t]he extent to which government cares for the poor should therefore adjust itself to the amount of work that is done by private effort. It cannot be determined by a hard and fast rule. The government should restrict or expand its action according as private charity is active or indolent. (Emphasis added.)*³³⁴

In a comment which today few people would agree with, unlike in 1888, Farnam stated “that private agencies can do what public ones are unable to do, for they can exercise charity.”³³⁵ Farnam’s point was that private charity, as a policing function, can “exercise a personal and moral influence, [therefore] the government should avoid all measures that will tend to weaken the beneficial effects of real charity.”³³⁶ Private charity could also overstep the mark, where it was “exercised with so little intelligence as to be itself the cause of pauperism.”³³⁷ Therefore, “[w]hile the state should endeavour to allow the greatest extension to well directed private charity, it should not hesitate to correct or even suppress it, when its results are obviously detrimental.”³³⁸ While Farnam preached in what would in the Twenty-first Century be considered a moralistic manner, he also took a pragmatic approach by arguing that pauperism, as a “social disease,” could be treated in the same way that bacteriological diseases were treated – by “attack[ing] the cause of the disease.”³³⁹ “We see the application of tons of cure,” wrote Farnam, “but the ounce of prevention seems to be an article that our social apothecaries do not keep.”³⁴⁰ Most importantly, Farnam described what he considered to be the “environment [in which] the germ of pauperism thrives.”³⁴¹ “We have seen it propagated in the Middle Ages,” wrote Farnam:

³³⁴ Farnam, above n 330, 306.

³³⁵ Farnam, above n 330, 307. That is certainly true, but what is generally accepted today is that charities can venture where governments cannot; they are more willing to experiment than government. Paternalism is, however, no longer an element of charitable activity.

³³⁶ Farnam, above n 330, 307. Views change, and today private charity, as Farnam called it, would not be so moralistic as to take the high moral ground as was common in the Eighteenth and Nineteenth centuries. “Pauperism,” argued Farnam, “is a social disease, not an economic state. Pauperism does not mean simply the absence of funds; it means the mental and moral habit which occasions this lack of funds ... [However] it does not seem unreasonable to hope that pauperism as an epidemic may be as thoroughly checked as have been the ravages of the smallpox or the black death.” Farnam, above n 330, 309.

³³⁷ Farnam, above n 330, 307.

³³⁸ Farnam, above n 330, 308.

³³⁹ Farnam, above n 330, 310.

³⁴⁰ Farnam, above n 330, 310.

³⁴¹ Farnam, above n 330, 310.

to a large extent by church charity and private alms. We have seen it fostered in more recent times by sentimental legislation and theories regarding the natural rights of man. We know fairly well, therefore, what is to be avoided. *The real problem is to ascertain by what positive measures this social bacillus can be radically exterminated.* (Emphasis added.)³⁴²

In such an environment in the Nineteenth Century, should government have wished to encourage private charity in its activities, one mechanism through which government could have provided support was the charitable purposes exemption from Income Tax. Yet Farnam made no mention of that fiscal policy. Neither did Farnam propose how the effectiveness of private charity could be measured, an issue no doubt as vexing then as it is in the Twenty-first Century.

The New Poor Law of 1834

“... alongside the vast and growing apparatus of sentimental charity through which the upper classes discharged warm advice and cold charity, there developed central and local agencies equipped to make realistic assessments of the social costs of urban industrialisation.”

O.R. McGregor.³⁴³

Kidd considers that “[t]he history of the Poor Law in the Nineteenth Century must be understood in its ideological and socioeconomic context.”³⁴⁴ The rationale for the New Poor Law Amendment Act 1834,³⁴⁵ that is, “classical political economy, utilitarianism, and evangelicalism, set the values and standards for the ‘liberal state’ of the mid-Nineteenth Century. (Emphasis added.)”³⁴⁶ While “[h]istorians do not agree on the balance of factors involved” in the reform of the Poor Law, a common factor on which Poynter, Dunkley, Brundage, Mandler and Hilton agree was “the mounting rates burden and the fear of unrest following the ‘Captain Swing’ agricultural labourers’ riots of 1830-31.”³⁴⁷ Charities did not have concerns regarding Income Tax, as the reform of the Poor Law took place during the 1816-1842 hiatus between the repeal of the Income Tax in 1816 and its reintroduction in 1842. However, with the increase in the national Poor Rate from £5.3 million in 1802-3, to £9.3 million in 1817-18, and lower levels in the 1820’s rising to £8.6 million in 1831-32,³⁴⁸

³⁴² Farnam, above n 330, 310.

³⁴³ O.R. McGregor, ‘Social Research and Social Policy in the Nineteenth Century’ (1957) 8(2) *The British Journal of Sociology* 146, 148.

³⁴⁴ Kidd, above n 256, 8.

³⁴⁵ *Poor Law Amendment Act* 4 & 5 Will. 4 c. 76 (1834).

³⁴⁶ Kidd, above n 256, 9.

³⁴⁷ Kidd, above n 256, 24.

³⁴⁸ Kidd, above n 256, 25.

there must have been increasing pressure on charitable institutions to contribute to the social issues of the times. One issue, as described by Humphreys, was that “the 15,000 or so parishes in England and Wales were often small in size, feebly funded and with variable response by part-time amateurish administrators.”³⁴⁹ Another issue identified by Humphreys was that while the anti-Poor Law lobby complained:

in 1832 that total poor relief expenditure had grown to around £7 million compared with just over £4 million 30 years earlier, [the lobbyists] chose not to dwell on the fact that over the same period the population had increased from around 9.13 million to well over 14 million.³⁵⁰

Evidently, from these figures, Humphreys suggests that “during the early decades of the Nineteenth Century the poor relief expenditure per head of population had shown only marginal change.”³⁵¹ If that were the case, the pressure on charitable institutions must have been considerable. As Kidd explains, “[c]harity ... was considered by many in the Nineteenth Century to be the vital element in the welfare equation.”³⁵²

Gladstone’s attack on the charitable purposes exemption from Income Tax

All the world seems to be divided into political economists, Poor Law Commissioners, guardians, policemen, and philanthropists, enthusiasts, and Christian socialists. Is there not a large intermediate ground which anyone who can write might occupy, and who could combine a real knowledge of the problems to be solved with the enthusiasm which impels a person to devote their life to solving them? The way would be to hide philanthropy altogether as a weakness of the flesh; and sensible people would then be willing to listen.

B. Jowett to F.P. Cobbe, 24 Sept. 1860, *Life of Frances Power Cobbe* (1894) i. 316.17.³⁵³

In his address on the Budget in the House of Commons on 16 April 1863, Gladstone, as Chancellor of the Exchequer, spoke at length of the charities of England and his intention to remove the charitable purposes exemption from Income Tax.³⁵⁴ In making his introductory remarks on the subject, Gladstone declared:

³⁴⁹ Humphreys, above n 321, 6.

³⁵⁰ Humphreys, above n 321, 7.

³⁵¹ Humphreys, above n 321, 7.

³⁵² Kidd, above n 256, 65. The Poor Law, which had its origins in 1601 during the reign of Elizabeth I, was not finally abolished from the statute books until 1948, having been gradually replaced by the emerging welfare state. See Maurice Bruce, *The coming of the welfare state* (1961).

³⁵³ Hilton, above n 140, 255.

³⁵⁴ This is discussed in detail at Chapter 6 of this Thesis. Gladstone was no misanthropist. In *The Life of William Ewart Gladstone* (1903) vol III, John Morley described how Gladstone “kept detailed accounts [under the heads of charity and religion] from 1831 to 1897, and from these it appears that from 1831 to the end of 1890 he devoted to objects of charity and religion upwards of [£70,000], and in the remaining years of his life the

that when the exemption was first granted the state of the case was very different. *At that time the State undertook no direct expenditure for education – one of the main objects of endowed charities. The State undertook no direct expenditure for the poor – another main purpose of these endowed charities.* Far less did the State undertake any expenditure on account of charities themselves. How stands the case now? The votes which are submitted to this House for the present year for those purposes include – for education, £1,111,100; for the Poor-Law Board, £227,000; for universities, £35,000; and for these charities themselves a little item of £18,000 a year. (Emphasis added.)³⁵⁵

The “little item” to which Gladstone had referred was the funding allocated in the Budget for the Charities Commission. However, what incensed Gladstone was that the endowed charities were those which benefited from what he called “death-bed bequests,” which were made “[without any] attempt ... to limit the amount of choice, of discretion, or of indiscretion, with which individuals may bequeath property to what is termed charitable uses.”³⁵⁶ Gladstone considered “that what a man wills on his deathbed, when he can no longer keep it in his own hands, is not charity ... a man is giving in a particular manner that which it does not rest with him to retain.”³⁵⁷ It was the use, or misuse, of those funds and the need for the long-running inquiry into charitable institutions, and the “£500,000 which the State has been compelled to lay out in the last fifty years” to fund that inquiry which concerned Gladstone.³⁵⁸ Gladstone’s primary rationale for taxing the income of charitable institutions was in order “that the eye of the State” could be kept on the administration of charitable bequests.³⁵⁹

The charities response to Gladstone’s challenge

On 4 May 1863 Gladstone was confronted at his residence by a deputation of unprecedented numbers which presented Gladstone with a list of eleven reasons why the Income Tax should not be applied to charitable institutions. The list of reasons was also published in *The Times* that same day.³⁶⁰ A list of nine reasons “for the continued exemption of endowed charities from Income Tax” was also published, but two days earlier, in *Jackson’s Oxford Journal*.³⁶¹ The author in *Jackson’s Oxford Journal* is described only as “a correspondent.”³⁶² The rationale provided by both lists bear some commonality, primarily: that the exemption is

figure in this account stands at [£13,500] [sic] – this besides [£30,000] for his cherished object of founding the hostel and library at Saint Deniol’s.” Morley, *ibid* 420.

³⁵⁵ Parliamentary Intelligence, ‘The Budget’, *The Times* (London), 17 April 1863, 6.

³⁵⁶ Hansard, *Parliamentary Debates* (1863) vol CLXX 1075.

³⁵⁷ Hansard, above n 356, 1076.

³⁵⁸ Hansard, above n 356, 1080.

³⁵⁹ Hansard, above n 356, 1081.

³⁶⁰ ‘Taxation of charities’, *The Times* (London), 4 May 1863, 5. See also Chapter 6 of this Thesis.

³⁶¹ ‘Charities and the Income Tax’, *Jackson’s Oxford Journal* (Oxford), 2 May 1863, Issue 5740.

³⁶² ‘Charities and the Income Tax’, above n 361.

historical in nature; that to tax charities would increase the burden on the Poor Rates; that to tax charities was to tax the poor; that the benefits outweigh the forgone income; and that the contribution from individual members of the public to substitute the income forgone was insignificant.

While the rationale proposed by both lists is founded predominantly on Christian ethics and social policy, there is a glimmer of fiscal policy in the lists in *The Times* and *Jackson's Oxford Journal*. Adam Smith had argued, in the first of his four maxims, that “[t]he subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities.”³⁶³ Observing or neglecting that maxim, Smith suggested, led to “the equality or inequality of taxation.”³⁶⁴ The taxation of charitable institutions would have created an inequality by providing an exemption for the income of persons under £100, with a progressive scale of taxation up to £200, while at the same time subjecting charitable institutions to Income Tax, the implication being that it is inequitable to exempt one class yet to tax the other which provides benefits to the first class.³⁶⁵ A further inequality would have arisen in that as incomes up to £100 were exempt, and income up to £200 taxed progressively, “dole[s] or allowance[s], however small, ... received through the channel of a charitable endowment” were “subject[ed] to taxation at the highest rate.”³⁶⁶

In effect, Gladstone had no fiscal control over the activities of charitable institutions. The correspondent in *Jackson's Oxford Journal* argued that “to tax charities would increase the burden on the Poor Rates.”³⁶⁷ That opinion overlooked the possibility that tax revenue collected from charitable institutions might have been applied to reduce the Poor Rates, in other words a redistribution of income through the mechanism of taxation. Gladstone held the view that charitable institutions should be the recipients of grants from the government, thus the government could select which charitable works fulfilled the government's social policy programmes. “One of the great evils of the present system with respect to charities,” Gladstone argued, “is that while we bestow public money on establishments, *we dispense with all public control over them; and we thus annul all effective motives for economical*

³⁶³ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1766; reprint) vol II 472.

³⁶⁴ Smith, above n 363, 472.

³⁶⁵ ‘Taxation of charities’, above n 360, [Reason No. 5]; ‘Charities and Income Tax’, above n 361, [Reason No. 8].

³⁶⁶ ‘Taxation of charities’, above n 360, [Reason No. 5].

³⁶⁷ ‘Charities and the Income Tax’, above n 361, [Reason No. 1].

management.”³⁶⁸ (Emphasis added.) “A public grant,” said Gladstone, “to such an establishment as St. Bartholomew’s would be ten times better than an exemption like the present. *When there is a public grant we know what we are about – we let in the light of day.*”³⁶⁹ (Emphasis added.) That is, Gladstone was discussing the redistributive effect of revenue obtained through taxation with respect to both fiscal and public policy.

The Livery Companies in 1884

Further evidence of the extent of charitable activity in London and the influence of charities is to be found in *The Report of the Royal Commission on the Livery Companies of London* of 1884 (the Report).³⁷⁰ What is of particular significance to this Thesis is that the Report contains details of inquiries by the State into the Livery Companies, by Richard II, Edward II, the Municipal Commission of 1833, the Charity Commissions of 1818-1837, the Charity Commission inquiry commencing in 1860, and Lord Montague’s Return of 1863.³⁷¹ Also of importance are the circumstances that lead to the enquiry, as it was in 1880 that Gladstone’s government indicated its intention to investigate the Livery Companies. On 29 May 1880 *The Pall Mall Gazette* reported that the intention of the Government to inquire into “the charters, powers, trusts, income and expenditure of the City guilds has excited no small stir in the City of London.”³⁷² Gladstone was still intent on taxing charities, as in 1883 he gave his approval to a proposal to do so, and it was believed that the report of the inquiry into the City Livery Companies would provide further support for the proposal.³⁷³ In the event, this did not happen.

On 22 March 1882, during the course of the inquiry into the Livery Companies, Mr Henry Longley, a Charity Commissioner who had held the post since 1874, was examined at length.³⁷⁴ Eventually, Mr Pell M.P asked Longley if the charitable trusts of the Companies

³⁶⁸ Sir Wemyss Reid, *The Life of William Ewart Gladstone* (1899) 439.

³⁶⁹ Hansard, above n 356, 1098.

³⁷⁰ British Parliamentary Papers, *The Report of the Royal Commission on the Livery Companies of London* (1884) (*The Report*) C. 4073-III XXXIX Pt. IV.1; C.4073-IV XXXIX Pt. V.I. Of the five volumes of the Report, only Volume I is available at www.british-history.ac.uk/report.aspx?compid=69380 at 2 January 2009.

³⁷¹ *The Report*, www.british-history.ac.uk/report.aspx?compid=69381 at 2 January 2009.

³⁷² ‘The City Guilds’, *The Pall Mall Gazette* (London), 29 May 1880, Issue 4763. Parliament, acting on the report of an earlier Commission, the Municipal Corporations Commission of 1833, while having been “conspicuously successful,” was unable to resolve the issues raised due to the political situation at that time. *The Pall Mall Gazette*, *ibid*.

³⁷³ ‘The Taxation of Corporate Bodies’, *The Bristol Mercury and Daily Post* (Bristol), 5 November 1883, Issue 11069.

³⁷⁴ *The Report*, above n 370, [compid 69394] 299-300.

paid “any Income Tax.”³⁷⁵ Longley replied, “[t]hey are entitled to exemption from Income Tax; all funds affected by charitable trusts are.”³⁷⁶ While trust property was “entitled to the exemption if they claim it,” said Longley, “all over the country trustees omit to claim exemption.”³⁷⁷ “But by law they are not required to pay?” asked Pell, to which Longley replied, “No.”³⁷⁸ Notably, during the course of the inquiry there was no discussion on the rationale for such an exemption.

In mid-1884, the Report was tabled in Parliament. The inquiry had taken nearly four years to the day, from the date of the Commission authorising the inquiry on 29 July 1880 until the Report of 28 May 1884.³⁷⁹ In spite of the depth and length of the inquiry, the recommendations of the Commission “bore no fruit.”³⁸⁰ However, one comment in the dissenting Report, that State interference in private funds applied to the public good should be resisted, warrants noting. The dissenting Report argued that:

[t]heir property being at law the companies own, the product partly of their own savings, partly of absolute gifts to them, and the income from it being in great part spent for the public good, we join with the Lord Chancellor in “declining to contemplate” any State interference with this property or with the companies in their administration of the income arising from it.³⁸¹

While the comment was directed at the Senior Inspector of Charities, Mr Hare, and his attempts to have his scheme for the reorganisation of the Companies of London adopted,³⁸² the term “State interference” might also be extended to taxing the income of the Companies trust property.

The income of the twelve great Livery Companies, for the years 1879/1880, totalled some £510,000 of which £363,000 (72 percent) was taxable corporate income, and £147,000 (28

³⁷⁵ *The Report*, above n 370, [compid 69394] 400.

³⁷⁶ *The Report*, above n 370, [compid 69394] 400.

³⁷⁷ *The Report*, above n 370, [compid 69394] 402.

³⁷⁸ *The Report*, above n 370, [compid 69394] 403.

³⁷⁹ *The Report*, above n 370, [compid 69381 to 69387, including dissenting Report].

³⁸⁰ G.D. Ramsay, ‘Victorian Historiography and the Guilds of London: The Report of the Royal Commission on the Livery Companies of London, 1884’ (1984) 10(2) *The London Journal* 155, 155.

³⁸¹ *The Report*, above n 370, [compid 69387] [page 9].

³⁸² *The Report*, above n 370, [compid 69387] [page 9].

percent), was non-taxable trust income.³⁸³ The gross annual income of all the companies for 1879/1880 “amounted to between £750,000 and £800,000, a sum noted as exceeding the income of the two universities of Oxford and Cambridge with their colleges; and that “the capital value of the Companies’ property cannot be less than 15 millions [sic] sterling.”³⁸⁴

Hazlitt used the Report extensively in his 1892 text, the title of which in itself, *The Livery Companies of the City of London: Their Origin, Character, Development, and Social and Political Importance*, indicates the influence of the Livery Companies.³⁸⁵ The charities of the Livery Companies used “their property ... not only for charitable purposes, as to which there have been conflicting opinions, but for purposes directly and indirectly connected with education, social science and human progress.”³⁸⁶ The Livery Companies were also criticised by Hazlitt for “the serious loss to the Imperial revenue from the enormous amount of property held in Mortmain and exempt from succession duty in perpetuity.”³⁸⁷ While the Livery Companies contributed “many thousands a year” to the revenue from tax on corporate income, trust income was exempt, due to the trust estates being “purely eleemosynary.”³⁸⁸

Hazlitt made an interesting point in suggesting that the reasons for the growth in the wealth of the charities of the Livery Companies was due to two factors. First, he argued that “[t]he source and explanation of the moneys and properties left to the Gilds [sic] to charitable uses are obviously to be found in the deficiency of our early municipal institutions and the absence of any system of poor relief.”³⁸⁹ Second, he argued that:

[t]he financial and social aggrandisement of many of the Companies, and their consequent divergence from their original *raison d’être* [as industrial and mercantile corporations], may be readily traced to the development of a feeling on the part of citizens, and even strangers, in the old state laws affecting benefactions and charities, *that these institutions formed the safest depositories for money left in trust or otherwise for superstitious, eleemosynary, and educational purposes*. There were no bodies formerly existing, when nearly all the Gilds [sic] were successively established, so well calculated to administer

³⁸³ *The Report*, above n 370, [compid 69384]. The Report also noted the disparity in income between corporate and trust. For example the Grocers’ Company had trust income of £500 and corporate income of £38,000 whereas the Mercer’s Company had trust income of £35,000 and corporate income of £47,000.

³⁸⁴ Ramsay, above n 380, 156.

³⁸⁵ W. Carew Hazlitt, *The Livery Companies of the City of London: Their Origin, Character, Development, and Social and Political Importance* (1892).

³⁸⁶ Hazlitt, above n 385, 2.

³⁸⁷ Hazlitt, above n 385, 3.

³⁸⁸ Hazlitt, above n 385, 3. “Eleemosynary” means “relating to, or dependent on charity.” Pearsall, above n 322, 597.

³⁸⁹ Hazlitt, above n 385, 33.

and protect funds lodged in their hands for periodical distribution and specific benevolence; and this was as much the case in the provinces as the metropolis, and without the City as within its confines. (Emphasis added.)³⁹⁰

There was another reason for the growth in the wealth of those entities – inflation. Hazlitt noted that the wealth of the Companies had “probably increased each century [due to] many hundreds of legacies of land, or of money to be converted into land,” for charitable purposes.³⁹¹ “But,” he declared:

the chief increase has taken place during the present [century] as a consequence of the recent rise in the value of house-property in the City of London, [and] [w]ithin the next twenty years the lapse of old leases will still further tend to augment the aggregate.³⁹²

In 1830 the Companies had taken advantage of building leases in the City expiring, as it then “became possible for the Gilds [sic] to raise the ground-rents so as to participate in its increased value.”³⁹³ The bulk of the Companies total trust income of £200,000, that is £140,000, came from rents and rentcharges, with the balance being from dividends.³⁹⁴ Another claim that Hazlitt made provided more evidence of the number of charities at that time, “as the trust-estate of the Companies ... supports upwards of a thousand charities; and the authorities in 1882-3 were of the opinion that no charities in England were better administered.”³⁹⁵

Conclusion

With the demands placed on England by the protracted war with France, England’s coffers were well and truly drained. Pitt’s Budgets, being War Budgets, made no provision for social welfare *per se*. Therefore, for peace and security to be maintained at home and to avoid the bloodshed as was occurring in France, the role of charitable institutions in undertaking their charitable purposes and as police were paramount. The end of the Napoleonic Wars did not see an end to England’s social and economic problems, which only intensified. Change was needed, at a level not previously seen.

³⁹⁰ Hazlitt, above n 385, 33. Hazlitt noted that the Companies “large trust-estate dates from the Fourteenth Century.” Hazlitt, above n 385, 69.

³⁹¹ Hazlitt, above n 385, 83.

³⁹² Hazlitt, above n 385, 83. Hazlitt did not acknowledge the source of these figures, that is, the Report of 1884.

³⁹³ Hazlitt, above n 385, 87.

³⁹⁴ Hazlitt, above n 385, 91.

³⁹⁵ Hazlitt, above n 385, 87.

The nature of charity in Britain underwent a major transformation in the form of a paradigm shift, from the religious fervour of the Evangelicals at the beginning of the Nineteenth Century to that of scientific endeavour during the Victorian era. Instead of pauperizing people and permeating the cycle of poverty, through the organization of charitable activity benevolence became systematized. Co-operation became the basis of charitable activity, and through investigation, whether a person's state of destitution was real or imagined was determined. From the days of Wilberforce and More at the end of the Eighteenth Century, the turmoil of the Napoleonic Wars and throughout the Nineteenth Century, government also relied on charitable activity in its policing function, through the maintenance of social order. The Poor Laws (which did not disappear from the statute books until the middle of the Twentieth Century) had increasingly been unable to cope with the demands placed on those paying the Poor Rates. Instead of advancing the cause of charity, Poor Rates impeded such initiatives by placing increasing financial burdens on those more ably placed to initiate and support charitable initiatives.

Both Wilberforce and More were in a position to influence Pitt in the closing years of the Eighteenth Century when he introduced the Assessed Tax Act in 1798 and the Duties upon Income Act in 1799, both of which contained exemptions from taxation with respect to the activities of charitable institutions. However, there is no direct evidence of either Wilberforce or More having raised the matter during the passage of the respective Bills through the House of Commons. Wilberforce and More, as Evangelicals, were charity activists who would have been concerned should Pitt have attempted to tax the income of charitable institutions. Further, there is no evidence that Highmore, or the Livery Companies, played a direct role in inspiring Pitt to ensure that charitable institutions were exempt from Income Tax.

While Pitt did not do so, that was not the case during the second half of the Nineteenth century when in 1863 Gladstone challenged the policy of exempting charitable institutions from Income Tax, by threatening to remove the charitable purposes exemption from Income Tax. While Gladstone failed in his mission, he did succeed in drawing attention to the activities of charities, and what he considered to be the excessive cost to the government of funding the recently established Board of Charities Commissioners, a cost that was borne by taxpayers, and not the charities.³⁹⁶ Gladstone was primarily concerned with the fact that

³⁹⁶ See Chapter 6 of this Thesis.

government had no control over the activities of charities. In Gladstone's opinion, government grants were preferable to providing charitable institutions with an exemption from Income Tax.

Significantly, however, the major achievement of the Nineteenth Century was the move from charitable activity as pauperization to one of scientific method. While this brought about a new set of problems, that of the inability of charities to cooperate with each other, and to minimise duplication of resources, both human and financial, such developments were symptomatic of the paradigm shift that was under way. However, in the Twenty-first Century, the duplication of charitable effort, with its wasteful use of resources, remains a significant problem.³⁹⁷ The lessons of history, I suggest, have been forgotten.

³⁹⁷ New Zealand, for example, has multiple charities dedicated to the research of cancer, and to the support of those affected by this disease in its many forms. In a country with a population of approximately 4.4 million, which is comparable to Melbourne in Australia, I consider that this must lead to the inefficient and ineffective use of resources, both human and financial, in the fight against cancer.

Chapter 10 A rationale proposed, conclusions, limitations, and future research

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The legal view in England

It is correct that “[c]ertainly there is no case in which the fiscal implications of a determination in favour of charity have been expressly considered.”¹ With the greatest of respect to the author of that quote, Hubert Picarda QC, I propose to make a modification by the inclusion of the word “direct,” so that the quote now reads “[c]ertainly there is no case in which the *direct* fiscal implications of a determination in favour of charity have been expressly considered.” Picarda was also of the opinion that “the collective wisdom [of the common law definition of charity,] being judge-made and not driven by governmental and fiscal considerations, has its own in-built protections.”²

¹ H. Picarda, *The Law and Practice relating to Charities* (3rd ed, 1999) 25.
² Picarda, above n 1, 14.

It was not until at least 1940 that economic theory was employed by the courts in decisions on tax cases, a point noted by Farnsworth that same year.³ Farnsworth had observed that “[t]he dissenting judgment of Scott LJ in *Bamford v Osborne*⁴ is an interesting example of the extent to which economic theory is *now* [sic] allowed to form part of the *ratio decidendi* of what a short while ago would have been a case of pure law.”⁵ (Emphasis added.) This leads me to ask, what would the outcome of *Pemsel*⁶ have been had the House of Lords considered the economic, and indeed the fiscal, implications of the charitable purposes exemption from Income Tax?

On a re-reading *Pemsel*, I came to the realisation that Lord Macnaghten was aware, albeit obliquely, of the effect that charitable status and its associated exemption would have on the financial resources of Great Britain. The evidence for this is to be found in the penultimate page of *Pemsel* where Lord Macnaghten stated that:

[b]y virtue of [the Charitable Trusts Amendment Act 1855] the income of a large proportion of the funds devoted to charity in this country, exceeding in amount for the year 1865 one million and a half, and now probably much larger, was entirely withdrawn from the cognizance and jurisdiction of the Board of Inland Revenue. Thenceforth, for the purposes of the Income Tax Acts, as well as for the purposes of administration, that income has been under the jurisdiction of a body *bound by law to construe the expression “charitable trusts” according to its legal meaning, and to give certificates of exemption in accordance with that construction.* The obligation is clear. The Charitable Trusts Amendment Act, 1855, is to be construed as one Act with the Charitable Trust Act 1853, and the Act of 1853 contains a definition of “charity” by reference to the Act of Elizabeth [43 Eliz. I c. 4] and the practice of the Court of Chancery. I may add that section 28 of the Act of 1855 has always formed part of the Income Tax Code whenever the tax has been re-imposed, carrying with it into the Code, to a certain extent, at least, the legal definition of “charity.” (Emphasis added.)⁷

Thus, from 1891, the consequence of the granting of charitable status following the decision in *Pemsel*, that is, the charitable purposes exemption from Income Tax, clearly has an indirect effect on the tax revenue of common law countries in that significant funds, in the form of Income Tax forgone, are unavailable for the use by the government of those countries. The *Pemsel* case finally clarified in charity law what had been required since Pitt’s Duties upon

³ A. Farnsworth, ‘Income Tax Cases’ (1940) 4(1) *The Modern Law Review* 66-68.

⁴ *Bamford v Osborne* (1940) 2 All E.R. 317.

⁵ Farnsworth, above n 3, 67.

⁶ *Commissioners for the Special Purposes of the Income Tax v Pemsel* [1891] AC 531.

⁷ *Pemsel*, above n 6, 590; 3 T.C. 53, 101.

Income Act of 9 January 1799,⁸ and subsequent such Acts, that is, a definition of charitable purposes with respect to Income Tax.

The legal view in North America

As well as attempting to define a contemporary rationale for the charitable purposes exemption, North American scholars have also studied the law of charitable trusts in connection with the exemption to better explain its origins. Gustafsson's paper supports my own conclusion: the lack of material makes a study such as this extremely problematic. Gustafsson wrote that:

[t]he purposes and effects of granting tax-exempt status to an organization and the concomitant deductibility of contributions, however, are very different from the purposes and effects of upholding the validity of a charitable trust. *Despite this, there is very little historical record to explain the unquestioned adoption of the same definition of charitable for purposes of tax exemption.* (Emphasis added.)⁹

Gustafsson cites two early Twentieth Century charity law cases in which suggestions as to the reason for the charitable purposes exemption were made. In the first such case Gustafsson noted that in 1924:

the Supreme Court commented on the purpose of the exemption from the Federal Income Tax of charitable organizations: "Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain."¹⁰

Gustafsson also noted that in 1934, the Supreme Court said that "[t]he exemption of income devoted to charity ... [was a] liberalization ... of the law in the taxpayer's favour, [was] begotten from motives of public policy, and [is] not narrowly construed."¹¹ However, Gustafsson maintains that: "[t]hese statements, while not necessarily objectionable as general

⁸ *An Act to repeal the Duties imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties* 39 Geo. III c. 13 [9 January 1799].

⁹ Lars G. Gustafsson, 'The definition of "charitable" for Federal Income Tax purposes: Defrocking the old and suggesting some new fundamental assumptions', (1996) 33(3) *Houston Law Review*, 587, 595.

¹⁰ Gustafsson, above n 9, 595 citing *Trinidad v Sagrada Orden de Predicadores* 26 U.S. 578 (1924).

¹¹ Gustafsson, above n 9, 595 citing *Helvering v Bliss* 293 U.S. 144, 151 (1934). Gustafsson notes that "*Bliss* has often been cited for this proposition."

statements, *are insufficient predicates for such an important tax policy.* (Emphasis added.)”¹²

Gustafsson then provides:

[a] further illustration of this point [as] the only statement in the legislative history [in North America] regarding the purpose of the Income Tax exemption for charitable organizations is found twenty-six years after the exemption’s enactment, in a 1939 House Report which stated:

The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory *that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriation from public funds*, and by the benefits resulting from the promotion of the general welfare. (Emphasis added.)¹³

Then, Gustafsson states, “[w]ith little or no guidance, courts have struggled with the policy ramifications of exemption without producing a coherent, integrated analysis.”¹⁴ It is at this point that North American charity law diverges from that of common law countries which have followed *Pemsel* since 1891, in applying the principles as laid down by Lord Macnaghten, without concern over the validity of the charitable purposes exemption from Income Tax in the context of social policy.¹⁵

The contemporary view of the charitable purposes exemption from Income Tax

The vast majority of academic material that has been written in an attempt to explain the charitable purposes exemption from Income Tax emanates from North America in the mid-Twentieth Century. This is clearly seen in an excellent text, which was published in 2002, entitled *Property-Tax Exemption for Charities*.¹⁶ Within this text is a comprehensive scholarly work by Stephen Diamond which contains “a brief treatment of the history of the issue of exemptions from the property tax in Nineteenth Century America, a history that largely shaped the debate for the draftsmen of the Federal Income Tax in the [Twentieth Century].”¹⁷ Diamond draws on a mix of case law, professional, and academic works and other commentaries in his short but comprehensive history of the property tax exemption in America. Diamond’s work, which provides an excellent overview of the developing debate

¹² Gustafsson, above n 9, 595.

¹³ Gustafsson, above n 9, 596 citing H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1938) reprinted in 1939-1 (Part 2) C.B. 728, 742.

¹⁴ Gustafsson, above n 9, 596.

¹⁵ *Pemsel*, above n 6, 583.

¹⁶ Evelyn Brody (ed), *Property-Tax Exemption for Charities* (2002).

¹⁷ Stephen Diamond, ‘Efficiency and Benevolence *Philanthropic Tax Exemptions in 19th Century America*’ in Brody, above n 16, 115, 117.

about tax exemptions, contains a list of 58 references split 50:50 between the Nineteenth and Twentieth Centuries, with only four resources post-World War II.

Brody's chapter in the same text, 'Legal Theories of Tax Exemption,' provides yet another excellent resource from which to study the concept of exempting charities from taxation.¹⁸ Brody's work also provides another important perspective in that it demonstrates that articles on the charity exemption largely have a legal bias, rather than a fiscal or social perspective. The earliest North American work that I have found, although it is clear from Diamond's work that there are others, was an article published in *The American Law Register* of 1898, entitled 'Is sectarianism a bar to exemption from taxation as a "purely public charity?"'¹⁹

However, Meredith does not make any reference to academic works on the subject and instead bases his arguments on charity case law. In 1916, Underwood published a paper entitled 'Exemptions as a principle of social justice.'²⁰ Underwood's discussion focussed primarily on personal exemptions, and also drew heavily on case law with few references to other sources. The April 1923 issue of the *Harvard Law Review* contained a detailed note on the exemption of charitable property from taxation and, once again, the unnamed author drew his or her arguments from case law.²¹

Case law continued to dominate articles written in North America on the charitable purposes tax exemption. As an example, the paper by Goddard and Spencer, published in *The University of Florida Law Review* of 1966-67, entitled 'The "Public Purpose" and "Charitable" Tax Exemption in Florida: A Judicial Morass,' draws not unexpectedly almost entirely on case law.²² By way of example, other legal publications containing scholarly work on the exemption of charities from taxation that I identified during my research are to be found in: *Harvard Law Review* (1970);²³ *Law and Contemporary Problems* (1975);²⁴ *The*

¹⁸ Evelyn Brody, 'Legal Theories of Tax Exemption,' in Brody, above n 16, 145-172.

¹⁹ William M. Meredith, 'Is Sectarianism a Bar to Exemption from Taxation as a "Purely Public Charity?"' (1898) *The American Law Register* (1898-1907) 593-607.

²⁰ J.H. Underwood, 'Exemptions as a Principle of Social Justice' (1916) 22(1) *The American Journal of Sociology* 53-79.

²¹ [Anonymous], Notes, 'Exemption from Taxation of Property of Charitable Institutions' (1923) 36(6) *Harvard Law Review* 733-737.

²² William D. Goddard and John C. Spencer, 'The "Public Purpose" and "Charitable" Tax Exemption in Florida: A Judicial Morass,' (1966-67) 19 *University of Florida Law Review* 330-359.

²³ Stanley S. Surrey, 'Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures' (1970) 83(4) *Harvard Law Review* 705-738.

²⁴ Kenneth Liles and Cynthia Blum, 'Development of the Federal Tax Treatment of Charities' (1975) 30(4) *Law and Contemporary Problems* 6-56.

Yale Law Journal (1976);²⁵ *Wisconsin Law Review* (1996);²⁶ and *Stetson Law Review* (1998-99).²⁷

In a special issue of the *Harvard Law Review* in 1992 (hereafter *HLR* Developments), the unidentified author or authors provided an comprehensive summation of the theory and practice of the charity tax exemption at that time.²⁸ Arguing that “[c]ommentators have offered a number of theoretical frameworks to explain the tax exemption for nonprofits [of which] none ... satisfactorily explain the tax exemption system (emphasis added),”²⁹ the author/s identified two rationale for the tax exemption: the “Conventional Rationale,” and “Academic Theories,”³⁰ which Dal Pont drew upon in 2000 to explain the contemporary justification for “exempting charities from taxation.”³¹

The following is a thumb-nail sketch of the key papers that have originated out of North America. The purpose of including them in this Thesis being to indicate the complexity of the issue of exempt organizations with charitable purposes in that country, in contrast to Great Britain which has steadfastly adhered to the *Pemsel* concept, thereby somewhat simplifying the matter.

Traditional Theory

Subsidy Theory³²

Subsidy Theory is arguably the most commonly understood rationale for the charitable purposes exemption, as can be seen from a North American case from 1927, in which the court said that:

[e]xemptions from taxation are made, not to favour the individual owners of property, but in the advancement of the interest of the whole people. The grant of an exemption from taxation rests upon the theory *that such exemption will benefit the body of the people, and*

²⁵ Boris I. Bittker and George K. Rahdert, ‘The Exemption of Nonprofit Organizations from Federal Income Taxation’ (1975-76) 85(3) *The Yale Law Journal* 299-358.

²⁶ Nancy J. Knauer, ‘How Charitable Organizations Influence Federal Tax Policy: “Rent-seeking” Charities or Virtuous Politicians?’ (1996) *Wisconsin Law Review* 971-1074.

²⁷ Rob Atkinson, ‘Theories of the Federal Income Tax Exemption for Charities: Thesis, AntiThesis, and SynThesis’ (1997-98) 27 *Stetson Law Review* 395-431.

²⁸ Harvard Law Review (ed), ‘Developments in the Law – Non-profit Corporations’ (1992) 105 *Harvard Law Review* 1579-1699 (*HLR* Developments).

²⁹ *HLR* Developments, above n 28, 1620.

³⁰ *HLR* Developments, above n 28, 1620.

³¹ Gino Dal Pont, *Charity Law in Australia and New Zealand* (2000) 446.

³² *HLR* Developments, above n 28, 1620.

not upon any idea of lessening the burdens of the individual owners of property. (Emphasis added.)³³

Surrey's comprehensive paper of 1970, which Bittker described as "the most systematic presentation of the 'Subsidy' Theory,"³⁴ discussed "the question of whether tax incentives are as useful or efficient an implement of social policy as direct government expenditures, such as grants, loans, interest subsidies, and guarantees of loans."³⁵ While Surrey's paper does not specifically discuss charities as organizations exempt from Income Tax, it is clear that Surrey views the exemption as a tax expenditure, a term which:

has been used to describe those special provisions of the Federal Income Tax system which represent government expenditures made through that system to achieve various social and economic objectives. These special provisions provide deductions, credits, exclusions, exemptions, deferrals, and preferential rates, and serve ends similar in nature to those served by direct government expenditures or loan programs.³⁶

The intent of Congress in providing tax incentives was "expressly ... to induce action which the Congress considered in the national interest [such as] the charitable deduction [which] was intended to foster philanthropy."³⁷ While Surrey does not specifically discuss the exempt organizations' exemption from Income Tax, the concepts that he describes are easily transferable to that part of the North American economy.

HLR Developments maintains that while "[t]he Subsidy Theory is the traditional rationale for the tax exemption, despite its general acceptance the subsidy rationale is an incomplete explanation for tax exemption."³⁸ Why this is so, it is explained, is because "it remains unclear why a subsidy should be granted through the tax system rather than through direct subsidies or government provision of the goods or services in question."³⁹

³³ *Columbus v Muscogee Manufacturing Co* 140 S.E. 860 (Ga. 1927) cited in Newman F. Baker, 'Judicial Interpretation of Tax Exemption Statutes' (1928) 7 *Texas Law Review* 385, 392.

³⁴ Boris I. Bittker, 'Income Tax Deductions, Credits, and Subsidies for Personal Expenditures' (1973) 16(2) *The Journal of Law and Economics* 193, 194.

³⁵ Surrey, above n 23, 705.

³⁶ Surrey, above n 23, 706.

³⁷ Surrey, above n 23, 711.

³⁸ *HLR Developments*, above n 28, 1620.

³⁹ *HLR Developments*, above n 28, 1620.

Other Theories

HLR Developments also argued that “[a]lthough the subsidy theory comports with common sense, it is an imprecise and inadequate tool for analyzing tax exemption.”⁴⁰ To address that issue “[a] number of commentators have sought to develop a more rigorous theory to justify tax exemption and to prescribe its proper scope.”⁴¹ The key theories which have originated from North America are Income Measurement Theory, Capital Constraints Theory, and Donative Theory.

Income Measurement Theory

In 1976 Bittker and Rahdert “offered one of the first academic attempts to provide a more coherent explanation of the Income Tax exemption,”⁴² by proposing that the tax exemption is said to be necessary “because there is no practical way to measure [the] net income [of exempt organizations].”⁴³ Notwithstanding the tax exemptions having been provided, first in the Revenue Act of 1894,⁴⁴ then in the Corporation Income Tax Act of 1909,⁴⁵ and the Revenue Act of 1913,⁴⁶ Bittker and Rahdert noted that:

[n]either upon their initial enactment nor during the ensuing decades have [the] exemptions elicited more than cursory legislative explanation, save for matters of technical detail. Commentators have been almost equally silent. These decades of benign neglect may have reflected a conviction that the wisdom of tax exemption was self-evident, that the basic policy was politically invulnerable to change, or that taxation in this area would bring in little revenue.⁴⁷

Bittker and Rahdert were “[not surprised] that the early legislative history of the tax exemption reveals no systematic analysis,” as the focus of Congress “was (indeed, still is), on profitmaking [entities] ... [and not on] non-profit groups which could be, at most, marginal targets for the tax collector.”⁴⁸ This issue, and the attempts by Congress “at different times and in different contexts .. [to rest] Income Tax exemption on a number of distinct rationales”

⁴⁰ *HLR* Developments, above n 28, 1621.

⁴¹ *HLR* Developments, above n 28, 1621.

⁴² Bittker and Rahdert, above n 25, as cited by *HLR* Developments, above n 28, 1621.

⁴³ *HLR* Developments, above n 28, 1621.

⁴⁴ *Revenue Act* [27 August 1894] Ch. 349, § 32, 28 Stat. 556.

⁴⁵ [9 August 1909] ch. 6 § 38, 36 Stat. 112.

⁴⁶ [3 October 1913] ch. 16 § 2(G) 38 Stat. 172.

⁴⁷ Bittker and Rahdert, above n 25, 301. The North American thinking concerning the tax exemption differs from that of Great Britain, in that tax exempt status is enjoyed by: charitable, scientific, social welfare, churches and other religious organizations; educational institutions; and political parties. Bittker and Rahdert, above n 25, 305.

⁴⁸ Bittker and Rahdert, above n 25, 304.

has also been neglected by academics, being a subject “deserving more attention and respect than it has received from tax scholars.”⁴⁹

One of the reasons for the tax exemption that Congress accepted was “[the] lack of fit between the concept of ‘income’ and the objectives of the nonprofit organizations.”⁵⁰ Their opinion was that such a supposition “is sounder both in theory and as a basis for legislative action than the competing view that statutory exemptions for nonprofit organizations constitute loopholes in a ‘normal’ tax structure or special privileges requiring affirmative action.”⁵¹ Bittker and Rahdert concluded that:

[t]he exemption of nonprofit organizations from Federal income taxation is neither a special privilege nor a hidden subsidy. Rather, it reflects the application of established principles of income taxation to organizations which, unlike the typical business corporation, do not seek profit.⁵²

The Income Measurement Theory was challenged by Hansmann who, in response to Bittker and Rahdert, proposed the Capital Constraints Theory.

Capital Constraints Theory

In 1981 Hansmann argued that:

[a]lthough most types of [North American] nonprofit corporations have been exempted from the Federal corporate Income Tax since that tax was first adopted [in 1894 then re-enacted in 1909] *we continue to lack a clear rationale for the exemption.* (Emphasis added.)⁵³

The lack of such a rationale may have been acceptable while the sector was relatively small but, by 1981 the sector in North America represented “a substantial and growing share of the national economy, accounting for roughly 3% of GNP, compared to just over 1% fifty years previously.”⁵⁴ While attempts had been made to rationalize the exemption, of which that

⁴⁹ Bittker and Rahdert, above n 25, 304.

⁵⁰ Bittker and Rahdert, above n 25, 304.

⁵¹ Bittker and Rahdert, above n 25, 304.

⁵² Bittker and Rahdert, above n 25, 357.

⁵³ H. Hansmann, ‘The Rationale for Exempting Nonprofit Organisations from Corporate Income Taxation’ (1981) 91 *Yale Law Journal* 54, 54.

⁵⁴ Hansmann, above n 53, 54.

proposed by Bittker and Rahdert in 1976 was “[t]he most comprehensive and thoughtful,” none of the theories proposed to date, according to Hansmann, were “ultimately satisfying.”⁵⁵

Being dissatisfied with existing theories, Hansmann proceeded “to offer a novel, and more satisfying, justification for the exemption,” by arguing “that the best justification for the exemption is that it helps to compensate [exempt organizations] for the constraints on capital formation that nonprofits commonly face.”⁵⁶

However, *HLR Developments* pointed out that Hansmann’s theory has, in turn, also been criticised,⁵⁷ on a number of grounds: “Hansmann’s theory ignores concepts of charity and philanthropy that are the intuitive bases for the exemption;”⁵⁸ “Hansmann’s theory lacks historical consistency; [and] [Hansmann] offers no evidence of congressional intent that tax exemption should serve as a subsidy to capital formation.”⁵⁹ As well, “like the income measurement theory, Hansmann’s theory fails to address the property tax exemption.”⁶⁰

Donative Theory

Donative Theory, propounded by Hall and Colombo in 1991, “offered a refined theory that builds on the works” of Bittker and Rahdert, and Hansmann.⁶¹ Hall and Colombo argue that “the primary rationale for the charitable exemption is to subsidise those organisations capable of attracting a substantial level of donative support from the public.”⁶² However, in 1992 the author/s of *HLR Developments* claims that the Donative Theory also has weaknesses, and that all the theories discussed to date, being methods to determine the Income Tax-exempt status of charities, “are unsatisfactory.”⁶³ In their conclusion to the discussion on tax exemption, the author/s of *HLR Developments* made the claim that:

[t]he tax exemption for non profits raises profound questions of public policy. Because *exemption is the equivalent of a subsidy*, it is vital to determine to which endeavours

⁵⁵ Hansmann, above n 53, 55.

⁵⁶ Hansmann, above n 53, 55.

⁵⁷ *HLR Developments*, above n 28, 1623.

⁵⁸ M.A. Hall and J.D. Colombo, ‘The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption’ (1991) 66 *Washington Law Review* 307, 389.

⁵⁹ Hall and Colombo, above n 58, 388-89.

⁶⁰ Hall and Colombo, above n 58, 388.

⁶¹ *HLR Developments*, above n 28, 1623.

⁶² M.A. Hall and J.D. Colombo, ‘The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption’ (1991) 66 *Washington Law Review* 307 at 390; M.A. Hall and J.D. Colombo, ‘The Donative Theory of the Charitable Tax Exemption’ (1991) 52 *Ohio St. L. J.* 1379.

⁶³ *HLR Developments*, above n 28, 1625.

limited government resources should be allocated. Abstract theories that attempt to distinguish those organizations that deserve subsidy are bound to prove unsatisfactory. Focussing on change at the local level should lead to a better understanding of what activities the public believes should be favoured. For if the distributional preferences expressed in the tax system are to be legitimated, they must be tested at the most responsive level of government. (Emphasis added.)⁶⁴

The 1991 paper by Hall and Colombo on the charitable status of nonprofit hospitals contains a 22-page exposition under the heading ‘The Donative Theory of the Charitable Tax Exemption,’ on which they expound in a comprehensive, 98-page paper, which was also published that year, under the same title.⁶⁵ Tellingly, Hall and Colombo begin their paper with the statement that “[i]t is extraordinary that no generally accepted rationale exists for the multi-billion dollar exemption from income and property taxes that is universally conferred on ‘charitable’ organizations.”⁶⁶ In a lengthy footnote to that statement, Hall and Colombo sketch the history of the exemption, as well as noting that “[t]he universal character of the charitable exemption extends internationally ... both eastern and western.”⁶⁷ Hall and Colombo also note that “[d]ue primarily to the vast array of activities to which the exemption has been applied, it has defied all past attempts to formulate a synthesizing concept of charitable.”⁶⁸ But they also explain, in a second footnote, that “the most frequent explanation for the exemption is that the government should not tax entities that relieve it from burdens it would otherwise have to bear itself.”⁶⁹ Hall and Colombo immediately demonstrate the complexity of the issue, as Subsidy Theory, which is what they have described:

is under-inclusive since the charitable exemption covers many activities [in North America] ... that the government has no obligation to undertake The most favoured alternative theory is that the exemption is used to support activities that provide a benefit to the community. ... *However, [the public benefit theory], standing alone, over-inclusively sets no subject matter limits whatsoever since any social or economic activity potentially benefits the community.* (Emphasis added.)⁷⁰

Through Donative Theory, Hall and Colombo were attempting “to place the [charitable purposes] exemption on firmer theoretical footing [by considering] as charities only those

⁶⁴ HLR Developments, above n 28, 1633.

⁶⁵ Mark A. Hall and John D. Colombo, ‘The Donative Theory of the Charitable Tax Exemption’ (1991) 52 *Ohio State Law Journal* 1379.

⁶⁶ Hall and Colombo, above n 65, 1381.

⁶⁷ Hall and Colombo, above n 65, 1381, fn1.

⁶⁸ Hall and Colombo, above n 65, 1381.

⁶⁹ Hall and Colombo, above n 65, 1381, fn2.

⁷⁰ Hall and Colombo, above n 65, 1381, fn3.

institutions that are capable of attracting a substantial level of donative support from the public.”⁷¹ Hall and Colombo argue, in some detail, that “a theory of the charitable tax exemption” should be measured against four criteria “that other exemption [theories] fail [that is]: deservedness; proportionality; universality; and historical consistency.”⁷² The inclusion of historical consistency as a criteria is particularly interesting, for that was given as a reason for the charitable purposes exemption by the deputation which attended on Gladstone in 1863 when he was attempting to remove the exemption; the deputation declared that “[t]he origin of the exemption of charity property from Income Tax is accordingly contemporaneous with the origin of the tax itself.”⁷³ In the opinion of Hall and Colombo, “[b]ecause the concept of charity explicitly refers to over 400 hundred years of legal precedent, it would constitute an abandonment, not an explanation, of the charitable exemption to construct a theory that is oblivious to this history.”⁷⁴

Other contributors to the Literature

A number of other North American academics have also written on this subject over the years, such as: Stone who, in 1968, stated that “in regulating the conduct of the exempt sector and in its provisions for tax benefits, the purpose of government should be to maintain a maximum of freedom of action and the continued healthy growth and survival of the sector.”⁷⁵ Other notable contributors are: Surrey, whose paper in 1970 addressed Subsidy Theory;⁷⁶ Knauer (1996);⁷⁷ Atkinson (1997);⁷⁸ Brody (1998);⁷⁹ Crimm (1998);⁸⁰ Brennen (2002);⁸¹ and Colombo (2005) who argued that “the ‘relief of government burden’ and the

⁷¹ Hall and Colombo, above n 65, 1383.

⁷² Hall and Colombo, above n 65, 1384 - 1388.

⁷³ ‘Extension of Income-tax to Charities’, *The Times* (London), 4 May 1863, 5.

⁷⁴ Hall and Colombo, above n 65, 1387.

⁷⁵ L.M. Stone, *Federal Tax Support of Charities and Other Exempt Organizations, The Need for a National Policy*, (1968) University of Southern California [Law Center] Tax Institute [Major Tax Planning] 27.

⁷⁶ Stanley S. Surrey, ‘Tax Incentives as a device for implementing Government policy: A comparison with direct government expenditures’ (1970) 83(4) *Harvard Law Review* 705.

⁷⁷ Nancy J. Knauer, ‘How Charitable Organizations Influence Federal Tax Policy: “Rent-seeking” Charities or Virtuous Politicians?’ (1996) *Wisconsin Law Review* 971.

⁷⁸ Rob Atkinson, ‘Theories of the Federal Income Tax Exemption for Charities: Thesis, AntiThesis, and Syntheses’ (1997-98) 27 *Stetson Law Review* 395.

⁷⁹ E. Brody, ‘Of Sovereignty and Subsidy: Conceptualizing the Charity Tax Exemption’ (1998) 23(4) *The Journal of Corporation Law* 589.

⁸⁰ Nina J. Crimm, ‘An Explanation of the Federal Income Tax Exemption for Charitable Organizations: A Theory of Risk Compensation’ (1998) 50 *Florida Law Review* 419.

⁸¹ David A. Brennen, ‘Charities and the Constitution: Evaluating the Role of Constitutional Principles in Determining the Scope of Tax Law’s Public Policy Limitation for Charities’ (2002) 5(9) *Florida Tax Review* 779.

Bittker/Rahdert tax-base theory ... have been fairly convincingly discredited as an effective explanation for exemption.’⁸²

The focus in the literature now appears to be moving towards that of non-profit hospitals and the tax exemption, such as: Mancino (1987);⁸³ Hyman (1990);⁸⁴ Sanders (1995) (who provides the evidence of why this is so);⁸⁵ Crimm (1995);⁸⁶ Rubinstein (1997);⁸⁷ and Aitsebaomo (2004).⁸⁸ What is evident, however, is that no consensus of opinion has yet been achieved in North America on the rationale for the nonprofit exemption from Income Tax while in other common law countries the *Pemsel* approach reigns supreme. A key research project that has flowed from this Thesis is that of fee-charging charity hospitals and the concept of public benefit in New Zealand. Another study I intend to pursue is that of the capital charge levied on New Zealand’s District Health Boards and the tax equity of this concept in relation to Income Tax exempt charity hospitals.

It is apparent that the development of the charitable purposes exemption in North America has taken quite a different path from that in the United Kingdom.⁸⁹ This suggests that a comparative study of this issue in North America and the United Kingdom would be a viable research subject for a researcher interested in comparative law and charity issues.

⁸² John D. Colombo, ‘The Role of Access in Charitable Tax Exemption’ (2005) 82 *Washington University Law Quarterly* 343.

⁸³ Douglas M. Mancino, ‘Income Tax Exemption of the Contemporary Nonprofit Hospital’ (1987-88) 32 *St. Louis University Law Journal* 1015.

⁸⁴ David A. Hyman, ‘The Conundrum of Charitability: Reassessing Tax Exemption for Hospitals’ (1990) 16 *American Journal of Law and Medicine* 327.

⁸⁵ Susan M. Sanders, ‘The “Common Sense” of the Nonprofit Hospital Tax Exemption: A Policy Analysis’ (1995) 14(3) *Journal of Policy Analysis and Management* 446. Sanders suggests that “[a]lthough rarely discussed prior to the 1985 Utah Supreme Court ruling against Intermountain Healthcare Inc., the question of whether to grant tax exemptions to nonprofit hospitals is currently being debated by Federal, state, and local legislators, and by the courts.” Sanders, *ibid* 446. No such debate has occurred in New Zealand, in spite of my efforts to raise the issue with the Government, which levies a capital charge on New Zealand’s District Health Boards. The cost to the Canterbury District Health Board for the year ended 30 June 2008 was NZD\$27 million, yet a local charity hospital, St George’s Hospital, which is exempt from Income Tax, makes significant surpluses each year, while charging market rates for its services and paying its Directors fees equivalent to those paid to a publicly listed private hospital. From a fiscal perspective, an uneven playing field exists.

⁸⁶ Nina J. Crimm, ‘Evolutionary Forces: Changes on For-profit and Not-for-profit Healthcare Delivery Structures; A Regeneration of Tax Exemption Standards’ (1995) 37(1) *Boston College Law Review* 1.

⁸⁷ Helena G. Rubenstein, ‘Nonprofit Hospitals and the Federal Tax Exemption: A Fresh Prescription’ (1997) 7(7) *Health Matrix* 381.

⁸⁸ Gabriel O. Aitsebaomo, ‘The Nonprofit Hospital: A Call for New National Guidance requiring Minimum Annual Charity care to Qualify for Federal Tax Exemption’ (2002) 26(2) *Campbell Law Review* 75.

⁸⁹ See Evelyn Brody (ed), *Property-Tax Exemption for Charities* (2002) for an excellent discussion on the subject.

The majority of resources which I have found that attempt to explain the rationale for the exemption of charities from Income Tax are based on the North American concept of exempt organisations, of which charities are but a part. Notably, while I have found a significant number of papers from North American sources, I have not found anything comparable written in England, where the focus has remained solely on the legal view of charitable purposes to justify the exemption. Examples of such works are: ““Charity” – One Definition for All Tax Purposes in the New Millennium?”;⁹⁰ *Foundations of Charity*;⁹¹ and *Charity Law and Social Inclusion: An International Study*.⁹²

Eighteenth and Nineteenth Centuries rationales for the charitable purposes exemption from Income Tax

The fiscal policy of exempting charitable institutions from the Assessed Taxes Act 1798 and the Duties upon Income Act 1799 were necessary due to four factors. First, as England had been at war with France since 1793, the country’s finances were under a high degree of financial stress, and the welfare state as we know it in the Twenty-first Century was non-existent. Charitable institutions, which undertook education, healthcare and other charitable activities, were an essential part of society and to tax them would have been tantamount to levying a tax on the poor, as well as potentially inhibiting their policing function contrary to public, if not fiscal, policy.

Second, with the country faced with a succession of bad harvests since the 1750’s,⁹³ and the war-time disruption of trade,⁹⁴ as well as the loss of imported corn “which had at last become necessary to steady food prices in our thickly populated island,”⁹⁵ the ability to raise rates under the Poor Laws was placing stress on the ability of the counties and parishes in dealing with poverty.⁹⁶ By taxing the income of charitable institutions, the government would have increased the financial stress on those organisations, reducing their ability to cope with the social problems of the day.

⁹⁰ Jean Warburton, ““Charity” – One Definition for All Tax Purposes in the New Millenium?” (2000) 3 *British Tax Review* 144.

⁹¹ Charles Mitchell and Susan R. Moody (eds), *Foundations of Charity* (2000).

⁹² Kerry O’Halloran, *Charity Law and Social Inclusion: An International Study* (2007).

⁹³ A.W. Coats, ‘Economic Thought and Poor Law Policy in the Eighteenth Century’ (1960) 13(1) *The Economic History Review* 39, 50.

⁹⁴ David C. Douglas (ed), *English Historical Documents 1783-1832* (1971) Vol XI 404.

⁹⁵ G.M. Trevelyan, *English Social History* (first published 1944; 1978 ed) 410.

⁹⁶ Douglas, above n 94, 405.

Third, the Poor Laws themselves were in dire need of review. Pitt could ill-afford to tax the country's charities at a time when the need for voluntary activity was potentially at its greatest as a policing function. The work of the charities was an essential adjunct to that undertaken under the Poor Laws, especially given Pitt's failure in 1796-7 to amend the Poor Laws.⁹⁷ This was in spite of the fact that Sir Frederic Morton Eden had compiled comprehensive data on the dire state of the poor throughout England, of which Pitt may well have had knowledge.⁹⁸ Eden explains, in the preface to Volume 1, that:

[t]he difficulties, which the labouring classes experienced, from the high price of grain, and of provisions in general, as well as of clothing and fuel, during the years 1794 and 1795, induced me, from motives both of benevolence and personal curiosity, to investigate their condition in various parts of the kingdom.⁹⁹

Fourth, the influence brought to bear on Pitt by the Evangelicals, notably Hannah More and William Wilberforce. Their power and authority was not to be ignored, and I suggest that Pitt would have paid careful attention to any concerns they may have had regarding the effect of his fiscal policies on charitable institutions. As I have been able to identify a link between the Evangelicals and Anthony Highmore through their involvement with the African Association,¹⁰⁰ given Highmore's rationale for exempting charitable institutions from all forms of taxation as described in his *Mortmain*,¹⁰¹ it stands to reason that Highmore may have also played an influential role, either directly or indirectly, in any arguments put to Pitt by the Evangelicals against the taxation of charitable institutions.

“A natural enough decision”

In a previous chapter¹⁰² I referred to Owen and his assertion that:

[t]he exemption of British charities from the Income Tax dated from its inception. *We can only guess* as to the motives that inspired Pitt to include in his Income Tax Act 1799 a clause exempting charitable organizations, *but it was a natural enough decision.* (Emphasis added.)¹⁰³

⁹⁷ See John Ehrman, *The Younger Pitt: The Reluctant Transition* (1986) 472-476.

⁹⁸ Sir Frederic Morton Eden, *The State of the Poor* (1797) vols I - III.

⁹⁹ Sir Frederic Morton Eden, *The State of the Poor* (1797) vol I i

¹⁰⁰ See Chapter 9 of this Thesis.

¹⁰¹ See Chapter 3 of this Thesis.

¹⁰² See Chapter 2 of this Thesis.

¹⁰³ David E. Owen, *English Philanthropy 1660-1960* (1965) 330.

Owen then explained, by giving “a single example,” why the charitable purposes exemption was “a natural enough decision.” The example that Owen chose was the “grammar schools and free schools [which] were carrying the entire burden of popular education *and thus performed a public function of incontestable value.* (Emphasis added.)”¹⁰⁴ Therefore, Owen argued, “it would have been preposterous to tax the income of such quasi-public agencies.”¹⁰⁵

I do not disagree with Owen, as the issue was much wider than that of taxing, or exempting from tax, quasi-public entities. In order to understand the charitable purposes exemption from Income Tax in Pitt’s Duties upon Income Act of 1799,¹⁰⁶ one needs to appreciate the social, economic, political, and religious environment of late Eighteenth Century Britain, and how that changed during the course of the Nineteenth Century. For, until the arrival of the formalised welfare state, charitable and philanthropic activity played a vital role in society to an extent that has not since been seen.

A recapitulation of the lone voice in the wilderness: Anthony Highmore

I have been able to find only one lone voice who spoke out against the taxation of charities in the late Eighteenth and early Nineteenth centuries, that of Anthony Highmore, a London lawyer.¹⁰⁷ In his *Pietas Londinensis*, which was published in 1810, Highmore made two comments about the exemption of charities from taxation.¹⁰⁸ In the chapter on Guy’s Hospital, Highmore wrote that:

I have endeavoured to shew [sic], in another place, ample grounds for a general Act of exemption of all charities from [the tax on servants] *and other taxes*; and I may add, that it was not for want of time and trouble that such a measure was not effected. (Emphasis added.)¹⁰⁹

¹⁰⁴ Owen, above n 103, 330.

¹⁰⁵ Owen, above n 103, 330. Owen might also have used the word “quango,” a term coined in America to mean “quasi autonomous non governmental organisation.” Quango was “[a] term invented in the USA at the end of the 1960’s as a half-joke – quasi-non-governmental organisations.” Brian W. Hogwood, ‘The “growth” of quangos: evidence and explanations’ 48(2) *Parliamentary Affairs* (1995) 207, 207 citing A. Barker (ed), *Quangos in Britain* (1992) [page not cited].

¹⁰⁶ *An Act ...*, above n 8.

¹⁰⁷ See also Chapter 4 of this Thesis.

¹⁰⁸ Anthony Highmore, *Pietas Londinensis: The History, Design, and Present State of the Public Charities in and near London* (1810).

¹⁰⁹ Anthony Highmore, *A Succinct View of the History of Mortmain* (1809) 141. The 1809 edition was a fuller version of Highmore’s first edition which he published in 1787.

The other place to which Highmore referred was his *Mortmain* of 1809.¹¹⁰ Highmore also referred to his attempts to encourage the government to exempt charities from taxation in his chapter on the Small-pox and Inoculation Hospitals in *Pietas Londinensis*, when he wrote that:

[i]n the year 1786, I submitted to this and other charities, and finally to some members of the administration, *a plan for the total exemption of all institutions of charity from taxes*, by one general Act; but, notwithstanding many interviews, and a tolerable concurrence in the principle, *the reduction of the revenue was an obstacle too powerful to be subdued*. (Emphasis added.)¹¹¹

Thus Highmore provided a reason why charitable institutions should not be exempt from taxation, that is, the detrimental effect of the exemption on the amount of taxes collected by the revenue. However, Highmore's *Mortmain* provides a more detailed insight into Highmore's rationale, as the third chapter is entitled 'Of taxes, and exemption from them,'¹¹² in which Highmore argued that hospitals require "*a large capital ... before even a moderate income can be secured*. (Emphasis added.)"¹¹³ Therefore, according to Highmore, "it should seem extraordinary that any taxes should ever have been levied upon charities."¹¹⁴ Highmore was arguing the case for exempting charitable institutions from taxation that was not to be proposed for another two hundred years, by Hansmann in his 1981 paper, 'The Rationale for Exempting Non-profit Organisations from Corporate Income Taxation,' that is, the Capital Constraints Theory.¹¹⁵

Highmore also argued the case for the tax of charitable institutions to be borne by the community on the grounds that "the burden ... on each individual in any parish or district is so minute that if it were not pointed out to him [sic], he would never discover it in his annual expenditure."¹¹⁶ Highmore's argument in this case was for a form of progressive tax, with the burden being borne by those presumably able to bear it, in addition to the Poor Rates. On the other hand, argued Highmore, if charities were taxed, then "the whole share of every tax falling upon any charity very considerably reduces its revenue, and abridges and restrains the

¹¹⁰ Highmore, above n 109.

¹¹¹ Highmore, above n 108, 291.

¹¹² Highmore, above n 109, 478.

¹¹³ Highmore, above n 109, 478.

¹¹⁴ Highmore, above n 109, 478.

¹¹⁵ H. Hansmann, 'The Rationale for Exempting Non-profit Organisations from Corporate Income Taxation' (1981) 91(54) *Yale Law Journal* 69-75. See also Chapter 3 of this Thesis.

¹¹⁶ Highmore, above n 109, 479.

benevolent designs of its institutions.”¹¹⁷ While tolls were exempted from taxation “on the principle of the revenue being received and distributed for public purposes,” a point which Highmore also made, he did not argue this point with respect to the revenues of charitable institutions.¹¹⁸ Finally, Highmore in effect referred to what is today known as Subsidy Theory,¹¹⁹ in concluding his text with the words:

the legislature hath wisely borne its testimony to such salutary establishments [as the ward and parochial schools, Christ’s Hospital and many other foundations under the administration of companies, parish overseers and others] by relieving them from any contribution to the public revenue.¹²⁰

In his 1787 edition of *Mortmain*, Highmore had declared that “hospitals and the sites thereof are exempted from Land Tax [there being no Income Tax at that time] and several other public contributions, *from the humane principle of not reducing their charitable fund.*”¹²¹ This principle which Highmore proposed has not been developed in common law countries in the Twentieth Century in the way that the Subsidy and Capital Constraints theories have in North America.

Mr Fuller’s contribution – 1843 to 1863

In Chapter 7 of this Thesis I discussed the manner in which Mr Fuller, a Special Commissioner, made decisions regarding the claims by charitable institutions for refunds of Income Tax. The problem for Mr Fuller was the lack of a definition of charitable purposes with respect to Income Tax. However, an extensive body of case law, which had developed over many centuries, gave Mr Fuller guidance as to what were charitable purposes in making his decisions. We have seen how, in 1863, the Law Lords objected to this practice, and recommended that Parliament develop a definition rather than leave the matter in the hands of a public servant. Gladstone had also noted this when, in his opening address on the Budget on 16 April 1863, he said that:

it being hardly possible to construe the law, it is obliged to be administered roughly and hand-over-head, as best can be done. The opinions of law officers come to throw great doubt upon any exemption. ... *An affinity of questions of the most perplexed kind arise,*

¹¹⁷ Highmore, above n 109, 479.

¹¹⁸ Highmore, above n 109, 487.

¹¹⁹ *HLR* Developments, above n 28.

¹²⁰ Highmore, above n 109, 504.

¹²¹ Anthony Highmore, *A Succinct View of the History of Mortmain* (1787) 173.

*and the difficulty in the execution of the law is beyond anything that can be conceived. ... The complexity and minuteness of the claims are indescribable. (Emphasis added.)*¹²²

The problem for Gladstone was identifying whether an activity was charitable or not. Gladstone was referring specifically to those cases:

where a single institution has property in 40 or 50, and sometimes 100 different parishes, and on each of those properties are charged little bequests and little payments, into the investigation of which it is impossible to enter with a view of ascertaining whether they are for the purposes of charity or not.¹²³

In Gladstone's opinion, "upon the sound general ground that all property ought to contribute to those taxes," the charitable purposes exemption should cease to exist "upon the ground of the altered practice of the State, and upon the ground of the difficulty and confusion in administering the law as it at present stands."¹²⁴ Not all charitable activities were to lose the exemption. Those excluded from Gladstone's proposal were "buildings belonging to hospitals, colleges, and charities of various descriptions," such as "the repairs of places of Divine worship ... [and] all income from voluntary subscriptions," the donors having already paid Income Tax.¹²⁵ It was the property of the endowed charities which Gladstone intended would be "taxed at its source."¹²⁶ Unknowingly, Gladstone was describing the concept of Donative Theory.¹²⁷

Mr Fuller, who since 1843, had "the superintendence of the business relating to the claims of charities for exemption," had undertaken that task until he retired at the beginning of 1863.¹²⁸ It was on Mr Fuller's retirement, when his duties were taken over by another Special Commissioner, that the Board decided "to consider more closely the principles on which the exemption has been heretofore allowed."¹²⁹ The key issue for the Board was that there was no definition of charitable purposes in the Income Tax Act and as a consequence Mr Fuller:

¹²² 'The Budget', *The Times* (London), 17 April 1863, 6.

¹²³ 'The Budget', above n 122, 6.

¹²⁴ 'The Budget', above n 122, 6.

¹²⁵ 'The Budget', above n 122, 6.

¹²⁶ 'The Budget', above n 122, 6.

¹²⁷ Hall and Colombo, above n 58.

¹²⁸ British Parliamentary Papers, *Correspondence between the Treasury and the Board of Inland Revenue, in August and September 1863, respecting the exemption from Income Tax of rents and dividends applied to charitable purposes* Paper No. 382 19 June 1865; *The Commissioners of Inland Revenue to the Lords Commissioners of the Treasury* 22 August 1863.

¹²⁹ British Parliamentary Papers, above n 128, 1.

from the outset, ... considered the words to bear the same sense as that in which the Court of Chancery would understand them in a deed or will, that is to say, such purposes as come within the meaning or purview of the Statute of [43 Eliz. 1601 c. 4].¹³⁰

The Lord Commissioners of the Treasury concluded “that the subject is one which should be reserved to be dealt with by the legislature.”¹³¹ Ultimately it was *Pemsel* in 1891,¹³² not the Legislature, which was to resolve the matter.

Income Tax as social policy

By the end of the Nineteenth Century, the Income Tax had evolved, from a temporary war-time measure in 1798, to an instrument of social policy. According to Sabine:

Income Tax had emerged with four most significant characteristics[:] ... an elastic element in the Revenue[;] ... a defence measure[;] ... a means [in 1876] of making up the deficit on ordinary expenditure[;] [a]nd finally, ... *emerging dimly ... as a social instrument.* (Emphasis added.)¹³³

As a social instrument, Income Tax was, by 1905, being used to redistribute wealth between “the various classes of society.”¹³⁴ While the concept of the “contract culture” was yet to emerge, government was increasingly making grants to charitable institutions, as “[t]he old view that philanthropy could cope with most welfare needs, with the state filling in the gaps” was disappearing, with the state playing an ever increasing role.¹³⁵ The Education Act 1870 was one such example.¹³⁶ The difference between the late Nineteenth Century and the middle of that century can be seen when, in 1842, the Lord Lieutenant of Ireland declared that “public grants [to charitable institutions] have a tendency to check private benevolence.”¹³⁷ This remarkable view was supported by the Miscellaneous Estimates Committee of 1848, which reported that “contributions to private charities were quite foreign to the proper

¹³⁰ British Parliamentary Papers, above n 128, 2.

¹³¹ ‘The Budget’, above n 122, 5.

¹³² *Pemsel*, above n 6.

¹³³ B.E.V. Sabine, *A History of Income Tax* (1966) 123.

¹³⁴ Sabine, above n 133, 124. “Perhaps it was just as well [that Queen Victoria and Gladstone had not lived to see that day] for neither would have approved the increasing amount of state socialism permeating [the political parties].” Sabine, *ibid* 126.

¹³⁵ Robert Whelan, *The Corrosion of Charity: From Moral Renewal to Contract Culture* (1996) 81.

¹³⁶ Whelan, above n 135, 25. Once the public realised that the state had accepted responsibility for education, voluntary funding for the voluntary schools began to disappear. Whelan, *ibid* 25.

¹³⁷ Sir S. Morton Peto, *Taxation: Its levy and expenditure* (1866) 221. The charities to which the Lord Lieutenant had referred were “the Fever Hospital, Lying-in Hospital, Lock Hospital, Ophthalmic Hospital, House of Industry, &c.” Peto, *ibid* 221.

application of public funds, *without tending to any public utility*. (Emphasis added.)¹³⁸ The Miscellaneous Estimates Committee had recommended “that a large reduction [in grants to public charities] only can be made by Parliament deciding on some great principle of relief to the public purse from certain charges. ... [A] minute and constant supervision of those that remain [was required].”¹³⁹ That was as true “in 1863, as it was in [1848],” Peto wrote.¹⁴⁰

If government did not intend funding charitable institutions, such as Dublin’s hospitals, the only remaining source of funds was private benevolence. That being the case, the exemption of charitable institutions from Income Tax, given their public utility (in spite of the opinion of the Lord Lieutenant of Ireland), in order to provide additional funding for their work by way of a subsidy, becomes obvious. This is all the more apparent when it is realised that, according to Peto, “we scarcely ever [heard], in Budget speeches or debates upon Finance, *one syllable as to the effect either of the taxes or of their expenditure upon the state of our poorer brethren*. (Emphasis added.)”¹⁴¹ Peto might just as well have added a comment about the importance of the work of charitable institutions in their role as social policy providers. With a population of 20,205,504 in England and Wales, “nearly one-twentieth part of our people are subsisting upon charity! ... [O]ne in twenty amongst us is a pauper!” opined Peto.¹⁴² This, in spite of the fact, declared Peto, that “[f]or many years past our philanthropists, *as well as our police authorities*, have pointed to the state of the dwellings of the poor as a source of vast evil in this country. (Emphasis added.)”¹⁴³

By the end of the Nineteenth Century, evidence suggested that the Income Tax was not going to be abolished, a point noted in 1894 by Sir John Lubbock who stated that “we must recognise [Income Tax] as a permanent portion of our fiscal system.”¹⁴⁴ Thirteen years later, in 1907, uncertainty about the permanence of the Income Tax continued. In the debate in the Budget of 1907, the Chancellor of the Exchequer, Mr Asquith, in responding to an accusation that he had said “that he looks forward to a permanent Income Tax of 1s in the pound,”

¹³⁸ Peto, above n 137, 221.

¹³⁹ Peto, above n 137, 221.

¹⁴⁰ Peto, above n 137, 221.

¹⁴¹ Peto, above n 137, 242.

¹⁴² Peto, above n 137, 242.

¹⁴³ Peto, above n 137, 243.

¹⁴⁴ Sir John Lubbock, ‘The Income Tax in England’ (1895) 158 *North American Review* 150 cited by E.R.A. Seligman, *The Income Tax: A study of the history, theory and practice of Income Taxation at home and abroad* (1914) 179.

replied, “I never said anything of the kind. I said we must regard the Income Tax in my opinion as a permanent part of our fiscal machinery.”¹⁴⁵

The Income Tax, since 1799, although only a temporary feature of government finance at that time,¹⁴⁶ had in effect been a social policy tool through the operation of the charitable purposes exemption from Income Tax. By the end of the Nineteenth Century, as a permanent feature of the fiscal programme each year, the charitable purposes exemption from Income Tax clearly had the sanction of Parliament. The campaign for differentiation was no longer being waged, having been succeeded by a second principle, that of graduation.¹⁴⁷ Graduation was not a new concept, which Gladstone had well known. In 1853 Gladstone condemned graduation on the basis that:

[a]ll persons know that *one of the great dangers by which the Income Tax was beset was the exemptions by which it was accompanied* When Pitt introduced the Income Tax he proposed a variety of graduations ... (but) it is wise to get rid of graduations and simplify distinctions as much as possible. (Emphasis added.)¹⁴⁸

It was not, however, the charitable purposes exemption to which Gladstone had referred, but the exemptions for those on low incomes, with the total exemption limit having been increased, in 1894, to £160.¹⁴⁹

Defining “income” in *Pemsel*¹⁵⁰

What is also noticeable about *Pemsel* was that the focus of the House of Lords was on the concept of charitable purposes with no discussion on what was meant by “income”. This can be easily explained, as that is not what *Pemsel* was concerned with. However, had the subject been discussed, the judiciary may well have realised that the concept of measuring income in charitable institutions was a vexed question, and one that was not to be considered for many decades until Income Measurement Theory emerged in North America.

¹⁴⁵ ‘House of Commons: The Budget’, *The Times* (London), 23 April 1907, 6.

¹⁴⁶ The Assessed Taxes continued to be levied throughout the Nineteenth Century, while the Income Tax Acts had disappeared from the statute books by 1815, only to be reintroduced in 1842.

¹⁴⁷ Sabine, above n 133, 125.

¹⁴⁸ Sabine, above n 133, 125 citing Gladstone, *Hansard* 27 April 1953.

¹⁴⁹ Sabine, above n 133, 128. When Pitt introduced his Duties upon Income in 1799, income below £60 were exempt.

¹⁵⁰ *Pemsel*, above n 6.

In 1880 the subject of a definition of income was of some importance as David Chadwick had written a paper on the topic, in which he stated that “[t]he assessment of the Income and Property Tax is based entirely upon the definition placed on the word *income* [sic].”¹⁵¹ However, Chadwick continued by saying that “the decisions of judges and Special Commissioners are almost as puzzling and various as the interpretation of the Scotch [sic] system of ‘*means and substance*’ [sic].”¹⁵²

The concept of ‘income’ had been discussed in 1852 when John Gellibrand Hubbard published a letter, entitled “How should an Income Tax be levied,” which he addressed to the Chancellor of the Exchequer, Benjamin Disraeli.¹⁵³ In asking the question “[w]hat is income as matter for taxation?”, Hubbard did not address his concerns to the income of charitable institutions.¹⁵⁴ He did, however, write: “Income! *In-come!* [sic] Why, Mr Warburton’s argument runs ‘all income is taxed, and all that *comes in* [sic] is income’.”¹⁵⁵ What is interesting about Warburton’s argument is that this is usually credited to Lord McNaughten in *London County Council v Attorney-General* when he said that “[i]ncome tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else.”¹⁵⁶

Hubbard did discuss an exemption from Income Tax in the context of the income of the clergy from their pew rents or fees, and the reasonableness of allowing a deduction for life insurance premiums before assessing their income.¹⁵⁷ Hubbard also discussed the exemption allowed in 1798 and 1803 of “the dividends on money in our funds belonging to foreigners,” which had “not been revived in the Act of 1842.”¹⁵⁸ But nowhere, in his 52-page letter, did Hubbard discuss the charitable purposes exemption from Income Tax, either to justify or denigrate the fiscal policy.

¹⁵¹ David Chadwick, ‘Definition of the word “income”’ (1880) *Transactions of the National Association for the Promotion of Social Science* 716, 716.

¹⁵² Chadwick, above n 151, 716.

¹⁵³ John Gellibrand Hubbard, “How should an Income Tax be levied?” *Knowsley Pamphlet Collection* (1852).

¹⁵⁴ Hubbard, above n 153, 14.

¹⁵⁵ Hubbard, above n 153, 22.

¹⁵⁶ *The London County Council v Attorney-General* [1901] AC 26, 35.

¹⁵⁷ Hubbard, above n 153, 38.

¹⁵⁸ Hubbard, above n 153, 45.

The frustration of the Crown in that there was no guidance in the Income Tax Act concerning charitable purposes is evident from a comment in *The Times* of 25 March 1890.¹⁵⁹ *The Times* reported that:

[o]n behalf of the Crown it was urged that *it was desirable that their Lordships should lay down the principle that should be a guide in the future* as to what societies were and what were not liable to pay Income Tax upon their incomes. (Emphasis added.)¹⁶⁰

This statement is not to be found in the official report of *Pemsel*.¹⁶¹ Ultimately, this was the outcome of the case as contained in Lord Macnaghten's judgment. However, a rationale for the charitable purposes exemption is to be found in *Pemsel*, when Sir E. Clarke, the Solicitor-General, stated that "the present trusts are for the benefit of foreign missions, *whereas the intention in granting exemptions was to relieve the inhabitants of the United Kingdom.* (Emphasis added.)"¹⁶² What Clarke mean by "relieve" is not clear, as Clarke did not elucidate on the point. However, guidance on that matter is to be found in the Preamble to *The Charitable Uses Act 1601* whereby lands, goods, and stocks of money given for charitable uses were to be applied to the "relief of aged impotent and poor people ... some for or towards relief stock or maintenance of houses of correction ... and others for relief or redemption of prisoners or captives."¹⁶³ From thus usage I suggest that the word "relief" is used as a synonym for "assistance." By granting charitable institutions with an exemption from Income Tax, thereby not draining the funds of those entities through taxation (thus providing additional funds for the assistance of the objects of the charity), the government was in effect subsidising those activities in accordance with Subsidy Theory.

The difficulty of the meaning of the charitable purposes exemption in the Income Tax Act 1842¹⁶⁴ was also discussed by Lord Halsbury, in delivering his judgment on 20 July 1891. Lord Halsbury acknowledged that "[while] it was true that these exemptions have been allowed for a long period," Halsbury did not consider that the approach taken by the Special Commissioners "under the circumstances of this case, *could afford any clue to the true*

¹⁵⁹ 'Law Report, March 24. House of Lords', *The Times* (London), 25 March 1890, 3.

¹⁶⁰ 'Law Report', above n 159.

¹⁶¹ *Pemsel*, above n 6, 531.

¹⁶² *Pemsel*, above n 6, 536.

¹⁶³ Preamble, *The Charitable Uses Act [1601]* 43 Eliz I c. 4.

¹⁶⁴ *Income Tax Act 5 & 6 Vict. c. 35* [22 June 1842].

construction of the statute. (Emphasis added.)”¹⁶⁵ Neither did Lord Halsbury consider, in referring to the Parliamentary Returns of 1863 and 1888,¹⁶⁶ “that the statute receives any exposition from the fact that the practice has been such as has been described.”¹⁶⁷ Lord Halsbury did, however, provide an argument against the charitable purposes exemption from Income Tax when he stated that “every exemption throws an additional burden on the rest of the community.”¹⁶⁸ “[While] it is suggested,” declared Lord Halsbury, “that the reason for an exemption may be that the public nature of the interest is that which may justify the exemption[,] *I cannot find any trace of such a principle in the statute.* (Emphasis added.)”¹⁶⁹

Lord Bramwell also attempted to identify the principle underlying the charitable purposes exemption in the Income Tax Act 1842. In his opinion, “[w]hat was the intention, and why the intention is made in the Act, is of course *very much guesswork.* (Emphasis added.)”¹⁷⁰ However, Lord Bramwell did attempt to provide a justification for the charitable purposes exemption from might be considered a perspective of social policy, in that “to tax the charity is to tax the poor, or take from the poor who would otherwise get the amount of tax.”¹⁷¹ Lord Bramwell agreed with Lord Halsbury “that to exempt any subject of taxation from a tax is to add to the burthen on taxpayers generally.”¹⁷²

Structure of the Thesis

The substantive part of my Thesis began at Chapter 3 with an introduction to Anthony Highmore, a London lawyer, who was actively involved with a number of charities in London as well as being a prolific author. Of Highmore’s publications one in particular, on *Mortmain*,¹⁷³ has made a significant and unexpected contribution to this study. Highmore himself is worthy of further study from the perspective of his contribution, not only to London charities, but also to the legal profession through his many and varied legal publications.

Chapter 4 discussed the Duties upon Income Act of 1799, followed by a discussion at Chapter 5 of the Income Tax Acts following that of 1799. Between 1799 and 1816, the Income Tax

¹⁶⁵ *Pemsel*, above n 6, 546.

¹⁶⁶ See Chapter 7 of this Thesis.

¹⁶⁷ *Pemsel*, above n 6, 548.

¹⁶⁸ *Pemsel*, above n 6, 551.

¹⁶⁹ *Pemsel*, above n 6, 552.

¹⁷⁰ *Pemsel*, above n 6, 566.

¹⁷¹ *Pemsel*, above n 6, 566.

¹⁷² *Pemsel*, above n 6, 566.

¹⁷³ Anthony Highmore, *A Succinct View of the History of Mortmain* (1787) and (1809).

(as a war tax) had a chequered history until finally being extinguished on 5 April 1816, with the exception of outstanding assessments.¹⁷⁴ Income Taxes were not to be seen again until 1842 but, instead of creating a new statute, the Act of 1842 was based almost entirely on the Act of 1806. The clause which provided the charitable purposes exemption from Income Tax, which had been a part of all the earlier Income Tax Acts, was also included in the Income tax Act of 1842, but in a different style while maintaining the original intent of the exemption.

The charitable purposes exemption did not go unchallenged, and the various challenges to this privileged status were discussed, in Chapter 6, particularly the events of 1863 when Gladstone made a dramatic attempt to abolish the privilege. This long-forgotten event, which resulted in the largest ever deputation (at that time) being made to a Prime Minister, provoked an outrage of monumental proportions. It also produced, for the first time in the history of the charitable purposes exemption from Income Tax, specific reasons why such an exemption should exist in the first place, at least from the perspective of the charitable institutions of Victorian England, if not based in fiscal or economic policy.

Chapter 7 reviewed the Parliamentary Returns concerning the taxation of charities, as in 1865 a Return on the Income Tax of charities was filed in the House of Commons, and then again in the Commons in 1888. These returns are of particular interest and place the taxation of charities in a context not since seen. The timing of the Return of 1888 is extremely significant for, at that same time, the issue of charities and taxation was being seriously tested in court, not in England, but in Scotland in *Trustees of the Baird Trustees*.¹⁷⁵ In Chapter 8 I discussed the *Pemsel* case¹⁷⁶ which, in 1891, resolved once and for all the issue of the charitable purposes exemption from Income Tax almost one hundred years after Pitt had introduced the clause, first in the Assessed Taxes Act 1798¹⁷⁷ then the Duties upon Income Act 1799.¹⁷⁸ In Chapter 9 I discuss the nature of charitable activity in Britain during the Eighteenth and Nineteenth centuries, and key persons and events which influenced that activity. Finally, in this chapter I suggest a rationale for the charitable purposes exemption in

¹⁷⁴ *An Act to explain and amend the Acts for granting Duties on profits arising from property, professions, trades and offices, so far as extend to the due assessment and collection of the Duties for past years; for confirming certain Abatements already made of the said Duties, and exempting collectors' Bonds from the Stamp Duties* 56 Geo. III c. 65 [22 June 1816].

¹⁷⁵ *Trustees of the Baird Trust v The Lord Advocate* 15 Sc. Sess. Cas. 4th series 682.

¹⁷⁶ *Pemsel*, above n 6.

¹⁷⁷ *An Act for granting to His Majesty an aid and contribution for the prosecution of the war* [12 January 1798].

¹⁷⁸ *An Act ...*, above n 8.

1799, after which I conclude my discussion, as well as set out the limitations of my study and offer suggestions for further research.

A comment on bibliographic resources

No doubt in common with other historical studies, I discovered little-used historical material of relevance to my study at the University of Canterbury, such as micro-film and microform media, and the Rare Books Collection. New Zealand's Parliamentary Library and National Library in Wellington also contain invaluable resources and I spent many fruitful hours at both institutions, in my seemingly never-ending search for clues to the origins of the charitable purposes exemption from Income Tax. Discovering the now little-used microform of the British Parliamentary Papers, along with Peter Cockton's 1988 publication *Subject Catalogue of the House of Commons Parliamentary papers 1801-1900*, in the Law Library at the University of Canterbury, was an exciting find. The Law librarians were intrigued at my interest in this resource, and I was disappointed to learn that this valuable resource is now rarely used.

While my visit to London was fruitful, the power of the Internet provided me with instant access to resources that only a few years ago would have taken weeks of waiting for library interloans to arrive. The JSTOR and HeinOnline data bases, accessed through the Central Library at the University of Canterbury proved to be invaluable resources. Coupled with those databases, I used the database of the *British Newspapers 1600-1900*, and *The Times*, held by the Christchurch City Libraries, on a regular basis. This relieved my disappointment in London in not having time to research Dr Burney's famous collection of newspapers at the British Library, as these are now a part of the *British Newspapers* series. Electronic databases such as these are a massive leap forward for research purposes, when compared to microform and microfiche. As time is an increasingly rare commodity in the Twenty-first Century, research can now be undertaken at a pace unheard of in past decades.

However, there are disadvantages to such research methods. First, there is nothing like the tactile pleasure of an old book or a newspaper. Second, research as a comparatively relaxed activity is no more. Third, the use of electronic databases can lead to information overload. While cataloguing and classifying found material has always been an important part of research, it is more so now with the excess of material that is available. A fourth issue that

can arise with the use of electronic databases is the risk of losing downloaded material if adequate back-up procedures are not in place.

Overall conclusions

Given the extensive debate in 1797/8 and 1798/9 surrounding Pitt's Assessed Taxes Bill and Duties upon Income Bill, respectively, it is somewhat surprising that there was no discussion concerning the exemption of charitable organisations from those taxes. Yet each Income Tax Act contained a clause, first exempting the Royal and public hospitals in 1798 then, in 1799, corporations, fraternities and societies of persons established for charitable purposes, from those taxes. Looking back, over two centuries later, at the country's social, political and economic and religious status, one can understand why such an exemption was provided. However, in spite of extensive research (but hampered by distance), but assisted with the advanced technology available to researchers in the Twenty-first Century, I have been unable to find conclusive evidence of a rationale for the charitable purposes exemption from Income Tax in 1799, which Owen contended was "a natural enough decision,"¹⁷⁹ grounded in fiscal or public policy. I must leave that task to others to fill the gap, if indeed that is at all possible.

Parliament did not take it upon itself to qualify the nexus between the charitable purposes exemption from Income Tax and the concept of charitable purposes. It was not until 1891 that the issue was resolved in *Pemsel*,¹⁸⁰ but without recourse to fiscal policy, as clearly stated by Lord Macnaghten when he declared that "[w]ith the policy of taxing charities I have nothing to do."¹⁸¹

In common law countries, the decision emanating from *Pemsel* in 1891 dictates that provided a charitable entity conforms with at least one of the four principal divisions of charity as laid down by Lord Macnaghten, then exemption from Income Tax will automatically follow.¹⁸² What then, is the nexus between charitable purposes and exemption from Income Tax? Is there an underlying fiscal policy for such an exemption, originating from Pitt's attempts to raise Income Tax in 1798,¹⁸³ and 1799,¹⁸⁴ which persists today? The answer, in short, is no.

¹⁷⁹ Owen, above n 103, 330.

¹⁸⁰ *Pemsel*, above n 6.

¹⁸¹ *Pemsel*, above n 6, 591.

¹⁸² *Pemsel*, above n 6, 531.

¹⁸³ *An Act*, above n 177.

¹⁸⁴ *An Act*, above n 8.

However, in May 1863, *Jackson's Oxford Journal*¹⁸⁵ and *The Times*¹⁸⁶ both carried advertisements arguing for the continuation of the charitable purposes exemption from Income Tax. The arguments for the continuation of the charitable purposes exemption from Income Tax were based on historical precedent, humanitarian principles, religious influence based in Christianity, and social, but not fiscal policy.

However, arguments such as these were not evident in 1798 and 1799. Having recognised that, the question that persisted was, were there other factors that may have inspired the inclusion of the charitable purposes exemption clause in the various Income Tax Acts during the closing years of the Hanoverian era? In Chapter 9 I proposed that it may have been due to the influence of Evangelicals, such as Wilberforce and More, with whom Pitt was acquainted. These relationships suggest that Pitt would have been aware of the thinking of the Evangelicals. Wilberforce was also a philanthropist and therefore would have had an interest in ensuring that funds donated to charitable institutions were not withered by taxation. The Guilds of London, with substantial wealth at their disposal, would have had similar interests to protect.

Given that exemptions for charitable purposes were attached to the Assessed Taxes, precedent would argue that to tax the non-voluntary income of charitable institutions was contrary to contemporary practice. With the country in dire straits due to the war with France, resulting in difficulties in obtaining imports of essential food, coupled with the failure of successive harvests, and with the Poor Law in a state of disrepair, the encouragement and support of charitable institutions was essential to the security of the country. While Owen has suggested that it would indeed have been “preposterous” to tax such institutions,¹⁸⁷ fiscal theory requires a more robust explanation than one based on emotion, although it might also be argued that religious influences were just as emotive as Owen’s suggestion. Clearly this subject requires further study in order to fully understand it.

The purpose of this chapter has been to propose a rationale for the charitable purposes exemption from Income Tax that was contained in the various Income Tax statutes during those periods. I suggest that there are two concepts which collectively provide such a

¹⁸⁵ ‘Charities and Income Tax’, *Jackson's Oxford Journal* (Oxford), 2 May 1863, Issue 5740.

¹⁸⁶ ‘Taxation of Charities – A Deputation’, *The Times* (London), 4 May 1863, 5.

¹⁸⁷ Owen, above n 103, 330.

rationale. The first is the social role played by charitable institutions as police in the absence of support from the State, by complementing the funding of charitable works through the exemption of charitable institutions from Income Tax. Allied to that rationale is the financial viability of charitable institutions as evidenced by Capital Constraints Theory,¹⁸⁸ to which Highmore had alluded. However, such a concept as known today was not evident in Highmore's time. The second allied theory is Subsidy Theory,¹⁸⁹ to which Gladstone had referred, being the evolution of a fiscal policy emerging in the mid-Nineteenth Century with Gladstone's suggestion that the charitable purposes exemption is a subsidy by the State.

The second rational that I propose derived from the influence of the Evangelicals, lead by Wilberforce and More, both of whom had an intimate relationship with Pitt, as well as being friends themselves. The religious fervour of Wilberforce and More would have ensured that any potential threat to the financial viability, in the form of a tax upon income of Britain's charitable institutions, would have been vigorously opposed, both in private and in public, ostensibly through the publications of the Clapham Sect.

Limitations

The intention of this study is to research the history of the charitable purposes exemption from Income Tax. I have not considered the history of the development of the charitable trust and the influence of philanthropic activity on the formation of those vehicles of social policy, in conjunction with the influencing effect of the charitable purposes exemption from Income Tax in encouraging such activity. It may be that amongst the personal papers of persons involved in philanthropic activity during the Napoleonic Wars there will be correspondence on Pitt's proposed Income Tax and what it might have meant for charities.

However, my study was limited for one very obvious reason. I was studying an historical event that occurred not in my country of birth, New Zealand, but on the other side of the world, namely in the United Kingdom. This necessitated a visit to London to undertake research, in 2005, which was the highlight of my study. During the two weeks that I had available for that purpose, I discovered a wealth of material at different locations. Knowing what I now know, a further visit to London beckons, as on my visit in 2005 I had focussed mainly on Pitt. While I had searched numerous archives, it was not until my last evening in

¹⁸⁸ See above n 53.

¹⁸⁹ See above n 28.

London that I discovered Highmore's work on the history of the charities of London, a serendipitous find that has made an invaluable contribution to my Thesis.¹⁹⁰

A further limitation of my Thesis is that exemptions from taxation were provided to charitable institutions throughout history, from as early as the Twelfth Century.¹⁹¹ It was partly for that reason that my supervisors and I decided to focus on the Pitt to *Pemsel* era and the charitable purposes exemption from Income Tax. By way of example of the wealth of resources I had found,¹⁹² in the early stages of my research I compiled a detailed table of charitable benefactions, a form of philanthropic activity, using Jordan's data for the period 1480 to 1600, then 1601 to 1660, and calculated the average per year for each of those periods. My figures appear to indicate an increase in philanthropic activity, as can be seen in Table 1 A Comparison of Charitable Benefactions before and after 43 Eliz c. 4 [1601].¹⁹³

Table 1 A Comparison of Charitable Benefactions before and after 43 Eliz c. 4 [1601]

	1480-1600 £	% of total	Average per year £	1601-1660 £	% of total	Average per year £	% increase
Poor Relief	305,379	25.5	2,524	823,962	43.3	13,733	444.1
Social Rehabilitation	145,390	12.1	1,202	174,043	9.1	2,901	141.3
Municipal Betterments	81,429	6.8	673	79,340	4.2	1,322	96.4
Education	319,433	26.6	2,640	514,051	27.0	8,568	224.6
Religion	346,636	29.0	2,865	312,979	16.4	5,216	82.1
Totals	£1,198,267	100.0	£9,903	£1,904,375	100.0	£31,740	220.5

Jordan's graph of the total benefactions by decade intervals shows a rapid increase between 1600 and 1620, with a gradual falling off between 1620 and 1630 and an even more rapid decline from 1630 to 1650, when a slight increase is seen for the next ten years to 1660. What then might this mean? Is it purely coincidence that the rapid increase, as seen in Jordan's graph, and the significant increase in the average benefaction, as seen in my figures above, coincided with the Charitable Uses Act 43 Eliz c. 4 of 1601? Were people more confident in making benefactions after 1601 than before? From Table 1 we can also identify another phenomenon. Before 1601, religion was the most favoured recipient, but after 1601, benefactions for the relief of poor dominated, both numerically and by percentage increase.

¹⁹⁰ Anthony Highmore, *Pietas Londinensis* (1810).

¹⁹¹ See Philip Adler, 'Historical origin of the exemption from taxation of charitable institutions'; W.E. Lunt, *Financial Relations of the Papacy with England to 1327* (1939); *Financial Relations of the Papacy with England 1327-1354* (1939); and *Papal Revenues in the Middle Ages* (1934).

¹⁹² This was at an early stage of my research and before I had decided to focus on the period 1798 to 1891.

¹⁹³ W.K. Jordan, *Philanthropy in England 1480-1660* (1959) Tables II to VI 368-375.

While Jordan's data has been criticised on the basis that he did not adjust his data for inflation, it is none-the-less valuable for the picture it paints of philanthropy in Sixteenth and Seventeenth Century England. In a re-assessment of Jordan's data, Bittle and Lane reproduced Jordan's graph of charitable benefactions in England from 1490 to 1660 with a considerably different result.¹⁹⁴ From a peak in 1510, price-adjusted benefactions fell away steadily until 1600 from whence they rose to peak again in 1630, then falling away mirroring Jordan's curve.¹⁹⁵ The peak in 1630, according to Jordan's curve, indicated benefactions of £425,000 while Bittle and Todd indicate benefactions of £100,000. In turn Bittle and Lane's figures have also been criticised, as Coleman, in his comment on their work, argued:

[b]ut are such crude and drastic reductions in Jordan's figures really justified? ... Messrs Bittle and Lane's valuable statistical service in presenting the deflated series should not blind anyone to two central fallacies of the whole exercise: *changing amounts of "generosity" cannot be measured by monetary series of testamentary benefactions; and the social value of such charity remains concealed even after those aggregates have been deflated by a price index and adjusted for population change.* (Emphasis added.)¹⁹⁶

Having found Jordan's work, I searched unsuccessfully for a similar study of philanthropic activity during Pitt's era which might have revealed the effect of the charitable purposes exemption from Income Tax in encouraging philanthropy. As a future research project, I suggest a study of the formation of charities both before 1799, when Pitt introduced the charitable purposes exemption for corporations, fraternities and societies of persons, then for the years 1799 to 1816, 1816 to 1842, and 1842 to 1891. The reason as to why I have suggested those dates should now be clear after reading this Thesis.

A further limitation on my Thesis was that this has been a "part-time" study. Other commitments, family and work, often interrupted my flow of research activity, necessitating having to restart again when time allowed. Time-management became an invaluable tool, and whenever I could, I took material with me on my employment-related overseas travel to work

¹⁹⁴ William G. Bittle and R. Todd Lane, 'Inflation and Philanthropy in England: A Re-Assessment of W.K. Jordan's Data (1976) 29(2) *The Economic History Review* 203. As well as ignoring the effects of inflation, Bittle and Lane note that Jordan's figures do not reveal absolute changes in philanthropic giving over time. Nevertheless, philanthropy was alive and well.

¹⁹⁵ Bittle and Lane, above n 194, 208.

¹⁹⁶ D.C. Coleman, 'Philanthropy Deflated: A Comment' (1978) 31(1) *The Economic History Review* 118, 119. For a paper in support of Bittle and Lane, see J.F. Hadwin, 'Deflating Philanthropy' (1978) 31(1) *The Economic History Review* 155-117.

on in order to keep my thought-processes active, and to make the best use my time once my professional obligations had been met.

Future research

In the Nineteenth Century, charitable institutions were formed either as a consequence of a bequest for a particular purpose, or through the philanthropy of an individual or a group of individuals with a special interest who initially contribute the funds to finance that activity, then seek, not government, but public support. That being said, the governments of Nineteenth Century England did sponsor certain types of charity, such as the Greenwich Hospital for seamen. In the Twentieth Century the culture of charities began to change, from that of an essentially private operation to the modern contract culture that now pervades the charity sector worldwide.¹⁹⁷ One issue that I will be pursuing is that of fee-charging charity hospitals, particularly with respect to the concept of the cost of capital levy in the form of a capital charge, which I consider to be a *de facto* Property Tax.

Philanthropy was not the sole preserve of those fortunate enough to be in a position to make a decision to help their fellow man, such as “that great and far-sighted philanthropist, Thomas Guy,” founder of Guy’s Hospital which opened its doors to its first patients in 1726, for other forces were also at work.¹⁹⁸ Professor John Cookson’s advice to me,¹⁹⁹ that philanthropy was an expected social requirement of the nobility, is made clear by Langford who wrote that:

[p]roperly society imposed on aristocratic behaviour its own patterns of conduct. Peers were compelled to present an image of openness and accessibility in their relations with inferiors. *They were also expected to provide leadership rather than authority, as patrons of philanthropic association and commercial improvement.* Public divergence from the ethical and religious standards expected of them was severely punished by a new tribunal, that of public opinion. Individual peers became conscious of the need to justify their privileges, in the process evolving a rhetoric of public service. (Emphasis added.)²⁰⁰

¹⁹⁷ Robert Whelan, *The Corrosion of Charity: From Moral Renewal to Contract Culture* (1996).

¹⁹⁸ H.C. Cameron, *Mr Guy’s Hospital 1726-1948* (1954) flyleaf.

¹⁹⁹ See Paul Langford, *Public Life and the Propertied Englishman 1689-1798* (1991) to which Professor Cookson had referred me.

²⁰⁰ Paul Langford, *Public Life and the Propertied Englishman 1689-1798* (Paperback; 1994) 510.

Of the eminent authors who have written extensively on philanthropy in England,²⁰¹ Jordan's work stands out for the financial detail it contains.²⁰² On the other hand, Owen points out that:

[i]n three respects fiscal policy was of direct concern to nineteenth-century philanthropy. First and most significant, *charity revenues were exempt from Income Tax*. Secondly, *charity bequests received no such favourable treatment*; on these Inland Revenue collected legacy duty at the maximum rate. Finally, *charity property - the question never received a categorical answer - might or might not be liable to local rates*. Related to these was a fourth issue which emerged only in the early 1920s. This had to do with Income Tax relief for donors to charity. (Emphasis added.)²⁰³

This raises the issue of what effect taxation, both local and Imperial, had on the funds of charitable institutions, particularly in the light of the writings of Highmore in the late Eighteenth and early Nineteenth Centuries. What was the effect of deduction at source on the financial position of charitable institutions? How did smaller charities cope with the new regime introduced by Addington in 1803? Many charitable institutions may not have had access to expertise possessed by persons such as Highmore in his capacity as a lawyer. While the evidence suggests that charitable institutions, particularly larger entities such as St. Bartholomew's were possessed of considerable wealth, a study of the effect of the Income Tax on their activities following its introduction might reveal to what extent claims for refunds of Income Tax were submitted.²⁰⁴

A study such as this might also indicate the direct cost to the State of refunds following claims for reimbursement between 1799 and 1816, and 1842 to 1891, in addition to the information contained in the Returns of 1863. Another avenue that suggests itself for study is the investment strategies of charitable institutions during the Nineteenth Century, as well as the extent of the formation of charitable institutions before 1799, compared with the years when the Income Tax legislation was in force, and the hiatus between 1816 and 1842, when there was no such legislation.

²⁰¹ See B. Kirkman Gray, *A History of English Philanthropy* (1905); Betsy Rodgers, *Cloak of Charity Studies in Eighteenth-Century Philanthropy* (1949); and Owen, above n 103.

²⁰² Jordan, above n 193.

²⁰³ Owen, above n 103, 330.

²⁰⁴ In June 2005 I received an email from John Avery Jones, which provided details of a volume on Charities Exemptions 1815-16 and Income Tax Accounts 1803-13. The volume had been rescued from the IR Library in London by John Jeffrey-Cook. In July 2006 Geoff Bailey, Librarian at King's College, London, sent me copies of six pages from the book. While I have not used this material in my Thesis, I appreciate their assistance and intend to use the resource at a later date, following a further research visit to London.

If you are about to embark on an historical research project, such as this that I have completed after many years of part-time study, may I wish you well in your endeavours, and I pray that you will find the task to be as fulfilling as I have, in spite of the many obstacles I encountered and overcame on my long journey. I end my journey with the quote from Montesquieu with which I began Chapter 1 of this Thesis:

“It demands a great deal of study to acquire moderate knowledge.”

APPENDIX

Anthony Highmore, *A Succinct View of the History of Mortmain* (1787 and 1809)

“Of taxes, and of exemption from them.”

Of Taxes,
And OF
Exemption from Them.

Chap III
Sect. I
~~Of Taxes, &c~~

(159) [478] All hospitals are erected and maintained for the relief of the poor and afflicted; public and voluntary contribution is the source from whence the great expence of their laudable designs is defrayed. The whole establishment is a work of mercy; and considering the extreme exigency of latter times, the liberality of the opulent is a monument of wonder to ourselves and to surrounding nations: however pressing may have been the demands of the state, however excessive may have been the luxuries and extravagance of the people in an age refined and polished as the present, still ~~these~~ OUR charitable institutions have continually increased (160) in number, in extent, and in wealth. But there are not many which have yet been so established as to become independent ~~or careless~~ of, OR INDIFFERENT TO their annual contributions; a large capital is necessary to be laid up, before even a moderate income can be secured; and if their wants alone are all supplied, they must be said to flourish under the public flavour!

From hence it should seem ~~strange~~ EXTRAORDINARY that any taxes should ever have been levied upon ~~hospitals~~ CHARITIES: if it be contended, that every part of them, appropriated to the occupation of the afflicted, are exempted; still there is a seeming injustice to charge the revenues of the institution, with a tax upon those apartments where the officers and servants are lodged: it would be of no benefit to a ANY patient labouring under the severity of some malignant disease, to be carried to an hospital, ~~and~~ NOR TO BE [479] RECEIVED OR to remain unattended by nurses and proper persons appointed to restore or relieve him; and these persons must

necessarily be indulged with some moments of rest and relaxation: ~~thus~~ it is obvious, the servants of an hospital are as essential to it, as any other part of its administration; and the directors would, for their own sakes, and the sake of its revenues, never employ one more than the immediate necessity of the case required: ~~wherefore the legislature would do well, and it is here humbly recommended to them, to pass an act for the total exemption of all hospitals from the payment of any taxes whatsoever.~~ THE HEAVY CHARGE OF ASSESSMENTS UPON AN OFFICER'S APARTMENTS, AND OF 10 PER CENT. UPON ALL CHARITABLE LEGACIES, WHICH ARE PLACED ON THE SAME FOOTING AS THOSE TO STRANGERS IN BLOOD OF ANY TESTATOR, AND OF STAMP DUTIES FOR BENEFACTIONS AND SUBSCRIPTIONS, FORM A CONSIDERABLE DRAWBACK UPON EVERY CHARITY, STRUGGLING FOR MEANS OF PAYMENT OF ITS ORDINARY EXPENCES, AND WOULD NOT BE FELT BY THE STATE IF THEY WERE RELINQUISHED; if it be ~~alleged~~ (sic) ALLEGED, that ~~this~~ SUCH AN EXEMPTION would throw the hospital's share of any tax upon the rest of the people, ~~as it has been vainly argued;~~ it is fair and manifest to answer, that the burden, which thus would fall on each individual in any parish or district, is so minute, that if it were not pointed (161) out to him, he would never discover it in his annual expenditure; whereas, the whole share of every tax ~~falls~~ FALLING upon ~~the hospital, and very uncharitably~~ ANY CHARITY VERY CONSIDERABLY reduces its revenue, and ~~takes away from~~ ABRIDGES AND RESTRAINS the benevolent designs of its institution. BESIDES, WHERE PROPERTY IS DEVOTED TO THE POOR, IT SEEMS INCONSISTENT TO SUBJECT ANY PART OF IT TO TAXATION. ~~I have though proper to recommend this measure of exemption, from the sincerest motives of reason and conviction, and I leave it to wiser and more powerful heads to consider and mature:—Let us now see, how the law stands at present in this particular.~~ FOR THESE REASONS, IT IS HUMBLY RECOMMENDED TO THE CONSIDERATION OF THE BOARD OF TREASURY, AND, FINALLY, TO THE LEGISLATURE, TO PASS A GENERAL

ACT OF EXEMPTION OF ALL CHARITABLE INSTITUTIONS FROM ALL TAXES AND ASSESSMENTS. FOR IF ANY PART OF ITS LANDS ARE LET AT A PROFIT, STILL THAT PROFIT IS OR OUGHT TO BE APPLIED FOR THE GENERAL BENEFIT OF THE CHARITY, AND THEREFORE SHOULD NOT BE MADE [THE] SUBJECT OF TAXATION. AND IF IT BE ALLEGED, [480] THAT THE OFFICERS OF SOME PUBLIC CHARITIES HOLD VERY LUCRATIVE POSTS UNDER ITS ESTABLISHMENT, IT MAY BE ANSWERED, THAT THEIR INDIVIDUAL INCOMES ARE THE MOST PREFERABLE OBJECTS OF TAXATION.

The annual acts HERETOFORE passed for the land-tax, Land-tax
~~exempt~~ EXEMPTED the two universities, the colleges of Eton, Winchester, and Westminster, the corporation for relief of poor widows and children of clergymen, the college of Bromley, and all hospitals in respect of the sites thereof or buildings within the walls or limits ~~of the same~~; and also the master, fellow, scholar or exhibitioner of any such college or hall, and any reader, officer or master of the universities, colleges or halls; and the masters or ushers of any schools, in respect of any stipend, wages, rents, profits, or exhibitions whatsoever, arising to them in respect of their places or employments, and also the lands, which, before 25th March, 1693, did belong to the sites of any college or hall, or to Christ's Hospital, St. Bartholomew's, Bridewell, St. Thomas's, and Bethlem, or any other hospitals or alms-houses in respect of any rents or revenues, which, before that time, were payable to them, being to be received and disbursed for the immediate use and relief of the poor of the said hospitals and alms-houses only. But tenants thereto, who by their leases ~~are~~ WERE obliged to pay all taxes, ~~are~~ WERE not exempted; they ~~are to be~~ WERE rated on their yearly value above the rent paid to the hospital.

Anno 1693
1694 (162) And in general it ~~is~~ WAS provided, that all such lands, revenues, or rents, belonging to any hospital or almshouse, or

settled to any charitable or pious use, as were assessed in 4th Wm. and Mary, ~~shall~~ SHOULD be liable; and no other lands, &c. then belonging to any hospital or almshouse, or settled to any charitable or pious use, ~~shall~~ SHOULD be charged or assessed.

[481] All questions how far any such lands ~~shall~~ SHOULD be taxed, WERE to be determined *finally* on appeal, by three or more of the commissioners.

3 Eccl. Law,
313

And the reason of this distinction, ~~adds Dr. Burn,~~ ~~seems to be,~~ SEEMS TO HAVE BEEN, because in that year the sums to be charged were fixed and determined upon every particular division; lands which were then appropriated to charities being exempted out of the valuation: therefore it is no hardship upon the neighbourhood, that lands then exempted should be exempted still, for the other lands pay no more ~~upon the~~ ON account of such exemption: but if lands appropriated to charities since that time should by such appropriation HAVE become exempted, this would ~~lay~~ HAVE LAID a greater burden upon all the rest, because the same ~~individual~~ sum upon the whole division ~~is~~ WAS to be raised still; ~~but how great that burden would be, has been already considered.~~

42 G. 3. c. 116
s. 17 & 19

BUT NOW BY THE STATUTES FOR REDEMPTION OF THE LAND TAX, THE TRUSTEES FOR CHARITABLE AND OTHER PURPOSES, COLLEGES AND CORPORATIONS, AS WELL ECCLESIASTICAL AS LAY, ARE EMPOWERED TO CONTRACT FOR THE PURCHASE OF THEIR LAND-TAX, AND TO SELL AND EXCHANGE THEIR LANDS FOR THAT PURPOSE; THOSE WHO ARE IN POSSESSION ARE PREFERRED TO THOSE IN REVERSION, AND THOSE IN REVERSION TO ALL WHO HAD NO INTEREST PREVIOUS TO 1803; AFTER WHICH TIME THEY MAY ALL REDEEM IT ON THE SAME TERMS, EXCEPT AS TO THE DIFFERENT PERIODS OF TRANSFER, IF NO OTHER OFFER SHOULD BE MADE.

SEC. 151

AND WHERE ANY TRUST-PROPERTY, UNDER ANY STATUTE, DEED, WILL, OR DECREE, IS APPLICABLE TO ANY CHARITABLE PURPOSE FOR THE BENEFIT OF ANY PARISH OR PLACE, IT MAY BE APPLIED TO THE REDEMPTION OF THE LAND-TAX, CHARGED ON ANY LANDS SETTLED TO CHARITABLE USES FOR THE BENEFIT OF SUCH PARISH OR PLACE; AND SUCH LANDS MAY BE CHARGED WITH ANY ANNUITY EQUAL TO THE AMOUNT OF THE INCOME OF THE TRUST-PROPERTY, WHICH SHALL HAVE BEEN APPLIED TO SUCH REDEMPTION, SUBJECT TO THE APPROBATION OF THE JUSTICES.

SEC 47

[482] THE GOVERNORS AND DIRECTORS OF HOSPITALS AND OTHER CHARITABLE INSTITUTIONS MAY ALSO APPLY ANY LEGACIES OR VOLUNTARY DONATIONS BEQUEATHED OR GIVEN TO THEM, AND NOT DIRECTED BY THE DONOR TO BE APPLIED TO ANY PARTICULAR PURPOSE TOWARDS THIS REDEMPTION. AND ANY PERSON MAY GIVE OR BEQUEATH ANY SUM TO BE SO APPLIED, CHARGED ON ANY LANDS SETTLED TO CHARITABLE USES, NOTWITHSTANDING ANY STATUTE OF MORTMAIN.

SEC. 43[?]

SEC. 50

45 G. 3. c. 133
SEC. 2

IT WAS AFTERWARDS FOUND THAT THE PROFITS TO THE PUBLIC, FROM THE REDEMPTION OF THE LAND-TAX BY CORPORATIONS AND TRUSTEES FOR CHARITABLE AND OTHER PURPOSES, AMOUNTED TO A VERY LARGE SUM, AND WAS LIKELY TO BE INCREASED BY THEIR FURTHER SALES, AND THEREFORE IT BECAME EXPEDIENT TO AUGMENT THEIR INCOMES BY EXONERATING THEIR LANDS FROM THE TAX; THE COMMISSIONERS WERE THEREFORE, IN 1806, EMPOWERED BY LETTERS-PATENT UNDER THE GREAT SEAL, WITHIN TWO YEARS FROM THE PASSING OF THAT ACT, TO DIRECT THIS EXONERATION IN CASES WHERE THE WHOLE CLEAR ANNUAL INCOME SHOULD NOT EXCEED 150L. WITHOUT ANY CONSIDERATION FOR THE SAME; PROVIDED THE ANNUAL AMOUNT OF LAND-TAX SO EXONERATED SHOULD NOT EXCEED 6000L.

TO EFFECT THIS PURPOSE THE PARTIES WERE DIRECTED, WITHIN SIX MONTHS OF THE PASSING OF THAT ACT, TO TRANSMIT TO THE COMMISSIONERS A MEMORIAL OF THE NATURE OF THEIR PROPERTY, FUNDS, OR SOURCES, AND THE AMOUNT OF THEIR INCOME DERIVED FROM THENCE, WITH A CERTIFICATE FROM TWO OF THE COMMISSIONERS OF THE DISTRICT, STATING A DESCRIPTION OF THE LANDS CHARGED, WITH POWERS TO THE SPECIAL COMMISSIONERS TO EXTEND THE TIME FOR SIX MONTHS. – SEC. 3. THIS PROVISION EXPIRED 22D JULY, 1808.

10 MAY, 1809

LEAVE HAS BEEN LATELY GIVEN FOR A BILL TO AMEND THE ACT OF 46 GEO. III WHICH AMENDED THE 42 GEO. III FOR CONSOLIDATING THE SEVERAL ACTS FOR THE REDEMPTION AND SALE OF THE LAND-TAX, AND TO MAKE FURTHER PROVISION FOR EXONERAT-[483] ING SMALL LIVINGS AND CHARITABLE INSTITUTIONS FROM THE LAND TAX.

Poor's Rate.
43 Eliz. c. 2

2 Salk. 527

All lands within a parish are to be assessed to the poor's rate. Hospital lands are chargeable to the poor as well as others; for no man, by appropriating his lands to an hospital, can discharge or exempt them from taxes to which they were subject before, and throw a great burden upon their neighbours. Per Holt, C.J.

Burr. 1053
2 Burn Eccl.
Law, 286

In the case of St. Luke's hospital, the above act and (163) subsequent decision, were greatly narrowed in their comprehensive extent; for there it was determined by Lord Mansfield, in Mich. Term, 1 Geo. III. that the said hospital was not chargeable to the parish rates; and that in general no hospital is so, with respect to the site thereof, except those parts of it which are inhabited by the officers belonging to the hospital, as the chaplain, and physician; and the like in Chelsea hospital: and these apartments are to be rated as *single tenements*, of which the officers are the occupiers of ~~them~~. The reason why the apartments in this hospital of the sick or

mad persons are not to be rated, is, that there are no persons who can be said to be the occupiers of them (and it is upon the *occupiers of houses* that the rate is to be levied); for it would be absurd to call the poor objects so with respect to this purpose; and the lessees of the hospital in trust for the charitable purposes to which it is applied, cannot with any propriety be considered as occupiers of it, ALTHOUGH PART OF ITS SITE MAY HAVE PAID POOR'S RATE BEFORE ITS APPROPRIATION TO THAT PURPOSE; nor lastly, can the servants of the hospital, who attend there for their livelihood; and no other persons can, with any shadow of reason, be considered as the occupiers of it.

REX v.
 BARTHOL. 4
 BURR. 2405 1
 BOT. 131 2
 BURR. 1053. ST.
 LUKE'S, 1 BOT.
 123.

THE ASSESSMENT TO THE POOR IN ALL PARISHES AFFECTING HOSPITALS AND FOUNDATIONS OF CHARITY, HAS GENERALLY BEEN [484] MADE UPON THE PRINCIPLE SETTLED IN THIS CASE; BUT SOME VARIATIONS IN CIRCUMSTANCE, SITUATION, OR OCCUPATION OF THE PARTIES, OR OF THE PROPERTY, HAVE INTRODUCED FURTHER DISCUSSIONS AND DETERMINATIONS, A FEW OF WHICH IT MAY BE SUFFICIENT TO NOTICE.

3 T REP 602 REX
 V SCOTT, 1790

THE *NEWPORT* SCHOOL-HOUSES, IN *SALOP*, WERE FOUNDED BY *W. ADAMS*, AND ENDOWED BY A CONSIDERABLE ESTATE AT *KNIGHTON*, IN *STAFFORDSHIRE*, AND VESTED BY HIM IN THE HABERDASHERS' COMPANY AS TRUSTEES. IN 12 CAR. II A PRIVATE ACT OF PARLIAMENT WAS OBTAINED, WHICH WAS PERPETUATED BY ANOTHER ACT IN THE FOLLOWING YEAR, WHEREBY IT WAS ENACTED, THAT THE MANOR OF *KNIGHTON*, AND ALL OTHER LANDS SETTLED BY HIM FOR THE PURPOSES AFORESAID, "BE AND AT ALL TIMES HEREAFTER SHALL BE FREED, DISCHARGED AND ACQUITTED OF AND FROM THE PAYMENT OF ALL AND EVERY MANNER OF TAXES, ASSESSMENTS, OR CHARGES, *CIVIL* OR *MILITARY* WHATSOEVER, HEREAFTER TO BE LAID AND IMPOSED BY AUTHORITY OF

PARLIAMENT OR OTHERWISE, AND THE MANORS, &C, AND THE OWNERS AND OCCUPIERS THEREOF SHALL NOT AT ANY TIME HEREAFTER BE RATED, TAXED, OR ASSESSED, TO PAY ANY SUM OR SUMS OF MONEY, OR TO BE OTHERWISE CHARGED IN ANY WAY WHATSOEVER, FOR OR IN RESPECT OF THE SAID MANORS, &C, FOR OR TOWARDS ANY MANNER OF *PUBLIC TAX*, ASSESSMENT, OR CHARGE WHATSOEVER, ANY STATUTE, &C. NOT WITHSTANDING.”

IN CONSEQUENCE OF THIS ACT THESE PREMISES HAD NEVER BEEN RATED OR PAID TO THE POOR OF THE PARISH IN THE MEMORY OF ANY PERSON LIVING, BUT THE QUARTER SESSIONS CONFIRMED THE RATE NOW MADE.

IN SUPPORT OF THE ORDER OF SESSION IT WAS CONTENDED, THAT A PRIVATE ACT OUGHT TO RECEIVE THE SAME CONSTRUCTION AS A DEED, AND AS THE PARISH WAS NOT PARTY TO IT, THEIR INTEREST OUGHT NOT TO BE AFFECTED BY IMPLICATION: HENCE ALL THE LEGISLATURE CAN BE SUPPOSED TO HAVE INTENDED WAS, EXEMPTION FROM ALL GENERAL PUBLIC TAXES, AND NOT FROM [485] ANY PARTICULAR LOCAL TAX AS THE WORDS *CIVIL AND MILITARY* PLAINLY REFER TO THE PUBLIC TAXES OF THE KINGDOM; BUT THIS RELATED ONLY TO TAXES ON LANDS, WHICH COULD NOT BE REFERRED TO PAROCHIAL RATES UNDER 43 ELIZ. IT HAVING BEEN HELD, THAT THAT STATUTE IMPOSES NO TAX ON THE LAND ITSELF, BUT ONLY ON THE OCCUPIER. AND WHEN THIS ACT OF CAR. II WAS PASSED, THERE WERE NO TAXES ON LANDS ON WHICH THE WORDS COULD OPERATE; AS, FOR INSTANCE, SUBSIDIES AND ASSESSMENTS, IN LIEU OF WHICH THE MODERN LAND-TAX WAS SUBSTITUTED. THAT BY THE LATTER PART OF THE CLAUSE THE EXEMPTION IS CONFINED TO *PUBLIC TAXES*. NOW THE POOR-TAX NEVER WAS CONSIDERED AS A PUBLIC TAX IN THE GENERAL ACCEPTATION OF THE TERM; AND ACCORDINGLY, WHENEVER THE LEGISLATURE HAVE INTENDED TO INCLUDE IT, THEY HAVE DONE IT BY EXPRESS WORDS (SIC), AS

CONTRADISTINGUISHED FROM PUBLIC TAXES, AS IN 10 ANN. C. 23 S. 2. 12 ANN. ST. 1. C. 5. S. 1. AND 18 GEO. II C. 18. S. 6.

LORD *KENYON*, C.J. SAID, THESE LANDS HAVING BEEN GIVEN FOR ELEEMOSYNARY PURPOSES, THE LEGISLATURE SEEM TO HAVE INTENDED TO EXEMPT THEM FROM ALL PUBLIC TAXES WHATSOEVER. AND IT IS IMMATERIAL TO THE PARISH, WHETHER THESE LANDS BE EXEMPTED FROM THE POOR'S RATE OR NOT, SINCE IF THEY BE NOT EXEMPT, GREATER CONTRIBUTIONS MIGHT BE RAISED. IF A CONSTRUCTION OF THIS ACT OF PARLIAMENT, MANIFESTLY ERRONEOUS, HAD HITHERTO PREVAILED, WE SHOULD HAVE BEEN BOUND TO CORRECT IT, THOUGH, INDEED, HAD THE WORDS OF THE STATUTE BEEN VERY DOUBTFUL, THE COTEMPORARY (SIC) AND SUBSEQUENT UNIFORM USAGE WOULD HAVE HAD GREAT WEIGHT. BUT WITHOUT RESORTING TO USAGE IN THIS CASE, THE WORDS OF THE STATUTE ARE VERY CLEAR AND POSITIVE, FOR THEY SPEAK OF ALL PUBLIC TAXES WHATSOEVER. THE WHOLE ARGUMENT RESOLVES ITSELF INTO THIS, WHETHER, IN THE IDEA OF THE LEGISLATURE, AT THE TIME OF PASSING THIS ACT, THE POOR'S TAX WAS A PUBLIC TAX. THE ACTS WHICH HAVE BEEN REFERRED TO IN THE [486] ARGUMENT DO NOT PROVE THE POINT FOR WHICH THEY WERE MENTIONED. BUT THE OTHER ACTS RESPECTING THE POOR ARE DECISIVE OF THIS QUESTION. THE STATUTE OF 3 W. AND M. C. 11. S. 6, SPEAKING OF THE MEANS BY WHICH A SETTLEMENT MAY BE GAINED, SAYS, THAT "IF ANY PERSON SHALL BE CHARGED WITH AND PAY HIS SHARE TOWARDS THE PUBLIC TAXES OR LEVIES OF THE SAID PARISH, HE SHALL BE ADJUDGED TO HAVE A LEGAL SETTLEMENT IN THE SAME." NOW ON THE CONSTRUCTION OF THIS STATUTE, IT NEVER WAS DOUBTED BUT THAT A PAYMENT TOWARDS THE POOR'S RATE WAS SUFFICIENT TO GIVE THE PARTY A SETTLEMENT. HIS LORDSHIP WAS THEREFORE OF [THE] OPINION, THAT THE EXEMPTION WHICH HAD HITHERTO PREVAILED OUGHT TO CONTINUE IN FUTURE. THE THREE OTHER JUDGES CONCURRED, AND THE ORDER OF SESSIONS WAS

QUASHED.

REX V. WALDO
CALD. 358. 1
BOT. 168. 1
NOLAN. 116.

MR WALDO PROVIDED A HOUSE, PREVIOUSLY RATED, AND PLACED TEN POOR GIRLS IN IT, SOME BEING TAKEN FROM THAT, AND SOME FROM OTHER PARISHES, WHO WERE EDUCATED, MAINTAINED, AND BROUGHT UP ON HIS CHARITY. HE PROVIDED AND PAID A WOMAN AS HIS SERVANT, TO SUPERINTEND AND INSTRUCT THEM IN READING AND WORKING, AND QUALIFYING THEM FOR SERVICE; THIS WOMAN AND THE CHILDREN WERE THE ONLY PERSONS RESIDENT IN THE HOUSE, WHICH WAS SOLELY APPROPRIATED TO THE PURPOSE, ALL VACANCIES BEING SUPPLIED FROM TIME TO TIME AT HIS DISCRETION. HE WAS HELD NOT TO BE AN OCCUPIER RATEABLE FOR THIS HOUSE, FOR HE MADE NO PROFIT OF THE BUILDING.

5 T. REP. 70.
REX V
WOODWARD.

SO LIKEWISE A BUILDING, HAVING BEEN RAISED BY VOLUNTARY CONTRIBUTION FOR A QUAKERS' MEETING-HOUSE, WHICH WAS USED ONLY FOR RELIGIOUS AND CHARITABLE PURPOSES; AND THE REMAINING APARTMENTS WERE OCCUPIED BY POOR PERSONS MAINTAINED BY DONATIONS. NO RENT WAS RECEIVED BY THE TRUSTEES WHO WERE SUBSCRIBERS TO THE FUND FOR CHARITABLE DONATIONS; NONE OF THE SEATS WERE LET OR OTHER ADVANTAGE TAKEN THEREOF. THIS BUILDING WAS HELD NOT RATEABLE TO [487] THE POOR-RATE, THE TRUSTEES NOT HAVING ANY INTEREST IN THE PREMISES, AND THEIR BEING NO OCCUPIER, NOR ANY PROFIT MADE: ON THE AUTHORITY OF *REX V. WALDO CALD. 358.* AND *ROBSON V. HYDE. IBID. 310.* AND 4 T. REP. 730. *REX V SALTER'S LOAD SLUICE.*

CALD. 310.
1. BOT. 166.
1 NOLAN 118.

BUT IF ANY PROFIT IS MADE BY LETTING THE SEATS, OR OTHERWISE, THE BUILDING IS RATEABLE.

WHERE THERE IS PROPERTY BUT NO OCCUPIER, THERE CANNOT BE A GROUND FOR TAXATION; IF ANY INTEREST CAN BE SHEWN TO RESULT TO ANY PERSONS, THERE TAXATION VESTS. TRUSTEES FOR A TOLL,

OR FOR AN HOSPITAL OR CHARITY, HAVING NO INTEREST FOR THEIR OWN BENEFIT, HOLD FOR THE PURPOSES OF MERE DISTRIBUTION, AND THOSE WHO RECEIVE THE BENEFIT ARE TRANSITORY, AS IN ST. LUKE'S CASE ABOVE-MENTIONED. IT IS OTHERWISE WHERE THEY ARE TRUSTEES FOR A CORPORATION, WHICH RECEIVES PROFITS, AND MAINTAINS ITS DIGNITY AND UTILITY BY ITS REVENUES, AS IN CITIES, DOCK, INSURANCE, AND BANK AND OTHER COMPANIES. TOLLS ARE EXEMPTED ON THE PRINCIPLE OF THE REVENUE BEING RECEIVED AND DISTRIBUTED FOR PUBLIC PURPOSES WITHOUT ANY OCCUPIER RECEIVING BENEFIT.

THE CHARITABLE PURPOSES FOR WHICH LAND IS GIVEN IN OCCUPATION DOES NOT EXCUSE AN OCCUPIER, WHO IS OTHERWISE WITHIN THE ACT; LAND OR HOUSES GRANTED TO A CHARITY ARE NOT LESS USEFUL THAN THE MAINTENANCE OF THE PAROCHIAL POOR, OR EVEN OPERATING COLLATERALLY FOR THEIR RELIEF AND ASSISTANCE, AND SO FAR APPLIED IN EXONERATION OF THE RATE, ARE NOTWITHSTANDING LIABLE, AS IN THE FOLLOWING CASE.

1 NOLAN, 116.

THE REV. *R. DYER*, AS MASTER OF A FREE-SCHOOL AT *WOODBRIDGE*, WAS OMITTED IN THE ASSESSMENT OF THE POOR-RATE. HE WAS APPOINTED BY THE PARISH UNDER A DEED OF FOUNDATION OF THE SCHOOL, AND IN WHICH THE HOUSE WAS ASSIGNED TO THE MASTER FREE OF RENT. NO RATES HAD BEEN ASSESSED UPON IT FOR MANY YEARS, BUT [488] HE LET PART OF THE FOUNDATION-LAND, AND THE TENANTS WERE RATED.

REX. V. COTT.
1795. 5 T. REP.
334.

IT WAS HELD, THAT WHERE A PERSON IS FOUND TO BE THE BENEFICIAL OCCUPIER, HE MUST BE RATED, THOUGH THE HOUSE BE APPROPRIATED TO CHARITABLE PURPOSES. BY THE OLD LAND-TAX ACTS, CERTAIN PROPERTY GIVEN FOR CHARITABLE PURPOSES IS EXEMPTED FROM THAT TAX; BUT THERE IS NO SUCH EXEMPTION IN THE ACTS RESPECTING THE RELIEF OF THE POOR. THOSE LANDS THAT

ARE APPROPRIATED FOR THE ESTABLISHMENT OF THE RELIGION OF THE COUNTRY, ARE IN ONE SENSE OF THE WORD LANDS GIVEN FOR CHARITABLE PURPOSES; BUT PARSONAGE HOUSES AND GLEBE LANDS, &C, ARE RATEABLE IN THE HANDS OF THE OCCUPIERS: IF THERE BE ANY INDIVIDUAL IN THE PARISH WHO OBJECTS TO THE OMISSION OF THE DEFENDANT, THE OBJECTION MUST PREVAIL.

AS TO THE OCCUPIERS OF ST. LUKE'S HOSPITAL, WHICH WAS ONE OF THE FIRST CASES ON THIS SUBJECT, THE GROUND WAS NOT THAT THE HOUSE WAS GIVEN TO CHARITABLE PURPOSES, BUT THAT THERE WAS NO PERSON WHO COULD BE SAID TO BE THE OCCUPIER OF IT: THE RATE THERE WAS NOT CONSIDER AS IMPROPER, BECAUSE THE PROPERTY WAS NOT IN ITSELF RATEABLE, BUT BECAUSE NO OCCUPIER COULD BE FOUND; BUT IN THIS CASE THERE WAS AN OCCUPIER. THAT PART OF THE LAND GIVEN FOR THE SAME PURPOSES IN THIS CASE, WHICH WAS LET OUT, WAS RATED IN THE HANDS OF THE SEVERAL OCCUPIERS: NO OBJECTION WAS MADE TO THAT PART OF THE RATE, AND THE COURT COULD NOT DISTINGUISH BETWEEN THE HOUSE AND THE GARDEN OCCUPIED BY THIS DEFENDANT, AND THE LAND SO LET TO THOSE OCCUPIERS. THE DEFENDANT WAS A BENEFICIAL OCCUPIER OF THE PROPERTY FOR WHICH HE WAS RATED – THEN HERE WAS THAT PERSON AN OCCUPIER, WHO COULD NOT BE FOUND IN THE CASE OF ST. LUKE'S HOSPITAL.

BUT THE SUPERINTENDANT OF A PUBLIC INSTITUTION, NOT REAPING ANY OTHER PROFIT THAN SALARY AND RESIDENCE, IS NOT [489] RATEABLE: AS THE MATRON OF THE PHILANTHROPIC SOCIETY, IN ST. GEORGE'S-FIELDS, WHO HAD UNDERTAKEN THE MANAGEMENT AND TUITION OF THE FEMALE CHILDREN, UNDER SPECIAL AGREEMENT THAT ALL HER AND THEIR EARNINGS SHOULD BE APPLIED TO THE CHARITY; IN CONSIDERATION OF WHICH, SHE WAS PROVIDED WITH A DWELLING, FREE FROM RENT AND TAXES, AND WITH PROVISION, RESIDENCE, AND A SALARY. SHE HAD NO DISTINCT APARTMENT FOR

HERSELF, ONLY A BED-CHAMBER; HER OWN FAMILY WAS NOT PERMITTED TO RESIDE WITH HER; AND SHE HAD NO OTHER PROFIT OR BENEFIT. SHE WAS, HOWEVER, RATED TO THE POOR, AND THE SESSIONS CONFIRMED THE RATE WITH COSTS.

BUT ON APPLICATION TO THE COURT OF K.B. IT WAS HELD, THAT THIS WAS NOT HER HOUSE – SHE WAS THE SERVANT OF A SOCIETY ESTABLISHED TO RESCUE FROM RUIN AND INFAMY CERTAIN POOR CHILDREN, WHO ARE THROWN UPON THE WORLD WITHOUT ANY PROTECTION; TO IMPROVE THE BEHAVIOUR AND MORALS OF THOSE CHILDREN, AND TO RENDER THOSE, WHO WITHOUT SUCH ASSISTANCE WOULD PROBABLY PROVE A NUISANCE TO SOCIETY, USEFUL AND RESPECTABLE MEMBERS OF IT: THE BENEFACTORS COULD NOT UNDERTAKE THIS THEMSELVES – IT WAS NECESSARY TO FIND SOME OTHER PERSON WHO COULD SUPERINTEND THE WHOLE. SHE WAS ENGAGED AS THEIR SERVANT – SHE WAS THE HOUKEEPER APPOINTED TO LOOK AFTER THE ECONOMY OF THE HOUSE – SHE COULD NEITHER PUT IN OR SEND OUT WHOM SHE PLEASED – SHE ACTED IN A SUBORDNIATE CAPACITY, SUBJECT TO THE DIRECTIONS AND CONTROL OF THE SOCIETY. IT MIGHT AS WELL BE SAID THAT SERVANTS ARE OCCUPIERS OF THEIR MASTERS’ HOUSES, AND SO BE RATEABLE. SHE WAS LIABLE TO BE DISMISSED AT AN HOUR’S NOTICE, ON PAYMENT OF HER WAGES: THE DWELLING PROVIDED FOR HER WAS MERE LODGING; IF THE BED-CHAMBER CONSTITUTED HER AN OCCUPIER, ANY MAID-SERVANT IS SUCH. THE LEGISLATURE MEANT ONLY THAT BENEFICIAL OCCUPIERS SHOULD BE RATED. – THE ORDER WAS QUASHED.

REX. V. FIELD,
1794. 5 T REP.
587. 1 NOLAN,
110.

[490] THIS PRINCIPLE WAS AGAIN RECOGNISED IN A SUBSEQUENT CASE, WHERE THE PERSONS RESIDENT UPON A CHARITABLE FOUNDATION, WERE FOUND TO BE BENEFICIAL OCCUPIERS, AND THEREFORE HELD LIABLE TO THE POOR RATE.

1 EAST. 584.
1891. REX. V.
MUNDAY.

LORD *RICH* FOUNDED A CHARITY AT *FELSTED* FOR CERTAIN POOR PERSONS, WHO WERE TO CUT AND PLANT WOOD, KEEP COWS, AND SELL CALVES, &C. FOR THEIR GENERAL BENEFIT AND PROFIT, TO BE SPENT IN THE ALMS-HOUSE:- THEY WERE RATED TO THE POOR UPON THE ANNUAL RENT. IN SUPPORT OF THE ORDER THE FORMER CASES WERE CITED, AND THEY WERE SHEWN TO BE OCCUPIERS REAPING A PROFIT. IT WAS URGED *É CONTRA*, THAT THE PRIMARY OBJECT OF 43 ELIZ. WAS TO MAKE PERSONS OF ABILITY CONTRIBUTE TO THE RELIEF OF THE POOR; THEREFORE, WHERE PROPERTY IS ALTOGETHER DEVOTED TO THIS PURPOSE, IT IS ABSURD TO REQUIRE THAT A PART OF IT SHOULD BE SO APPROPRIATED; PERSONS OF THIS DESCRIPTION CAN NEVER BE CONSIDERED AS HAVING THAT ABILITY TO PROVIDE FOR OTHERS, WHICH THE STATUTE WAS INTENDED TO ENFORCE.

THE COURT HELD THAT THE WORDS OF THE STATUTE, 43 ELIZ. C. 2. BEING GENERAL, THE RATE FOR THE RELIEF OF THE POOR IS TO BE LEVIED UPON EVERY OCCUPIER OF LANDS, HOUSES, &C. THERE IS NO EXCEPTION MADE OF ANY HOSPITAL OR OTHER LANDS DEVOTED TO CHARITABLE PURPOSES: THE ONLY QUESTION WAS, WHETHER THESE PERSONS WERE OCCUPIERS FOR THEIR OWN BENEFIT – THEY PLOUGHED, AND SOWED, AND REAPED, AND HAD EVERY SORT OF OCCUPATION IN FACT WHICH ANY OTHER PERSON COULD HAVE, AND ALL THIS WAS FOR THEIR OWN BENEFIT. THE SMALLNESS OF THE BENEFIT COULD NOT CONSTITUTE AN EXEMPTION – AND IF IT SHOULD INCREASE (SIC), SHOULD IT BE SAID THEY WERE NOT BOUND TO CONTRIBUTE, BECAUSE THEY DERIVED THAT BENEFIT FROM A CHARITABLE INSTITUTION? THEN IT WAS SAID, THAT CASES HAD DECIDED THAT PROPERTY OF THIS KIND WAS NOT RATEABLE, BECAUSE NO OCCUPIER COULD BE FOUND; BUT NO CASE HAS DECIDED THAT WHERE PERSONS ARE FOUND IN THE ACTUAL [491] OCCUPATION, AND HAVING A BENEFICIAL ENJOYMENT OF IT, THEY ARE NOT WITHIN THE STATUTE. IN THE CASE OF THE BURSAR OF ST. CATHARINE HALL, HE WAS DEEMED RATEABLE. THOUGH AN OBJECT

COWP. 79.

OF CHARITY IN ONE SENSE, BEING APPOINTED TO A SITUATION IN A CHARITABLE FOUNDATION.

THE DISTINCTION HAS BEEN TRULY TAKEN; THAT WHENEVER PERSONS HAVE BEEN FOUND IN POSSESSION OF PROPERTY FROM WHICH THEY DERIVE A BENEFIT TO THEMSELVES, THEY HAVE BEEN HELD RATEABLE AS OCCUPIERS; AND ALL THE CASES WHICH HAVE BEEN DECIDED AGAINST THE LIABILITY, HAVE EITHER BEEN UPON THE GROUND THAT THE PARTY WAS NOT THE OCCUPIER, OR IF HE WERE, THAT HE DERIVED NO BENEFIT TO HIMSELF. BUT IT WAS SAID THAT THE OBJECTS THEMSELVES OF A CHARITY, THOUGH BENEFICIAL OCCUPIERS, DID NOT COME WITHIN THE MEANING OF 43 ELIZ. C.2 THE RATE BEING FOR THE RELIEF OF THE POOR; BUT HOWEVER THE PERSONS RATED MIGHT HAVE BEEN POOR AND IMPOTENT AT THE TIME WHEN THEY WERE SELECTED AS OBJECTS OF THE CHARITY, YET AFTER THEIR APPOINTMENT TO BE MEMBERS OF THE FOUNDATION, THEY CEASED TO BE OF THAT DESCRIPTION OF PERSONS, AND THEREFORE BECAME RATEABLE ACCORDING TO THE PROPERTY SO ACQUIRED. THEY WERE IN POSSESSION OF RATEABLE PROPERTY.

THE OBJECT OF THESE CASES HAS BEEN TO FIND OUT WHETHER THE OCCUPIERS WERE IN POSSESSION FOR THEMSELVES, OR MERELY AS AGENTS FOR OTHERS, DERIVING NO BENEFIT FROM IT THEMSELVES, AS THE PATIENTS OF HOSPITALS; OF *WALDO'S* CHARITY, &c. THESE PERSONS REAPED THE BENEFIT OF RATEABLE PROPERTY, AND ON THESE GROUNDS THE RATE WAS CONFIRMED.

2 SALK. 526.
1 BOT. 115.
REX. V.
GARDNER.
COWP. 79.
1 BOT. 138.
1 NOLAN, 118.

UPON SIMILAR GROUNDS, THE APPLICATION OF THE RENT PAID BY THE OCCUPIER TO CHARITABLE PURPOSES DOES NOT EXEMPT HIM, ALTHOUGH HIS LIABILITY MUST NECESSARILY DIMINISH THE AMOUNT OF THE FUND WHICH IS TO BE SO APPLIED. THUS HOSPITAL LANDS ARE RATEABLE IN THE HANDS OF THE BENEFICIAL OCCUPIER, AS ABOVE-MENTIONED.

REX. V.
INHABITANTS
OF ABERAVON,
1801. [?] EAST,
452[?]

[492] BUT WHERE A CORPORATION WAS SEISED IN FEE OF UNINCLOSED LANDS, WHEREON THE CATTLE OF THE RESIDENT BURGESSES, OR OF THEIR WIDOWS, WHO ALONE WERE PERMITTED TO CLAIM THE RIGHT, AND ALSO OF POOR PARISHIONERS WHO FROM CHARITY WERE PERMITTED BY THE CORPORATION TO ENJOY THE RIGHT, THE LANDS HAD BEEN CONSEQUENTLY ALWAYS OMITTED FROM THE POOR-RATE, IN THE NAME OF THE “BURGESSES LAND;” THEY PRODUCED A PROFIT, AND WERE NOT RATED, BUT IT WAS DOUBTFUL WHETHER THE OCCUPATION WERE THAT OF THE CORPORATION OR OF INDIVIDUALS – AND THE RATE WAS QUASHED BECAUSE NO PERSON HAD BEEN RATED FOR PROPERTY WHICH OUGHT TO HAVE BEEN RATED.

THE DISTINCTION, SAYS MR. NOLAN, WITH HIS USUAL DISCRIMINATION, AS TO WHERE CHARITIES ARE RATEABLE, AND WHERE THEY ARE NOT SO, SEEMS TO DEPEND ON THIS, WHETHER THERE IS ANY BODY WHO CAN BE RATED AS *OCCUPIERS*. THE TRUSTEES ARE NOT RATEABLE WHEN THEY INTERMEDDLE WITH THE PROPERTY MERELY AS TRUSTEES, BECAUSE THEIR *OCCUPATION IS NOT BENEFICIAL*. NEITHER ARE THE POOR, WHERE THEY ARE MERE INMATES WITHOUT POWER OR CONTROL OVER THE PREMISES WHICH THEY INHABIT, AS IN THE CASE OF ST. LUKE’S AND BARTHOLOMEW’S HOSPITALS, WALDO’S ALMS-HOUSES, AND THE OTHER CASES CITED: FOR THEY ARE NOT OCCUPIERS. BUT WHERE THE OBJECTS OF A CHARITY ARE OCCUPIERS, AS IN LORD RICH’S CHARITY, OR WHERE ANOTHER IS A BENEFICIAL OCCUPIER FOR THEIR BENEFIT, AS IN THOSE OF HOSPITAL LANDS, THE OCCUPIER IS RATEABLE, WITHOUT CONSIDERING THE CHARITABLE PURPOSE TO WHICH THE PROFITS ARE DEDICATED, ALTHOUGH THE RATE MUST ULTIMATELY COME FROM THENCE. NAY, WHERE THE CHARITY IS APPROPRIATED TO ASSIST THE PAROCHIAL POOR, FOR WHOSE SUPPORT THE RATE IS RAISED, THE PROPERTY SEEMS LIABLE TO THE RATE IF OCCUPIED, ALTHOUGH THE

I NOLAN, 110

ASSESSMENT MAY BE NUGATORY IN SOME INSTANCES, AND HIGHLY IMPROPER IN OTHERS.

[493] It is upon the equity of ~~this decision~~ THE DECISION ON ST. LUKE'S HOSPITAL, that the assessors have usually levied only upon ~~the~~ officers' apartments in all the taxes ~~assessed~~ CHARGED upon hospitals. But in the original act for levying a duty on inhabited houses, called the *house-tax*, there ~~is~~ WAS a clause of exemption without this reserve; and on that ground the Small-pox hospital was relieved *in toto*, on appeal to the commissioners in ~~1787~~ 1807.

HOUSE-TAX 18
G. 3. c.26 SEC.
35 REP. BY 19
G. 3. c. 59

Commutation-
tax

~~In the commutation window act, it is declared, that (164) nothing therein shall extend to charge any hospital, charity school, or house, provided for the reception and relief of poor persons, to the payment of the rate or duty imposed thereby, BUT BY THE LAST ACT FOR RAISING THE ASSESSED TAXES, THE DUTY ON WINDOWS AND ON INHABITED HOUSES IS EXCEPTED AS TO ANY HOSPITAL, CHARITY SCHOOL, OR HOUSE PROVIDED FOR THE RECEPTION OR RELIEF OF POOR PERSONS; except such apartments therein as are occupied by the officers or servants thereof, which shall be ARE MADE subject to the same duty, according to the number of windows contained in each, as ENTIRE DWELLINGS AND other inhabited houses: are by the same act subject to. But AND chambers at either of the universities or inns of court are liable to the duties as separate tenements.~~

24 Geo. III.
c. 38. f. 35

48? G. 3. c. 55

s. 31. and 32.

~~I have been favoured by a friend with the perusal of the books of decisions of the judges and commissioners, on appeals made for over rates on the window duties, under the 20 and 21 of Geo. II. some of which are dated in 1775, 1778, 1779, 1780, 1781, 1782, and published for the commissioners use in 1782, and 1783; and the new act does not alter the nature of these decisions. Although there appear some determinations absolutely contradictory to each other, yet I have endeavoured to gather from them, some leading~~

~~principles by which this matter may be clearly ascertained. The act exempts all houses for the reception of the poor, and therefore reasonably exempts the wards wherein they are lodged, and by analogy all other parts of the house used for their necessary accommodation; to receive a patient, and not administer to him daily food, can never be the intent of any such house of refuge, therefore the kitchen should be exempted, and every other place for depositing the needful supplies of the house; cleanliness is likewise an essential means towards recovery, the washhouse therefore should stand exempted, &c. &c. in July 1775, the twelve judges declared that all the offices, pantry, dining-room, cel- (165)lars, &c. of the workhouse at West-Wycomb, and at Beamister, and at Windsor, the Magdalen Hospital, &c. &c. were exempt, and charged only two window's in the master's or matron's chamber.~~

~~In 1779, the twelve judges went further, and exempted the workhouse of St Paul Covent Garden, from payment for the apartments of the master, matron, clerk, school mistress, and the committee room: the officers were all hired yearly, and the rooms of the master and matron were only bedchambers.~~

~~The infirmary at Worcester was likewise discharged from this duty, on similar grounds, that the matron was the servant of the subscribers, had no property in the house, nor was there any officer or person therein that paid any parochial rate.~~

~~The act of 18 Geo. III. establishing a duty on inhabited houses, enacts that "no house shall within the intention of the act, be deemed or taken to be inhabited houses, except the same shall be inhabited by the owner, or by a tenant renting the same."~~

Tax on
inhabited
houses

~~At Drayton, in Shropshire, the free school is detached from the master's dwelling house; three of the judges in 1779, declared the~~

~~latter chargeable and the former not so, to the duty on inhabited houses. And at Great Torrington, in Devonshire, the master's dwelling and the free-school, joined by a passage; the judges in 1782, declared him liable only for the part he inhabited.~~

~~The apartments of the officers in Greenwich hos(166)pital, are contiguous to, though entirely separate from any communication with those parts of the building appropriated to the objects of the charity, and are inhabited by the officers and their families; the commissioners had declared them chargeable to the house-duty, but four of the judges in 1779 adjudged them exempt. This is expressly against the decision in 1749 of the twelve judges, who charged all the officers' dwelling houses in St. Thomas's hospital; while the apartments of a matron, or master of a small hospital, who live and sleep in the adjoining rooms to the patients, are declared chargeable.~~

~~Under this act the register of Sutton's hospital (called the Charter-house) was rated for all the officers' apartments who were deemed necessary to the carrying on of its designs. It appeared that they had all for many years paid the window-duty: the commissioners and eight of the judges declared them liable; another decision directly contrary to that of Greenwich hospital.~~

~~Where the dwellings of the officers have been detached from the poor-house or hospital, it seems notwithstanding to have been, in some cases, the chief cause of confirming the assessment; this was expressly so in the case of Wigston hospital at Leicester, where the communication was through the back yards of both buildings; the commissioners judging this a part of the hospital, exempted it; but four of the judges reversed their decision in 1780.~~

~~Winchester College was likewise assessed under the 19 Geo. III. the~~

~~commissioners adjudged that this (167) college, in which is included the warden's house, rooms for the fellows, school, chapel, kitchen, brewhouse, &c. is under the same situation as the colleges at the universities, and adjudged them liable; which four of the judges afterwards confirmed.~~

~~But where any profit is derived to a school-master of any parish school, as in the case of the Brewers free school, at Clerkenwell, who had liberty to take day scholars, for which he was paid independent of the charity; the judges declared him liable for his own apartments which were over the school-room in the same house.~~

~~In the act for levying~~ THE SAME ACT CHARGES a duty on servants, ~~it is declared that nothing therein shall extend to charge any of~~ AND EXEMPTS the English ~~or Scotch~~ universities, the colleges of Eton, ~~Winton, or~~ WINCHESTER, AND Westminster, FOR ANY BUTLER, MANCIPLE, COOK, GARDNER, OR PORTER: ~~of~~ AND ALSO the royal hospitals of Christ, St. Bartholomew, Bridewell, Bethlem, St. Thomas, AND ALSO Guy, ~~of~~ AND the Foundling.

Tax on servants.
25 Geo. III c. 43
f. 9 and 10.

48 G. 3. c. 55.
SCH. C. No. 2.3.

But ~~though~~ ALTHOUGH this clause is not extended by name to any other house for relief of the poor, the same reasoning which was established in the case of the poor's rate, and which most evidently produced the above exemption ~~in the window act~~ RELATING TO WINDOW AND HOUSE-DUTY, is materially applicable and conclusive here: for though the servants are hired by the house steward, they are not his servants, even though they obey his commands; they are not the servants of the individual governors, nor are they the servants of the poor ~~wretches~~ PERSONS who come into the house [494] for relief: ~~and on whom then could the assessors distrain, if they should levy and the tax be unpaid? what name could they affix as proprietor of the goods they should seize upon? But the fact is,~~

~~(168) the assessors have not levied this tax upon hospitals; for these difficulties are obvious; but it is right to return their list, with some such answer as this, indorsed: "No servants are employed here except such as are immediately concerned in the charity." BUT STILL IT IS NECESSARY THAT THE ASSESSOR'S LIST SHOULD BE RETURNED PROPERLY FILLED UP, AND THE PROPRIETY OF ANY SUBSEQUENT APPEAL MAY BE WORTHY OF CONSIDERATION.~~

REX. V. ST.
LUKE'S
HOSPITAL.
2. BUR. 1053.
1 BOT. 123.
1 NOLAN. 110.
A[?] v.
SMALLPIECE.
1 BOT. 12.
1 NOLAN 111.

SERVANTS ATTENDING AN HOSPITAL, AND RESIDENT THERE, ARE NOT SUCH OCCUPIERS AS ARE INTENDED BY THE STATUTE, WHICH RENDERS A HOUSE OR PROPERTY RATEABLE.

REX. V.
GARDNER,
COWP. 813,
1 NOLAN, 111.

WHERE THE COMPTROLLER OF CHELSEA HOSPITAL, OR OFFICERS OF THAT OR OTHER CHARITABLE FOUNDATIONS, HAVE LARGE DISTINCT APARTMENTS APPROPRIATED TO THE USE OF THEIR RESPECTIVE OFFICES, WHERE THEY AND THEIR FAMILIES RESIDE, THEY ARE TO BE CHARGED NOT AS SERVANTS OF SUCH HOSPITALS, OR AS INHABITANTS AND OCCUPIERS OF THE ORDINARY ROOMS AND LODGINGS, BUT AS HAVING SEPARATE AND DISTINCT APARTMENTS, [] WHICH ARE CONSIDERED AS THEIR DWELLING-HOUSES. SO THE PORTER AND BUTLER OF A COLLEGE ARE RATEABLE FOR THEIR DWELLING HOUSES ERECTED FOR THEM BY, AND BELONGING TO THE COLLEGE, IF THEY HAVE THE ENTIRE USE OF THEM, WITHOUT THE COLLEGES INTERMEDDLING THEREWITH.

Highways
[Indecipherable]

As to the ALTERATION OR REPAIR OF highways, ~~there is no clause in any of the acts on that subject which refers to any hospitals. The general expression of "all persons inhabitants of any parish or~~

1783

~~place, and keeping such teams or carriages," bears a very different description from the character of any house, or its officers, supported for the relief of the poor; and therefore it is presumed, if for their convenience they were to keep a cart, it could not be taken to assist in the performance of *statute work*; nor can any inhabitant of such a house be liable to compound for any proportion of labour, that should be assessed upon it. I remember an instance of the surveyors sending their usual notice under the act of the 13th of his present majesty, to a house of charity near London, that they should attend at a place specified to receive the composition money of the landholders and inhabitants of the parish for that year; but the steward of the hospital never paid any attention to it, and the surveyors never thought proper to present the neglect.~~

THE ACT OF 1773, WHICH CONSOLIDATED THE FORMER STATUTES INTO ONE, COMPRISES PUBLIC AS WELL AS PRIVATE PROPERTY; AND AS FOR THE GENERAL GOOD THE PECULIAR PROPERTY APPROPRIATED TO ANY CHARITABLE PURPOSE MAY BE AFFECTED BY SOME OF ITS REGULATIONS, I SHALL NOTICE IN GENERAL TERMS ONLY SUCH CLAUSES AS MAY BE NECESSARY FOR THE READER'S MORE MINUTE INSPECTION.

SEC. 16.

WHERE IT SHALL APPEAR THAT ANY HIGHWAY IS NOT OF SUFFICIENT BREADTH, AND MAY BE CONVENIENTLY WIDENED, OR CANNOT BE CONVENIENTLY ENLARGED AND MADE COMMODIOUS FOR TRAVELLERS WITHOUT TURNING THE SAME, ANY TWO JUSTICES OF THE DISTRICT, UPON THEIR OWN VIEW, MAY ORDER THE SAME TO BE WIDENED OR TURNED IN SUCH MANNER AS THEY SHALL THINK FIT, NOT EXCEEDING 30 FEET IN BREADTH. [495] THIS POWER DOES NOT EXTEND TO PULL DOWN ANY HOUSE OR BUILDING, OR TAKE AWAY ANY GARDEN, PARK, PADDOCK, COURT, OR YARD; AND FOR THE SATISFACTION OF ANY INDIVIDUAL OR CORPORATION THEN IN POSSESSION, OR INTERESTED IN THEIR OWN RIGHT, OR IN TRUST, THE

SURVEYOR, UNDER THE JUSTICE'S DIRECTION, MAY MAKE AGREEMENT FOR PROPER RECOMPENSE FOR THE INJURY, IN PROPORTION TO THEIR INTERESTS; AND IF THEY REFUSE TO TREAT OR TO ACCEPT THE SATISFACTION OFFERED BY HIM, THE JUSTICES AT THEIR QUARTER SESSIONS UPON A CERTIFICATE, SIGNED BY THE JUSTICES MAKING THE VIEW OF THEIR PROCEEDINGS THEREIN, AND UPON PROOF OF FOURTEEN DAYS' NOTICE IN WRITING BY THE SURVEYOR TO THE PARTY INTERESTED, OF SUCH INTENDED APPLICATION, MAY IMPANNEL (SIC) A JURY TO ASSESS THE DAMAGES, WHICH ARE LIMITED TO FORTY YEARS' PURCHASE, FOR THE CLEAR YEARLY VALUE OF THE GROUND SO LAID OUT; AND LIKEWISE SUCH RECOMPENSE FOR MAKING NEW FENCES, AND SATISFACTION FOR THE INJURY; AND ON PAYMENT, OR TENDER OF THE MONEY SO ASSESSED, OR LEAVING IT IN THE HANDS OF THE CLERK OF THE PEACE, WHERE THE PROPER PARTY CANNOT BE FOUND, OR WHERE THEY REFUSE TO ACCEPT THE SAME, SUCH INTEREST SHALL BE FOR EVER DIVESTED OUT OF THEM, AND THE GROUND BE TAKEN TO BE A PUBLIC HIGHWAY. SAVING TO THE OWNERS ALL MINES, MINERALS, AND FOSSILS, WHICH CAN BE GOT WITHOUT BREAKING THE SURFACE OF THE SAID HIGHWAY, AND ALL GROWING TIMBER AND WOOD TO BE TAKEN BY THEM WITHIN ONE MONTH AFTER SUCH ORDER, OR IN DEFAULT THEREOF TO BE FALLEN BY THE SURVEYOR, AND LAID UPON THE LAND ADJOINING TO THE OWNER'S PREMISES; OAK TREES IN THE MONTHS OF APRIL, MAY, OR JUNE, AND ASH, ELM, OR OTHER TREES IN THE MONTHS OF DECEMBER, JANUARY, FEBRUARY, AND MARCH, WITH POWER TO MAKE ASSESSMENT, IF NECESSARY, NOT EXCEEDING 6D. IN THE POUND OF THE YEARLY VALUE IN ANY ONE YEAR.

SEC. 13

POWER IS GIVEN TO THE SURVEYOR, WITH THE APPROBATION OF THE JUSTICES, TO SELL THE LAND CONSTITUTIING THE OLD HIGHWAY, [496] RESERVING ANY ANCIENT RIGHT, OR WAY, TO PREMISES ADJOINING THERETO; THE PRODUCE OF THE SALE TO BE APPLIED TOWARDS THE PURCHASE, AND TO VEST IN THE PURCHASER, SUBJECT

SEC. 17

AS AFORESAID: IF THE JURY ASSESS MORE MONEY THAN THE SUM OFFERED BY THE SURVEYOR, THE COSTS OF THESE PROCEEDINGS ARE TO BE BORNE BY HIM; IF OTHERWISE, THEN BY THE PARTY.

SEC. 19. WHEN IT SHALL APPEAR, UPON THE VIEW OF ANY TWO JUSTICES, THAT ANY PUBLIC HIGHWAY, NOT IN THE SITUATION BEFORE DESCRIBED, OR PUBLIC BRIDLEWAY, OR FOOTWAY, MAY BE DIVERTED, AND THE OWNERS OF THE LAND, THROUGH WHICH IT IS PROPOSED TO BE MADE, SHALL CONSENT THERETO IN WRITING, THE JUSTICES AT SOME SPECIAL SESSION MAY ORDER THE SAME, AND STOP UP, INCLOSE, AND DISPOSE OF THE OLD WAY, AND PURCHASE THE GROUND FOR THE NEW WAY, IN SUCH MANNER, AND WITH SUCH EXCEPTIONS AS ARE BEFORE PRESCRIBED; AND THE OWNER MAY, BY VIRTUE OF ANY INQUISITION TAKEN UPON ANY WRIT OF *AD QUOD DUMNUM*, COMPLAIN THEREOF BY APPEAL TO THE QUARTER SESSIONS, UPON TEN DAYS' PREVIOUS NOTICE TO THE SURVEYOR, IF THERE BE SUFFICIENT TIME FOR THAT PURPOSE, AND IF NOT, SUCH APPEAL MAY BE MADE UPON THE LIKE NOTICE AT THE NEXT SUBSEQUENT QUARTER SESSIONS, WHICH ARE AUTHORIZED TO HEAR AND FINALLY DETERMINE THE APPEAL.

SEC. 25. THE SURVEYOR IS TO GIVE INFORMATION UPON OATH TO ANY TWO JUSTICES OF SUCH HIGHWAYS, BRIDGES, CAUSEWAYS, OR PAVEMENTS AS ARE OUT OF REPAIR, AND OUGHT TO BE REPAIRED BY ANY PERSONS, OR CORPORATIONS, BY REASON OF ANY GRANT, TENURE, LIMITATION, OR APPOINTMENT OF ANY CHARITABLE GIFT, OR OTHERWISE HOWSOEVER, WHO SHALL LIMIT A TIME FOR SUCH REPAIR, OF WHICH NOTICE SHALL BE GIVEN BY THE SURVEYOR TO THE PARTY LIABLE; AND IF THE REPAIR BE NOT THEN EFFECTUALLY MADE, THE JUSTICES ARE REQUIRED TO PRESENT SUCH HIGHWAY, [497] &c. TOGETHER WITH THE PARTY LIABLE, AT THE NEXT GENERAL QUARTER SESSIONS FOR THE DISTRICT, AND THE SESSION MAY DIRECT THE PROSECUTION TO BE CARRIED ON AT THE GENERAL

EXPENSE OF THE LIMIT, OR TO BE PAID OUT OF THE GENERAL RATE.

THE JUSTICES OF THE ASSIZE ARE AUTHORISED TO MAKE SIMILAR PRESENTMENTS, SAVING TO ALL PERSONS AFFECTED THEREBY THEIR LAWFUL TRAVERSE, AS WELL WITH RESPECT TO THE FACT OF NON-REPAIR, AS TO THE DUTY OF REPAIRING, AS THEY MIGHT HAVE HAD UPON ANY INDICTMENT. SEC. 24

BY THE ABOVE STATUTE CERTAIN REGULATIONS WERE PRESCRIBED FOR THE REPAIR, AND THE PERSONS CHARGEABLE THERETO, AND HOW THE CONTRIBUTIONS WERE TO BE RECOVERED; BUT THESE WERE REPEALED IN 1794, AND A DIFFERENT MODE DIRECTED; BUT IN A SUBSEQUENT ACT, PASSED IN THE YEAR 1804; THE STATUTE DUTY WAS AGAIN DIRECTED TO BE PERFORMED IN THE MANNER ENACTED BY 34 G. III, AND COMPOUNDED FOR IN THE MANNER ENACTED BY THE ACT OF 13 G. III VIZ. EVERY PERSON KEEPING A WAGGON (SIC), CART, WAIN, PLOUGH, OR TUMBREL, AND 3 OR MORE HORSES OR BEASTS OF DRAUGHT USED TO DRAW THE SAME, SHALL BE DEEMED TO KEEP A TEAM, DRAUGHT, OR PLOUGH, AND BE LIABLE TO PERFORM STATUTE-DUTY SIX DAYS IN THE YEAR, IF NECESSARY, FROM MICHAELMAS TO MICHAELMAS, AND SEND THE SAME WITH TWO ABLE MEN, WHICH DUTY SO PERFORMED SHALL EXCUSE EVERY PERSON FROM HIS DUTY IN SUCH PARISH, IN RESPECT OF ALL LANDS, &C. NOT EXCEEDING THE ANNUAL VALUE OF 50L. WHICH HE SHALL OCCUPY THEREIN, AND IF HE OCCUPY THEREIN LANDS OF THE YEARLY VALUE OF 50L. BEYOND THE SAID YEARLY VALUE OF 50L. IN RESPECT WHEREOF SUCH TEAM-DUTY SHALL BE PERFORMED; AND EVERY PERSON OCCUPYING LANDS OF THE YEARLY VALUE OF 50L. IN ANY OTHER PARISH BESIDES THAT WHEREIN HE RESIDES; AND EVERY PERSON NOT KEEPING A TEAM, &C. BUT OCCUPYING LANDS OF 50L IN ANY PARISH, SHALL, IN LIKE MANNER, AND FOR THE SAME NUMBER OF DAYS, SEND 1 WAIN, CART, OR CARRIAGE, FURNISHED WITH NOT [498] LESS THAN 3 HORSES, OR 4 OXEN AND 1 HORSE, OR 2 OXEN AND STATUTE DUTY, 13 G. 3.c. 78. s. 34. 34 G. 3. c. 74 .3. S. 4. 44 G.3. c. 52

2 HORSES, AND TWO ABLE MEN TO EACH WAIN, &C. AND IN LIKE MANNER FOR EVERY 50L. PER ANNUM, WHICH HE SHALL FURTHER OCCUPY IN ANY SUCH PARISH; AND EVERY PERSON WHO SHALL NOT KEEP A TEAM, DRAUGHT, OR PLOUGH, BUT SHALL OCCUPY LANDS UNDER THE VALUE OF 50L. IN THE PARISH WHERE HE RESIDES, OR IN ANY OTHER PARISH; AND EVERY PERSON KEEPING A TEAM, &C, AND OCCUPYING LANDS UNDER THE YEARLY VALUE OF 50L. IN ANY OTHER PARISH; SHALL RESPECTIVELY CONTRIBUTE TO THE REPAIR, AND PAY THE SURVEYOR, IN LIEU OF SUCH DUTY AT THE TIMES MENTIONED IN 13 GEO. III. C. 78. S. 41. VIZ. WITHIN TEN DAYS AFTER NOTICE GIVEN IN THE PARISH CHURCH, ON SOME SUNDAY IN NOVEMBER, OR WITHIN ONE CALENDAR MONTH AFTERWARD, SUCH SUMS AS THE JUSTICES FOR THE LIMITS AT THEIR SPECIAL SESSION, TO BE HELD IN THE FIRST WEEK AFTER MICHAELMAS QUARTER SESSION, SHALL, BY 44 G. III C. 52. ADJUDGE TO BE REASONABLE, NOT EXCEEDING 12S. NOR LESS THAN 3S. FOR EACH TEAM, &C, PER DAY; AND IN DEFAULT OF THEIR ADJUDICATION, 6S. IN LIEU OF EVERY DAY'S DUTY FOR EACH TEAM, &C.: AND FOR EACH CART WITH TWO HORSES, OR BEASTS OF DRAUGHT, NOT EXCEEDING 8S. NOR LESS THAN 3S.; AND IN DEFAULT OF SUCH ADJUDICATION, 4S; AND FOR EACH CART WITH ONE HORSE, OR BEAST OF DRAUGHT, NOT EXCEEDING 6S. NOR LESS THAN 2S.; AND IN DEFAULT OF SUCH ADJUDICATION, 3S.

34 G. 3. C. 78. s.
41

THESE COMPOSITIONS ARE TO BE RECOVERED UPON THE ORDER OF TWO JUSTICES, AT A PETTY SESSION, BY DISTRESS AND SALE.

34 G 3.C. 74 s.
4.

IT WILL BE FOR THE DIRECTORS AND STEWARDS OF HOUSES OF CHARITY IN THE COUNTRY, TO CONSIDER HOW FAR THE LANGUAGE OF THESE STATUTES APPLY TO THEM, SO AS TO RENDER THEIR CARRIAGES, AND THEMSELVES AS OCCUPIERS, LIABLE TO THE PERFORMANCE OF THE STATUTE-DUTY, OR TO THE COMPOSITION IN LIEU THEREOF; THE GENERAL LANGUAGE AND TENOR OF THE

STATUTES, CHARGE THE LIABILITY UPON PERSONS OCCUPYING LANDS OF CERTAIN VALUES, WITH A PROPORTIONATE DUTY AND A RATEABLE COMPOSITION, BUT [499] THE IMPLICATION IS CLEAR THAT SUCH OCCUPATION IS, IN CONFORMITY WITH THE DECISIONS ALREADY NOTICED RESPECTING OTHER RATES AND TAXES, SOLELY INTENDED TO BE A *BENEFICIAL OCCUPATION* AND INTEREST. THESE BEAR A VERY DIFFERENT DESCRIPTION AND INTERPRETATION FROM THOSE WHO ARE PLACED IN ANY HOUSE FOR RELIEF OF THE POOR TO SUPERINTEND ITS ECONOMY AND MANAGEMENT, AND WHO RECEIVE A STIPEND FOR THE EXERCISE OF THE TRUST COMMITTED TO THEM; AS TO THE POOR PERSONS THEMSELVES, THEY ARE IN GENERAL TERMS EXEMPTED BY 34 G. III. C. 74. S. 5 WHICH WAS NOT REPEALED BY THE ACT OF 44 G. 3.; AND THOUGH THEY ARE DESCRIBED AS GAINING THEIR LIVELIHOOD BY DAILY WAGES, AND INHABITING RATEABLE TENEMENTS, YET THE SPIRIT OF THE ACT MAY BE JUSTLY EXTENDED TO THOSE WHO ARE INCAPABLE OF EITHER, AND DWELL IN ANY HOUSE OF CHARITY.

IT MAY THEREFORE BE REASONABLY PRESUMED, THAT IF, FOR THE CONVENIENCE OF ANY SUCH HOUSE, THE MASTER WERE TO KEEP A CART, IT COULD NOT BE TAKEN TO ASSIST IN THE PERFORMANCE OF STATUTE-WORK, NOR CAN ANY INHABITANT OF SUCH A HOUSE BE LIABLE TO COMPOUND FOR ANY PROPORTION OF THE DUTY THAT SHOULD BE CHARGED UPON HIM; HOW FAR THEY MAY BE INDUCED TO CONFORM TO THE NOTICE, AND TO PAY THE COMPOSITION, ON ACCOUNT OF ITS BEING VERY SMALL, AND IN CONSIDERATION OF THE PUBLIC PROTECTION WHICH THEIR ESTABLISHMENT MAY RECEIVE, ARE POINTS FOR THE ATTENTION OF THE COMMITTEES ACTING ON THE SPOT.

Indeed where corporations have by ~~prescription~~ PRESCRIPTIONS, or for any consideration, been accustomed to repair highways, they will remain always liable thereto, even though they may have done

1 Haw. 202

it out of charity, or gratuitously for any considerable time; for what it hath always done, it shall be presumed, says Mr. Hawkins, to have been always bound to do.

(169) But sometimes a charitable gift of lands has been for – [500] merly made to trustees, or to a corporation, to repair highways; here the trustees are bound to let the lands at the most improved yearly value *without fine*: and the justices may inquire into their value, and order the employment thereof according to the will of the donor (except such lands as are given for such uses to either of the universities, which have visitors of their own:) and AND (SIC) in such case the surveyor’s notice goes to the occupier or to the trustees. And in the case of *Harrow School*, the court did not choose to interpose, though the trustees had laid out the money in repairing a different part of that road, not exactly pursuant to the will; but then they were invested with very extensive discretionary powers, and it did not appear they had acted corruptly: but the court would not dismiss the information.

7 Geo. III. c. 42.
f. 14, 33.

2 Vezey, 551.

43 G. 3. c. 122.
PROPERTY

[500] IN THE STATUTE OF 1803, FOR LEVYING DUTY ON PROPERTY, THE REVENUES AND INCOME OF LANDS AND FUNDS OF CHARITABLE INSTITUTIONS WERE EXEMPTED.

THIS ACT WAS REPEALED BY 46 GEO. III C. 65. 1806, UNDER WHICH STATUTE THOSE EXEMPTIONS ARE STATED AS FOLLOW AFTER SEC.74, IN SCHEDULE A. NO. 6.

“FOR THE DUTIES CHARGED ON ANY COLLEGE OR HALL IN ANY OF HE (SIC) UNIVERSITIES IN GREAT BRITAIN, IN RESPECT OF THE PUBLIC BUILDINGS AND OFFICES BELONGING THERETO, AND NOT OCCUPIED BY ANY INDIVIDUAL MEMBER OR MEMBERS THEREOF, OR BY ANY PERSON PAYING RENT FOR THE SAME, AND FOR THE REPAIRS OF THE PUBLIC BUILDINGS AND OFFICES OF SUCH COLLEGE OR HALL, AND THE GARDENS, WALKS, AND GROUNDS FOR RECREATION, REPAIRED

AND MAINTAINED BY THE FUNDS OF SUCH COLLEGE OR HALL.

“OR ON ANY HOSPITAL, PUBLIC SCHOOL, OR ALMS-HOUSE, IN RESPECT OF THE PUBLIC BUILDINGS, OFFICES, AND PREMISES BELONGING TO SUCH HOSPITAL, PUBLIC SCHOOL, OR ALMS-HOUSE, AND NOT OCCUPIED BY ANY INDIVIDUAL OFFICER, OR THE MASTER THEREOF, WHOSE PROFITS OR EMOLUMENTS, HOWEVER ARISING, SHALL [501] EXCEED 50L. PER ANNUM, OR BY ANY PERSON PAYING RENT FOR THE SAME, AND FOR THE REPAIRS OF SUCH HOSPITAL, PUBLIC SCHOOL, OR ALMS-HOUSE, AND OFFICES BELONGING THERETO, AND OF THE GARDENS, WALKS, AND GROUNDS, FOR THE SUSTENANCE OR RECREATION OF THE HOSPITALLERS, SCHOLARS, AND ALMS-MEN, REPAIRED AND MAINTAINED BY THE FUNDS OF SUCH HOSPITALS, SCHOOL, OR ALMSHOUSE.

“OR ON THE RENTS AND PROFITS OF MESSUAGES, LANDS, TENEMENTS, OR HEREDITAMENTS BELONGING TO ANY HOSPITAL, PUBLIC SCHOOL, OR ALMS-HOUSE, OR VESTED IN TRUSTEES FOR CHARITABLE PURPOSES, SO FAR AS THE SAME ARE APPLIED TO CHARITABLE PURPOSES.

“THE SAID ALLOWANCES TO BE GRANTED ON PROOF BEFORE THE COMMISSIONERS FOR SPECIAL PURPOSES, OF THE DUE APPLICATION OF THE RENTS AND PROFITS TO CHARITABLE PURPOSES ONLY, AND IN SO FAR AS THE SAME SHALL BE APPLIED TO CHARITABLE PURPOSES ONLY; TO BE CLAIMED AND PROVED BY ANY STEWARD, AGENT, OR FACTOR, ACTING FOR SUCH SCHOOL, HOSPITAL, OR ALMS-HOUSE, OR OTHER TRUST FOR CHARITABLE PURPOSES, OR BY ANY TRUSTEE OF THE SAME, BY AFFIDAVIT TO BE TAKEN BEFORE ANY COMMISSIONER IN THE DISTRICT, WHERE SUCH PERSON SHALL RESIDE, STATING THE AMOUNT OF THE DUTIES CHARGEABLE, AND THE APPLICATION THEREOF, AND TO BE CARRIED INTO EFFECT BY THE SAID COMMISSIONERS FOR SPECIAL PURPOSES, AND ACCORDING TO THE POWERS VESTED IN THEM, WITHOUT VACATING, ALTERING, OR IMPEACHING THE ASSESSMENT MADE IN RESPECT OF SUCH PROPERTIES, WHICH ASSESSMENT SHALL BE IN FORCE AND LEVIED

NOTWITHSTANDING SUCH ALLOWANCES.

AS SOON AS THE TRUSTEE OR AGENT FOR THE CHARITY HAS PAID THIS ASSESSMENT, IT IS NECESSARY FOR HIM TO ADDRESS A LETTER TO THE SPECIAL COMMISSIONERS, STATING THE AMOUNT AND SOLICITING THE RETURN; HE WILL IN A SHORT TIME AFTERWARDS RECEIVE A PRINTED AFFIDAVIT, FILLED UP AT THEIR OFFICE CONFORMABLY WITH HIS RETURN, STATING THAT THE PREMISES IN QUESTION ARE WHOLLY OCCUPIED FOR THE PURPOSES OF [502] THE CHARITY, NOTICING THE RESIDENT OFFICER'S APARTMENTS. THIS AFFIDAVIT MUST THEN BE SIGNED AND SWORN BEFORE A COMMISSIONER ACTING FOR HIS DISTRICT, FOR WHICH NO FEE IS DEMANDED; AND WHEN IT HAS BEEN TRANSMITTED TO THE SPECIAL COMMISSIONERS, A CERTIFICATE WILL BE RETURNED FOR REPAYMENT OF THE DUTY AT THE OFFICE OF THE RECEIVER-GENERAL OF THE COUNTY.

THE EXEMPTIONS FROM DUTY ON PERSONAL PROPERTY ARE STATED AFTER SEC. 103, SCHEDULE C.

“1. THE STOCK OR DIVIDENDS OF ANY FRIENDLY SOCIETY, ESTABLISHED UNDER THE STATUTE OF 33 G. III. C. 54. PROVIDED THE PROPERTY THEREIN SHALL BE DULY PROVED IN THE MANNER ABOVE PRESCRIBED.

“2. THE STOCK OR DIVIDENDS OF ANY CORPORATION, FRATERNITY, OR SOCIETY OF PERSONS, OR OF ANY TRUST ESTABLISHED FOR CHARITABLE PURPOSES ONLY; OR WHICH, ACCORDING TO THE RULES OR REGULATIONS ESTABLISHED BY ACT OF PARLIAMENT, CHARTER, DECREE, DEED OF TRUST OR WILL, SHALL BE APPLICABLE BY THEM TO CHARITABLE PURPOSES ONLY, AND IN SO FAR AS THE SAME SHALL BE APPLIED TO CHARITABLE PURPOSES ONLY; OR THE STOCK OR DIVIDENDS IN THE NAMES OF ANY TRUSTEES APPLICABLE TO THE REPAIRS OF ANY CATHEDRAL, COLLEGE, CHURCH, OR CHAPEL, AND TO NO OTHER PURPOSE, AND IN SO FAR AS

THE SAME SHALL BE APPLIED TO SUCH PURPOSES, PROVIDED THE APPLICATION THEREOF TO SUCH PURPOSES SHALL BE PROVED IN THE LIKE MANNER.”

WHEN THE TRUSTEE HAS RECEIVED THE NET DIVIDEND, IT IS NECESSARY TO ADDRESS A LETTER TO THE SPECIAL COMMISSIONERS, AT THEIR OFFICE IN SOMERSET-PLACE, STATING THE NAMES IN THE JOINT ACCOUNT, THE STOCK, AND THE DIVIDEND, AND SOLICITING A RETURN OF THE DUTY RETAINED; THEY WILL THEN TRANSMIT AN AFFIDAVIT, FILLED UP AT THEIR OFFICE, ACCORDING TO HIS LETTER, AND STATING THAT THE PROPERTY IS WHOLLY APPLIED TO THE USE OF THE CHARITY; WHICH MUST BE SIGNED AND SWORN BY HIM BEFORE ANY ONE COMMISSIONER OF THE DISTRICT [503] WHERE HE RESIDES, FOR WHICH NO FEE IS DEMANDED, THIS MUST THEN BE RETURNED TO THE SPECIAL COMMISSIONERS, WHO WILL IN A SHORT TIME AFTERWARDS REMIT TO HIM A CERTIFICATE FOR THE REPAYMENT OF THE DUTY BY THE BANK OF ENGLAND. HAVING OCCASION AT EVERY QUARTER OF THE YEAR TO MAKE THIS APPLICATION, I CANNOT FORBEAR MY HUMBLE TESTIMONY TO THE FACILITY WITH WHICH THIS ARRANGEMENT IS CONDUCTED, SO AS TO CREATE NEITHER TROUBLE TO THE PARTIES, OR UNNECESSARY DELAY IN THE PAYMENT.

THE STATUTE OF QUEEN ANN, RELATIVE TO THE BINDING OF PARISH APPRENTICES, EXEMPTS THE MASTER FROM THE PAYMENT OF THE DUTY CHARGED ON THE FEE, WHERE HE IS PLACED OUT AT THE EXPENCE OF ANY “PARISH OR TOWNSHIP, OR PUBLIC CHARITY.”

BINDING. ?
ANN C ? S. 40.
A.D. 17??.
REX V. ST. PE?
T. REP. 196.
1 BOT. 556

THESE WORDS ARE SAID TO COMPREHEND NOT ONLY PARISH APPRENTICES FORMERLY BOUND OUT BY PARISH OFFICERS WITH THE ASSENT OF TWO JUSTICES, BUT VOLUNTARY APPRENTICES ALSO, PROVIDED THE FEE BE TAKEN FROM THE PUBLIC PARISH OR CHARITY

FUND. BUT THE WORDS OF 44 GEO. III C. 98. DIFFER SOMEWHAT FROM THE ABOVE.

THE COURT HAS GIVEN A LIBERAL CONSTRUCTION TO THE WORDS "PUBLIC CHARITY," AND HELD THAT IT NEED NOT BE A *PERMANENT* CHARITY.

IN THE PARISH OF ST. JOHN, WAPPING, THERE WAS A VOLUNTARY ANNUAL SUBSCRIPTION BY DIVERS INHABITANTS FOR PUTTING OUT APPRENTICES, BOYS AND GIRLS BROUGHT UP AT THE PARISH CHARITY SCHOOL. FOUR TRUSTEES AND A TREASURER WERE ANNUALLY ELECTED TO MANAGE THE CHARITY, AND A NUMBER OF CHILDREN WERE ANNUALLY BOUND OUT. THIS WAS HELD A *PUBLIC CHARITY* AND WITHIN THE PROVISIO. A BOY THEREFORE BOUND BY INDENTURE, WHOSE MASTER RECEIVED 5L. FROM THE TRUSTEES OF THIS CHARITY, GAINED A SETTLEMENT, ALTHOUGH NOT STAMPED WITH A STAMP DENOTING THE RECEIPT OF THIS DUTY. FOR LORD *MANSFIELD* HELD THIS TO BE A PUBLIC CHARITY, AND THAT IT WAS NOT NECESSARY THAT IT SHOULD BE A [504] PERMANENT CHARITY. THE REASON OF THE DISTINCTION BETWEEN A PUBLIC AND A PRIVATE CHARITY IS OBVIOUS; A PRIVATE CHARITY MAY BE CALCULATED TO EVADE THE ACT, WHICH A PUBLIC CANNOT BE SUPPOSED TO BE. NEITHER IS THE EXTENT OF THE FUND, OR THE NUMBER OF ITS OBJECTS MATERIAL. THE CRITERION OF A PUBLIC CHARITY WITHIN THIS ACT APPEARS TO BE, THAT THE OBJECT OF THE CHARITY SHOULD BE GENERAL, WITHOUT HAVING ANY PARTICULAR INDIVIDUAL IN CONTEMPLATION AT THE TIME IT IS CREATED, AS OTHERWISE THE DUTY MIGHT BE EASILY EVADED. A BEQUEST TO A PARISH OF A SUM TO BE GIVEN AS A TRUSTEE THINKS FIT, "SOME OF IT TO PUT OUT CHILDREN APPRENTICES," UPON THE BINDING OF SEVERAL THE INDENTURES EXPRESSED THE FEE, AND THAT IT WAS CHARITY-MONEY, AND THERE WAS NO STAMP DUTY THEREON. THE COURT OF QUARTER-SESSION FOUND THAT IT WAS A PUBLIC CHARITY, AND THAT THE LEGACY

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403?

(WHICH WAS CHARGED ON LAND) WAS NOT PAID FOR EIGHT YEARS AFTER THE WILL WAS PROVED, AND ON THAT ACCOUNT 70L. WAS PAID. IT WAS ARGUED THAT THIS WAS NOT A PUBLIC BUT A PRIVATE CHARITY, BEING LEFT ENTIRELY TO THE CHOICE OF THE TRUSTEE, WHETHER TO PUT OUT CHILDREN APPRENTICE WITH THIS MONEY OR NOT. BUT THE COURT HELD IT A *PUBLIC CHARITY*, AND THAT THE PAUPER GAINED A SETTLEMENT.

ALL THE WARD AND PAROCHIAL SCHOOLS, CHRIST'S HOSPITAL, AND MANY OTHER FOUNDATIONS UNDER THE ADMINISTRATION OF COMPANIES, PARISH OVERSEERS, &C. ARE VESTED WITH LEGACIES, TRUSTS, AND BENEFACTIONS, AND SOME LANDED ENDOWMENTS FOR THE PURPOSE OF GIVING APPRENTICE-FEES, AND BINDING OUT POOR CHILDREN TO TRADES, MANUFACTURES, AND ARTS, WHICH HAVE BEEN PRODUCTIVE OF THE SAFETY AND PROTECTION OF THE RISING GENERATION FROM VICIOUS COURSES, WHEN THE PERIOD OF THEIR MATURITY SHOULD ARRIVE, AND THEY SHOULD BECOME THEREBY EMANCIPATED FROM CONTROL; AND THE LEGISLATURE HATH WISELY BORNE ITS TESTIMONY TO SUCH SALUTARY ESTABLISHMENTS, BY RELIEVING THEM FROM ANY CONTRIBUTION TO THE PUBLIC REVENUE.

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An Act for the restitution of the First Fruits and Tenths, and rents reserved Nomine Decime, and of Parsonages Improprate, to the Imperial Crown of this Realm 1 Eliz c. 4 [1558].

[An Act] for the better assurance of gifts, grants, &c [sic] made and to be made, to and for the relief of the poor in the hospitals, in and near unto the city of London, of Christ's, Bridewell, and St. Thomas the Apostle 14 Eliz. c.14 [1572].

Commissions may be awarded to certain persons, to enquire of lands or goods given to hospitals, or other charitable uses, misemployed, and to reform [Charitable Trusts] 39 Eliz. c. 6 [1597].

An Act for the relief of the poor 43 Eliz. I c. 2 [1601].

An Act to redress the misemployment of lands goods and stocks of money heretofore given to Charitable Uses 43 Eliz. I c. 4 [1601].

An Act for a grant to their Majesties of an aid of twelve pence in the pound for one year for the necessary defence of their Realms 1 Will. & Mar. c. 20 [1688].

An Act for granting to His Majesty several rates or duties upon houses, for making good the deficiency of the clipped money 7 & 8 Will. III c. 18 [1696].

An Act for granting to His Majesty certain duties upon all inhabited houses within the kingdom of Great Britain 18 Geo. III c. 26 [1778].

Land Tax 26 Geo. III cc. 3, 54, 103, 105 and 121 [1786].

Returns of charitable donations 26 Geo. III c. 58 [1786].

Returns relative to the poor 26 Geo. III c. 56 [1786].

Duties on Houses 26 Geo. III c. 79 [1786].

An Act for raising a certain sum of money, by way of annuities, to be charged on the consolidated fund; and for making perpetual certain duties of excise on British spirits, and certain duties on the amount of Assessed Taxes 33 Geo. III c. 28 [30 April 1793].

An Act for the encouragement and relief of friendly societies 33 Geo. III c. 54 [21 June 1793].

Duties on clocks and watches 37 Geo. III c. 108 [1796-7].

An Act for granting to His Majesty certain duties on clocks and watches 37 Geo. III c. CVIII [19 July 1797].

An Act for granting to His Majesty an aid and contribution for the prosecution of the war 38 Geo. III c. 16 [12 January 1798].

A Bill [As amended by the Committee] to repeal the Duties imposed by an Act, made in the last Session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties. [8 December 1798].

A Bill [As amended by the Committee] ... Duties upon Income otbp 8 December 1798.

An Act for raising the sum of three millions by way of annuities 39 Geo. III c. 7 [22 December 1798].

A Bill [As amended on re-commitment] ... Duties upon Income otbp 22 December 1798.

An Act to repeal the Duties imposed by an Act, made in the last session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties 39 Geo. III c. 13 [9 January 1799].

An Act for extending the time for returning statements under [39 Geo. III c. 13], passed in the present session of Parliament, intituled An Act to repeal the Duties imposed by an Act, made in the last session of Parliament, for granting an aid and contribution for the prosecution of the war; and to make more effectual provision for the like purpose, by granting certain Duties upon Income, in lieu of the said Duties; and to amend the said Act 39 Geo. III c. 22 [21 March 1799].

An Act to enable the Commercial Commissioners appointed to carry into execution certain Acts for granting Duties upon Income, to extend the time limited by the said Acts for receiving Returns of Income; and for explaining and amending the said Acts 39 Geo. III c. 42 [10 May 1799].

An Act for raising the sum of fifteen millions five hundred thousand pounds, by way of annuities 39 Geo. III c. 60 [21 June 1799].

An Act to amend [39 Geo III c. 13] so far as relates to the Assessments made upon trustees, agents, receivers, and guardians 39 Geo. III. c. 72 [12 July 1799].

An Act for exempting certain specific legacies which shall be given to bodies corporate, or other public bodies, from the payment of Duty; and also the legacy of books and other articles given by the Will of the late Reverend Clayton Mordaunt Cracherode to the Trustees of the British Museum 39 Geo. III c. 73 [12 July 1799].

An Act for better ascertaining and collecting the Duties granted by several Acts passed in the last Session of Parliament, relating to the Duties on Income; and to explain and amend the said Acts 39 & 40 Geo. III c. 49 [20 June 1800].

An Act for explaining and amending so much of an Act, passed in the present Session of Parliament, relating to Duties on Income, as respect the delivery of the statements to the Commercial Commissioners of London, under the amount of [£20] 39 & 40 Geo III c. 96 [28 July 1800]. An Act for continuing until [25 March 1802] certain Acts of the last Session of the parliament to Ireland, for granting Duties to His Majesty 41 Geo. III c. 17 [24 March 1801].

An Act to exempt elephant oil sold by auction in Great Britain from the Duty imposed on such sales 41 Geo. III c. 42 [21 May 1801].

An Act for granting to His Majesty certain additional Duties on windows or lights, and on inhabited houses; and for consolidating the same with the present Duties thereon 42 Geo. III c. 34 [15 April 1802].

An Act for repealing the Duties on Income; for the effectual collection of arrears of the said Duties, and accounting the same; and for charging the Annuities specifically charged thereon upon the Consolidated Fund of Great Britain 42 Geo. III c. 42 [4 May 1802].

An Act for consolidating the provisions of several Acts passed for the redemption and sale of the Land Tax, into one Act, and for making further provisions for the redemption and sale thereof 42 Geo. III c. 116 [26 June 1802].

An Act for consolidating certain of the provisions contained in any Act or Acts relating to the Duties under the management of the Commissioners for the Affairs of Taxes, and for amending the same 43 Geo. III c. 99 [27 July 1803].

An Act for granting to His Majesty, until the sixth day of May next after the Ratification of a definitive Treaty of peace, a contribution on profits arising from property, professions, trades, and offices 43 Geo. III c. 122 [11 August 1803].

An Act for repealing the several Duties under the management of the Commissioners for the Affairs of Taxes, and granting new Duties in lieu thereof; for granting new Duties in certain cases therein mentioned; for repealing the Duties of Excises on Licences, and on carriages constructed by Coachmakers, and granting new duties thereon under the management of the said Commissioners for the Affairs of Taxes; and also new Duties on persons selling carriages by auction, or on commission 43 Geo. III c. 161 [12 August 1803].

An Act to repeal so much of an Act, passed in the last Session of Parliament, for granting to His Majesty a contribution on profits arising from property, professions, trades, and offices, as requires attorneys, agents, and factors, to retain and pay the Duties chargeable upon public Annuities; and to extend the time for hearing appeals on assessments or surcharges made in pursuance of the Act 44 Geo. III c. 37 [3 May 1804].

An Act for granting to His Majesty additional Duties in Great Britain, on the amount of assessments to be charged on the profits arising from property, professions, trades, and offices 45 Geo. III c. 15 [18 March 1805].

An Act to repeal certain parts of an Act, made in the 43rd year of His present Majesty [43 Geo. III c. 122], for granting a contribution on the profits arising from property, professions, trades, and offices; and to consolidate, and render more effectual, the provisions for collecting the said Duties 45 Geo. III c. 49 [5 June 1805].

An Act for granting to His Majesty, during the present war, and until the sixth day of April next after the ratification of a definitive Treaty of peace, further additional Rates and Duties in Great Britain (on the Rates and Duties on profits – query on the profits) arising from property professions trades and offices; for repealing an Act passed in the Forty-fifth year of His present Majesty, for repealing certain parts of an Act made in the Forty-third year of His present Majesty, for granting a contribution on the profits arising from property professions trades and offices; and to consolidate and render more effectual the provisions for collecting the said Duties 46 Geo III c. 65 [13 June 1806].

An Act for repealing the Duties of Assessed Taxes, and granting new Duties in lieu thereof, and certain additional Duties be consolidated therewith; and also for repealing the Stamp Duties on Game Certificates, and granting new Duties in Lieu thereof, to be placed under the management of the Commissioners for the Affairs of Taxes 48 Geo. III c. 55 [1 June 1808].

An Act to revive and continue for one year the Duties and contributions on the profits arising from property, professions, trades and offices, in Great Britain 55 Geo III c. 53 [12 May 1815].

An Act to explain and amend the Acts for granting Duties on profits arising from property, professions, trades and offices, so far as extend to the due assessment and collection of the Duties for past years; for confirming certain Abatements already made of the said Duties, and exempting collectors' Bonds from the Stamp Duties 56 Geo III. C. 65 [22 June 1816].

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An Act for granting to Her Majesty an increased Rate of Duty on Profits arising from property, professions, trades, and offices 17 & 18 Vict. c. 24 [16 June 1854].

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An Act to grant certain Duties of Customs and Inland Revenue 26 & 27 Vict. c. 22 [8 June 1863].

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