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1860: India's first income tax

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***B.T.R. 87** This article tells the story of India's first income tax, and the men and events that shaped it--explaining why the tax was introduced, its scope and operation, and why it failed. It is a story told against a backdrop of civil war and bitter bureaucratic infighting. It centres on the conflict between James Wilson (India's first finance minister and founder of The Economist) and Sir Charles Trevelyan (Governor of Madras). The argument between the entrepreneur turned politician and the sunburnt and strong-willed colonial civil servant ended in a manner neither expected. The passing of the Income Tax Act in 1860 illustrates a crucial and ultimately irreversible transition in the Raj. Not least of these changes was the shift from local to central revenue administration. The income tax, and the reforms that went with it, form part of the foundations of modern India.*

Introduction

In 1860 India took its first steps towards fiscal modernity by implementing an income tax. It had no choice. The Mutiny of 1857 had nearly bankrupted the Indian Government.1 New revenue had to be extracted from a people so recently at war with their colonial masters. Whitehall, itself cash strapped, sent the next best thing: James Wilson. The Prime Minister, Lord Palmerston,2 reasoned that if money seemed to stick to Wilson--a wily entrepreneur turned politician--what better hand to turn to revenue gathering? He was not disappointed. Wilson applied his fertile mind to the conundrum of Indian public finance. Though his income tax lasted only five years, his wider financial and administrative reforms revolutionised the Raj, conditioning its people to a tax that has become the hallmark of a modern state.

2010 marked the 150th anniversary of the income tax; a turning point in the histories of India, Pakistan, Bangladesh, and Burma (all once part of British India). Its story is told in three parts. Part one seats the income tax in context. It rose amid a clash of arms and ideas; its conception and operation punctuated by civil war and political compromise. Part two explains the scope and operation of the Act. Part three evaluates the tax.

The following discussion is as much a study in power as a tax history. The Government of India had near unbridled power over the population of British India, numbering close to 150 million.3 But that does not mean that the tax is important for its scale. It was imposed on less than 1 per cent of the population, and never accounted for more than 5 per cent of revenue (similar ***B.T.R. 88** to other early income taxes).4 The tax is important because it reveals something of the way the few ruled the many. The few presented a single-minded policy, but were not always of one mind. Their arguments proved crucial in shaping the Act.

Foundations

Financial crisis of the Raj

For the schoolboy, British rule began with the Battle of Plassey in 1757. A mixture of brute-force and intrigue won the young Empire what would become the jewel in the crown.5 The true prize was not territory, but the transfer of tax gathering rights once reserved for local rulers.6 India was a *private* empire--controlled by the East India Company. Constituted by Royal Charter, it operated solely to advance its own trading interests, governing territory it acquired with extensive state-like powers.7 At first, most wealth came from trading monopolies, but as these were emasculated by a series of Acts of Parliament,8 it relied more heavily on taxation to fund the administration of India for Britain.9

By the mid-19th century the Company controlled two-thirds of the sub-continent--though a recent annexation, Oudh, was beginning to cause some consternation.10 Lord Canning,11 newly appointed Governor-General, feared unrest in this new province. On arrival in India he was reassured by telegram: "all is quiet in Oudh".12 He (and Queen Victoria) benignly contemplated several more peaceful years of Company rule.

They were wrong. In 1857, what began as a localised uprising of Indian troops in Oudh soon engulfed northern India in a year-long war, known as the Mutiny.13 Its causes were complex; for present purposes, its effect was threefold. First, it necessitated a sustained increase in the size and professionalism of forces stationed in India.14 Britain could no longer rely on local mercenaries led by a handful of soldier-adventurers to keep order.15

B.T.R. 89 Secondly, it signalled the end of Company rule. The Government of India Act 1858 saw the Crown assume direct authority. New departments and titles were created. The India Office, with a Secretary of State (a member of the cabinet, Sir Charles Wood),16 would replace the Governor of the Company, his Court of Directors, and the Board of Control. Lord Canning kept his job as Governor-General.

As in the days of the Company, while London directed policy, much power still reposed in the Governor-General (who gained a new title, that of Viceroy) and his appointed Council. The Viceroy's Council had five members; each was assigned one or several areas of responsibility--akin to departmental portfolios. Most members were drawn from the highest levels of government service in British India, though one (usually a lawyer) was sent out directly from England.17 While the bulk of the work of government was conducted by the members individually, important matters were discussed by all, and decisions made by majority vote (though the Viceroy could overrule the Council in exceptional cases).18

Statutes were sourced in a separate body, the Legislative Council of India (with the Viceroy's assent). Twelve sat on this unelected legislature: five from the Viceroy's Council, four nominated by local governments, and the rest by the Secretary of State.19 In many ways, the Viceroy's Council was the cabinet of this wider law-making body: proposals were first informally discussed in Council, before being introduced to the legislature.20

The Government of India had authority over the 150 million people who lived in *British* India. A further 50 million lived in the "princely states"--under the authority of native rulers tied by treaty to the Crown. These, along with the half-million living in French and Portuguese toeholds on the sub-continent (Pondicherry and Goa, for example), were beyond the Viceroy's reach.21

Finally, the Mutiny threw the administrative and financial apparatus of the Company into disarray.22 The Act of 1858 laid the foundations for a national bureaucracy: the Indian Civil Service (Kipling would call this privileged class "heaven-born").23

These reforms came at a price.24 When the dust settled, the Government estimated it would face a deficit of anywhere between £7,000,000 and £9,000,000 for the 1860 financial year.25 While cuts in expenditure could be made, £3,000,000 of new revenue was needed.26

B.T.R. 90 The Mutiny exposed troubling weaknesses in the Raj. Its finances were precarious at best. Deficits coincided with times of war; precisely when stability was needed.27 It relied on opium revenue and tariffs, land rents, and the salt duty.28 These revenue sources were unstable,29 and in the case of opium, required significant military intervention abroad to keep markets open.30

Bound to take action (and for want of a better option), the Government doubled tariffs, and raised the salt duty.31 This was a short term fix, and Wood knew it. It was generally felt in Whitehall that the deficit was one with which "the financiers of India did not *seem* to be able to cope, and which a cumbrous financial system did not give them the best means of vanquishing";32 equally, that "some one with an English training and English habits of business would have a better chance of overcoming the most pressing difficulty of India than any one on the spot".33

By 1859, James Wilson34 --a former hatter from Hawick, Scotland; financier; and magazine editor (he founded *The Economist*)35 --was a leading member of the Liberal Government; on the cusp of becoming Chancellor of the Exchequer.36 Instead, Lord Palmerston had other plans, and chose Wilson as its first Indian equivalent: Finance Member of the Viceroy's Council. Though his appointment raised a few eyebrows, Wilson was eminently qualified, having served in the Company equivalent of the India Office, and as Financial Secretary to the Treasury.37 In Wilson, financial savvy and knowledge of Indian affairs and taxation, met with intelligence and determination.38 He accepted the position; sense of duty walking hand in hand with taste.39

Wilson's proposal

Despite the circumstances giving rise to his appointment, Wilson was confident. Soon after arrival, he followed Canning on his tour of northern India--a "rich country teeming with people and the richest of crops … [a] goodly country to bear taxes!"40 His enthusiasm was undimmed even in visiting Oudh--the very "cradle of the Mutiny"41 :

"The country is everywhere extremely quiet, the people feel themselves completely beaten, are annoyed at their folly and failure, and more than ever look with astonishment upon British courage, intrepidity, and power. They seem eager only that the past shall be forgotten. Their leaders are all dead or taken. The prestige of England never stood higher. They are ***B.T.R. 91** ready to submit to anything and to pay any taxes we impose; they are only astonished at our generosity and leniency after the deep offence we have received."

Canning and Wilson discussed their plans for financial reconstruction. While the Government had come to accept the need for new revenue sources before Wilson arrived, his broad-based income tax was a novelty.42 In December 1859 he reported back to his political master, India Secretary Sir Charles Wood43 :

"A fair Income Tax has everything now to commend it.

1. The merchants one and all have declared publicly and to me privately that they are all in favour of it, if generally extended.

2. The press has done the same.

3. It would give us far more money.

4. And above all, it would be the introduction of a principle of taxation which, being just and general, may lay the basis for a sounder financial system, and of a revenue to the State flexible and adapted to emergencies."

His son-in-law Walter Bagehot was kept informed. By virtue of their close family and business ties (he had succeeded Wilson as editor of *The Economist*), Bagehot "found himself … interpreting [Wilson's] great work in India to the public".44 He told his de facto press agent of his wider plans45 :

"Firmness and justice are the only policy for India: no vacillation, or you are gone. They like to be governed; and respect an iron hand, if it be but equal and just. I have, I think, more confidence than ever that the taxes will be established and collected, and without disturbance; but the task is still an enormous one. I must retrench yet at least three and a half millions, and get the same sum from my new taxes to make both ends meet. I am putting the screw on very strongly; but rather by an improved policy in army and police than in reductions of salaries and establishments, which cannot be made. I have set myself five great points of policy to introduce and carry out:

1. To extend a system of sound taxation to the great trading classes, who hitherto have been exempted, though chiefly benefited by our enormously increased civil expenditure.

2. To establish a paper currency.

3. To reform and remodel our financial system, by a plan of annual Budgets and estimates, with a Pay Department to check issues and keep them within the authorised limits, and an

effective audit.

4. A great police system of semi-military organisation, but usually of purely civil application, which, dear though it be, will be cheaper by half a million than our present wretched and expensive system; and by which we shall be able to reduce ***B.T.R. 92** our native army to at least one-third, and by which alone we can utilize the natives as an arm of defence without the danger of congregating idle organised masses.

5. Public works and roads, with a view to increased production of cotton, flax, wool, and European raw materials."

Wilson was nothing if not ambitious. To his fellow Councillors, attempting to tackle all five "great points of policy" smacked of ignorance, or arrogance, or both.46 The third point had been attempted years before, and abandoned.47 Though Wilson recognised the difficulty of the task that lay ahead, he was acutely aware that48 :

"Reforms become possible only when an emergency arises. Such an emergency has now arisen and reform and changes are now possible that would not have been before in our day."

He might well have added "at home". Thoroughgoing reform in a parliamentary democracy is slow and painful. Wilson joined an Indian Government that was as absolute as ever it had been49 :

"you will call it 'a large order'; however, you have no idea of the increased capacity of the mind for undertaking a special service of this kind when removed to a new scene of action … particularly when one feels assured of having the power to carry it out. I cannot tell you with what ease one determines the largest and gravest question here compared with in England; and I am certain that the more one can exercise real power, there is by far the greater tendency to moderation, care, and prudence."

Policy

The situation demanded more money; it did not necessarily demand an income tax. For Wilson, this decision was firmly planted in policy. Canning was Tory by birth50 ; Wilson, Liberal by choice. He cut his teeth as a "free trader" on the Corn Laws.51 He championed free trade and economic efficiency in the House, and in his *Economist.*52 It follows, then, that the first Indian "Budget" had a distinctly Liberal tint.53 Wilson, who had been in Parliament at the time, admired the UK Budget of 1853, which included an updated income tax.54 He had no hesitation in carrying ***B.T.R. 93** forward similar principles of free trade, limited state functions, a balanced budget, and relatively broad-based taxation, that caused minimum interference. He sought to reduce India's reliance on tariff duties; an affront to the laissez-faire approach of mid-19th century Liberals. He opposed progressive taxation55 :

"The lot of men is fixed by thousands of inscrutable causes, and if a Government were to attempt to produce an equality by distributing the incidence of taxation, it would undertake a task, the end of which must be confusion and disappointment to all concerned. No, Sir, it is our duty to adjust our taxes upon a clear and general principle with as much equality as possible, and then to leave to their full and free course all those general principles of competition and other elements which determine the lot of men."

Wilson also refused to raise the salt tax. As an indirect tax it was easy to collect, but the poor bore the burden (in 1930 Mahatma Gandhi would choose it as the focus of the first national non-violent protest against British rule, the Salt March). "Equal and just" taxation required that taxes were spread as widely as possible,56 and that contributions were conscious. A decade later, the Duke of Argyll (India Secretary from 1868) again warned against raising the salt duty, as such indirect taxes could become "very heavy and unjust without the fact being perceived or understood by those on whom they fall".57 On this front, Wilson's proposal for direct taxation was beyond reproach.

Wilson's detractors were only half right in saying that he unthinkingly transplanted an English tree into Indian soil.58 In his Budget speech, he freely admitted that his aim was to make the Indian tax "nearly the same as that of England, as the difference of circumstances would permit".59 Some attempts were made to adapt the income tax to the climate. His efforts to justify the tax using ancient Indian law may seem quaint and perhaps disingenuous; but in 1860, the fact he even tried to throw a bridge across the divide between Indian and European is remarkable. On arriving in India he lamented that there was "no sympathy between the Europeans and the Natives and no bending to its increase … not the slightest Social communication".60

So he set about convincing India on its own terms. He cited Manu the Lawgiver, and was careful to select passages which emphasised the native rulers' wide powers of taxation. He remarked that "their sacred writings give us ample latitude of choice … enough … for the most needy exchequer and for the most voracious minister".61 Wilson omits to mention one of Manu's more famous passages (which appears to place a limit on "voracious ministers")62 :

***B.T.R. 94** "Just as the leech, the calf, and the bee take their sustenance little by little, so must the king draw from his kingdom annual taxes little by little. Let the king not cut up his own root, by levying no taxes, nor the root of others by excessive greed."

Appeals to a long dead (and probably mythical) lawgiver resonated slightly, if at all, with the largely illiterate population; a fact appreciated by Sir Charles Trevelyan, Governor of Madras.63 He remarked that they would have no more influence than "quotations from rubric or canon law would have upon a country congregation in England suffering from the innovations of a reforming High Church clergyman".64 For the most part, Indians saw little difference between the imposts of the Mughals, the Company, or the Crown. Tax was tax.

There were other Indian adjustments. Wilson felt that because India was a developing economy, its Government had a duty to fund public works. A portion of the tax was earmarked for public works expenditure by provincial governments (inspired by similar arrangements in the United States).65 Later commentators dismiss this as a hollow promise aimed at placating local governors who opposed the tax.66 While less successful than envisaged (public works expenditure did not markedly increase), as a matter of policy, it played a major part in matching the income tax to Indian conditions.67

Wilson spent most of his time tinkering with the UK income tax,68 so that it would lie comfortably in Indian soil. His alterations centred on the Act's operation, which goes some way to explaining why the Indian Act is longer than its UK counterparts. For him, the Act's underlying policy was correct; as much in Britain, as British India. Here we might see a kind of imperialism in ideas; Wilson, one of many economists who "exalted what was at any moment truth and wisdom for England into truth and wisdom for all times and places".69 But his attempts to appeal to the native population cannot be written off as window dressing. Securing something like public acceptance was important, even for an unelected government.70 Lord Canning encouraged Wilson's efforts on this score; he believed that if the Government had better understood its subjects, the Mutiny might have been averted.71

Wilson "probably learnt more of the country in a very short time than any person who ever landed on its shores",72 but this knowledge did not particularly sway him to one or other tax. As for the public, the majority gossiped (tickets to the Budget speech sold out),73 some unsuccessfully ***B.T.R. 95*** fought their corners for exemptions (he received deputations from various lobby groups, European and Indian),74 but all probably realised that the Government had made up its mind long before it made its plans public.75 Wilson became convinced that certainty, stability, and unity were crucial to the success of the new tax: "we must take our stand upon some intelligible principle in taxation and stick firmly to it".76 While he gladly engaged in private (and frequently heated) debates at meetings of the Viceroy's Council, from the beginning, he was wary of public disagreement. Disunity could be fatal77 :

"A Chancellor of the Exchequer in England would find it … difficult … if he had to consult every revenue officer in the country as to what would prove best … and his position would not be mended if … many of them were to rush into print and each to show that some tax or other could not be borne. The truth is there is so much to be said against any and every tax taken separately that it is not difficult to raise a prejudice against them all, and thus make any tax difficult."

With the keen eye of a man who had once considered taking up the law,[78] Wilson extracted a promise of secrecy from all members, that none would seek to publish dissenting views through the Legislative Council or the press.[79] This was confirmed via Government telegram sent to all who were privy to the discussions: "it would be highly injurious to the Queen's service that these documents should at present be made public in any way".[80] But India had been riven by discord between central and local authorities from time immemorial; distance, and the need for localised armies made sure of that. Princely India was littered with conspicuously disloyal servants of the old Mughal emperors. Equally, British India was littered with old men from the heady, expansionist Company days. As Wilson and Canning would soon learn, it still had its fair share of mavericks.

The "great Madras revolt"[81]

After months of private arguments, Trevelyan, Governor of Madras, broke ranks and went public.[82] To him, Wilson's income tax was wrongheaded in every respect; a desperate "leap in the dark".[83] He first railed against the basis for raising new taxes: he claimed that the much touted deficit was exaggerated. Though this proved to be true, the blame cannot be laid at Wilson's door.[84] Trevelyan knew as well as he that the financial administration of the Raj had "arisen without any attempt at any general system or plan" and that projected deficits were only rough ***B.T.R. 96** and ready estimates.[85] He then argued that the deficit could be met by reduced spending, even on defence.[86] By 1860, the Government was a power distinctly more armed than civil, and it was felt that only in the lasting presence of British troops would there be lasting peace.[87] Trevelyan took the opposite view, and found himself in unexpected company. Canning, hitherto supportive of Wilson's proposals, is reputed to have said: "Danger for danger, I would rather risk governing India with an army of only 40,000 Europeans than I would risk having to impose unpopular taxation."[88] Seventy years later the Simon Commission would share in his sentiments, noting the "very definite limits to the extent to which an irresponsible Government can force increased taxation on a poor country."[89]

Others painted Trevelyan, not Wilson, as wick to the powder keg. Bagehot followed the crisis in *The Economist*[90] :

"Sir C. Trevelyan thinks there is danger in the course Mr. Wilson has taken. But is there not greater danger in his own course? He has told the natives of Madras that new taxes which are unjust and unnecessary are about to be levied upon them. He has used his authority as local Governor to spread this doctrine. He has hinted that he expects the natives will rebel. Who will be to blame if they do rebel? Surely the ruler who was instructed with an authority over 30,000,000 of people, and who incited them to resistance."

It soon became clear that the Viceroy's Council was swayed in favour of the income tax, at least as a temporary measure to quell the "formidable deficit".[91] Trevelyan made a last-ditch attempt at securing an exemption for the Madras Presidency.[92] This suggestion was not taken seriously.[93] Wilson urged the Viceroy and his Council to stay the course with an income tax that was broad-based and universal. His task became much easier when Trevelyan was recalled to London, "for palpable and plain insubordination".[94] Wood addressed the House of Commons[95] :

"A more honest, zealous, upright, and independent servant could not be. He was a loss to India, but there would be danger if he were allowed to remain, after having adopted a course so subversive of all authority, so fearfully tending to endanger our rule, and so likely to provoke the people to insurrection against the central and responsible authority."

In time, distinctions become sharper, motivations simpler, if not simplistic. Though he took most of the limelight, the untamed Trevelyan was not the only source of opposition. Lord ***B.T.R. 97** Elphinstone, Governor of Bombay, was also hostile to the income tax.[96] Most writers paint a simple picture of cause and effect: that "Wilson was at the outset greeted with a chorus of public approval" and it was only after Trevelyan's outburst that "clouds began to rise on this clear horizon".[97] In truth, what Wilson called the "great Madras revolt" stiffened opposition that was already there.[98]

Like any good story of power and intrigue, *Trevelyan v Wilson* grew with the telling. Wilson (and his loyal propagandists, Bagehot and Sir Richard Temple)99 may be partly to blame. It suited their purposes to attribute all opposition to Trevelyan,100 and those who were taken in by his abuse of authority. Wilson wrote to his eldest daughter101 :

"As you say I don't think the Trevelyan affair has done me any harm, but the contrary in England; but there is no doubt it has given us a great shock among the natives here. Up to the time of those minutes appearing, all Europeans showed a combined and united front, and that had a great effect upon the natives. Had that not been disturbed they would never have ventured even to think of opposition. As it is, that moral power and restraint has been removed and what was like a charm has been broken. Certainly all that could have been done to counteract the effect has been done. On the instant here, we declared our undiminished determination to proceed with our plans, and the prompt recall of Trevelyan gave all the support to that determination we could have desired. For a bad job the best has been made of it, but the task is heavy and I fear a long one."

As he worked towards finalising the adjustments to his Income Tax Bill, and securing support from the Council, his health deteriorated under the strain.102 His own words, written years before as he strove to build *The Economist* with his own meagre capital, are apt: "Our public men do not know what anxiety means; they have never known what it is to have their own position dependent on their own exertions."103

"My Income Tax"

Wilson succeeded in submitting his Budget to the Legislative Council (writing to Bagehot that "they yield … but it was certainly rather audacious"),104 and informed Bagehot by letter dated July 19, 1860105 :

***B.T.R. 98** "My Income Tax is now law and will begin collection on salaries and dividends next week. I managed to get it through the [Legislative Council] without a single division and without giving up one point of importance."106

This would be Wilson's last letter home. With his health failing, it was decided that he too should be put on the mail steamer, and sent out to sea ("the usual remedy at Calcutta for diseases of the climate")--but he was not strong enough to bear removal, and died on August 11, 1860.107 His funeral was the largest ever known in Calcutta.108 He received a 15 minute gun salute from the garrison at Fort William.109

When news of his death reached London, the price of India funds fell.110

The Income Tax Act

Wilson lived long enough to see his income tax made law. He had hoped the tax would be a permanent feature of the finances of the Raj. The Government hoped in equal measure that its financial difficulties would be temporary, so prevailed on Wilson to insert a sunset clause. The tax would expire after five years.111 Trevelyan's fears of rebellion were not realised; the tax was even paid in infamous Oudh "without a murmur".112 Aside from a small peasant riot in Peshawar (the rioters believed that the new tax would be "levied upon priests, women, children, and even corpses"),113 the experience in Oudh was repeated across British India.114

Here, Wilson's income tax is explained around two questions. First: what did the tax look like? This covers the scope of taxable income, the rates of tax, and special rules (for land and housing, government and charities, and companies). Secondly: how was the tax paid and enforced?

Scope

Based on the contemporary British income tax,115 the Indian Act was schedular, dividing all taxable income sources into four schedules.116 The schedules cast a wide net, and were based on what we now know as the residence and source principles. The First Schedule was founded on the source principle, taxing profits arising from land or houses in India,117 irrespective of the ***B.T.R. 99** residence of those who received them.118 The Second Schedule taxed on the basis of both principles. The income of non-residents was taxable if it flowed from property situate, or activities carried on, in India. Interest, annuities, and dividends (those not covered by the Third Schedule) were taxable whatever their source, provided they accrued or were payable in India (to a resident or otherwise).

The Second Schedule also covered the income of residents of British India, derived from any kind of property, in the course of any profession, trade or employment: it did not matter whether it was sourced at home or abroad.119 Tax was imposed on:

"[T]he annual profits arising to any person residing in India from any kind of property … situate in India or elsewhere; and [those] arising to any person residing in India from any profession, trade, or employment … carried on in India or elsewhere".120

The residence principle was adjusted where trade121 was carried on entirely out of India: these profits were not taxable, provided they were "in no way connected either with the products of India exported there-from or with any manufactures or products whatever purchased out of India and imported or to be imported into India … unless such profits be received in India".122 Residency extended to temporary visitors who stayed in India for more than six months in a year (not necessarily continuously).123

The Third Schedule taxed dividends, annuities, or interest payable in India, by the Indian Government.124 The Fourth Schedule taxed income from employment in India. The advantage of these final two schedules was that tax was withheld at source, which simplified collection, and left fewer avenues for evasion.125

There is some controversy over the scope of the Second Schedule. One academic commentator, Shankar Pagar, claims that "income from property situated at home, i.e. in Great Britain and paying the English income tax was not liable to the Indian tax."126 The Act of 1860 did not contain ***B.T.R. 100** an express exemption to this effect, and his claim is not repeated in subsequent studies.127 This inconsistency might be explained in several ways. The least charitable is that Pagar simply made a mistake--after all, the 1860 Act was not the focus of his thesis, and later income taxes gave similar exemptions.128

Another, is that Pagar incorrectly interpreted section 121 of the ITA 1860, which provided that taxpayers could apply to the collector or commissioner for an exemption, granted if it appeared that "any property or profits of such person is or are assessed, or liable to be assessed in any other place". At first glance, this seems to exempt any foreign-taxed income (not just British); but taken in context, it could equally be seen as operating *inter se* the different provinces of India. The title of the section refers to "any other District", and may restrict "any other place" to districts in India. The section itself mandates communication between local collectors and local government authorities,129 not with any central authority (which might be expected in what Pagar presents as unequal relief from double tax). Taxpayers had to prove that tax had already been paid or was payable, which had to be certified by local collectors or commissioners130 --and it is far more realistic to have expected them to consult a neighbouring district, as opposed to somehow eliciting a response from the notoriously byzantine British Treasury. Further, the Act made it clear that Schedule Two income was taxable without special deductions even if the property was situated elsewhere in the British Empire--which seems to anticipate that property might be subject to taxation elsewhere.131 This is strengthened by its inclusion of the words "without other deduction or abatement"; a phrase used in commercial contracts to exclude allowances for the payment of foreign tax.132 Perhaps Pagar was a little overzealous in his search for special treatment of Britons.133

It could be that Pagar sought to interpret the Second Schedule in accordance with the extra-territoriality doctrine--a general rule against states (especially colonies) levying tax on property outside their territorial limits. This might explain why he referred only to "property situated at home" and not the other foreign-sourced incomes which fall under Schedule Two. In the colonial setting, the rule was one of "somewhat obscure extent"134 ; its operation differed across the Empire, depending on the level of self-government, or whether such powers had been expressly granted by the Imperial Parliament.135

Whether a state can levy taxes beyond its borders depends on two factors. The first is whether its legislature has the power to levy taxes on income arising from property situated abroad. The ***B.T.R. 101** source and extent of India's law-making powers cannot be neatly tied back to the Statute of Westminster--nor can we unthinkingly invoke the Government of India Act 1858, which simply transferred Company powers to the Crown136 including its "powers and duties in anywise relating to the government or revenues of India".137 So was the Company a law unto itself? An Act of 1814 confirmed its powers to levy taxes:

"upon all persons whomsoever, whether British-born or foreigners, resident or being in any country or place within the authority of [British India] in respect of all goods, wares, merchandizes, commodities, and property whatsoever, *being in any such country or place.* "138

The second factor is whether the extra-territorial provision has some connection with the law-making state; *personal,* if not territorial jurisdiction. As Lord Herschell pointed out in *Colquhoun v Brooks* :

"The Income Tax Acts, however, themselves impose a territorial limit; either that from which the taxable income is derived must be situate in [the jurisdiction] or the person whose income is to be taxed must be a resident there."139

In one of the last Indian appeals to the Privy Council, *Wallace Brothers and Co Ltd v Commissioner of Income-tax, Bombay,*140 the Board advised that even without specific extra-territorial powers granted by the Imperial Parliament, India was competent to enact such legislation for the purposes of taxation, provided there was sufficient connection between the taxpayer and India. According to Lord Uthwatt, the residency connection was enough to show "the legislature is in truth minding its own business" when it levies tax on "foreign" income.141 Similarly, Schedule Two of the ITA 1860 did not set out to tax foreign property, rather it taxed those resident in India, with reference to their worldwide income.

In the absence of contemporary case law on this point, all that remains to be said is that a subsequent decision that considered the history of the Indian income tax reiterated the broad scope of Schedule Two, without mention of an exclusion for British property. In 1943, with Burma overrun by the Japanese, and the "Quit India" movement brutally crushed, Mitter J. in *Raleigh Investment Co Ltd v Governor-General in Council*142 reiterated that Wilson's Act applied to "property whether situate in India or elsewhere."

The true scope of Schedule Two is far from settled--and without evidence of the approach of judges and tax authorities at the time, either interpretation is possible. Even with this uncertainty, it is significant that the ITA 1860 appears to be one of the first colonial income taxes that attempted to tax the worldwide income of its residents. Wilson's emergency (real or manufactured) certainly bore novel fruits.143

B.T.R. 102** *Rates of tax

Rates were the same across all schedules. A 3 per cent yearly tax was levied on all schedular income, with an additional 1 per cent for the purposes of "reproductive public works."144 Wilson had originally proposed the phrase "local purposes", but this was thought to give too much leeway to the likes of Trevelyan, so the more restrictive phrasing was substituted. These funds were to be used for roads, canals, and other infrastructure145 (as opposed to the "public buildings and gardens" which would have fallen under the wider permission),146 and were kept in a separate account allocated to provincial administrations; an early example of an earmarked tax.147

So the ITA 1860 imposed a nominally flat rate of tax totalling 4 per cent. The *effective* rate of tax was, in modern terms, progressive on two fronts (despite Wilson's ardent claims to the contrary). First, through a low income exemption: those earning less than Rs 200 annually from all sources were not taxed.148 Secondly, there was a lower rate for taxpayers whose income fell within a specified band. Persons who earned between Rs 200 and Rs 500 were taxed at 2 per cent, and were exempted from the 1 per cent public works tax.149

This meant that the poorer the individual, the lower the tax rate; creating a shallow gradation in the tax base. The exemption and lower rates applied to persons, not income.

Those in the Rs 200-500 band paid a flat rate of 2 per cent from the first rupee, and those earning more than Rs 500 also paid tax at a flat rate, 4 per cent, on all their income. Taxpayers did not receive a general allowance for the first Rs 200 earned; it was an all or nothing exemption.

Whether a taxpayer met these tax thresholds (at Rs 200 and 500) was calculated on the "aggregate amount of [the taxpayer's] annual income or profits, from whatever source derived"150 -- although for these purposes it is unclear whether losses in one schedule could offset liability in another.151

Wilson was careful to justify these differing rates of tax. Although his main purpose was to avoid double taxation arising from the planned license tax,152 we might see an imperceptible nod to fairness153 :

"[T]he wider you can spread the incidence of your taxation, *so long as a fair proportion is maintained as to the means of different persons, the more just it is as a whole.* The security of the Government extends to all … from the richest capitalist to the humblest labourer [who] share in the prosperity which good order and security can alone insure. But … incomes from 200 to 500 rupees shall be taxed at a somewhat lower rate. This we do, because if, at ****B.T.R. 103*** the same rate, the double action of the license duty and of the income tax upon this class of incomes would be rather more severe than in other cases."

The level of exemption was carefully considered in the lead up to the Budget. Wilson initially proposed an Rs 100 threshold, but was cautioned by Canning,154 who suggested taking sample surveys of certain districts to determine the extent of the exclusion:

"[T]his information is necessary both for the defence of so low a limit as 100 Rupees in a Tax which professes to be forbearing towards the lower classes, and in order that we may calculate the extent of hostility which it may provoke."155

It is unclear whether these surveys were conducted--but a week before the Budget presentation, Canning told Wilson that Rs 200 was a more reasonable limit, and could "effectively introduce the thin end of the wedge" of a broad tax base, without raising the hackles of the masses.156 Perhaps Wilson's earlier tour of northern India had been somewhat stage-managed.157 Once tactfully apprised of the reality of India's poverty, he deferred to Canning's experience.

The Rs 200 threshold meant that only around 900,000 of the 150 million158 people living in British India were subject to taxation (0.6 per cent of the population).159 After Wilson's death, the exemptions were raised, and the rates reduced. His immediate successor, Samuel Laing,160 raised the threshold for taxation to Rs 500, exempting a further 600,000 people.161 In his eyes, the small revenue generated from this class did not justify the high costs of collection,162 and those in the Rs 200-500 band were more likely to be victims of unfair treatment:

"[M]en of property and intelligence can defend themselves against mistakes or attempts at extortion by native officials, far better than the class who just come within the limit of the 2 per cent assessment."163

In 1863, as the financial outlook brightened, the total tax rate was reduced from 4 to 3 per cent (the public works tax was unaltered).164

**B.T.R. 104 Land and housing*

As a starting point, all profits arising from land or houses were taxable.165 "House" was widely defined, and included all buildings used for the purposes of habitation, as well as warehouses, counting houses, factories, shops, offices, and attached buildings.166

There were special rules for owners and occupiers of land or housing, and additional rules for agricultural land. Owners and occupiers were taxed differently. Owners were taxed on their *imputed* income; the value of the yearly market rent of their property.167 The owners of houses (or other buildings) could make deductions from their taxable income for repairs, up to the value of six months' rent, once every three years (provided the buildings were occupied, not necessarily by the owner).168 Occupiers of land or housing were taxed on their *actual* income.169 Provided they paid market rent, persons occupying housing solely for the purposes of habitation were not taxed on income arising from that occupation.170 Rent actually paid was deductible for all types of land or housing.171

The ITA 1860 taxed income from both agricultural and non-agricultural land. While rejecting the claims of some landowners to constitutional immunity from taxation,172 Wilson increased the taxability threshold for tenant farmers (not owners). Occupiers of agricultural land, actually engaged in farming, were exempted from tax, provided their annual rent was less than Rs 600.173 Those who rented land from the Government above this threshold were deemed to make a profit amounting to a third of their rent, taxable as income under the First Schedule, unless they could prove profits were lower.174 In challenging this deemed profit, landholders risked liability to double duty if they failed to prove their claim to the satisfaction of the commissioner or collector.175

Government and charities

All income from Government property was exempted,176 and local governments were given the power to order exemptions for property devoted to religious or charitable purposes.177

Special rules for the armed forces and police were justified along similar lines to the general Rs 200 threshold. Wood took a special interest in the soldiers who had so recently proved their worth in quelling the Mutiny. He cautioned the Government178 :

***B.T.R. 105** "to guard against the imposition of the tax on incomes of too low an amount. The plan proposed would subject to the tax many classes in the lower walks of life, including non-commissioned European officers, and Native officers of the Army or Police corps. I cannot but fear that a tax which reaches these classes would be carried lower than is consistent with sound policy."

The Viceroy agreed. He telegrammed Wilson in March 1860179 :

"The bearing of the Income Tax upon the Army is likely to become a serious question. Be careful how you commit the Government on it."

Canning urged Wilson to exempt all non-commissioned servicemen, irrespective of rank--and noted with alarm disgruntled "barrack-room murmurings". Their main concern was to avoid treating men in the same Mess differently. If senior NCOs were subject to tax and others were not, this would be a cause of friction. Wilson chose to draw the line much higher. The incomes of policemen and Indian Army officers were exempted, provided their pay and allowances were less than those of a captain of infantry.180 Naval personnel whose pay fell below that of a (naval) lieutenant were exempted from tax.181 These exemptions did not apply to their other sources of income. This effectively shifted the "friction" between different ranks to the (more civilised) Officers' Mess. The annual pay of an infantry captain in 1860 was around Rs 1,945182 ; the "khaki" allowance was more than triple that enjoyed by the general population.

Companies

Companies were taxed under the Act and were subject to the same rates and exemptions as "persons".183 "Company" was widely defined, extending to "any Society, Association, Fraternity, or Partnership of any kind whatever, of or carried on by more than six persons".184 Management had to file tax returns on behalf of the company.185

The drafters of the Act avoided the classical taxation of dividends (at the company *and* shareholder level). Dividends were taxed once in the hands of the company or trader.186 Company profits were taxed before dividends were distributed, and companies could not deduct from their taxable income the value of dividends paid.187 Companies had the right to deduct from each ***B.T.R. 106** dividend the proportional tax paid; meaning shareholders were paid dividends net of tax.188 Shareholders were required to allow this deduction, and the residual dividend was treated as full payment for the purposes of discharging other obligations (for instance, if the share entitled the holder to a dividend of a set value).189 On receiving their dividends, shareholders could apply to the Revenue for certificates which allowed them to deduct from their taxable income the corresponding proportional value of the tax already paid by the company, meaning dividends were taxed at the company level, but not at the shareholder level.190 In short, the company withheld a portion of the dividend as tax, set it aside for the Revenue, and the shareholder was deemed to have paid it. The theoretical liability of dividend source and beneficiary was satisfied, without it being taxed twice.191 The treatment of dividends is similar to today's imputation credits regime; where companies issue credits to shareholders to offset the latter's tax liability, avoiding double taxation.

This approach yielded several advantages. First, it is far easier to deal with a few companies, as opposed to a multitude of shareholders. But the advantages are not solely administrative. Taxing at the company level prevents revenue leakage. While there was no difference in the *nominal* rates of tax for individuals and companies, the *effective* rate of tax differed markedly. Individual shareholders were more likely to be eligible for the exemptions outlined above, while most companies worth taxing easily exceeded the Rs 200 and 500 tax thresholds. If Calcutta had waited for the dividends to be distributed, it may never have had the chance to tax them.

Like the UK Act, the Indian Act allowed the deduction of revenue, but not capital expenditure.192 Companies (or individuals engaged in trade) could not deduct withdrawals of capital, foregone interest, and debts,193 but could deduct expenditure on repairs, to the extent "usually expended for such purposes, according to an average of three years preceding the year in which such assessment shall be made".194 Losses could be deducted, if they were connected with, or arose out of the assessed trade.195 These deductions only applied to companies or individuals engaged in trade. Other taxpayers could not deduct "any disbursements or expenses whatever"; except rent,196 life insurance premiums,197 tax on dividends withheld at source (see above), and "money wholly and exclusively expended for the purposes of [their] profession or employment."198

Depreciation is noticeable by its absence, though this is not unexpected in the India of 1860. Costly plant and machinery was not a major feature of the economy.199 There was little need for a depreciation regime, which in any case was probably beyond the administrative capability of ****B.T.R. 107*** the Raj.200 Furthermore, the Act was based on the UK tax, which did not include depreciation. This was first introduced by the Customs and Inland Revenue Act 1878 (UK), which granted an allowance for wear and tear which diminished the value of plant and machinery.201 India followed suit with the Income Tax Act 1886.202

Assessment and collection

The first signs of the new income tax were the large notices in Urdu, Hindi, and English placed at police stations and "other conspicuous places" informing the public that they were required to submit a statement of income from all schedules to local assessors, provided they earned more than Rs 200 per year.203 Assessors were well known to the public, as were their superiors: collectors and commissioners. These offices had existed under Company rule; in 1860 they simply shifted from assessing land taxes to income tax.204 Day to day administration of the tax was carried out by frontline assessors; collectors and commissioners handled appeals, and managed collection.205

On receiving the returns, assessors calculated the tax owed.206 They had wide discretion to re-estimate and surcharge taxable income on the basis of "the sum on which he shall consider the person making such return ought to be assessed."207 The collector and commissioner's power to surcharge if dissatisfied with a return was similarly drawn; they could "surcharge … in such sum as they shall think fit."208

These wide powers were not unfettered. Taxpayers could appeal assessments,209 and adduce evidence, or bring witnesses to support a lower assessment; though they had to pay the tax in the meantime, and risked being charged the cost of the hearing if their objection was deemed frivolous.210 They could be assisted or represented by other individuals, but were not allowed legal representation.211 After the hearing, the assessment of the collector or commissioner was final (though if fraud was subsequently discovered the assessment could be increased).212 This did not preclude litigation on other grounds, for instance that income tax was illegally assessed.213

In (predominantly rural) areas without assessors, assessments were made by the *Punchayet* : a local committee appointed by the district collector to make yearly assessments, without returns.214 These were modelled on assemblies of elders that traditionally settled disputes.215 The *Punchayet* only had authority in relation to the first two Schedules; taxpayers who objected to this form of assessment, or whose income straddled several Schedules, could be assessed by a collector, ***B.T.R. 108** though they had to make the usual return.216 The appeals regime for *Punchayet* assessments broadly followed that outlined above (with the insertion of an intermediate step before the substantive hearing, where the collector or commissioner could order the *Punchayet* to revise its assessment).217 Wilson was "desirous in every way of avoiding inquisitorial practises", and attempted to "avoid undue interference", leaving the assessment of tax to the "habits and wishes of the communities, provided always that the [collectors] are satisfied that the result will be fair".218 To avoid repetitious and annoying assessments, commissioners were empowered to compound assessments, with the total tax bill paid at the end of the five year operation of the Act.219 They were given instructions that underscored the importance of avoiding a public perception of "the vexatious inquisition, the inconvenient revaluations, and the consequent malpractices."220 For those who submitted returns, the oaths of secrecy taken by Revenue officers were equally important.221

Wood applauded Wilson's efforts in "making a disagreeable thing so little disagreeable".222 But for the rest of the population, compulsory returns were a contentious issue, and according to some later commentators, were more in the form of reparation than taxation223 :

"To a people just recovering from the Mutiny, with the memory of British excesses fresh in their minds, the demand for personal returns of total income seemed to be but the first stage of an organised attempt at wholesale confiscation."

The returns were unpopular and made Indians suspicious224 ; unsurprisingly, they were "as a rule conspicuously and shamelessly false".225 Recognising that repeated requests for returns would make already suspect data worse, and that it was better to focus the energy of collectors on those who made no returns at all, the Government decided to base taxation throughout the life of the ITA 1860 on assessments (not returns) made for the year 1860.226 This made the tax easier to administer, but it also produced its own set of problems. While personal income might remain relatively stable, taxing commercial or industrial income on historical figures "reduced the income-tax to a farce."227 It also placed an undue burden on government employees, who paid tax on their known income by the withholding mechanism (which Pagar praised as the ITA 1860's sole redeeming feature).228 Their contribution to the fisc rose from 14 per cent in 1860, to 21 per cent in 1864.229

***B.T.R. 109** *Payment and evasion*

Taxes were paid quarterly.230 Where taxpayers failed to pay, collectors could force the sale of any property,231 and had significant powers of entry to assess value, or search for hidden property.232 Sufficient notice to allow for the removal of women (in deference to the shared Muslim and Hindu practice of *purdah*) had to be given before rights of entry could be exercised. Officials who entered female apartments without giving notice could be imprisoned for up to three months.233 Proceedings could be commenced against those who failed to pay their taxes even if they fled to other districts; they faced additional fines if they continued to refuse payment, or left insufficient property behind to satisfy their debt to the Crown.234 Defaulters could be sent to prison for periods ranging from three months to two years, depending on the amount of unpaid tax.235

Fraud on the Revenue was strictly punished (at least on paper).236 Taxpayers who forged a tax certificate or receipt with intent to defraud were liable at most to be sentenced to transportation (to a penal colony in the Andaman Islands)237 for 14 years, or imprisonment for seven.238 Europeans or Americans239 were liable to lighter maximum sentences of penal servitude for 10 years, or imprisonment for two. The Act does not provide for those of mixed descent. Failure to submit a tax return within the allotted time period, and refusal to verify statements made to commissioners were met with fines, and liability to treble duty.240

Evasion was addressed by section 215 ITA 1860; defined first by a series of specific examples. Taxpayers evaded tax if they, fraudulently: changed their place of residence; converted their property or a part of it; conveyed or assigned it, or pretended to do so; altered security over the property; or made it temporarily unproductive (for instance, when the assessor came for inspection). This was followed by a catch-all rule: evasion was "any falsehood, wilful neglect, fraud, or contrivance whatsoever used or practised [to] avoid, or attempt to avoid being charged and assessed according to the true intent and meaning of this Act."241 Punishment could include treble duty, imprisonment for two years at most, and maximum fines of Rs 1,000.

The first part of section 215 ITA 1860 was modelled closely on section 203 of the Property and Income Tax Act 1805 (UK).242 The catch-all provision is similar, except that the ITA 1860 removed the archaic word "covin" (treachery or fraud); in its place, Wilson chose the words ***B.T.R. 110** "avoid, or attempt to avoid". Precisely what was meant by this rewording is unclear; if "avoid" took its ordinary meaning, the consequences would be absurd (should the tea planter who contrives to relocate from India to Ceylon to escape the former's new tax be punished with treble duty, or worse?). Was the new phrase a modern equivalent of the old ("avoid with covin"), or did "avoid" mean "evade"? In the contemporary English case *Sheldon v Sheldon,* Dr Lushington (whose father had been Chairman of the East India Company) distinguishes between "evasion" and "avoidance" in the context of legacy duty,243 and seems to suggest that a legislative provision against "avoidance" would cover conduct not already caught by "evasion".244 That being the case, was the Indian section meant to be broader than its UK equivalent? The later obiter of Lindley J. in *Attorney General v Noyes* might show that in England at least, "avoid" was understood to be broader than "evade", as it did not require fraudulent intent.245 Another explanation might be that the drafters were anxious to avoid any uncertainty, realising that adding an imprisonment sanction meant the section would be narrowly construed as a penal provision. Perhaps the addition of the phrase "avoid, or attempt to avoid" simply made it clear that even failed attempts to escape tax would be covered.

No case law on section 215 ITA 1860 has come to light.246 V.K. Rao, a professor at Wilson's namesake college at Bombay University, suggested that India's undemocratic system of government at the time "encouraged evasion by lending it a semi-halo of patriotic fervour."247 He provides no evidence, and writing as he was, years later, as Indian nationalism neared maturity, his comments are more reflective of his own political climate than Wilson's. For completeness, it must be said that in 1860 the distinction between the terms "evasion" and "avoidance" was not what it is today. Some tax historians believe that the distinction may have been deliberately blurred by officials "in order to make avoidance appear less acceptable by tainting it with the illegality of evasion."248 So despite its use of the word "avoidance", section 215 ITA 1860 is not the first "general anti-avoidance rule"; we owe the current meaning of "avoidance" to the affray played out between parliaments and judges decades later.249

The British in India can hardly be accused of failing to look after their own. In addition to avoiding the harsher penalties visited upon native Indians, they received significant procedural advantages. Individuals could be imprisoned or fined up to Rs 5,000 for falsely swearing or affirming matters relating to the Act before an official.250 Indians were tried "in the place where such affidavit, disposition, or affirmation shall be exhibited to the Collector or ***B.T.R. 111** Commissioners"--seemingly the same quasi-judicial body used for appealing assessments. European British subjects (narrower than "European or American")251 were tried in a Supreme Court, with the protections of open justice, procedure, and, crucially, legal representation.252

British justice was, at best, a mixed blessing; Her Majesty's Courts of Judicature were not colour-blind. White defendants received advantages in procedure and available penalties, and were generally favoured by the predominantly white judiciary.253 Though favouritism became less prevalent as the Raj neared sunset, it was an injustice more keenly felt than before.254 Modern India, for better or worse, was shaped by these experiences; and after Independence, moved quickly to restore the impartiality of justice.255

Evaluation

Financially, the income tax was a disappointment to the Government.256 Wilson, though confessing a lack of "precise knowledge," had hoped that the income and license taxes would yield "from three to four millions a year when in full bloom; this financial year [1860] not more than a million [pounds]".257 The yield fell short by almost half: between £1 million and £2 million were raised per year, accounting for only 2-5 per cent of total revenue.

Financial Results of the Income and License Taxes 1860-1865258			
Year	**Rs 0,000,000**	**£ million**	**% of total revenue**
1860	0.22	0.24	0.6
1861	1.10	1.19	2.2
1862	2.05	2.22	4.7
1863	1.88	2.04	4.2
1864	1.48	1.60	3.3
1865	1.28	1.39	2.8

Though Wilson's estimates were incorrect, it must be remembered that he had inherited a Financial Department which had only the vaguest notion of proper accounts, and that the taxable limit and rates he envisaged were altered by subsequent Finance Members.

By 1865, Trevelyan's political fortunes were restored, and he was made Finance Member (the appointment outraged Wilson's family, who had become convinced that his illness had been ***B.T.R. 112** brought on by the stress of Trevelyan's revolt).258 Trevelyan allowed the Act that so nearly destroyed his career to expire.259 He did not see the income tax as a permanent feature of the tax system, rather he viewed it as "a potent but imperfect fiscal machine" to be kept as "the great financial reserve of the country … complete in all its gear, ready to be reimposed in case of any new emergency."260

The reasons for the failure of the income tax are complex. Some blame must lie with its temporary nature. After another failed attempt in 1869, a government report stated: "It is doubtful whether an income-tax could even be properly assessed unless it was continued and carefully worked out during a long series of years".261 Writers in the early 20th century blamed the inclusion of agricultural income, which caused considerable discontent, as many already paid rent to the Government as landlord, and were subject to local property taxes. This "double taxation … inflicted a great deal of hardship on a large number of poor cultivators"262 ; the Government was hardly willing to extend an unpopular tax once the financial emergency had abated.

Later commentators, willing to excuse the revenue shortfall,263 roundly condemned the Act's inadequate administrative machinery.264 To them, it was premised on a system of self-reporting; a measure borrowed from Britain265 that was "utterly unsuited to a people with whom the idea of disclosing individual income was something novel and revolutionary."266 In operation, the Government relied almost exclusively on new assessments based on the subjective opinion of those charged with administering the Act. These differed markedly from original returns, and varied between collectors and districts.267 A former collector later recounted how he had examined "cartloads of returns" and concluded "that they were mere waste paper".268 Pagar and Niyogi point to the numbers: in one province, 96 per cent of all returns were reassessed.269 Reliance on largely arbitrary assessment--and *unintended* reliance at that--meant Wilson's Act was a "dismal failure".270

These writers failed to see the cold cynicism with which the income tax was conceived. Perhaps they were a little eager in their search for evidence of British incompetence (a tone not unexpected from Indian academics writing in the 'twenties and 'thirties).271 Wilson, known for his ***B.T.R. 113** "business-like method and vigorous simplicity",272 revealed the pragmatism lurking behind the compulsory returns to Wood273 :

"As to the practicability of assessing it, I have no fear if we only take powers sufficiently large and discretionary to assess [the tax] somewhat in accordance with the habits of the people, giving a wide margin to the Commissioners of the districts to determine the precise plan."

In developing the income tax, Wilson was in constant contact with Bagehot: "To no one else did he write in so confidential a strain alike on public and private matters."274 The latter's detailed explanation of Wilson's plan is striking evidence of what he called his father-in-law's "business-imagination … which enabled him to see 'what men did,' and 'why they did it"'275 :

"It is true that but little reliance can perhaps be placed on the statements of orientals as to their wealth; it is very possible that the complicated machinery of forms and notices which is in use here may not be applicable in India. All this Mr. Wilson well knew. But he thought that our Indian subjects should have an opportunity of stating their income before they were taxed upon it. If they should state it untruly, or should decline to state it, it might be necessary to tax them arbitrarily. But he did not think it would be decent--that it would be civilised--to begin with an arbitrary assessment. By the Income Tax Act which he framed, it is enacted that other modes may be substituted if in any instance the English mode of assessment should prove inapplicable. In other words, if our oriental fellow-subjects will not tell us the truth when they are asked, we must tax them as best we can, and they cannot justly complain of unfairness and inequality. *We* would have been mathematically just, if *they* had given us the means."

The British were under no illusions in 1860. They paid lip-service to the rule of law; ostensibly basing taxation on income returns. But the whole machinery of the Act was geared to accommodate a "nation of liars."276 We need only to cast back to the seemingly unlimited powers to surcharge (the "fiscal thumbscrew"),277 the difficulties in appealing assessment,278 the reliance on local assessors with long experience in levying property taxes, and the operation of the income tax. Widespread dishonesty was not simply feared, but actively prepared for.

While this might explain the regime, it cannot excuse the inherent weaknesses of a tax system dependent on arbitrary assessment.279 In 1861, Samuel Laing, Wilson's successor as Finance ***B.T.R. 114** Member, pointed out that to achieve anything like acceptable financial results, arbitrary assessments were universally necessary, which influenced how the tax was perceived280 :

"Their picture of income tax is that of some great man from a distance or still worse, some native officer anxious to curry favour with great men, coming down on some unhappy district like a roaring lion, surcharging right and left without mercy, rating some poor widow or struggling tradesman at Rs. 200 a year on the information of some enemy and hurrying off the next day without condescending to listen to any argument or appeal."

Trevelyan had foreseen these difficulties--and worse--two years earlier. He had warned that India would be beset:

"with a swarm of ill-paid, ill-superintended native subordinates with duties so favourable to underhand exaction that it would be impossible to prevent them from preying upon the people … [which] makes me exceedingly dread the introduction of such an element of immorality and extortion in this heathen country".281

Ignored in 1859, he was vindicated by 1865.

The conflict between Trevelyan and Wilson ran deeper than the income tax; it ran into "different schools of statesmanship."282 Theirs was a clash between old and new; local and central; Company and Crown. The Company men kept their jobs after the Mutiny, but found themselves following orders from new men who had never before been to India.283 Trevelyan later wrote:

"When the orders came from Calcutta levying the income-tax, it was much as if an avatar of one of their malignant deities had imposed a new strange instrument of torture".284

Faced with the wider trend towards centralisation, he bemoaned that taxes were no longer spent where they had been levied, and that provinces had little control over national policy: "Our legislation might as well be conducted on the moon."285

A centralised, united India is exactly what Wilson hoped to achieve. Without a national revenue system, and central control of accounts, India would always be a series of loosely confederated fiefdoms, owing allegiance to Calcutta in name only. Divided, India could never be the independent nation Wilson envisaged, even during the darkest days of the Mutiny. "We must decide," he wrote in an editorial in 1857, whether India is:

"fit to be entrusted with the functions of self-government, ripe (or to be ripened) for British institutions, likely to appreciate the blessings of our rule, and, therefore, to aid us in perpetuating it,--and, in a word, to be gradually prepared, as our own working classes are ***B.T.R. 115*** preparing, for a full participation in the privilege of representative assemblies, trial by jury, and all the other palladia of English liberty."286

To him, the income tax, and all that went with it, was the first step in a long road to self rule.

Conclusion

The income tax was not the salvation for which Wilson had hoped. The Government let it expire in 1865. Financially, it fell short of expectations; though it was far from the "dismal failure" reported by Rao, Banerjea, and Pagar. The British were cunning, not stupid. But the system of arbitrary assessment did carry the seeds of its own decay. Without an index of the true wealth of each person, in the atmosphere of distrust that followed the Munity, assessors may have lacked the confidence to attribute taxes quite as mechanistically as Wilson intended. Or perhaps he simply overestimated India's wealth. Undoubtedly, corruption played its part in the tax's unpopularity.

The introduction of the income tax exposed a deep rift between two men and two Indias. Trevelyan's spirited defence of the old order marks a divide in history, separating the old, fragmented India from the centralised India of today. Of the many minds that shaped British India, Trevelyan and Wilson are proof that power and noble intentions can have unexpected results, and not all of them good. The Raj was remarkably supple in shifting from creator, to preserver, to destroyer.

Over time, the Government of India began to accept the idea of a broad-based income tax. Temple, Wilson's protégé, saw to it that it returned as part of the Government's armoury in 1869.287 In 1947, the British left India more or less willingly, leaving behind a relatively broad income tax which remains to this day.288 Rao held it up as "one of the few happy heritages of British rule"289 --though at least one contemporary of his disagreed. A young Indian woman wrote in the 1930s290 :

"The British Raj impose taxes for everything--what are these taxes? Is it to suck out our lifeblood? They plunder us for our money, and make us living corpses."

Putting aside the ambiguous legacies of the Raj, we should not judge Wilson too harshly. Yes, he was "grievously at fault, as it is natural for pioneers to be."291 He was the first in a line of economists to grapple with the problems of Indian public finance; in time, even Keynes would weigh into the debate.292 Temple reminds us that it is easy to forget that:

"these broadly laid plans embracing, with a comprehensive policy, vast affairs and varied subjects, were all crowded by Wilson into the brief space of eight months".293

B.T.R. 116 But he is hardly impartial.294 Trevelyan outlasted Wilson, and outclassed

Temple; the last word belongs to him. James Wilson, in the last year of his life, "laid the foundation of the new system of Indian finance".295 It proved an extremely durable base for modern India: a worthy, if unlikely, legacy for a hatter from Hawick.296

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B.T.R. 2012, 1, 87-116

1.

See generally, Christopher Hibbert, *The Great Mutiny,* (London: Viking, 1978).

2.

Henry John Temple, 3rd Viscount Palmerston (1784-1865), served twice as Prime Minister of the UK in the 1850s and 1860s. He began political life as a Tory, and ended it a Liberal.

3.

HMSO, *Statistical Abstract Relating to British India* (1867), C.3891 (Statistical Abstract), 1.

4.

See generally Stephen Dowell, *A History of Taxation and Taxes in England,* (London: Frank Cass & Co, 1965), Vol.3, 92-121.

5.

J. Talboys Wheeler, *India Under British Rule,* (London: Macmillan, 1886), 40-82.

6.

Courtenay Ilbert, *The Government of India,* (Oxford: Clarendon Press, 1922), 1; Shankar Madhav Pagar, *The Indian Income Tax,* (Baroda: K G Patel, 1920), 1-8.

7.

Ilbert, above fn.6.

8.

Ilbert, above fn.6, 73-90, contains an outline of the Charter Acts of 1813 and 1833.

9.

Pagar, above fn.6, 10-13.

10.

Edwin Arnold, *Dalhousie's Administration of British India,* (London: Saunders, Otley, and Co, 1865); Hibbert, above fn.1.

11.

Charles John Canning, 1st Earl Canning (1812-1862), was the son of former Prime Minister George Canning. Palmerston knew Lord Canning only slightly in 1856; his appointment was more "on the ground of his father's great services than from any proof as yet given of special personal fitness": Hugh Chisholm (ed.), *Encyclopædia Britannica,* (Edinburgh: Encyclopædia Britannica Co, 1910), 186.

12.

Arnold, above fn.10, Vol.2, 373.

13.

Hibbert, above fn.1.

14.

By 1859, the Indian Army was 7% larger than it had been before the Mutiny; Europeans in service had risen from 15% to 35%: *Statement of Sir Charles Wood to the House of Commons,* (August 1, 1859).

15.

John Marshman, *Abridgment of the History of India,* (Edinburgh: William Blackwood and Sons, 1880), 524-525; J. P. Niyogi, *The Evolution of the Indian Income Tax,* (London: P. S. King & Son, 1929), 20.

16.

Charles Wood, 1st Viscount Halifax (1800-1885), then known as Sir Charles Wood, was a Liberal politician. He served as Secretary of State for India in Palmerston's second government (1859-1866): Algernon West, *Sir Charles Wood's Administration of Indian Affairs,* (London: Smith, Elder and Co, 1867). His grandson would become Viceroy in 1926.

17.

Walter Bagehot, *Collected Works,* (London: The Economist, 1968), Vol.3, 352-353.

18.

The Imperial Gazetteer of India, (Oxford: Clarendon Press, 1909), Vol.4, 19-21 (Gazetteer).

19.

Charter Act 1853; *Gazetteer,* above fn.18, 129; S. Bhattacharyya, *Financial Foundations of the British Raj,* (Simla: Indian Institute of Advanced Study, 1971), xli, lxvii-lxviii, 24, 42-45; Pramathanath Banerjea, *A History of Indian Taxation,* (London: Macmillan, 1930), 10.

20.

Gazetteer, above fn.18, 19-21.

21.

Statistical Abstract, above fn.3; *Gazetteer,* above fn.18, 21-22.

22.

Pagar, above fn.6, 13.

23.

R. V. Vernede (ed.), *British Life in India,* (Oxford: OUP, 1995), 10.

24.

Niyogi, above fn.15, 13.

25.

The actual deficit for the year 1860 was £4,021,385: HMSO, *Fawcett Committee Report* (1871), Vol.1, 709.

26.

Pagar, above fn.6, 14.

27.

James Wilson, *Financial Statement,* (Calcutta: Legislative Council of India, 1860), 77-78.

28.

In 1858-1859, opium taxes and revenue were 17% of government revenue, land 50%, and salt 7%: Bhattacharyya, above fn.19, 292.

29.

Niyogi, above fn.15, 20.

30.

Edgar Holt, *The Opium Wars in China,* (London: Putnam, 1964); John F. Richards, “The opium industry in British India” (2002) 39 *Indian Economic & Social History Review* 149.

31.

Government of India, *Statistics of British India, Sixth Issue* (1911-1912), 73-74.

32.

Bagehot, above fn.17, 353 (emphasis in original).

33.

Bagehot, above fn.17, 353.

34.

1805-1860: Bagehot, above fn.17, 322.

35.

Bagehot, above fn.17, 330.

36.

Bagehot, above fn.17, 353.

37.

Bagehot, above fn. 17, 344-350.

38.

Bagehot, above fn.17, 353.

39.

Bagehot, above fn.17.

40.

Letter from Wilson to his daughters (December 20, 1859): Emilie Russell Barrington, *Life of Walter Bagehot,* (London: Longmans, Green and Co, 1914), 312.

41.

Letter from Wilson to his daughters (December 20, 1859): Barrington (1914), above fn.40, 314-315.

42.

Niyogi, above fn.15, 15-19; Wilson, above fn.27, 74.

43.

Letter from Wilson to Wood (December 9, 1859): Barrington (1914), above fn.40, 309-310.

44.

Barrington (1914), above fn.40, 300.

45.

Letter to a friend (July 4, 1860): Bagehot, above fn.17, 357-359. The name of the recipient is not disclosed: letters copied to Bagehot are described in all published sources only as letters to friends.

46.

On his deathbed, Wilson would ask Sir Henry Bartle Frere (a fellow member of the Council) "to take up and carry through his unfinished measures" (letter from Frere to F. Marriott (August 11, 1860): John Martineau, *The Life and Correspondence of Sir Bartle Frere,* (London: John Murray, 1895), Vol.1, 312). Frere despaired at "the hopelessness of any one mortal achieving them": 313.

47.

Barrington (1914), above fn.40, 318-319.

48.

Letter from Wilson to Wood (July 11, 1859): Emilie Barrington, *The Servant of All: Pages from the Family, Social and Political Life of my Father James Wilson,* (London: Longmans, Green, and Co, 1927), Vol.2, 171.

49.

Letter to a friend (July 4, 1860): Bagehot, above fn.17, 357-359.

50.

Chisholm, above fn.11.

51.

Bagehot, above fn.17, 326-340; Bhattacharyya, above fn.19, 4.

52.

Bagehot, above fn.17.

53.

For the first time a British and Indian budget could be directly compared: W. A. Porter, "The Two Budgets of 1860" in David Masson (ed.), *Macmillan's Magazine,* (London: Macmillan, May-October 1860), Vol.2, 416-424.

54.

He was Financial Secretary to the Treasury when the Income Tax Act 1853 was passed, with William Gladstone as Chancellor of the Exchequer. This was under a coalition government of Whigs and Peelites, the genesis of the Liberal party. Sir Charles Trevelyan wrote that Wilson's was "simply a Gladstonian Budget": letter from Trevelyan to T. Pycroft (February 25, 1860): Bhattacharyya, above fn.19, l.

55.

James Wilson, speech to the Legislative Council (April 14, 1860): Banerjea, above fn.19, 2; Wilson, above fn.27, 90; Barrington (1927), above fn.48, 205. Though see text accompanying fn.149 below.

56.

Letter to a friend (July 4, 1860): Bagehot, above fn.17, 357-359; Banerjea, above fn.19, 24.

57.

Letter from the Wood to the Government of India (January 21, 1869): John and Richard Strachey, *The Finances and Public Works of India from 1869 to 1881,* (London: K. Paul, Trench & Co, 1882), 223.

58.

See above fn.54.

59.

Wilson based his income tax on the Bill which led to the Income Tax Act 1860 (UK) and accompanying regulations: Wilson, above fn.27, 94.

60.

Barrington (1914), above fn.40, 311-312.

61.

Wilson, above fn.27, 84-85.

62.

N. N. Bhattacharyya (ed.), *Encyclopaedia of Ancient Indian Culture,* (New Delhi: Manohar, 1998), 367.

63.

Sir Charles Edward Trevelyan (1807-1886) was from a landed and Liberal family of minor aristocrats. A career civil servant, he attended the East India Company's College at Haileybury, and began working for the Company in Bengal in 1826. He rose through the ranks, and after an interlude at the Treasury (which saw him avoid the Mutiny) he became Governor of Madras in 1859. In retirement, he wrote letters to *The Times* under the pseudonym "Indophilius": Sidney Lee (ed.), *Dictionary of National Biography,* (London: Smith, Elder & Co, 1899), Vol.57, 208-209.

64.

Minute from Trevelyan to the Government of India (March 20, 1860): Niyogi, above fn.15, 26.

65.

Letter to a friend (July 4, 1860): Bagehot, above fn.17, 357-359; Wilson, above fn.27, 91.

66.

Pagar, above fn.6, 22; see text accompanying fn.81 below.

67.

Statistical Abstract, above fn.3, 70.

68.

Bagehot, above fn.17, 355.

69.

Joseph Schumpeter describes Keynes's “Englishness”: *Ten Great Economists,* (London: Allen & Unwin, 1952), 274.

70.

Barrington (1927), above fn.48, 204-206, 223-224, 274-275.

71.

Barrington (1914), above fn.40, 305-306.

72.

Richard Temple, *Men and Events of My Time in India,* (London: John Murray, 1882), 188-189.

73.

Barrington (1914), above fn.40, 315. Temple (who was present) wrote that the speech “seemed to take, as it were, the public mind by storm”: above fn.72, 191-192.

74.

Pagar, above fn.6, 23.

75.

Barrington (1914), above fn.40, 301-302; Bhattacharyya, above fn.19, xx-xxxv.

76.

Letter from Wilson to Wood (December 9, 1859): Barrington (1914), above fn.40, 309; Bagehot, above fn.17, 355.

77.

Letter from Wilson to Wood (December 8, 1859): Barrington (1914), above fn.40, 308.

78.

Bagehot, above fn.17, 324.

79.

Letter from Trevelyan to Wood (5 May 1860): Niyogi, above fn.15, 28.

80.

Letter from Trevelyan to Wood (5 May 1860): Niyogi, above fn.15.

81.

Wilson coined this phrase in a letter to Bagehot (July 4, 1860): Barrington (1914), above fn.40, 320.

82.

Charles Trevelyan, *Statement by Sir Charles Trevelyan of the Circumstances Connected with his Recall from the Government of Madras,* (London: Longman, Green, Longman, and Brothers, 1860).

83.

Niyogi, above fn.15, 25.

84.

See above fn.25.

85.

Letter from Wilson to Trevelyan (December 9, 1859): Barrington (1914), above fn.40, 308.

86.

Trevelyan, above fn.82.

87.

See above fn.14.

88.

Niyogi, above fn.15, 31.

89.

Dharma Kumar, "The Fiscal System" in *Cambridge Economic History of India,* (Cambridge: CUP, 1983), Vol.2, 905 (Economic History).

90.

Barrington (1914), above fn.40, 319-320, quoting *The Economist* (May 12, 1860).

91.

Wilson, above fn.27, 80.

92.

Madras (known officially as Presidency of Fort St George) was one of the provinces of British India. At its greatest extent, it included the present-day Indian states of Tamil Nadu, parts of Kerala, Andhra Pradesh, Orissa and Karnataka.

93.

Letter from the Government of India (May 4, 1860): House of Commons, *East India Accounts and Papers* (1860), Vol.49, 447-451.

94.

Barrington (1914), above fn.40, 345.

95.

Hansard HC Vol 158 cols 1130-1161 (May 11, 1860). See also *Despatch from the Secretary of State for India* (May 10, 1860): above fn.93, Vol.49, 374-375.

96.

Minute by Lord Elphinstone (April 19, 1860): House of Commons, *East India Accounts and Papers* (1860), XLIX, No.11, item 481, 3-9, [21]-[22]. This confidential minute was leaked to the press before it reached the Government: letter from Frere and Wilson to Wood (May 19, 1860): House of Commons, *East India Accounts and Papers* (1860), Vol.19, 471-473.

97.

Temple, above fn.72, 192-193.

98.

Niyogi, above fn.15, 30.

99.

Temple, who worked under Wilson in India, later wrote: "I became much attached to him, and whether as master, teacher or friend, he made on my mind an impression which time cannot weaken" (Temple, above fn.72, 188).

100.

Bagehot, above fn.17, 355-356.

101.

Letter from Wilson to his eldest daughter (July 19, 1860): Barrington (1914), above fn.40, 322-323.

102.

Bagehot, above fn.17, 356.

103.

Bagehot, above fn.17, 341.

104.

Letter from Wilson to Bagehot (February 22, 1860): Barrington (1914), above fn.40, 315. By this stage, Canning had reluctantly agreed to support the income tax, on the basis of financial necessity: Niyogi, above fn.15, 30.

105.

Barrington (1914), above fn.40, 324-325. It received the Viceroy's assent on July 24, 1860.

106.

See Banerjea, above fn.19, 89, for a list of the slight alterations made to the Bill.

107.

Bagehot, above fn.17, 361.

108.

Bagehot, above fn.17.

109.

Barrington (1914), above fn.40, 325.

110.

Friend of India (April 11, 1861): Bhattacharyya, above fn.19, 4. The decline in India funds (bonds tied to investments in India) might be attributed to earlier press reports that claimed that "all chance of financial regeneration was bound up in the life of Mr Wilson": *The Times* (August 8, 1860), quoted in Barrington (1914), above fn.40, 328.

111.

Income Tax Act 1860 (British India) (ITA 1860) s.249.

112.

Letter from Wilson to Wood (May 1860): Niyogi, above fn.15, 34; Barrington (1914), above fn.40, 316.

113.

Canning wrote a letter to reassure Wood (April 19, 1860): Niyogi, above fn.15, 34.

114.

Peace in Oudh did not last. Beset by famine and flagging trade in 1861, locals blamed the imposition of the income tax; these claims were dismissed as evidence only of "the special sensibility of the native community to novel forms of fiscal pressure": "Report of Colonel Baird Smith to the Indian government on the commercial condition of the North West Province" (May 8, 1861) in House of Commons, *East India Accounts and Papers* (1862), Vol 29, 7-8.

115.

See text accompanying fn.59 above.

116.

ITA 1860 s.1.

117.

Throughout, India meant British India: ITA 1860 s.248, definition 2.

118.

This combines Schs A and B of the British income tax.

119.

ITA 1860 s.98, Rule 1.

120.

ITA 1860 s.1, Sch.Two.

121.

Trade included "any manufacture, and any business, adventure, or concern in the nature of trade": ITA 1860 s.248, definition 18.

122.

ITA 1860 s.98, Rule 1. This differs from the situation in *Commissioner of Income Tax*

Bombay Presidency and Aden v Chunilal B Mehta of Bombay [1938] UKPC 38; (1938) LR 65 Ind App 332, where income tax was levied on foreign sourced income "accruing or arising in British India". Sir George Rankin noted "the antithesis between these words and the words 'received in"': 4.

123.

ITA 1860 s.98, Rules 45-47.

124.

Act 39 of 1860 extended the scope of Schs One and Three to cover the income of public servants appointed by the Crown, and employed in "the territories of any foreign prince or state in alliance with Her Majesty" (ss.1-2). Their government wages had always been taxed under Sch.Four, but the amendment extended taxation to cover income from lands and houses within the princely states (otherwise outside of British India, and not taxable under Sch.One), and any annuities paid to them or their families, by the Government of India (otherwise outside Sch.Three).

125.

ITA 1860 s.100, Rule 14; akin to Sch.E under Addington's Act of 1803: Dowell, above fn.4, 101.

126.

Pagar, above fn.6, 20-21. He also claims that pensions received from the Indian Government were exempt, to avoid double taxation. In truth, those who received their pensions from the India Office in London fell outside the scope of the Act, while those who received pensions via agents in India *were* subject to tax, and were denied exemption: House of Commons, *East India Accounts and Papers: Session 5 February-28 July 1863* (1863), Vol 40, number 12, item 212 (2-6).

127.

Niyogi, above fn.15, Banerjea, above fn.19, V.K.R.V. Rao, *Taxation of Income in India,* (London: Longmans, Green and Co, 1931), and Bhattacharyya, above fn.19 all referred to Pagar's paper, but none repeated his claim.

128.

Rao, above fn.127, 231.

129.

Perhaps he was misled by use of the phrase "Chief Revenue Authority"; ITA 1860 s.248, definition 7, defines this as the local revenue authority in each administrative district.

130.

ITA 1860 ss.121-122.

131.

ITA 1860 s.98, Rule 22.

132.

See, for example, *Henderson v Rothschild & Sons* (1886) LR 33 Ch D 459 at 462; 55 LJ Ch 939, in relation to Egyptian tax. *Festing v Taylor* (1862) 3 B & S 217; (1862) 27 JP 281 is a contemporary example of the purported use of the same phrase in wills, to deny deductions for payment of income tax.

133.

See, for example, Pagar, above fn.6, 193-194, 55-56.

134.

Lord Sankey LC, *British Coal Corporation v The King* [1935] AC 500 at 520; 104 LJPC 58.

135.

S.D. Sharma "Applicability of the Doctrine of Extra-Territoriality to Legislation by the Indian Legislature" (1946) 28(3/4) *Journal of Comparative Legislation and International Law, Third Series* 91.

136.

Government of India Act 1858, s.1.

137.

Government of India Act 1858, s.3.

138.

54 Geo III c 105 s.1 (emphasis added). See Ilbert, above fn.6 for earlier sources of authority.

139.

Colquhoun v Brooks (1889) LR 14 App Cas 493 at 504, cited in *Raleigh Investment Co Ltd v Governor-General in Council* (1943) 11 ITR 393 Cal (*Raleigh*).

140.

Wallace Brothers and Co Ltd v Commissioner of Income-tax, Bombay (1948) 16 ITR 240; (1948) 10 FCR 1.

141.

Wallace Brothers and Co Ltd v Commissioner of Income Tax, Bombay (1946) 13 *Annual Digest and Reports of Public International Law Cases* 59, 60.

142.

Raleigh, above fn.139.

143.

See above fn.48.

144.

ITA 1860 s.3.

145.

ITA 1860 s.3.

146.

Minute by Elphinstone: House of Commons, *East India Accounts and Papers: Session 24 January-28 August 1860* (1860), Vol 11(8), [22].

147.

ITA 1860 ss.191-194. See above fn.67.

148.

ITA 1860 s.116.

149.

ITA 1860 s.117.

150.

ITA 1860 ss.116-117. Aggregation for some but not all purposes was shared with the English system at the time: Dowell, above fn.4, 92-121, and B.E.V. Sabine, *A Short History of Taxation,* (London: Institute of Taxation, 1980), 115-131.

151.

ITA 1860 s.97, Rule 13, s.98, Rule 4.

152.

See Wilson, above fn.27, 90. The license tax came into being as Act 18 of 1861.

153.

Wilson, above fn.27, 89-90 (emphasis added).

154.

Wood shared in these concerns. See below fn.178.

155.

Letter from Canning to Wilson (January 31, 1860): Barrington (1927), above fn.48, Vol.2, 223-224.

156.

Letter from Canning to Wilson (February 10, 1860): Barrington (1927), above fn.48, Vol.2, 225-227.

157.

Barrington (1914), above fn.40, 306.

158.

Statistical Abstract, above fn.3.

159.

Derived from Samuel Laing's *Financial Statement* (Legislative Council of India, 1862), using figures calculated after the tax had been in operation for two years.

160.

Samuel Laing (1812-1897) was born in Edinburgh. After Cambridge and a brief period at the Bar, he was called to the Board of Trade, and his life oscillated around Parliament (he, too, was a Liberal), railway interests (he was invariably the chairman), and the City (he amassed a small fortune): biographical entry by Thomas Seccombe in *Oxford Dictionary of National Biography,* (London: OUP, 2004).

161.

Act 16 of 1862.

162.

The tax generated £350,000 in revenue and cost £100,000 to collect--of a total income tax yield of £1,750,000: Laing, above fn.160.

163.

Laing, above fn.160.

164.

Act 27 of 1863 s.1.

165.

ITA 1860 Sch.One.

166.

ITA 1860 s.248, definition 11.

167.

ITA 1860 s.97, Rule 8; "market rent" is termed "rack rent" in the Act (s.248, definition 12).

168.

ITA 1860 s.132.

169.

ITA 1860 s.97, Rule 7.

170.

ITA 1860 s.131.

171.

ITA 1860 s.97, Rule 6.

172.

Wilson, above fn.27, 93-94; Barrington (1914), above fn.40, 209; Bhattacharyya, above fn.19, lxi, 206.

173.

ITA 1860 s.130.

174.

ITA 1860 s.97, Rules 1-2.

175.

ITA 1860 s.97, Rule 3.

176.

ITA 1860 s.126.

177.

Subject to the Viceroy's approval: ITA 1860 s.133.

178.

Letter from Wood to the Government of India (April 3, 1860): "Despatches from the Secretary of State for India to Government of India" in India Office, *Finance Despatches, 1858-1875* (1876).

179.

Telegram from Canning to Wilson (March 13, 1860): Barrington (1927), above fn.48, Vol.2, 272.

180.

ITA 1860 s.127.

181.

ITA 1860 s.128. Act 34 of 1860 extended this exemption to Marines (s.9), and removed it for personnel in civil employment other than the police (s.7).

182.

Infantry captains were paid £211 annually: "Army estimates of effective and non-effective services, for 1859-60" in House of Commons, *East India Accounts and Papers* (1859), XIV, 429 (no 63). £1 was worth Rs 9.23 in 1860, so £211 is approximately Rs 1,945. On the exchange rate, see Arun Ghosh, "Price Movements and Fluctuations in Economic Activity (1860-1947)" (1984) 12(12) *Social Scientist* 31. The British Army source on pay referred to above is relevant to soldiers serving in the Indian Army: "the pay and allowances for corresponding ranks in the two services are … very nearly the same": "Report of Mr. Hammack on comparative cost of line and local armies in India" in House of Commons, *East India Accounts and Papers* (1860), L:1 (No.330), 22.

183.

ITA 1860 s.88, s.248, definition 15.

184.

ITA 1860 s.248, definition 17.

185.

ITA 1860 ss.91-92.

186.

ITA 1860 s.98, Rules 27 and 28.

187.

ITA 1860 s.98, Rule 5.

188.

ITA 1860 s.98, Rule 29.

189.

ITA 1860 s.98, Rules 30 and 31.

190.

ITA 1860 s.98, Rule 33.

191.

Special classes of shareholders (like trustees or guardians of children, or those who received payments from government entities) were governed by separate rules, though with similar effect: s.93, s.99.

192.

ITA 1860 s.98, Rules 4 and 9.
193.
ITA 1860 s.98, Rule 4 (however, proven bad debts were deductible).
194.
ITA 1860 s.98, Rule 4.
195.
ITA 1860 s.98, Rule 4.
196.
ITA 1860 s.97, Rule 6. See text accompanying fn.171 above.
197.
ITA 1860 s.134 (cf. Income Tax Act 1853 (UK) s.54).
198.
ITA 1860 s.98, Rule 9.
199.
See generally *Economic History,* above fn.89.
200.
Niyogi, above fn.15, 24.
201.
Customs and Inland Revenue Act 1878 (UK) s.12.
202.
Pagar, above fn.6, 44.
203.
ITA 1860 ss.37-38.
204.
Rao, above fn.127, 4.
205.
Pagar, above fn.6, 19.
206.
ITA 1860 ss.46-49.
207.
ITA 1860 s.47.
208.
Further surcharges could be applied in the case of fraud: ITA 1860 s.54.
209.
ITA 1860 s.55, s.56 cl.4.
210.
ITA 1860 s.56 cl.5.
211.
ITA 1860 s.64.
212.
ITA 1860 s.60, s.53.
213.
ITA 1860 s.137. As applied in *Collector of Fureedpore v Goroo Doss Roy* 11 WR (India) 425.
214.
ITA 1860 ss.101-102.
215.

N. N. Bhattacharyya, above fn.62.
216.
ITA 1860 s.104.
217.
ITA 1860 ss.105-115.
218.
Wilson, above fn.27, 94.
219.
Wilson, above fn.27; ITA 1860 Part V; Bhattacharyya, above fn.19, 207.
220.
House of Commons, *Home Revenue Proceedings: August 10, 1860* (1860) No.9.
221.
ITA 1860 s.33.
222.
Letter from Wood to Wilson (March 26, 1860): Barrington (1927), above fn.48, Vol.2, 238.
223.
Rao, above fn.127, 4; Niyogi, above fn.15, 39, 41.
224.
Niyogi, above fn.15, 39.
225.
Statement of evidence reported in House of Commons, *Moral and Material Progress of British India: 1860-61* (1861), Vol 2, 105 (Progress).
226.
Act 21 of 1861; Act 16 of 1862; Niyogi, above fn.15, 39.
227.
Rao, above fn.127, 5.
228.
Above fn.6, 22.
229.
Pagar, above fn.6; House of Commons, *Report from the Select Committee on East India Finance* (1873), VIII:1 (No.327), Appendix 15.
230.
Unless the payment schedule was altered by local government: ITA 1860 s.142.
231.
ITA 1860 ss.160-165.
232.
ITA 1860 ss.166-168.
233.
ITA 1860 s.197.
234.
ITA 1860 ss.177-178, 216.
235.
ITA 1860 s.180.
236.
ITA 1860 Pt XIX.
237.

Founded in 1789, it was expanded in 1858 to house prisoners captured in the Mutiny: Charles Richmond Henderson, "Control of Crime in India" (1913) 4(3) *Journal of the American Institute of Criminal Law and Criminology* 378, 395-396; James Leasor, *The Red Fort,* (London: Werner Laurie, 1956), 23.

238.

ITA 1860 s.199.

239.

Case law suggests that these terms (not defined in the Act) are wider than nationality, and any claims to being European or American would be met with a factual inquiry and determination by the judge: *Queen-Empress v Grant* (1888) ILR 12 Bom 561 at [5], on the same terms in the Indian Code of Criminal Procedure 1872 s.4.

240.

ITA 1860 ss.210-211.

241.

ITA 1860 s.215.

242.

Property and Income Tax Act 1805 (UK) s.203.

243.

Sheldon v Sheldon (Sheldon) (1844) 1 Rob Ecc 81 at 83-84; 163 ER 972.

244.

Sheldon, above fn.243, at 84.

245.

Attorney General v Noyes (1881-1882) LR 8 QBD 125 at 132-133.

246.

Greedharee Singh v Foolihuree Kooer 24 WR (India) 173, decided in relation to s.19 (making a false statement of income) of the Income Tax Act 1869, held that a false income statement alone was not conclusive evidence of intent to evade the Act. This aligns with an earlier case decided on s.97 of the 1860 Act, that a return is not conclusive evidence of perpetuity of tenure: *Jowahir Lall v Pookurum Singh* 6 WR (India) 252.

247.

Rao, above fn.127, 16.

248.

D. P. Stopforth, "Settlements and the avoidance of tax on income--the period to 1920" [1990] BTR 225, 2, 13; Jane Frecknall Hughes, "Tax management or tax avoidance--some thoughts on historical development of Terminology" paper presented at the 21st Accounting, Financial & Business History Conference, Cardiff University, September 14-15, 2009.

249.

Michael Littlewood, "The Privy Council and the Australasian Anti-Avoidance Rules" [2007] BTR 175.

250.

ITA 1860 s.202.

251.

See above fn.239.

252.

ITA 1860 s.203.

253.

See, for example, David Gilmour, *The Ruling Caste: Imperial Lives in the Victorian Raj,* (New York: Farrar, Straus and Giroux, 2006), 133-134.

254.

See, for example, Milton Israel, *Communications and Power: Propaganda and the Press in the Indian Nationalist Struggle, 1920-1947,* (Cambridge: CUP, 1994), 56.

255.

Similar provisions in the Indian Penal Code 1860 (45 of 1860) were repealed by the Criminal Law (Removal of Racial Discriminations) Act 1949 (17 of 1949).

256.

Government of India, Central Publication Branch, *Report of the Indian Taxation Enquiry Committee 1924-25* (1926), Vol 1, 189 (Todhunter Report).

257.

Letter to a friend (July 19, 1860): Bagehot, above fn.17, 359.

258.

Barrington (1914), above fn.40, 323, 344-347.

259.

ITA 1860 s.249.

260.

Charles Trevelyan, *Financial Statement,* (Calcutta: Legislative Council of India, 1865).

261.

Progress, above fn.225; Rao, above fn.127, 10.

262.

Rao, above fn.127, 11.

263.

Niyogi, above fn.15, 42.

264.

See, for example, Rao, above fn.127, 11-12; Niyogi, above fn.15, 42-43; *Todhunter Report,* above fn.256.

265.

Along with returns of income, Addington's Act of 1803 made extensive use of the withholding mechanism: Dowell, above fn.4.

266.

Niyogi, above fn.15, 42.

267.

Niyogi, above fn.15.

268.

Proceedings of the Legislative Council (March 31, 1868): Niyogi, above fn.15, 38.

269.

Pagar, above fn.6, 21-22, citing *Report on the Income Tax in the N W Provinces* (1861-1862), 45; Niyogi, above fn.15, 36-37.

270.

Rao, above fn.127, 4.

271.

See Gilbert Slater's review of Banerjea's *History of Indian Taxation* (1930) 40 (158) *The Economic Journal* 317.

272.

Bagehot, above fn.17, 331.

273.

Letter from Wilson to Wood (December 9, 1859): Barrington (1914), above fn.40, 309-310.

274.

Barrington (1914), above fn.40, 299.

275.

Bagehot, above fn.17, 330-331, 355 (emphasis in original).

276.

Gladstone once apprehended that the income tax would make England “a nation of liars”: G. Eichelgrun, “Income-Tax in British Colonies” (1948) 58(229) *The Economic Journal* 128, 130.

277.

Niyogi, above fn.15, 41.

278.

See text accompanying fn.209 above.

279.

There may also have been problems with the *Punchayet* system. Niyogi suggests that some were too timid to tax wealthy, influential villagers to the full extent; they were designed to protect the poor, but lacked the courage to tax the rich: above fn.15, 36.

280.

House of Commons, *Report on the Income Tax Acts and a Minute on the subject of the amendment of these Acts by the Hon Samuel Laing* (1861), 37.

281.

Minute by Trevelyan (December 1, 1859) in House of Commons, *East India Accounts and Papers* (1860), Vol 49, 299-305.

282.

Elphinstone, above fn.146, 9.

283.

Bhattacharyya, above fn.19, 5, 14-15.

284.

HMSO, *Report of the Select Committee on East Indian Finance* (1873), Q 898; Rao, above fn.127, 15.

285.

C.E. Trevelyan, “Decentralisation” (1871) V (pt 2, No.G2) *Journal of the East India Association* 108; Malcolm McRae, “Trevelyan's Indian Letters” (1962) LXXVII (CCCV) *English Historical Review* 706, 709.

286.

James Wilson, “The Bright Side of the Picture” in *The Economist,* September 26, 1857, Vol.15, 1062.

287.

See Acts 9 of 1869, 16 of 1870, and 12 of 1871.

288.

Agricultural income is the most significant carve out: Income Tax Act 1961 (India) s.10(1).

289.

Rao, above fn.127, 1.

290.

Quoted in *The British Empire in Colour: Tryst with Destiny* (London: Carlton Television, 2001).

291.

Schumpeter, above fn.69, 268, describing the early English classical economists.

292.

See John Maynard Keynes, “Indian Currency and Finance” (1913) in *Collected Works,* (London: Macmillan, 1971), Vol.1, 4-5, 26-29; and Vol.15, 36-40.

293.

Temple, above fn.72, 205.

294.

See above fn.99.

295.

Letter from Trevelyan to Wood (December 2, 1862): Barrington (1927), above fn.48, Vol.2, 259.

296.

Income tax; India; Legal history; Tax avoidance