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The Failure of the First Income Tax: A Tale of Commercial Tax Evaders?

Abstract: This article constitutes a re-examination of the financial failure of the first income tax in Britain, introduced in 1799 in order to address the rising cost of the French revolutionary wars. In accounting for this failure, the existing literature has focused largely on failings in the administration of the tax, often blaming, for example, its emphasis on local responsibility for tax collection, and its reliance on the honesty of its contributors. This article furthers these interpretations by highlighting that such issues were particularly problematic in their application to the commercial sector of society. It argues that the preferential treatment of commercial interests in the substance of the tax, on account of their privileged position in the political sphere, led to the establishment of a culture of commercial evasion. The evidence for this is examined at length, through both detailed analysis of the yield of the tax, as well as the attitudes of contemporaries evident in the literature at the time. This analysis ultimately leads to the conclusion that commercial evasion of the first tax played a pivotal, and hitherto underplayed, role in the financial underperformance of the tax.

Keywords: tax law; income tax; legal history; law with economics

I. Introduction

The first income tax, 1799 to 1802, has thus far attracted relatively little attention from historians, at least in comparison to the better-known second tax of 1803–1816. This can be explained in part by the fact that until 1939, all records accounting for the administration of the tax were believed lost, destroyed by Parliament upon the abolition of the tax in an apparent attempt to wipe the tax from memory, the 'bare statistical outline' all that remained.[1] However, the discovery by Hope-Jones of duplicates sitting forgotten in the records of the king's remembrancer sparked several detailed analyses of the tax,[2] notably by Hope-Jones himself in

[1] Arthur Hope-Jones, Income Tax in the Napoleonic Wars, Cambridge, 1939, 2.

[2] The king's remembrancer was an office within the court of the exchequer, tasked primarily with the keeping of records relating to taxation.

1939,[3] subsequently by Farnsworth in 1951,[4] and also by Sabine in 1966.[5] These studies, alongside notable contributions from modern commentators such as Chantal Stebbings and John F. Avery Jones,[6] have painted a picture of the first tax as the birth of a promising fiscal instrument, but blighted by administrative weaknesses such that its failure was inevitable. There is no doubt that general administrative failings – such as the lack of a strong centralized system of collection – did play a significant part in accounting for the poor yield, and such failings will be considered in this article in due course. However, this focus has led to the neglect of a central explanation for the financial underperformance of the tax, namely the exceptionally poor revenue taken from 'commercial income'. References to this shortfall in the literature have often been brief and largely supplementary, tending to dismiss it as a symptom of an overarching problem of ineffective tax administration. This article instead argues that the 'financial failure' of the tax – i.e. its significant disappointment in yield – was underpinned in all areas by commercial evasion, which had been facilitated by significant concessions towards the commercial interest in the substance of the tax.

The article begins by discussing the desperate fiscal situation that necessitated the tax, and argues that effective targeting of commercial income was crucial in addressing the deficit arising from the expensive war with France. It then turns to consider the objections that were raised against an income tax. These objections are well-documented within the literature, as is the fact that the strength of objection led the government to impose a tax that was tolerant of evasion. However, this argument will be developed further by examining the particularly strong objections of the commercial interest. It will then be demonstrated that this interest wielded significant influence within and over parliament, providing them with a unique platform from which to put forward their objections. It is argued that this contributed to the adoption of further concessions in the substance of the tax, afforded specifically to commercial parties. It will be demonstrated that the most important of these concessions was the so-called 'secret procedure', which effectively allowed commercial taxpayers to hide their declarations from everyone but

[3] Ibid.

[4] Albert Farnsworth, Addington, Author of the Modern Income Tax, London, 1951.

[5] B.E.V. Sabine, A History of Income Tax, London, 1966.

[6] See, for example, Chantal Stebbings, 'The Budget of 1798: legislative provision for secrecy in income taxation' [1998] British Tax Review, 651; and John F. Avery Jones, 'The Sources of Addington's Income Tax' in Peter Harris and Dominic De Cogan (eds.), Studies in the History of Tax Law, vol. 7, Oxford, 2015, 1.

the commercial commissioners, who had limited power to challenge the declaration.[7] The article also considers the lack of effective centralized control over the tax, evident primarily through issues with the tax collectors. Again, this particularly pertains to commercial parties. These concessions, it will be demonstrated, allowed for easy evasion of the tax by the commercial sector.

The article then moves on to demonstrate the key role of commercial income in accounting for the financial failure of the tax. The discrepancy between the estimated yield and that actually collected is considered, and it is demonstrated that only twenty-seven per cent of the predicted revenue from commercial income was actually collected. This contrasts with other forms of income where eighty-one per cent of the estimated sums were collected. This conclusion, that low revenue from commercial income was the key factor in accounting for the financial shortfall, is buttressed by various forms of evidence, and the argument that said shortfall can be accounted for primarily by miscalculation in Pitt's estimates is rejected. This leads naturally to the conclusion that the responsibility for the financial failure of the tax can be principally attributed to evasion by the commercial sector of society.

II. Context and concessions

1. The lead-up to the tax

The fiscal situation on the eve of the income tax in the late 1790s was a grave one. The eighteenth century had been characterized by a series of expensive wars, resulting in the adoption of what Brewer has dubbed the 'fiscal-military state':[8] a system of public finance geared almost exclusively towards raising revenue to offset the debts of the previous war, whilst also funding the next. The sheer expense of these conflicts was addressed through the

[7] This issue has been discussed at length by Stebbings in 'The Budget of 1798', ibid., as part of a larger study focusing on the culture of secrecy pervading all areas of the first tax. This article takes her conclusions further, in developing in detail the reasons behind the preferential treatment of the commercial interest, and exploring the effect that this treatment had in supporting a culture of commercial evasion of the tax. Importantly, this article also considers the evidence of this evasion, alongside the impact that it had on the yield of the tax. Ultimately, it demonstrates that commercial evasion is the key factor in explaining its financial failure.

[8] John Brewer, The Sinews of Power: War, Money and the English State 1688–1783, Oxford, 1989, repr. 2014.

creation of long-term, ‘funded’ debt,[9] the repayment of which was to be achieved through the development of a sinking fund,[10] with an increase in taxation to secure the interest. This system was moderately successful during peacetime, when national income exceeded expenditure. However, in wartime, characterized by significant deficit and the accumulation of further debt, the amounts paid into the fund were too small to have any significant effect. As the amount of debt grew higher, so did the interest payments due, and consequently further, or higher, taxes were necessary to meet this cost.

Thus, by the last decade of the eighteenth century, the country found itself engaged in the costliest war it had ever waged, subject to an unprecedented level of national debt, its only hope further imposition on the already overburdened taxpaying public.[11] Pitt therefore recognized that in order to secure further borrowing, a new approach to taxation would be required. However, he was reluctant to immediately turn to a tax upon income, owing to the significant public and parliamentary opposition that would likely arise, opposition that was bolstered by, among others, the opinions of economic philosopher Adam Smith, who had insisted that a tax upon income was impossible without imposing an inquisitorial system.[12] The period from 1793 to 1799 was therefore characterized by what economic historian Patrick O’Brien has referred to as a ‘holding operation’ against the tax: a series of attempts by Pitt to

[9] This meant that borrowing was secured on the existence of a particular tax to cover the interest. See ibid., 116–120.

[10] This involved the annual setting aside of revenue in order ultimately to redeem the debt: see, inter alia, Eric J. Evans, The Forging of the Modern State: Early Industrial Britain, 1783–1870, 3rd ed., Harlow, 2001, 33; and Boyd Hilton, A Mad, Bad, & Dangerous People? England 1783–1846, Oxford, 2006, 115.

[11] Total unredeemed capital of public debt had risen from £14.2 million in 1700, to £78 million in 1750, to £391.2 million in 1798 (B.R. Mitchell, Abstract of British Historical Statistics, Cambridge, 1962, 401-402). The political and economic quagmire that Pitt found himself in is summed up well by Monroe: ‘All the familiar ingredients of financial crisis were present…Increased taxation was inevitable. Pitt’s problem? How best to tighten the screw?’ Hubert Holmes Monroe, Intolerable Inquisition?: Reflections on the Law of Tax, London, 1981, 4.

[12] According to Smith, ‘An inquisition into every man’s private circumstances…would be a source of such continual and endless vexation as no people could support.’ – An Inquiry into the Nature and Causes of the Wealth of Nations, 3 vols., 11th edition, London, vol. 3, 309.

raise sufficient revenue without having to resort to a general tax on income.[13] This 'holding operation' began with an increase in the rates of existing expenditure taxes, notably through the 'triple assessment', whereby rates of existing so-called 'assessed taxes' were arbitrarily increased.[14] Ultimately, these efforts fell far short of raising the required revenue, and Pitt was forced to turn to new sources of revenue in order to fund the increasingly expensive war effort.[15]

One important factor in achieving revenue growth was the targeting of commercial income. Commercial income was particularly important considering the large-scale growth in trade that the country had seen, and was continuing to see, from the 'consumer revolution' of the eighteenth century, and the burgeoning 'industrial revolution'.[16] Although an increase in the number of articles subject to taxation meant that receipts from excise duties and assessed taxes rose, their effectiveness was limited as they provided no means of targeting the great profits accumulated by the wealthy traders, and largely maintained in capital. As Stebbings has noted, commercial income formed part of a '"great means" which had hitherto remained untaxed'.[17] Considering both the scale of commercial income and the inadequacies of the existing taxes in targeting it, it would have been clear to Pitt that the key to unlocking greater revenue would be to access this 'great means'. However, this would prove to be far from straightforward. As will now be discussed, strong opposition to the tax led to a generous system of taxation, particularly towards commercial income.

[13] P.K. O'Brien, 'The Political Economy of British Taxation, 1660-1815' 41 The Economic History Review (1988), 1, at 18.

[14] For a good discussion of the growth of the assessed taxes, culminating in the triple assessment, see Sabine, A History of Income Tax, 19–24.

[15] For a detailed discussion of the various efforts see, for example: Stephen Dowell, A History of Taxation and Taxes, 2nd ed., London, 1888, 208–224; and William Phillips, 'The Origin of Income Tax' [1967] British Tax Review, 113, particularly at 122.

[16] As will be discussed below, Pitt estimated that the commercial sector produced forty-four per cent of national income.

[17] Stebbings, 'The Budget of 1798', at 654.

2. The advent of the income tax

The impending tax on income was greatly unpopular, and this was apparent in the contemporary literature. The tax was declared 'hideous and detestable',[18] 'in its nature unequal, unprincipled, unjust',[19] and 'impolitic and irritating'.[20] Particularly vocal in their opposition were the commercial interest, especially the merchants and traders of London.[21] Despite officially approving the principle of a wartime income tax, the common council of the city of London adopted a resolution in December 1798 stating: 'that the said bill proposes to establish an inquisitorial power unknown in this country – inconsistent with the principles of the British Constitution – and repugnant to the feelings of Englishmen'.[22] This identifies a key criticism that was voiced extensively by landed and commercial interests alike: namely that the tax constituted unwarranted official intrusion into the private affairs of its contributors. However, as will also be demonstrated, this argument is less than persuasive in accounting for the overall bad feeling towards the tax. Instead, two key explanations proposed by modern commentators emerge: first that complaints were reflective of a perceived 'breach of consent' by the government; and second, and more relevant for our purposes, that they disguised dissatisfaction at a change in form of taxation, which had before allowed taxpayers to control, and often avoid, its full weight. The latter was especially true of the commercial interest, and provides a persuasive explanation for both commercial antipathy to the tax, and ultimately the concessions that Pitt was forced to make in its administration, concessions that proved particularly of benefit to the commercial community.

As regards the threat of inquisition, this was a prevalent criticism of the new tax even in parliament. One member spoke of tax collectors as 'a spy [that] comes, not only into the

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[18] Benjamin Kingsbury, An Address to the People of Great Britain on the Subject of Mr Pitt's Proposed Tax on Income, London, 1798, 15.

[19] Ibid., 20.

[20] Estimate of the produce of the tax upon income; with a few observations on the impolicy of the measure, London, 1799, 15. For further evidence of opposition to the tax, see Benjamin Bell, Three Essays on Taxation of Income, London, 1799.

[21] See, for example, the heated opposition to the tax by a draper of the city of London and future lord mayor: Robert Waithman, War proved to be the real cause of the present scarcity, 4th ed., London, 1800.

[22] As reported in Oracle and Daily Advertiser, 20 Dec. 1798, 3. The common council was officially comprised of the lord mayor, aldermen and various merchants and traders from across the city, and was styled as representative of the mercantile and trading interests of the city of London.

House, but opens the bureau of every man, and becomes acquainted with his most secret concerns'.[23] This strength of feeling, although dramatic, is perhaps unsurprising. The violent French revolution, which had been triggered by oppressive governance, particularly through the heavy and regressive taxation imposed by the ancien régime, was still fresh in the public mind.[24] An important example of this was the so-called vingtième, the pre-revolutionary French income tax, which had been poorly administered and was deeply unpopular, exempting the wealthy whilst overburdening the poor and middle classes. That this would have played into fears surrounding the prospect of a British income tax is very likely: a tax that not only allowed for government investigation into private affairs, but that had also been used as an instrument of oppression across the Channel would have been an alarming prospect for contemporaries. This fear of tyranny was only added to by the radical opinions of social philosophers such as Thomas Paine,[25] who played an important role in both the American and French revolutions,[26] in expounding the rights of the ordinary man to rise up against unwarranted interference by the government, particularly in the face of excessive or intrusive taxation.[27] These fears took place

[23] Parliamentary History, vol. 34, col. 91, 14 Dec. 1798 (House of Commons).

[24] See Dowell's statement that the revolution had inspired 'feelings of amazement and horror…[that] made a deep impression upon people of all classes in this country' – A History of Taxation and Taxes, vol. 2, 208-209. That fears stemming from the French revolution fed into anti-income tax rhetoric is evidenced by Mr Tierney's assertion in parliament that 'this measure puts a tenth of the property of England in a state of requisition – a measure which the French have followed in their career of revolutionary rapine…' – Parliamentary History, vol. 34, col. 22, 3 Dec. 1798 (House of Commons). For more on the role of tax in the French revolution, see William Doyle, The Oxford History of the French Revolution, 2nd ed., Oxford, 2002.

[25] See his seminal work, *Rights of Man: being an answer to Mr. Burke's attack on the French* Revolution, London, 1791.

[26] In particular, Paine was a popular and powerful advocate of American independence: see his pamphlet Common Sense; Addressed to the Inhabitants of America, Philadelphia, 1776. The American revolution in particular was a perfect example of successful action against state intrusion, having been triggered by dissatisfaction over the imposition of duties on tea by the British government, and ultimately resulting in national independence. For a detailed account of this see, James Coffield, A Popular History of Taxation: from ancient to modern times, Harlow, 1970, particularly at 82–88.

[27] For a good discussion of this attitude and how this was exacerbated by onerous stamp duties on newspapers at the time, interpreted by many contemporaries as an unforgivable encroachment on

against a backdrop of predominantly local control over taxation, particularly in the remote counties, as most taxes were assessed and collected by local men, before being remitted to London.[28] Residents of these areas were unused to official involvement in local affairs,[29] and although they might not object to answering to their 'natural superiors' in the form of the local gentry or county magistrate,[30] submitting to officials in London was a quite different prospect. Accordingly, it is unsurprising that the concept of switching from a localized system of administration in all aspects of life to a central 'inquisition' resulted in significant objection.

It was not only the fear of disclosure to state officials that concerned taxpayers. The possibility that it would allow fellow citizens knowledge of their neighbour's particular financial position was hotly opposed, most particularly by the commercial community.[31] The key to understanding this fear lies in the particular nature of trade at the time, which was highly centred around credit. This, as Stebbings has noted, was vital to trading success as 'most commerce was carried on either by sole merchants or small partnerships', meaning that 'the great majority of commercial men who needed further capital had no option but to turn to some form of credit'.[32] The ability to obtain credit hinged on 'the borrower's good name and the faith a lender had in his ability and intention to repay',[33] and a great indicator of this would be the financial situation of the would-be debtor. If a creditor gained access to this information, there

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press freedom, see L. Oats and P. Sadler, 'Stamp Duty, Propaganda and the French Revolutionary and Napoleonic Wars' in John Tiley, ed., Studies in the History of Tax Law, vol. 1, Oxford, 2004, 243, at 251–253.

[28] The localized nature of taxation at the time has been explored in depth by Chantal Stebbings in her works: The Victorian Taxpayer and the Law: a study in constitutional conflict, Cambridge, 2009; and 'Consent and Constitutionality in Nineteenth Century English Taxation' in John Tiley (ed.), Studies in the History of Tax Law, vol. 3, Oxford, 2009, 293.

[29] As Hudson has described: '…the maintenance of order and justice, and much economic and social regulation, were devolved locally' – Pat Hudson, The Industrial Revolution, London, 1992, repr. 1993, at 52. See discussion of the importance and consequences of local administration, below.

[30] Hope-Jones, Income Tax in the Napoleonic Wars, 114.

[31] For an in-depth consideration of this concern, see Stebbings, 'The Budget of 1798'. See also the related point, discussed in the aforementioned article, that 'disclosure of a gentleman's financial circumstances might tend to the erosion of a generally accepted hierarchy where everyone knew his place' (at 652).

[32] Ibid., at 656.

[33] Ibid., at 657.

would be an increased risk that he would refuse to lend to the debtor, or that he would impose onerous terms on the loan, in turn reducing engagement in trade. This risked 'kill[ing] the proverbial goose which laid the golden eggs',[34] providing commercial parties with a platform upon which to push for secrecy in the tax.

Further consideration shows that the sincerity of these complaints is doubtful, particularly with respect to commercial parties. The income tax was by no means the first inquisitorial intrusion into a taxpayer's private life. The excise had been a source of discontent on those grounds since its introduction in the seventeenth century, involving significant intrusion into the affairs of both manufacturers and merchants,[35] and granting the government 'an extraordinary degree of formal and informal control'.[36] Bearing in mind the minute and onerous requirements upon manufacturers and traders under the excise scheme, an income tax was unlikely to prove any more inquisitorial than existing taxes.[37] As Stebbings has suggested, this raises the question as to whether this complaint 'was…genuine…or whether it was merely a plausible concern raised to apply pressure to the government to ease the impact of a generally unpopular measure'.[38] Furthermore, that complaints of inquisition were made even despite Pitt's concession in the way of a secret procedure pertaining to commercial parties, which, as will be discussed below, effectively allowed them to hide their contributions, also casts doubt on the veracity of these complaints.

Accordingly, discerning the true basis of anti-income tax sentiment requires further investigation. One explanation can be found in what Daunton has styled 'loss of consent', i.e. that the government was to acquire the power to probe into the personal affairs of a gentleman

[34] Evans, The Forging of the Modern State, 101. See also the assertion of an anonymous contemporary pamphleteer, that if credit is 'touched with a rude hand it will fly in a thousand pieces, and be irrecoverably destroyed!' – Estimate of the produce of the tax upon income, 13.

[35] For a detailed discussion of this, see Chantal Stebbings, 'Traders, the Excise and the Law: Tensions and Conflicts in Early Nineteenth Century England' in John Tiley (ed.), Studies in the History of Tax Law, vol. 4, Oxford, 2010, 139, especially at 140–143. See particularly the statement at 141 that 'the relationship between the merchant community and the excise board was an exceptionally close and intense one'.

[36] Ibid., 140.

[37] See further Phillips, 'The Origin of Income Tax', at 114, and B.E.V. Sabine, 'Great Budgets I: Pitt's Budget of 1799' [1970] British Tax Review, 201, at 210, both of whom argue that 'inquisition' had existed long before the income tax.

[38] Stebbings, 'The Budget of 1798', at 656.

without his agreement.[39] This can be developed by the theory of 'breach of consent', put forward by Stebbings. She has argued that contemporaries believed themselves to possess a constitutional right to 'consent to taxation'.[40] This could be achieved through real consent, or implied consent arising from local administration. The imposition of an objectionable, centrally administered tax therefore directly contravened perceived ideas of liberty and constitutionality.[41] This chimed on another level with other, disenfranchised taxpayers who, perhaps influenced by the notion of 'no taxation without representation' thrown up by the American revolution, had even less opportunity to consent to this new tax.[42] This theme of lack of constitutionality is evident in the contemporary literature. That the government was to have the power to subject a gentleman to interview and to impose a judgment upon him without recourse to the courts was, according to Sir John Sinclair, 'the height of cruelty and injustice'.[43] Perhaps, then, the real objection to the tax was less to its 'inquisitorial' nature, and more that it contravened what taxpayers perceived to be their rights as Englishmen.

It seems that many objections to the tax were to its principle, based on the notion that there had been a breach of constitutional right. However, Pitt's introduction of some local administration alongside the principle of self-declaration, discussed below, went at least some way to offsetting these complaints by giving local communities a hand in their own tax collection. Despite this, opposition to the tax remained strong, suggesting another reason behind the general distaste. One answer to this was provided by Phillips: that objection to the tax can be explained by a change in form of taxation, from indirect to direct.[44] As he notes: 'during the eighteenth century…the doctrine had come to be universally accepted that taxes on so-called luxuries were optional taxes; income tax was clearly not an optional tax, and it therefore offended an idée fixe, one very firmly fixed indeed'.[45] The income tax therefore served as a break with tradition, and a very convenient tradition at that: that the tax system was

[39] Martin Daunton, Trusting Leviathan: The Politics of Taxation in Britain, 1799–1914, Cambridge, 2001, repr. 2007, 45.

[40] Stebbings: 'Consent and Constitutionality', The Victorian Taxpayer and the Law.

[41] See, inter alia, Stebbings, 'The Budget of 1798', particularly at 652; and Monroe, Intolerable Inquisition?, particularly at 3.

[42] See n 26, above.

[43] Parliamentary History, vol. 34, col. 84, 14 Dec. 1798 (House of Commons).

[44] William Phillips, 'The Real Objection to the Income Tax of 1799' [1967] British Tax Review 177.

[45] Ibid., at 177.

based on regressive indirect taxation, targeting the poorer classes and allowing for easy avoidance by, and lesser impact upon, the wealthy.[46] As O'Brien has stated: '[By]…a prudent selection of the commodities and social groups "picked upon" to bear the mounting exactions of the state…rising taxation…[was made]…tolerable and politically manageable'.[47] As discussed above, the nature of the indirect taxes had also meant that 'Virtually no taxation fell upon business profits or business capitals',[48] which is key in explaining the strong opposition of the commercial community to the income tax. For the first time, trading profits were threatened by taxation. This reveals what was likely the true commercial complaint: that they would be required to contribute more in the way of income tax than they had under any other tax ever before.

3. The influence of the commercial interest

That the weight of public opinion, particularly from the commercial sector, was set against the income tax from the beginning is well-established. What is less well understood is that commercial parties were subject to significant preferential treatment in terms of the application of the tax, particularly as against the landed classes. This primarily resulted from their strong influence over Parliament. This influence is not immediately obvious when looking at the distribution of political power at the time. For example, the city of London, possessing no doubt the largest trading population in the country, elected just four members of parliament of the total 558.[49] Accordingly, direct political power on the part of the commercial sector was

[46] See, for example, the attitude expressed by a contemporary pamphleteer, that 'it is to the multitude that the financier should look for efficient sources of revenue', and not the wealthy – Estimate of the produce of the tax upon income, at 4. This point has also been discussed by Mathias and O'Brien, who have argued that 'direct taxation was generally "progressive" – which is doubtless why it formed so small a proportion of total public revenue' – Peter Mathias and Patrick O'Brien, 'Taxation in Britain and France, 1715–1810: A Comparison of the Social and Economic Incidence of Taxes Collected for the Central Governments' 5 Journal of European Economic History (1976), 601, at 614.

[47] O'Brien, 'Political Economy', at 6. This carefully selected tax base, as O'Brien points out, was coupled with tolerance of evasion of other more direct taxes, making change even harder as a 'blind-eye' attitude was already deeply ingrained in tax administration.

[48] Peter Mathias, The First Industrial Nation: An Economic History of Britain 1700–1914, 2nd ed., Oxford, 1983, repr. 2001, 37.

[49] For an in-depth analysis of the political make-up at the time, see 'The Constituencies', in R.G. Thorne (ed.), The History of Parliament: the House of Commons, 1790 – 1820' London, 1986,

limited. However, the mercantile interest in particular managed to make their influence felt in other, less direct, ways, by establishing for themselves a close, mutually beneficial relationship with the political class. This, as will be demonstrated, allowed them significant power over policymakers, affording them a position that ultimately played a part in the demise of the first income tax.

One way in which the commercial interest possessed political power was through its close relationship with the governing élite. Large trading interests sought to create solid relationships with politicians, forming powerful lobbies through which to press commercial objectives.[50] These relationships were reflected in the demographic of parliament itself: according to Thorne,[51] in the overall period of 1790 to 1820, thirteen members of parliament were, or had been, directors of the Bank of England, and thirty-two were directors of the East India Company.[52] As O'Brien has pointed out:

> [Chancellors] ran into determined and well-organised parliamentary opposition from political lobbies in the shape of the West India interest, the City of London members of parliament on the payroll of the East India Company and other trading corporations, who all used the influence they commanded to divert the Chancellor's attention away from foreign commerce.[53]

Another, more integral source of commercial influence came from its vital economic importance. This was manifested in two central ways. First, commercial income ostensibly

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available at <http://www.historyofparliamentonline.org/volume/1790-1820/survey/i-constituencies> accessed 2 May 2017.

[50] See, for example, Evans's assertion that 'Directors of the East India and South Sea Companies and the Committee of West Indian Planters and Merchants all had ready access to powerful politicians to press their interests…' – Evans, The Forging of the Modern State, 37. See also Porter's description of 'the mercantile classes…currying ministerial favour', with 'master manufacturers…argu[ing] for their preferred commercial policies in the snuff-filled ante-rooms of Westminster' – Roy Porter, English Society in the Eighteenth Century, 2nd ed., London, 1990, 75.

[51] 'The Members', in The History of Parliament, available at <http://www.historyofparliamentonline.org/volume/1790-1820/survey/iii-members> accessed 4 Jan. 2017.

[52] Ibid.

[53] O'Brien, 'Political Economy', at 24.

accounted for forty-four per cent of national income.[54] For the government to work against the commercial interest, therefore, risked undermining the entire economy.[55] Second, and arguably even more importantly, the great trading entities of the city of London, such as the East India and South Sea Companies, and the Bank of England, financed loans to the government that kept the wartime nation afloat. This has led Dickinson to argue that: 'What gave these institutions political power was not their votes, but their ability to raise substantial loans for the Treasury whenever the government required them.'[56] The importance of this cannot be understated: in a time of economic difficulty, fighting an expensive war and with a high national debt, to ignore the voices of those propping up the economy would have been disastrous. It is little wonder, then, that the government found complaints against the income tax from the mercantile interest particularly persuasive.

These mercantile interests were also particularly valuable as they provided a route by which the nation could assert its aspirations to empire. As Colley has asserted, the élite believed 'that commerce…was the engine that drove a state's power and wealth…and that if British traders were to succeed in the struggle [to win access to foreign markets and materials], they must be vigorously supported abroad and protected at home'.[57] This need to protect trade in order to dominate on an international level was arguably more important in 1799 than ever before, given that 'the French Revolution, followed by a global war, provided Britain…with an opportunity to capture and retain an "inordinate" share of the world markets'.[58] Thus, trading interests were seen as key both to retaining Britain's international reputation, and also to succeeding in the war against France.[59] Imposing a system of taxation that risked inhibiting

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[54] See Pitt's estimates of national income, discussed below.

[55] See, for example, Stebbings's account of how excessive excise duties earlier in the eighteenth century saw 'some of the largest manufacturers [in Scotland]…forced out of business by the depressed state of trade caused directly by excise regulation' – 'Traders, the Excise and the Law', at 143.

[56] H. T. Dickinson, The Politics of the People in Eighteenth-Century Britain, New York, 1995, 61.

[57] Linda Colley, Britons: Forging the Nation 1707–1837, New Haven, 3rd ed., 2009, repr. 2014, 64.

[58] P.K. O'Brien and S.L. Engerman, 'Exports and the Growth of the British Economy from the Glorious Revolution to the Peace of Amiens' in B.L. Solow (ed.), Slavery and the Rise of the Atlantic System, Cambridge, 1991, 185.

[59] This was furthered by the close relationship between the royal navy and the merchant navy, and the donations made by the large trading companies to its maintenance: see Colley, Britons, 65 and 93-94.

their activities therefore threatened not only the value of trade, but also British international supremacy.[60]

By the end of the eighteenth century, then, the commercial interest occupied a privileged position in the political fabric. There are many examples of this interest spilling over into policymaking, such as the awarding of trading monopolies to the large merchant entities, and also the future enactment of the corn laws in 1815.[61] However, one particular example of the power that traders had over policy is that of the 1733 excise crisis, when Prime Minister Robert Walpole intended to replace the land tax with higher rates of excise duty, most particularly on wine and tobacco.[62] This was ultimately defeated by an extensive campaign by the commercial sector, whereby 'Merchants…mobilized public opinion',[63] by petitioning and disseminating publications intended to whip up feeling against the proposals, eliciting a reaction that Langford argues 'would not have been possible without skilled and vigorous leadership, such as came from the City of London, the home of the great plutocratic merchant houses as well as one of the strongest centres of opposition to government'.[64] This exercise of commercial power against government was replicated on numerous occasions throughout the eighteenth century.[65]

In light of the above discussion, it is reasonable to suggest that the views of the commercial community held significant weight with both parliament and the executive at the point that the income tax was proposed. The position was summed up in parliament by Mr Rose, who argued that the government 'were now prostrate at the feet of the Parliament of the

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[60] According to Dickinson, the recognition of this led to wealthy merchants 'adopting pressure group tactics': The Politics of the People, 63.

[61] For an extensive discussion of the role of the commercial interest in policymaking through the eighteenth century, see Dickinson, ibid.

[62] For an in-depth discussion of this, see Paul Langford, The Excise Crisis, Oxford, 1975.

[63] Michael Kammen, Empire and Interest: The American Colonies and the Politics of Mercantilism, Philadelphia, 1970, 64.

[64] Langford, The Excise Crisis, 58.

[65] See, for example, the 1739 Spanish wars, which, according to Dickinson, began as a result of commercial pressure (The Politics of the People, 68); and the proposed increase in the duty on imported sugar in 1744 (ibid., 66). See also the repeal of the shop taxes in the late 1780s – see William Kennedy, English Taxation, 1640–1799: An Essay on Policy and Opinion, London, 1913, 159.

Mansion-House'.[66] However, this begs the question why, given the strength of feeling against it, the tax was not scrapped as the excise proposals had been in 1733. Despite their objections to its mode of collection, the court of common council approved the principle of an income tax.[67] The answer lies again in the relationship that businessmen had with government: it was simply not in their interest to oppose the tax completely. This can be explained by a number of factors, which will be considered in turn.

First, although as we have seen the country was dependent on traders in a number of ways, this was far from non-reciprocal. As Colley has pointed out, loyalty paid.[68] Traders depended on the protection of the state to pursue commercial activity abroad, both directly, through the granting of monopolies such as those awarded to the East India Company, and indirectly, through the protection of merchant ships en route to foreign markets by the navy. They also depended on the government for preferential trade conditions at home: as has been discussed, the overall system of taxation allowed the commercial community largely to escape its scope. In order to secure the continued favour of government, traders by and large supported their various efforts, most crucially in a financial sense.[69]

Moreover, many traders actually benefited from the war. As discussed above, it was often the large trading interests that financed the wars, leading to beneficial interest rates and income security. Furthermore, war with France, as Britain's largest trading rival, provided the opportunity for the commercial interest to benefit from French markets and lands abroad, should Britain win.[70] The potential benefits of war would likely have proved irresistible to businessmen: accordingly, it was in their best interests to promote both supportive relationships with the government, and as successful a war as possible.

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[66] Morning Post, 20 May 1800, 2. The Mansion House is the official residence of the mayor of London, and was also the site of the meetings of the court of common council. It was therefore used in this context as representative of the commercial city of London.

[67] See the resolutions of the court of common council, reprinted in William Frend, Principles of Taxation, London, 1799, xiv–xv.

[68] Colley, Britons, 56.

[69] See Colley's statement regarding the formation of patriotic societies and the giving of donations to the navy, that: 'Doing one's bit for the manning of the Royal Navy was one way of impressing the authorities, a public-spirited gesture that might just ensure some kind of reward.' – ibid., 94.

[70] See ibid., 100.

Moreover, the risk of invasion threatened the commercial community as much as any other national interest. As Colley has pointed out, 'threatened invasion from abroad…was almost certain to disrupt business and endanger money supply and credit'.[71] Accordingly, to campaign contrary to the war effort would potentially have proved counterproductive financially, as well as politically.

In presenting too strong an opposition to the income tax, then, traders risked their influential position in society, as well as their financial well-being. Nonetheless, the fact remained that the income tax would prove an unacceptable encroachment on their profits. In using their influence to negotiate a preferential system of assessment, however, the commercial interest sought to achieve the best of both worlds: to avoid much of the impact of the tax, whilst still maintaining the appearance of compliance. This was achieved in several key ways, centring on the role played by the so-called secret procedure available to the commercial interest.

4. Making the tax more palatable: general concessions

That there was strong, principled objection to the imposition of the tax is clear. As a result, in enforcing the tax the legislature found itself torn between strict enforcement, risking an uprising such as that that had characterized the excise crisis, or acquiescence to public opinion, potentially undermining the tax as a revenue generator. An anonymous pamphleteer expressed this dilemma at the time: 'if it be severe and rigorous, it will be oppressive and vexatious; if less strict and rigid, it will open the door to fraud and evasion'.[72] Pitt chose the latter option, thereby imposing a tolerant system of tax collection that was relatively easy to evade.[73] In order to demonstrate this, it is necessary first to consider the general provisions of the Act, followed by the aspects of the tax most demonstrative of concession to public opinion, namely the

[71] Ibid., 66. See also O'Brien's statement that 'Naval power forestalled, repelled and protected the British Isles from invasion and provided its capitalists with the security to invest in the long-term future...' – Patrick K. O'Brien, Power with Profit: The State and the Economy, 1688–1815, London, 1991, 20.

[72] Thoughts on taxation in the course of which the policy of a tax on income is impartially investigated, London, 1798, 65.

[73] There has been some suggestion in the literature that Pitt designed the tax in this way so as to ensure its passing through parliament, with an aim to amend it once it proved problematic: see Stebbings, 'The Budget of 1798', at 653.

principle of self-declaration and the lack of effective centralized control inherent in the tax. It is these concessions that were developed even further with regard to commercial income.

Income for the purposes of the Act was taken to mean: 'not less than the full Amount of the Profits or Gains of such Trade, Profession, Office, Pension, Stipend, Employment, or Vocation'.[74] Gross income was subject to general deductions,[75] intended to offset the impact of the tax on those who had particular demands on their income. For example, deductions were permitted for children, owing to their dependency on the taxpayer. There were then further 'specific deductions' for each named head of income, the relevant deductions for trade being comprised in the fifteenth case of schedule A of the Act.[76] This included, for example, monies paid in wages, and shareholders' dividends.

Taxable income was self-declared in that the taxpayer would make a statement as to his income, alongside relevant deductions. This could be challenged should the commissioner believe it to be incorrect, but importantly the commissioner had no power to inspect the books of the taxpayer.[77] This system of self-declaration with assessors lacking the power to access accounts without consent rendered the process almost voluntary in nature, and consequently dependent, as Sir John Sinclair argued in parliament at the time, 'on the voluntary seal, and unfortunately, the lax morality, of…the people'.[78] Self-declaration had opened up the system to evasion under the triple assessment,[79] and there was every reason to suggest that it would have the same effect on the income tax.

Pitt thus put his faith in the 'general honesty' of the public.[80] His only answer to the possibility of evasion was, in addition to allocating responsibility for tax collection to local commissioners,[81] to appoint a surveyor, responsible for 'lay[ing] before the commissioners

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[74] 'The fifteenth case', schedule A to the Income Tax Act 1799.

[75] 'General Deductions from Income', schedule A.

[76] For detailed consideration of the provisions of the Act, see Farnsworth, Addington, Author of the Modern Income Tax, 15–18.

[77] See Sabine, A History of Income Tax, 28-29.

[78] Parliamentary History, vol. 34, col. 76, 14 Dec. 1798 (House of Commons).

[79] The increase of the so-called assessed taxes that took place in 1798. See n 14, above. For an account of the evasion under this measure, see Phillips, 'The Origin of Income Tax', at 124.

[80] Parliamentary History, vol. 34, col. 7, 3 Dec. 1798 (House of Commons).

[81] For a discussion of this see, for example, Hope-Jones's account of the basic administration of the tax – Income Tax in the Napoleonic Wars, 19.

such grounds of doubt, as may occur to him on the fairness of the rate at which a party may have assessed himself'.[82] Such doubts were then to be reported to the commissioners, such that 'they may call for farther explanation from the person concerned',[83] but as Seligman has pointed out, 'no taxpayer was compelled to answer any question'.[84] This is not to say that commissioners were powerless in the event of suspected evasion. As Pitt himself warned: 'If, however, he [the tax payer] declines to submit to the investigation of his books…it shall be competent for the commissioners to fix the assessment, and their decision shall be final, unless he appeals to the higher commissioner'.[85] However, the effectiveness of this deterrent against evasion was undermined in several key ways. The lack of power to investigate meant that any evidence of evasion presented by the surveyor, just as any assessment that the commissioner may 'fix', would result from mere guesswork. This would naturally be based on external indicators, such as outward appearance of wealth and known local investment, making it a far from accurate assessment. This inherent inaccuracy essentially rendered the state incapable of obtaining a fully comprehensive return. Thus, evasion by under-declaration was to a large extent unchallengeable, rendering it inevitable.

It must also be remembered that commissioners were often overworked, and their loyalties were split. The commissioners themselves were selected by the grand jury from the existing land tax commissioners for that area and ten others, 'also so qualified'.[86] The responsibility of such a small number of men for the accuracy of the hundreds, if not thousands,

[82] Parliamentary History, vol. 34, col. 7, 3 Dec. 1798 (House of Commons).

[83] Ibid.

[84] Edwin Robert Anderson Seligman, The Income Tax: a study of the history, theory and practice of income taxation at home and abroad, New York, 1911, 81.

[85] Parliamentary History, vol. 34, col. 8., 3 Dec. 1798 (House of Commons). The 'higher commissioners' Pitt referred to were the commissioners of appeal, who by virtue of section 64 of the Act had the power to determine the appeal in line with what appeared to them to be 'just and equitable'. A good discussion of the powers of these commissioners can be found in Chantal Stebbings, 'The General Commissioners of Income Tax: assessors or adjudicators?' [1993] British Tax Review 52. It is important to note that no appeal could be made on the assessments of the commercial commissioners, possibly in order to maintain the secrecy of commercial declarations.

[86] The Income Tax Act, s. 11.

of assessments from their locality was an important limiting factor.[87] Placing the administration of the tax in the hands of mainly local men was a concession to the fears of bureaucracy by those geographically divorced from London. Stebbings has discussed the need for local administration of the tax,[88] pointing out that 'self-government…was engrained in society' at the time,[89] and that therefore, in light of the strong opposition to the tax, 'to use a traditional means of tax administration which was familiar…was a powerful pacifier'.[90] However, the emphasis on local administration had significant consequences. Commissioners appear to have regarded themselves as 'representatives of the taxpayers, and might naturally be supposed to defend their legitimate interests against the treasury'.[91] They had little interest in sending money outside of their locality, and less incentive still to contradict a declaration made by a prominent local figure. Ultimately, the role of commissioners as a safeguard against evasion was significantly flawed.

Although these concessions undoubtedly contributed to the culture of evasion surrounding the tax, the public at large did pay their dues, albeit reluctantly. As will be discussed below, together the yield of the tax from non-commercial sectors accounted for almost eighty-one per cent of that anticipated. This, when compared to a mere twenty-seven per cent from the commercial community, was a relatively successful result. As commentators have pointed out, during this period the landed interest in particular did pay the high taxes that they complained about so vociferously (albeit grudgingly).[92] Accordingly, it seems that, although general administrative issues with the tax and its general commissioners played a part in the financial failure of the tax, these issues alone are not persuasive. Instead, it is necessary to turn to the particular concessions made to the commercial sector, in order to understand why the tax failed so spectacularly in generating revenue.

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[87] See discussion of this in, for example, Sabine, A History of Income Tax, 33-34. For a detailed account of the day to day administration of the tax, see Hope-Jones, Income Tax in the Napoleonic Wars, 21–47.

[88] See Stebbings, The Victorian Taxpayer and the Law.

[89] Ibid. at 23.

[90] Ibid. at 25.

[91] Seligman, The Income Tax, 82.

[92] See, inter alia, Evans, The Forging of the Modern State, at 94, 101 and 116; and Philip Harling, The Waning of 'Old Corruption': The Politics of Economical Reform in Britain, 1779–1846, Oxford, 1996, 56-57.

5. Concessions and commercial income

It has already been established that, at the point of the introduction of the income tax, the commercial interest wielded significant political power. Indeed, Pitt himself seems to have recognized this, evidenced by his consultation with the 'commercial community of the City of London, with whom he appeared to enjoy good relations'.[93] That their concerns led him to propose a lenient system of taxation, especially towards the trading community, seems extremely likely, considering the overwhelming evidence of their indirect political power. This generous scheme of assessment manifested itself in several key ways, as will now be considered.

Unlike in modern systems of taxation, the principle of a ten per cent tax on income, at least in theory, applied equally to both natural persons and commercial entities.[94] Deductions were similarly permitted and, in the case of corporations, included income designated for the payment of dividends,[95] on the basis that they would be taxed via the income of the shareholder. Although commercial parties were taxed in a broadly similar way to other classes of taxpayer, the method of assessment and tax return was vastly different. Local administration such as that pertaining to non-commercial returns would mean, as Stebbings has pointed out, that commissioners 'would become familiar with the financial affairs of men who might well be their rivals in trade',[96] meaning that 'the very livelihoods of commercial men might be compromised'.[97] In light of this,[98] Pitt inserted what became section 96 of the Income Tax Act, holding that commercial parties could elect to be assessed by commercial commissioners,

[93] Stebbings, 'The Budget of 1798', at 655.

[94] The Income Tax Act, s. 87.

[95] Ibid., at s. 88.

[96] Stebbings, The Victorian Taxpayer and the Law, 28.

[97] Stebbings, 'The Budget of 1798', at 654. See above for further discussion of how livelihoods may have been affected by competitors gaining access to this knowledge.

[98] See e.g. Farnsworth, Addington, Author of the Modern Income Tax, for an account of the 'strength of the mercantile community…forc[ing]' Pitt to concede to the commercial interest, through the introduction of the commercial commissioners, at 13. Further to this, see also Seligman, The Income Tax, at 82.

rather than commissioners for general purposes.[99] Returns made to the commercial commissioners were kept secret, entered into an assessment book and marked only by a number that matched that on the certificate of assessment.[100] In line with other returns, income was self-declared, and was only to be investigated should the commissioner have doubts over the accuracy of the disclosure. In the event of a commercial commissioner harbouring such suspicions, he was entitled to call two assistants to judge the 'reputed income' of the party. If they judged the declaration to be too low, the commissioner could then interview two connected persons in order to ascertain the truth, before imposing an assessment.[101] Importantly, however, no power was granted to examine the accounts of the party, and so the basis for any assessment was limited to hearsay. Secrecy could be justified on the grounds that it prevented competitors from accessing information,[102] but in concealing the declaration from all but the commercial commissioners, any external checks on its veracity were rendered impossible. As Jenkinson argued at the time: 'Wherever concealment is not necessary, it is objectionable…[as] a door [would] be opened, by that means, to fraud and evasion.'[103]

This secrecy was perhaps even more of an issue than in the context of other, non-commercial income. For example, the means of a landed gentleman were usually evident in his lifestyle, for instance, through his large house, his servants, and his expensive commodities. As John Sinclair stated: 'It is natural to suppose that every individual nearly in proportion to his property would procure for himself the convenience of being well-lodged.'[104] However, the wealth of commercial parties was far less outwardly apparent. This was compounded by the fact that commercial commissioners 'acted for a much wider area' than general

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[99] Commercial commissioners were only able to assess income arising from those 'engaged in any Trade or Manufacture'. However, they were able to assess the entirety of a trader's income, and not just that part which was derived from trade or manufacture.

[100] The Income Tax Act, s. 99.

[101] Ibid., at s. 98.

[102] See discussion of commercial concerns over their financial affairs being made transparent to their rivals, above.

[103] Charles Jenkinson, Review of the arguments advanced in the House of Commons, in support of the bill for granting an aid and contribution for the prosecution of the war, by imposing certain duties upon income, London, 1799, 27.

[104] John Sinclair, History of the Public Revenue of the British Empire, vol. 3, London, 1803, 78.

commissioners,[105] and therefore lacked local knowledge.[106] Furthermore, they generally possessed no skills in accountancy, and did not have an adequate workforce at their disposal.

Moreover, even if a commercial commissioner had reason to suspect evasion, he may have had little interest in pursuing the matter further, particularly in London. By virtue of section 110 of the Income Tax Act, of the eighteen commercial commissioners for London, thirteen were to be chosen by the large corporations based in London.[107] That commercial parties held the power of selection over commissioners raises questions over the loyalties of those selected, and as a result their interest in enforcing the tax. It is certainly likely that commercial commissioners were not the strictest enforcers of the tax, given their interest in both protecting their fellow commercial men, and potentially also in the failure of the tax, as a threat to their profits.

The combination of these concessions meant that evasion of the tax would have been very simple. All that was required for a commercial taxpayer to avoid the full force of a tax was for him to under-declare his income, or to exaggerate the scale of the approved deductions, such as those on account of his children, for the interest due on his debts, or for the annuities he was bound to pay.[108] The potential for such evasion was recognized from the start, with a contemporary member of parliament pointing out that 'as [commercial] property was generally in stock, the manufacturers…will be induced to undervalue it, and thus avoid the tax altogether'.[109] Bearing in mind the commercial commissioners' heavy workload, combined with the difficulty of proving a declaration to be false, alongside issues of bias, such declarations were unlikely to be challenged. Furthermore, as Stopforth has argued, the system was also open to avoidance of the tax, for example, by transferring assets to family members,

[105] See complaints to this effect in the report of the commissioners for the affairs of taxes, held at The National Archives: Public Record Office (PRO) 30/8/279, part 2.

[106] This compared unfavourably to the general commissioners, who were in most cases local landowners, and might be expected to have at least some familiarity with the contributor or of the conditions in the locale. See discussion of this point in Farnsworth, Addington, Author of the Modern Income Tax, 22-23; and also in Avery Jones, 'The Sources of Addington's Income Tax', particularly at 2 n. 4.

[107] Three were selected each by the Bank of England, the East India Company and the South Sea Company, and two each by the Royal Exchange Insurance Company and the London Insurance Company.

[108] See 'General Deductions from Income', schedule A of the 1799 Act.

[109] Sir Francis Baring, Parliamentary History, vol. 34, col. 95, 14 Dec. 1798 (House of Commons).

creating trusts in their favour, or granting annuities.[110] Primitive forms of avoidance by transferring assets 'offshore' had also developed by this point,[111] although it is unclear how effective this would have been in respect of the income tax, given the operation of the tax on a remittance basis, coupled with England's position as the main trading market.[112] In any event, ease of evasion would likely have rendered most forms of avoidance unnecessary, although as Stopforth has pointed out, 'the fundamental flaw upon which much tax avoidance was later based was inherent in the system right from the start'.[113]

It seems that evasion was both simple to commit and facilitated by lax administration of the tax. This was recognized at the time, for example by Lord Hawkesbury, who was reported by The Morning Post and Gazetteer as attributing large-scale evasion to 'the facility with which [it] might be committed'.[114] Importantly, however, one also finds in contemporary sources an indication that it was the treatment of commercial income that caused the most significant problems. When asked by Pitt to account for the low yield, the commissioners for the affairs of taxes identified that 'the third of the main causes for the great defalcation in the yield of the tax was attributed…to the institution of the Commercial Commissioners', and that as such 'total abolition of the Commercial Commissioners (except in London) is most strongly recommended'.[115] This is a strong indicator that it was evasion of the tax on commercial income that was key to the ultimate shortfall in the yield of the tax. The extent of this shortfall,

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[110] David P Stopforth, 'Settlements and the Avoidance of Tax on Income: the period to 1920' [1990] British Tax Review 225, particularly at 225.

[111] See Ian Ferrier, 'The Meaning of the Statute: Mansfield on Tax Avoidance' [1981] British Tax Review 303.

[112] Meaning that, as Avery Jones has pointed out, most goods were sold in England and so the payment of the tax on foreign income 'was therefore more of a timing provision than one where remittances were voluntary' – John F. Avery Jones, 'Taxing Foreign Income from Pitt to the Tax Law Rewrite – The Decline of the Remittance Basis' in John Tiley (ed.), Studies in the History of Tax Law, vol. 1, Oxford, 2004, 15.

[113] Stopforth, 'The Avoidance of Tax on Income', 225.

[114] Morning Post and Gazetteer, 21 May 1800, 2.

[115] PRO 30/8/279, pt. 2. This Paper recommended limiting the jurisdiction of commercial commissioners to larger returns, which would have eliminated some possibility of bias, thereby potentially increasing revenue from larger trading parties. However, this recommendation was not implemented.

and the direct evidence of lack of commercial contribution, have passed largely unnoticed in the literature.

III. The financial failure of the tax re-examined

In light of the above discussion, it is fair to say that the 1799 income tax was particularly generous to commercial parties, as it allowed for widespread evasion without significant difficulty. However, unequivocally demonstrating that this failure to target commercial income was key in accounting for the overall financial failure of the tax poses a significant challenge, and has not been attempted in the existing literature. One reason for this is a lack of documentation, owing both to the destruction of many of the documents upon the abolition of the tax, and also to the secret procedure inherent in the collection of the tax on commercial income.[116] A further complicating factor is that, as the Act required no differentiation between genres of income, the taxpayer's declaration of liability was general in nature.[117] For that reason, it is impossible to know the exact figure of returns from commercial income: the only method of gaining even an indication of this is to consider the amount returned to commercial commissioners.[118] Assessment by commercial commissioners was voluntary, and was also

[116] Some documents relating to the tax collected by the commercial commissioners have survived, and are comprised within the E182 series of documents held at The National Archives. However, their usefulness for the purposes of this article is limited, as there is no indication as to the identity of the taxpayer, and so they cannot be used to prove under-declaration.

[117] Instead, all that was required was the declaration that the amount returned was (in the case of income amounting to over £200) 'not less than One Tenth Part of my…Income…to the best of my Knowledge and Belief'. See schedule B of The Income Tax Act for the various general declarations.

[118] In contrast to this, Farnsworth (Addington, Author of the Modern Income Tax, at 87) claims that assessments from the 1800 tax year show that £15 million was returned in total commercial income, indicating a tax yield of around £1.5 million. Farnsworth cites as his source the anonymous pamphlet Observations ... submitted with a view to the substitution of an income or property tax for the present taxes, London, 1831, appendix, at 11. However, neither the anonymous author of this text nor Farnsworth state the source for this figure, and given that income was only declared overall and not broken down by source (see ibid.), it is difficult to understand where this figure arose from, other than from the returns to the commercial commissioners.

only available in the major trading locations within the country, meaning that their returns were by no means reflective of all commercial tax contributions.[119]

However, the elective nature of the process does not seem significantly problematic to our analysis, considering that, in light of concerns over inquisition and public disclosure of returns, it seems logical that commercial parties would have wished to take advantage of the secret procedure available to them wherever possible. Moreover, despite the limited availability of commercial commissioners within the country as a whole, the counties to which they were allocated covered most significant trading areas at the time.[120] As such, it is unlikely that the commercial yield from other localities could amount to a figure significant enough to offset what we will see to be very strong evidence of commercial evasion, particularly considering that these areas were likely to be populated mainly by local traders and shopkeepers, therefore with little to contribute in the way of income tax. Therefore, although not exact, it seems logical to assume that the amount returned to commercial commissioners accounted for the majority of the commercial yield of the tax.

Accordingly, evasion by commercial parties cannot be demonstrated with absolute certainty. However, close inspection of statistical data from the returns submitted to commercial commissioners suggests that the shortfall in yield, even despite the incomplete nature of this data, was both so great and so inconsistent with other indicators of commercial income at the time that the case for the charge of widespread evasion is compelling.

1. The discrepancy between estimates and the actual yield

That the tax failed overall is easy to demonstrate: it consistently fell short of its projected yield, even despite a reduction in the estimates for each year, as demonstrated by Figure 1.

[119] According to Accounts respecting the income duty in Great Britain, for the year ended fifth April 1801, P.P. 1802 (112) viii 879, of the fifty-seven counties used for tax purposes, only twenty, slightly more than one-third, were allocated commercial commissioners.

[120] For example (excluding Scotland), London, Lancashire, West Yorkshire, Somerset and Kent were the five largest contributors to the income tax respectively, and were each allocated commercial commissioners. All were seats of significant industry at the time, between them contributing £3.3m to the tax overall, of which over £1.25 million was accounted for by returns to commercial commissioners – ibid.

Figure 1: Demonstrating the difference between the estimated tax yield and the actual tax yield: 1799 – 1801.[121]

(SEE FIGURE 1)

In producing his estimates, Pitt calculated the net income of the country during 1798 from various forms of profit-making activity. These 'heads of income' are reproduced in Table 1.

Table 1: Pitt's estimates of national income.[122]

(SEE TABLE 1)

Pitt's initial estimate for the overall yield of the income tax for 1799 was calculated by the percentage rate of tax, ten per cent, of overall taxable national income: £10.2 million from

[121] Authority for estimates: Parliamentary History, vol. 34, cols. 10–18, 3 Dec. 1798 (House of Commons); vol. 34, col. 1517, 24 Feb. 1800 (House of Commons); vol. 35, col. 973, 18 Feb. 1801 (House of Commons).
Authority for yields: Parliamentary Register, vol. 12, p. 54, 5 June 1800 (House of Commons); Accounts Relating to Assessment and Produce of Income Duty, 1800-1801, P.P. 1801-1802 (41) iv 147, 147; Commissioners of the Inland Revenue: Thirteenth Report, P.P. 1870 C.82-I xx 377, 562. For a detailed discussion of these figures, see Farnsworth, Addington, Author of the Modern Income Tax, 18–26.

[122] Source: Parliamentary History, vol. 34, col. 18, 3 Dec. 1798 (House of Commons). Pitt acknowledges that much of the calculation of these estimates depended on 'conjectur[e]' (at col. 10) owing to a lack of accounts and sources. The commercial estimates are based on the notion that profits accounted for fifteen per cent of the value of imports and exports (at col. 16), and that domestic trade accounted for four times the value of exports (at col. 17). These figures apparently have no real source other than educated supposition. This raises issues regarding the viability of Pitt's expectations. This will be explored in greater detail below.

£102 million.[123] It therefore follows that the commercial specific yield was £4.5 million, with the income arising from commercial activity estimated at £45 million.[124]

However, it became quickly apparent at the conclusion of the 1799 tax year that the tax had fallen markedly short of the estimates. The overall yield for the 1799 tax year was around £5.8 million.[125] Significantly, of this sum less than £1.2 million arose from assessments by commercial commissioners.[126] This was less than twenty-one per cent of the overall yield, far short of Pitt's estimate of forty-four per cent. That all other income combined accounted for almost eighty per cent of the overall yield is the first indication of the serious problems associated with taxing commercial income. The proportionate shortfall of revenue collected by commercial commissioners compared to the commercial estimates is displayed in Figure 2.

Figure 2: Demonstrating the distribution of estimated and actual yield – 1799

(SEE FIGURE 2)

Another way to approach these figures is to point out that the actual revenue collected on commercial income accounted for a mere twenty-seven per cent of the £4.5 million predicted, compared to the almost eighty-one per cent of expected revenue collected from all other classes of taxpayer. This is illustrated by Figure 3.

[123] Pitt rounded this figure to £10 million, presumably for ease of calculation. However, in the interests of accuracy, this analysis will use the £10.2 million figure based on overall taxable income.

[124] This being comprised of: £12 million arising from profits on the capital employed in foreign commerce; £28 million from profits on the capital employed in domestic trade, and the profits of skill and industry; and £5 million from the income of the retail trade.

[125] Parliamentary Register, vol. 12, p. 54, 5 June 1800 (House of Commons).

[126] An Account of the Total Produce of the Tax upon Income, for the Year ending the 5th of April 1800, P.P. 1799-1800 cxxx 311. It is unclear whether this figure relates only to contributions arising from trade income, or from all income submitted by traders (i.e. trading income or otherwise), which was eligible for submission to commercial commissioners by virtue of section 96 of the 1799 Act. Unlike in subsequent years, the figure is provided as one, with no breakdown of income derived from commercial and non-commercial sources. Therefore, all that can be said is that the actual returns from commercial income may have been significantly lower than £1.2 million. This may have been by as much as £400,000, given that this was the non-trading figure the following year – Accounts respecting the income duty in Great Britain, for the year ended fifth April 1801, P.P. 1802 (112) viii 879.

Figure 3: Shortfall of actual yield compared to that estimated, per genre of income – 1799 (SEE FIGURE 3)

This disappointing yield was not merely the result of teething problems arising from the first year of a new tax. The revenue generated during the 1800 tax year, although improved, still fell significantly short of the revised expectation of £7 million,[127] accounting for just under £5.9 million in total net revenue.[128] Of this sum, not quite £1.2 million was accounted for by commercial assessments.[129] It seems that the tax, although not a success overall, failed particularly in collecting income from the commercial sector.

In explaining the low commercial yield, there are two logical possibilities. The first is that proposed by the contemporary pamphleteer Henry Beeke,[130] namely that Pitt's estimates were drastically wrong and that the tax was therefore incapable of producing the figures estimated. This argument will be fully considered below, but at the outset it should be noted that, despite issues with the provenance of Pitt's estimates,[131] the suggestion that the government overestimated taxable commercial income by over two-thirds is implausible. Instead, the second explanation is much more persuasive: that the yield from commercial parties should have been much higher than it was, and accordingly that the shortfall in yield can only be accounted for by widespread evasion of the tax. The evidence of this evasion, albeit indirect, is strong, and goes a long way to dispensing with the argument that it was a fault in Pitt's projections that was responsible for the commercial shortfall.

[127] Parliamentary History, vol. 34, col. 1517, 24 Feb. 1800 (House of Commons)

[128] Accounts respecting the income duty in Great Britain, for the year ended fifth April 1801, P.P. 1802 (112) viii 879, 879. This figure was calculated by subtracting deductions for children from the gross assessment, although charges for collection are not subtracted, being an administrative cost separate to the returns themselves.

[129] Ibid., at 879. The gross figure was almost £1.6 million, although this included income returned by commercial parties that arose from other sources, such as rent and foreign possessions.

[130] Henry Beeke, Observations on the produce of the income tax, and on its proportion to the whole income of Great Britain, London, 1800.

[131] See above at n 122.

2. *Beeke's argument*

In making his argument that the official estimates were faulty, Beeke argued that Pitt had underestimated the value of relevant deductions:

> The account of our commerce…is of a magnitude astonishing and unparalleled; and yet the public expectation has certainly been greatly disappointed as to the produce of that part of the income tax which results from the profit of it. Either, therefore, the value of our trade has been exaggerated, or gross evasions must have been practised in the declarations of commercial income; or else the proportion of the commercial profit of Great Britain to the annual value of its exports and imports, has been considerably miscalculated.[132]

In favouring the latter view, Beeke provided his own estimates, crucially that a more accurate figure for taxable income was £65 million, and that therefore the tax could not hope to achieve more than £6.5 million,[133] of which £2.8 million would arise from commercial income.[134] This, of course, was still in itself much higher than the figure of £1.2 million actually collected from commercial parties. Beeke accounts for this by stating that: 'some concealments and some arts of evasion, have been practised, but probably by no means to any considerable extent; or to a degree which can give any just grounds for supposing that my estimate is too low'.[135] Therefore, according to Beeke, although evasion did take place, in no way did it occur to the extent that would explain the variation between Pitt's estimated yield, and the actual returns. Instead, he argues, this is explained by Pitt's initial miscalculation, meaning that the tax was never able to produce the revenue that had been promised.

There has been little consideration of Beeke's hypothesis in subsequent literature, and as such limited analysis of the plausibility of his claims.[136] It is an arduous task to attempt to

[132] Beeke, Observations, 45.

[133] Ibid., at 138.

[134] Ibid., at 136.

[135] Ibid., at 134.

[136] For a general discussion of the lack of consensus among contemporaries attempting to assess national income, see Thompson, 'The First Income Tax, Political Arithmetic, and the Measurement of Economic Growth' 66 The Economic History Review (2013), 873; and T.V. Jackson, 'British Incomes circa 1800' 52 The Economic History Review (1999), 257.

assess contemporaneous national income correctly, and even harder to estimate the true amount of deductions. It is complicated even further by the secret procedure of the commercial commissioners, leaving us unable to comment on to what extent the tax procedure was correctly followed. However, there are several factors that render Beeke's hypothesis unlikely, instead suggesting a culture of widespread commercial evasion. These will be considered in turn.

3. Evidence of evasion

Collecting evidence to support a claim of tax evasion is never straightforward, but it is compounded in this case by the secrecy inherent in the assessment of commercial parties and the destruction of records. Accordingly, the only evidence that can be adduced is either that which directly supports Pitt's estimates as to taxable income, or that indicates that, regardless of the accuracy of Pitt's estimates, the actual yield was much too low.

Perhaps the main evidence of an unduly low commercial contribution is, of course, the approximation of liability by Pitt.[137] Despite the aforementioned issues with a lack of authority for his estimates, some limited support for them can be found in modern studies attempting to gauge contemporaneous national income. One such source of support for the approximations can be found in Deane and Cole's estimates as to gross national income.[138] According to these figures, total income for 1801 amounted to £232 million, of which £94.2 million arose from commercial sources. These estimates are of gross income, unlike Pitt's, which were subject to numerous deductions to provide an idea of net taxable income. Despite this, the proportionate relationship between national income and commercial-specific income can be used to support Pitt's estimates. According to Deane and Cole's figures, commercial income accounted for around forty-one per cent of overall income, which is in line with Pitt's estimate of forty-four

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[137] For an in-depth examination of contemporary attempts to assess national income, see Thompson, ibid.

[138] P. Deane and W.A. Cole, British Economic Growth, 2nd ed., Cambridge, 1967, 161. Deane and Cole's estimates are based on a combination of wage data and income tax assessments, as well as the conclusions drawn by contemporaries such as Pitt himself, Beeke, Bell (Three Essays), and Colquhoun (Patrick Colquhoun, A Treatise on Indigence, London, 1806). However, the authors themselves acknowledge difficulties in undertaking their assessments, considering that commercial income was 'the most unreliable group of assessments' (British Economic Growth, at 160). As such, the study cannot conclusively prove under-contribution.

per cent. Regardless of the actual figure, the commercial contribution should have amounted to between forty and forty-five per cent of the overall yield. It has been established above that the actual proportion was just twenty-one per cent. Therefore, in supporting Pitt's proportionate estimates, Deane and Cole's study highlights the significant under-contribution by the commercial sector.[139]

Another way in which conclusions can be drawn regarding the level of commercial activity at the time is by considering the value of foreign trade. In 1799 alone, the value of imports, exports, and re-exports to and from Great Britain was £62,828,000, rising to £73,723,000 in 1800 and £75,098,000 in 1801.[140] Although these figures are by no means indicators of income (instead accounting for the overall value of foreign trade, which would have to be subject to extensive deductions) an important inference can be drawn. Against these figures, it is simply implausible to suggest that overall income from commercial activity in 1799, including purely domestic trade, was only £12 million, as the collection of a mere £1.2 million suggests. This is particularly so if Pitt's suggestion that British profits on imports and exports amounted to approximately fifteen per cent was correct.[141] This would mean that taxable income in this area amounted to just over £9 million, indicating that the returns should have been £900,000 for foreign trade alone. If this amount was actually returned, it would mean that a mere £300,000 was collected from domestic trade, a genre of income estimated by the prime minister to produce £28 million per annum. In light of these high values of foreign trade, it is sensible to conclude that the tax returns should have been much higher.

Under-contribution by commercial parties can also be seen when assessing the breakdown of the yield by locality.[142] Unsurprisingly, the yield in each place is significantly lower than expected, for example, less than £990,000 was collected by the commercial commissioners in

[139] For consideration of the accuracy of these estimates, as well as further investigation as to the actual extent of national income at the time, see Peter H. Lindert and Jeffrey G. Williamson, 'Revising England's Social Tables 1688–1812' 19 Explorations in Economic History (1982), 385; and Thompson, 'The First Income Tax'.

[140] See 'Official Values of Overseas Trade' in Mitchell and Deane, Abstract of British Historical Statistics, 281, citing figures provided in Phyllis Deane and W.A. Cole, British Economic Growth, 1688–1959: trends and structure, 1st ed., Cambridge, 1962.

[141] See n 122, above.

[142] Accounts respecting the income duty in Great Britain, for the year ended fifth April 1801, P.P. 1802 (112) viii 879, 884-885.

London, of which under £725,000 was collected on income from trade. Considering London's status as one of the most important trading cities in the world at that time, this certainly seems at odds with what could have been expected. Furthermore, when considering the yield taken from localities further afield, and therefore more divorced from central control, it appears that even more significant evasion was taking place. For example, the locality with the second highest commercial yield, Lancashire, produced a mere £130,000. When considering that this amount included commercial revenue from both the entirety of the Lancashire textile industry, as well as the significant shipping industry based in Liverpool, the amount collected appears far from satisfactory. This pattern is repeated in other significantly industrial-focused localities such as Somerset,[143] and West Yorkshire.[144] Importantly, moreover, this is consistent with what is known about the operation of the tax generally in areas that were distant from London, having been noted by economic historians that, 'the geographically remote' avoided the tax altogether more easily.[145]

Later events also suggest that Beeke's analysis was flawed. The abolition of the income tax was made possible by the 1802 treaty of Amiens, but with the outbreak of renewed hostilities some 12 months later, new Prime Minister Henry Addington was forced to impose another income tax. This second income tax was by all accounts significantly better administered, owing not least to the dividing of income between five 'schedules', each relating to a different form of income.[146] The 'secret procedure' afforded to commercial income was abolished, as was the position of commercial commissioner, and instead commercial income was declared to general commissioners.[147]

Another important difference between the two taxes was that, at least initially, the rate was reduced, making immediate comparisons challenging. However, it is apparent that from the beginning the second tax was producing more. The rate in 1803, at one shilling in the pound,

[143] From which £75,920 was collected by the commercial commissioners – ibid.

[144] From which £72,198 was collected by the commercial commissioners – ibid.

[145] O'Brien, 'Political Economy', at 4-5.

[146] This meant that each schedule required a separate statement of income, allowing for a much more accurate analysis of income. For an in-depth discussion of how Addington's tax differed from Pitt's, see, among others, Avery Jones, 'The Sources of Addington's Income Tax'; Farnsworth, Addington, Author of the Modern Income Tax.

[147] For an in-depth analysis of the changes implemented in the second tax, see Hope-Jones, Income Tax in the Napoleonic Wars, ch. 2, on the legislative development of the income tax.

or five per cent, was half that of the first tax, yet £1.7 million was collected in gross assessment under schedule D, the relevant schedule applying to income from both trade and professions. In contrast, the gross assessment made by the commercial commissioners in the 1800 tax year was just under £1.6 million, with a mere £1.2 million collected on income from trade.[148] This demonstrates that, despite the much lower rate, a comparable,[149] if not higher, figure was collected. By 1806, the rate was once more back up to two shillings in the pound, or ten per cent, and the commercial yield for that year grew to £3.46 million, with almost £13 million collected overall.[150] As such, it seems that both the overall and the commercial yield were not only vastly improved upon the first income tax, but also on the £2.8 million suggested by Beeke as the maximum that could be collected on commercial income. That in just six years the commercial contribution to the tax had doubled significantly undermines Beeke's argument that the tax was not capable of producing such figures as those estimated by Pitt.

Although the new schedule D largely correlated to the 'fifteenth case' of income under schedule A of the 1799 Act,[151] the commercial commissioners during the first tax collected only income arising from those involved in trade and manufacture, and not that arising from professional men as included under schedule D. As such, it is difficult to make an exact comparison between the income collected by the commercial commissioners, and that produced under schedule D, owing to the absence of professional income in the former. However, if we consider Pitt's estimates as to income, as set out above, we can see that he calculated the value of profits from professions to be £2,000,000, suggesting that £200,000 could be expected in returns.[152] It therefore follows that profits from professions simply could not have accounted for such a gulf in commercial yield between the taxes.

The preceding discussion goes a long way towards evidencing that there was a significant problem with commercial under-contribution to the first income tax. However, it does not necessarily follow from this that evasion was the cause of this under-contribution. In the absence of detailed accounts of the first tax, it is impossible to prove that evasion was the

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148 Accounts respecting the income duty in Great Britain, for the year ended fifth April 1801, P.P. 1802 (112) viii 879.

149 Owing to the inclusion of professional income within schedule D – see below for further discussion of this.

150 Commissioners of the Inland Revenue: Thirteenth Report, P.P. 1870 C.82-I xx 377, 562.

151 As both included income arising from trade alongside that from professions and employment.

152 See Table 1, detailing Pitt's estimates, reproduced above.

definitive reason for the shortfall in the yield from commercial income, and not, for example, poor accounting.[153] However, given the lax scheme of collection of commercial income discussed above, allowing evasion by under-declaration to take place without significant difficulty, it seems reasonable to assume that commercial evasion was the principal reason for the poor yield. Furthermore, the overwhelming magnitude of the commercial shortfall has been demonstrated at length: it is unlikely that poor administration could have occurred to such an extent as to explain a shortfall of almost three-quarters on that predicted.[154] This conclusion is bolstered by contemporary opinion, which indicates that commercial evasion was well-recognized at the time. Mr Johnes of the House of Commons referred in May 1800 to 'the Commercial Men, who had been guilty of a gross evasion of the tax',[155] with Mr Tierney observing 'the gross evasion of the mercantile world'.[156] However, the most striking evidence comes from an amending bill proposed in April 1800 to remove from the commercial sector the benefit of the secret procedure under the commercial commissioners.[157] This was never passed into law, ostensibly as the influence of the commercial interest was simply too strong,[158] although the fact that it was proposed at all is strongly suggestive that the existence of commercial evasion was well-known. Accordingly, it seems that, although there can be no conclusive proof that commercial evasion was responsible for the financial failure of the tax, the circumstantial evidence is overwhelming.

IV. Conclusion

[153] Perhaps resulting from the limited availability of deductions. This led to taxable income for the purposes of the income tax proving discrepant with 'actual' profits calculated through commercial accounting. This formed the subject of much debate towards the end of the nineteenth century: see M. Lamb, 'Defining "Profits" for British Income Tax Purposes: A Contextual Study of the Depreciation Cases: 1875-1897', 29 Accounting Historians Journal (2002), 105.

[154] Based on £1.2 million of the predicted £4.5 million being collected in 1799 – see Figure 3.

[155] As reported in Oracle, 27 May 1800, 6.

[156] Bell's Weekly Messenger, 2 March 1800, 2.

[157] Pitt's motivation in proposing this bill has been discussed by Stebbings in her article 'The Budget of 1798', at 662-663.

[158] See the assertions of Mr Tierney of the House of Commons that the bill was withdrawn owing to pressure from the trading sector, as reported in Oracle, 20 May 1800, 7.

The literature on the first income tax has up to now primarily focused on its administrative failings, usually as part of a general study of the history of income taxes in Britain, and any references to the role of the commercial sector in its financial failure have been limited and lacking in detail. This article thus breaks new ground by showing that, although poor administration certainly played a key role in the failure of the first income tax, a significant and largely unexplored explanation for its failure was the manner in which commercial income was treated. This article has tracked this issue from its source, the politically powerful 'silent force' of the commercial interest in parliament, to its manifestation in the substance of the tax, namely through the secret procedure and commercial-specific tax collectors, up to the ultimate financial consequences of the resulting evasion: a shortfall of over forty per cent overall, with a commercial shortfall of seventy-three per cent. The responsibility of the commercial influence is clear: it is commercial tax evasion that is the key in accounting for the financial failure of the first income tax.

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