

Bureaucratic Adjudication: the Internal Appeals of the Inland Revenue

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Summary

Lay adjudication was familiar to the English legal system. Through justices of the peace and juries, and also through arbitration, ordinary people were accustomed to having their disputes and transgressions adjudicated by their peers. Reflecting the traditional principles of the legal system, these lay adjudicators needed no formal training, since their function was primarily to decide issues of fact, and any issues of law which might arise would be dealt with by a formal appeals process to the courts of law. Inherent in amateur lay adjudication, therefore, was the underlying safeguard of access to the regular courts, staffed by independent and qualified judges. Tax law was no exception. It was administered entirely by lay and untrained commissioners, and, with the important exception on policy grounds of the income tax, provision was made for appeals to the regular courts on questions of law. The legal system thus maintained the orthodoxy of lay adjudication of fact and professional adjudication of law.

Tax law, however, was conspicuous in the field of lay adjudication for having a parallel or additional recourse to bureaucratic adjudication. This adjudication by civil servants was found within a number of tax regimes in the nineteenth century. One of its earliest and most overt expressions was in relation to the excise, with the creation of a specialist court for London staffed by bureaucrats from the central excise board. It was also used in the taxation of commercial income. Bureaucratic adjudication in income tax had two aspects: first, the Special Commissioners of Income Tax who were civil servants and had assessing and appellate functions; and secondly, and more strikingly, the process whereby the Board of Inland Revenue itself would hear appeals from their decisions. The board also heard a wide range of appeals relating to the other taxes in its charge. This was lay adjudication of a character quite different from the traditional amateur kind of landowners and businessmen acting as justices of the peace or ordinary tax commissioners.

The jurisdiction of the excise court of summary jurisdiction, the formal system of appeals to the Special Commissioners, and particularly the more obscure and informal appeals to the Board of Inland Revenue, constituted bureaucratic adjudication in its purest form. The existence of an important jurisdiction couched in unambiguously legal forms in the hands of a branch of the Executive was significant. It was sufficiently important to attract the attention of legislators and critics. It was problematic in two particular respects: it was adjudication without formal legal knowledge or skills; and it was adjudication by a body lacking independence from the parties and the subject-matter in the dispute. It thus raised fundamental questions of the personal requirements for effective adjudication which did not arise in the context of the regular courts and in a different way in the context of normal lay tax adjudication, and provoked debate as to the protection of the taxpayer. It also demanded the consideration of wider issues in the machinery of justice such as the desirability of special jurisdictions and the changing relationship between government and the courts in view of the growth of administrative justice. The Inland Revenue strongly defended the use of bureaucratic adjudication, justifying its use on the basis of the specific requirements of the various taxes and of fiscal policy, of the overriding need for specialist expertise in tax adjudication, and various pragmatic considerations. Only the specialist excise court was unable to withstand criticisms as to its independence, but that was in the context of its criminal rather than civil jurisdiction. In the wider tax context, the arguments in favour of bureaucratic adjudication effectively overcame informed and justifiable criticisms. The establishment in this way of bureaucratic adjudication in tax is revealing of two major features in nineteenth century taxation: the growing power and dominance of the Executive in

tax matters; and the official and the legal perception of the character of tax disputes which itself reveals the nature of tax law and its place within the legal system. The Executive is seen to be coming to dominate the administration of tax at the expense of the traditional legal safeguards constructed for the protection of the taxpayer. Bureaucratic tax adjudication comes to stand apart from traditional adjudication in the regular legal system and the new kind of adjudication in the developing system of statutory tribunals. It reveals the legal isolation of tax adjudication and, ultimately, of tax law itself.