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# Local Authority Borrowing

Past, Present and Future

Sir Harry Page



## Local Authority Borrowing

*Local Authority Borrowing* (1985) sets out the history of local authorities' activities as borrowers. The early attempts to finance the building of toll roads and bridges are the beginning of a story which carries on through the centuries to the present-day market in local authority bonds worth over £48 billion. The book moves on from the history to discuss what reforms might be implemented to improve still further the efficiency of the market in the future.



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LOCAL  
AUTHORITY  
BORROWING  
PAST, PRESENT AND  
—— FUTURE ——

SIR HARRY PAGE, MA(Admin.), IPFA

*Formerly City Treasurer, Manchester  
Past President of the Chartered Institute of  
Public Finance and Accountancy*

London  
GEORGE ALLEN & UNWIN  
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## SIR HARRY PAGE

*An appreciation by Noel Hepworth, Director, CIPFA*

In this country we are all of us fortunate that the public service has attracted so many fine men and women. In this uncertain world the security of the integrity of the public services contributes much to a civilized society.

Sir Harry Page was one of the great men of local government. He was a determined innovator and he applied his considerable talents with dedication, energy and success.

His talents were not only recognized in Manchester where he became City Treasurer in 1957, but also nationally. He was appointed in 1962 as the senior financial adviser to the Association of Municipal Corporations. During his period as senior financial adviser, which lasted until 1970, central-local government co-operation reached its peak and yet he was never seduced by central government. However, he was always a realist about local government and saw that it had to change to survive.

When Sir Harry Page was appointed City Treasurer of Manchester, he became closely involved with capital finance and this, coupled with his concern for simplification and his creativity, led to the development of a major new borrowing instrument for local government – the bond. The bond emerged as a mechanism above all other borrowing mechanisms. Through its use local government could borrow the vast sums it needed at the lowest price and administrative cost, to finance the demanded growth in public services.

The bond established his already growing reputation in the City of London, and on his retirement from the post of City Treasurer he joined Long, Till & Colvin (subsequently Butler Till), London money brokers, as a director. He was also appointed by the then Chancellor of the Exchequer as the chairman of a committee to consider the future role and development of the national savings movement and the Trustee Savings Banks. The Page Report was a *tour de force* and his committee's recommendations led directly to the Trustee Savings Bank Act 1976, which created the Trustee Savings Banks as a major force in British banking.

Harry Page was elected an Associate of the Institute of Municipal Treasurers and Accountants in 1938. He became a Fellow in 1957. He was voted on to the Council of the Institute in 1960, and in 1968 he was elected President. He dominated the Council table by sheer professional stature and his pervading interest in local government finance. He was awarded a knighthood before he was elected President, something unique in the history of Presidents of this Institute.

He encouraged the development of the Institute and its services and he welcomed and supported the widening role reflected in its changed name as the Chartered Institute of Public Finance and Accountancy.

The culmination of Sir Harry's knowledge and experience was his preparation as an honorary Simon Research Fellow of Manchester University of this substantive authoritative review of local authority borrowing. This is an original and monumental work and Manchester University, in recognition of Sir Harry's outstanding contribution to public service and local government finance, had agreed to award him the degree of an honorary Doctor of Social Science. Sadly Sir Harry Page died on New Year's Day 1985.

#### *Acknowledgement by CIPFA*

A professional institute is a product of the energies, ambitions, talents and, perhaps, above all, integrity of its members. They create a public reputation and hence public recognition of the contribution that an institute can make to society, for a professional institute is there to serve society not itself.

Sir Harry Page was a most distinguished Past President of the Chartered Institute of Public Finance and Accountancy. He contributed greatly to its success. The Institute is delighted that he and the chairman and directors of Butler Till Ltd (a firm of great integrity and repute and of long standing in the service of local authority capital finance) have on the publication of this major work on local authority borrowing offered it as a tribute to the culmination of one hundred years of development by the Institute. The Institute welcomes the singular tribute to its centenary in the publication of this volume.

N. P. HEPWORTH

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*To my Wife*



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## PREFACE

When in 1971 I retired from the Manchester City Treasurership (after forty-two years in that one department), I had two strokes of good fortune: the first was to be offered the chairmanship of the Chancellor's Committee to Review National Savings (which reported two years later to considerable effect), the second was in being invited to join the local authority money-broking firm of Butler Till Ltd (previously Long, Till & Colvin). I remained with them for some ten years, a happy and rewarding experience. During that time I produced the handbook *Money Services for Local Authorities*, a work originally undertaken as a means of enabling me to improve my grasp of the minutiae of local authority borrowing, but which after three painfully evolved editions ultimately gained acceptance as a detailed and authoritative vade-mecum of the day-to-day operations and the current underlying statutory provisions of local authority borrowing. This became for some years the source of reference for local authority loans offices, relevant government departments and many London financial institutions of all sorts and degrees (including, we have been led to believe, the Bank of England).

The search for 'historic origins' in the National Savings' Review (which in one aspect – the Trustee Savings Banks – went back to the beginning of the nineteenth century), and my pursuit of the precise statutory authority for current local authority borrowing practices, were both experiences which gave me an insatiable curiosity about the remote origins of the local authority system of capital finance. Encouraged by an honorary Simon Fellowship at Manchester University, I therefore set out to make what I intended to be an exhaustive study of the history of the subject into which events had led me. After some ten years of intermittent labour, I concede that what I have produced, from vast areas of what was once *terra incognita* to me, can be regarded only as a broad survey and the most that I can claim for it is that I have probably opened doors into areas which others may now be encouraged to explore more fully.

I have also to admit to a 'missionary motive' in writing this book. During my later years in Manchester I had been involved in the rationalization of the ancient form of mortgage, the reintroduction of the money bill and the launching of the modern concept of the bond and its derivative, the negotiable bond (and, on the other side of the coin, the introduction of local authority pension funds to the equity market). As financial adviser to the Association of Municipal Corporations I had also taken an active part in the consultations which led to the acceptance of the 'permanent' nature of 'temporary' borrowing. When the Local Government Act 1972 saw the light of day, I felt that it failed adequately to encompass these changes. My attempts through *Money Services* to urge a

further and more penetrating rethinking of the local authority borrowing code were largely unsuccessful. I have therefore used this book to restate my case, and to base this case more firmly on historical origins and to make sure that my personal version of these experiences are recorded with such objectivity as I can muster.

I have owed a great deal over the past dozen years to the friendships which I have established in the Butler Till office. I am now further indebted to Butler's for their sponsorship of this book on a subject which, though of considerable economic importance, is in a highly specialized field and likely to have a limited appeal. Butler's are undertaking this sponsorship because they have long operated a commendable policy of contributing some of their earnings to the better understanding of the markets in which they work, and because they wish to make some tangible expression of their felicitations to the Chartered Institute of Public Finance and Accountancy on the attainment of its hundredth anniversary. I am highly delighted by this happy coincidence of events. Both Butler Till and I myself take this opportunity of offering warmest congratulations to the Institute on its magnificent achievements over this long period.

Readers will find that, as is my practice, I do not plunge straight into the subject. I prefer to spend some time – perhaps too much – in setting the scene, moving gradually into the heart of the matter. My early chapters are therefore to some extent a history of emerging local government and particularly of the changing area structure. Nor have I hesitated to go outside the theme of borrowing where I feel that this aspect would be better understood against a broader background. Local authority borrowing practitioners have managed very well so far without a detailed historical understanding of their expertise; nevertheless, I feel that things would have been better in the past, and will be better in the future (if there is to be a future for local government), if the origins of what we do – and the mistakes which both we and central government have made – are better understood.

H. R. PAGE  
*Fallowfield, Manchester*  
December 1984

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Very many people – treasurers and their staffs, local history librarians, city and county archivists and others – have aided me in this research by replying with understanding and patience to my various importunings. I hope that I have adequately acknowledged such help where the subject-matter occurs throughout the text, but there are some names which I must specifically record here, of people who have helped me in a more general but material way to such understanding as I have of municipal capital finance.

First, I must mention three colleagues from the Manchester Loans Office whose support to me on borrowing issues both before and after my retirement was most loyal and valuable; these are John Swift, Philip Rogers and Donald Foley. And I must add to these the name of a member of the Town Clerk's Department, Arthur Fellows, Assistant Town Clerk and parliamentary expert, for his enterprise and guidance in obtaining the various statutory powers on loan matters which we developed in Manchester and which eventually stimulated my determination to write this book.

The contemporary municipal treasurer who in my view best combines knowledge and understanding of the basic philosophy, history and current practices of local authority borrowing is Norman Sage, formerly treasurer of Bullingdon RDC. He has been unsparing in his help to me, latterly at a time of great personal stress; his store of information and appreciation of the past, and his willingness to share these, have placed me under a great debt. Moreover, his book *Local Authority Capital Finance* has been an important and constant source of reference.

My colleagues at Butler Till Ltd have not only taught me a great deal about the operations of the London capital market, but much encouraged me in pursuing this research. I must refer specifically to Peter Clayton, then chairman and managing director and now a close personal friend, who first took me aboard, and to John White and Robert Bell, both friends of long standing (and both of whom are now launched on their own account). For the sponsorship I am greatly indebted to the present management – Don Turner, Gerry Wilton and, in particular, Chas Dobson – with whom I have established a very happy relationship. There are many others on the 'dealing desk' whose friendship and confidence I am pleased to share.

The secretary to the PWLC, Peter Goodwin, another friend over a long period, and his colleagues, have given me much valuable information – on the unearthing of which they must have spent a good deal of time and effort. A lady to whom I would especially like to express my thanks for encouragement in my early days in the local authority borrowing field is

Miss Joan Kelly of HM Treasury. We did not always see eye to eye, but our shared Manchester origin was a great help.

I would like to acknowledge the considerable assistance I have derived from the facilities offered by the Manchester Central Reference Library and its staff, and in particular J. Horton, who gave me much valuable help in my trawl through the public statutes. I have also, of course, found invaluable the resources of the Manchester University John Rylands Library. There was very little of what I sought which could not be found in one or other (often both) of these repositories.

The book which, of all those I have used, was of the greatest help was *Loans of Local Authorities*, by J. R. Johnson, former City Treasurer of Birmingham. I wish he had been alive today to know of my appreciation. *Municipal Capital Finance*, by A. B. Griffiths, one-time treasurer of Sheffield, has also been a useful aid.

I must also acknowledge my indebtedness to the Vice-Chancellor of Manchester University and the members of the Simon Fellowship Committee for the access to university resources which the granting of an Honorary Fellowship gave me, and their patience in extending this privilege over so many years.

Finally, I am grateful to my younger son, Oliver Page, for his painstaking scrutiny of the typescript, for his comments as an economist on my somewhat pragmatic concept of interest and his delving on my behalf into early statutes in the House of Lords Record Office. (My elder son, Andrew Page, FCA, would have wished to be equally helpful, I know, had his health permitted it.) My appreciation of my wife's support I hope that I have indicated in the dedication. She has shared the burden and turmoil of this book with me over a period of years which, though filled with many new experiences, have at times also been fraught with quite considerable problems for us both.

H. R. PAGE

## LIST OF ABBREVIATIONS

The following are the main abbreviations used in this book:

CBC	County Borough Council
CC	County Council
CLF	Consolidated Loans Fund
DOE	Department of the Environment
GLC	Greater London Council
IMTA	Institute of Municipal Treasurers and Accountants
CIPFA	Chartered Institute of Public Finance and Accountancy
LCC	London County Council
MBW	Metropolitan Board of Works
NCB	Non-County Borough Council
PWLB	Public Works Loan Commission or Board
PWLC	
RDC	Rural District Council
UDC	Urban District Council



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PART ONE

# Preliminary Considerations



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## INTRODUCTION

The local government authorities in this country have been borrowers of money on the open market for at least three centuries; the point has long ago been reached at which the scale of this activity and the resultant debt have a material impact on the national economy. This book explores the history of the statutory powers granted by the central government authority – the sovereign in Parliament – to the administrators of the subordinate local government authorities, permitting such local authorities to finance defined (capital) portions of their expenditure initially from money borrowed at interest rather than directly from current revenue, and subject to amortization over specified periods. The origins and development of the techniques used in the process of longer-term finance are traced to the present day, and the ways are examined in which (and the constraints and stimulations under which) the local government authorities have exercised the facility to borrow. This examination concludes with suggestions for the rationalization of current practices derived from the experience of the past and against the background of current trends in national and international finance. In this book borrowing is not treated as an isolated independent theme or operation, but in its context as an integrated and evolving function of local government administration.

Local government of a kind was operative long before borrowing was officially resorted to as a method of finance. The areas, and even the names, on which local government was – and by and large still is – administered similarly long preceded the introduction of capital financing methods, and to some extent preceded even organized revenue taxation for local purposes.

For better or worse, the view is here taken that, for a proper understanding of the subject, the evolution of local government needs to be visualized as a coherent whole from which emerges at a specific date and for logical reasons, the acceptance of the principle of finance of certain types of expenditure by borrowing, and resulting in the spread of the cost over users during a period of years ahead. The book begins therefore with a brief description of the creation of an area structure for local government and the gradual devolution on to the local authorities of a growing volume of responsibilities; alas, this long-term trend has been followed in quite recent times by a withdrawal of major duties from the local administrations and an increase in the pressure of central government dominance of locally administered activities!

British local government authorities are clearly to be seen as bodies which the central authority – the Crown – has selected to carry out certain of its decisions. In the ultimate these local bodies are exercising not their own authority, but powers devolved from the centre, and may operate

only within this area of devolution. Even though they are given degrees of discretion, the local bodies must work *intra vires* and cannot branch out into other activities at their own will except by an Act of the central government granting permission for the undertaking of such activities. Such responsibilities, when created, are exercised 'by permission' of the central government. But the essence of the system is that although the powers administered are those specified or approved by the central power, the people charged with their administration are local. Sometimes these local administrators are selected centrally, sometimes locally. Thus the ancient sheriff (shire reeve), a once-powerful local official vestiges of whom still remain in the judicial system, was a local resident but centrally appointed and fully accountable to the central authority. There is a parallel in the justices of the peace – influential local officials on whom powers of the Crown have been devolved, but who remain answerable to the Crown as an integral part of the system for the administration of justice (initially for far wider purposes). In due course the local government administrators came to be wholly appointed not by central nomination, but by local democratic election – mainly by stages from the 1830s and principally from the 1880s – but even from the start there was a distinctly democratic element in the system, in that the boroughs and parishes though working within functions defined by central government were administered by local people locally selected, on however rough-and-ready a basis.

Among inherent problems the definitions of what should properly be regarded as a local authority and of what constitutes capital expenditure have, by the application of a somewhat pragmatist approach, proved less difficult than expected. Any organized body locally administering services which in due course became the official responsibility of a duly elected and statutory local authority has been adopted herein from its beginnings as an embryo or quasi-local authority. The obvious example is the county, an area which although administered by non-elective magistrates from the thirteenth century until 1888, then became a wholly recognized and defined elective local authority, and remains so, of high status and responsibility. Charter boroughs, also of early origin, have their counterparts today, however shadowy these may now seem. Even the parish, though later re-designated administrative rather than ecclesiastical, was from early times a unit of administration (and with something of an elective basis) within the county, and continues both to retain an identity and constitute the building-blocks of the present structure. All of these are clearly entitled to recognition as having been local authorities for some five hundred years or more. A departure from this pragmatic approach which should perhaps at least be mentioned is that early charities for the care of children and the foundation of hospitals, which in the mid-twentieth century were functions transferred to the local authorities, have not been treated as embryo local authorities.

The turnpike trusts, which played an important role in the introduction of borrowing, are less clearly recognizable directly as local authorities.

Nevertheless, here they have been so considered because they came into being as non-profit-making bodies with the task of improving the quality of the work which should have been performed (under statute, however unrealistic) by the parishes; moreover, the work performed by the trusts later became a major local authority responsibility and ultimately, in considerable part, a direct responsibility of central government. River navigation and harbour authorities, many of which bear a striking resemblance to turnpike trusts, are also treated as local authorities in so far as they evolved – as they frequently did – in co-operation with more easily recognizable local authorities, notably the boroughs.

On the other hand, the canal companies (and of course the railway companies) which were in the main profit-directed are not here recognized as local authorities because their function was not one which ultimately descended on the later statutory authorities. The intermediate trading undertakings – for water, gas, electricity and transport and others – many of which were in due course taken over by the local authorities (though some remained until recent nationalizations in private hands), are regarded as local authorities only to the extent that this transference later took place. Recognition of this borderline status assists rather than confuses the study of early borrowing.

There were other bodies which clearly must be regarded as true, if primitive, local authorities. The early Poor Law incorporations were simply combinations of parishes for more effective operation (including borrowing), and the Poor Law unions which followed them equally so, and even more entitled to recognition as perhaps the first specifically created statutory local authorities on a national framework. The overseers, really an offshoot of the parishes, but later in some instances (in the larger cities) separate entities, positioned between the local authorities and the Boards of Guardians, may be recognized as local authorities in their own right, though their impact on the history of borrowing is negligible. Improvement, police and other commissioners, and the various groupings of parishes into highway and local sanitary and health authorities, which in due course became the urban and rural district councils, and in due course again the present district councils, are equally clearly stages in the evolution of organized local government.

On the whole, the later concept of a local authority as a body financed by the levy of a local rate – or with power to levy a rate (either directly or by precept) – would suffice to cover the majority of the types of organization covered in this book. This broad definition would however, in the early period, be subject to the exception of the turnpike trusts and some harbour and navigation authorities; although trading undertakings were expected to rely on their revenues rather than on the rate levy (in so far as they are of interest here), they were organized by bodies which were rate dependent. The counties present a difficulty, in that in the pre-1888 period they were administered by the magistrates in quarter and petty sessions. While involved in the rate-making process, and financing some of their own responsibilities by dependence on a rate, the magistrates are very

much on the fringe of this general definition, yet clearly bona fide local authorities in respect of their administrative as distinct from judicial function.

From the dawn of local government, as here recognized, until today three principles of an almost constitutional nature have applied to the financial aspect of the system:

- (1) Because the right to levy taxes was the fiscal prerogative of the Crown, no compulsory local tax could be levied without statutory authority. (There were some modifications of this rule in the charter boroughs which for a time had curious local taxing powers partly derived from the remote past, and partly from the bargain through which they achieved their charter rights.) There were two aspects: the right to levy a local tax, and the amount of tax (or at least the upper limits) which might be levied. Thus the early Poor Law legislation gave a right to levy a rate, but the amount of this was, at least theoretically, subject to the approval of the centrally appointed magistrates. The control of rate impact by central government lapsed or was considerably modified in due course, but at present is being reimposed in the name of economic stability.
- (2) Consequently, borrowing to finance expenditure, although it avoided the immediate levying of a rate, was a commitment to a future rate and was therefore also subject to approval by the central authority as to amount and purpose, and for most of the time provision for amortization.
- (3) Borrowing for revenue purposes was never given approval until recent times, and then only within the financial year as a cash-flow measure.

The application of these principles might be expected to have required a definition of capital expenditure and a clear specification of the reasons which could justify the spread of part of the cost over future generations of ratepayers. In fact capital expenditure has never been precisely defined. The problem is considered more fully later, but the simple pragmatic solution for which there has been a surprising consensus of opinion over the centuries has been that borrowing might take place for such projects whose cost the appropriate minister of the Crown considered might with justice be spread over a number of years. Only in the latest (1980) interpretations of this approach have detailed lists been formulated of what central government considers to be expenditure of a capital nature. The point is that what was at issue until very recently was not whether expenditure was of a 'capital nature', but whether the local authority wished to borrow to finance it – and if so, whether the minister considered that this project was one the cost of which should be shared by future generations. Any expenditure – whatever its nature – financed directly from revenue was of little concern to the central authority so long as it was *intra vires*; at the present time central government has assumed a direct

interest in the total volume of local authority capital investment for a number of reasons, irrespective of the mode of finance.

Various reasons for finance by borrowing emerge in later chapters, but the three principal justifications have been that:

- (1) revenue to pay for a project could not reasonably be collected until the project had been completed – turnpikes are the obvious example of this, so that borrowing to carry out the substantial repair or restructuring of a road was bound to precede the levying of tolls;
- (2) the cost of a project likely to be quickly completed but of a long-enduring nature simply would be too heavy to be met by the ratepayers of a single year, and should therefore be spread over a number of years by initial borrowing;
- (3) as a corollary of this and irrespective of the avoidance of immediate burden, borrowing with deferred repayment has been considered to be justified for projects from which the ratepayers of more than one year, or more than one generation, will derive benefit; such future generations of users should share the cost of the assets the use of which they enjoy.

These three reasons for borrowing might perhaps be called the ‘classic’ argument, the ‘practical’ argument and the ‘philosophic’ justification. The third – the ‘philosophic’ – argument is the one generally assumed today in support of finance by borrowing but, reasonable though it may seem, it has limited validity where there is continuing expansion of demand for the provision of capital assets. There is evidence that this principle has been pushed too far, with central government approval, from a desire to stimulate the speedy introduction or development of a service with avoidance of immediate excessive cost. When borrowing for the ‘reasonable life’ of the asset stretches to sixty or even eighty years, regardless of technological development, future generations – who will have their own problems – may feel less than gratitude to their predecessors for this inheritance. Moreover, as will be shown, future generations can be left to bear what they may feel is an unreasonable share of the cost simply by the manipulation of methods of amortization weighted against early extinction of debt. Whether inflation really reduces the burden of debt is another issue. In fact the line between maintenance revenue expenditure and true capital expenditure is a fine one at the point of interface; the stage at which maintenance involves major improvement, which in turn rises to the status of new capital works, is not open to exact definition.

The inherent problems therefore of what is capital expenditure and what justifies the bearing of the cost from money borrowed at interest are also seen to have been solved pragmatically. That money borrowed was subject to interest is not so self-evident. Theoretically, prior to the reign of Henry VIII, usury – simply a charge for the use of money – had been forbidden since 1179 on religious grounds, arising from the so-called Deuteronomic Prohibition of Usury. In practice, usury was rampant, either overtly or

covertly, by many ingenious devices (much as agile minds today seek methods of tax avoidance). In an attempt at compromise in 1545 – a date close to the birth of local government in the modern sense – Henry VIII,\* while still condemning usury, authorized the charging of a maximum interest rate of 10 per cent per annum. In 1552 his successor, Edward VI, said that Henry's compromise 'be utterly abrogate void and repealed', interest charging thus again being forbidden. In 1571 Elizabeth sadly admitted, in reference to Edward's prohibition, 'which latter Act hath not done so much good as was hoped it should', and despite 'all usury being forbidden by the laws of God is sin and detestable', reinstated (but in a somewhat vacillating manner) her father's concession of 'X li. for the lone of C li. for a yere'. James I in 1623 reduced this to 8 per cent; in 1651 a Commonwealth Ordinance reduced the 8 per cent to 6 per cent, and in 1660 this was reluctantly confirmed by the Parliament of Charles II; in 1713 a final reduction to 5 per cent was introduced. This was not abolished (despite powerful arguments for abolition by such people as Jeremy Bentham in his *Defence of Usury*, 1778) until 1854. Hence the frequent references in statutes prior to this final date to borrowing and the charging of 'interest at legal or lesser rates'.<sup>1</sup>

A confusion in terms is to be seen throughout local authority borrowing legislation which has led to much unnecessary labour in loans administration and to delay in the rationalized treatment of borrowed funds. This is the confusion between the period for which the incurring of a debt is sanctioned, and over which provision must be made for its amortization, and the periods for which individual lenders lend their money to the local borrower. The two periods may coincide, and when the loan is repayable by equal annual instalments, this constitutes the simplest financial arrangement – money borrowed for the same period as that for which the debt has been sanctioned, and an equal portion of the liability charged annually against revenue and repaid each year directly to the lender along with interest on the declining balance. But usually the periods will not coincide and the number of years for which the money is borrowed from the lender will frequently be far shorter than the loan sanction period in which the annual amortization provision is being made from revenue for the ultimate discharge of the debt. Thus the initial borrowing will fall to be repaid and replaced by further borrowing – 'rolled over' – involving a succession of re-borrowings, though each for a slightly less amount in so far as some annual amortization will have been set aside from year one.

If a loan sanction for twenty/thirty/forty years is given, for which one twentieth/thirtieth/fortieth is set aside each year for its ultimate discharge (accumulations from the investment of sinking funds being ignored) and if the initial borrowing has, say, a five-year maturity period, whether repayable in annual instalments or at the end of the period, there is never available until the end of the full loan sanction period sufficient money set

\* The statutory references for all Acts quoted are given chronologically at the conclusion of this book.

aside from revenue to discharge the debt entirely. The initial borrowing for a 20/30/40 loan sanction may be for a very few years – indeed in modern practice even ‘overnight’ at some stage of the transaction – in the expectation that fresh borrowing will be readily available to replace it at a new ‘going rate’ at each maturity or ‘roll-over’ date of the original borrowing: pious though such hope may be, this is the system which has worked satisfactorily for centuries without serious difficulty. If this difference and its implications had been clearly recognized from the start of borrowing, a much simpler and more rational system would have evolved sooner than it did. The failure in legislation to dissociate the lending period from the loan sanction period, and to recognize the consequences of this disassociation, has led to great complexity in loan administration and volumes of unnecessary work, the earmarking and reinvestment of sinking funds, and arguments about the validity of the re-use of sinking funds for new capital works (the ultimate acceptance of which principle was in fact an unrecognized acceptance of the lack of any real link between period borrowed and period of amortization). This confusion of thought was not finally resolved until as recently as 1972 when the device of the consolidated loans fund was at last given full statutory sanction. In this book therefore the period for which money is lent will be referred to as the lending or maturity period, and the period over which the debt may be amortized from revenue as the loan sanction, redemption, or amortization period.<sup>2</sup>

While in the course of this inquiry an extensive search of the statute-books has been made from earliest times for measures applicable to local government in which reference to borrowing might occur, a problem has been created by the great volume of statute law which is in private local Acts applicable only to individual local authorities. The quantity of these local Acts has been such (particularly since the beginning of the nineteenth century) that parliamentary decisions have been made to restrict their inclusion in the printed statute-books. Because of the volume of these special statutes and their consequential difficulty of access, even the Webbs in their monumental history, *English Local Government*, confessed their inability to make a completely exhaustive review.<sup>3</sup>

None of the early statutes giving general powers to parish, borough and county administrations conferred powers to finance capital expenditure by borrowing, yet during the same period there were many Acts of local application which did give such powers. Even when general statutes relating to borrowing became common, variations and innovations continued to find place in local Acts down to modern times. Indeed only since the passing of the Local Government Act 1972 (which can scarcely be accepted, for reasons which will be given, as the last word in local authority borrowing provisions) has the Department of the Environment sought to discourage local authorities from extending their financial powers by local legislation.<sup>4</sup> Experimentation in local Acts has been of the utmost importance in the development of local government in every sphere, and especially in capital finance.

Those local Acts with borrowing provisions which have been identified are examined in due course but the problem is to decide whether the early local Act borrowing powers examined hereafter are indeed the earliest or the most significant; the suspicion must persist that there may be other local Acts giving significant relevant powers which have not been brought to light. Some assurance may be derived from the relative simplicity of these early powers, which suggests their novelty; that is, there is no sudden adoption of complex powers which appear without evolutionary precedent. The same problem does not arise (or if it does only minimally) with early rating law, where the powers have always been given in the general law and significant local variations not permitted.

A practice developed in the later eighteenth and first half of the nineteenth centuries of concluding local Acts with the words 'This Act shall be deemed to be a public Act and be judicially noticed as such' (which still did not ensure printing along with the public general Acts) arose because in so far as local Act powers were additional to, or amended, general statutes, they were to that degree contrary to general law, so that judges were prone to require excessive proof of their validity if any point came before the courts. The inclusion of this clause did not wholly alleviate this judicial concern. From 1850 (Lord Brougham's Act) the more generous principle was adopted that every Act is a public Act unless the contrary is expressed in the Act; this principle was followed in the Interpretation Act 1889, and reaffirmed as recently as 1978 in the Interpretation Act of that year, but this still did not result in the inclusion of Acts of a local character in the general statutes.<sup>5</sup>

The Turnpike Acts provide a good example of private local Act procedure; although in the course of time there were a number of general Turnpike Acts, each of the many hundreds of turnpike trusts was created, amended and extended by private Act. Fortunately there was much copying of standard provisions (including financial) from one Act to another, a feature of all local legislation, though subtle and significant differences, easily overlooked, can occur from time to time.

Access to the statutes gives us of course far less than the full story; there is a need to know why statutory powers were sought and what use was made of them. What problems were encountered? Answers to such questions as these are difficult to obtain even for recent borrowing legislation and virtually impossible for ancient activities. There is undoubtedly much to be found by examination of council records and abstracts of account, but the availability of much of this has been made difficult by subsequent local government reorganizations and would in any event present an overwhelming task, except on a much-narrowed field. The obtaining by a local authority of financial powers does not necessarily mean that these powers were utilized. Why, for example, did the treasurer of Swansea launch a campaign in 1923 for the creation of a 'true consolidated loans fund' and yet – although his arguments were widely accepted – not seek such powers for his own borough until twenty years later? Why did Torquay obtain such powers in 1923 but delay putting

them into operation until after Leeds had done so with powers obtained only in 1927? Why did the several authorities who had all the necessary bond powers before Manchester in 1961 fail to see the opportunity for issuing a negotiable bond? Much less important in practice, but no less fascinating, what was the outcome of the various borrowings by tontine, and why did several authorities who obtained such powers balk at using them? On a broader plane what internal struggles in government circles led to the production of two Acts with such a different approach to borrowing as the Local Loans Act and the Public Health Act both of 1875? How, despite the general view of its unworkability even from the start, have the provisions of the Local Loans Act retained a place in current local authority borrowing legislation? Most of these and many other fascinating byways have not been followed through in this book, though the answers no doubt lie buried in the archives.

One of the peculiarities of the world of borrowing, both in the commercial and public sectors, is the general lack of statutory or otherwise precise definitions of terms both for instruments and certain of the techniques involved. This is possibly because of the considerable antiquity of these processes. The bill of exchange and the promissory note are known by every student of finance to be exactly defined in the Bills of Exchange Act 1882 (though many varieties of bill have evolved within this definition and much judicial clarification has been necessary). These are virtually the only two borrowing instruments to be specified precisely in a statute (except to the extent that *pro forma* documents to be used, 'or to the like effect', are frequently given in schedules to the Acts). The important word 'debenture', and the scarcely less important terms 'mortgage', 'bond' and 'stock', are not defined in statutory form (and most certainly not in local government statutes by which they have nevertheless been adopted), though their attributes and varieties are well established in common and case law and general practice.

Probably the most misused term of all is 'annuity', which is used in a general sense in application to an annual payment, and in various specific senses, one of which (perpetual annuity) does not involve what is usually regarded as the essence of an annuity – the annual repayment of a portion of principal. While the method of setting aside or using for annual repayment an equal part of principal is well known and commonly used, this is variously referred to as the EIP (equal instalment of principal) method, the fractional method and even the straight-line method (as this is how this system would appear in graphical form). This method, annual repayment with interest on the declining outstanding balance, is certainly a variety of annuity payment. Yet if the repayment is of such varying portion of principal as together with interest will give a flat rate of payment of the two sums combined each year over the life of the loan, this commonly is referred to specifically as the annuity method but also the equal annual charge method when applied to systems of redemption. Problems also arise by confusion of the terms 'negotiable', 'marketable' and 'quoted' particularly in relation to the bond in local authority use. Even the term

'security' is used in two distinct senses (sometimes in a single section of a statute): first, as a generic name for borrowing instruments; and secondly, in reference to the underlying financial guarantee offered against loans, for example, the rates and revenues.

To be precise, the bill of exchange and its simpler companion are not the only instruments defined by statute. The Statute concerning the Jews 1233 (Henry III) states that:

no loan may be contracted with Jews by tally, but by chirograph, whose other part the Jew shall have, with the seal of the Christian contracting the loan appended, and the other part let the Christian contracting the loan have. The third part that is called the foot, let that be placed in the chest to be safely held by the chirographers. Christian and Jew, and a chirograph whose foot shall not have been found in the chest shall not be valid.

No Jew may lend anything by penalty but let him take interest at twopence per pound each week and no more [which amounts to 43% p.a. simple interest] so that nothing is put to hazard save the sum first loaned.

This reference to 'penalty' is relevant to later practices in the use of bonds. The chirograph as a borrowing instrument is therefore clearly defined as a three-part document, the sealed portion given to the lender, a copy retained by the borrower and the third lodged in the hands of the equivalent of the modern registrar. The essence of an efficient borrowing instrument was clearly understood from a very early date.

The above record also illustrates that the system of wooden tallies was in operation by this date. Fortunately tallies play no part in local government financial recording. There is also a record of a two-part chirograph dated 1201. Doubt is expressed among historians as to whether the introduction of a third registered copy was to develop a market in bonds, or to facilitate the collection of a levy by the sovereign on all transactions, the modern equivalent of which was reflected until recently in the stamp duty on borrowing instruments. The suggestion is made that the prohibition of wooden tallies in this process, in 1233, was part of the attempt to prevent avoidance of the sovereign's tax – tax evasion at an early date.<sup>6</sup>

Our study now continues with a brief outline of the emergence and evolution of the units of local government into what has been a strikingly stable system over half a millennium, and of the services which have been allotted among the constituent parts of this system. This description begins at a stage before borrowing (or for a time even before rating) had been contemplated. It leads naturally into the introduction of rating and the emergence of borrowing when rating was found to be an inadequate means for the initial financing of assets of a capital nature. The growing

acceptance of borrowing is then followed through in historical sequence beginning with the introduction of turnpike roads.

The limitation of this 'continuous historical' method is that while the growth of the use of borrowing techniques is thus illustrated chronologically, a clear picture of each method of borrowing and the considerations involved in the introduction and growth of each cannot be clearly discerned. This historical sequence is therefore followed by separate examination of each form of instrument from its first appearance to the present day, bringing out more clearly the aspirations of those who introduced the methods and the advantages and shortcomings of each instrument. The structural problem involved may be well illustrated in relation to the Public Works Loan Commissioners (where the surprising discovery is made that the title now in common use – the Public Works Loan Board – has no official justification). The commission, set up in 1817, is referred to from time to time during our historical sequence but is dealt with separately and more coherently in the later section. Likewise while methods of amortization are naturally referred to from time to time in the chronological section, their detailed development into the consolidated loans fund (via mortgage pooling) is also re-examined as an entity separately. Borrowing by bonds, a method found to be in use in early times, requires essentially a reconsideration to show the impact of early usages on the adoption of this technique which occurred in modest fashion in the 1920s and to the point at which it has become the major instrument in the 1980s. Some degree of duplication has been inevitable in this approach.

Sadly but inescapably the impression which emerges from these two strands of historical development is not so much the lack of ideas about methods of local authority borrowing, but the slow, laborious and incoherent manner in which the ideas have been brought to fruition and the lack of a penetrating and fundamental analysis of principle at the various points of change. The delays in the full acceptance of new techniques even after their operation and proved efficiency in limited but adequate experimental areas can only be described as disappointing and disconcerting. This procrastination in the adoption of measures of rationalization, innovation and improvement is partly the result of central government's reluctance to allow freedom of action to local government and a distrust of the efficiency of small-scale administrations, coupled with their own adherence to ancient and outmoded principles, not rethought in the light of changing circumstances and developing markets. It is also in part and most regrettably the outcome of a certain lack of enterprise by local authorities, perhaps partially justifying central government's reluctance to give local authorities greater freedom. However, such lack of enterprise by no means can be attributed to the preponderance of smaller authorities within the system as much of such enterprise as is shown emanates from the smaller authorities.

To take again two subjects mentioned above: the Public Works Loan Commission (PWLC) – not in any way a complex conception – took 150

years to develop to the point at which the commissioners at last seem to feel confidence in local authority capabilities and integrity, despite the *raison d'être* of the commission being to assist local authorities to carry out tasks allotted to them by central government. The consolidated loans fund, another effective but basically simple device, took astonishingly a century to reach full flower from its first tentative appearance, and even half a century from the time when its advantages were fully recognized and its operational techniques comprehended. In consequence, substantial numbers of local Act clauses, with all the expense and labour involved, were needed to give acceptable powers to those local authorities which chose to seek them before the provisions found their way into general legislation. But sometimes even when modernized provisions were available, many treasurers can be seen to have adhered stubbornly to outmoded practices. The value of experimentation can be held to justify some degree of use to local Act procedures, but in no way to the extent which events illustrate. Modern borrowing techniques are still hampered by central government, and in particular Treasury and Bank of England concepts formulated nearly a century ago, some of which have long been seen as anachronistic, and by retention of the vestigial remains of abandoned technique. This lack of dynamism in both central and local government is not confined to the financial issues in local government. Long adherence to the 'sealing' of borrowing instruments, despite the devices used to evade this requirement, and reluctance to recognize the change in the nature of the so-called 'temporary' loan and continued confusion between the mortgage and the bond – matters on which the 'market', which cheerfully continues to call a five-year bond a 'yearling', is not free from responsibility – are all indications of the turgid approach to the subject by some of the professionals. However, if the halting and reluctant nature of their approach to change by all parties involved can be demonstrated, perhaps the outcome may be a more vigorous acceptance of change in the future. (The lines along which the scope for future developments might be considered, together with questions about the propriety of the continuation of borrowing as a technique of local government finance and the validity of the basic principles of redemption, are dealt with in Part 4 of this book.)

## NOTES: INTRODUCTION

- 1 For a fuller examination of the history of restrictions on the admissible rate of interest see my *In Restraint of Usury* (CIPFA, 1985).
- 2 For comments on this exasperating confusion of thought see, for example, Johnson's *Loans of Local Authorities* (1925), p. 96: 'An important difference exists between the redemption and the repayment of loans, the former consisting of the provision made to extinguish the amount sanctioned for borrowing within the period allowed, whereas repayment consists of the return to the investor of the amount of his investment.' See also A. B. Griffiths, *Municipal Capital Finance* (1936), p. 24: 'the periods for which loans are borrowed do not usually bear any relationship to the periods of the loan sanction . . . repayment and reborrowing in respect of the same sanction may take place on numerous

occasions during the life of the loan sanction.’ And see A. Carson Roberts (District Auditor), *Local Administration, Finance and Accounts* (1930), ch. XI, and more particularly his comments on the paper on consolidated loan funds given by R. A. Wetherall (Swansea), 1923, p. 226 of the IMTA Conference Proceedings, 1923: ‘The delay in this development [of the CLF] has been attributed to confusion of thought in connection with raising and repaying loans, on the one hand, and spreading capital charges by the help of borrowing powers on the other. The distinction between the obligation to the mortgagees and the obligation to the ratepayers is . . . of primary importance . . . Unfortunately the expressions which our language provides – “loans”, “borrowing” – apply equally to both and that is why the statutory provisions are ambiguous even when it is clear that the distinction was present in the minds of those who framed them.’

- 3 Sidney and Beatrice Webb, *English Local Government from the Revolution to the Municipal Corporation Act* (9 vols, 1906–29), a monumental work but strangely lacking in references to borrowing.
- 4 For example: very many local authorities obtained powers by local Act from 1877 onwards to raise money bills (see later). However, general powers for the issue of such bills was not given until 1972. The Local Authorities, etc. (Miscellaneous Provisions) (No. 2) Order 1974 (SI 595) rescinded all these local Act powers on the ground that uniform powers were more appropriate. Authorities have been led to believe that variations of these standard powers will not be welcomed. The Order however permits local authorities to frame their own regulations on the detailed handling of money bills. On the other hand, general powers to establish capital funds leave the many local authorities which have local Act powers for this purpose to operate under those provisions – and presumably to seek amendments to them if they so wish.
- 5 This practice is examined in Sir P. B. Maxwell’s *Interpretation of the Statutes*, 12th edn (London: Sweet & Maxwell, 1969) ed. P. St J. Langan. I am also indebted to W. Wentworth Pritchard, of Sharpe Pritchard & Co., Parliamentary Agents, for guidance on this point.
- 6 The discovery of the chirograph and the recognition of its striking relevance to modern borrowing was one of the several examples of serendipity occurring during the course of writing this book. The sources are: *English Historical Documents*, vol. 1, pp. 147, 350 (London: Eyre & Spottiswoode, 1955) and H. G. Richardson, *English Jewry under the Angevin Kings* (London: Methuen, 1960), p. 264. An illustration of a chirograph (which simply means a ‘handwriting’ or a deed) is to be found in W. H. Galbraith, *The Historian at work* (BBC, 1962), taken from the Public Record Office. This (relating to a land rather than a borrowing transaction) shows a sheet of parchment, divided by a horizontal line about one-third of the distance from its foot, with a vertical line dividing the upper portion. The text is written three times in these spaces, and the word ‘chirographum’ is inscribed along each of the dividing lines, along which and through the word, the portions are then severed by indentured cuts.

## Chapter 1

# LOCAL GOVERNMENT AREAS IN ENGLAND AND WALES — A NOTE ON THEIR ORIGINS AND DEVELOPMENT

In 1871 Mr Goschen, in introducing to Parliament proposals on local government areas generally and rating in particular, said in a memorable and oft-quoted rhetorical outburst:<sup>1</sup>

We have a chaos as regards authorities, a chaos as regards rates and a worse chaos as regards areas . . . every different form of election which it is possible to conceive is applied to the various local authorities who administer the various rates in the various areas.

He might well also have made reference to a confusion of borrowing practices, but his criticism does less than justice to the stability of the framework of local government organization over the centuries. (He might also have acknowledged the long-term stability of the source of finance — the rating system.) The local administration organizational chaos of the mid-nineteenth century, from 1835 to 1888, arose patently because Parliament failed to recognize the great burgeoning of interest in local government which was already under way, and could not be persuaded to continue the rationalization introduced under the Poor Law Amendment Act 1834 and Municipal Corporations Act 1835, themselves the result of the fervour which produced the Reform Act of 1832. The reluctance of the magistrates to relinquish their control of county administration (and to concentrate on their main business of the administration of justice) may well have been the root cause of procrastination on the part of Parliament.<sup>2</sup>

Though greatly confused in detail (not least by variant regional designations), the broad lines are reasonably clear on which present-day local authorities whose titles, territorial demarcations, functions and other features are now so clearly defined by statute, have emerged from the mist of history. From earliest recorded times the units into which the country has been subdivided for judicial, fiscal and embryonic administrative purposes have been the county (initially called the shire) and the borough, with the hundred as a further subdivision of the county and itself further subdivided into hides. Both the hundred and the hide have had other designations, in particular the wapentake as the equivalent of the hundred in those northern areas influenced by the Danish invasion.

Alongside this secular administrative structure was the ecclesiastical system of administration based on the diocese and the parish. The manorial system also persisted for several centuries alongside these systems but seems to have made surprisingly little impact on their history and development, or their evolution into the administrative system of today, except that the area of the manor and the parish may often have roughly coincided. The major change was the gradual usurpation of the administrative status of the hundred by the ecclesiastical parish from the mid-sixteenth century.

Even though the county structure was not fully demarcated until the reign of Henry VIII, the Anglo-Saxon shire, later to be renamed by the Normans as the county, has been the premier territorial division of England and Wales since time immemorial. Boroughs, with various degrees of independence of the county, have also an ancient history deriving from the Anglo-Saxon groups of population in 'fortified places', some of them later receiving a degree of self-government by royal charter. The confusion of minor, special-purpose areas which evolved in the mid-nineteenth century were in the main composed either of single parishes or groups of parishes which ultimately became the urban and rural district councils, consolidated in 1972 into district councils. The boroughs continued, some as county districts little different from the urban and rural districts and others as county boroughs independent of and with a wider range of responsibilities than the counties, until these too were demoted to district council status in 1972. Only the Poor Law unions had a somewhat different structure, but again based on the grouping of parishes from 1834 until their absorption into the 'mainframe' system in 1928. These groupings of parishes for Poor Law purposes, based it seems on groups of parishes adjacent to market towns, actually cut across county boundaries in some instances, a circumstance which led to later problems.

The rating system, despite the complexities which arose from the technical attachment of different rates to different services right down to 1925, was and has remained the basic source of local government revenue since before 1601 (usually considered, with a degree of inexactitude, to be the starting-point for rating). Within most recent times the rating system though under heavy criticism and threatened with abolition has nevertheless been reaffirmed by the present government (1983) as the most appropriate, or at least practicable, system for raising local revenue (certainly against the background of all other forms of taxation utilized by central government). There are ample grounds for the contention that the decade 1928–38 was the Golden Age of local government; if this period did represent the apotheosis of the system, its decline thereafter has been sharp and rapid. Nevertheless, by this period the great consolidation of services had taken place by the absorption into the main system of the rating authorities and the Poor Law unions (which included substantial hospital and child-care services). Local authorities were in the main responsible for the major trading services of gas, electricity, water, transport and others. The all-purpose county borough – surely the most

successful unit of local administration ever to operate in this realm – was flourishing, and the government grant system was put on to what was then regarded as a highly logical and equitable basis. Uniformity of the administrative system and a moderately satisfactory borrowing system was introduced in a single code in 1933. Local government was highly respected and full of confidence in its future and, on the whole, in most authorities party politics played only a minor role. Perhaps it is mere nostalgia, but those who grew up in it (including the present author) will have no difficulty in confirming the concept of the Golden Age. The drift downwards began with the (necessary) nationalization of poor relief, but the advent of the Second World War certainly brought that age, among so many others, to an end. Of course the increase in communications, the desire for larger-scale areas for trading activities and a general increase in demand for standardization of services played a powerful part in the decline of local administration. Perhaps a bolder reorganization in 1933 – which on the whole simply consolidated a system already nearly fifty years old – might have made a difference.<sup>3</sup>

The subdivision of the country into counties, largely achieved by the thirteenth century, but not completed until the reign of Henry VIII, had its origins in the Anglo-Saxon shires.<sup>4</sup> These emerged from remote sources – ancient kingdoms, sometimes divided for the benefit of a king's family, tribal areas, areas occupied by invaders, artificial creations by Alfred around major towns from which they took their names and, finally, those created by Henry to facilitate the subjugation of Wales. At this stage, according to the Webbs, the number of fifty-two geographical counties was established.

The origin of the Anglo-Saxon term 'shire' is obscure. The *Oxford Dictionary* gives the derivation from the Old English 'scir', meaning 'care, an official charge', while Irene Gladwin in *The Sheriff* relates it to the Anglo-Saxon word 'scir' as meaning 'a piece shorn off'. The *New English Dictionary* more cautiously states that the etymology is doubtful, but denies its relation with 'shear, cut off'. However, all derivations are consistent with the idea of a subdivision of a larger kingdom under the care of an official appointed by the sovereign. Shires as administrative units are mentioned in legal documents under the laws of King Ine (late seventh century) which refer to the earl-derman and scirman as officials responsible upwards to the king and downwards to the individual inhabitants of the area.

The shire reeve – a name believed to derive from the Anglo-Saxon 'gerif' (guardian) – was the officer for the local administration for centuries, originally under the shire moot. As the influence of the shire/county moot dwindled following the creation of the justices of the peace in quarter sessions in the fourteenth century, the influence of the Lord Lieutenant (the earlier earl-derman) and the sheriff also declined.

The Norman-French term 'county', coming into use in this country after 1066, derives from *conte* – the area presided over by a count – the earlier designation being the Latin *comitatus*, the office of a territorial lord

(although rather surprisingly the title 'count' was not adopted here).<sup>5</sup>

The boundaries of the geographical counties have not altered materially over the centuries, although some were subdivided for administrative purposes in 1888. In 1972 more drastic changes were made, by combinations of counties and by 'heroic' surgery. Whatever the means by which the physical boundaries were first delineated, they are now, under the 1972 Act, to be as 'merged by the Ordnance Survey'. In the 1972 changes two classes of county were created – the metropolitan counties in the highly urbanized and industrialized areas, and the remainder which because of their cumbersome and negative statutory title of non-metropolitan counties are colloquially known by the tautology, the shire counties.

The county administrations remained essentially organs of central power, operated by local people centrally appointed, from the fourteenth century until 1888, when the Local Government Act transferred the administrative functions from the non-elective justices to the new democratically elected units of local government, the county councils. The justices retained their judicial functions and their direct responsibility to the Crown.

Lipman in *Local Government Areas 1834–1945* painstakingly examines the problem of identifying precisely what constituted an administrative county in the pre-1888 period of the nineteenth century; this issue does not particularly affect us here, but the justices have played so important a part in early local government, together with their initiation of finance by borrowing for the construction of the turnpike roads, that a note on the origins of this continuing influential body is surely called for.

For 200 years before the statutory recognition of local government functions the justices of the peace provided a judicial service in the counties, and for a further three centuries after the first local government legislation they were also the administrative as well as judicial arm of county government. When in 1888 they parted with their administrative functions to the newly created elective county councils, they continued in strength in their judicial capacity. Thus although the office is now almost exclusively concerned with the administration of justice (except for certain licensing functions and in association with the Watch Committees in police administration – both quasi-judicial functions), the justices have from the fourteenth century played a prominent role in local judicial and civil administration and taxation.

The principle behind the magisterial system is clear. The justices are representatives of the Crown, centrally appointed from among the local people to supervise the effective application of laws laid down by the central government. But because these appointments are made from local inhabitants, familiar with local conditions and readily available at grassroots level, the magistrates – as they are also called – though representing the Crown, are able to convey back to the central authorities the views, problems and complaints of the inhabitants of the locality. That is to say, although they are central government appointees and representatives, the roots which the magistrates have in their localities

enable them to effect a two-way exchange of ideas and reactions. Redlich and Hirst in their *History of Local Government in England* suggest that although appointed by the king, the justices of the peace 'are a significant landmark in the struggle against the centralising tendencies of government'; whether this was the original intention may be unlikely, but in practice the system established was in fact an eminently practical solution to the problem of central and local relationships. As Redlich also says, 'This system was a compromise between the two extremes – the centralising tendencies of the Norman tradition, and the obstinate provincialism of the Anglo-Saxon'.

The ancient principal function of the Anglo-Saxon shire administrators through the hundred moot was the establishment of justice and the keeping of the peace among neighbours (as well as the provision of fighting men when needed for national defence) and, in a way rather oddly, the upkeep of bridges. A more rational and national system emerged in 1195 when the Chief Justice, Archbishop Hubert, selected knights who were called upon to swear an oath to maintain the peace – an early step towards the central appointment of local officers.

At that date knighthood was not the acceptance of an honour bestowed by the sovereign, but rather a rank of responsibility to be assumed by landholders above a certain level of affluence who were expected to pay a fee for their elevation. This was apparently felt to be an onerous and unwelcome responsibility but appears to have been based on the belief that people with a personal stake in the nation's economy would be more inclined to uphold the existing system (a 'property-owning democracy' in current phraseology). Under Edward I, in 1278, a Writ of Distrain of Knighthood was issued to all sheriffs requiring them to see that all who were qualified to become knights – 'all in your bailiwick who have lands worth £20 a year . . . and ought to be knights but are not' – assumed this position. A roll was to be formed in each county by two law-worthy knights and presented to the Crown without delay. The writ ends with the threat: 'And we wish you to know that we shall make careful enquiry into your conduct in carrying out this order of ours and have a suitable remedy ready provided for it forthwith', a threat not dissimilar to that used today in regard to 'ratecapping'.

The knights appointed after 1195 under the edict of Archbishop Hubert were known as 'conservators of the peace' – *custodes pacis*. In 1285 the Statute of Winchester, concerned with watch and ward, required the inhabitants of areas where felonies occurred to produce the culprits. Under Hubert's system the powers of the shire moot gradually dwindled, but the step which was to have such long-term results was taken in 1361 when Edward III superseded the conservators of the peace by the more thoroughly organized system of justices of the peace; this designation was used in the title of the Act and in a side-note, but not in the body of the text. The statute stated: 'in every County of England there shall be assigned for the keeping of the Peace one Lord and with him three or four others of the most worthy of the county together with some learned in the

law.' These persons were given powers, at some length, to arrest and chastise offenders according to the law and custom of the realm. Also in 1361 the first of what may be identified as combined judicial-administrative local functions were given to those 'which shall be assigned to keep the peace', who were required to 'enquire of Measures and also Weights' according to the terms of earlier statutes. The same problem was also dealt with in the next Act, which stated: 'All measures shall be according to the King's standard' and that 'Justices of the Peace shall enquire of all defaults'. Thus the new officers were finally referred to, in the body of an Act, by the title which they now bear.

Shortly afterwards a further statute of Edward III, in 1362, ordered the Commissions of Justices of the Peace to meet four times a year (hence the quarter sessions). The petty sessions (often based on hundred divisions) evolved as a means of handling minor and special matters expeditiously and with less effort to all concerned than required by full quarter sessions. The commission from the sovereign to each justice of the peace has remained practically unchanged since inception – to inquire into, to hear, determine and punish crimes and offences. The powers were confirmed, though with some restrictions, in 1495 under Henry VII when the justices were empowered to try all offences except treason, murder and felony. There have been many variations in the scope of the judicial functions over the centuries.

With the emergence of local government proper in the mid-sixteenth century, the county justices were well able to extend their judicial interests into the administrative field. They were given a statutory responsibility for the supervision of roads (which ultimately involved them in turnpike trusts) and more significantly in the administration of the Poor Law and of the rating system which went along with it (although the parish remained the rating authority). The justices retained an administrative function – partly executive and partly supervisory – until that great turning-point, the Local Government Act 1888. By this Act, sixty-two administrative counties were created on the basis of the geographical counties, subdivided in some instances. Although the justices were relieved of their administrative functions, they were required to co-operate with the newly elected county councils in police administration. The Act indicated *in extenso* the administrative functions which the new councils were to assume. Although the infrastructure of the county was not reorganized until 1894, a substantial development of borough administration also took place in 1888, in that boroughs of not less than 50,000 population were designated county boroughs. These new county boroughs were not merely counties within counties, but with the added feature that they were all-purpose authorities, unlike the real counties who continued to share their responsibilities with their subordinate units in a two-tier structure.

This situation resulted in constant conflict between the counties and the county boroughs, as well as with the non-county boroughs seeking promotion to county borough status, until the struggle was resolved in favour of the counties in 1972. The lower tier in the counties – the

parishes, smaller boroughs and the conglomeration of *ad hoc* districts for various functions, mainly sanitary and highway duties – were shaken into pattern by the Local Government Act 1894, usually referred to as the Parish Councils Act but of wider significance. The resultant structure of county districts – parishes, urban and rural districts, and non-county boroughs – necessitated boundary changes to bring some of the ecclesiastical parishes within the exact county boundaries as administrative parishes. Only the Poor Law Boards of Guardians retained their independent status, though even they were still dependent on parish structures for rating and questions of pauper settlement.

The end of the nineteenth century was therefore reached with a reasonably rationalized system of areas for local administration – counties with county districts, consisting of rural and urban districts and subordinate rural parishes, and non-county boroughs, with all-purpose county boroughs as islands of independence dotted sporadically within the county areas.

The 1888–94 structure endured for almost eighty years, through a period of tremendous social and economic change and two world wars. It was therefore ripe for review, and many alternative schemes were put forward (of which the most logical and sustained was probably the Report of the Royal Commission on Local Government under Lord Redcliffe-Maud, issued in 1969, which favoured unitary authorities). All these proposals were ruthlessly overridden by the Conservative government of the late 1960s and a system was imposed which was based on the abolition of the all-purpose county borough and the supremacy of the county as the principal administrative unit, supported by district councils. (Boroughs and cities were allowed to retain these titles as a courtesy measure only.) The Local Government Act 1933, important though it was, had been mainly a consolidating Act which retained the county/district/county borough system, the overseers and the Poor Law unions having been absorbed by the counties and county boroughs in 1925 and 1928 respectively. The major reconstruction which took place around the early 1970s involved four Acts: the London Government Act 1963, which created the Greater London Council from the former London County Council, and the London boroughs from a larger number of metropolitan boroughs; the Local Government Act 1972, which created new counties and district councils (abolishing the county boroughs) in England and Wales; the Local Government (Scotland) Act 1973, which combined Scottish counties into six regions, with district councils, plus three Island Areas which because of their remoteness were given all-purpose status; and the Local Government Act 1972 (Northern Ireland), which abolished administrative counties and created weak district councils directly under central government supervision.

Under the 1972 Act the number of administrative counties in England and Wales was determined at fifty-three (excluding the GLC), six of which were designated metropolitan and the rest non-metropolitan, and their subordinate districts likewise. However ruthlessly the system was imposed,

it must be seen as an attempt to recognize two organizational factors – the great difference in the problems of the highly populated industrialized conurbations as compared with the rest of the country, and the need, in any event, for wider areas of administration combining where possible towns with their surrounding rural areas, as a result of improved communications and the outward spread of populations. Thus the newly created metropolitan counties were based on the great cities; four of them formed a belt across industrial mid-England (Merseyside, Greater Manchester, West Yorkshire and South Yorkshire), plus one to the north of this belt, Tyne and Wear centred on Newcastle upon Tyne, and one somewhat south of the belt, West Midlands based on Birmingham.

What differentiates the metropolitan from the non-metropolitan counties and districts, in addition to their degree of urbanization, is that while districts of both types remain the rating authorities (a clear survival from the sixteenth-century parish as the rating authority), in the non-metropolitan counties the county has the major share of the duties and responsibilities, even where the districts were formerly important towns such as Bristol, Nottingham, and the like, whereas in the metropolitan highly urbanized areas the balance of executive responsibility lies with the district rather than the new county authorities. The metropolitan districts, for the most part former county boroughs deprived of their all-purpose status, have waged a constant battle for the abolition of the metropolitan county councils, and for a return to all-purpose status for themselves. They seem to be winning this battle, in that at the time of writing the present government, though Conservative like that which set up the metropolitan counties, has announced its intention of abolishing this (mainly Labour-controlled) tier in the great conurbations, despite the problems which will arise from unscrambling this omelette. Paradoxically the metropolitan boroughs now seem less than happy with the proposals; perhaps what is really needed is not abolition of the metro-counties, but a review of the allocation of duties in the light of ten years of experience.<sup>6</sup>

The hundred requires notice in this book because although as an administrative subdivision of the county it was gradually displaced by the ecclesiastical parish from the date of the introduction of recognizable local government, it nevertheless influenced the areas of petty sessional divisions. Petty sessions exercised some oversight, on behalf of quarter sessions, on parish activities and later, in some instances, provided the area for Poor Law incorporations (and hence later still Poor Law unions) – and subsequently the urban district councils (today's district councils) – thus giving a further indication of the long-term persistence of the local government area pattern. The hundred area survived in some parliamentary divisions (for instance, West Derby), and such peculiarities as the Salford Hundred Court of Record which dealt with, in the main, small debtors' claims until it was abolished some twenty-five years ago.

Despite its curiously precise title, this ancient Anglo-Saxon subdivision of the county ('wapentake' in northern areas) appears to lack a specific origin and significance. A possible origin is that it was a combination of

100 hides – a further subdivision of the county – but this takes the matter very little forward as the exact meaning of the hide is also obscure. A hide is thought to have been an area of land sufficient to maintain a single household, but this requirement must have varied substantially according to fluctuating size of families, the terrain and nature of the soil, and the enterprise of individuals. There is a view that the area of a hide varied between 40 and 130 acres ('Domesday Book' unit), as it might well, but even the acre was in early times an inexact measure. Moreover, while the evidence from the English Midlands supports this origin, further north the area designated by a hundred did not appear to contain any specific number of hides; presumably therefore while the term hundred may have begun as a theoretically exact subdivision in the minds of the early bureaucrats, it declined into a mere title of general use applied to more or less any natural grouping, as hides were inevitably combined, subdivided, or newly created over the course of time.

There is a manuscript of about AD 940 known as the 'Hundred Ordinance' (*English Historical Documents*, vol. 1, no. 39) in which the internal evidence fails to make clear whether the ordinance established the hundred or merely sought to clarify the responsibilities of already organized units. What is relatively clear is that those who administered the hundred did so almost entirely as a body of a judicial character concerned with the maintenance of law and order, and the apportionment of responsibility for that duty. This body appears to have been a court under a hundredman or reeve, which met monthly at places long established in the localities as centres of administration. For example, the first clause in this ordinance says: 'This is the ordinance of how the hundred shall be held. First, that they are to assemble every four weeks and each man is to do justice to another.' This code also referred to 'tithings' which are believed to represent small groups of inhabitants in a township or village, but might have been a group of ten hides within the hundred. Blackstone, in his *Commentaries on the English Law* (1765), says confidently that as ten families of freeholders made up a town or tithing, so ten tithings made up a superior division called a hundred, but this sounds like oversimplification or, at most, a theoretical basis which only worked out in practice in a much more rough-and-ready manner. However, superior groupings of hundreds did occur in some counties under such names as 'ridings' in Yorkshire, 'lathes' in Kent and 'rapes' in Sussex. 'Riding' may have been derived from a 'thriding', or third, and a 'rape' seems to have been a division of one-sixth.

The editorial comment accompanying the above-quoted document claims that there is evidence of assessments for taxes in round figures for 100, or multiples of 100, hides, but there is no earlier evidence than this ordinance to establish the origins of the hundred for judicial or administrative matters. There are a number of other ancient terms denoting areas, such as a 'carucate', possibly the term used in northern England for a hide, a 'vergate' and a 'bovate', and in cities the 'liberty' as an area of special privilege.