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Proprietary Medicines and the Fiscal State

“Tax quackery with all my heart: It is but right that they who place greater confidence in the unknown hodge-podge of a stone mason or a gingerbread-baker, than in the skill of an honest and able regular practitioner, should pay a tax ad valorem, over and above the price of the stuff, for their folly and credulity.”¹

INTRODUCTION

The taxation of medicines within the British fiscal and legal systems began in 1783, the result of a confluence of various distinct and powerful forces. Socially, the country saw an unprecedented rise in the production and consumption of so-called ‘quack’ medicines sold for the purposes of self-medication. These were remedies promoted by a wide range of generally unqualified entrepreneurs who invented and sold them to the general public, with secret compositions and exaggerated claims for their efficacy in curing, preventing or relieving illness. These remedies were unproven, sometimes of little or no use, often dangerous, and they were consumed in prodigious quantities by a credulous public desperate for relief at a time when medical science was rudimentary. The trade had reached an unprecedented height in the later years of the eighteenth century.

The first formal legislative response to the phenomenon of proprietary medicines was to tax them. The state immediately took a keen fiscal interest in this exceptionally robust and thriving trade in medicines as a commodity and its potential financial yield. Economically, Britain in the late eighteenth

¹ William Chamberlaine, *History of the Proceedings of the Committee appointed by the General Meeting of Apothecaries, Chemists, and Druggists, in London, for the Purpose of obtaining Relief from the Hardships imposed on the Dealers in Medicine, by certain Clauses and Provisions contained in the new Medicine Act, passed June 3, 1802 etc.* (London: Highley, 1804), p. 20.

century faced an urgent need for increased public revenue and chose to meet this need, in part at least, through the instrument of taxation. Together these forces resulted in the forging of a fiscal relationship between medicines and the state, because it is in this context that a tax – the medicine stamp duty – was imposed on quack medicines, a description which, when cast in legislative language, extended to all proprietary and recommended medicines. The tax was a minor one in fiscal terms, being highly specialised, raising relatively little revenue, largely unremarked by the general public and familiar to only a small proportion of revenue staff, who tended to leave it to its own devices. This tax, which endured throughout the nineteenth century and was, still in its original form, abolished in 1941, constituted the principal tax on medicines in Britain.

The medicine stamp duty operated throughout a period of unprecedented social, legal and economic dynamism.² Specifically, it spanned the epoch in which the practice, profession and science of pharmacy developed. It saw the construction of the legal foundations of a sophisticated tax system fit for a new industrial age, and it experienced the enormous growth in the bureaucratic authority of the state. To assume that taxation does no more than raise revenue for the purposes of government underrates the power of tax. That a synergy exists between tax and wider social, fiscal and legal movements was made explicit in 1918 when Joseph Schumpeter observed that tax law is the prism through which the social, political and economic values of any society are distinguished, and that it shapes human behaviour and activity.³ His premise was that taxes created their own social and economic momentum, an idea that has been adopted by the emerging discipline of fiscal sociology.⁴ To fully understand any social phenomenon, the role of tax cannot be ignored.

What lies at the heart of an appreciation of the broader effects of the medicine stamp duty in its wider legal context and in its specific field of operation, namely pharmacy, is an understanding of the tax itself and that is a matter of

² For the politics of nineteenth-century taxation, see the seminal work by Professor Daunton: Martin Daunton, *Trusting Leviathan* (Cambridge: Cambridge University Press, 2001).

³ Joseph Schumpeter, 'The Crisis of the Tax State' (1918), in R. Swedberg (ed.), *The Economics and Sociology of Capitalism* (Princeton: Princeton University Press, 1991), pp. 99–140; John Tiley, *Revenue Law*, 6th edn (Oxford: Hart Publishing, 2008); Rebecca Boden, 'Taxation Research as Social Policy Research', in M. Lamb, A. Lymer, J. Freedman, S. James (eds.), *Taxation: An Interdisciplinary Approach to Research* (Oxford: Oxford University Press, 2005), pp. 105–21.

⁴ Isaac William Martin, Ajay K. Mehrotra, Monica Prasad (eds.), *The New Fiscal Sociology, Taxation in Comparative and Historical Perspective* (Cambridge: Cambridge University Press, 2009).

law. Constitutionally, taxes must be expressed in law. The imperatives that drive the legislators who draft and introduce the tax and the legal constraints under which they operate govern its shape. The legal form that a tax takes, the way it is formulated, the structures that are set up to administer it and the nature of provisions for its enforcement and collection together constitute its essential nature and the basis of its very existence.

This foundation makes any tax part of a legalistic discourse, which by its nature is highly technical. And although this character of a tax can seem arcane, being accessible and of interest only to doctrinal lawyers, and to tax lawyers at that, it is the legal factors shaping the tax that are responsible for the effects it can have. This fact makes the legal study of tax relevant beyond the narrow field of doctrinal law and its practitioners. Scholars pursuing other discourses in history, social policy, politics and government, seeking a full explanation of the dynamics of their field, could find their subject informed by its relationship with tax. What might appear unpromising issues of dubious relevance, namely questions of legislative drafting, statutory interpretation, bureaucratic administration and the practicalities of the implementation of tax, can illuminate the routine, the extraordinary and the intractable. A close doctrinal study of the law and practice of a tax, therefore, not only promotes the more profound understanding of the forces working towards the introduction of a specific tax and identifies the reasons for the nature of its substance and supporting machinery, but can also explain its potency outside the fiscal sphere. It can also reveal the reasons why certain taxes have difficulty in adapting to changing conditions and values.

This, then, is the story of a tax. The overall objective of this study is to explore the dynamics of the medicine stamp duty, to see the nature and extent of its contribution to the shaping of its operational context in law and in the practice of pharmacy. It explores the origins, nature and consequences of this fiscal relationship between medicines and the state as expressed in the medicine stamp duty. Its specific aims are twofold.

The first is to demonstrate that this apparently minor tax in the fiscal portfolio was far from insignificant, and through its history revealed broad themes of profound importance to the development of tax law and the wider legal order. An enduring tax on a specific commodity is rare in the history of taxation, especially one that remained essentially unreformed for the whole of its long life. The subject matter of taxes throughout fiscal history addressed social, political and economic imperatives and reflected the values of the age. Imposts on hats, gloves, carriages, servants, windows, hair powder and armorial bearings embodied a policy of taxation that had yet to reach the degree of sophistication that was to emerge in the later nineteenth century. But it is

these very qualities of fiscal unimportance and restricted specialist operation which resulted in the tax's retention of its original form and its longevity and which together make the medicine stamp duty unique in its power to reveal much wider themes in the legal history of tax. These concern the fundamentals of taxation: the purposes and role of tax in society, the orthodox ideals of good taxation, the power of fiscal imperatives, the reality of the authority of law in the field of tax and the limits of bureaucratic power, how fairness was achieved in tax and the isolation of tax law within the English legal system. And these are themes that, in their detail, character and substance, reflect contemporary values and concerns. They transcend chronological differences and are of enduring relevance. Any historical understanding of these recurring questions in tax leads to a greater appreciation of the dynamics of these themes today.

The second aim of this study is to demonstrate that despite its relative financial insignificance, the medicine stamp duty and the way it was administered historically had a profound and unforeseen effect on the structures and practice of professional pharmacy, far beyond its original fiscal intent, namely the proprietary medicines it was first planned to address. It was the law of tax that determined the nature, processes and structure of an impost and, in turn, had an impact on the field of activity in which the tax operated. This study examines the effectiveness of the legal regime of the medicine stamp duty as a taxing and regulating instrument, the degree of its influence in the development of the pharmacy profession and its impact on the quality of medicines and the control of therapeutic medicines. The legalistic discourse is adopted and valued as shedding new light and revealing a novel perspective on the history of pharmacy. This study argues that tax is a potent force in the development of the practice of pharmacy, that it has a place within the social, political and economic forces that have been identified as shaping it in the nineteenth and twentieth centuries. Tax is the focus of this study, but it does not, of course, argue that the law of tax is the only, or even a major, factor in determining the historical course of pharmaceutical development. It acknowledges that tax is just one factor among many formative influences in this complex branch of medical history,⁵ but maintains that it is one that can be addressed with value among the others identified by scholars in the medical humanities. Although tax and its legal doctrine constitute one dimension of the study of history, it is one that is frequently ignored, dismissed or regarded as merely incidental.⁶

⁵ See generally Glenn Sonnedecker (ed.), *Kremers and Urdang's History of Pharmacy*, 4th edn (Philadelphia: J. B. Lippincott Company, 1976), pp. 99–121.

⁶ Jan M. Novotny, 'Stamp Duties', (1955) 15 *Journal of Economic History* 288.

It has been neglected because it is, at best, perceived as technical and intractable, at worst because it is regarded as irrelevant, but always because of the dominance of other perspectives. This study seeks to redress the balance, to reveal a neglected force in a major aspect of nineteenth-century social development and to ensure tax takes its place in the intellectual infrastructure of pharmaceutical history, to provide new insights and fresh perspectives and to permit new connections to be made. It further seeks to address the remoteness of tax law to provide an accessible resource for scholars pursuing alternative discourses in the field of pharmaceutical history.

FINANCIAL IMPERATIVES IN EIGHTEENTH-CENTURY ENGLAND

At the time that the British government took the decision to tax medicines in the last quarter of the eighteenth century, it was in urgent need of increased public revenue. Politically the country was in turmoil and rife with faction.⁷ Reeling from the loss of America in 1776, Lord North resigned in 1782, having served for more than a decade as Prime Minister and Chancellor of the Exchequer; the Marquess of Rockingham had died after just three months at the head of his administration; and the Earl of Shelburne's ministry of just eight months was defeated by a cynical alliance between Charles James Fox and Lord North. That ministry, headed by the Duke of Portland and only reluctantly accepted by George III, came into power on 2 April 1783. Financially, the country was in desperate straits. For much of the century it had been at war with France, Spain and, latterly, America, and the challenge facing successive administrations was that of raising sufficient public revenue to meet the escalating costs of these hostilities. The series of long and expensive wars had resulted in an enormous national debt, which reached £234 million in the wake of the American war. The annual tax revenues amounted to some £13 million, and of that more than half serviced the national debt. This financial crisis was of such magnitude that it could not be swiftly resolved. Indeed, when Sir Robert Peel became prime minister more than fifty years later, in 1841, he found a Treasury still empty from the financial aftermath of the wars of the previous century. The debt then claimed more than half of the total gross expenditure of the central government. Furthermore, the tax revenue had fallen as a result of the remission of some duties to promote the Whig principles of free trade, and the population struggled in the face of a series

⁷ David Wilkinson, *The Duke of Portland, Politics and Party in the Age of George III* (Basingstoke: Palgrave Macmillan, 2003), pp. 48–52. See also John Cannon, *The Fox-North Coalition* (Cambridge: Cambridge University Press, 1969), pp. 82–8.

of bad harvests and depressed wages to pay the established taxes on everyday items of life. The financial trials seemed no less severe in the 1840s than they had been in the 1780s.

This challenging economic situation was exacerbated by an added call on the public revenue which was emerging in the early years of the new Victorian age. The economy of late-eighteenth-century Britain was characterised by the domination of agriculture, the modest scale and local nature of domestic commerce and industry,⁸ the small and largely sessile population and the prime importance of land as the basis of political power. Only foreign commerce was important in scale and in its use of capital. The nascent industrialisation of the latter part of the eighteenth century grew and intensified apace, and by 1837 Britain was already in the process of transformation from an agricultural to an industrial economy. Technological advances had revealed the possibility of escape from the constraints of natural power, and from this stemmed the development, at an astonishing speed, of new heavy and manufacturing industry and a revolution in communications. Stimulating and sustaining these developments were the evolution of new markets, both domestic and foreign, and the availability of plentiful labour resulting from the trebling of the population. Britain's economy continued to grow throughout the nineteenth century, rising to such a degree of prosperity that by the last quarter of the century it could indeed claim to be the world's leading industrial nation.

Such rapid economic growth brought with it social problems greater than any the country had yet experienced. The new towns that developed rapidly in centres of industry, attracting workers from the countryside, soon became overcrowded and diseased, giving rise to severe problems of epidemic, criminality and vice.⁹ Other problems of social welfare emerged from the appalling working conditions in mines and factories,¹⁰ with the health, safety and education of children of particular concern. And underlying and intensifying these grave social concerns was the persistent question of poverty. The magnitude of these social welfare problems overwhelmed the essentially medieval legal and governmental infrastructure of early Victorian Britain.¹¹ To act on so many

⁸ See generally, M. J. Daunton, *Progress and Poverty* (Oxford: Oxford University Press, 1995).

⁹ Poor Law Commissioners, *Report on an Inquiry into the Sanitary Condition of the Labouring Population of Great Britain* (London: HMSO, 1842).

¹⁰ First Report of the Central Board of Commissioners for inquiring into the Employment of Children in Factories, *House of Commons Parliamentary Papers* (1833) (450) xx 1 at p. 36.

¹¹ See generally S. G. and E. O. A. Checkland (eds.), *The Poor Law Report of 1834* (London: Pelican Books, 1974), Introduction; Derek Fraser, *The Evolution of the British Welfare State* (London: Macmillan, 1973); David Roberts, *Victorian Origins of the British Welfare State* (Hamden: Archon Books, 1969).

fronts, to gather the information necessary to initiate reform, to frame the legislation, set up commissions and the network of personnel in the field and to regulate and pay the officials concerned was costly. These were not one-off expenditures: what was required was a consistent flow of public revenue to meet what amounted to the increased expenditure of a new bureaucratic state.

The orthodox response to raising public revenue to meet such financial exigencies throughout the eighteenth century invariably included a combination of raising loans and levying taxes.¹² Accepting that the solution to the financial crisis lay in part at least with increased taxation, successive administrations sought to determine how far the existing imposts that formed part of the tax code could meet their pressing demands. In the late eighteenth century, direct taxation was inherently limited and constituted the exception rather than the rule. Such taxation was extraordinary, being limited to times of national emergency – generally war – and no sufficiently developed administrative machinery existed to extend its scope. The principal direct tax was the land tax, originally a tax on real and personal property and incomes but which by the end of the eighteenth century became a tax purely on land in the nature of a perpetual charge.¹³ Although it was levied every year and constituted a real burden on landowners,¹⁴ the tax reduced in importance and effectiveness, and in 1798 provision was made for its redemption.¹⁵

In the late eighteenth century, the fiscal system favoured indirect taxation and direct expenditure taxes, namely the taxation of a range of human events, transactions and commodities. There were various avenues in which public revenue could be raised in this way: taxes on a finished product, on the elements of its manufacture, on its sale, or on the seller, sometimes all at the same time, sometimes only one or more elements. The reason lay in dominant orthodox views as to the nature of desirable taxation, a fiscal ideology that excluded direct taxation from realistic consideration as a routine means

¹² See John Brewer, *The Sinews of Power* (London: Unwin Hyman, 1989), pp. 88–134.

¹³ See generally B. E. V. Sabine, *A Short History of Taxation* (London: Butterworths, 1980), pp. 103–7; Thirteenth Report of the Commissioners of Inland Revenue, *House of Commons Parliamentary Papers* (1870) (C. 82) xx 193 at pp. 314–22; W. R. Ward, *The English Land Tax in the Eighteenth Century* (London: Oxford University Press, 1953); Paul Langford, *Public Life and the Propertied Englishman 1689–1798* (Oxford: Clarendon Press, 1991), pp. 339–66; J. V. Beckett, 'Land Tax or Excise: The Levying of Taxation in Seventeenth- and Eighteenth-Century England' (1985) 100 *English Historical Review* 285; William Phillips, 'No Flowers, By Request' (1963) *British Tax Review* 285.

¹⁴ See R. A. C. Parker, 'Direct Taxation on the Coke Estates in the Eighteenth Century' (1956) 71 *English Historical Review* 247.

¹⁵ Land Tax Perpetuation Act 1798 (38 Geo. III c. 60); Anon., *Considerations on the Act for the Redemption of the Land Tax* (London: J. Payne, 1798).

of raising public revenue. These were expressed in a number of canons, all stemming from the fundamental constitutional principle of consent to taxation, each of which inevitably led to a preference for indirect and expenditure taxation. These canons were set down by Adam Smith in his *Wealth of Nations* in 1776¹⁶ to the effect that taxes should be voluntary and non-inquisitorial, that any direct assessment should be necessary and that the role of central government in assessment and collection should be kept to a minimum. It was also widely accepted that the poor should be taxed sensitively or not at all. Indirect and expenditure taxation went a long way towards satisfying these principles. Arguably, being directed to meet the nation's needs, all taxation was necessary. It was voluntary because, being imposed on luxuries rather than necessities, the individual had a choice whether to purchase the item and, accordingly, whether to bear the tax. By the same reasoning expenditure taxes were thought to constitute an accurate taxation of wealth and ensured that the poor were taxed as lightly as possible. Taxes on commodities were generally non-inquisitorial, that is, not requiring an intrusive inquiry into the personal financial affairs of individuals and so leaving any questions of means or income untouched by the officers of the executive. Furthermore, the costs of collecting indirect taxes were generally, although not invariably, lower than the costs of collecting direct taxes, requiring minimum effort by the executive who collected the tax from the merchant. This reflected a further immense advantage enjoyed by indirect taxes. As Adam Smith observed, taxes on commodities were 'not so much murmured against' because they were imposed in the first instance on the manufacturer or seller, who would increase the price of the commodity accordingly to pass the burden of the tax to the purchaser. The tax was thereby 'insensibly paid by the people'.¹⁷ Thereafter, the duty could be increased, as small rises would barely be noticed. Such a low degree of public awareness promoted compliance.

Ideology and pragmatism, therefore, ensured that in the eighteenth century the public revenue was raised almost entirely through indirect and expenditure taxes.¹⁸ These comprised the excise and the customs duties, a raft of assessed taxes and the stamp duties. Of these, the excise, introduced as part of the financial measures of the civil war in 1643, was the most productive. It applied

¹⁶ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (R. H. Campbell, A. S. Skinner, W. B. Todd (eds.), 2 vols. (Oxford: Clarendon Press, 1976), vol. 2, pp. 825–8.

¹⁷ Adam Smith, *Lectures on Justice, Police, Revenue and Arms delivered in 1763* (Oxford: Clarendon Press, 1896), p. 243.

¹⁸ Patrick K. O'Brien, 'The Political Economy of British Taxation, 1660–1815' (1988) 41 *Economic History Review* 1.

to a wide range of domestically produced articles and raw materials intended for home consumption, and came to include beer, malt, spirits, soap, salt, candles, coal and paper, and was levied at the point of production or the point of sale. It also comprised various licences such as those to auctioneers, brewers, maltsters, tobacco dealers, vinegar makers and wine dealers. It raised the greatest proportion of revenue and its department was the largest by far of all the fiscal offices. Next in productivity came the ancient customs. They were imposed at the ports primarily on imported goods, notably spirits, beer, wine and tobacco, paid by the merchant and the cost passed on to the consumer.¹⁹ They were set as a percentage on the value of the goods in the two Books of Rates, tables of duties agreed by Parliament and signed by the Speaker. The first Book of Rates was compiled during the speakership of Sir Harbottle Grimstone in 1660,²⁰ and it was supplemented in the time of Sir Spencer Compton to include in a second book goods not specified in the original.²¹ Assessed taxes, which were strictly direct taxes, had the most various objects of charge in the seventeenth century, including burials, bachelors, glass, stone and earthenware bottles, windows and hearths, and throughout the eighteenth century taxes were imposed on armorial bearings, dogs, servants, silver and many other items.²² The last in the portfolio of indirect taxes of the British fiscal system was the stamp duty. As with many of Britain's financial instruments, it had first been adopted from Holland and introduced into Britain in 1694 to help finance the war against France.²³ The duty was originally imposed on the vellum, parchment and paper on which legal transactions, agreements and proceedings were written.²⁴ As such it applied to documents such as insurance policies, documents in court proceedings, grants of honour, probate and

¹⁹ For a history of the customs duties see First Report, Commissioners of Customs, *House of Commons Parliamentary Papers* (1857) (2186) iii 301 at pp. 358–76. See generally Edward Carson, 'The Development of Taxation up to the 18th Century' (1984) *British Tax Review* 237; John Craig, *A History of Red Tape* (London: Macdonald & Evans Ltd, 1955), pp. 91–6; William Phillips, 'Anything to Declare' (1965) *British Tax Review* 226.

²⁰ Referred to in the Act of Tonnage and Poundage 1660 (12 Car. II c. 4) s. 6.

²¹ Act Amending the Act of Tonnage and Poundage 1724 (11 Geo I c. 7) s. 2. See Stephen Dowell, *A History of Taxation and Taxes in England*, 4 vols. (London: Longmans, Green and Co., 1884), vol. 2, pp. 17–20, 95–6.

²² Report and Minutes of Evidence from the Select Committee on Inland Revenue and Customs Establishments, *House of Commons Parliamentary Papers* (1862) (370) xii 131 at q. 32.

²³ Stamp Act 1694 (5 & 6 Will. & M. c. 21). For the early history of the stamp duties, see Edward Hughes, 'The English Stamp Duties, 1664–1764' (1941) 56 *English Historical Review* 234; H. Dagnall, *Creating a Good Impression* (London: HMSO, 1994), pp. 3–14; See generally R. S. Nock, '1694 And All That' (1994) *British Tax Review* 432; Dowell, *History of Taxation*, vol. 3, pp. 321–46.

²⁴ 5 & 6 Will. & M. c. 21 s. 3.

letters of administration. The stamp duty was either a fixed amount depending on the nature of the item in question, or an ad valorem duty depending on the value involved, and ranged from one penny to forty shillings. It was immediately successful as a tax.

Not all the indirect taxes enjoyed an unrestricted potential for expansion. Customs duties had to be carefully managed due to their unique possible impact in the wider sphere of foreign trade and politics. Indeed, when Sir Robert Peel reintroduced the income tax in 1842, he did so to ‘unlock the Free Trade cupboard.’²⁵ The excise was of equal, albeit domestic, sensitivity. Being imposed primarily on commodities perceived as necessities rather than luxuries as orthodox understanding of fairness demanded, and obtrusively administered by officers of central government, it had been immensely unpopular in the years after its introduction.²⁶ ‘[I]ts very name,’ observed Blackstone, ‘has been odious to the people of England.’²⁷ Although this resentment of the excise was diminishing by the close of the eighteenth century, and excise riots were rare,²⁸ governments were wary of straining this fragile popular acceptance too far. When Lord John Cavendish, Chancellor of the Exchequer in the Fox-North coalition, was searching for new sources of revenue in 1783, he said that the bad weather and poor harvests of recent years prevented him from raising the customs and excise duties, for the burden would ultimately fall on corn and that would cause national distress.²⁹ So while both customs and excise were increased during the eighteenth century, reaching their peak in the early nineteenth century before beginning their decline in the face of the movement for free trade,³⁰ it was done with caution. As to the assessed taxes, the danger in extending these lay in popular resentment of direct taxation and a perception that the British were overtaxed.

²⁵ G. M. Trevelyan, *British History in the Nineteenth Century and After (1782–1919)*, 2nd edn (London: Longmans, Green & Co., 1937), p. 267. See generally J. H. Clapham, *An Economic History of Modern Britain: Free Trade and Steel 1850–1886* (Cambridge University Press, 1932), pp. 398–9; Brewer, *Sinews of Power*, p. 100.

²⁶ Edward Raymond Turner, ‘Early Opinion about English Excise’ (1916) 21 *American Historical Review* 314.

²⁷ Blackstone, *Commentaries on the Laws of England*, E. Christian (ed), 15th edn (London: T. Cadell and W. Davies, 1809), vol. 1, p. 319.

²⁸ Michael J. Braddick, ‘Popular Politics and Public Policy: The Excise Riot at Smithfield in February 1647 and its Aftermath’ (1991) 34 *Historical Journal* 597; Stephen Matthews, ‘A Tax Riot in Tewkesbury in 1805’ (2002) *British Tax Review* 437.

²⁹ And, implicitly, any potential popular unrest: *Parliamentary Register 1780–1796*, vol. 10, 26 May 1783, p. 67 *per* Lord John Cavendish.

³⁰ See generally Graham Smith, *Something to Declare, 1000 years of Customs and Excise* (London: Harrap, 1980).