

# **TAX AND QUACKS: THE POLICY OF THE EIGHTEENTH CENTURY MEDICINE STAMP DUTY\***

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## **INTRODUCTION**

It is a rarity in the history of taxation to find an enduring tax on a specific commodity. In general such taxes constitute the ephemeral subject-matter of a major species of tax, the content shifting with changing social, political and fiscal imperatives. Imposts on hats, gloves, carriages, servants, windows, hair powder and armorial bearings are reflections of an earlier age where taxation had yet to reach the degree of sophistication and organisation that was to emerge in the later nineteenth century. The medicine stamp duty was a tax that was introduced in the context of a trade in medicines promoted and puffed by a wide range of unqualified entrepreneurs who were collectively and popularly known as quacks. They invented and sold remedies to the general public, with secret compositions and exaggerated claims for their efficacy in curing, preventing or relieving illness. These remedies were unproven, sometimes useless, frequently dangerous, and they were consumed in prodigious quantities by a gullible populace 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 and was viewed by many European states with concern.

The overall aim of this paper is to analyse the nature of the British fiscal response to this problem and to identify the various social, political and legal forces that drove it. Specifically, and first, it ascertains whether the introduction of the medicine stamp duty was an attempt to curb or control the trade in quack medicines or merely to raise urgently-needed revenue, or both. Secondly, it establishes why Britain chose to tax when its European neighbours adopted an overt regulatory regime. Thirdly, it investigates whether the tax was

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perceived as an alternative to, or a form of, the regulation of dangerous medicines and unqualified medical practice. Finally, it explores the character of the original tax to identify what it was in its original form that enabled it to transcend fiscal fashions and endure for 160 years into the modern age of taxation.

## **THE PHENOMENON OF QUACKERY**

A plurality of medical services characterised the eighteenth century. Physicians and apothecaries, along with surgeons, constituted the regular medical profession, at the core of which lay the professional values of education, ethics and, theoretically, monopoly. If they had the means, the sick would consult a physician, the elite of the medical world, and if less eased they could consult an apothecary for advice. Equally, however, the public, and especially the poor, would consult an array of individuals operating on the fringe of orthodox medical practice. One facet of medical treatment in the eighteenth century was the use of therapeutic medicines. A physician would prescribe medicines to be made up by an apothecary on his instructions, following a one to one consultation between physician and the individual patient. Apothecaries, and later chemists and druggists, would stock standard medicines prepared according to the official pharmacopoeia. There developed a widespread and growing culture of self-treatment, with the public purchasing medicines created by individuals who were neither physician nor apothecary, and were commonly known as quacks. The invention and sale of medicines was central to the activities of the great majority of quacks.

The precise meaning of the term 'quack' was always uncertain, and problems of definition pervade this field of activity. It was a subjective term, generally used as a term of abuse, and was loosely used to describe an unorthodox medical practitioner, with

connotations of amateurism and false premises.<sup>1</sup> It included a diverse range of practitioners, notably individual medicine vendors and entrepreneurs who at best were astute businessmen, at worst were simply crooks. However the term also included members of the regular medical profession who engaged in commercial activity. This, and the fact that quack remedies were often concocted from ingredients used by regular practitioners in the preparation of the medicines they prescribed,<sup>2</sup> served to make the dividing line between quack medicines and orthodox medicines extremely difficult to draw. So while the term quack was a familiar term that most people felt they understood instantly and precisely, it was one that was particularly challenging to define.

The pre-eminent feature of quack medicines was their highly pronounced commercial nature. Quack medicines were invariably aggressively advertised to the public. By the eighteenth century, the preferred method of publicising such products was through advertisements in the ever increasing number of national and provincial newspapers.<sup>3</sup> The advertisements nearly always made exaggerated and miraculous claims for the medicines' powers in curing, preventing or relieving every illness from the common cold to cancers and tuberculosis. These claims were generally supported by fulsome testimonials from respectable middle class individuals or, even better, the nobility or royalty.<sup>4</sup> The name of the product was prominent, usually reflecting that of the inventor or proprietor, who thereby claimed the formula as their own and accordingly kept it secret. Secrecy was a central characteristic of quack medicines in order to maintain the exclusive right to manufacture, and some inventors went further and sought the formal protection of Letters Patent from the

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<sup>1</sup> James Makittrick Adair, 'Essay on Empiricism or Quackery' in *Medical Cautions for the Consideration of Invalids* (Bath, R Cruttwell, 1786) 138.

<sup>2</sup> *ibid* 132.

<sup>3</sup> Roy Porter, *Quacks, Fakers & Charlatans in English Medicine*. (Stroud, Tempus Publishing Ltd, 2000) 109-14. This book is the illustrated version of Professor Porter's seminal work on quackery, Roy Porter, *Health for Sale, Quackery in England 1650-1850* (Manchester, Manchester University Press, 1989).

<sup>4</sup> See the testimonials for Spilsbury's Antiscorbutic Drops in *Bath Chronicle*, 23 September 1784.

Crown.<sup>5</sup> However the extremely costly and cumbersome processes<sup>6</sup> meant that the great majority of medicines sold were not formally patented. But in order to give their medicines an aura of official approbation, many quack medicine vendors falsely claimed a patent, most consumers being entirely unaware whether a particular medicine was formally patented or not. By the eighteenth century the terms quack, proprietary, patent, nostrum and empiric were used interchangeably, with the term 'patent medicine' being the most widely, and inaccurately, employed.

The trade in quack medicines was at its height in the eighteenth century.<sup>7</sup> At least 200 were well known in 1748,<sup>8</sup> with many such as Dr Johnson's Yellow Ointment, Daffy's Elixir, Friar's Balsam, Dr James' Fever Powders and Velnos' Vegetable Syrup being household names and consumed in vast quantities. Many celebrated individuals used quack remedies. For example, Queen Anne, who was severely short sighted, swore by her oculist William Read, a tailor by trade;<sup>9</sup> and George II employed Joshua Ward, who had once worked in the salt trade, to attend to his dislocated thumb.<sup>10</sup> Various powerful economic and social factors combined to create and sustain this intense demand for quack medicines from people of all classes, from the educated and wealthy to the poor and ignorant. In the eighteenth century, acute and chronic illnesses were widespread, death rates high and the age of mortality low.<sup>11</sup> Healthcare was rudimentary, as the state of medical science in the Western world was as yet undeveloped and the causes of disease not understood. Most serious diseases could not be cured, relieved or prevented by orthodox medical practitioners. Individuals thus naturally sought whatever relief they could obtain from

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<sup>5</sup> Statute of Monopolies 1624 (21 James I c 3), s 6; Stephen Dowell, *A History of Taxation and Taxes in England*, 4 vols (London, Longmans, Green and Co, 1884) vol 4, 366.

<sup>6</sup> See the process described in William Holdsworth, *A History of English Law* (London, Methuen & Co Ltd, 1965) vol 15, 35-7. See too Adair, 'Essay,' 141.

<sup>7</sup> Adair, 'Essay,' 126. See generally Porter, *Quacks*, 24-43.

<sup>8</sup> 'Pharmacopoeia Empirica' (1748) 18 *Gentleman's Magazine* 346-50.

<sup>9</sup> Leslie G Matthews, 'Licensed Mountebanks in Britain' (1964) 19 *Journal of the History of Medicine* 30, 45.

<sup>10</sup> Porter, *Quacks*, 61, 68.

<sup>11</sup> *ibid* 32-3.

whatever source, and were prepared to try almost anything. The sick, the ignorant, the gullible and the desperate were the stock in trade of the quack medicine vendor. Enjoying other advantages such as convenience, ease of purchase, anonymity, and some degree of efficacy,<sup>12</sup> the trade in quack medicines went from strength to strength. There were concerns, however. Many quack medicines were merely benign, useless and unpleasant, containing bread, brick-dust or sheep dung,<sup>13</sup> but many were dangerous. They were sold to the general public with no individual consultation and contained powerful and often harmful ingredients in unregulated amounts and concentrations. Toxic constituents such as mercury and antimony, and addictive substances such as alcohol and opium, were routinely used.<sup>14</sup> The power of vested interests along with perhaps a genuine desire to protect the public from unscrupulous vendors of harmful medicines, combined to create a denigration of these medicines as quack medicines. The outcome was a call for some form of regulation.

## **THE LAW'S RESPONSE**

It was in this context of a thriving trade that Lord John Cavendish introduced the medicine stamp duty in 1783 with the intention of taxing quack medicines for the first time.<sup>15</sup> The Act provided that all persons selling medicines in Great Britain had to purchase an annual licence,<sup>16</sup> and that any medicines they sold had to pay stamp duty on the container of the medicine at a rate which depended on the value of the medicine sold. The stamp had to be fixed to the bottle, packet, phial or box to show that the duty had been paid before sale, and in such a way that the medicine could not be consumed without tearing the stamp.<sup>17</sup> This

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<sup>12</sup> eg Dr James' Powders: Adair, 'Essay,' 134.

<sup>13</sup> *ibid* 141.

<sup>14</sup> (1734) 4 *Gentleman's Magazine* 616-18. See generally R Ian McCallum, *Antimony in Medical History* (Bishop Auckland, Pentland Press, 1999).

<sup>15</sup> 23 Geo III c 62.

<sup>16</sup> 23 Geo III c 62 ss 1, 5.

<sup>17</sup> The notion of stamping the wrapper of an article subject to duty was not new. In the case of the 1711 tax on playing cards, the pack of cards would be enclosed in a wrapper that had already been sent to the Stamp Office to be stamped.

comprehensive charge was refined by the inclusion of a number of exemptions. Mindful of the difficulties in defining quack medicines sufficiently precisely to tax them, the Chancellor of the Exchequer took the view that the only alternative was to judge the quality of the medicines by the status of the vendor; that medicines sold by medically qualified persons would be wholesome, while those sold by unqualified persons could be harmful. Accordingly, the 1783 Act was directed primarily to the sellers, and not to the medicines they sold,<sup>18</sup> and those who had served an apprenticeship to a surgeon, apothecary, chemist and druggist,<sup>19</sup> or who had served as a navy or army surgeon<sup>20</sup> were exempt.<sup>21</sup> Another exemption, not related to medical qualification, applied to individuals who had kept a shop 'for the vending of drugs and medicines only, not being drugs or medicines sold by virtue of His Majesty's Letters Patent' and had done so for three years before the passing of the Act.<sup>22</sup> Unqualified persons wishing to sell medicines had to be licensed, and the intention of the Act was that all licensed persons should pay tax on all the medicines they sold.

The 1783 Act was an immediate financial failure, yielding well under half its predicted revenue.<sup>23</sup> William Pitt replaced the Act by a radically recast measure only two years later. The second Medicine Stamp Act 1785<sup>24</sup> laid down the duty in the form it was fundamentally to retain until its abolition some 160 years later and did so with immediate financial success.<sup>25</sup> At the end of its first year the reformed duty had yielded over £12,000 and that remained more or less constant until 1800, when it rose over £14,000.<sup>26</sup> The Act adopted a different and more realistic approach, reflecting the acknowledged need clearly to

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<sup>18</sup> See notice in *St. James's Chronicle or the British Evening Post*, 11-14 September 1784, issue 3670.

<sup>19</sup> 23 Geo III c 62 s 1.

<sup>20</sup> *ibid* s 2.

<sup>21</sup> Physicians were not included in this exemption because they were not permitted to dispense medicines.

<sup>22</sup> 23 Geo III c 62 s 1.

<sup>23</sup> Board of Customs and Excise and Predecessor: Private Office Papers, Medicine Stamp Duty 1783-1936, The National Archives (hereafter TNA) CUST 118/366 at p 6.

<sup>24</sup> 25 Geo III c 79.

<sup>25</sup> *Morning Chronicle and London Advertiser*, 26 September 1785.

<sup>26</sup> Board of Customs and Excise and Predecessor: Private Office Papers, Medicine Stamp Duty 1783-1936, TNA CUST 118/366 at p 11.

set out the object of charge – the medicine – and to attach the duty to it whoever should happen to be selling it. In other words, the duty had to attach primarily to the medicine, not to the vendor. Pitt directly addressed the difficulties inherent in the definition of key terms and subjective popular perceptions and arrived at an objective test to tax quack medicines. The Act began by charging every packet of medicine sold in Great Britain, irrespective of the vendor's status.<sup>27</sup> It then refined this general and all-inclusive charge, explaining it more precisely in an official description of the remedies that were to be taxed,<sup>28</sup> and carefully, realistically and accurately identified the universally recognised characteristics of quack medicines.<sup>29</sup> The Act brought into charge every preparation used as a medicine to prevent, cure or relieve any human ailment, if the maker or seller made or sold it under Letters Patent, or claimed a secret art, or an exclusive right in doing so, or recommended it to the public as an effective remedy, or if it was expressly named in a supplementing schedule, which contained over eighty named preparations, including famous ones such as Bateman's Drops, Daffy's Elixir and Turlington's Balsam. This was a pragmatic and realistic approach, correctly identifying secrecy, ignorance, deception, publicity and proprietary claims as the leading characteristics of quacks and the medicines they sold and thereby showing an understanding of these powerful social and cultural beliefs. As the characteristics laid down were disjunctive, the scope of the charge was very wide. It covered all patented, secret, proprietary, advertised and scheduled medicines. The rate was as before determined by the value of the medicine,<sup>30</sup> and the requirement to obtain a licence remained.<sup>31</sup>

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<sup>27</sup> 25 Geo III c 79 s 2: the duty attached to 'every packet, box, bottle, phial, or other inclosure, containing any drugs, oils, waters, essences, tinctures, powders, or other preparation or composition whatsoever, used or applied, or to be used or applied, externally or internally, as medicines or medicaments, for the prevention, cure, or relief of any disorder or complaint incident to, or in anywise affecting, the human body, which shall be uttered or vended in Great Britain'.

<sup>28</sup> *ibid* s 16.

<sup>29</sup> Porter, *Quacks*, 11.

<sup>30</sup> 25 Geo III c 79 s 2.

<sup>31</sup> *ibid* ss 5, 7.

As the duty was grounded in the nature of the taxed medicine as a quack medicine, it followed that no exemptions could properly be given.<sup>32</sup> Nevertheless, Pitt wished to ensure that legitimate medical and pharmaceutical practice was not undermined. He did so by including three exemptions. The first applied to imported medicines which were already subject to customs duties, mainly natural drugs and certain chemicals in general use by chemists and druggists and apothecaries.<sup>33</sup> The second exempted medicines which were 'entire', namely pure and unmixed, and were sold by a medically qualified or licensed person.<sup>34</sup> And the third exempted composite medicines which were 'known, admitted and approved' remedies for illnesses and where they were sold by a qualified person.<sup>35</sup> It could not be claimed if the medicine was secret, proprietary, patent or recommended as an effective remedy.<sup>36</sup> This exemption, which Dowell suggested was included in order to make it quite clear that ordinary medicines were no longer chargeable,<sup>37</sup> was to become of immense importance to the modern pharmacist.

## THE RATIONALE OF THE TAX

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<sup>32</sup> Stamp Office: Observations upon the present Medicine Act and Proposals for an Improvement of that Duty, TNA T1/624/514-19, 21 May 1785.

<sup>33</sup> 25 Geo III c 79 s 3. See Board of Customs and Excise and Predecessor: Private Office Papers, Medicine Stamp Duty 1783-1936, TNA CUST 118/366 at Appendix 1 and para 17.

<sup>34</sup> 25 Geo III c 79 s 3.

<sup>35</sup> *ibid* s 4.

<sup>36</sup> *ibid*.

<sup>37</sup> Dowell, *History*, vol 4, 367.

The objective of the legislation in introducing the medicine stamp duty was undoubtedly to tax quack medicines and not medicines in general.<sup>38</sup> In all pre-legislation discussion and when he introduced the tax in 1783, Lord John Cavendish expressly called it a tax on quack medicines, and knew the term would be well understood by his audience in the House. Newspaper reports gave it the same name,<sup>39</sup> and contemporary pamphleteers agreed. The public too took the duty as one that attached to quack medicines.<sup>40</sup> The non-appearance of the term 'quack medicines' in the legislation itself was not significant and not an indication of the object of the charge. The constitutional principle of consent to taxation demanded that a tax be imposed only in express and clear words. There was a clear tension between this requirement and the term quack medicine. Although it was a familiar term that was widely understood, it was virtually impossible to define. It was a slang term, with no clear meaning, and was certainly far too loose to be used in an instrument as formal as an Act of Parliament. The Stamp Office itself acknowledged that it was 'unfit to be introduced into an Act of the Legislature'.<sup>41</sup>

The underlying purpose of imposing the tax, however, is not self-evident. It is tempting, particularly in retrospect, to assume that when a tax is imposed on an activity or commodity that has been identified as an obvious evil, it was imposed in order to address that mischief. However the forces at play in the imposition and maintenance of a tax are complex, and the essential character of the medicine stamp duty as a regulatory instrument or merely a means of revenue-raising is far from clear.

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<sup>38</sup> The Stamp Commissioners expressly confirmed it in 1785: Stamp Office: Observations upon the present Medicine Act and Proposals for an Improvement of that Duty, TNA T1/624/514-19, 21 May 1785.

<sup>39</sup> The term is used, for example, in *Public Advertiser* 12 July 1783; *Morning Herald and Daily Advertiser* 11 July 1783.

<sup>40</sup> See the wedding announcement in *Morning Post and Daily Advertiser* 8 September 1785.

<sup>41</sup> Stamp Office: Observations upon the present Medicine Act and Proposals for an Improvement of that Duty, TNA T1/624/514-19, 21 May 1785.

The political reality was undeniable. In the late eighteenth century there was a desperate need for public revenue. Transcending a political maelstrom<sup>42</sup> was the parlous financial state of the country. Britain had been at war for much of the eighteenth century, against France, Spain and, latterly, America, and the challenge facing successive administrations was that of raising sufficient public revenue to finance their bellicose activities. More specifically, in the early 1780s, when the medicine stamp duty was first introduced, Britain faced urgent and considerable financial exigencies. Cavendish's budget was not strictly a war budget, as the preliminaries of peace with France and Spain had been signed five months earlier, and the Treaty of Versailles between the three parties would be signed the following September. However the size of the national debt was the result of a series of long and expensive wars. The American war had left Britain's finances seriously depleted and with a national debt of £234 million. The annual tax revenues amounted to some £13 million, and of that £8 million serviced the national debt.<sup>43</sup>

And so when the tax was first introduced, the anticipated yield of £15,000<sup>44</sup> would have constituted a small but welcome contribution in the context of Britain's finances. The payment of the interest on the newly floated loan of £12 million was the only justification that Lord John Cavendish gave for imposing any of his new taxes in 1783. He admitted the task was unpleasant for any Chancellor of the Exchequer, but he would endeavour to ensure the least inconvenience to the public. The bad weather and poor harvests of recent years prevented him raising the customs and excise duties, for the burden would ultimately fall on corn and that would cause national distress. He chose, instead, to both increase current stamp duties and introduce new objects of charge, because such imposts would raise a large revenue 'without materially affecting the poor'.<sup>45</sup> He calculated that his proposals would

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<sup>42</sup>David Wilkinson, *The Duke of Portland, Politics and Party in the Age of George III* (Basingstoke, Palgrave Macmillan, 2003) 48-52. See too John Cannon, *The Fox-North Coalition* (Cambridge, Cambridge University Press, 1969) 82-88.

<sup>43</sup> See generally John Jeffrey-Cook, 'William Pitt and his Taxes' (2010) *British Tax Review* 376, 380.

<sup>44</sup> 10 *Parliamentary Register 1780-1796* 71, 26 May 1783 per Lord John Cavendish

<sup>45</sup> *ibid* 70.

raise £560,000.<sup>46</sup> There was no suggestion, in relation to the tax on quack medicines, that there was any reason other than the raising of revenue. The Chancellor chose as his objects of new taxation those he felt 'could well bear taxation, and be truly productive'.<sup>47</sup> He made no mention of the possible evils of the trade and expressed no concern for the health of the public. He gave no reasons for the introduction of the medicine stamp duty other than the generalised justifications he outlined in introducing his budget. Indeed, only in relation to the taxation of the registration of births, marriages and deaths did he mention that it was a matter of policy and not merely finance.<sup>48</sup> And when Pitt succeeded Cavendish in January 1784, amid political chaos and less than four months after the 1783 Act came into force, he had to address the same immense and largely unabated financial challenge. Pitt's financial policy was, therefore, equally dominated by the urgent need for fresh sources of public revenue and ensuring that established ones were made as productive as possible. His principal financial objective was to create a surplus so that he could reduce the country's enormous national debt,<sup>49</sup> and he looked to taxation to achieve it.

The argument that the medicine stamp duty was imposed for purely financial reasons is supported by its fiscal context. It was just one of a number of new taxes, many of which had no discernible wider policy perspective at all. The taxation of a large variety of human events, transactions and commodities was a characteristic of British taxation from the seventeenth century onwards. Taxes on burials, on bachelors, on glass, stone and earthenware bottles, on windows and on hearths were all found in the seventeenth century, and throughout the eighteenth century taxes were imposed on hair powder, dogs, servants, silver, beer, candles, coal and many other items. Furthermore, stamp duties in particular proliferated, a trend which Cavendish continued by taxing promissory notes, receipts, contracts and inventories, carriages and the registration of births, marriages and deaths and

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<sup>46</sup> *ibid* 73.

<sup>47</sup> *ibid* 67.

<sup>48</sup> *ibid* 72.

<sup>49</sup> Michael Duffy, *The Younger Pitt*, (Harlow, Longman 2000) 81, 85-86.

increasing the duties or extending them on bills of exchange, probates and legacies, bonds, law proceedings, the admission to certain bodies such as the Inns of Court and stage coaches.<sup>50</sup> As such, the medicine stamp duty was a minor feature of Lord John Cavendish's budget, but nevertheless part of a comprehensive increase in the scope of stamp duty taxation.

Equally in urgent need of increased public revenue, Pitt looked to taxation and explored every item as a possible object of charge – corks, guns, pins, fans, printed music, visiting cards, operas, clocks, racecourses, ropes and so on.<sup>51</sup> He was certainly a prodigious and effective tax legislator and reformer, who would introduce seventeen new taxes during his ministries, reforming existing ones and thoroughly overhauling the structures for the administration of the taxes.<sup>52</sup> His fiscal approach was immediately clear in his budget of June 1784, where he increased or extended a number of established taxes, and introduced new duties including those on bricks and tiles, horses, game licences and hats.<sup>53</sup> The last resembled the medicine stamp duty, being a stamp duty on a luxury commodity. He favoured the imposition of licences on shopkeepers and traders as a form of business taxation and proceeded to extend the practice.<sup>54</sup> Clear sighted, acute and above all pragmatic, Pitt was prepared to increase existing taxes, introduce new ones, abolish old ones, improve administration, take advice from friends, the revenue departments and commercial interests,<sup>55</sup> and in doing all this to be guided by the principles of taxation derived from Adam Smith. And so he chose not to abolish the medicine stamp duty but to reform it as part of this general traditional policy and surge of fiscal activity, agreeing with the view of the Stamp Commissioners, expressed only four months after the 1783 Act came

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<sup>50</sup> 10 *Parliamentary Register 1780-1796*, 66-73, 26 May 1783 *per* Lord John Cavendish.

<sup>51</sup> Dowell, *History*, vol 2, 186-87.

<sup>52</sup> See Jeffrey-Cook, 'Pitt and his Taxes,' 376-91.

<sup>53</sup> 15 *Parliamentary Register 1780-1796*, 272-88, 30 June 1784.

<sup>54</sup> *Ibid* 285.

<sup>55</sup> Jeffrey-Cook, 'Pitt and his Taxes' 381-82; Duffy, *Younger Pitt*, 75-78; 136-37.

into force, that although the duty was 'in some respects incomplete', it 'merits attention, as an object of revenue that may admit of much extension and improvement'.<sup>56</sup>

In July 1785 the first Medicine Stamp Duty Act was addressed by the House and a revised Act considered.<sup>57</sup> Many tax reforms of the eighteenth century resulted from suggestions from the revenue boards themselves, and the stamp duty was no exception. It was unsurprising, therefore, that the recasting of the medicine stamp duty by Pitt in 1785 was effected entirely in accordance with the proposals of the Stamp Commissioners in order to make the law workable and profitable.<sup>58</sup>

Equally influential in determining the financial rationale of the medicine stamp duty was the orthodox understanding of the nature of taxation in the eighteenth century, and indeed until well into the twentieth, as an instrument of government whose sole object was to raise money. This was indeed confirmed when the Stamp Office adopted the conventional determinant of the success of a tax, and declared that with an annual yield of just a quarter of the anticipated return, the 1783 medicine stamp duty was a failure.<sup>59</sup> With the exception of customs duties, which were used to achieve strategic economic objectives, tax was not conceived of as an instrument to effect any non-financial policy. The remedying of social ills did not fit into this paradigm, and accordingly taxation was only very exceptionally introduced deliberately to control harmful social behaviour. Indeed, a rare and earlier attempt to use tax in this way had proved a complete failure. The demand for strong drink in the early eighteenth century had led to the development of a new spirit made from malt spirit manufactured in England, mixed with other spirits paying little duty, and flavoured with juniper berries. It was called gin, and its consumption particularly among the poor grew at such an alarming rate that the legislature felt compelled to intervene to curb public

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<sup>56</sup> First Report from the Committee Appointed to Enquire into the Illicit Practices Used in Defrauding the Revenue, 38 *House of Commons Sessional Papers of the Eighteenth Century* 23 (24 December 1783).

<sup>57</sup> 40 *Journals of the House of Commons* 1144, 15 July 1785.

<sup>58</sup> Stamp Office: Observations upon the present Medicine Act and Proposals for an Improvement of that Duty, TNA T1/624/514-19, 21 May 1785

<sup>59</sup> Board of Customs and Excise and predecessor: Private Office Papers, Medicine Stamp Duty 1783-1936, TNA CUST 118/366, p 6.

drunkenness,<sup>60</sup> believing that the affordability of gin was the cause of the problem. It aimed to control the trade through taxation. Stringent legislation in 1736 imposed a very heavy tax on all spirits, and a licence duty of £50 on their retailers.<sup>61</sup> The Act failed because so comprehensive were its provisions that it had the effect of depriving the people of all spirits, which was totally unacceptable to them. Spirits were still sold, often under the guise of medicines, and the legislation was simply evaded. Prohibitive taxation had clearly failed, and so a more moderate regime of taxation of spirits was imposed and maintained in its place in the mid eighteenth century.<sup>62</sup>

Furthermore, the traditional perception of taxation as primarily an instrument of revenue-raising led governments to adopt an attitude of unconcern as to the possible or actual social effects of a tax. For example, the harmful effect on the public health of the window tax began to be understood in the earliest years of urban growth and despite a growing body of evidence confirming its injurious consequences, the government refused to repeal it until the middle years of the nineteenth century.<sup>63</sup>

Finally, fiscal ambitions appear far more likely than any regulatory ones, since the 1783 Act was wholly unconvincing as a means of suppressing quack medicines. It permitted qualified persons to sell any quack medicine they wished, free of duty, and unqualified individuals could sell them as long as they had a licence and paid the duty. The legislation did not include any provision to ensure the regulation or scrutiny of applicants for licences, and it would seem that a completely unqualified individual could obtain a licence to sell any medicine, as long as it was paid for. The Act, therefore, imposed no control on the quality of the medicines sold to the public, and suggests that the legislature had no direct concern with this matter. At best, the legislature took the view that only unqualified individuals would

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<sup>60</sup> See generally Dowell, *History*, vol 4, 103-9.

<sup>61</sup> 9 Geo II c 23.

<sup>62</sup> 24 Geo II c 40 (1751).

<sup>63</sup> Chantal Stebbings, 'Public Health Imperatives and Taxation Policy: the Window Tax as an Early Paradigm in English Law' in J Tiley (ed), *Studies in the History of Tax Law*, vol 5 (Oxford, Hart Publishing, 2011) 43.

sell dangerous or inappropriate medicines, and qualified persons would not. And so by targeting unqualified vendors they would thereby control the sale of their medicines which, by the nature of the vendors as unqualified, were presumed to be quack remedies. Although this vestigial quality control was undermined by the exemption for established shopkeepers, it was removed entirely by the Act of 1785. With the shift in focus from the seller to the medicine itself, the qualification of the former became entirely irrelevant. Anyone could sell quack medicines as long as a licence was purchased and the medicines were stamped. The licence merely assisted the supervision and collection of the revenue and constituted no kind of guarantee that the vendors were qualified in any way other than materially.

Despite these strong indications that the tax was driven entirely by pecuniary motives,<sup>64</sup> the evidence establishes that the medicine stamp duty was introduced for two, albeit unequal purposes, namely a primary purpose to raise revenue, and secondarily to impose a modicum of control over the trade in quack medicines. Although it was never formally stated, the tax was undoubtedly politically and popularly believed to be imposed to suppress, and not merely to tax, quack medicines. When he introduced the duty in 1783, Lord John Cavendish stated that medicines were 'very proper objects of taxation'.<sup>65</sup> While his expression was ambiguous, potentially referring to the significant fiscal potential of this commodity, it could equally have been referring to the dangers and deceptions well known to be inherent in the trade and the resulting wider benefits of taxing quack medicines. Indeed, this is how his political colleagues interpreted it, commenting that quack medicines were proper objects of taxation because they were 'very pernicious to mankind'<sup>66</sup> and observing that the tax was imposed 'for the sake of humanity'.<sup>67</sup> Moreover, that most vociferous opponent of the tax, Francis Spilsbury, not only believed that Cavendish had introduced the

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<sup>64</sup> Accepted by scholars such as George Griffenhagen, *Medicine Tax Stamps Worldwide* (Milwaukee, Wisconsin, USA, American Topical Association, 1971) 3.

<sup>65</sup> 10 *Parliamentary Register 1780-1796*, 72, 26 May 1783 per Lord John Cavendish.

<sup>66</sup> *Gazetteer and New Daily Advertiser* 28 May 1783.

<sup>67</sup> *Parker's General Advertiser and Morning Intelligencer* 28 May 1783.

tax because he thought quack medicines were harmful,<sup>68</sup> but maintained that he had introduced the Act by saying that since quack medicines had done much harm to the public, it was fair game to tax them.<sup>69</sup> This was not reprinted in the parliamentary records but the accurate reporting of debates in 1783 was in its infancy and was neither comprehensive nor regulated, and so it is possible that the Chancellor had intimated that there existed in his mind some kind of nexus between the evils of quackery and the imposition of taxation. The substance of the legislation supported this. The 1783 Act was unambiguously and exclusively aimed at unqualified sellers of medicines, suggesting that at least part of the motivation was to put an extra burden on quacks in order to discourage the trade. And the fact that Pitt, who was well known to be prepared to abolish taxes if they were either unproductive or excessively unpopular, maintained the medicine stamp duty even though it had failed dismally, could suggest he saw a wider purpose in it, to repress a social evil, a characteristic not shared by the duties that he did abolish.

Furthermore, although the taxation of gin had been a failure, both financially and in terms of the regulation of a trade dangerous to the public health, it did constitute a precedent for the use of taxation in this way. What was more common was the introduction of a tax with the primary purpose of raising finance, but having a regulatory effect which was, as such, welcomed by legislators. One example is the newspaper stamp duty. It has been suggested that Pitt increased the newspaper duty in 1789 in order to curb the radical press in Britain, which was reporting about the progress of the French Revolution. It was a time of intense apprehension as to the damaging nature of newspapers.<sup>70</sup> While the problems of the quack medicine trade were of a different order, they were well recognised. Unlike the newspaper stamp duty of the eighteenth century, which was only subsequently

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<sup>68</sup>Francis Spilsbury, *Discursory Thoughts Disputing the Construction of His Majesty's Hon. Commissioners and Crown Lawyers, relative to the Medicine and Horse Acts...with Remarks on the Late Trials Concerning the Medicine Act* (London, Dispensary in Soho Square, 1785) 41.

<sup>69</sup> *ibid* 1.

<sup>70</sup> H. Dagnall, *Creating a Good Impression* (London, HMSO, 1994) 29-32; Lynne Oats and Pauline Sadler 'Stamp Duty, Propaganda and the French Revolutionary and Napoleonic Wars' in J Tiley (ed), *Studies in the History of Tax Law*, vol 1 (Oxford, Hart Publishing, 2004) 243, 252-53.

expressly revealed as an instrument of censorship, there is no need to rely on circumstantial evidence.<sup>71</sup> Correspondence has been found between the Commissioners of Stamps and the Treasury in 1785 which shows conclusively the intention of the drafters of the medicine stamp duty legislation. The raising of public revenue was not the sole rationale of the medicine stamp duty, because it was also intended to affect behaviour and suppress a perceived evil. The correspondence asserts that the object of the tax was to act as ‘a Regulation of Police, or as a Law of Revenue’,<sup>72</sup> in other words both to control and limit the use of quack medicines and to raise public revenue. With the precedent of the dual purpose inherent in the newspaper stamp duty, the introduction of the medicine stamp duty with the ancillary purpose of controlling quack medicines in the interests of the public health was neither new nor surprising.

The regulation the government was aiming at was a purely market regulation: protecting legitimate medicines used by the regular medical profession, while making quack medicines less attractive to the consuming public by forcing a rise in their price and thereby hoping to reduce the volume of the trade in quack medicines. It did not even attempt any kind of quality regulation, and there was no attempt at an informed assessment of the quality of the product. Market regulation was, at least, better than no regulation. Taxing quack medicines imposed a certain degree, albeit slight, of control. The evidence shows that the sellers of medicines, above all the chemists and druggists, feared the impact of the tax on their businesses.<sup>73</sup> The tax was bound to make a commercial impression: they would have to purchase a licence, to raise their prices to cover the cost of the stamp, to take the time and trouble within their working lives to correspond with the Stamp Office to check whether any new products, or uncertain products, were dutiable and, if they breached the Act, would be liable for the heaviest financial penalties. The imposition of the stamp duty undoubtedly

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<sup>71</sup> Pauline Sadler and Lynne Oats, ‘“This Great Crisis in the Republic of Letters” – The Introduction in 1712 of Stamp Duties on Newspapers and Pamphlets’ (2002) *British Tax Review* 353, 363-64.

<sup>72</sup> Stamp Office: Observations upon the present Medicine Act and Proposals for an Improvement of that Duty, TNA T1/624/514-19, 21 May 1785.

<sup>73</sup> Spilsbury, *Discursory Thoughts*, 10-11.

made such products more expensive for the customer, but it also sent a clear signal that quack medicines were now brought to the attention of the state.

So the evidence establishes that the rationale of the tax included a regulatory element, though one that was unambiguously ancillary to the principal purpose of revenue-raising. Nevertheless, the presence of even a subsidiary element of regulatory intent shows that the government recognised its desirability. That raises the question why the British government did not follow the example of the French and introduce explicitly regulatory legislation, and why it was content merely to tax. The British fiscal response to the phenomenon of the trade in quack medicines was singular in eighteenth century Europe. Other states adopted an overt regulatory and legalistic approach. In France, for example, where, it was said, 'quackery prevails more, if possible, than in this country',<sup>74</sup> it was understood that in order to protect the health of the public, the trade in quack medicines had to be legally controlled.<sup>75</sup> And so at the very time that Britain was imposing a tax on quack medicines, the authorities of the Ancien Régime in France established a succession of regulatory legal frameworks to suppress the manufacture and sale of secret remedies.<sup>76</sup> Where a remedy was useless or dangerous the French adopted two approaches.<sup>77</sup> The first was retail control, providing that only apothecaries or licensed individuals could sell proprietary medicines, and enforced by financial penalties. This was similar to the licence element of the British medicine stamp duty but, like that, the control was remote from the medicine itself and any control of its quality was fortuitous. The second was one that was not adopted in Britain, namely the analysis and control of the medicines themselves. The first significant French attempt to do this was in 1728 when a commission composed of

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<sup>74</sup> *London Chronicle* 27-30 September 1783, issue 4199.

<sup>75</sup> Adair, 'Essay,' 139-40.

<sup>76</sup> For a comprehensive account of unqualified medical practitioners in France in the eighteenth and early nineteenth centuries, see Matthew Ramsey *Professional and Popular Medicine in France, 1770-1830* (Cambridge, Cambridge University Press, 1988) 129-228.

<sup>77</sup> Matthew Ramsey, 'Traditional Medicine and Medical Enlightenment: The Regulation of Secret Remedies in the Ancien Régime' in Jean-Pierre Goubert (ed) *La Médicalisation de La Société Française 1770-1830* (Ontario, Canada, Historical Reflections Press, 1982) 217.

physicians, surgeons and apothecaries was established to examine all licensed proprietary medicines and to either renew or withdraw the licence according to the commission's findings as to the quality and effectiveness of the medicine.<sup>78</sup> This commission adopted a variety of forms throughout the rest of the eighteenth century to carry out the state's determination to regulate the quality of quack medicines, culminating in the Société Royale de Médecine taking on the duty in 1776.<sup>79</sup> Official evaluation was compulsory, with proprietors of remedies having to submit samples for analysis, and disclose the ingredients and methods of manufacture.<sup>80</sup> Beneficial remedies were approved and authorisation given, though very sparingly,<sup>81</sup> dangerous ones were prohibited, and medicines of uncertain value were subjected to closer analysis and, if non-toxic, clinical trial.<sup>82</sup> Difficulties resulting from multiple possible avenues of authorisation for quack medicines,<sup>83</sup> from ideological tensions following the Revolution in 1789,<sup>84</sup> and a widespread evasion of the law or claims to exemption, resulted in an overall failure to curb the trade in quack medicines, let alone ban it. The trade remained as robust in France as it was in Britain. Nevertheless, the French system in the eighteenth century demonstrated a serious commitment of the state to regulate quack medicines in the public interest. Intensive official debate at the highest levels of government and the medical professions characterised the French approach, and as each initiative failed, the government persisted in looking for an effective solution.<sup>85</sup> This systematic engagement with the problem was noticeably absent in Britain until the twentieth century, even though eighteenth century British critics of quackery thought penal laws on the French model were necessary to suppress quacks, and James Makittrick Adair, a regular

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<sup>78</sup> *ibid* 217-18.

<sup>79</sup> *ibid* 219.

<sup>80</sup> For specific examples of the process, see *ibid* 225-31.

<sup>81</sup> *ibid* 222-23.

<sup>82</sup> *ibid* 220.

<sup>83</sup> *ibid* 218-19.

<sup>84</sup> Matthew Ramsey, 'Property Rights and the Right to Health: the Regulation of Secret Remedies in France, 1789-1815' in W F Bynum and Roy Porter (eds) *Medical Fringe and Medical Orthodoxy 1750-1850* (London, Croom Helm, 1987) 79-105.

<sup>85</sup> See generally Ramsey, 'Traditional Medicine' 215-32.

practitioner, condemned the absence of state regulation of quackery. He doubted the wisdom and efficacy of Britain's decision merely to tax.<sup>86</sup> Similarly the British press commented that regulation along French lines would 'prevent the unhappy effects of the credulity of the people'.<sup>87</sup>

There were two principal and cogent reasons why Britain made the decision not to regulate. The first was political. The theory of mercantilism, which had dominated economic thinking for the past two hundred years, was giving way to *laissez faire*. And when in the early nineteenth century *laissez faire* came to dominate economic and political thought, regulation became politically unacceptable. The importance of trade and commerce was recognised, but prevailing theories believed that it was best promoted through market forces rather than proactive regulation. Also, although quack medicines caused concern to the government in terms of the public health, medical science was not sufficiently advanced to prove that quack medicines were a threat to the public. Moreover, quacks themselves were not perceived as a sufficiently severe social or political threat.<sup>88</sup>

The second, and crucial, reason was professional. Orthodox regulation through penal laws administered by the regular medical professional bodies had already been tried but had failed. When the Royal College of Physicians received its royal charter in the early sixteenth century, its principal function was to grant licences to qualified practitioners to practise medicine and to punish unqualified practitioners.<sup>89</sup> It could examine and grant licences to individuals of whom it approved, including some quacks, could discipline unlicensed practice, and could examine the stocks of apothecaries and druggists. While this had some effect in exposing and punishing some notorious quacks,<sup>90</sup> it was largely ineffective. The reason for this failure lay in the state of development of the British

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<sup>86</sup> Adair, 'Essay,' 142.

<sup>87</sup> *London Chronicle*, 27-30 September 1783, issue 4199.

<sup>88</sup> Porter, *Quacks* 56.

<sup>89</sup> For earlier attempts to do so, see George Clark, *A History of the Royal College of Physicians*, 2 vols (Oxford, Clarendon Press, 1964) vol 1, 24-29; 102.

<sup>90</sup> Adair, 'Essay,' 140-41.

professional structure. It was weak, divided, complex, uncoordinated and confused prior to the mid nineteenth century. The College of Physicians was just one of a number of bodies which could licence various branches of medical practice in certain areas, namely the professional medical bodies of physicians, surgeons and apothecaries, the universities, the Archbishop of Canterbury and the Crown.<sup>91</sup> Not only did these provide quacks with opportunities for legitimising their practice,<sup>92</sup> the granting of exemptions from such licensing<sup>93</sup> and the rigid demarcation between the three traditional branches of medical practice which they were determined to maintain contributed to the inability of the professional bodies to enforce regulations. In addition, the best efforts of the College of Physicians in particular were undermined by bribery, apathy, vested interests, inconsistency and practical problems of enforcement against the itinerant quack.<sup>94</sup> The absence of powerful and effective corporate control meant the medical profession was essentially unregulated both in London and the provinces,<sup>95</sup> and there was nothing to stop the proliferation in the eighteenth century of unqualified persons practising medicine, including the manufacture, advertisement and sale of quack medicines, even with the most outrageous and unlikely claims.

This combination of political and professional conditions prevailing in eighteenth century Britain made the overt regulation of quack medicines difficult if not impossible. This left a vacuum which the government, grasping a market opportunity, filled with tax. The decision to tax, however, was not just a second best to regulation. In its own right it was overwhelmingly the choice of the government. Taxing quack medicines was simply more attractive from almost every perspective. First, the trade was very extensive, and so evidently a species of commercial enterprise rather than professional practice, that it was

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<sup>91</sup> Matthew Ramsey 'The Politics of Professional Monopoly in Nineteenth-Century Medicine: The French Model and Its Rivals' in Gerald L Geison (ed) *Professions and the French State 1700-1900* (Philadelphia USA, University of Pennsylvania Press, 1984) 225, 245-46.

<sup>92</sup> Matthews, 'Mountebanks', 34-6; 40-1.

<sup>93</sup> See Porter, *Quacks*, 58.

<sup>94</sup> Clark, *Physicians*, vol 1, 116-8, 140-41, 144, 194- 96, 262-64; vol 2, 507, 513-15; 677-79.

<sup>95</sup> Porter, *Quacks*, 37-9.

naturally an object of taxation. Quack medicines were almost predisposed to be taxed. And indeed in fiscal terms, the recast medicine stamp duty of 1785 was very successful. Whereas the 1783 Act had raised only £2000, the reformed Act immediately yielded more, and soon met its target of £15,000 per annum. In the context of the overall tax yield this was small, indeed it was less than 1 per cent of the entire stamp duty yield, and the stamp duty was the smallest producer of the four main taxes of customs, excises, taxes and stamps. Nevertheless, it had an unrealised potential as a small but secure source of much needed revenue and as such was a worthwhile contribution in a time of imperative financial exigencies.

Secondly, the medicine stamp duty conformed to the orthodox principles of taxation which dominated the fiscal policy of the eighteenth century and were expounded by Adam Smith in his *Wealth of Nations* in 1776.<sup>96</sup> These were that taxes should be voluntary, non-inquisitorial, necessary, and that the poor should be taxed sensitively or not at all. Pitt, who was particularly influenced by Smith, was concerned in his taxation policy with raising public revenue as efficiently and cheaply as possible, but doing so with the lightest impact on the people in general, and ensuring as far as possible that the tax burden was fairly shared according to ability to pay. He avoided taxing the poor as far as possible, and accordingly targeted luxuries rather than necessities. Arguably the medicine stamp duty satisfied these canons. It was an indirect assessment through an increased cost of a commodity which the public could choose whether or not to purchase. As such, it was a non-inquisitorial and voluntary tax. The one issue of doubt was as to the nature of quack medicines. Opponents of the tax naturally argued that medicines were not luxuries but necessities,<sup>97</sup> and that their purchase by the public was thus not a matter of choice. Not only did that breach that canon of taxation it also implicitly breached the one that maintained the poor should not be taxed. Furthermore, tax had always been an exception to the policy of

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<sup>96</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, (RH Campbell, AS Skinner, WB Todd (eds), 2 vols (Oxford, Clarendon Press, 1976) vol 2 Book V Chapter 2, 825-28.

<sup>97</sup> Spilsbury, *Discursory Thoughts*, 11.

laissez faire, with its adherents accepting that it was necessary to effective government. As such, the medicine stamp duty was a useful tool: it provided a measure of regulation in a politically acceptable guise, which could be denied as such at will, and was always justifiable as pure revenue-raising for the necessities of the state.

Thirdly, a number of factors combined to make taxing quack medicines relatively easy. It was socially acceptable, because although quack medicines were very popular, quacks were not. The traditional perception of a quack as an ignorant, cheating and often foreign itinerant rogue, preying on the misfortunes of others persisted.<sup>98</sup> Indeed, when the tax was introduced, one newspaper observed that even if the quacks evaded the tax by reducing the price of medicines to 6d per box or phial, they would still make a profit of some 600% or 800%, as well as 'the certainty of a greater sale'.<sup>99</sup> And with respect to the medicines the quacks sold, the public resented the element of secrecy, particularly when allied to extravagant advertising and uncertain results.<sup>100</sup> To keep the ingredients of medicines secret could only be to prevent others manufacturing them and thereby diminishing the profits of the inventor. This was 'naked self-serving, sanctimoniously masquerading under the cloak of humanity',<sup>101</sup> and created widespread and intense grievance. This made the quack a legitimate target for taxation, and the taxation of quack remedies not universally unpopular.

More significantly, however, the tax of choice - the stamp duty - had many practical advantages. As with so many of Britain's fiscal instruments, stamp duty originated in Holland, and was introduced to Britain in 1694 to finance the war against France.<sup>102</sup> It was imposed on vellum, parchment and paper and was immediately very successful. Its potential to produce more revenue was understood, and it was steadily increased in scope. Prior to the introduction of the duty on medicines it was already imposed on a large range

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<sup>98</sup> For quackery in pre-modern England, see Porter, *Quacks*, 15-16.

<sup>99</sup> *London Packet or New Lloyd's Evening Post* 22-24 October 1783 issue 2036.

<sup>100</sup> Porter, *Quacks*, 17-18.

<sup>101</sup> *ibid* 44.

<sup>102</sup> 5 & 6 Will & Mary 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; Dagnall, *Good Impression*, 3-14.

of documents, notably conveyances, grants of probate, legacies, newspapers, marine and fire insurances and bills of exchange, and on a number of commodities, namely cards and dice, and gold and silver plate. It has been seen that when the stamp duty was first imposed on medicines, it was also newly laid or extended on a number of other documents and commodities.<sup>103</sup> The Medicine Stamp Act 1783 was the third of three Acts imposing or raising stamp duties in the same year as part of a general increase within the stamp duty regime to finance the new loan.

The medicine tax was a stamp duty, albeit not one of the original kind, being on a commodity rather than a document and accordingly known internally within the revenue departments as one of the 'unstamped duties of stamps.'<sup>104</sup> It was a tax on a consumable, and taxes of this nature were the most acceptable to the public. Such taxes were, as Adam Smith observed, 'not so much murmured against'<sup>105</sup> 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'.<sup>106</sup> Thereafter, the duty could be increased as small rises would barely be noticed. Thus far this was true of the medicine stamp duty, though the fact that the bottle, packet or box of medicines would bear a physical stamp served to remind the purchasers that they were paying the duty, and as such it was more visible than other indirect taxes.

Although the stamp duty was the least productive of the four eighteenth century imposts of customs, excise, stamps and taxes, it enjoyed the inestimable advantages of easy and cheap management. Administration was kept to a minimum, and the bureaucratic procedures were established and efficient. The items which had to bear a stamp were laid down in the charging statute, and the manufacturer or vendor simply had to purchase the stamps of the required value from the Stamp Office. The distributors of stamps did not have

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<sup>103</sup> See text at n 50.

<sup>104</sup> Dowell, *Taxation*, vol 2, 188.

<sup>105</sup> Adam Smith, *Lectures on Justice, Police, Revenue and Arms delivered in 1763* (Oxford, Clarendon Press 1896) 243.

<sup>106</sup> *ibid.*

to give advice, merely to provide the stamps requested. In 1797 Pitt expressed his reasons for favouring the stamp duties in the raising of public revenue, reasons which were to endure for all subsequent governments:<sup>107</sup>

In looking at the different branches of revenue, there was one source of taxation which appeared to him to be preferable to any other, because the produce was easily raised, widely diffused, and which pressed little upon any particular class, especially the lower orders of society; and it was the more eligible on this account, that the revenue arising from it, at the same time that it was ample, was safely and expeditiously collected at a small expense.<sup>108</sup>

## CONCLUSION

It is always difficult to discern the policy of any taxing legislation, particularly that of the eighteenth century, because of the strength of orthodox thinking that the purpose of a tax was purely to raise money. That is not to say that other motives were absent, but they were rarely articulated and they emerge, if at all, by close examination of contemporary sources, particularly extra-statutory ones, and educated guesses. This is in contrast to modern taxes, where governments are quite open about using taxation to achieve non-fiscal aims and to shape social and environmental policy. The evidence shows that the eighteenth century medicine stamp duty was imposed with the primary purpose of raising public revenue in a period of acute need, and as such it was the outcome of a clear and dominant political imperative. It has also been found to have been introduced with a subsidiary purpose, namely to impose some control on the undesirable and mischievous trade in quack medicines. As such it was a response to a social imperative. Most nineteenth century and

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<sup>107</sup> See RS Nock, '1694 And All That' (1994) *British Tax Review* 432, 433.

<sup>108</sup> William Pitt, *The Speeches of William Pitt* 4 vols (London, Longman, Hurst Rees and Orme, 1806) vol 3, 122-23.

later commentators took the view that the medicine stamp duty had been introduced solely to raise money, such a flourishing trade inevitably attracting the attention of the revenue departments.<sup>109</sup> Only Stephen Dowell believed that the tax was imposed '[i]n the interests of the public, the qualified practitioners and the revenue'<sup>110</sup> and was recast 'for the sake of convenience and the public service'.<sup>111</sup> However, his placing of revenue as the last of the tax's objectives is belied by contemporary evidence.

The imposition of stamp duty on quack medicines in the eighteenth century was a singular and undoubtedly a lesser response to the phenomenon of quack medicines than that of other European states. The reason was that it was first and foremost a response to the financial exigencies facing the country after many years of war and only secondarily a response to the evils of the trade. Indeed any regulatory effect of the tax was an unlooked for but welcome by-product. It could be that quack medicines were not regarded as an unmitigated evil that had to be prevented; or that the evils of the trade were recognised by the government but, when balanced against the benefits of a new taxable object with a material yield, the profit motive dominated; or, finally, that a pragmatic government thought that taxing quack medicines would be to obtain the best possible compromise: that the tax would raise money for the public revenue, but might also serve to deter at least some of the smaller quacks. The British legislature saw that the European model of overt regulation signified an official commitment to addressing the evils of the quack trade, but recognised that it had failed. Social and medical conditions in Europe were such that there was a huge public appetite for quack medicines, supported by public need and public credulity.<sup>112</sup> Britain had but to look to France's serious efforts to suppress the trade by regulatory legislation to understand that to legislate against quack medicines, however

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<sup>109</sup> EN Alpe, *Handy Book of Medicine Stamp Duty*, (London, Offices of 'The Chemist and Druggist' c 1888) 7; Leslie G Matthews, 'The Medicine Stamp Acts of Great Britain' (1986) 16 *Pharmaceutical Historian* 2.

<sup>110</sup> Dowell, *History*, vol 4, 366.

<sup>111</sup> *ibid* 367.

<sup>112</sup> Dr Faligot, *La question des remèdes secrets sous la Révolution et l'Empire* (Paris, Occitania, 1924) 155.

strongly, was unlikely to be effective. It recognised that in attempting to suppress the trade in quack medicines, all legislatures faced the fundamental problem that the principal obstacle in protecting the health of the public was the public itself. And so when forced by the weak and fragmented state of the British regular medical professional bodies to accept that a similar regime of regulation was impossible, the albeit minor controlling side-effect of the taxation which contemporary political conditions and fiscal policy rendered inevitable, was both recognised and welcomed by the eighteenth century British legislature. It is possible that Britain also understood that the effective regulation of quack medicines could not be achieved by one single regime, and that various techniques were legitimate instruments of control. To impose a tax and eschew formal regulation was an astute, realistic and pragmatic political compromise. It raised money for the public revenue and imposed a potential, though small, measure of market control on quack medicines. The evidence shows that the publicly-proclaimed eighteenth century orthodox view of taxation being solely to raise public revenue, with no wider policy objectives, was maintained in its essentials but was not inflexible. The government did have a policy agenda in imposing the medicine stamp duty, albeit a subsidiary one.

The policy objective inherent in the medicine stamp duty was presumed by politicians and public, but never formally or openly articulated. No regulatory claims were made for the tax at its inception, and its formal character was as no more and no less than a tax like any other. However, when financial and regulatory objectives were united in the same tax, albeit unequally, tensions were inevitably created. Having chosen taxation as an instrument of regulation, even to a minor degree, that regulation would not be allowed to operate outside the constraints of the essential nature of taxation. The fiscal character dominated, and the medicine stamp duty brought with it all the consequences of its character as a tax. That was an inherent and probably unavoidable limitation of the tax regime. The problems for commercial pharmacy arising from this characterisation thus

established in the eighteenth century would only become apparent in the nineteenth, but should not overshadow the achievements of the eighteenth century tax. It was a new impost on a thriving commercial activity; the charge was as clear as the subject-matter allowed; despite some complexity within the exemptions they were regarded as clearly protecting the regular medical profession; the tax was as well administered as any of the taxes, depending as it did on the established processes of the Stamp Office; it was generally accepted by the public, and it consistently raised its predicted yield. It was these characteristics, established in the eighteenth century, which would transcend the problems caused in the next century by its ancillary regulatory function and ensured it endured as a viable impost for nearly 160 years into the modern age of taxation.