

Regulating drinking through alcohol taxation and minimum unit pricing: A historical perspective on alcohol pricing interventions

Henry Yeomans *

School of Law, University of Leeds, Leeds, UK

Abstract

Discourse on alcohol policy in several countries has recently become dominated by discussions of pricing. In Britain, proposals for a minimum unit price for alcoholic drinks are frequently depicted as radical and new. However, other means of legally intervening in alcohol pricing have long been used to shape consumption habits. Key to recognizing this historical lineage is a conceptualization of taxation as partly a form of regulation. This article builds upon findings from a wider historical study of alcohol excise duties in England and Wales to develop an empirically-based typology of the main forms of government interventions in alcohol pricing. By connecting some instances of alcohol excise taxation to government attempts to shape behavior, this typology enables advances in understanding of the relationship between taxation and regulation. In so doing, the article also provides an original historical perspective on an ongoing policy debate. © 2017 John Wiley & Sons Australia, Ltd

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1. Introduction

In various countries, recent debates about alcohol policy have featured sustained consideration of proposals for the introduction of a minimum price per unit of alcohol. There has been serious discussion about minimum pricing in Australia (Vandenberg & Sharma 2014); the Irish Government has proposed a Public Health Bill which would introduce a similar measure (Varadkar 2015); and the relevant governing authorities in all of the constituent countries of the United Kingdom (UK) have expressed, in some form or degree, an enthusiasm for the introduction of minimum unit prices (MUP). It is usually contended that an MUP would increase the price of some or all alcoholic drinks and thus impact positively on public health. This paper concentrates on England and Wales where health professionals and organizations have been coordinated, consistent, and vocal in arguing that MUP policies will, by increasing the price of some drinks, limit the availability of alcohol and reduce overall consumption (Yeomans 2013). Lower levels of drinking would, it is argued, significantly reduce levels of alcohol-related morbidity and mortality, and studies of the projected impacts of an MUP have found evidence to support these claims (Meier *et al.* 2008). An MUP has also been attributed with the capacity to reduce other social problems, notably alcohol-related crime; it has been projected that an MUP of 40 pence would lead to 16,000 fewer crimes per year in England (Meier *et al.* 2008). In an evaluation of existing minimum pricing policies operating through state alcohol monopolies in some Canadian provinces, the measure was associated with a nine percent fall in crimes against the person (Stockwell *et al.* 2015). An MUP is now widely considered to merit attention as an additional or alternative means for states to manage the consumption of alcohol (e.g. see World Health Organization 2014).¹

Although government plans to introduce it in England were shelved in 2013, an MUP continues to be a serious proposition in UK politics. The National Assemblies of Wales and Northern Ireland both plan to introduce an MUP in their jurisdictions (BBC News December 3, 2014; BBC News July 15, 2015), and the Scottish Government, having legislated for the creation of an MUP in 2012, remains embroiled in a protracted legal dispute with the alcohol industry over the legality of its implementation (Scottish Government 2015). The campaign for an MUP in England also continues unabated (see Alcohol Health Alliance 2015). Within social and public policy studies, discussion of this live

Correspondence: Henry Yeomans, School of Law, Liberty Building, University of Leeds, Leeds, UK, LS2 9JT, 0113 3434556.

Email: h.p.yeomans@leeds.ac.uk

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political issue has tended to position an MUP as a “novel” policy (Katikireddi *et al.* 2014, p.1) or a potential “turning point” (McCambridge 2012, p. 377; Nicholls 2012: p. 355). Cairney and Studlar equate an MUP with a “neo-prohibitionist restrictive regime” (2014, p. 309), Nicholls and Greenaway (2015) depict it as an unusual governmental foray into supply-side controls and Haydock (2014) explores its jarring inconsistency with the prevalent neoliberal approach to governance which valorizes the unfettered decision making of individual rational actors. These accounts are correct to the extent that the imposition of a price floor on the trade in any commodity would indeed be a deeply unusual public policy in 21st century Britain.² However, the emphasis placed on novelty should not obscure the historical antecedents of an MUP. It is crucial to understand that, through other means, British governments have been using interventions in price to try to shape alcohol consumption for centuries.

The key to recognizing this often overlooked historical lineage is a conceptualization of taxation generally and alcohol excise duties specifically as forms of behavioral regulation. Excise duties are selective taxes that are applied to certain commodities and have become ubiquitous in Western countries. A varying range of commodities is currently subject to excise duties in different countries, but there is a smaller group of commodities that are commonly and consistently taxed in contemporary Western societies (see Yelvington 1997; Cnossen 2007). Although this group includes alcoholic drinks, alongside items such as tobacco and petroleum products, analyses of alcohol policy or regulation frequently overlook excise duties. There is a sizeable literature within criminology and social or public policy that examines the multiple means through which governments seek to shape or control public drinking habits, such as licensing, public health initiatives, private security, screening of offenders for alcohol problems, court sentencing powers, and treatments for alcoholism (e.g. Valverde 1998, 2003; Thom 1999; Hobbs *et al.* 2003; Hadfield 2006; Hopkins & Sparrow 2006; Barton 2011; Skellington Orr *et al.* 2013; McSweeney 2015). However, thus far, excise duties have remained largely absent from this alcohol policy discussion. In public policy studies generally, as well as in economics, it is more common to recognize that taxation can impact alcohol consumption.³ But, this insight is rarely accompanied by developed analyses of how alcohol taxation can function as a form of behavioral regulation (as well as a fiscal tool for revenue-raising).

This article seeks to address these shortcomings through a dedicated examination of how taxation has been used, for much of the modern historical period, as a means to regulate drinking in England and Wales. It builds on the findings of a wider empirical project that examined the records, held at The (UK) National Archives (TNA), of the successive government departments who have overseen the administration of excise duties. These sources are supplemented here with a consideration of relevant statutes and parliamentary debates, as well as secondary historical literature. Importantly, this information is then interpreted in light of both contemporary policy developments and the socio-legal literature around regulation. Through an empirically-based conceptualization of how taxation can function as a form of regulation, this paper will therefore extend the wider socio-legal study of regulation, as well as providing an original historical perspective on the topical political issue of interventions in alcohol pricing.

2. Taxation and regulation

Taxation is not unfamiliar within the literature on regulation. An article search of “tax” or “taxation” in this journal yields a fairly healthy total of around 106 hits. However, the vast majority of these do not address taxation directly and only a handful focus on taxation practices or policies as a significant component of their enquiries. *Regulation & Governance* is not unusual in this regard as searches of wider databases of literature produce equally modest quantities of publications that connect taxation to regulation or vice versa.⁴ When this does occur, it is typically as part of empirical enquiry into compliance with tax laws and how relevant authorities can best promote this. The work of Valerie Braithwaite and her colleagues is particularly notable in this respect. She has written extensively on, for example, how values and trust in the system affect people’s willingness to pay taxes (Braithwaite & Ahmed, 2005; Braithwaite, 2009), and how tax regimes can be designed and operated responsively in order to better engender compliance among taxpayers (Braithwaite & Braithwaite, 2006; Braithwaite, 2007; see also Leviner 2008; Farnsworth & Fooks 2015). It is also pertinent for the focus of this paper that there are a number of studies that explore compliance with tax laws by analyzing the effects of national variations in alcohol duty rates on the phenomenon of cross-border shopping (e.g. Makela *et al.* 2008; Beatty *et al.* 2009; Chaiyasong *et al.* 2011). These studies all concern the formulation and enforcement of tax regimes and, as such, might collectively be said to relate to the regulation of taxation. While this

is a valuable and important object of study, it does not represent the sum total of ways in which the notion of regulation may usefully be applied to the study of taxation.

Of course, the primary function of most taxes is to raise revenue for the state. Within some disciplines, however, it has become common to also understand taxation, especially excise taxation, as partly a regulatory tool. Following Pigou (1960 [1920]), economists often discuss the capacity of excise taxes to better manage activities that create undesirable social effects (or “externalities”). Pigou specifically identified the alcohol trade within his argument that, in situations where the benefits to producers and retailers of an industry are greater than the benefits to the public at large, the state may usefully impose special taxes on that industry (1960, p. 192). Such taxes are then argued to be justifiable as, by bringing the private cost of consumption (i.e. the cost to producers, retailers, and consumers) into line with the social cost (which includes items such as healthcare and policing costs), they will engender a reduction in consumption and a resulting diminution of negative externalities (Pigou 1960, especially pp. 172–203; see also Cnossen 2011). Other economists have focused more on the connection of taxes to undesirable individual consequences resulting from personal decisions about consumption (or “internalities”). Behavioral economists recognize that individuals do not always make decisions in a “rational,” benefit-maximizing manner and often choose to engage in behavior which, especially in the long term, may be detrimental to their interests (Thaler 1980; Thaler & Sunstein 2008). For many, it is therefore justifiable for the state to impose taxes on risky or harmful commodities as this will, in theory at least, discourage their consumption and thus help to align personal decision making with long-term individual wellbeing (see Lorenzi 2004, 2006; Fennell 2009). Significant research by public health academics has found that alcohol excise duties may well address internalities and externalities in these ways as alcohol consumption is often found to decrease at a population level as tax rates increase (Meier *et al.* 2008; Wagenaar *et al.* 2009; Babor *et al.* 2010). In recent years, there has also been parallel discussion of whether sugar taxes are a viable means of improving public health (e.g. von Tigerstrom 2012; Atwell 2013; Galle 2014). Within economics and health, the capacity of excise taxes to “correct” internalities and externalities, thus regulating consumption, is fairly well recognized.

Other scholars, working primarily within economics, have developed alternative accounts of “sin taxes” that draw upon the study of public choice. These scholars recognize that taxation can place restrictions on private consumption choices and concentrate on how such restrictions can be motivated by political self-interest more than public good (see Shughart 1997a; Gifford 1997). Rather than concentrating on the “correction” of internalities and externalities, these scholars explain excise taxes as primarily responses to the lobbying activities of various pressure groups and special interests, as well as to the rent-seeking behavior of politicians (Shughart 1997a,b; Hoffer *et al.* 2014). This “political economy” approach is a helpful complement to the more common Pigouvian studies of taxation. However, while excise taxes are sometimes depicted as aspects of state paternalism or “nannying,” the principal focus on the politics of taxation in this literature militates against any sustained consideration of how taxation can be connected to regulation. Indeed, for Shughart, “the objective of discouraging ‘sin’ is at bottom just a handy political pretext for pushing back the limits of taxpayer resistance to feeding government’s insatiable revenue appetite” (1997a, p. 8).

Thus, the insight that taxation can be used for regulatory purposes, found in economics as well as in public policy studies and health, has not been fully developed. Crucially, it appears to have made only a limited impact upon the more explicit study of regulation. This situation may exist partly because of the ambiguity of regulation as a concept. As Koop and Lodge describe, some scholars regard regulation as referring quite narrowly to the direct intervention of “public-sector actors in the economic activities of private sector actors” (2015, p. 11). Excise taxes are typically levied on the production of commodities and if they are intended to reduce the manufacture or sale of the taxed commodity, might fit this definition of regulation. But often these taxes do not conform to this definition as they also entail other actors, such as individuals and populations, and an intended indirect impact (through producers passing on the cost of the excise) on non-economic outcomes, such as public health or public order. Many other scholars, however, employ broader definitions of regulation. Grabosky speaks of regulation as “any activity, legal, political, social, economic or psychological, the purpose of which is to steer the flow of events” (2010, p. 73). This notion of “steering” is commonly distinguished from “command and control” styles of governance, which apparently correspond to the analogy of “rowing” (Baldwin *et al.* 1998; Smith *et al.* 2010). Elucidating the notion of “responsive regulation,” Ayres and Braithwaite (1992) conceptualized these various means of steering within their famous regulatory pyramids. These typically position criminal law, the most serious and least used regulatory response, above less serious and more widely used practices, such as civil action, licensing, education, and persuasion (see also Braithwaite 2008). Both the targets as well as the mechanisms involved in regulation are, thus, considered by these scholars to be broader than simply direct

intervention in the private sector. Koop and Lodge explain that, in this approach, regulation is defined as an “intentional intervention in the activities of a target population,” which may be direct or indirect, economic or non-economic, and involve public and private sector actors (2015, p. 10).⁵ Importantly, this broader definition of regulation creates greater possibilities to conceptualize taxation as a potential form of behavioral regulation.

These possibilities to examine taxation as a form of regulation have been partially explored. Notably, Ogus argues, “an important function of law is to attach prices to choices” (1998, p. 770). As well as through fines and awards made under criminal and tort law, financial impositions made by tax law can be connected to government efforts to affect behavioral change. Ogus further suggests that such efforts to change behavior through taxation can be split into several types. “Rectificatory” taxes exist to “correct” the sort of market failure that enables a commodity to be sold at a price that does not equate to its social cost (Ogus 1999, p. 245; see also Kaplow & Shavell 2002). If the state can levy a duty on the commodity that is commensurate to its externalities, then the social cost is recouped by the state and the market failure is rectified.⁶ “Nudging” taxes, by contrast, are described by Ogus as any tax whose existence is related to motivations other than revenue raising (1999, p. 245). Broadly, these exist in situations where states act to promote a desirable behavioral outcome but, for whatever reason, prefer to do this through subtler or “softer” means than a direct, command and control type legal intervention. Additionally, Ogus describes how significant financial impositions can sometimes engender deterrence. In criminal and tort law this can occur through the imposition of fines that are large enough to ensure the disutility of an illegal action outweighs its utility, and thus the boundaries of lawful activity are reinforced (Ogus 1998). Taxes, however, are said to rarely fit this category as they apply only to lawful activities and states rarely aim to so forcefully deter an activity that is revenue raising.

To summarize, adopting a broader view of the sort of objectives and mechanisms that constitute regulation opens up significant scope for taxation to be connected to behavioral regulation. Although the regulatory potential of taxation is often recognized, existing literature linking taxation to regulation is not extensive. Ogus’ work provides some useful starting points for this analysis by outlining several forms of regulatory taxation and assessing whether their economic logic can be reconciled with the practicalities of law and government. While Ogus’ work on this topic is largely theoretical, this paper provides an empirical examination of the main forms of state intervention in alcohol pricing that have been employed in England across the modern historical period. It concentrates specifically on alcohol as a commodity and connects regulation through taxation to other pricing interventions used at various points in time. Thus, in addition to the implications relating to alcohol policy, the paper also seeks to develop new, empirically-based ways of conceptualizing regulation *through* taxation.

3. Alcohol pricing interventions through time

This section presents a historical overview of the main ways in which British governments have used pricing interventions as part of wider efforts to govern drinking. The intention is not to offer a comprehensive historical analysis but to identify the major pricing interventions that have been used in England and Wales and describe how, in addition to possessing fiscal or other uses, they also function or functioned as regulatory devices. In line with the wider discussion of regulation here presented, particular attention is paid to the objectives and mechanisms associated with each intervention in addition to (as a result of its prominence within the examples presented) the form of actor targeted. The section draws upon original archival research as well as secondary historical literature focusing on the development of alcohol excise duties. While it is largely concerned with excise duties, the section begins by identifying an earlier form of alcohol pricing intervention.

3.1. Maximum pricing

For much of the Middle Ages, a system of price control existed to suppress the price of some drinks. The Assize of Bread and Ale 1266 established price limits which meant that ale could not be sold for more than a halfpenny a gallon in towns and around farthing a gallon in the countryside (Clark 1983). Until the Victorian period, beer was a dietary staple and an important source of nutrition for many British people, especially those from the lower social orders (Burnett 1999, pp. 111–140). The Assize was thus designed to ensure that beer and ale, as well as bread, were always available at affordable prices (Clark 1983). While enforcement appears to have been inconsistent, this law was in effect until around the mid-16th century and, into the 17th century, further laws were passed to set maximum prices for beer and ale (Clark 1983; Hunter 2002). The medieval and Tudor period also saw attempts to regulate the price of wine at the local and

national level (Heinze 1976; Hunter 2002). For example, 1536 legislation sought to ensure the sale of wine at a “reasonable price” (Nicholls 2009, p. 26). Wine was not consumed by a mass market during this period but, obviously, Parliament still saw fit to protect its availability through price suppression. These statutes thus indicate that in earlier historical periods, British governments have extensively intervened in markets by limiting the price of certain drinks with a view to protecting their availability.

Of course, for much of this period, it was common for governments to intervene in various markets in order to suppress prices. Until the 18th and early 19th centuries, the prices of bread, sugar and meat, for example, were suppressed by governments (Heinze 1976; Thompson 1991, pp. 185–258).⁷ These practices fit squarely into what John Braithwaite terms the “police economy” to emphasize the interventionist role that governments played in policing markets and the flow of goods (Braithwaite 2008, p. 26). This police economy eventually gave way to liberal ideas of free trade and laissez faire government that promoted economic and social non-intervention. This shift is usually located around the late 18th and early 19th century (Thompson 1991, pp. 185–258; Braithwaite 2008, pp. 26–27; Foucault 2009, pp. 29–54), although there was a lack of maximum pricing statutes applicable to alcoholic drinks across the whole 18th century. The salient points to note here are, firstly, that government interventions in the price of alcoholic drinks have a very long history indeed. Secondly, for many centuries these interventions were designed to support public consumption, in stark contrast to contemporary proposals, by creating maximum prices for some alcoholic drinks.

3.2. Regulation through taxation

3.2.1. *Taxation as prohibition*

Excise taxes were created by Parliament in 1643 and included new duties on various goods, including drinks such as beer, wine, and cider. Some levies on the drinks trade had been made in earlier periods, but these were applied inconsistently and on a local level (Clark 1983, p. 171). Customs duties date from around the early 13th century and were applied to the import and export of alcoholic drinks, but their use was closely tied to trade and national interests (Ashworth 2003). Excise duties, by contrast, were national taxes that were (usually) levied on the domestic production of various commodities, including beer, spirits, and other drinks. Significantly, the emergence of alcohol excise duties created the possibility for governments to regulate drinking *through* taxation. The regulatory potential of this new form of taxation was not instantly apparent as excise duties were created with the primary purpose, not of controlling consumption, but of raising money to fund the Civil War (see Coffman 2013).⁸ The first clear instance in which alcohol excise duties were used to regulate consumption occurred during the “gin craze” in the early 1700s. Public anxiety about the consumption of spirits intensified in this period. The consumption of spirits, especially gin, appeared to have increased rapidly in England and was associated with a range of problems, including public disorder, violence, sickness, poverty, and maternal neglect (Dillon 2003; Warner 2004). In this alarmed context, the government adapted excise taxation to better regulate public consumption of alcohol.

From 1729, a series of Gin Acts were passed which extended licensing restrictions and altered taxes. As well as an existing wholesale excise duty paid by the original producers, in 1729 an additional excise duty of five shillings per gallon was imposed on compound distillers, who were typically persons who added flavoring to liquor before selling it (Dillon 2003). This Act was repealed in 1733 but was followed in 1736 by a further reform that created an excise duty of 20 shillings per gallon to be paid by all retailers of alcoholic spirits. In both cases, it was envisaged that, by imposing the new duty on retailers, these reforms would increase the price at which spirits were available to drinkers and thus reduce drinking levels. These retail excises were part of wider government attempts to control public consumption of gin and other spirits. Their imposition on retailers rather than producers was intended to engender a more direct effect on drinkers than usual excises had. The Gin Act 1736 is also especially important because of the rate at which the retail excise was imposed. The new duty of 20 shillings per gallon was almost 10 times higher than the usual retail price of a gallon of gin at this time (Wilson 1940, pp. 192–193). Hence, the new duty rate was so high that it was judged by contemporaries, and is usually viewed in retrospect, as effectively a prohibition on alcoholic spirits (House of Commons 1803 [1736], pp. 1073–1110; Wilson 1940; Warner *et al.* 2001). In this era, excise duties thus provided a new means through which governments could shape consumption habits by “policing” the drinks trade.

Both retail excises were generally ineffective. With a large quantity of people selling spirits, collection and enforcement was almost impossible. Evasion became common, a black market for spirits flourished, and drunkenness

did not appear to decrease (Warner *et al.* 2001; Dillon 2003). Both retail excises were soon abandoned with the 1729 imposition being abolished in 1733 and the 1736 tax only lasting until 1743. This short historical episode does exhibit some continuity with the older operations of a police economy in that the government was intervening in markets and seeking to affect the availability of certain goods. But, in other respects, it illustrates a strange and radical way in which taxation has been used to shape consumption, in a fairly direct manner, through the effective enactment of a prohibition on the consumption of a certain category of drinks. The Gin Act 1736, in particular, provides a rare example of a tax that fits Ogus' (1998) description of the deterrent model of financial impositions as government intervention through tax resulted in a price that was intended to deter spirits consumption. Strangely, and unlike in Ogus' discussion of deterrent impositions in criminal and tort law, the deterred behavior in this example (spirits-drinking) is not unlawful. This practice of taxation as prohibition is historically unusual, but it does demonstrate a further means through which governments have sought to regulate drinking through legal interventions that affect price.

3.2.2. *Taxation as governance through choice*

Retail excise duties imposed on alcoholic drinks are not typical. The historically more normal type of excise taxes, often called wholesale excise duties, are levied on the manufacture of alcoholic drinks and other goods and thus are paid higher up the supply chain (by brewers, distillers, and other producers). Despite their imposition being further removed from consumers than with retail excises, wholesale excises have also been regularly used to shape consumption. It is not clear when this first occurred, but it was permissible for the costs of the tax to be passed to consumers from at least 1671. In this year, an Excise Act endorsed this practice by stipulating that retailers must not be "sued, impleaded or molested, by any indictment, information, or popular action" for selling beer or ale at a price above the rate of excise laid out in the statute (see also Hunter 2002). If producers and retailers could pass the cost of excise duties on to consumers, then it was possible for governments to encourage them to raise prices by increasing duty. Equally, a cut in duty could encourage a fall in price. Through these indirect mechanisms, governments gained the capacity to regulate alcohol consumption through normal wholesale excises. There are examples of government attempts to use these duties to regulate alcohol consumption from the 18th century but this practice becomes particularly prominent in the 19th century (Warner *et al.* 2001).

The Beer Act 1830 abolished beer duty along with the requirement for beer-sellers to possess a magistrate's licence. The objectives of this legislation were largely tied up with a wider government commitment to free trade but, within this agenda, there was a specific government vision to make beer a more preferable alternative to spirits. Spirits-drinking was believed to have increased in the previous decade and had been linked to health problems as well as an apparent rise in crime (see House of Commons, 1830b). Beer drinking, by contrast, was not seen as problematic to the same extent and, to some members of parliament, was even a "healthful nutritious" and "moral" beverage (House of Commons 1830a, b). It was widely envisaged that, in an era of concern about both spirits-drinking and the adulteration of beer, removing legislative impediments (such as beer duty) would stimulate competition, thus improving the taste of beer and reducing its price.⁹ With these conditions in place, drinkers would be much more inclined, as Member of Parliament Lord Grenville Somerset put it, to start "substituting good beer for an abominable adulteration and for gin" (House of Commons 1830a). This practice of using tax to promote a desired form of consumption above an undesired one became quite common in the 1800s. For example, Gladstone justified the reduction of import duties on wine in his 1860 budget by arguing that poor people, like wealthy people, will choose the superior beverage of wine over other drinks if it could be made available at more competitive prices (Gladstone 1860). If taxation could influence taste and price, governments believed they could weight or structure individual decisions in a manner that would promote the behavioral outcomes that they favored.

Taxation, in these examples, was clearly used as a way to seek to regulate drinking. While the previous section explained how the Georgian experiments with taxation as prohibition correspond closely to Ogus' (1998) deterrent model of financial imposition, these 19th century practices of regulatory taxation are distinct. The difference is that, in the examples described, the duty is not being used to elevate prices to a level that closes off a specific lawful avenue of consumption. Nor do these examples fit with Ogus' (1998) description of a rectificatory tax in which the duty is fixed on specific commodities in line with the cost of the externalities that their consumption produces. Parliamentary debates about the Beer Act, to elaborate, did not feature notable efforts to quantify the cost of these harms and/or fix the levels of taxation accordingly (see e.g. House of Commons 1830a,b). The Beer Act 1830, however, did exaggerate the differences between the levels of taxation applied to various drinks and, especially as the rate of spirits duty rose by

sixpence in the same year (TNA CUST 44/1), it did result in the higher duty being attached to the commodity perceived as most personally and socially harmful (spirits). This measure could therefore be seen as loosely Pigovian in the sense that the private costs of beer drinking and spirits drinking were being adjusted to reflect the apparently divergent social costs of these activities. As well as discussing government revenue, agriculture, and the beer industry, parliamentary supporters of the Beer Act 1830 argued that its provisions would make beer cheaper and, through greater competition, improve its taste (e.g. House of Commons 1830a). The key to behavioral change was considered to be an ability to alter taste and price and thereby affect individual decision making.

This regulatory approach contrasts the instances of prohibitive taxes in the 18th century in which, because of anxieties about the decision making capabilities of individual drinkers, the government viewed a deterrent-type intervention as necessary. The importance of taste, price, and decisions in the 19th century policies discussed belies the fact that a liberal faith in the individual rational actor laid at the heart of the regulatory mechanisms that they sought to engender. The police economy that supported earlier interventions in the marketplace had, as Braithwaite (2008) describes, thus deteriorated and been replaced by a liberal economy. By altering the taste and price of alcoholic drinks, it was envisaged that the rational individual would be more likely to choose drinks perceived as less personally and socially problematic. Behavioral change would thus be produced by working through personal autonomy rather than through the imposition of constraints upon it. This practice is broadly consistent with the category of interventions that Ogus (1999) calls nudging taxes. However, the term “nudge” has become tied to a slightly different set of regulatory techniques since the publication of Thaler and Sunstein’s (2008) famous book of the same name. Thaler and Sunstein’s nudges are adaptations to “choice architecture” that are designed to modify individuals’ non-rational decision making without significant economic inducement (2008, p. 3).¹⁰ Given the centrality of the rational actor to their intended operation, and to their fundamental existence as financial measures, it is preferable to use a separate term for the tax practices described here; namely, governance through choice. This term is adapted from Rose and Miller (1992) who use it to refer (more appropriately) to largely indirect governmental practices, historically characteristic of liberalism, which work to bring individual decisions into line with sociopolitical objectives (see also Miller & Rose 2008).

The instances of taxation discussed here thus show that, in the 19th century, the state sometimes used tax in an attempt to alter price and taste and thus shape decisions about alcohol consumption. Individuals were, therefore, being governed “through their freedom to choose” (Rose & Miller 1992, p. 201). Therefore, as well as prohibiting certain forms of consumption, excise duties can also engender governance through choice. This characterization constitutes the third historical means through which governments have intervened in alcohol pricing and the second that has specifically operated as an attempt to regulate drinking through taxation.

4. Regulation through taxation today

The historical evidence presented so far has been sufficient to build up a typology of alcohol price interventions that have existed at some point in British history. It has further been possible to illustrate that governments have sometimes deployed these interventions, especially the taxation-based interventions, with the intention of regulating drinking. But what relevance does this historical evidence hold beyond the chronological boundaries of the periods discussed? This section considers how practices of regulation through taxation continue to be important today with respect to both current alcohol policy and the study of regulation.

The abolition of the beer duty in 1830 is not an isolated historical example of the use of taxation to govern through choice. In many respects, British governments have continued to seek to regulate drinking in this fashion. The beer duty was reinstated in 1880, although it was explained at the time mainly in reference to the fact that it would be easier and cheaper to collect than the malt duty (which was simultaneously repealed) (House of Commons 1880). Spirits continued to be taxed at a proportionately higher rate than other drinks into the early 20th century. Explaining this situation in 1914, a Customs House official asserted that “Apart from questions of revenue, the theory has always been that the consumption of Beer and light Wine should be encouraged as against the consumption of Spirits and stronger Wine” (TNA CUST 118/27). More recent evidence shows that taxation constituted a much greater proportion of the retail price of spirits than other drinks throughout the 1970s and 1980s (TNA CUST 44/69; TNA CUST 44/79); that, per 100 milligrams of alcohol, beer was taxed at nine pence and spirits 16 pence in 1989 (Crooks 1989); and spirits were taxed at a higher rate per unit of alcohol than other drinks in 2011 (Leicester 2011). It also became common, from the 1970s, for understanding of price-demand elasticities to facilitate statistical projections of how specific changes in rates

of excise duty would affect levels of alcohol consumption (TNA T328/764; also Crooks 1989; Home Office 2012). Governmental interest in the regulation of drinking through taxation is not confined to isolated spells during the 18th and 19th centuries, but is clearly visible for much of the 20th and 21st centuries.

Recent government changes to alcohol excise duties have also been widely understood with reference to the regulation of consumption. The New Labour Government (1997–2010) introduced an “alcohol duty escalator” in 2008 that enforced successive annual increases in alcohol excise duties at two percent above the rate of inflation. Government ministers mostly stuck to the line that the escalator was designed to raise revenue only (Seely 2014), although its introduction did follow substantial pressure for action on alcohol pricing and was understood by many interested parties in reference to efforts to lower general alcohol consumption (e.g. Alcohol Health Alliance 2013). The Coalition Government (2010–2015) continued the duty escalator until 2014 and also introduced other duty reforms that were more openly connected to efforts to regulate drinking. In 2011, a new higher rate of duty for strong beer (minimum 7.5 percent alcohol by volume) was justified in reference to addressing “the consumption of cheap, ‘super strength’ lagers that are also associated with high, and dangerous, levels of alcohol consumption” (Seely 2014, p. 19). Simultaneously, a new lower duty rate for weak beer (maximum 2.8 percent alcohol by volume) was created in 2011 and was described as helping to “encourage the production and consumption of lower-strength beers and give responsible drinkers additional choice” (Seely 2014, p. 19). Furthermore, the Coalition’s 2014 ban on the sale of alcoholic drinks at below cost price (defined as excise duty plus value-added tax) was attributed to efforts to “stop problem drinking” (Seely 2014, p. 32). These taxation measures are not designed to affect the taste of drinks as in earlier eras, but they do similarly embody an attempt to use excise duties to financially weight behavioral decisions in order to favor certain outcomes. The specific creation of new strength-based brackets of beer duty again engenders regulation by promoting more politically desirable forms of alcohol consumption. These super strength “binge drinks” have joined spirits as alcoholic beverages that are constructed as especially problematic and thus suitable for higher taxes.

The Coalition’s duty reforms can thus be seen as an attempt at regulation through taxation and, more specifically, a contemporary example of the use of taxation to govern drinking by structuring choices. From a historical perspective, the ongoing favor of such policies should not be especially surprising. This is, firstly, because of the waning fiscal importance of alcohol excise duties in the last century. Along with alcohol import duties, these taxes typically provided 30–40 percent of total annual government revenue across the 19th century (Harrison 1971, p. 246). While governments in the 1800s did use tax policies to seek to shape drinking habits, these behavioral projects clearly had to be balanced against the state’s considerable pecuniary interest in maintaining at least some level or type of alcohol consumption.¹¹ While the rates and receipts increased massively in both the First and Second World Wars, alcohol taxes actually shrank as a proportion of total tax revenues across the first half of the 20th century (Harrison 1971, p. 246). Figure 1 illustrates the further decline of alcohol taxes as a proportion of total government revenue from the 1950s onwards. They provided

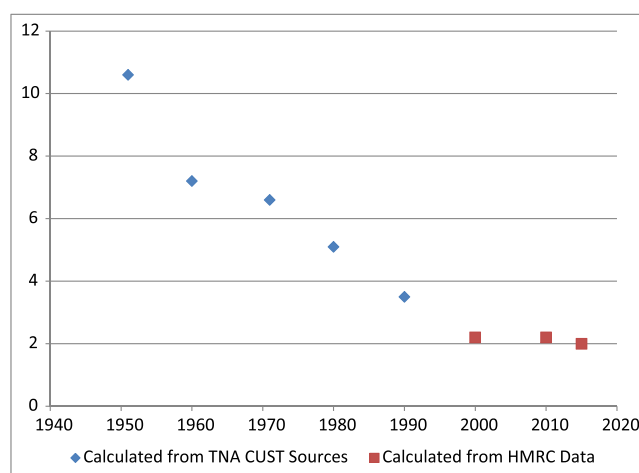


Figure 1 Alcohol Tax (Excise and Import Duties) as % of Total Government Revenue. Alcohol duty totals based on TNA sources are the sum of receipts from beer, spirits and wine duties (including duties on British and ‘made’ wine). They do not include receipts from cider or perry (which are charged intermittently) or revenue from excise licences. Other data used is taken from HM Revenue and Customs (2016a; 2016b).

7.2 percent of government revenue in 1960 and 5.1 percent in 1980. In the tax year ending 2015, the £10.5bn collected in alcohol taxes provided only two percent of total revenue.¹² As they came to rely less on the revenue provided by alcohol taxes, British governments will have gained an enhanced capacity to attempt to reduce drinking through taxation or, at least, to direct consumption toward outcomes attuned to behavioral objectives as well as fiscal ones.

The second reason why the continued use of alcohol taxes to govern drinking through choice is unsurprising is its neat consistency with dominant political ideas and trends in governance. The study of regulation became popular in the context of sociopolitical changes since the 1980s, which, it is widely claimed, have seen neoliberal ideals of minimal government and free trade pursued by states with a new vigor. The privatization of many publicly owned industries, the decline of state economic planning, and the retraction or reduction of many welfare entitlements have exemplified this transformation. Importantly, as regulation scholars have shown, these changes did not and do not necessarily amount to a lessening of governance or social control so much as they constitute a shift toward differing means of influencing behavior, through steering above rowing or regulating responsively rather than through command and control style interventions (Ayres & Braithwaite 1992; Baldwin *et al.* 1998; Braithwaite 2008; Smith *et al.* 2010). Thus, on the one hand, the purchase of alcoholic drinks is not controlled tightly by legal prohibitions or other state commands and exists as a lawful activity which individuals are notionally “free” to engage with. But on the other hand, choices about drinking are financially weighted by taxes in order to steer individuals in certain directions. Just as historical forms of alcohol pricing intervention have been connected to the police and liberal economies, the contemporary use of alcohol excise duties to govern through choice are consistent with the wider forms of regulation prevalent within a neoliberal socioeconomic climate.

In the present, several features characterize the use of alcohol excise duties to regulate drinking. It is non-prohibitive, legally enforced, and universal (in the sense that it is applied to all licit alcohol sales within the UK jurisdiction). It is steering or directive in nature and operates primarily through choice. While taxes must be legislated into existence and their collection is backed by criminal sanctions, the means through which they impact behavior are economic rather than legal as they operate through price. These crucial features help to make sense of alcohol taxes in relation to other methods of regulating drinking. Of course, as with their historical antecedents, today’s regulatory tax policies are accompanied by a range of other measures. Drawing on the work of Ayres and Braithwaite (1992), it is useful to express these different forms of regulation as a pyramid. As discussed, the avoidance of drunkenness, through the discouragement of spirits-drinking or binge drinking, has been constructed as the objective of historical and contemporary examples of regulation through taxation. Hence the pyramid in Figure 2 depicts the principal means used by contemporary British governments to respond to drunkenness. The width of each level indicates how broadly the response is applied and the vertical order is determined by its severity and formality. Criminal prosecutions for drunkenness offences thus sit at the top of pyramid, as severe, formal but not extensively used responses that allow certain individuals to be convicted and punished. Education and persuasion, which encompass anti-binge drinking advertising campaigns

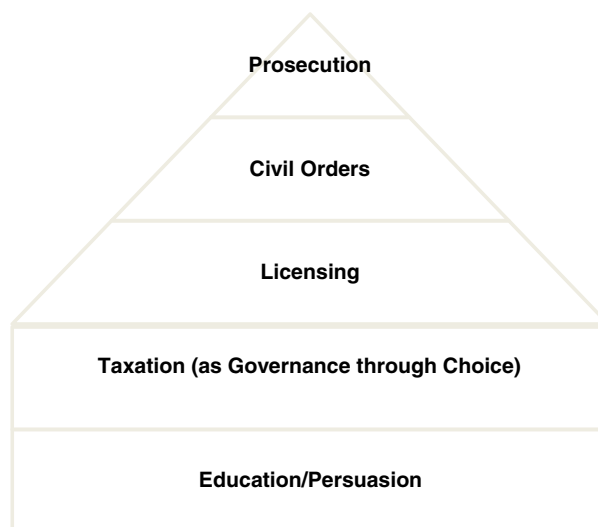


Figure 2 Regulatory strategies for responding to drunkenness.

and public health advice on “safe” levels of drinking, sit at the bottom as they are broadly dispensed but non-legal and fairly informal. Licensing and civil orders are both legal measures employed on an individual basis to either control the behavior of individuals (by giving them a Drinking Banning Order, for instance) or to limit the selling of alcoholic drinks to specific people on certain premises (through licensing). Taxation, thus, sits below the individual and potentially severe legal measures, but above the more informal, less severe, and non-legally-based regulation through education and persuasion. It is also notable that the levels of the pyramid become more preventive with each descending tier.

Presenting alcohol regulation as a five-tiered pyramid may appear a little reductionist. It is also fair to say that the forms of regulation depicted are not necessarily utilized in a manner that is coordinated or complementary.¹³ But the point is less about providing an entirely accurate and adequate depiction of the complex web of interventions and practices that are brought to bear on drunkenness, and more about situating alcohol taxation in relation to other means of regulating drunkenness. The contemporary use of alcohol excise duties can thus be conceptualized as a practice of governance through choice that is as widely applied as any form of alcohol regulation, as well as being less individual and severe than licensing, civil orders, or criminal prosecution. In this form, alcohol excise duties contribute to the regulation of drinking today just as they did in the 19th century.

5. Conclusion

This article has used historical analysis to build up a typology of alcohol pricing interventions that consists of maximum pricing, taxation as prohibition, and taxation as governance through choice. For each intervention, the discussion has identified the relevant objective in relation to behavior or consumption (ensure availability of beer, prevent the consumption of spirits, or increase beer-drinking at the expense of spirits-drinking), the regulatory mechanism through which it was intended that behavior would be effected (price suppression, price inflation to deterrent levels, or varied duty rates between drinks to weight individual choices), and the type of actor upon whom an effect was envisaged (rational or irrational). Examining these historical interventions gives rise to new perspectives on the present. This occurs partly as the present regime of alcohol excise taxation is more clearly characterized by historically familiar attempts to govern drinking through choice. These practices are very similar to the 19th century tax policies examined in the sense that, in both cases, varied duty rates are intended to alter the decisions made by individual rational actors. Although current policies are justified more as anti-binge drinking measures rather than anti-spirits measures, in both cases the objective is to reduce a form of drinking that is believed to cause a disproportionate amount of alcohol-related social problems. A longer-term perspective thus highlights a fair degree of consistency in the operation of alcohol regulation through taxation in England and Wales.

As well as bringing the present into sharper focus, the historical perspective adopted here enables more informed reflections on the future of alcohol policy. This article began by outlining current debates about the introduction of an MUP in various parts of the UK and how this is often perceived as a new and different policy that is tantamount to a “turning point.” It was noted at the outset that the mechanism involved in this policy – the creation of a legal price floor for alcohol sales above and beyond the amount of taxation involved in any transaction – would indeed be new. Such a policy would starkly contrast the system of maximum pricing that operated for much of the medieval and early modern periods. Moreover, it is notable that the statutory price boost of an MUP is justified more with regards to the control of irrational drinkers than governance through the choices of rational drinkers (see Haydock, 2014). In this respect, it may have more in common with 18th century experiments with taxation as prohibition rather than the ongoing usage of taxation as governance through choice. But crucially, the long history of alcohol pricing interventions examined here undermines any conception of the total novelty of MUP proposals. It has been amply demonstrated that the manipulation of alcohol prices for the purpose of altering general patterns of drinking behavior is a well-established historical practice of British governments. It has also been suggested that the waning fiscal importance of alcohol excise duties in the last century has enabled their operation to be directed increasingly towards behavioral objectives as opposed to financial ones. It is thus suggested that an MUP should not be seen as anything paradigmatically distinct in alcohol policy.¹⁴ As depicted in Table 1, it is a (potential) fourth type of alcohol pricing intervention that is separate, but also similar, to its historical antecedents. An MUP, therefore, is less a turning point and more a potential next step along a regulatory path that British governments have been walking for centuries.

Finally, this article has sought to make a contribution to the wider socio-legal study of regulation. It should be stressed that the article has not sought to obscure the distinction between taxation and regulation. Instead, it has argued

Table 1 Comparison of alcohol pricing interventions

Intervention	Objective	Mechanism	Target
Maximum pricing/price suppression	Ensure availability of beer	Price suppression	–
Taxation as prohibition	Prevent, or radically reduce, spirits drinking	Price inflation to deterrent levels	Irrational actors
Taxation as governance through choice	Consumption of less problematic drinks	Varied duty levels to weight prices in favor of desired outcome	Rational actors
Minimum unit pricing	Lower consumption generally	Minimum unit price to increase prices	Irrational actors

that valuable existing studies of the regulation of taxation, as well as frequent assertions that taxation can be used to shape consumption, should be accompanied by additional enquiries into how taxation can, in some circumstances, be connected to wider projects of behavioral regulation. To further this end, this article has identified historical examples of the sort of deterrent, prohibitory taxation previously only described hypothetically and has examined, in some depth, the usual historical operation of taxation as governance through choice. It has drawn on existing regulation literature to develop an analytical framework based on objective, mechanism, and target, and used this to compare these two forms of regulation through taxation to other means of intervening in alcohol pricing. Through this historical typology of pricing interventions, that has empirically and conceptually extended understanding of taxation as a form of behavioral regulation, it is envisaged that this paper will help to facilitate further studies in this area. Such studies might examine alcohol further but need not be limited in this way. Excise duties on tobacco, gambling, and petrol are, in various countries, often justified with reference to the social or environmental problems resulting from the consumption of these commodities. It is notable that the UK Government recently announced plans to follow other jurisdictions, such as France and many American states, by introducing a tax on sugary drinks as a means of tackling childhood obesity (von Tigerstrom 2012; Hoffer et al. 2014; Triggle 2016). Furthermore, Colorado's bold move to legalize the marijuana trade has involved the creation of marijuana taxes (see Colorado Department of Revenue, 2016). In all of these examples, it is either apparent or possible that the use of taxation may form part of the regulation of the consumption of these apparently problematic commodities. It is therefore hoped that this paper can contribute toward a wider and better understanding of the important and evolving practices of regulation through taxation.

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Notes

- 1 See Katikireddi *et al.* (2014) for a more detailed account of the evolution of MUP as a policy proposal.
- 2 Indeed, the novelty of a price floor seemed to be reflected in the European Court of Justice ruling on the legality of the Alcohol (Minimum Pricing) (Scotland) Act 2012. See *Scotch Whisky Association v. the Lord Advocate and The Advocate General for Scotland* (2015).
- 3 For example, see Babor *et al.* (2010); Cnossen (2011); and Howlett (2011, pp. 101–114).
- 4 For example, a search for “taxation AND regulation” on Web of Science produced 1346 hits. This is a large number and consideration was given to the first 100 hits by relevance, the first 100 hits by date (newest) and the first 100 most cited. By each means of sorting, the quantity of results that actually examined taxation and regulation simultaneously, and in any depth, was very small.
- 5 This broad definition of regulation also corresponds to the third definition of regulation identified by Baldwin *et al.* (1998) as all mechanisms of social control. It also echoes Black's statement that “regulation is the sustained and focused attempt to alter the behaviour of others according to the defined standards or purposes with the intention of producing a broadly defined outcome or outcomes” (cited in Smith *et al.* 2010, p. 2).
- 6 Interestingly, Ogus (1998) is skeptical about the practicalities of implementing a tax that is pegged to the cost of externalities. Administrative costs, weak accountability, and the difficulty of calculating externalities are identified as problems. Others authors have expanded on the latter problem (e.g. Kaplow & Shavell 2002).

- 7 It is worth adding that there was no settled comprehension of “alcoholic drinks” as a category of beverages until at least the 19th century. In this sense also, beer and other drinks we now understand as alcoholic were not treated as a defined category of commodities requiring special regulation.
- 8 Similarly, the early history of federal excise taxes in the US was dominated by attempts to use such taxes to raise money to fund military activities (see Yelvington 1997).
- 9 There were regular communications between excise officers and the Treasury on the topic of adulteration in the 1820s and 1830s. For example, in December 1829, a group of excise officers informed the Treasury that, of every 10 brewers, six to eight were adulterating porter (TNA CUST 119/368).
- 10 Thaler and Sunstein define a nudge as “any aspect of the choice architecture that alters people’s in a predictable way without forbidding any options or significantly changing their economic incentives” (2008, p. 6). Consistent with the findings presented here, they specifically associate taxes designed to change behavior with the vision of human beings as rational actors and separate them from nudging which, in their argument, is underpinned by a non-rational conception of human agency (2008, particularly pp. 6–8).
- 11 Gladstone neatly expressed these dual purposes in 1880 when he explained that the objective of spirits taxes was not to eradicate consumption but “to bring it to what would be the minimum compatible with the collection of the Revenue” (House of Commons 1880).
- 12 Again, see Yelvington (1997) for information on the interesting and parallel decline in the fiscal importance of excise taxes in the US across the 20th century.
- 13 Indeed, a number of criminological studies have raised the idea that the relaxation of various licensing rules in the 1990s and 2000s actively contributed to an increase in drunkenness (e.g. Measham & Brain 2005; Hadfield 2006; Hayward & Hobbs 2007).
- 14 The form of change described here might be characterized as, using Hall’s (1993) famous schema, a second order policy change rather than a paradigm shift. Applying Hall would be to suggest that the goals of the policy remain the same (reducing alcohol-related social problems), but the instruments used to achieve these goals are different (MUP vs. taxation as governance through choice). While such a characterization might be tenable, it is also important to recognize that both an MUP and alcohol taxation as governance through choice belong to the same family of price-based interventions and are used (or proposed for use) alongside other regulatory measures, such as licensing and education. These points do not sit as comfortably within Hall’s schema for analyzing policy change.

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