

Public Health Imperatives and Taxation Policy: An Early Paradigm in English Law

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EXTENDED SUMMARY

Since the middle of the twentieth century it has become a feature of fiscal law and policy for taxation to have a prominent and potentially very powerful role to play in promoting public health. The indirect taxes on tobacco and alcoholic beverages, dating from the seventeenth century, have come to acquire an objective beyond their original and explicit revenue-raising and have been consciously imposed to control the widespread use of substances proved by medical science to be injurious to public health. The use of taxation as part of the essential function of government to take measures to promote the health of the public, and on this scale, is a modern phenomenon, an expression of contemporary fiscal thought. However the official acceptance of the interaction between fiscal and public health imperatives, even only to the extent of acknowledging the need to balance the two requirements, was first seen unambiguously in the context of the window tax in the third and fourth decades of the nineteenth century. A tension had always existed between government's need for public revenue and the unforeseen consequences of a tax. The consequences of the window tax undoubtedly were unanticipated and unintended by the legislature, but they were strikingly evident and particularly unfortunate. The tax affected the behaviour and, thereby, the living conditions and ultimately the health of the urban poor in nineteenth century Britain. The window tax had been imposed for reasons that reflected orthodox taxation theories of the seventeenth and eighteenth centuries – to fulfil the function of revenue-raising, in a form that was easy to collect and relatively un-inquisitorial. It was a tax suited to a pre-industrial, pre-urban society which was found unsuitable, and indeed actively damaging, in an industrial urban society. This paper examines government responses to a tax which was found to be injurious to the public health and assesses the place of the window tax in the formative period of modern fiscal policy. It investigates whether the tax was reformed or repealed on public health grounds alone, irrespective of purely fiscal considerations and the contribution of expert medical and social evidence so as to lead to its ultimate repeal in 1851.

The window tax was a direct tax introduced in 1695, imposed on every inhabited dwelling house, originally as a charge supplementary to a house tax and then as a distinct charge on the windows themselves. The rates varied throughout the eighteenth century. In the first quarter of the nineteenth century windows were charged on an ascending scale, with the highest charge per window being on a house with forty windows, and thereafter the charge lessened until it reached its original starting point of 1s 9d per window. The tax raised some £2 million per annum. The legislation provided for a number of exemptions, the most notable of which was for all houses with fewer

than seven (later, eight) windows, an exemption that was intended to relieve the poorest in society from the liability to the tax.

All taxes were unpopular, but the window tax was the subject of the most intense popular invective. It was described as 'obnoxious' 'too oppressive to be endured', 'the foulest blot that ever disgraced the fiscal code of any civilized nation'. The reasons were many, and of various significance. First, the window tax was perceived as undermining a number of orthodox canons of taxation. It was inherent in eighteenth century theories of taxation that the necessities of life should not be taxed, that taxes should be essentially voluntary, that they should be locally administered, should not be inquisitorial and should be related to an individual's ability to pay. The window tax undermined most of these. It was perceived as a tax on light and air. As these elements were necessary to human life, taxpayers had no choice as to their consumption, and accordingly this unavoidable tax lacked the essential element of consent to taxation and was, effectively, compulsory. Light and air were in this sense not regarded as appropriate or legitimate objects of taxation, an argument which took on a religious character. Religious and moral themes pervaded debates on the tax, with frequent references to the 'impious' taxation of 'the light of heaven'. Though only mildly inquisitorial by the standards of the new income tax of 1842, the fact that the tax was assessed by a government official who had authority to pass through a house to count the rear windows, made it objectionable on those grounds. Furthermore, the tax was also seen to be unequal, with the wealthiest houses paying proportionately the least. Its scale of rates meant that it was particularly burdensome to the poorer and middle classes, and began to decline when it affected the houses of the wealthy. It left the houses of the aristocracy relatively untouched. Contemporary commentators demonstrated that the houses of the poor paid a far higher proportion of the rental value of their property in window tax than the wealthy. An inhabitant of a poor area of London paid some 20% of his rental in tax, while the Duke of Beaufort, for example, paid just over 2%. In addition, the traditional rationale of the window tax had been discredited, and it was widely understood that the number of windows in a house was no longer an accurate measure of an occupant's wealth or indeed a fair criterion of its value. Secondly, the Board of Stamps and Taxes was intransigent in its administration of the tax, and the judiciary's interpretation of the legislation was strict to an extent that was striking even by the standards of nineteenth century statutory interpretation in the tax sphere. The legislation was comprehensive, did not define the term 'window' and prescribed no minimum size. The judges interpreted the Act so as to bring into charge virtually any opening in a wall, even the smallest chink, if it admitted any light at all. An opening in a cellar to let out noxious air, an unglazed window in a laundry to let out steam, a grating in a larder to keep food cool, or the smallest opening letting in even feeble light were all legitimately charged the same as a window 12' by 4'9". Thirdly, there were concerns about the impact of the tax on the architecture and building in the country. Elegant houses in Bath, Edinburgh and London were spoiled by the blocking up of windows, while small back to back houses stretched for miles around the major cities, all individual houses with the minimum number of windows. Finally, and above all, the tax was unpopular with the medical profession and social reformers because of its severe impact on the living conditions of the urban poor.

In the context of a very significant increase in the population and the concentration of industry in the towns and cities, the urban poor formed a new and

rapidly growing class in the first half of the nineteenth century. One outcome was the development of slum housing which was crowded and insanitary, and was prone to devastating epidemics of typhus, smallpox and cholera. Mortality rates were shockingly high, and life expectancy shockingly low. This state of affairs was first exposed by the reports of the Poor Law Commissioners in the 1830s. A number of local investigations were commissioned, concentrating on the living conditions of the poor in the north of England, and these ultimately resulted in Edwin Chadwick's landmark report on the Sanitary Condition of the Labouring Population in 1842. The evidence of these and subsequent investigations into the health of towns revealed the appalling sanitary conditions in which the working poor lived in London and the other industrial cities. An inadequate supply of fresh clean water, filthy unpaved streets, no drainage or sewerage and, inside the dwellings themselves, unspeakable dirt and degradation were commonplace. The principal causes of these unacceptably squalid living conditions, namely inadequate drainage, sewerage provision and water supply, could only effectively be addressed by remedial public health legislation implemented by central government.

It was on the conditions within the homes of the poor that the window tax had a severe impact. The exemption for cottages with fewer than seven windows was intended to relieve the poor from liability to the tax, on the basis that only the poor inhabited dwellings with so few windows and that accordingly relief from the tax would be appropriately directed where it was needed. While this exemption was effective in the homes of the rural poor, who generally lived in distinct cottages with fewer than seven windows, the exemption was ineffective in relation to the urban poor. In towns and cities, the poor rarely lived in individual houses, but increasingly in large tenement blocks, many of which were originally the large houses of the wealthy converted into a number of dwellings. Though each apartment would have four or so windows, it was not treated as a separate dwelling house attracting exemption from the tax, but instead bore the full tax of the whole building. Whether they paid directly as occupiers or through an increased rent, the tax constituted a heavy financial burden on poor families. They thus blocked up every window they could. When a committee of the Metropolitan parishes inquired into the window tax in 1845, it found that thousands of windows had been blocked up in the large houses converted into sets of dwellings for the poor. The impact on the public health appeared obvious. Ventilation in living rooms was inadequate as windows and skylights were blocked up wherever possible, and since the tax was imposed on the smallest opening, including air holes and gratings, diseases bred in confined rooms, damp cellars and unventilated larders. The problem was extended into the future because builders and architects constructed new houses with as few windows as possible.

By the end of the 1840s, expert and informed opinion was unanimous that the window tax was a major cause of inadequately ventilated and lit houses and that this was seriously injurious to the health of the urban poor. Inadequate ventilation and lighting both caused disease directly and aggravated existing disease. It could lead to death. It was observed that it was the inhabitants of unventilated houses who suffered most from scrofula, typhus, typhoid, malaria, smallpox, whooping cough and scarlet fever. It was also believed that tuberculosis, stunted growth and nervous depression were caused by inadequate ventilation. Medical science in this period supported the view that a deprivation of fresh air and light was seriously injurious to health. Orthodox

medical thinking asserted that there were various forms of epidemic, endemic and other diseases caused, aggravated, or propagated chiefly amongst the poor by atmospheric impurities or 'miasma'. This was produced by decomposing animal and vegetable substances, by damp and filth. It was also present in close and overcrowded dwellings, for where whole families lived in one room with closed up windows, the breathing in and out of a limited air supply caused the air to become 'vitiating' and impure. The inhalation of this miasma both caused disease and was responsible for spreading infection. By the 1850s the miasmatic theory of the origin of infectious disease was being supplanted by the new germ theory, but it dominated scientific and official thinking for the first half of the nineteenth century and, significantly, during the agitation against the window tax on public health grounds.

The consensus was that the window tax resulted in poor ventilation, that poor ventilation in insanitary conditions resulted in poisoned air which caused, spread and aggravated disease, and that a supply of fresh air was essential to prevent disease, mitigate its severity, and permit its effective treatment. The movement for abolition of the window tax began in the 1830s, though the arguments for repealing the tax in the interests of the public health were in their initial stages of proof through statistical evidence, scientific knowledge and medical observation. The work of reformers such as Edwin Chadwick and Thomas Southwood Smith initiated the public health movement, and the investigations of the poor law commissioners and the commissioners for the improvement of towns yielded full evidence as to the effects of the window tax. Petitions to the House of Commons, deputations to the Chancellor of the Exchequer, and a popular movement of public meetings and pamphlet agitation demanded the repeal of the tax, initially entirely on the grounds of its inherent unfairness and unequal financial incidence. As the evidence for the injurious effects of inadequate ventilation became increasingly extensive and compelling, and it was adopted by the public health reformers as the principal grounds for repeal. Motions for the tax's repeal were put to Parliament in 1845, 1848 and 1850, and on each occasion the case for abolition was put forcibly and convincingly by Lord Duncan. Successive Chancellors of the Exchequer, with the notable exception of Henry Goulburn, could not deny the evidence, but all felt unable to forgo the revenue even in the context of a substantial surplus and, in 1848, the devastation of the second cholera epidemic. Ultimately, so convincing were the arguments for its repeal that, although the tax was not abolished in 1850, the motion was lost by just three votes. Thereafter the tax was untenable, and it was repealed in 1851.

This paper concludes that the importance of the window tax lay in the fact that it was the first time that public health imperatives had conflicted so directly and manifestly with the fiscal interests of the state. The window tax was ultimately repealed as a result of intense pressure from public health activists and medical practitioners, and the compelling nature of the social and medical evidence they adduced. The repeal was a triumph for those fighting for better housing for the poor, and as such the window tax appeared to be the earliest paradigm in English law of the viability of a tax being dictated by non-fiscal public health imperatives. However, the evidence suggests that the public health arguments as such were effective because of their political effects rather than their intrinsic merit. The tax was repealed because it was politically untenable in the context of the medical evidence as to the effects of inadequate ventilation. While the public health imperatives appeared to prevail in that the tax was repealed expressly on those grounds, there were other weaknesses in the structure of the

tax which rendered it inappropriate in the developing fiscal theories of the nineteenth century. The tax was also clearly inconsistent within the wider portfolio of government policies, for the emergency provisions of the Nuisances Removal and Diseases Prevention Act and the newly formed General Board of Health were in clear conflict with the acknowledged effects of the window tax. It thereby reveals a wider underlying theme, namely the degree of integration between tax policy and government policy in other spheres, and the political dangers of dislocation between them. Furthermore, the window tax reveals the tenacity of revenue considerations in the resolution of this conflict. On repeal, the revenue demands of the government were safeguarded: despite a time of surplus and the relatively small sum the window tax raised, the revenue was not permitted to diminish. It was replaced immediately by a new inhabited house duty with a more rational basis of charge. Fiscal imperatives were thus allowed to prevail in the face of incontrovertible evidence of damage to the public health, but the process unequivocally raised the awareness of the potential connection between fiscal policy and public health, and constituted an example of a tax where the public health impact demanded some action on the part of the Treasury. This connection was thereafter accepted as a factor in tax policy, a factor that could be a major one, and one that could never be ignored and indeed had to be consciously addressed. Today the connection has been taken to a stage beyond any negative impact of a tax on public health, and is now used in a positive sense, in that taxes on alcohol and tobacco are deliberately and expressly imposed in order to form social behaviour with public health objectives. The window tax thus had a formative role in the shape and pattern of modern fiscal policy and its embodying legislation. It marked the beginning of a period where direct taxation was officially acknowledged as moving out of an inward looking fiscal sphere where its only purpose was to raise money, and looking at the use of tax for wider social purposes.