

ATTA 2017: A Tax or a Fine? The Development and Relevance of Tobacco Taxation

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ABSTRACT

Within decades of the introduction of tobacco in England, King James I issued one of the earliest anti-smoking missives, his *Counterblaste to Tobacco*, which he followed with a forty-fold increase in the custom on the substance. History repeats; four centuries later the New Zealand Government adopted the goal of making New Zealand essentially a smoke-free nation by 2025, and a series of annual increases in tobacco taxation to discourage smoking is a key component of this policy. Concurrently, there are proposals to tax certain foods to combat obesity. Taxes on tobacco, alcohol and sugar have long provided a ready stream of revenue for governments. However, the negative effects of consumption of these products have provided a separate justification for their taxation.

This contribution to taxation history considers the relationship between tax and society as illustrated by the tobacco tax. It reviews the development of tobacco taxation in New Zealand since its establishment as a Colony in 1840, to determine how the tax was justified and how this has changed over time.

This research provides a context in which to discuss the contentious issue of what constitutes a tax, why a tax may be levied, and whether a tax imposed in pursuit of a specific policy goal has a legitimate place in a tax system formally committed to neutrality. It also has contemporary relevance at a time when similar taxes are proposed to address obesity.

1.0 INTRODUCTION

If you can recall these phrases, you may be showing your age:

More Doctors Smoke Camels than Any Other Cigarette.¹

A spoonful of sugar makes the medicine go down, in the most delightful way!²

Times change: you won't see that Camel advertisement anymore; in fact you won't see *any* tobacco advertising anymore. And Julie Andrews just might be censured (if not censored) for encouraging obesity – in children, no less! Smoking is now depicted as anti-social, and spoons full of sugar (in sugary drinks) are no longer “delightful”. Both tobacco and sugar have long been tapped for revenue, but cigarettes are already subject to specific, corrective taxes intended to reduce or eliminate consumption.

There have been recent calls for a similar approach to address the emerging obesity problem by taxing sugary and fatty foods. The *New Zealand Journal of Taxation Law and Policy* recently published five articles related to fiscal measures to address obesity, each of which cites tobacco taxation as a precedent for proposed taxes on sugar and fat. Thus, “[p]roponents of a soft drink tax argued that the rationale behind such a tax is not very different from the taxing of tobacco/cigarettes, which has been used successfully as a strategy to control or deter smoking.”³ The new taxes are justified by “the apparent success of excise duties in reducing demand for tobacco,”⁴ and would mirror current practice with tobacco, alcohol and petrol, ie an excise tax on certain foods in addition to GST.⁵ While it is acknowledged that “food and beverage taxes are a paternalistic policy approach”, the end would seem to justify the means, for “history provides many examples of successful interventions, for example, ... taxes on tobacco.”⁶ In sum, “An example of how excise taxes have been effective in New Zealand is tobacco consumption.”⁷ These calls contrast with the direction of New Zealand tax policy over the past 20 years which has been characterised by “a light-handed approach to regulation [which] typically has not supported using the tax system to influence behaviour.”⁸

This article considers the history of tobacco taxation in New Zealand. It reviews the development and justification for selective taxation per se, before outlining the legislature's

¹ Advertisement for Camel cigarettes, R. J. Reynolds Tobacco Company, 1946. This slogan was used in print, radio and television advertising.

² Bill Walsh and Don DaGradi *Mary Poppins* (Movie) (Walt Disney, Los Angeles CA, 1964)

³ Lin Mei Tan and James Xun Liu “Curbing the Consumption of Soft Drinks in New Zealand: Is Tax the Solution?” (2014) 20:2 *New Zealand Journal of Taxation Law and Policy* 203 at 209.

⁴ Jonathan Barrett “Fat taxes: A Proportionality Approach” (2012) 18:3 *New Zealand Journal of Taxation Law and Policy* 242 at 242.

⁵ Judith Pinny “Tax Working Group Myopia: The Omission of Corrective Taxes to Deal with Obesity” (2010) 16:3 *New Zealand Journal of Taxation Law and Policy* 325.

⁶ Jessica Burns-Grant and Lisa Marriott (2012) “An Institutional Perspective on Fighting Obesity via the GST System: A New Zealand Case Study” (2012) 18:2 *New Zealand Journal of Taxation Law and Policy* at 190 at 213.

⁷ Helene Stuart and Adrian Sawyer “An Excise Tax on Unhealthy Food or the Removal of GST from Healthy Food as a Way of Managing Obesity: A New Zealand Perspective” (2013) 19:2 *New Zealand Journal of Taxation Law and Policy* 112 at 118.

⁸ Burns-Grant and Marriott, above n 6 at 204.

rationale(s) for tobacco taxation, and makes the following contributions. First, in keeping with the theme of the conference, it highlights the interaction between taxation and society. Taxation instantiates changes in social norms concerning tobacco. In particular, tobacco taxation demonstrates the inherently moral nature of tax policy. Secondly, the article questions whether a corrective tax is properly called a tax. Finally, the historical survey provides a basis for future critical and comparative research.

The article continues as follows. The next section discusses the relationship between taxation and society and relates this to tobacco taxation. Next, the article summarises the history of tobacco taxation in New Zealand, before considering rationales for corrective taxes on certain foods and drinks. After discussion, the article concludes.

Full disclosure: the author does not smoke, and this article is not intended to provide an argument against smoking, or a review or evaluation of conflicting claims concerning the costs and effects of smoking; that discussion is readily available elsewhere.⁹ Nor is the author obese, but he will not allow the fact that any corrective taxes are unlikely to affect his weight to affect his assessment of dietary taxes.

2.0 TAX AND SOCIETY

The conjunction in the ATTA 2017 conference theme – tax *and* society – links taxation and social practice. If tax is an individual sacrifice for a collective goal,¹⁰ then taxation presupposes a collectivity – a society – to and for whom the sacrifice is made: no society, no tax. Yet if government is necessary for the maintenance of society, and governments “cannot be supported without great Charge”,¹¹ some form of taxation is necessary to establish and maintain government and thus society: no tax, no society.

Schumpeter highlighted this link between taxation and society in the concept of Fiscal Sociology, and argued that taxation was both symptomatic and causal of society. Fiscal history “provides an insight into the laws of social being and becoming ... as well as into the manner in which concrete conditions ... grow and pass away.”¹² The more recent New Fiscal Sociology, “a new wave of multidisciplinary scholarship on taxation”, supplements

⁹ For a record of the anti-smoking movement in New Zealand, see Ian McIntosh *A Force to be Reckoned with: ASH (Action on Smoking and Health) The Twenty-One Year History of ASH* (Action on Smoking and Health, 2004). For a contrarian view see Christopher Snowden *Velvet Glove, Iron Fist: A History of Anti-Smoking* (Little Dice, London, 2009).

¹⁰ Ferdinand HM Grapperhaus *Tax Tales from the Second Millennium* (International Bureau of Fiscal Documentation, Amsterdam, 1998) at 1. In contrast, the Oxford English Dictionary (OED), provider of “the meaning of everything (Simon Winchester *The Meaning of Everything: The Story of the Oxford English Dictionary* (Oxford: Oxford University Press, 2003)) ignores this broader context when it defines taxation as “a compulsory contribution to the support of government, levied on persons, property, income, commodities, transactions...” “excise, n.” OED Online. September 2016. Oxford University Press. <<http://www.oed.com/view/Entry/65780?rskey=BtQ9ZE&result=1>>.

¹¹ John Locke “Second Treatise on Government” in Peter Laslett (ed) *John Locke: Two Treatises of Government*, (Cambridge University Press, Cambridge, 1988), 2.140 (p. 362).

¹² Joseph Schumpeter ‘The crisis of the tax state’ in R Swedberg (ed) *The Economics and Sociology of Capitalism* (Princeton University Press, Princeton NJ, 1991) 99

traditional, black letter, taxation scholarship in understanding tax as constitutive of society, for:¹³

taxes have been central to the formation of civic identity across place and time ... Nearly every issue with which [sociologists] are concerned runs through the issue of taxation. They signify who is a member of our political community, how wide we draw the circle of 'we'.

Positively, the payment of taxes may be regarded as a mark of inclusion; 'taxpayer' is a mark of social membership.¹⁴ Negatively, taxes may stigmatise particular individuals based on their (consumption) behaviour, where the individual with the stigma (eg a smoker or an overweight person) is denied full social acceptance.¹⁵

Ritzer defines "society" as "a relatively large population that lives in a given territory, has a social structure, and shares a culture, and the complex pattern of social relationships that is bounded by space and persists over time."¹⁶ Taxation reflects and affects these elements: social structure, culture, and pattern of social relationships, as is evident in Madeo et al.'s definition of taxation as:¹⁷

any nonpenal yet compulsory transfer of resources from the private to the public sector [ie society], levied without receipt of a specific benefit of equal value and on the basis of predetermined criteria, in order to accomplish some of a nation's economic and social objectives.

While all taxes have social and economic effects, some are specifically intended to do so. The 2010 Tax Working Group distinguished between revenue and corrective taxes.¹⁸ Revenue taxes provide an indirect means to accomplish a nation's economic and social objectives by providing the revenue to enable governments to progress their policies. There is usually no nexus between revenue taxes and specific social outcomes; eg New Zealand's comprehensive, single-rate Good and Services Tax revenue cannot be related to any specific behavioural outcomes.¹⁹ In contrast, corrective (or selective) taxes are specifically designed

¹³ IW Martin, AK Mehrotra, and M Prasad 'The thunder of history: The origins and development of the New Fiscal Sociology' in IW Martin, AK Mehrotra and M Prasad, *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective* (Cambridge University Press, New York, 2009) 1 at 1.

¹⁴ Nancy C Staudt "The Hidden Costs of the Progressivity Debate" (1997) 50 *Vanderbilt Law Journal*, 919.

¹⁵ Erving Goffman *Stigma: Notes on the Management of Spoiled Identity* (Penguin, London, 1963).

¹⁶ George Ritzer *Introduction to Sociology* (Sage, Thousand Oaks CA, 2013) at A-10. Since taxation is levied by a government on a "subject" population, for the purposes of this article, the members of a particular society will be coterminous with residency (i.e. liability for taxation within a particular jurisdiction) for tax purposes.

¹⁷ SA Madeo, KE Anderson and BR Jackson *Somerfield's Concepts of Taxation* (Dryden Press, New York, 1995) at 4.

¹⁸ Victoria University of Wellington Tax Working Group *A Tax System for New Zealand's Future: Report of the Victoria University of Wellington Tax Working Group* (Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington, Wellington, 2010) at 13.

¹⁹ Income tax is similar, but although it is primarily intended to raise revenue for general purposes, progressivity in the income tax is directed toward society's demand for equity by affecting the distribution of (post-tax) income (see eg Walter J. Blum and Harry Kalven Jr "The Uneasy Case for Progressive Taxation" (1952) 19 *University of Chicago Law Review* 417 at 520: "The case for progression, after a long critical look, turns out to be stubborn but uneasy"; Henry C. Simons *Personal Income Taxation: The Definition of Income as a Problem of Fiscal Policy* (University of Chicago Press, Chicago, 1938) at 128: the objective of policy must be fairness among persons, not fairness among kinds of receipts (whatever that might be construed to mean)."

to promote or discourage behaviours or to address the perceived costs of some activities”,²⁰ in addition to (or even apart from) providing revenue, and “are often also justified on other grounds, or viewed as serving a special purpose,”²¹ often to discourage an activity.²² They may also be referred to as “negative tax expenditures”, designed to:²³

treat certain taxpayers or activities disadvantageously ... at a higher rate compared to the benchmark tax system so defined; so taxes imposed on cigarettes and alcohol may be regarded as negative tax expenditures.

Certain corrective taxes are referred to as sin taxes, “a popular term for fees charged for guilty pleasures or human indulgence, such as smoking cigarettes and drinking alcohol.”²⁴

Since corrective taxes also provide revenue, there is an inherent conflict between the revenue goal which is met when income is maximised, and the social goal which would be met if the harm were eliminated and no revenue was collected. The latter reflects social and moral judgments on particular activities. However, Lorenzi aptly asks whether a tax on something ‘bad’ can be justified by the revenue it generates for something ‘good’?²⁵

2.1 Justifications for selective taxes

2.1.1. Context

In taxing tobacco, New Zealand followed British precedent, where tobacco has always been subject to tax. Tobacco was introduced into Western Europe around 1560, and arrived in England later that decade.²⁶ It was lauded by some for its sanitary and curative properties,²⁷ and hailed as “the long-sought *panacea*, the herb that would heal all ills.”²⁸ Yet tobacco was also opposed on “medicomoral” grounds.²⁹ In 1604 King James I published his *Counterblaste against Tobacco* in which he argued that “there cannot be a more base, and yet hurtfull, corruption in a Contrey, then is the vile use (or other abuse) of taking Tobacco in this Kingdome”³⁰ Among the ills it produced, King James noted that tobacco led to lust and

²⁰ Victoria University of Wellington above n 18.

²¹ Sijbren Cnossen (2005) “Economics and politics of excise taxation” in Sijbren Cnossen (ed) *Theory and Practice of Excise Taxation* (Oxford University Press, Oxford, 2005) 1 at 2.

²² For example, the property speculation tax was intended to discourage a specific type of activity rather than to raise revenue: see Rob Vosslamber “‘Removing a Parasitic Element’: Speculation, Housing Affordability and the 1973 Property Speculation Tax” (2015) 21:2 *New Zealand Journal of Taxation Law and Policy* 169.

²³ Mark Burton and Kerrie Sadiq *Tax Expenditure Management: A Critical Assessment* (Cambridge University Press, New York, 2013) at 22.

²⁴ Peter Lorenzi “Sin Taxes” (2004) 41:3 *Social Science and Public Policy* 59 at 60.

²⁵ At 59.

²⁶ Stephen Dowell *A History of Taxation and Taxes in England from the Earliest Times to the Year 1885* (Longmans Green, London, 1888) at 245.

²⁷ At 246.

²⁸ David Harley “The beginnings of the tobacco controversy: Puritanism, James I, and the royal physicians” 1993 67:1 *Bulletin of the History of Medicine*, 28 at 29.

²⁹ At 28. See also Simon Schama *The Embarrassment of Riches: An Interpretation of Dutch Culture in the Golden Age* (Vintage Books, New York, 1987) ch 3.

³⁰ King James I (1604) *A Counterblaste to Tobacco*.

bewitchment (which we might call addiction); consequent indolence in the service of the King and Commonwealth; waste and indebtedness; and pollution of home and breath. In conclusion, tobacco was:³¹

A custome loathsome to the eye, hatefull to the Nose, harmfull to the braine, dangerous to the lungs and in the blacke stinking fume thereof, nearest resembling the horrible Stigian smoke of the pit that is bottomlesse.

King James' arguments sound both archaic and modern; archaic in the overt paternalism which as God's vicegerent he endeavoured to exercise concerning his subjects,³² yet modern in citing a range of moral, medical and economic arguments against tobacco.

Despite royal objections, popular demand for tobacco created significant economic opportunities which the Crown was only too happy to exploit. Like other imports, tobacco was initially subject to duty of the standard 2d. per pound weight under the general heading in the Book of Rates for the Customs.³³ Rather than prohibit the use of tobacco, King James adopted the "pragmatic approach"³⁴ of levying a tax of 6s. 8d. per pound in addition to 2d. custom duty. This forty-fold hike in duty did not stem the spread of the tobacco habit, and the revenue benefitted accordingly. Tobacco became a royal monopoly in 1624, and to secure the revenue local cultivation was prohibited and smuggling suppressed.³⁵

The English tobacco duty was adjusted frequently to meet revenue needs,³⁶ and before 1789 amounted to nearly 400 per cent of the value of the tobacco.³⁷ The ambiguous moral status and health effects of tobacco, coupled with its revenue potential, justified high levels of taxation, and the British fiscal system was heavily reliant on indirect taxes, such as on tobacco.³⁸ Selective tobacco taxation on tobacco may be justified on a number of revenue and corrective grounds.

2.2.2 Revenue grounds

2.2.2.1 Ability to pay

In his discussion of taxes on commodities, Adam Smith, the father of economics, argued for taxation to be levied on luxuries rather than necessities. The latter were necessary for the support of life, including "whatever the custom of the country renders it indecent for creditable person, even of the lowest order, to be without."³⁹ In contrast, taxes on luxuries, since they were borne by the consumer, acted as a form of sumptuary law, and would not

³¹ Above n 30.

³² James I (1994), "The Trew Law of Free Monarchies" in Johann P Sommerville, (ed.) *King James VI and I: Political Writings* (Cambridge: Cambridge University Press) 62-84.

³³ Dowell, above note 26 at 248.

³⁴ Harley, above note 28 at 42.

³⁵ Snowdon, above n 9 at 19.

³⁶ Dowell, above n 26 at 245ff.

³⁷ At 257.

³⁸ Martin Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799-1914*. (Cambridge University Press Cambridge, 2001) at 161.

³⁹ Adam Smith *An Inquiry into the Nature and Causes of the Wealth of Nations* E. Cannan (ed) (Methuen, London, 1950) at II:465.

harm the “sober and industrious poor”,⁴⁰ for “it is the luxurious and not the necessary expense of the inferior ranks of people that ought to be taxed.”⁴¹ If tobacco was a luxury, it provided an appropriate taxation base since the taxpayer would have the ability to pay. Despite a hint of paternalism in designating certain goods as luxuries, Smith’s focus was on revenue, not correction.⁴²

Conversely, a century later JS Mill raised concerns about the effect of tobacco taxation on the livelihood of the poor. In a free trade context,⁴³ he questioned the rates of consumption taxes on the basis of their (in)ability to pay:⁴⁴

The duties which now yield nearly the whole of the customs and excise revenue, those on sugar, coffee, tea, wine, beer, spirits, and tobacco, are in themselves where a large amount of revenue is necessary, extremely proper taxes; but at present grossly unjust, from the disproportionate weight with which they press on the poorer classes; and some of them (those on spirits and tobacco) are so high as to cause a considerable amount of smuggling. It is probable that most of these taxes might bear a great reduction without any material loss of revenue.

This is a particular concern when those on lower incomes consume more of the taxed commodity, as is the case with unhealthy foods and tobacco. Since excise taxes are borne by the end user, they are regressive.⁴⁵

2.2.2.2 Price elasticity

Rather than ability to pay, Ramsey developed what might be termed the ‘willingness to pay’ argument for selective taxation. According to the eponymous Ramsey Rule, tax rates on goods should be inversely related to their elasticity of demand.⁴⁶ Demand for price-inelastic or monopoly-supplied goods is less affected by increases in price, so tax revenue should continue to increase as tax rates rise. If tobacco is addictive, tax increases will not have a significant effect on demand and so revenue will increase. However, no good is totally price inelastic in a world of scarcity; excise taxes could raise the price of a commodity above the ability of a consumer to pay, leading to both efficiency and equity concerns and taxes may be raised to the point that that revenue starts to decline, as consumers reduce their purchases of the taxed commodity. This concern was popularised by Arthur Laffer, who applied the Laffer Curve to tobacco taxation, and argued that excessive levels of taxation would result in decreased revenue, in part by encouraging smuggling.⁴⁷ If revenue is the aim, then increasing excises may be counterproductive.

⁴⁰ At II:467.

⁴¹ At II:484.

⁴² Compare Hobbes, who in the previous century that a tax on consumption generally was justified because it benefitted those who saved, and penalised those who squandered, their wealth: Dudley Jackson “Thomas Hobbes’ Theory of Taxation” (1973) 21 *Journal of Political Studies* at 175.

⁴³ Daunton, above n 38 at 164.

⁴⁴ John S Mill *Principles of Political Economy* William J Ashley (ed) (Longmans Green London, 1909) at V:VI: 9. The same concern has recently been expressed in the New Zealand media: Mike McConnell “How far can you oppress somebody?: Anti-smoking campaigner says tax hikes aren’t working” *stuff.co.nz* (New Zealand, 9 January 2017).

⁴⁵ Toni Ashton and Susan St John *Insights into Excises: A Focus on Alcohol, Tobacco and Motor Fuels Taxation* (Victoria University Press for the Institute for Policy Studies, Wellington, 1985).

⁴⁶ Frank P Ramsey “A Contribution to the Theory of Taxation” (1927) 37:145 *The Economic Journal* at 47.

⁴⁷ Arthur B Laffer (2014), *Handbook of Tobacco Taxation: Theory and Practice* (Laffer Center at the Pacific Research Institute, San Francisco, CA, 2014).

2.2.2.3 Benefits received

Rather than focusing on ability to pay, Pigou developed the benefits justification for taxation that Mill had denounced as the “quid pro quo” principle.⁴⁸ Where the marginal private net product falls short of marginal net social product, he argued that there is justification for state intervention to equalise the two, for example by taxation.⁴⁹ Strictly, only external costs should be included, but cost calculations often include internal costs.⁵⁰ It is also difficult, if not impossible to measure the actual costs of an activity, and the relevance in a social welfare state is questionable.

LeGrand fine-tuned the benefits-based argument in respect of tobacco taxation, and argued that where individual behaviour causes a social cost that is outside the individual’s control (eg due to an inherited condition), the community should finance the resulting costs.⁵¹ However, where a risk is clearly identified with certain voluntary activities (such as smoking) those who engaged in the activities should bear the resulting costs. LeGrand argued that his approach did not depend on value judgments, but McLachlan questioned why smoking, but not, eg sexual activity, should be singled out for taxation in a polity where healthcare is publically provided.⁵² Like JS Mill, McLachlan accepted that a tax on tobacco was a good tax *qua tax* “it can be raised without a public outcry [and] it is easy and cheap to collect”⁵³ –but argued against the paternalism of tobacco taxation, since “[p]aternalism as such is, in general, a poor basis for public policy.”⁵⁴

2.2.3 Paternalism

There is an inherent conflict between the claims of the individual and of society, which runs through politics, law,⁵⁵ economics,⁵⁶ and as indicated by fiscal sociology, taxation. King James may have been an early advocate of taxation on tobacco on paternalistic grounds, but he was not the last. Although JS Mill argued against paternalism, since “over himself, over his own body and mind, the individual is sovereign,”⁵⁷ he permitted a large role for government.⁵⁸

it is not admissible that the protection of persons and that of property are the sole purposes of government. The ends of government are as comprehensive as those of the social union.

⁴⁸ Mill, above n 44 at V.2.8.

⁴⁹ AC Pigou *The Economics of Welfare* (Palgrave Macmillan, Basingstoke, 2013) at. 185, 224.

⁵⁰ Snowdon, above n 9.

⁵¹ Julian LeGrand, (1991), *Equity and Choice: An Essay in Economics and Applied Philosophy* (London, HarperCollins Academic 1991).

⁵² Hugh V McLachlan “Smokers, virgins and health care costs” (1995) 21 *Journal of Medical Ethics* at 209; Hugh V McLachlan “Tobacco, taxation and fairness” (2002) 28 *Journal of Medical Ethics* at 381.

⁵³ McLachlan (2002) at 383.

⁵⁴ At 383.

⁵⁵ For example the Hart/Fuller debate: see Peter Cane (ed) *The Harr-Fuller Debate in the Twenty-First Century* (Hart, Oxford, 2010).

⁵⁶ For example Keynes vs Hayek: see Rob Vosslamber *The Road to Freedom? Hayek and New Zealand's Tax Depreciation* (2014) 9:1 *Journal of the Australasian Tax Teachers Association* 126.

⁵⁷ John S Mill “On Liberty” in *On Liberty and The Subjection of Women* (Wordsworth, Ware, 1996).

⁵⁸ Mill, above n 44.

If the promotion of health and welfare is regarded as a proper end of the social union, then government might intervene, eg by means of corrective taxation. Like a divine ruler, the social union could then prescribe and proscribe behaviour, and taxation could be justified as an instrument to promote this social utility.

The 1967 Taxation Committee noted that “the tax system must also be so designed that it can help achieve broad social objectives”,⁵⁹ and not merely to raise revenue. While acknowledging that freedom of choice was one of the principal objectives of economic policy, this freedom should be “consistent with the attainment of other objectives and conforming with accepted views of rights and duties.”⁶⁰ A trade-off between individual freedom and social claims was accepted, and the government was expected to intervene for the social good; thus Finance Minister (1967-1972; 1975-1984) and Prime Minister (1975-1984) Rob Muldoon argued that:⁶¹

The whole concept of government is based on intervention ... Intervention is what government is about, and in a democracy it is the people who decide whether that intervention is acceptable and if they say, ‘No, it is not,’ then they proceed to change the government.

However, from the mid-1980s there was a shift in New Zealand tax policy to a focus on neutrality. Neutrality may be defined to mean that “taxation does not alter the allocation of resources,”⁶² as opposed to “an unneutral tax [which] will usually result in a deviation from an existing pattern of resource utilisation.”⁶³ Thus the 2001 Tax Review maintained that: “The broad base low rates approach developed over the last twenty years is sound and should be continued ... Any exceptions to a broadly neutral approach can be a thin end of a wedge and unravel an overall general approach.”⁶⁴ The 2001 Tax Review therefore criticised the level of selective taxes, which “were difficult to justify on either tax efficiency or tax equity grounds”,⁶⁵ since they overcompensated for market mispricing. Moreover,

although they raise a significant amount of revenue, they seem out of step with the low rate, broad base approach taken in respect of our other tax bases ... On tax policy grounds, we have a strong preference for the transparent approach to taxation exemplified by GST, which makes tax burdens independent of how New Zealanders choose to spend their money. In our view, the current excise and duty regime cannot readily be justified on conventional tax policy grounds.”⁶⁶

⁵⁹ LN Ross *Taxation in New Zealand: Report of the Taxation Review Committee* (Government Printer Wellington, 1967) at 13 (para. 8). The 1951 Taxation Committee appointed by the Government had noted that “Taxes should be levied with due regard to the encouragement of primary and secondary production but made no mention of social goals, perhaps reflecting the focus on returning to a post-war economy: TN Gibbs, *Report of the Taxation Committee* (Government Printer, Wellington, 1951) at para. 57.

⁶⁰ At 17 (para. 16).

⁶¹ Robert D Muldoon *The New Zealand Economy: A Personal View* (Endeavour Press, Auckland, 2005) at 119.

⁶² Harold M Groves “Neutrality in Taxation” (1948) 1:1 *National Tax Journal* 18 at 19.

⁶³ At 20.

⁶⁴ Robert McLeod, David Patterson, Shirley Jones, Srikanta Chatterjee and Edward Sieper *Tax Review 2001: Final Report* (Wellington: New Zealand Government, 2001) at Iff.

⁶⁵ Above n 64 at

⁶⁶ At IV. This is consistent with an optimal tax theory condition “that intermediate goods (like oil) should not be taxed or the condition that final goods (like tobacco and alcohol) should all be taxed alike” (N. N Gregory Mankiw, Charles Weinzierl and Danny Yagan “Optimal Taxation in Theory and Practice”

The 2010 Tax Working Group confirmed this broad-base low-rate (BBLR) approach to taxation, and noted that the ideal tax system would be efficient (meaning that it would not distort people's behaviours) ...” which it considered “generally a sound principle to adopt in choosing the approach to tax design and should continue to be an underlying framework for the New Zealand tax system.”⁶⁷ The Tax Working Group moderated the conclusions of the 2001 Review, however, noting that “[t]here may be circumstances where corrective taxes are warranted to address externalities, such as pollution.”⁶⁸ Since corrective taxes fell outside the scope of their review, they did not address them further.⁶⁹

There has been a variety of justifications for selective taxes over time which, apart from paternalism, apply irrespective of any corrective intent. The next section reviews the taxation of tobacco in New Zealand.

3.0 TOBACCO TAXATION IN NEW ZEALAND

A data series of the taxation on tobacco was prepared to identify when changes occurred in the rates of tobacco taxation. Related parliamentary debates were then reviewed to identify the official rationale for the changes.

3.1 Background

The Customs Regulation Ordinance effective 1 July 1841 was the first New Zealand excise legislation, and followed the declaration of New Zealand as a British colony two months earlier, replacing the New South Wales rules which had previously applied in New Zealand.⁷⁰ Unlike other dutiable goods which were levied on an ad valorem basis, tobacco (like spirits and strong waters) was subject to a specific duty, which was adjusted over time.

Given centuries of tobacco taxation in England, there was little discussion in the New Zealand Parliament concerning tobacco taxation during the nineteenth century, but there was pressure from free traders to simplify the tariff by levying the whole duty of customs on a few articles at a fixed rate.⁷¹ During discussion of the Duties of Customs Bill 1854, a member noted that the rates should be charged upon the luxuries rather than the necessities of life, but that instead it was charged on the articles of import upon which the duty could most easily and certainly collected, including sugar.⁷² As an accepted and justifiable source of revenue,

(2009) 23:4 *Journal of Economic Perspectives* 147 at 166 .The then Labour government disagreed: “Neither does the government agree with the review’s recommendation to remove excises on alcohol, tobacco, petrol and gaming, and then to make up the lost revenue with an increase to GST”, Michael Cullen *Address to the 2001 Tax Conference in Rotorua*, 26 October 2001 <<https://www.beehive.govt.nz/speech/address-2001-tax-conference-rotorua>>.

⁶⁷ At 16.

⁶⁸ Above n 18 at 14.

⁶⁹ See Pinny, above n. 5.

⁷⁰ David McGill *The Guardians at the Gate: The History of the New Zealand Customs Department* (Silver Owl Press for the New Zealand Customs Department, Wellington, 1991).

⁷¹ (8 September 1854) NZPD at 388.

⁷² The “free trade bill” was finally passed in 1858.

tobacco continued to be subject to duty since it might be regarded as a luxury and the tax was easy to collect.

Tobacco provided a ready source of revenue, but also an opportunity for local industry. The Tobacco Act 1879 provided an inducement for tobacco growing in New Zealand by introducing a tax expenditure, “a bonus of sixpence for every pound of tobacco manufactured in the colony on which the duty hereby imposed shall be paid, and such bonus shall be paid by the Customs as a refund of revenue.”⁷³ The 1930 Tobacco Industry Select Committee confirmed the appropriateness of tariff protection for local industry.⁷⁴ Since most tobacco was imported, tariff policy also permitted differentiation between nations to effect foreign policy preferences, as was evident in 1921 Customs Amendment Act 1921.⁷⁵

Moral and health arguments were raised against smoking in the popular press and among various groups in society,⁷⁶ but not in nineteenth century Parliamentary debates on tobacco duties. Paternalism was evident in the enactment of the Juvenile Smoking Suppression Act 1903,⁷⁷ a non-revenue measure which made it an offense to sell tobacco to youths under fifteen years of age, or for such youth to smoke in a public place. The motivation for the bill was that “the question of the effect of smoking upon the juvenile population had been very much discussed,”⁷⁸ in light of a high level of refusals of potential army enlistees for the Boer War, for:⁷⁹

If a man’s body were matured and healthy, smoking could do him little or no harm ... But, as far as youngsters were concerned, there could be little doubt that the effect of smoking upon the nerve system and the heart was distinctly bad.

Moreover, smoking was said to lead a boy into crime.⁸⁰ However, opposing views were also aired; an MP noted that, “as to any one saying that boys under the age of sixteen years were injured by smoking the thing was absurd.”⁸¹ Besides, he could not find more than one medical man out of fifty who did not smoke. Ironically, youth were exempted from the operation of the Act if they could produce a certificate from a legally qualified medical practitioner to the effect that the using or smoking of tobacco, cigars, or cigarettes was beneficial to the health of such youth!⁸²

⁷³ Tobacco Act 1879, s 12.

⁷⁴ George C Black (Chairman) “Reports of the Tobacco Industry Committee [1930] I AJHR I 17.

⁷⁵ See NZ Government *New Zealand Official Yearbook 1931* (Wellington, Government Printer, 1930); Paul Goldsmith *We won, you lost, eat that! A political history of tax in New Zealand since 1840* (David Ling Publishing, Auckland, 2008) at 155). There had been earlier differentiation.

⁷⁶ This ambiguity is evident in the Roman Catholic weekly, the *New Zealand Tablet*, which published occasional comments on nicotine. In an article entitled “Nicotine and Longevity”, which somewhat sarcastically suggested that the demise of a certain Abraham Elmer at the age of 119 was due to nicotine poisoning (20 February 1902) *New Zealand Tablet*. An earlier article noted that “Whether tobacco smoking is injurious or not has long been a debateable subject” (8 December 1882).

⁷⁷ A similar bill had been passed by the Legislative Council in 1901, but was not discussed in the House of Representatives: (17 Nov. 1903) NZPD Vol. 127 at 665.

⁷⁸ (11 November 1903) NZPD, Vol. 127 at 489.

⁷⁹ At 489f – Mr Taylor, MP for Christchurch City)

⁸⁰ At 667.

⁸¹ At 668.

⁸² Juvenile Smoking Suppression Act 1903, s 4.

Aside from concerns about youth, health was not raised as a rationale for government intervention. Instead, tobacco tax increases were motivated by revenue considerations. Like other taxes, the tobacco excise was increased significantly during World Wars One and Two. Perhaps the most (in)famous increase – the doubling of tobacco taxes in Finance Minister Nordmeyer’s 1958 “black” budget – was to “serve the two-fold purpose of providing sufficient revenue for Government needs and of diminishing demand for imports.”⁸³ Health concerns were not raised in that budget or in the ensuing parliamentary debates; rather, the increase was deprecated as “an attack on the worker’s standard of living,”⁸⁴ which increased the taxes on a worker’s little luxuries – tobacco, alcohol and motor vehicles.

3.2 Tobacco and health

Similarly, there was no discussion of tobacco or smoking in the first history of public health in New Zealand which was published in 1964, even in a section that dealt with air pollution.⁸⁵ Significantly, this was the year of the influential United States Surgeon General’s Report which confirmed a link between smoking and lung cancer.⁸⁶ Similarly, the 1967 Taxation Review Committee made no mention of health concerns, but recommended the continuation of excise duties:⁸⁷

in view of the nature of the commodities taxed, their importance in general to the revenue and the acceptability of excise in the public mind, we do not consider that the mere fact of regression in this sector of the tax field is of itself a sufficient reason for any change, provided the tax system as a whole is progressive.

The link between tobacco taxation and health was explicitly made by Rob Muldoon, the Minister of Finance, in his 1970 budget speech in which he provided several reasons for increasing the tax on tobacco.⁸⁸ First, the government faced a deficit, and the required shortfall would be met by increasing the tax on cigarettes and tobacco. Besides, it was clear that tobacco could be subjected to additional tax “without harming in any way the general welfare of the community.”⁸⁹ This seems to imply that tobacco was considered a luxury rather than a necessity. Contradicting the revenue motive, Muldoon then expanded on the welfare motive by arguing that “it is increasingly argued that discouraging the consumption of these commodities is likely to make a positive contribution to our general health.”⁹⁰

Revenue continued to be a motivation for higher levels of taxation on tobacco, but the basis for the social justification changed over time. While the concern in 1970 was to improve the

⁸³ (26 June 1958), NZPD, Vol. 316 at 285. See also Vosslander “Black Budget” above n 29.

⁸⁴ Keith Sinclair *Walter Nash* (Auckland University Press, Auckland, 1976) at 311.

⁸⁵ George Thomson and Nicholas Wilson *Resource Document: A Brief History of Tobacco Control in New Zealand* (Australasian Faculty of Public Health Medicine, Wellington, 1997).

⁸⁶ Luther L Terry *Smoking And Health: Report Of The Advisory Committee To The Surgeon General Of The Public Health Service* (U.S. Dept. of Health, Education, and Welfare, Public Health Service, Washington, 1964).

⁸⁷ Ross, above n 59 at 372.

⁸⁸ Robert Muldoon “Statement” [1970] 1 AJHR, B6A at 12, Statement. This conflicts with Henare (above n 9) who suggested that the 1986 Budget was the first budget to raise the tobacco excise for health reasons.

⁸⁹ At 12.

⁹⁰ At 12.

general health of the population, in his 1977 Budget Muldoon shifted from a focus on health to the related cost to society:⁹¹

The government is concerned at the high level of public expenditure caused directly and indirectly by the consumption of tobacco and alcohol. The adverse effects on health of smoking and drinking have been well publicised. Alcohol is also a major cause of many road accidents. The cost of providing health care and treatment in public hospitals and elsewhere for those affected is very high.

The increased taxation revenue would “help sustain the high level of spending on health, including the extension of health services.” Tobacco was an appropriate target for a Pigouvian taxation.

In 1979, the rhetoric shifted again to the more overtly paternalistic “increasing social costs which consumption ... imposes on the community as a whole, as well as on individual consumers.” Sales tax was added to the excise “to remove the inducement to consume ... and at the same time to recoup some of the real social and economic costs which their consumption imposes.” Revenue (which would increase by up to \$100 million in a full year) remained a motivation for the tax, but Muldoon acknowledged the effect of “consumer reaction” – indicating that tobacco might not be quite so price inelastic after all. Aside from revenue, cost recovery, rather than the suppression of smoking, remained the primary justification.⁹²

The subsequent Lange Labour Government (1984-1990) cited encouragement from “people concerned about public health” as justification for raising tobacco taxes, and international comparisons of the tax component of the retail price of cigarettes provided an additional justification.⁹³ The corrective focus also shifted from cost recovery to smoking reduction; an annual increase in the tax was “part of our measures to increase tax revenue and decrease the incidence of smoking ...”.⁹⁴ Inflation indexation of the excise was introduced in 1989.⁹⁵

The 1986 budget was the last to specifically mention revenue-raising. A 15 per cent increase in the tobacco excise in 1988 was intended “to reinforce the Government’s smoking reduction strategy”. This strategy was confirmed in 2011 with the announcement of an increase of the tobacco excise by 10 per cent over and above inflation in each of the following four years, a policy extended in 2016 a further four years. The Finance Minister acknowledged the work of the Maori Party and its members in advocating this policy in the *Maori Affairs Select Committee Inquiry into the Tobacco Industry in Aotearoa and the Consequences of Tobacco Use for Maori*.⁹⁶ This report recommended that the Government “aim for tobacco consumption and smoking prevalence to be halved by 2015 across all demographics, followed by a longer-term goal of making New Zealand a smoke-free nation by 2025.”⁹⁷

⁹¹ Robert Muldoon [1977] 1 AJHR 1977 B1 at 42f.

⁹² Robert Muldoon, “Budget” [1979] 1 AJHR B6 at 30f.

⁹³ Roger Douglas [1986] “Budget” 1 AJHR B6.

⁹⁴ Roger Douglas [1986] “Budget” 1 AJHR B6.

⁹⁵ David Caygill [1989] “Budget” 1 AJHR 1979.

⁹⁶ Above n 9.

⁹⁷ At 5.

3.3 Summary

Why was tobacco taxed in New Zealand? The parliamentary record suggests that revenue was the main motivation until 1970, along with economic development and trade policy. Subsequently, health concerns provided a second, and now ostensibly primary justification for the tax. Both continue to this day, with the latter now more commonly expressed to justify the tax, even as the tax take continues to provide substantial revenue. Tobacco taxation has thus come full circle. King James may have objected to tobacco taxation on paternalistic grounds, but he and his successors realised the revenue potential of this “luxury”. The moral concerns are now repeated to justify taxing sugary drinks and fatty foods.

4.0 OBESITY

Like tobacco, sugar has long provided a steady albeit contested source of revenue. Daunton noted that in Britain:⁹⁸

In the Victoria and Edwardian period, Liberal and Labour demanded the ‘free breakfast table’, arguing that taxes on necessities – tea, coffee, sugar – should be repealed. Most indirect taxes fell on tobacco, beer and spirits, which were not covered by the general opposition to indirect taxes.

Like tobacco, if the demand for sugar were inelastic, it provided a useful tax base. However, equity concerns were raised since sugar was mainly used by the lower classes, for “At present abstainers from sugar are to be found principally among the richer classes, in those who think it too fattening, or who act under the mistaken notion that it produces acidity.”⁹⁹

Currently, New Zealand has no corrective taxes on sugar or sugar-related products, which are subject to Goods and Services tax at the standard rate. Selective taxation of sugar would need to be justified.¹⁰⁰ This is particularly so since New Zealand is committed to BBLR and has a clear tax policy process, and where “ordinarily, market forces are left to determine the allocation of resources.”¹⁰¹ Moreover, “unlike a tax on money or property, a government measure that seeks to interfere with people’s choices about their bodies is a deep human rights issue.”¹⁰² As with tobacco taxation, a number of justifications are offered for taxing sugar and fat.

Pinny suggests that higher taxes may be justified to ensure that “the increased cost to be borne by those who participate in the activity.”¹⁰³ This Pigouvian tax reflects the classic benefits theory basis for taxation, but begs the question as to why only some activities which cause social costs should be taxed. Neutrality (indeed, fairness) would suggest that there should be no discrimination.

⁹⁸ Daunton, Above n 39 at 223

⁹⁹ Dowell, above n 28 at 32; see generally at 22-32.

¹⁰⁰ This article does not address the prior question of whether (and if so, how) taxation per se might be justified. It could be argued that all taxes now require some form of justification given the doctrine of parliamentary intentment.

¹⁰¹ Patricia Meng San Jeong “Curbing Harms through Price Control: Alcohol Excises versus Minimum Price” (2012) 18:3 *New Zealand Journal of Taxation Law and Policy* 303.

¹⁰² Barrett, above n 4 at 244.

¹⁰³ Pinny above n 5 at 326.

Assuming that a corrective tax should be levied, Barrett argues that it might be justified if the proportionality principle applies – that there be “some articulable relationship between means and ends, specifically that the means chosen by an administration be suitable or appropriate, and no more restrictive than necessary to achieve a lawful end.”¹⁰⁴ Non-tax considerations would include: correctly identifying and measuring the (cost of) the social mischief; confirming the effectiveness of the proposed tax in meeting the policy objective; and considering the unintended, and perhaps unjust, effects of the policy, including the impact on rights. Barrett concludes that fat taxes “are generally disproportionate: they fail to plausibly link cause and effect; they are likely to manifest unpredictable and undesirable outcomes; and they may be discriminatory.”¹⁰⁵

If the harm is difficult to measure, so is the effectiveness of the selective tax in meeting its objective. Stuart and Sawyer compare a possible excise tax on unhealthy food with the removal of GST from healthy foods as two possible approaches to manage obesity, and note that the effectiveness of taxation policy in reducing a social harm (eg sugar consumption or tobacco use) is difficult to measure since “other factors have been effective such as advertising, smoke-free legislation and smoking cessation services.”¹⁰⁶ Burns-Grant and Marriott also mention the regressive nature of increased taxes on unhealthy foods as a concern.¹⁰⁷

Overt paternalism has provided an underlying justification for selective taxes since at least King James I, and is evident in recent proposals. In her discussion of alcohol taxation, Jeong suggests that an obvious justification for its taxation is that such behaviour generates significant harms. However, while most morally “undesirable” commodities are not subject to tax in New Zealand, she suggests two features which may justify the state in taking a more paternalistic stance, namely, irrationality and addiction, and the effect on young people. Thus, tax policy is also urged to overcome the “time-inconsistent preferences” and “cognitive imperfection” of consumers of unhealthy products.¹⁰⁸ This is more than a mere ‘nudge’ (or libertarian paternalism), which Thaler and Sunstein define and promote as “any aspect of the choice architecture that alters people’s behaviour in a predictable way without forbidding any options or significantly changing their economic incentives,”¹⁰⁹ for unlike a nudge, corrective taxation *is* intended to change behaviour by altering economic incentives.

5.0 DISCUSSION

At a general level, tobacco taxation confirms Schumpeter’s view that fiscal history provides “an insight into the laws of social being and becoming.”¹¹⁰ Changing attitudes to tobacco are

¹⁰⁴ Barrett above n 4, quoting Michael Taggart “Proportionality Deference *Wednesbury*” (2008) NZ Law Review 423 at 424-25.

¹⁰⁵ At 255.

¹⁰⁶ Stuart and Sawyer, above n 7 at 118.

¹⁰⁷ Burns-Grant Marriott, above n 100 at 196.

¹⁰⁸ Above n 100 at 327.

¹⁰⁹ Richard H Thaler and Cass R Sunstein *Nudge: Improving Decisions about Health, Wealth and Happiness* (Penguin, New York, 2009) at 6.

¹¹⁰ Schumpeter, above n 13 at 101.

evident in its taxation. Tobacco has always provided a ready source of revenue, and a number of rationales are evident in its history in New Zealand. To the extent that tobacco consumption is inelastic, Ramsey's Rule recommends it as a tax base. If tobacco consumption results in social costs it may be a suitable target for a Pigouvian tax. Moreover, tobacco could be a means to promote other social goals such as promoting trade with friendly nations, or encouraging the development of local industry and import substitution. Such economic arguments need have no specific moral basis, and may justify a discriminatory tax. In contrast, when the discrimination is based on an evaluation as to the goodness of a particular product or activity, moral judgments are involved. Such judgments assume that the taxpayer can make better decisions of what is good or bad for a person than the person themselves, and taxation is a form of paternalism. King James I's arguments against tobacco provide a precedent for modern day sin taxes – that government should promote what is good, and may discourage what is not. This assumes some social consensus on what is the good, and some way of measuring the costs of the harm.

The New Zealand experience demonstrates the relationship between taxation and society is not linear, but has changed over time. In particular, tobacco taxation has morphed in New Zealand from a general revenue-raising tax, to a selective tax with a specific policy intent. Prior to 1984 this would have been unremarkable, but since the adoption of BBLR as the preferred tax policy setting, and neutrality as a key criterion, it now seems anomalous. Moreover, it is frequently cited as precedent for taxes on other social disapproved goods.

The 2001 Tax Review suggested that corrective taxes were vestigial, but recent calls for taxes on harmful food products indicate that there continue to be two bases for tax policy in New Zealand. Most taxes are intended to be neutral, raising revenue with minimal effect on taxpayer behaviour. However, other taxes are specifically intended to promote a social policy. Such taxes conflict with current New Zealand tax norms which prioritise neutrality, and with current social norms which emphasise personal freedom to pursue legal activities. This gives rise to several concerns, aside from consistency in tax policy.

5.1 A penalty, not a tax?

Changes in the rationale for tobacco taxation beg the question whether selective taxes are, in fact, taxes. If it is of the essence of taxation that it be “nonpenal” and “levied without receipt of a specific benefit of equal value”,¹¹¹ then tobacco taxation in its current form – with its high level of exaction and specific objective – may better be regarded as a penalty, and not a tax, for “the larger the exaction and the more restrictive the objective, the more likely that the exaction should be classified as a penalty rather than a tax.”¹¹² At the extreme, the power to tax is the power to destroy persons or activities.¹¹³ As Stamp eloquently put it:¹¹⁴

We have all heard that it is wrong to marry for money, but quite praiseworthy to marry where money happens to be. So taxation for other than revenue objects, to punish or discourage, taken by itself might sometimes be indefensible. It should be called what it is, a fine or penalty, and not a tax.

¹¹¹ Madeo et al, above n 17 at 5.

¹¹² At 5.

¹¹³ *McCulloch v. Maryland* [1819] 17 U.S. 327.

¹¹⁴ Josiah Stamp *The Fundamental Principles of Taxation in the Light of Modern Developments (The Newmarch Lectures for 1919)* (Macmillan, London, 1921) at 170.

Relabelling a corrective tax a penalty or fine would make the policy (and parliamentary!) intent explicit. Whereas taxation serves a range of functions, a penalty is specifically intended to deter or prevent an activity. Penalties therefore should require a higher level of justification than taxes, particularly if the activity that is taxed is legal. Given the relatively recent shift to parliamentary intent as the yardstick of judicial interpretation, reconceptualising corrective taxes as fines or penalties rather than as taxes would clarify that the primary intent of such measures was corrective and not revenue.

Alternatively, if the activity continues to be legal, the charge might be better labelled a fee, intended to cover related costs. This would, however, require a more careful assessment of the actual costs to be covered, and why that activity is singled out for corrective taxation. In any event, it might promote social discussion as to the limits of the state in attempting to change individual behaviour.

5.2 Equity

Since at least JS Mill, there have been concerns about the equity of tobacco taxation. Since the incidence of smoking is higher among those on lower incomes, the tax is regressive. This concern has recently been expressed in the New Zealand media where a public health analyst suggested that “there’s no proof the tobacco tax is reducing smoking in New Zealand. ‘It’s just a tax grab now’”.¹¹⁵ There is the risk that the tax might be an ineffective and inequitable paternalism, or worse: oppressive stigmatisation dressed up as beneficial public policy.

5.3 Morality

The changing rationales for tobacco taxation reflect changes in social attitudes towards taxation, as well as broader social changes such as the adoption of the welfare state and a publicly funded health system. While there may be no morality in tax, taxation practice does reflect (often tacit) moral assumptions concerning the respective rights and responsibilities of the individual and society, the place of paternalism (if any), and individual freedom. The history of tobacco taxation provides a context in which to consider and develop the ethical dimensions of taxation policy.¹¹⁶ It also provides a case study to explore such issues.

6. CONCLUSION

Doctors may no longer smoke Camels, and Julie Andrews might have to forego her spoonful of sugar, if society considers either to be bad for you. But they may persist in their consumption so long as they pay the taxman for the privilege. Exactly why certain goods rather than others should be taxed can be justified on a number of grounds. However, tobacco has provided a ready source of revenue since its introduction into the New World. It has also always been a source of controversy.

Like many (most?) conference papers, this is a work in progress. It remains to complete and further analyse the data series of tobacco taxation, and then to carefully consider the basis for (and against) this paternalism in tax policy.

¹¹⁵ Mike McConnell “How far can you oppress somebody?: Anti-smoking campaigner says tax hikes aren’t working” *stuff.co.nz* (New Zealand, 9 January 2017).

¹¹⁶ See Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (Oxford University Press, Oxford, 2005).