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THE SEMANTICS OF SIN TAX: POLITICS, MORALITY, AND FISCAL IMPOSITION

Bruce G. Carruthers*

INTRODUCTION

By encouraging some activities while discouraging others, governments use laws to shape individual and collective human behavior.¹ The most extreme discouragement comes as outright legal prohibition, with severe penalties to be rigorously imposed on violators of the proscription. Moderate penalties combined with lax enforcement constitute a gentler way to discourage illegal activity. Yet there are other, even less stringent ways to deal with unwanted behavior. Legal but morally problematic market-based activities can be discouraged through the price system: the imposition of a government tax raises prices and makes the taxed activity more expensive for participants to undertake.² Depending on the price elasticity of demand,³ higher prices then reduce market activity. Examples of such problematic but legal activities in the United States include: alcohol consumption, tobacco consumption, and gambling. Other dubious activities that have been legalized very recently, or selectively, include consumption of marijuana (e.g., in Colorado)⁴ and use of sexual services (e.g., brothels in Nevada).⁵ Across all such disapproved, but still legal

* John D. MacArthur Chair and Professor of Sociology, Northwestern University. My thanks to Tom Kerby for his very able research assistance, to the participants at the *Fordham Law Review* symposium entitled *We Are What We Tax* for their helpful feedback, and to Laura K. Nelson for her comments. For an overview of the symposium, see Mary Louise Fellows, Grace Heinecke & Linda Sugin, *Foreword: We Are What We Tax*, 84 *FORDHAM L. REV.* 2413 (2016).

1. Monica Prasad, *Taxation As a Regulatory Tool: Lessons from Environmental Taxes in Europe*, in *GOVERNMENT AND MARKETS: TOWARD A NEW THEORY OF REGULATION* 363 (Edward J. Balleisen & David A. Moss eds., 2010).

2. See Anthony Ogus, *Corrective Taxes and Financial Impositions As Regulatory Instruments*, 61 *MOD. L. REV.* 767, 770 (1998) (noting that in addition to criminal law and taxation, tort law can be used to regulate unwanted behavior).

3. This is a measure of how demand for a good or service changes when its price changes.

4. John Hudak, *Colorado's Rollout of Legal Marijuana Is Succeeding*, *BROOKINGS INST.* (July 31, 2014), <http://www.brookings.edu/research/reports/2014/07/colorado-marijuana-legalization-succeeding> [<https://perma.cc/FHU6-NU98>].

5. Barbara G. Brents & Katherine Hausbeck, *State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels*, 44 *PAC. SOC. PERSP.* 307, 312–14 (2001).

activities, the taxes imposed are simply known as “sin taxes.”⁶ They are segregated from other revenues and frequently have been used to fund “motherhood and apple pie” expenditures.

In this Article, I consider how negative social meanings can be projected through public revenue systems and propose to examine the link between taxation and representation in a new light.⁷ First, I discuss how social meanings are attached to money and then explain how, through the use of earmarking, this works in the case of tax revenues. I next briefly review the history of sin taxes at both the state and federal levels. Finally, I use computational linguistic methods to suggest that the fiscal significance of sin taxes, and their cultural significance, are loosely coupled.

In capitalist democratic societies, taxes concern monetary flows from taxpayers in the private economy into state coffers. The sociology of money offers insights into how money and monetary flows gain social meaning and significance. Viviana Zelizer argues against theoretical perspectives that view money as an abstract and fungible measure of value undergirding rational calculation (in the maximization of expected payoffs, for example).⁸ Furthermore, she questions the idea that the introduction of money was socially transformational because it had the effect of neutralizing or dissolving preexisting social relations (recall Karl Marx’s famous critique of the “cash nexus”).⁹ Rather than simply imposing a one-dimensional measure onto complex social realities, Zelizer claims that money is an instrument of collective expression; rather than erasing meanings, it can bear them.¹⁰ This primarily is accomplished through a variety of earmarking and labeling practices that place money into qualitatively distinct categories of varying semantic valence. Zelizer’s evidence for this monetary production of meaning is mostly drawn from the domestic sphere and from the arena of pin money¹¹ and familial budgeting.¹² Here, I propose to take her basic insight and apply it to the sphere of public finance. Because imposition of a tax requires some categorical specificity that also occurs with earmarking, the social meaning

6. I distinguish these from “sinful” taxes where someone objects to the imposition of a particular tax and attaches a derogatory label in order to signal their unhappiness. For example, opponents of the federal estate tax refer to it as the “death tax,” as if death itself were being taxed. I will focus on “sin taxes,” rather than “sinful taxes.”

7. I am setting aside the important but separate framing effects involved in the basic act of labeling public revenues and whether they are classified as “taxes,” “fees,” or “fines.”

8. See generally VIVIANA A. ZELIZER, *THE PURCHASE OF INTIMACY* (2005); VIVIANA A. ZELIZER, *THE SOCIAL MEANING OF MONEY* (1994) [hereinafter ZELIZER, *THE SOCIAL MEANING OF MONEY*]; Viviana A. Zelizer, *The Social Meaning of Money: “Special Monies”*, 95 AM. J. SOC. 342 (1989).

9. See, e.g., KARL MARX & FRIEDRICH ENGELS, *THE COMMUNIST MANIFESTO* 53 (1998).

10. See Zelizer, *supra* note 8, at 350–51.

11. “Pin money” refers to small sums given by a husband to a wife, the use of which is subject to her discretion, but typically it will be devoted to household expenditures.

12. See ZELIZER, *THE SOCIAL MEANING OF MONEY*, *supra* note 8, at 27. Her claims are consistent with later work in behavioral economics on “mental accounting.” See generally Eldar Shafir & Richard H. Thaler, *Invest Now, Drink Later, Spend Never: On the Mental Accounting of Delayed Consumption*, 27 J. ECON. PSYCHOL. 694 (2006); Richard H. Thaler, *Mental Accounting Matters*, 12 J. BEHAV. DECISION MAKING 183 (1999).

of an activity can migrate to a tax that is imposed on that activity and to the revenues that it generates.¹³ Taxes can *represent* meaning.

Some economic activities operate under a weight of heavy moral disapproval: they may not be illegal, but nevertheless they are stigmatized.¹⁴ Their censured status is reflected not only in public attitudes and behavior, but also in public policy. Setting aside other regulatory measures, heavy taxes imposed on the consumption of tobacco products and alcoholic beverages, or participation in gambling, serve the dual purpose of raising revenue and discouraging consumption. Such taxes are known as sumptuary or sin taxes.¹⁵ The imposition of sin taxes raises market prices, and by working through prices, these taxes attempt to regulate behavior: higher prices reduce demand, just as lower prices expand it. This dual purpose has been recognized for some time. For example, in a Temperance-era discussion of the social problems caused by alcohol in Switzerland, Watson Milliet proposed imposing federal and cantonal taxes on distilled liquors as an effective way to raise prices, thus encouraging Swiss drinkers to consume wine or beer rather than stronger alcoholic drinks.¹⁶ Drinking was legal but problematic, and excise taxes were a way to mitigate the problem. Similarly, in the United States, alcohol and tobacco were deemed socially undesirable commodities, which created a good reason to tax them.¹⁷

Contemporary economics is seldom concerned with sin and stigma.¹⁸ But economics does have a framework with which to analyze and even justify sin taxes. As James R. Hines explains, taxes can be used to correct for externalities, a type of market failure.¹⁹ If consumption of a good or service entails social costs that are not fully reflected in the market price, then imposition of an excise tax can be socially beneficial.²⁰ For example, if consumption of cigarettes causes damage to nonsmokers via secondhand

13. Therefore, I take issue with perspectives such as that of the Emperor Vespasian, who observed to his son Titus that the revenues generated by a tax on urinals nevertheless did not smell of urine, neither figuratively nor literally. See GAIUS Suetonius Tranquillus, *THE TWELVE CAESARS* 285 (E.V. Rieu ed., Robert Graves trans., Penguin Books 1957) (121).

14. I recognize, of course, that culture is not monolithic and that groups often vary in their perceptions of stigma. For example, even when the U.S. Temperance movement was at its strongest, wine continued to play a key role in legitimate religious rituals and practices of groups. Moreover, through widespread noncompliance, many people contested the prohibition against alcohol.

15. See, e.g., Cathy M. Johnson & Kenneth J. Meier, *The Wages of Sin: Taxing America's Legal Vices*, 43 W. POL. Q. 577 (1990).

16. Watson Milliet, *The Alcohol Question in Switzerland*, 3 ANNALS AM. ACAD. POL. & SOC. SCI. 37, 44–45 (1893).

17. See generally JOSEPH J. THORNDIKE, *THEIR FAIR SHARE: TAXING THE RICH IN THE AGE OF FDR* 235 (2013).

18. For an exception, see Alvin E. Roth, *Repugnance As a Constraint on Markets*, 21 J. ECON. PERSP. 37 (2007). As an example, Roth discusses measures like the prohibition against the consumption of dog meat, which are founded on widespread repugnance and not simply on personal preference or concern for food safety. *Id.* at 37.

19. James R. Hines, Jr., *Taxing Consumption and Other Sins*, 21 J. ECON. PERSP. 49, 64 (2007).

20. For a forceful argument in favor of doing just this, see George A. Hacker, *Taxing Booze for Health and Wealth*, 6 J. POL'Y ANALYSIS & MGMT. 701, 701–08 (1987).

smoke, then the market price of cigarettes will not reflect their full cost to people who neither bought nor sold the cigarettes. Similarly, if alcohol consumption involves social costs (including increased traffic accidents, fetal alcohol syndrome, and other problems associated with alcoholism) that are borne by people who do not consume alcohol, then the market price of alcohol is too low.²¹ Such a tax, sometimes called a “Pigouvian tax,” can help “internalize” such externalities.²²

Sin taxes face a number of complications. Whether they are imposed for moral, fiscal, or technical reasons, at some point higher taxes also increase the incentive to evade taxation and so can spur the growth of illegal or black market transactions. With too heavy of a fiscal burden, stigmatized legal activity shifts to where it becomes invisible to the state, and the state can neither track nor receive benefits from it. At the extreme, the ability of taxation to suppress activity has its limits. Ironically, governments acquire a financial interest in activity that they otherwise condemn: if alcohol consumption is too successfully reduced, the government may lose a valued source of tax revenue.²³ In similar fashion, the profits generated by stigmatized activity are deemed “ill-gotten gains” and also can become stigmatized.²⁴ Markets for such goods are often regulated in other ways that reflect concern about their broader social effects or their stigmatized status. For example, a regulatory agency may require producers and sellers to acquire a license to operate,²⁵ or a statute may restrict buyers of such products by age (e.g., prohibitions against underage drinking and smoking). Although sin taxes are not the only way that public policy responds to or manages stigmatized activity, they will be my primary focus here.

Of course, taxes can also be used to signal positive social meanings, and not simply through nonimposition. In the political debates about welfare reform in the 1990s, for example, much was made of the virtues of “honest labor.”²⁶ In contrast to those who “chose” not to work and looked to government for financial support (thus participating in the culture of “welfare dependency”), the working poor were celebrated for their

21. A.C. PIGOU, *THE ECONOMICS OF WELFARE* (4th ed. 1938). Long before A.C. Pigou, some noneconomists had a similar insight. Consider a New Hampshire newspaper article supporting a proposed excise tax on liquor, which observes that even if the tax did not reduce consumption, “dealers in and consumers of the stuff would pay a larger proportion of the criminal and pauper expenses directly traceable to them.” See *Gen. Marston’s Temperance Bill*, INDEP. STATESMEN, June 23, 1881.

22. William J. Baumol, *On Taxation and the Control of Externalities*, 62 AM. ECON. REV. 307, 308–09 (1972); Ogus, *supra* note 2, at 768. Taxes also have been proposed as a way to deal with environmental externalities, although the taxed behavior tends not to have the strong moral connotations of “sin.” See, e.g., Thomas A. Barthold, *Issues in the Design of Environmental Excise Taxes*, 8 J. ECON. PERSP. 133, 134–40 (1994).

23. See Prasad, *supra* note 1, at 370.

24. Bruce G. Carruthers & Wendy Nelson Espeland, *Money, Meaning and Morality*, 41 AM. BEHAV. SCI. 1384, 1389 (1998).

25. In this case, governments can then restrict licenses to those who meet some kind of minimal standards for activity, legitimacy, accountability, or suitability.

26. See Dennis J. Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969–99*, 53 NAT’L TAX J. 983, 985 (2000).

independence, uprightness, and sense of personal responsibility.²⁷ So even as entitlement programs like Aid to Families with Dependent Children (AFDC) were abolished and overall social welfare supports were reduced, federal policy used the personal income tax system to reward the paid labor of the working poor.²⁸ Expansion of the Earned Income Tax Credit (EITC) gave tax credits (not merely tax deductions) to low income individuals based on their income level and number of children.²⁹ In short, tax expenditures were used to mark and reward poor people who undertook paid labor.³⁰ Similarly, home mortgage interest tax deductions reflect a widespread political consensus about the positive social value of individual home ownership.³¹ Other income tax measures reflect social approval of, among other things, entrepreneurship, charitable contributions, savings, and capital gains.³² The tax code can reflect both sin and virtue.

I. TAXATION AND REPRESENTATION

How can a public revenue system serve as an instrument of cultural expression or as a vehicle with which to represent meaning? Presumably, there are other and better ways for a society to state its collective values, and surely the basic purpose of the revenue system is to generate the resources needed to fund government activity as efficiently as possible. To consider that taxes might have other purposes or effects beside simple resource extraction entails moving beyond perspectives that regard governments and sovereigns as primarily revenue maximizers,³³ or which posit a tight link between taxation, warmaking, and the growth of the state.³⁴ Of course, revenue extraction usually is the main purpose of taxation, but here I only wish to observe that it need not be the only consideration. Taxes can be used to regulate behavior, to change behavior, or to mark behavior.³⁵ So here I will not focus on the extractive side of taxation, except to note its loose connection with the cultural side.

27. *Id.* at 993–94.

28. *Id.*

29. For a much more extensive discussion of this and related matters, see Tsilly Dagan, *The Currency of Taxation*, 84 *FORDHAM L. REV.* 2537 (2016).

30. CHRISTOPHER HOWARD, *THE HIDDEN WELFARE STATE: TAX EXPENDITURES AND SOCIAL POLICY IN THE UNITED STATES* 64–69 (1997); Christopher Howard, *The Hidden Side of the American Welfare State*, 108 *POL. SCI. Q.* 403, 425–26 (1993).

31. HOWARD, *supra* note 30, at 93.

32. This is not to say, of course, that all tax expenditures are markers of public approval. Many are simply the result of interest group lobbying or narrow political favors.

33. *See, e.g.*, MARGARET LEVI, *OF RULE AND REVENUE* 10 (1988); DOUGLASS C. NORTH, *STRUCTURE AND CHANGE IN ECONOMIC HISTORY* 23–25 (1981).

34. *See, e.g.*, CHARLES TILLY, *COERCION, CAPITAL, AND EUROPEAN STATES, AD 990–1990*, at 67–70 (1990).

35. Taxes also can be used in other ways. Ronald King offers a telling detail when he recounts that when President Taft sought a corporation excise tax, the goal was not so much to generate tax revenue as to regulate business accounting practices, which is quite a different matter. *See* Ronald Frederick King, *From Redistributive to Hegemonic Logic: The Transformation of American Tax Politics, 1894–1963*, 12 *POL. & SOC'Y* 1, 17 (1983). Or consider that state-chartered bank notes were taxed after the Civil War in order to encourage the formation of national banks in support of Union finance. *See* BRUCE G. CARRUTHERS &

For market activity, certain associations can engender stigma or create a problematic measure of illegitimacy. First of all, in accordance with some social value systems, particular goods and market-based activities are simply classified as “wrongful.” They are associated with immorality, personal corruption, violation of religious codes, impurities of intent, inappropriate outcomes, and so on. The stigmatization increases when those goods and activities are deemed luxuries rather than necessities. That is, the moral valence intensifies when consumption is a matter of individual choice, when it is a personal option rather than a requirement. Under such conditions, those who indulge in such wrongful behavior or who acquire “tainted” goods do so of their own free will and without mitigating circumstances or a compelling external reason why they did so.

When deployed as a fiscal burden that encumbers a particular activity, taxation can serve as a public marker of stigma. The tax publicly labels disapproved goods or services and can be imposed at exactly that point in the production chain where the good is created out of its constituent parts, or after its production and somewhere further downstream (perhaps when the good is sold, or the service provided, to consumers). Thus, as symbolic expressions of disapproval, excise taxes can be highly precise, differentiating sharply between good and bad commodities and even between the components of a commodity (e.g., glass, corn, wheat, rye, malted barley), and the commodity itself (e.g., bottled bourbon whiskey). And the tax can signal social disapproval even when it generates no actual revenue. Consider, for example, that the stigma attached to alcohol was such that liquor taxes remained on the books, as a public—if largely nonapplicable—expression of disapproval even during Prohibition.³⁶

The imposition of taxes on “luxuries” rather than “necessities” has implications for the perception of tax incidence.³⁷ Luxury goods connote waste, excess, and discretionary consumption—a set of associations that certainly have shaped tax policy.³⁸ Consider, for example, how much New Deal-era discussions of luxury taxes depended on the perceived status of various goods: jewelry and furs were easy to classify as luxury goods.³⁹ Necessary goods, by contrast, are nondiscretionary, and their consumption

LAURA ARIOVICH, *MONEY AND CREDIT: A SOCIOLOGICAL APPROACH* 31 (2010); Prasad, *supra* note 1, at 370. Additionally, note that taxation plays a metrological role in the definition and measurement of product qualities and standards. See WILLIAM J. ASHWORTH, *CUSTOMS AND EXCISE: TRADE, PRODUCTION, AND CONSUMPTION IN ENGLAND, 1640–1845*, at 7 (2003); Clark Byse, *Alcoholic Beverage Control Before Repeal*, 7 L. & CONTEMP. PROBS. 544, 552–53 (1940); John E. O’Neill, *Federal Activity in Alcoholic Beverage Control*, 7 L. & CONTEMP. PROBS. 570, 585–89 (1940).

36. Jendi B. Reiter, *Citizens or Sinners?—The Economic and Political Inequity of “Sin Taxes” on Tobacco and Alcohol Products*, 29 COLUM. J.L. & SOC. PROBS. 443, 448 (1996).

37. Although the meaning of “luxury” changes over time, beer and tobacco clearly were lumped together as “luxuries” in a San Francisco newspaper article on the excise tax imposed on beer production. See *Letter from New York*, S.F. DAILY EVENING BULL., Dec. 16, 1862. Going forward, they are consistently classified as non-necessities.

38. Reginald Lennard, *The Taxation of Luxury*, 28 ECON. J. 287, 290, 294 (1918).

39. See THORNDIKE, *supra* note 17, at 63–64, 82–83, 235.

is consistent with thrift and the careful husbandry of resources.⁴⁰ In addition, however, luxuries generally are consumed by high-income individuals while necessities are consumed by everyone. This means that taxes on luxuries should be relatively “progressive” (so that higher income individuals pay higher consumption taxes), but taxes on necessities are more “regressive” in that lower-income individuals bear a proportionately higher burden. It also suggests that, if they so choose, those who consume luxury goods easily could reduce their consumption in response to higher prices, particularly when substitute goods are readily available.⁴¹ By contrast, the consumption of necessary goods will not decline even if the imposition of taxes raises the price. By definition, there are no substitutes for something that truly is necessary.

Following Tsilly Dagan’s discussion of income taxes,⁴² the imposition of excise taxes on stigmatized activity also has the effect of giving a precise measure to sinful activity: the more activity, the higher the tax, in exact proportion. Just as personal income taxes recognize and give quantitative measure to various human attributes, resources, and interactions, excise taxes are also a precise numerical measure to stigmatized consumption. This occurs only when stigmatized activity involves the purchase or the use of market-based goods and services, both of which necessarily possess a market price. Depending on how it is imposed, whether in terms of value (e.g., as a percent added to the price), or some physical measure (e.g., per liquid gallon or per carton), a sin tax commensurates stigmatized activity even if it does not commodify it. Someone who more frequently engages in taxed behavior pays a higher penalty than someone who does not engage in it at all. And tax levels can differentiate between degrees of stigmatization within the same overall product category. For example, the alcohol taxes imposed on the purchase of beer or wine frequently are lower than those imposed on distilled spirits (so-called “hard liquor”). The latter beverage has a higher alcohol content and so is considered more problematic. Stigmatized activity that occurs outside of the market economy, and which therefore does not have a market price, cannot be commensurated in this fashion (e.g., actions like telling lies, wishing ill of someone else, embarrassing one’s family, etc.).

One can understand why those who participate in stigmatized activities are not in a strong position to object to the taxation of such activities. To be perceived as illegitimate is a weak basis for tax resistance. But rather than avoid taxes, participants tarnished by stigma may actually seek out taxation because it can, in a sense, become a form of political protection.⁴³ Consider

40. As Adam Smith noted: “Sugar, rum, and tobacco are commodities which are nowhere necessities of life, which are become [sic] objects of almost universal consumption, and which are therefore extremely proper subjects of taxation.” 39 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 416 (1952).

41. It turns out, of course, that even low-income individuals enjoy a drink and a smoke and that excise taxes imposed on such items generally are regressive.

42. See Dagan, *supra* note 29.

43. AJAY K. MEHROTRA, MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION, 1877–1929, at 74–75 (2013).

the political power of U.S. prohibitionists who wanted to completely curtail the nonmedical consumption of alcoholic beverages and managed to do so during the Prohibition era (1920 to 1933). In consenting to be taxed both before and after Prohibition, distillers and brewers gave state and federal governments a good fiscal reason not to follow the prohibitionists and completely prohibit alcohol.⁴⁴ And the higher the tax rates and the more lucrative and reliable the revenues, the stronger the reason not to follow the prohibitionists. This willingness to be taxed, however, hardly can explain the emergence of sin taxes.

II. TAXES AS EARMARKS

In explaining the cultural significance of money, Viviana Zelizer places a great deal of emphasis on earmarking practices.⁴⁵ These insert distinctions into what is otherwise indistinguishable, or fungible, money. Modern legal tender is homogeneous: it varies quantitatively ($\$10 = \$5 + \$5$; $\$10 > \5) but not qualitatively ($\$1 = \1). Earmarks create qualitative differences within the homogeneity.⁴⁶ According to Zelizer, "The earmarking of money is thus a social process: money is attached to a variety of social relations rather than to individuals."⁴⁷ A traditional American housewife who covers household expenses with a monthly allowance she receives from her traditional breadwinner husband might set aside a portion of that sum into a domestic category known as "pin money."⁴⁸ Thus categorized, pin money is frequently earmarked for distinctive purposes and has a qualitatively different meaning. People also physically segregate and label accumulations of money by putting them into piggy banks, jars, or stockings, and then treat that money differently (it might be designated for specific recreational uses or purchase of gifts) and not as part of the overall household budget.

The imposition of taxes upon a particular type of transaction or commodity functions very much like an earmark. The specific sourcing of tax revenue inserts categorical distinctions into fungible cash flow. Instead of generic revenue, the government receives revenue from alcohol sales or revenue from cigarette sales, or taxes on casino gambling. Domestic earmarking for Zelizer concerned symbolic designations or physical sequestration of monies.⁴⁹ But matters necessarily are different where public and private sector organizations are concerned. For these organizations, earmarking concerns budgetary categorizations.⁵⁰ Otherwise identical legal tender becomes heterogeneous once it has been earmarked

44. W. ELLIOT BROWNLEE, *FEDERAL TAXATION IN AMERICA: A SHORT HISTORY* 33 (2004).

45. See ZELIZER, *THE SOCIAL MEANING OF MONEY*, *supra* note 8, at 143.

46. In its original meaning, ranchers marked the ears of their cattle in order to distinguish them from cattle owned by other ranchers.

47. See *id.* at 25.

48. See *supra* note 11 and accompanying text.

49. See ZELIZER, *THE SOCIAL MEANING OF MONEY*, *supra* note 8, at 39.

50. ARTHUR L. STINCHCOMBE, *WHEN FORMALITY WORKS: AUTHORITY AND ABSTRACTION IN LAW AND ORGANIZATIONS* 126–29 (2001).

and placed into different budget categories. It is important to recognize that this is a different matter than the *incidence* of taxation, which concerns who bears the ultimate financial burden of a tax. If the party that directly pays a tax can pass the fiscal burden on to someone else (perhaps by charging higher prices to their customers), then the incidence is shifted elsewhere.

At the symbolic level, the proximate point of fiscal imposition imparts meaning to sin tax revenue. What is the social status of the underlying market transaction? Is it legitimate, or illegitimate (even if legal)? The answer shapes how taxes on that transaction are perceived. Thus, a tax on legal prostitution becomes a sin tax, even if the burden of the tax ultimately falls on the (often) nonstigmatized customers who, because of the tax, will pay a higher price for the sexual services they purchase. Collateral transactions also escape the symbolism that is attached to the focal transaction. A tax on hotel room occupancy carries no problematic meaning, even if prostitutes rent hotel rooms to offer their services to clients. Similarly, the taint of alcohol does not affect those who produce and sell the glass containers for alcoholic beverages, and so a bottle tax is not necessarily a sin tax.

How sin tax revenues are used creates another opportunity for earmarking, particularly when this helps to “launder” the revenues. Money that arises out of one set of market transactions subsequently can be used to fund an entirely different set of transactions (it is, after all, in the nature of money to circulate). Money flows link together transactions of different moral valence, and the following transaction can modify the meaning of its predecessor. “Dirty” money may be “cleansed” by being earmarked to serve a virtuous social end. Perhaps tobacco revenues are spent on public health or to further children’s education. Such earmarking introduces further symbolic categorical distinctions into what is otherwise purely fungible money and is a long-standing practice in American public finance. Charles Conlon points out that in the middle of the twentieth century, U.S. states often earmarked alcoholic beverage tax revenues for activities like old age pensions, schools, charitable institutions, and support of poor children.⁵¹ More recently, in 2005, twenty-six states earmarked their tobacco tax revenues, twenty-three states earmarked alcoholic beverage tax revenues, and fourteen states earmarked their tax revenues from gaming for purposes that included education, health, and welfare.⁵² For instance, the state of Alabama earmarked 32.4 percent of the tax revenues generated by the sale of liquor and wine for social and protective services and 40 percent of the revenues generated by beer sales for public schools and higher education.⁵³ California earmarked 86.9 percent of taxes on the sale of cigarettes and tobacco products for a broad range of good works, including tobacco-related health education programs, disease research, environmental

51. Charles F. Conlon, *Taxation in the Alcoholic Beverage Field*, 7 L. & CONTEMP. PROBS. 728, 745–46 (1940).

52. ARTURO PÉREZ, EARMARKING STATE TAXES app. B, at 6 (2008).

53. *Id.* app. D, at 9.

conservation, fire prevention, and indigent health care services.⁵⁴ It is easier to tolerate sinful activities if they can be credibly used for good, and budgetary earmarks can tie particular taxes to particular expenditures.⁵⁵

If, as Zelizer argues,⁵⁶ earmarks create meaning within fungible monetary flows, then sin tax revenues constitute a double semantic process. On the origin or revenue side, taxation of stigmatized activity shares the stigma with the tax revenues, while at the same time mitigating that stigma because the problematic activity is now directly and publicly burdened with a tax. The tax expresses disapproval while at the same time allowing the activity to proceed. On the destination or spending side, budgetary earmarks can further mitigate the stigma by ensuring that at least some sin tax revenues support valuable and praiseworthy public policies. Putting problematic revenues in tight linkage with legitimate activity creates a kind of halo effect.

III. VARIABLE TAXES AND DURABLE SEMANTICS

Definitions of sin shift over time, as does the application of the term “stigmatized.” The mobility of cultural meaning clearly is illustrated by the changing status of alcoholic beverages, which for a time were sanctioned to the point of being completely illegal. Similarly, as awareness of the health hazards associated with tobacco consumption spread, the status of commodities like cigarettes became increasingly problematic.

In the United States, the fiscal importance of “sin taxes” also has varied over time and across levels of government. At the federal level, sin taxes generally have declined in importance as a revenue source.⁵⁷ For much of the nineteenth century, the federal government depended on customs taxes for most of its revenue.⁵⁸ Then, in the early twentieth century, there was a dramatic shift toward internal revenue sources, which included various excise taxes. But the shift away from customs revenues did not make sin taxes more important. In 1902, for example, the federal government derived roughly 29 percent of its total revenues from a sales tax on alcoholic beverages and about 7.5 percent of revenues from sales taxes on tobacco.⁵⁹ In 1913, those proportions had changed to 23 percent for alcohol

54. *Id.* app. D, at 20.

55. For a more general discussion of budgetary earmarking, see IRENE S. RUBIN, *THE POLITICS OF PUBLIC BUDGETING: GETTING AND SPENDING* 43–44, 163 (5th ed. 2006). For an overview of state-level earmarking, see PÉREZ, *supra* note 52, at 2–8.

56. See ZELIZER, *THE SOCIAL MEANING OF MONEY*, *supra* note 8, at 5, 18–19.

57. See MEHROTRA, *supra* note 43, at 7, 72.

58. See *infra* APPENDIX Figure 1. The author created Figure 1 based on the statistics found in John Joseph Wallis, *Federal Government Revenue, by Source: 1789–1939*, HIST. STAT. U.S. tbl.Ea588-593, <http://hsus.cambridge.org/HSUSWeb/essay/showtableessay.do?id=Ea588-593&swidth=1366> (last visited Apr. 29, 2016) [<https://perma.cc/GJW6-X2YL>].

59. The majority of the percentages in this and the following paragraph are derived from the Historical Statistics of the United States. See John Joseph Wallis, *Federal Government Revenue, by Source: 1902–1995*, HIST. STAT. OF U.S. tbl.Ea132-159, <http://hsus.cambridge.org/HSUSWeb/essay/showtableessay.do?id=Ea132-159&swidth=1600#> (last visited Apr. 29, 2016) [<https://perma.cc/5X4L-CDDL>].

and 8 percent for tobacco.⁶⁰ Prohibition greatly reduced revenues from sale of alcohol, but in 1934, shortly after repeal, the federal revenue proportions were 6.4 percent for alcohol sales and 10.9 percent for tobacco sales.⁶¹ By 1948, during the post-war economic boom and after expansion of the personal income tax system during World War II, sales of alcoholic beverages and tobacco products contributed only 4.7 percent and 2.7 percent, respectively to federal government revenues.⁶² And twenty years later, the proportions were even smaller: 2.6 percent and 1.3 percent, respectively.⁶³

One of the major causes of the overall decline at the federal level had nothing to do with changing social meanings, or changes in consumption of “sinful” commodities, but rather with wartime changes in taxation. At the start of both World Wars I and II, the U.S. government had to raise much greater sums of money than before, and, in addition to borrowing heavily, the only direction to go in was to impose new types of personal income, corporate income, excise, or estate taxes.⁶⁴ Extant tax revenues simply could not be expanded high enough, or fast enough, to meet the extraordinary fiscal needs of modern warfare.⁶⁵ The outbreak of war was marked by a rapid decline in the relative importance of customs tax revenues, primarily because of the decline in international trade.⁶⁶ Relative to total revenues, sin tax revenues also decreased. As Figure 2 shows, taxes on alcoholic beverages were a major contributor to the federal government’s internal revenues during the late nineteenth century.⁶⁷ But then they shrank dramatically as various income tax revenues expanded. In general terms, federal revenues between the Civil War and World War I depended on a combination of customs and internal revenues.⁶⁸ After World War I, internal revenues became more important chiefly because of

60. See sources cited *supra* note 59.

61. See sources cited *supra* note 59.

62. See THORNDIKE, *supra* note 17, at 264.

63. See John Joseph Wallis, *Federal Government Internal Tax Revenue, by Source: 1863–1940*, HIST. STAT. U.S. tbl.Ea594-608, <http://hsus.cambridge.org/HSUSWeb/table/showtablepdf.do?id=Ea594-608> (last visited Apr. 29, 2016) [<https://perma.cc/AF3X-TX4E>].

64. See JOEL SLEMRD & JON BAKIJA, *TAXING OURSELVES: A CITIZEN’S GUIDE TO THE DEBATE OVER TAXES 18–22* (4th ed. 2008); King, *supra* note 35, at 21–23; see also THORNDIKE, *supra* note 17, at 207. A similar pattern unfolded during the Civil War: the North raised excise taxes substantially (particularly on luxury goods), but still had to establish an income tax to meet its revenue goals. After the war was over, these new taxes only were gradually reduced. See MARGARET G. MYERS, *A FINANCIAL HISTORY OF THE UNITED STATES 158–59* (1970); Jeffrey Rogers Hummel, *The Civil War and Reconstruction, in GOVERNMENT AND THE AMERICAN ECONOMY: A NEW HISTORY 188, 214* (Price Fishback et al. eds., 2007).

65. See *infra* APPENDIX Figure 1.

66. See *infra* APPENDIX Figure 1.

67. See *infra* APPENDIX Figure 2. The author created Figure 2 based on the statistics found in John Joseph Wallis, *Federal Government Internal Tax Revenue, by Source: 1863–1940*, HIST. STAT. U.S. tbl.Ea594-608, <http://hsus.cambridge.org/HSUSWeb/table/showtablepdf.do?id=Ea594-608> (last visited Apr. 29, 2016) [<https://perma.cc/8YYJ-X5TQ>].

68. See BROWNLEE, *supra* note 44, at 24, 29–30.

expanded income taxes.⁶⁹ Federal sin taxes continued to be imposed, but their fiscal significance diminished.⁷⁰

The historical pattern is not as simple for state government revenues. In 1902, state taxes on the sale of alcoholic beverages and tobacco products generated no revenue at all.⁷¹ Instead, state governments relied heavily on property-tax revenues.⁷² In 1913, taxes on the sale of alcohol provided only 0.7 percent of total state revenues, while sales taxes on tobacco continued to provide zero revenues.⁷³ In 1934, the contributions were 1.8 percent (alcohol) and 0.7 percent (tobacco), and by 1948 these increased to 3.4 percent and 2.8 percent, respectively.⁷⁴ By 1968, the proportions were 1.7 percent (alcohol) and 2.8 percent (tobacco).⁷⁵ Overall, these sin taxes generated zero state revenue at the outset of the twentieth century; their contribution then grew so that by mid century, they contributed a small but substantial amount of revenue; finally, their relative size shrank back down. Tax revenues from legalized gambling largely are a post-1960 phenomenon, and, with the exception of Nevada, only recently have revenues from casinos, lotteries, or pari-mutuel activity contributed substantially to state budgets.⁷⁶

Even as sin tax collections vary over time, they also vary across states. Some states impose higher taxes on stigmatized transactions than others. In 2015, for example, the tax rate on a gallon of distilled spirits was \$12.80 in Alaska, \$6.50 in Florida, and \$8.55 in Illinois, whereas it was only \$1.50 in Maryland and \$2.28 in Colorado.⁷⁷ Many states, including Alabama, Idaho, North Carolina, and Pennsylvania, directly control the sale of distilled spirits; accordingly, the state sets profit margins and also imposes fees and taxes.⁷⁸ Hence, in 2014, Alabama gained about 2 percent of total tax revenues from alcoholic beverage sales taxes.⁷⁹ The same sin tax generated

69. John Joseph Wallis, *The National Era*, in GOVERNMENT AND THE AMERICAN ECONOMY: A NEW HISTORY, *supra* note 64, at 148, 151.

70. The decline additionally stemmed from the fact that federal taxes are stated in nominal terms (so much money per gallon of distilled spirits, for instance), and these sums eroded in real terms with inflation.

71. *State Government Tax Collections—Historical Dataset*, U.S. CENSUS BUREAU, https://www.census.gov/govs/statetax/historical_data.html (last visited Apr. 29, 2016) (download zip file labeled “State Government Tax Collections”; then see excel file labeled “STC_Historical_DB.xls”) [<https://perma.cc/B2VG-ACTV>].

72. John Joseph Wallis, *American Government Finance in the Long Run: 1790 to 1990*, 14 J. ECON. PERSP. 62, 67, 70–71 (2000).

73. See *State Government Tax Collections—Historical Dataset*, *supra* note 71.

74. John Joseph Wallis, *State Government Revenue, by Source: 1902–1996*, HIST. STAT. U.S. tbl.Ea594-608, <http://hsus.cambridge.org/HSUSWeb/table/showtablepdf.do?id=Ea348-384> (last visited Apr. 29, 2016) [<https://perma.cc/ZDD8-H8EM>].

75. *Id.*

76. William R. Eadington, *The Economics of Casino Gambling*, 13 J. ECON. PERSP. 173, 174–75 (1999).

77. FED’N TAX ADMIN’S, STATE TAX RATES ON DISTILLED SPIRITS (2015), <http://www.taxadmin.org/assets/docs/Research/Rates/liquor.pdf> [<https://perma.cc/NWH7-DNKP>].

78. *Id.*

79. *American Fact Finder: 2014 Annual Survey of State Government Tax Collections Detailed Table*, U.S. CENSUS BUREAU, <https://www.census.gov/govs/statetax/> (last visited

1.3 percent of total tax revenues for the state of Florida.⁸⁰ The low rates imposed in Colorado produced little revenue: alcoholic beverage sales provided only 0.3 percent of total tax revenues in 2014.⁸¹ Maryland's low sin tax rates produced even less tax revenue, less than 0.2 percent of total tax revenues.⁸² The causes of these state-level variations have not been investigated thoroughly, but Cathy Johnson and Kenneth Meier found that religious groups make a difference for sin taxes: U.S. states with larger Catholic populations tended to have lower alcohol taxes, while states with more Protestant fundamentalists were more likely to have state monopoly liquor stores (and less likely to have a state lottery).⁸³

These cross-jurisdictional and temporal variations in the fiscal magnitude of sin taxes underscore the loose coupling between symbolism and substance. Cultural salience and fiscal significance are not the same thing.⁸⁴ As a crude measure of cultural salience at the national level, consider evidence derived from the Google Ngram application, which summarizes the relative frequency of words and phrases contained in a very large corpus of digitized American English books.⁸⁵ As with ordinary content analysis, word frequencies can be used to measure the importance of particular topics, and with a textual corpus that extends over long periods of time, word frequencies can measure how topics change over time. Figure 3 in the appendix simply is a calibration test, showing that between 1880 and 2000, published mentions of the word "prohibition" peaked in the period leading up to the repeal of the prohibition on the production and

Apr. 29, 2016) (follow "2014 Annual Survey of State Government Tax Collections Detailed Table" hyperlink) [<https://perma.cc/9GHU-QJX4>].

80. *Id.*

81. *Id.*

82. *Id.*

83. Johnson & Meier, *supra* note 15, at 585–87.

84. Consider, for example, how much employer withholding of income taxes reduced the salience and noncompliance of individual taxpayers. Fiscally important income taxes became less salient.

85. The Ngram corpus currently contains over eight million books, or about 6 percent of all the books that were ever published. See Yuri Lin et al., *Syntactic Annotations for the Google Books Ngram Corpus*, in 2 PROCEEDINGS OF THE 50TH ANNUAL MEETING OF THE ASSOCIATION FOR COMPUTATIONAL LINGUISTICS 169, 169 (2012), <https://aclweb.org/anthology/P/P12/P12-3029.pdf> [<https://perma.cc/Z2X6-XH3N>]. For an introduction to Ngram as a research tool, see Jean-Baptiste Michel et al., *Quantitative Analysis of Culture Using Millions of Digitized Books*, 331 SCIENCE 176 (2011). For other studies using Google's Ngram, see Patricia M. Greenfield, *The Changing Psychology of Culture From 1800 Through 2000*, 24 PSYCHOL. SCI. 1722 (2013); Patrick Juola, *Using the Google N-Gram Corpus to Measure Cultural Complexity*, 28 LITERARY & LINGUISTIC COMPUTING 668 (2013). Pechenick, Danforth, and Dodds and others identify a number of problems with Ngram, but so far as I can tell, the most severe of these (e.g., shortcomings of Optical Character Recognition (OCR) technology, biases deriving from the introduction of scientific texts into the corpus, overrepresentation of prolific authors) do not apply here. See Eitan Adam Pechenick, Christopher M. Danforth & Peter Sheridan Dodds, *Characterizing the Google Books Corpus: Strong Limits to Inferences of Socio-Cultural and Linguistic Evolution*, PLOS ONE (Oct. 7, 2015), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0137041> [<https://perma.cc/9WSN-ZPYH>]. Thanks to Laura Nelson for calling my attention to the issue of flaws of Ngram.

distribution of alcoholic beverages and declined thereafter.⁸⁶ Prohibition as a social and political issue was tracked by the relative frequency of the word “prohibition” contained in published books. In this and subsequent graphs, the data are “smoothed” by using a seven-year moving average, but the overall pattern is the same when viewed without smoothing.⁸⁷ This visible peak is consistent with the overall timeline of political and legal events preceding the passage and then repeal of the Eighteenth Amendment of the U.S. Constitution.⁸⁸

The evidence in Figure 4 is more relevant for my purpose here and charts the frequency of “alcohol tax” from 1880 to 2000.⁸⁹ Although not as intense as the discussion of prohibition, the national conversation about taxes on alcohol waxes and wanes, with an increase during the late 1910s (just as federal alcohol revenues were declining in importance), becoming even more intense through the 1930s (after the end of prohibition), and then reaching a high point in the 1940s and into the early 1950s. Thereafter, it settles down. Figure 5 provides an interesting comparison between alcohol and cigarettes, both stigmatized commodities.⁹⁰ Interest in cigarette taxation started in the 1920s and rose quickly through the late 1930s. Then it declined and began to increase again in the mid-1940s, producing higher levels of published commentary in the early 1950s than did alcohol taxes at any point.⁹¹ Then, matters quieted down until the 1980s when the discussion began to rebound in intensity (perhaps because the health consequences of cigarette use had become so publicly undeniable).

This simple textual evidence is only suggestive, of course, but it does reflect how much the collective discussion of “sinful” commodities has increased and decreased over time. As an issue, such taxes do not create a steady state of controversy or durable deliberation. It also shows that the fiscal importance of sin taxes does not drive, in any mechanical fashion, the cultural or political salience of sin taxes. Indeed, once individual and corporate income taxes were put in place in response to wartime financial imperatives, excise taxes contributed relatively little to the federal budget. But the discussion of excise taxes imposed on sinful commodities nevertheless continued, and even intensified. The symbolic connection between stigmatized activity and the tax revenues that can arise out of them remained intact, even when sin tax revenues made a relatively small

86. *See infra* APPENDIX Figure 3. The author created Figure 3.

87. The result for a particular year is calculated as the average of the three previous years, the three subsequent years, and the year itself. Thus, the value charted for 1940 is the average of the values for 1937 to 1943, inclusive. A moving average smooths out “noisy” year-to-year fluctuations and makes it easier to perceive the underlying trend.

88. Based on the author’s own Ngram analysis, tracking “Eighteenth Amendment” or “Volstead Act” produces very similar results.

89. *See infra* APPENDIX Figure 4. The author created Figure 4.

90. *See infra* APPENDIX Figure 5. The author created Figure 5 based on an Ngram analysis.

91. If I track “tobacco tax” rather than “cigarette tax,” the patterns are qualitatively similar.

contribution to public finances and even when sin taxes were not a hot political issue.

CONCLUSION

Taxation involves legally mandated revenue streams coming from private economic assets and activity into the public purse. Modern taxation involves streams of homogeneous, territorially bounded, fungible legal tender—streams that emerge from market-based activity. But taxation is not simply a matter of resource extraction to pay for public policy. In suggesting that taxes also can represent meaning, I borrow from Zelizer's analysis of money,⁹² and the ways in which earmarking practices create categories and distinctions within flows of homogeneous money, at both their sources and destinations. A tax revenue stream flowing out of stigmatized economic activity itself becomes stigmatized and is known as a "sin tax." It often is treated as categorically distinct, segregated in the budget from other revenues and frequently earmarked to cover particular categories of expense. If a sin tax signals dishonor by its point of origination, it also can weaken that stigma through its earmarked destination, to be dispersed in payment of "motherhood and apple pie" public expenses. These semiotic connections persist even when the sin tax contributes only a small proportion of total public revenues.

My broader goal in this Article is to rethink the connection between taxation and representation. Usually, this conjoint phrase refers to *political* representation, or the right of citizens to exercise their voting rights and have a say in how, and how much, they are taxed by municipal, state, or federal governments. But here, I mean *symbolic* representation, underscoring that taxes can serve as a vehicle for the conveyance of collective or public meanings, not just for the deployment of purchasing power. As many have previously noted,⁹³ politics involves symbols and rituals. The power of the democratic state consists of its ability to mobilize and deploy material resources, but it also possesses considerable cultural power. Through its system of taxation, it renders the private economy legible, recognizes some of its moral features, and enacts with precision both approval and disapprobation. If it is true that, following Cicero,⁹⁴ taxes are the sinews of the state, it is also true that they can serve as its voice.

92. See ZELIZER, THE SOCIAL MEANING OF MONEY, *supra* note 8, at 1–5.

93. See, e.g., MURRAY EDELMAN, THE SYMBOLIC USES OF POLITICS (2d ed. 1985); DAVID KERTZER, RITUAL, POLITICS, AND POWER (1989).

94. SELECT ORATIONS OF CICERO 29 (William Duncan trans., Oxford 1841).

APPENDIX

Figure 1

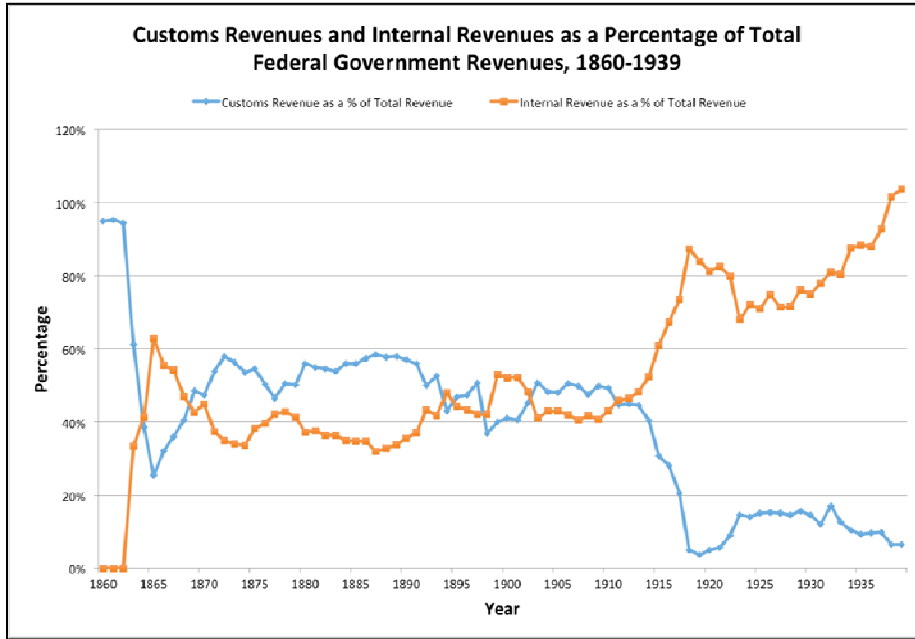


Figure 2

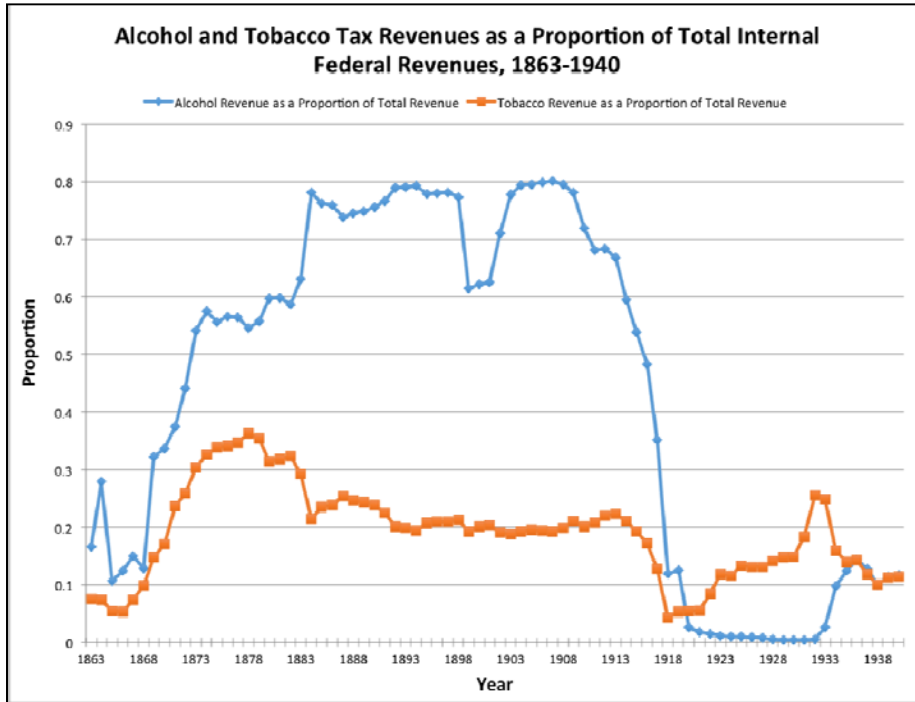


Figure 3: Relative frequency of “prohibition” in Google book corpus, 1880–2000



Figure 4: Relative frequency of “alcohol tax” in Google book corpus, 1880–2000

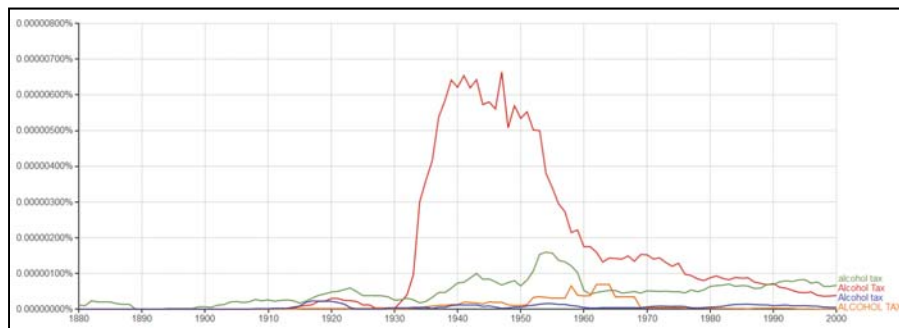


Figure 5: Relative frequency of “alcohol tax” and “cigarette tax” in Google book corpus, 1880–2000

