What is the Difference between Medicine and Quackery? How Law Performs Boundary Work

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Did you know that law was involved in establishing the status of medical science as we know it today? In the nineteenth century, the medical scene was a confusing mix of professional doctors and a medical market. Anyone could concoct and sell any medicine they imagined; and, with the spread of mass advertising, the market for these so-called proprietary medicines became big business in Britain. The medical establishment worked hard, with the aid of law, to distinguish scientific medicine from this market, despite being involved in it. This process shaped modern understandings of medical science and the medical market as distinct spheres of activity. We can revisit one legal case to get a sense of this history.

In 1864 Robert Hunter, a doctor certified in New York and Canada, began to advertise his book on tuberculosis and its cure by oxygen inhalation in a series of column publications in the *Times*, *Standard*, *Morning Post*, *Daily Telegraph*, *Star*, and other newspapers in Britain. Britain had seen a surge of tuberculosis with the spread of industrialization and urbanization. The medical profession was groping in the dark against the foremost killer of the nineteenth century. The search for a cure was an industry, with treatments, health tourism, ventilation solutions, medical books, and brochures in wide circulation. At this point, no one—including Hunter—had a cure, yet he claimed to have found it.

According to medical ethical codes, doctors were not supposed to advertise, but Hunter was not impressed. He attacked the medical establishment for ignoring his treatment against rational explanation and argued that doctors had breached their duty of instruction by shunning publicity.

In 1865 the *Pall Mall Gazette* attacked Hunter under the title "Impostors and Dupes" calling him a quack who advertised as no "reputable physician"

would. Hunter sued the publisher for libel. *Hunter v Sharpe* (1866) was an event, one of the few c*auses célèbres* of the year in the courts according to the *Law Times* (Hunter 1867: 169). But it was also just one of a run of cases that turned courts into public forums asking: what is quackery, and how can we tell the difference from scientific medicine?

It was no trivial question. Doctors qualified in British institutions often worked with and for commercial medical sellers, were directors and shareholders in their businesses, prescribed their medicines, and published their adverts in medical magazines. Sellers of medicines on the market competed with qualified doctors for clientele, but even worse was the existential fear that medicine could degenerate into quackery under the pressures of big money. In other words, a doctor was always in danger of turning into a quack. The medical establishment and its supporters therefore described the market as everything that scientific medicine could not be—its cultural Mr Hyde. *Hunter v Sharpe* revealed how this logic worked. Here is how the Lord Chief Justice Cockburn put the question to the jury:

> Is Dr. Hunter's system one which he has propounded to the public as an honest medical writer or practitioner, for the purpose of enlightening the profession or benefiting the public? Or is it a system of quackery, delusion, and dishonesty put forward – no matter at what cost to the victims … for the purpose of putting money into his own pocket (*Hunter v Sharpe* 1866: 983).

Cockburn posited a sharp distinction between scientific enlightenment and private profit. According to the judge, the "system" was illuminated by the advertising campaign. He exclaimed: "Gentlemen, we are not in America; we are in England … Empirics advertise; professional men do not" (Hunter 1867: 355).

The jury decided for Hunter, yet the damages were one farthing. This was an ambiguous outcome, but the medical establishment celebrated. The president of the Royal College of Physicians presided over a ceremony in which *The Lancet* and the *British Medical Journal* gave Sharpe a silver vase worth over £25,000 in 2025 terms, decorated with the crowning of science. He was praised for efforts "to expose the social evil of barefaced systematic quackery, especially the degrading practice of self-laudation".

The question of science became, simply, to advertise or not to advertise. Advertising was associated with exaggeration and excess driven by the profit motive. It was contrasted with modesty and reserve that stood for the truth delivered by science. Science was celebrated as a philanthropic

Vase presented to the owner of the Pall Mall Gazette, Illustrated London News*, 17 August 1867, 12. © Illustrated London News Ltd/Mary Evans.*

exercise characterized by methodological reticence, positivistic minimalism, and personal humility.

Hunter was driven out of England. In his fury he unwittingly demonstrated the exaggerative bent. If what was done to him had been done to other discoverers, he wrote:

> the world might still have been a plain resting on the back of a turtle; the Archean spirit would certainly have reigned supreme in the arterial tubes; the smallpox have served to prune and keep down our redundant population; while Newton would never have been such a fool as to notice the 'fall of the apple' (Hunter 1867: 368).

What was the significance of this legal battle? The use of market mechanisms—particularly advertising—and the distinction between exaggeration and restraint that law attached to this use, did not always

identify curative value correctly. In 1909, the distinction between restraint and exaggeration led courts and Parliament astray when an advertiser truly had an effective medicine for tuberculosis, which was still fatal 50 years after Hunter. This advertiser was accused of quackery by the British Medical Association, but lost when he sued for libel. For many years, he continued to lobby medical authorities, continued to advertise, and continued to sell. It took almost a decade before the cure was rehabilitated by a Swiss scientist. It became a lucrative medicine, with a sales turnover of €80 million in 2006 (Brendler & van Wyk 2008: table 2).

Some medical providers collapsed in the wake of legal battles while others continued to thrive. The historical significance of these cases was not their ability to identify curative value; it was their cultural impact as public forums that distinguished between science and the market. Through multiple legal events, the nineteenth century established the idea that science was defined by restraint and the market by its lack. Advertising medicine became a suspicious realm of exaggeration, but also a free realm in which fantasy and wild imagination were liberated from the restraints of rationalism. This process was so successful that the distinctions came to seem axiomatic, when they actually have a legal history worth knowing!

For the full account of *Hunter v Sharpe* (1866), see Anat Rosenberg (2022).

While at the Wellcome Institute …

… you could examine its collections of ephemera, particularly for drug advertising. You will find print and digital options. If you have time, check out the Wellcome Collection's events, the galleries, and cafe.

While at the British Medical Association House …

… check out the garden, historical building, and café.

About the author

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Cases

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