

charge of its educators and practitioners. These are its trustees. Trustees who do not administer rightly are replaced by those who do. Trustees of a profession must be wholly professionally-minded. They must improve their trust and not weaken or debase it. The present trustees of pharmacy are on trial now. They are accountable to the present and future generations. The AMERICAN PHARMACEUTICAL ASSOCIATION, the American Association of Colleges of Pharmacy and the National Association of Boards of Pharmacy are important associative trustees. They usually proceed most carefully and deliberately and constructively. For anyone to aid and abet the commercial invasion, would, in my judgment, amount to maladministration of our share of the trust.

THE ASSOCIATION, THE LAW AND THE PHARMACIST.*

BY J. H. BEAL.

One of the severest indictments that can be laid at the door of pharmacy to-day is that it contains so large a class of men who must be argued with in order to convince them that they should support their state and national associations.

As long as the personnel of pharmacy includes any considerable proportion of those who do not instinctively and spontaneously recognize the duty of loyalty to the organizations which represent them in their collective vocational capacity, just that long will pharmacy lack the professional spirit and cohesive sentiment necessary to give it an honorable place in public estimation.

It was said by Lord Bacon that "Every man who engages in the exercise of a profession enters into a tacit understanding with his brethren to maintain its honor and dignity."

The pharmacist who is not a member of his professional organizations in effect denies the honor and dignity of his vocation, and has no ground of complaint if the public follows his example. Those who evidence no respect for their vocation cannot expect others to do so.

The druggist who complacently accepts the benefits of the state association's efforts without contributing to its support is a business hobo living at the expense of better men than himself. Were all other considerations lacking, the constant menace of injurious or even destructive legislation which can be successfully combated only by concerted effort should be full and sufficient justification for all the support which the state and national associations ask of the retail druggists.

If the associations have not reached the state of efficiency they should possess, the failure should be charged to lack of proper support from those whom they are striving to serve. Only those can consistently criticize them for lack of efficiency who have made an honest effort to make them better.

Some members have most extravagant ideas of what their state association should be able to accomplish with very insignificant financial resources. They are as hard to please as the small boy in the candy shop. After the boy had looked at all of the candy in the show-case the clerk asked, "Do you expect the earth with a red ribbon around it for a nickel?" And the small boy said, "Let me see it."

* From an address to the W. Va. State Pharmaceutical Association, June 22, 1927.

With an appreciation of values similar to that of the small boy some druggists expect the associations to protect them against cut prices, prevent the enactment of vexatious legislation, effect the repeal of burdensome taxes, and establish a pharmaceutical millennium all in return for a contribution considerably less than the annual dues paid by a member of the hod-carriers' union.

Pharmacy will never come into its own until the average retail druggist, without prompting or urging, shall consider the support of state and national associations a matter of course and as much an established part of his business policy as the carrying of fire insurance or the keeping of a telephone.

The Multiplication of Laws Affecting the Practice of Pharmacy.—When the writer entered the drug business, somewhat more than fifty years ago, aside from a working acquaintance with the Ten Commandments, the only laws the Ohio druggist needed to be acquainted with were two brief statutes, one regulating the sale of poisons and another prohibiting the sale of abortifacient drugs, both of which were pasted on the inside cover of the Pharmacopœia for convenient reference.

In that ancient day when two or three druggists got together they invariably bewailed the dearth of pharmacy laws, and speculated upon how much higher the pharmacist would stand in public estimation, and how much more profitable his business would be, if there were laws regulating admission to the practice of pharmacy and prohibiting various things thought to be undesirable.

To-day, if all the laws and regulations of interest to the retail druggist were bound together they would make a volume considerably larger than that old 1870 Pharmacopœia. That the druggist of the present time finds many more occasions to know the provisions of the law than to know the text of the Pharmacopœia is no idle figure of speech but a plain statement of fact. From the syrups of the soda fountain to the items of the drug stock there is scarcely a transaction in the daily business of the drug store which is not the subject of some statute law or bureaucratic regulation, not merely requirements enforcing the genuineness and purity of drugs and their proper dispensing, but many useless and vexatious regulations relating solely to the petty details of bureaucratic administration.

A survey of various lines of occupation would probably show that no other calling or vocation has been so constantly plagued by unnecessary legislation, either accomplished or attempted, or so persistently heckled by meddlesome administrative orders as the drug business. No other merchant is required to take out so many licenses and permits, is subject to the regulations of so many bureaus, boards and commissions, or is required to pay taxes on so many items of his stock in trade as the dealer in drugs and medicines.

Not only for the present but for many years to come legislation will probably continue to be a subject to which the pharmacist will be forced to give serious attention, both in respect to that which he may justly seek on his own initiative and to the still larger volume which zealous reformers ever seem inclined to thrust upon him.

A Common Legislative Program Desirable.—In surveying the legislative situation one fails to discover anything like a common opinion in the various states as to the character of legislation which the pharmacists in all states might equally endorse. Not only is there a wide difference of opinion as to the kind and purpose

of legislation most necessary, but there is an equally wide divergence in the provisions of measures intended for the same purpose. Each state seems inclined to drive ahead on its own program regardless of what the program may be in other states.

Doubtless all of the separately proposed laws possess some measure of desirability, but the disparity of objects proposed indicates very plainly the lack of common understanding and the lack of coordinated effort which must somehow be reached if pharmacy is ever to make itself effective in a large way. Certainly each state should have the right to determine for itself what legislation it will adopt, but it should not ignore the advantages to be gained by utilizing the wisdom and experience of its sister states nor the advantage of having the laws upon the same subjects as nearly uniform as possible in all of the states.

The formulation of a proper statute involves something more than the simple hiring of an attorney to convert the suggestions of the legislative committee of a state association into legal phraseology. It needs the lawyer trained in the principles of statutory interpretation and constitutional law in order that the new statute may have the necessary legal validity; it needs the help of the political economist posted in the reactions of legislation in order that the statute may not fail through infringement of economic principles; and finally it needs the technical knowledge and practical experience of the man in business, in order that it may not be burdened with provisions incapable of practical application.

If a thorough and systematic study of the entire subject of legislation as related to pharmacy could be made by a body of representatives appointed for that purpose by the different state associations and meeting under the auspices of one of the national organizations, it would promote a common understanding as to the kind of legislation most desirable and work a great improvement in the character of measures presented to the state legislatures.

Such a common program of legislation would give a unity of action highly desirable, would stimulate the sense of common interest which pharmacy so much needs, would harmonize the efforts of state and national associations, and would save the N. A. R. D. the embarrassment of occasionally being called upon to simultaneously assist in the enactment of a particular measure in one state and to help defeat practically the same measure in some other state.

Some Unexpected Reactions of the Pharmacy Acts.—It is a matter of common observation that new legislation quite frequently fails to accomplish what was expected of it, and on the other hand, that it frequently gives rise to reactions entirely different from those which were anticipated or desired.

The original pharmacy acts were proposed upon the theory that the enforced examination of candidates for the practice of pharmacy was necessary to protect the public from the injuries likely to result from the dispensing of medicines and poisons by ignorant and otherwise incompetent persons. Although advocated for the protection of the public health, the general public was either indifferent to the measures, or in some cases altogether hostile to their enactment, and it was almost entirely due to the efforts of pharmacist proprietors that these laws were finally placed upon the statute books.

While the pharmacist advocates of these laws were no doubt sincere in the claim that they would result in great public benefit, nevertheless, the chief incentive

to the energy with which they advocated them was the belief that, as a collateral and incidental result, they would also be of immense benefit to the practice of pharmacy.

It was confidently believed that the enforced examination of candidates would admit men of first-class ability, that it would exclude the unworthy, and thereby so reduce the number of drug stores in proportion to population as to greatly enhance the dignity of pharmacy in public estimation and correspondingly improve the financial prosperity of its practitioners. In fact the druggists of that day confidently expected all the benefits from the pharmacy acts that are now expected to follow the requirements that all registered pharmacists be college graduates, and that all store owners be registered pharmacists.

How far have these expectations been realized?

That the average qualification of pharmacists is higher than formerly, and that the laws have resulted in the exclusion of many unqualified persons who otherwise might be engaged in the dispensing of medicines and poisons is beyond question, and in these respects the laws have justified themselves as measures primarily for the public benefit. That the other expectations of their advocates have been realized is not so clear.

In operation they have not reduced the number of pharmaceutical establishments in proportion to the population as it was hoped they would. On the contrary the existence of the laws has caused those on the outside to look upon pharmacy as a "protected vocation"—which it is not—and has increased their desire to share in the supposed benefits. If the laws have served to prevent the multiplication of drug stores to any extent, the possible benefit has been more than nullified by the transfer to other shops of the sale of articles of merchandise formerly sold exclusively in drug stores.

One reaction quite unexpected by the pharmacist proprietors who so vigorously advocated the enactment of the laws has been their effect upon the compensation of clerks and assistants, which since the choice of assistants is confined to a restricted list has been largely increased. Formerly the opportunity of learning his profession, and acquiring the experience which would make him a successful proprietor was considered to be a liberal part of the drug clerk's compensation; now he is one of the best paid among those who occupy clerical positions. The assistant pharmacist, therefore, has abundant reason to be satisfied with the operation of the pharmacy acts, though their wage-increasing effect was a result neither sought nor anticipated by the proprietors who were responsible for their enactment.

Another unexpected reaction of the laws has been a somewhat lessened opportunity of the enterprising pharmacist to establish a personal reputation for exceptional professional qualifications. When it comes to the filling of prescriptions the public is apt to reason that one store must be about as good as another, since the Board of Pharmacy will not admit to practice any except those who have proved themselves competent. If the prescriptionist is competent, what more can be asked?

For the pharmacist proprietor the pharmacy acts have if anything increased the competition which he must meet, have materially added to his cost of doing business and have not perceptibly improved either his professional prestige or his profits.

While no one would advocate repeal of the acts, a comparison of their antici-

pated with their actual results tends to make us somewhat skeptical as to the possible benefits to be derived from further restrictive legislation.

Unexpected Reactions of the Anti-Trust Laws.—Another illustration of the fact that legislation affecting trade relations is a remedy which should be handled cautiously is found in the Sherman Anti-Trust Act, the reactions of which have worked greater injury upon some of the interests which favored its enactment than upon the evils it was intended to reach.

The undoubted purpose of the Sherman Act was to prevent great aggregations of capital in the hands of a few men—the so-called Trusts—from acquiring monopolistic control of certain staple commodities by the simple process of radically underselling their competitors of smaller capital until the latter were driven out of business, after which the Trusts could quickly recoup their losses by again raising prices to a remunerative level. This the law sought to do by prohibiting certain forms of trust agreements, and by defining and prohibiting monopolistic combinations and practices.

The intention of the law was good but its application has been far from satisfactory to the class of small dealers who were most active in securing its enactment. Large capital owners soon found it possible to circumvent the language of the law by avoiding the prohibited forms of trust agreement and yet enjoy all the advantages of large capital control.

When labor held its mighty fist in the face of Congress, the latter quickly exempted labor combinations from the provisions of the Act. When agriculture with its tremendous voting strength made objections, agricultural combinations were likewise exempted. At the present time these two powerful voting groups may, if they like, meet in front of the Capitol at Washington and openly enter into combinations and agreements unlawful to all other citizens. And not only this, but we behold the executive department of the Federal Government actively urging agricultural interests to cooperate in the restriction of production for the definite purpose of increasing prices, which if attempted by united action of any weak voting group, such as shop-keepers or professional men, would subject them to all the pains and penalties of the anti-trust laws.

Furthermore, by interpretation the meaning of the law has been expanded far beyond anything that could have been in the minds of those who were most active in having it placed on the statute books—a meaning which makes it unlawful for men of small capital to combine for the purpose of doing what is perfectly lawful for men of large capital to do. For example, it is lawful for an individual or corporation owner of many stores to control prices in all the stores of the same ownership without let or hindrance. The single owner of many stores may lower prices to a point where his competitors can no longer remain in business, and thus acquire complete monopoly, or he may by a single order increase prices in all his stores without violating any law. But if the many independent dealers thus attacked should attempt to protect themselves by agreement with each other to do precisely the same thing which the large capitalist owner may lawfully do, they become an unlawful combination subject to fine and imprisonment. In other words, it is distinctly unlawful for small owners to agree with each other to do precisely the same things which the large individual or corporation owner may do with perfect impunity.

This, substantially, is the present state of the law under a government alleged to be based upon the principle of "equal rights to all; special privileges to none."

Numerous other examples might be cited of laws similarly disappointing in their results: of public utility laws and commissions which have become the strongest aids of public utility interests in their raids upon the public which the laws were intended to protect; of insurance laws and commissions ostensibly intended to secure open competition in rates between insurance companies, but which in fact have become the willing instruments of the combined insurance interests in preventing any reduction of rates by independent companies.

The further we carry our investigations the more evident it becomes that legislation is an uncertain remedy for trade or social evils; a remedy that misses about as often as it hits; and not infrequently misses the abuse at which it was aimed and hits the interests it was intended to benefit.

Sound Legislation Based on Fixed Principles.—Law-making is not a new subject of investigation; the world has been experimenting with it for some thousands of years, which experience has served to establish certain general principles the observance of which characterize the kind of legislation which can reasonably be expected to accomplish its object, and the non-observance of which marks the variety of legislation that is almost certain to fail. These principles, although familiar to the political economist and to the careful student of history, seem to be largely non-existent in the minds of those who constitute a majority of our state and national law-makers and in the minds of a majority of the reformers who inspire a large proportion of their activities.

Legislation Must Not Conflict with Natural Law.—The first principle of sound legislation and one which law-makers and reformers so frequently forget is that legislation intended to prevent or reverse the operation of natural or economic law cannot succeed. The history of civilization is filled with examples illustrative of this fact. Occasionally political action has seemed to prevail over economic law, but only temporarily: when the final account has been made up, the credit balance has always been on the side of economic law.

Man-made laws may be violently thrust into economic problems, but they cannot prevent the economic consequences which balance the equation. Political action may produce an artificial surplus of a commodity but it cannot prevent a corresponding fall in price; it can create an artificial scarcity, but cannot prevent the price from rising proportionately. Political action may increase the issue of a paper currency beyond economically safe reserves of specie, but all the powers of government combined cannot prevent a corresponding fall in the purchasing value of the fiat money.

A statute may prohibit under severest penalties acts growing out of the inborn qualities of human nature, but it cannot prevent these qualities from influencing the behavior and characters of men.

Physical structures can be erected according to exact specifications because physical materials may be lengthened or shortened, or shaped at will. Social structures cannot be constructed to meet the blue-print specifications of reformers and moralists because the fundamental qualities of human nature do not lend themselves to artificial manipulation.

The first requirement, then, of statutory enactments, whether relating to pharmacy or to any other division of the social structure is that they must be constructed to operate in harmony with natural law, otherwise they will fail, or will provoke reactions more intolerable than the conditions they are intended to correct.

Effective Legislation Must Represent Prevailing Public Sentiment.—Another principle many times confirmed by experience is that the only effective kind of legislation is that which represents the well-settled convictions of a substantial majority of the people who are to be controlled by it. In proportion as statute laws approach this standard they will be observed; in proportion as they recede from it they will be disobeyed. Perhaps we might go farther and say that frequent or general disobedience to a statute is nearly conclusive evidence that it does not represent the settled convictions of a substantial majority of citizens, and that it should be amended until it does represent them.

A properly effective statute does not of itself establish a reform but only marks the period when the reform has already become established in the minds and habits of all but that slender minority of citizens who do not willingly conform to the accepted standards and customs of the society of which they are a part, and to whom the method of compulsion must be applied.

Legislation Cannot Serve as a Substitute for Business Capacity.—Legislation can facilitate business or retard it; it can divert business from the establishment where it would naturally go to the establishment it would naturally stay away from, but in the true sense it cannot create business, nor compensate for lack of business capacity.

Brown owns a store on the North side of a street and being a competent and enterprising business man, builds up a prosperous trade. Jones owns a store on the South side of the same street, but lacking business capacity or not exercising good business judgment either fails altogether or makes only a bare living.

The law was the same on both sides of the street but the men were different. The failure, however, believes that if the law had contained some additional provisions his own success would have been greater and that of his competitor would have been less.

If the law be equal to all, either in distributing favors or in imposing handicaps, the man with the best business judgment and with the most enterprise and industry will always win over the man who possesses these essential qualities in less degree.

Legislation which has no higher purpose than to keep customers away from the stores of competitors and bring them into the stores of those seeking the legislation not only offends against economic law but is a sin against the spirit of democracy. The man who can't win when the rules are the same for both sides should play some other game.

Our quarrel with the anti-trust laws is that as interpreted they do not distribute their favors and handicaps impartially; that they permit the large corporation owner of many stores to manipulate prices in all of its stores at will, but do not permit the independent proprietors of the same number of stores to act in concert in doing exactly the same thing; that they make a crime of the *agreement* to do a thing which is not a crime when done by a single individual. In advocating the passage of the Capper-Kelly Bill by Congress we are not seeking to reverse the action of economic law nor to impose restrictions upon our competitors but only

the removal of the artificial handicap imposed by the Sherman Act, and to restore the freedom of contract which we claim to have had under the old Common Law.

Legislation Which Favors the Unfit Destroys the Fit.—Another limitation imposed by natural law is that legislation cannot successfully favor two opposite qualities of the same thing at the same time.

Whenever two qualities of a thing are in competition, whatever policy favors the inferior quality tends to the elimination of the superior. This is a universal law, prevailing alike in political economy, in biology and in sociology. When two kinds of money are in circulation, if the poor and cheap be made a legal tender it will drive the better kind out of circulation, and it will do this in spite of legal prohibitions and penalties. In agriculture whatever practice favors the multiplication of weeds reduces the quantity and quality of the useful crops. In any trade or professional group any policy which tends to favor the perpetuation of incompetents and weaklings tends in equal degree to discourage and eliminate the strong and vigorous, and in time to reduce the level of respectability of the whole group.

There may be those who would regard as ideal some kind of law which would, under all conditions, insure a profitable business to every pharmacist, even to the least capable and enterprising. To the thoughtful, however, such a law would indicate that pharmacy was to become the resort and refuge of the weak and incompetent from other social groups. It would be the last nail in the coffin of pharmaceutical respectability.

Before committing ourselves to any specified program of legislation or to any particular policy, therefore, it is important to have a clear understanding whether it is one which will favor the perpetuation and multiplication of weaklings and incompetents or one which will tend to weed them out. We cannot favor both at the same time.

It is not the true office of legislation, either by granting direct favors or imposing special burdens, to advance the interests of one class of citizens at the expense of other classes, but rather to hold the scales so evenly that no class may unjustly invade the rights of another.

Adjusting Pharmacy to the Needs of Civilization.—Is it not possible that we have in the past placed too much stress upon legislation as a means of advancing the prosperity of pharmacy and have devoted too little attention to the adjustment of pharmacists to the rapidly changing conditions of modern civilization?

No vocation can be expected to prosper beyond the measure of its ability to render service to the age in which it exists. Instead, therefore, of attempting to confine pharmacy to old channels and to restrict its development to the paths established by tradition, will it not be the part of wisdom to encourage pharmacists to seek new ways and methods of service?

All other lines of human activity have found it necessary to adjust themselves to new conditions: is it reasonable to expect that pharmacy shall be the single exception?

Passing of the Rule-of-Thumb in Business.—The wonderful era of invention and discovery which has given us the command of physical forces and materials possessed by our present civilization began when experimental methods and the use of instruments of precision were introduced into the investigations of the physical sciences. It was the result of the replacement of the methods of tradition

by methods established by deliberately planned research, and by the substitution of exact information obtained from controlled experiments for empirical rule-of-thumb.

We are now in the midst of a period in which the same methods of research and precision which have prevailed in the exact sciences are in process of being extended to the spheres of commerce and sociology. In psychology, in education, in political and domestic science, in business, and in all activities of our daily lives we are approaching a period when every conclusion will be subjected to experimental verification.

The modern theory of efficiency is that among all the possible methods of doing any particular thing there is one method which, measured by quality and quantity of results, is superior to all others, and that this one best method can be ascertained only by the process of definitely directed research.

Rule-of-thumb and hap-hazard methods are being driven out of business. The optimist who formerly rented the first store room found vacant is being replaced by the man who selects his store location only after careful investigation of the number and character of possible customers who pass each business day. The man who formerly counted his cash at the beginning and end of the year and considered the difference as loss or gain is being superseded by the man whose business is departmentalized, and whose balance sheet affords at all times a perfect picture of the profit or loss in any division of his business.

Whatever the problem may be, whether store location, selection of the stock of goods, sources of stock supply, or what not, business methods, more and more, are being controlled by information gained through planned experiments and less and less by tradition; more and more by the results of careful investigation and less and less by chance and guess-work.

As standardization and exact information have speeded up and intensified industrial methods, so they are being applied to intensify and accelerate commercial activities. Naturally those brought up in the old traditions resent being suddenly called upon to discard accustomed methods, and are hoping for some form of legislation that will enable them to continue along in the old ways. All such hopes are vain. After much lost motion and wasted energy they will discover that the course of evolution is determined by qualities planted in the nature of things before legislation enactments were invented.

The handwriting on the wall reads that if the pharmacist is to survive and prosper, he must improve his business methods by applying to them the same careful research and investigation that he formerly applied in perfecting pharmaceutical processes, and in improving the contents of the *Pharmacopœia*.

Quality of Men in Pharmacy of First Importance.—Of the many questions confronting pharmacy perhaps the most fundamental of all is not whether we are to have or not to have any particular kind of legislation but, What is to be the character of the future pharmacist?

No calling or profession can rise higher in public estimation than is justified by the average mental and moral qualities of its practitioners. If the men who are to constitute the rank and file of pharmacists are to be of first-class character and ability, they can be trusted to meet the problems of the future as they arise. If pharmacy is to become the refuge of second-class men, no magic of legislation can prevent it from being a second-class profession.