

THE PROPOSED TRANSFER OF PROHIBITION ENFORCEMENT TO  
THE DEPARTMENT OF JUSTICE.\*

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Regardless of what our private opinions may be as to the wisdom or unwisdom of prohibition as represented by the Eighteenth Amendment and the Volstead Act, as chemists and pharmacists we cannot consider any other policy than that of strict adherence to the law and to the regulations lawfully issued thereunder. This from the first has been the attitude of the American Chemical Society, the AMERICAN PHARMACEUTICAL ASSOCIATION and the National Association of Retail Druggists, the three national associations most representative of the scientific, industrial and professional uses of alcohol. For us the question of the transfer of the enforcement of the law from its present location with the Bureau of Prohibition in the Treasury Department to the Department of Justice is purely a professional question to be decided upon professional, rather than upon sentimental, grounds.

In a census of those who are most zealous for the transfer of the administration of the Prohibition Act to the Department of Justice we can easily discern three classes:

1. Those who are unfamiliar with the overwhelming importance of ethyl alcohol in the industrial arts, entirely aside from its use for beverage purposes, and who may, therefore, be of the opinion that any additional obstruction that can be placed in the way of the use of that substance will be for the public benefit.

2. Those who are unfamiliar with the provisions of the Prohibition Act itself, and therefore unfamiliar with the nature of the work necessary to be done in the administration of the regulatory features of the law and of the unfitness of the Department of Justice for the discharge of the new duties which would be imposed upon it.

3. Those who without much knowledge of any portion of the subject, and being dissatisfied with the results of the law, are hoping, without being able to give any good reason for the hope, that the transfer would somehow work an improvement.

Of those who have hastily assumed that the transfer is sought by the friends of prohibition and opposed by its enemies it may be said simply that they are not acquainted with the facts.

The late Wayne B. Wheeler, the real author of the Volstead Act, in speaking before a Senate Committee, said: "The proposal which has been made to transfer the entire subject of prohibition enforcement to the Department of Justice, or all except that which relates to the collection of revenue, is impracticable." On various other occasions Mr. Wheeler expressed himself as strongly opposed to such transfer. The original placement of prohibition enforcement with the Treasury Department, and later the creation of a special Bureau of Prohibition within that Department was the will of the Anti-Saloon League and of the Methodist Church, and the text of these acts was the handiwork of Mr. Wheeler. All the United States Congress did was to adopt the acts as presented to it with a few

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\* Section on Education and Legislation, A. P. H. A., Rapid City meeting, 1929.

comparatively slight modifications. The proposition to transfer did not, therefore, originate with the Anti-Saloon League, with the Methodist Church or with its political organization, the Board of Temperance, Prohibition and Public Morals.

#### THE ARGUMENT IN FAVOR OF THE TRANSFER.

Of the arguments in favor of the transfer, the one which has the most semblance of logic is that, since the Department of Justice must prosecute all cases of violation, and since the evidence to sustain prosecutions can be collected only in connection with the application of the regulatory provisions of the act, the Department should, therefore, have charge of the administration of these regulatory provisions.

The apparent logic of this argument disappears, however, when we reflect that the reason which it alleges would equally require a transfer to the Department of Justice of the administration of all other laws in which the same relations exist. The Department of Justice must prosecute those who counterfeit the currency, and those who forge imitations of the public obligations of the United States. Why not, therefore, transfer the issue of currency, and of all public securities to the same department? Violations of the Food and Drugs Act, of the Tariff Act and of many other laws must be prosecuted by the Department of Justice and, if prosecution is inseparably connected with the administration of regulatory provisions, it would follow that the major portion of the functions of practically all other existing Federal Departments would also need to be transferred to the Department of Justice.

In all of these acts the method of enforcement is the same: the department having charge of the administration of the regulatory features of the laws collects the evidences of violation and presents them to the Department of Justice which then decides whether the evidence collected will or will not justify prosecution, and proceeds accordingly. If the latter Department desires different or additional evidence, it so notifies the appropriate department which then endeavors to collect such evidence.

This method is a logical and efficient division of functions between the departments of administration and the department of prosecution, and enables the correct placing of blame for failure with the department really responsible. It is based upon the experience of the Government since the day of its creation. If it does not succeed in the single case of prohibition the reason must be looked for elsewhere than in the method of collecting evidence to be employed in prosecutions.

The present arrangement, therefore, of leaving the general administration of the regulatory features of the Prohibition Act in the hands of the Bureau of Prohibition and of prosecutions for violations in the hands of the Department of Justice is the most logical arrangement that can be made, and the one permitting of the highest efficiency in both divisions of the work.

#### THE INDUSTRIAL IMPORTANCE OF ALCOHOL.

Probably not one person in a thousand appreciates the present vast importance of alcohol in modern arts and industries.

The popular idea is that alcohol has a limited and perhaps doubtful field of usefulness in medicine and is of some importance in chemistry and in scientific investigations, but that aside from these uses it might very well be dispensed with. In fact, it is one of the most important materials in modern industry, its consumption amounting to many millions of gallons annually, and ranging in importance with such substances as water, steel, copper and sulphuric acid.

The use of alcohol in the potable spirits such as whisky, brandy, rum, etc., which figure so largely in temperance oratory and literature, amounts to only a minute proportion, probably less than one per cent of the alcohol used industrially, and would still constitute only a small proportion of the total consumption if all restraints upon the beverage use of alcohol were to be removed, and these industrial uses instead of decreasing are constantly growing. For manufacturing chemistry and pharmacy and other industrial arts, alcohol is an absolute necessity. Some years ago an industrious chemist compiled a list of 5000 or more distinct uses for alcohol where no adequate substitute was known.

Ever since the Civil War, when alcohol first became the subject of heavy revenue taxation, chemists and pharmacists have diligently sought for substitutes, and wherever possible substitutes have been used, but for thousands of other purposes no equivalent solvent is known, nor is there any well-grounded hope of such being discovered. In numerous instances where equivalents were first thought to have been discovered, their practical uses have proved so unsatisfactory that a return to the more costly alcohol has been compulsory. The fault, if any, is therefore with nature in endowing alcohol with a greater number of useful properties than it has bestowed upon any other known liquid except water.

#### OBJECTIONS TO THE TRANSFER.

The objections of the industrial users of alcohol to the transfer of the administration of the regulatory provisions of the Prohibition Act from the Treasury Department to the Department of Justice may be briefly summarized as follows:

1. The alleged argument that the prosecution of violations of the law could be more successfully conducted if the same department also administered the regulatory provision is unsound. If it were true it would require the transfer of a majority of the other functions of the Federal Government to the Department of Justice.

2. The correct administration of the law so as to permit the proper use of alcohol in the arts and industries demands an amount of technical knowledge based upon experience such as cannot be found outside of the Treasury Department. This Department has had the administration of the liquor laws ever since alcohol was first made the subject of revenue taxation and regulation, and has a trained body of men and an accumulation of experience not available in any other department of government.

3. If the entire personnel of qualified persons in the Prohibition Bureau were to be transferred to the Department of Justice, they could only exercise the same judgment and experience they now exercise in the Treasury Department, unless over-ruled by their legal superiors, in which case they would be directed by those who have no technical knowledge of the subject.

4. That the Bureau of Prohibition is not derelict in its duties is shown by the fact that it has transferred to the Department many thousands of cases which remain unprosecuted. If the latter cannot dispose of the cases as fast as it receives them from the Bureau of Prohibition, how could it hope to be more successful if in addition to the work of prosecution it had to assume the enormous burden of administering the regulatory provisions of the law?

5. The training and experience of lawyers render them especially unsuited for the duties of business administration, as witness the result of the Federal control of railroads. Appointments to the Department of Justice are political appointments, the appointees in many cases being defeated candidates for elective offices, who are rewarded for party loyalty by being chosen for U. S. attorneyships. As a whole, no more unfit body of men could be selected to supervise business and industry.

6. In the contemplated transfer it is not intended that the Department of Justice shall take over all of the duties of the Bureau of Prohibition, but only a part of them. The result would be constant over-lapping of functions and conflict of authority.

7. The present administration of the regulatory provisions of the law is satisfactory to the vast majority of the users of alcohol for lawful purposes, who together consume more than ninety per cent of the alcohol lawfully produced and against whom not the slightest suspicion exists of any unlawful diversion of that which passes through their hands. The representatives of these industrial users are practically unanimous in their opposition to the proposed transfer.

The chemical and industrial users of alcohol have no objection to the transfer to the Department of Justice the pursuit of illicit distillers, and their boot-legger distributors, but they do unanimously object to turning over the administration of the regulatory provisions of the law relating to the lawful producers and consumers of alcohol to a department the personnel of which is entirely unfitted by training and experience to supervise trade and industry.

The real reason for the failure of prohibition is in the unseemly haste with which the provisions of the Act were thrown together and made into law. Until this fault is recognized and corrected, the results will be about as they have been, regardless of what department of the Federal Government is entrusted with the task of enforcement.

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#### HUXLEY ON EXAMINATIONS.

"Just as the London season was on the wane, and the great societies closed their doors in concert with the great public schools, Professor Huxley distributed the prizes to the boys of the London University, and in so doing contrived to awaken an animated discussion. The main point was that examinations are not the sole test of excellence, and that many will be found to make their way successfully in after-life whose names are not recorded in a prize-list. We are always glad when this view is prominently brought forward by a

distinguished man, for we are convinced that our present system, which is unavoidable, is a source of much discouragement to a large class of meritorious workers. All are not gifted with the power of rapid acquirement, or with a facility of rapid production of their acquirement, or with a facility of rapid production of their knowledge. The Professor closed his observations with the enunciation of a truth which we should do well to treasure in our hearts, that personal character is in the long run more valuable than cleverness."—*The Chemist & Druggist*, August 15, 1879.