

CONTRIBUTED AND SELECTED

A PLEA FOR SANITY IN DRUG REGULATION.*

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It certainly affords me great pleasure to be the bearer of a message of good will from the American Pharmaceutical Association to this, the 42d annual convention of your organization.

During the 65 years of its existence, the American Pharmaceutical Association has devoted itself mainly to the scientific and educational development of pharmacy; to the cultivation of the sciences contributing to the purity and quality of drugs and medicines, and to improvements in the methods of manufacturing and dispensing them in appropriate form for medicinal use.

Your association, on the other hand, has devoted itself mainly to the commercial and economic development of pharmacy; to the assemblage in a large way of the products of earth, air and sea which have medicinal use, and their transmission to those who make the final distribution of these articles to the consuming public.

Not only is it important that our two associations should enjoy a good understanding with each other, but if I do not misread the signs of the times, the day is not far distant when all of the associations which represent the several divisions of the drug trade will acutely realize the necessity of having a common purpose and policy in the defense of their legitimate business interests.

Nowhere is the necessity for a good understanding between all branches of the drug trade greater than in the field of legislation.

Honesty and good intentions are no longer sufficient to protect us from collision with the laws, or with the multifarious and frequently conflicting regulations prescribed by the boards and bureaus into whose hands the interpretation and administration of the laws are given.

To the thoughtful individual, a statute is merely the formal expression of the well-settled convictions of the majority, intended to compel the obedience of that minority of the community which is unwilling to obey the unassisted force of moral and civic obligation. To the radical reformer, the statute law is a convenient instrument for compelling the many to accept his peculiar views of civic duties, and instead of appealing to the slow and tedious process of education, he endeavors by furious assaults upon the law-making body to impose his will upon the majority.

It is only in theory that many of the new laws annually placed upon the statute books represent the settled convictions of a majority of the citizens of the state. Not infrequently they represent the will of a small but compactly organized minority who have pressed their special measures upon the law-making bodies with such vehemence that they have seemed to represent the voice of the many.

The drug trade is not opposed to reform as such. It realizes that old institutions and old methods must constantly be remodelled to meet new conditions. It recognizes and has had its full share in developing the modern idea of social justice. It accepts as fundamental the doctrine that no man has the right to pursue his calling in such a manner as to cause either moral or physical injury to his fellow citizens, or to profit by a traffic in their frailties or passions.

If I understand the spirit of the American drug trade, it aims at the middle ground of moderation represented by legislation that will protect the weak and

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incapable from reckless exploitation, but will avoid that excessive paternalism which would deprive the average normal citizen of reasonable freedom of action, and tend to loosen his sense of legal and moral responsibility to society and the state.

The Burdens Imposed by Reformatory Legislation.—One disagreeable feature of modern reformatory legislation is that it invariably brings in its train a fresh set of evils in the shape of increased burdens upon moral and law-abiding citizens whose habits and methods of business are not a menace to the peace and good order of the community, and who are in no sense responsible for the abuses that are sought to be corrected.

Some of these burdens are, of course, inevitable. They constitute a part of the overhead cost of modern civilization, and must be accepted with resignation.

There is perhaps no such thing possible as a one-sided reform, or a reform which does not bring with it some qualifying disadvantage. There is always a balance to be struck between the good results hoped for from new legislation and the injury sure to follow from the imposition of fresh burdens upon society at large; and in every case the vital question we have to settle is, How far are we justified in interfering with the comfort and well-being of the whole body of citizens in order to protect the comparatively small number of delinquents against injury to themselves through weak or vicious yielding to their own evil propensities?

These delinquents are the debtors of society, not its creditors; and yet there is a disposition on the part of certain doctrinaire reformers to treat them as if the state owed them some peculiar and exalted duty of protection above that which it owes to the whole body of normal, moral and well-behaved citizens.

In the older reformatory legislation the individual who actually committed the offense was made the principal object of the penal clause, and was the party who was sought out and punished—not the man who made or sold the instruments with which the crime was committed, unless the latter had such guilty knowledge of the purpose for which they were to be used as to make him a partner in the crime. Gradually and unconsciously a new element has crept into the method and theory of reformatory legislation, and this is to excuse or minimize the offense of the individual who commits the actual fault, and to place the burden of guilt and the penalties chiefly upon those who supply the instrument with which the fault is committed.

When such instruments are intentionally designed or sold for a wrongful purpose, the penalty is not misplaced; but when they are articles which serve a large and important usefulness in life and have a legitimate application in the business of the world, and their occasional wrongful use is due to a perversion of the purpose for which they were designed, then any excessive or unnecessary restrictions placed upon their manufacture and sale impose an unjust burden upon society as a whole.

The Alcohol Question as It Affects Pharmacy and Medicine.—The evils resulting from the intemperate use of alcoholic beverages have aroused a tremendous volume of sentiment in favor of restrictions upon their sale and use, ranging from propositions for strict regulation to the total prohibition of their manufacture and sale for any purpose.

Unfortunately for the peace of the drug trade, alcohol has a peculiar and highly important use in the manufacture and preservation of medicines entirely separate from its qualities as a beverage. For generations efforts have been made to find an efficient substitute for it in the extraction of drugs, but without

success. Its use in the manufacture of medicinal preparations is not a matter of choice, but of necessity, and of hard necessity too, since tax-paid alcohol is a most expensive solvent.

For example, there are a number of undoubtedly legitimate preparations, such as the common flavoring extracts and essences, the so-called perfumery extracts, certain of the official elixirs, spirits, tinctures, etc., in which the use of alcohol is indispensable to hold the active constituents in solution, and no other known solvent will take its place. The Pharmacopœia prescribes the proportion of alcohol which must be used in these compounds, and the food and drug laws make it a criminal offense to either omit that solvent or to diminish the prescribed quantity.

These preparations used for the purposes for which they are intended will never create a taste for alcoholic beverages, and if alcohol had never been used in any other form, there would be no modern temperance problem; yet, some so-called temperance laws go so far as to include these useful and perfectly proper preparations in the same category with brandy and whiskey, and subject their sale to the same restrictions, and some temperance advocates go so far as to maintain that even the strongly poisonous alcoholic tinctures and fluidextracts should be put under the ban because it is possible, with a little ingenuity, to distil off the alcohol.

Why should the proper use of preparations of the above classes by tens of thousands of moral, law-abiding citizens be interfered with because of their possible occasional beverage use by a few, and these few only among those who have already abused the privilege of citizenship? Why should the thousands of respectable druggists be subject to this restraint upon their business because a few have conducted saloons disguised as drug stores?

Legislation of the kind I have described has a tendency to go beyond all reason in its restrictions. It is to-day a crime in one or more states for a druggist to keep beef, iron and wine, or similar articles, in stock for any purpose whatever. In at least one other state it is illegal for a druggist to obtain pure alcohol even for manufacturing purposes. At nearly every session of the state legislatures, bills are introduced tending to prohibit the sale of alcohol-containing medicines, whether adapted for beverage use or not.

The Habit-forming Drug Problem.—A similar situation, with a new set of burdens for the drug trade and a new set of inconveniences for the public, has grown out of legislation intended to correct the abuses resulting from the unregulated sale of habit-forming narcotic drugs. While these abuses never amounted to more than a small fraction of that indicated by sensational press reports, there was abuse, nevertheless, and the drug trade has taken the lead in preparing and procuring the enactment of laws designed for its correction, and has cheerfully assumed the added expense and increased business detail imposed by such legislation.

The federal, or so-called Harrison Law,¹ covers only coca leaves and opium and their respective preparations, alkaloids and derivatives, because these are

¹ The Harrison Law was not intended, as popularly supposed, to regulate the use of habit-forming drugs by individuals, but to enable the state laws to be effectively enforced by furnishing the means whereby the supply of these drugs through illicit dealers could be traced. The provision declaring it unlawful for certain individuals to have the drugs in their possession was inserted as a concession to certain doctrinaire reformers who could not be otherwise appeased, and the invalidation of this provision, by a recent decision of the United States Supreme Court, does not in the least impair the law's efficiency for the primary purpose for which it was intended.

practically the only drugs which have been misused to any great extent within the United States. This law, like the anti-narcotic laws of the States, exempts from its provisions certain well-known preparations which have a domestic use, as remedies for summer diarrhea, cough remedies, anodyne liniments, etc., which contain small proportions of opiates in combination with other drugs, the use of which, in the manner directed, is not at all likely to create a drug habit, and which, because of the small amount of narcotics they contain, are never used by regular habitués, except when in dire distress due to their inability to procure the more potent, unmixed and undiluted drugs.

Practically all cases of drug habituation have been created through the taking of the unmixed opiate for a considerable period of time, for the relief of a more or less chronic ailment. If any habitués have been created through the use of the exempted preparations, they are so few as to be negligible. Most of such alleged cases, when carefully investigated, will be found to be based on manufactured or insufficient evidence.

As was to be expected, when drug fiends found themselves unable to obtain their usual supplies of opium and morphine, they began a desperate hunt for real or alleged substitutes. Though no exact substitutes were to be had they were able to obtain some measure of relief by the use of other drugs not included in the law, or by the consumption of large quantities of diarrhea mixtures, etc.

Certain doctrinaires and theorists opposed the enactment of the Harrison Law, because, as they alleged, it did not go far enough, and before the ink was dry upon the statute book, they began a propaganda for its mutilation and amendment to fit their particular ideas. Instead of giving the new law a fair try-out under intelligent and impartial enforcement, they propose to increase the restrictions by adding many new items to the list of prohibited drugs and by striking out the present list of exempted preparations.

If these changes are made in the Harrison Law, they will multiply enormously the details which must be attended to by physician and pharmacist, add immensely to the trouble and expense of doing business, and will deprive the general public of the opportunity of obtaining inexpensive remedies for simple ailments without greatly increased trouble and expense.

The beneficial effects of the Harrison Law have already been great. There is reason to believe that few, if any, new victims of a drug habit are being created, while it is known that very many of the former victims have either been cured or are taking treatment for the habit. If the present rate of progress continues, and if the federal law is properly supplemented by wisely enforced state laws, it will not be long until the abuse of habit-forming drugs will be practically non-existent within the United States. Why not let well enough alone? Why not give the existing law a fair trial before further experimental tinkering with it?

An incident that occurred in an Illinois town during the past winter illustrates how the emotional reformers reach the conclusion that section six of the Harrison Law should be repealed, and that all sorts of other drugs should be brought within the prohibitions of that law. In the Illinois case a woman who was a confirmed morphine habitué, being unable to procure the accustomed drug, undertook to satisfy her craving by the use of the supposed substitutes for morphine, such as syrup of white pine and similar preparations. Failing to obtain the desired relief from any of these, the poor victim finally committed suicide by cutting her throat. Practical people would be likely to conclude from this occurrence that the law in its present form exercises a pretty effectual restraint upon the improper sale of habit-forming narcotic drugs. Not so the coroner, however, who gravely

decided that the woman had become insane through the taking of a syrup of white pine, and recommended that the sale of this preparation, and of the other substitutes which she had vainly taken, should be entirely prohibited by law.

An Erroneous Theory of Reform.—Naturally it will be claimed that as long as certain preparations containing alcohol and narcotics are exempted from the provisions of the anti-liquor and anti-narcotic laws, some unscrupulous doctors and druggists will make use of such exemptions as a means of evading the law.

Such evasions I believe can be cured by other methods than the total prohibition of the sale of the articles concerned. But even if they could not be cured, why should thousands of conscientious physicians and pharmacists be unjustly hampered in their perfectly proper professional and business transactions because a limited number in each class are guilty of misconduct? Or, putting the professional and business interests of physicians and pharmacists entirely aside, why should tens of thousands of sober and temperate citizens be deprived of the opportunity of obtaining simple and harmless remedial agents, or be able to obtain them only under humiliating conditions and at greatly increased expense, because the few abuse them? Why should the many innocent be made to suffer for the faults of the few?

Is there not something absurdly wrong with a theory of reformation that values the derelicts of society at so high a rate that it insists upon saving them at the expense of the normally constituted and law-abiding portion of the community? Is it a broad and philosophical spirit of humanity which dictates such a policy, or is it a mere sloppy sentimentalism, the result of the peculiar spiritual exaltation of the emotional reformer that blinds him to a true appreciation of moral values?

That the law-abiding citizen must surrender some of his liberties and assume some additional burdens in order to curb the criminal and defective classes is granted, but there is a limit beyond which the law should not go, and that limit is exceeded whenever it is proposed to place a premium upon the weaklings and unfit at the expense of the welfare of the normally constituted and deserving members of society.

I maintain that the state owes its first duty to the great mass of its citizens who so order their lives and occupations that no compulsion is needed for their correction, and that it disgracefully violates this obligation when it sacrifices the just rights and liberties of these to the passions and faults of the criminal and defective classes.

A Reasonable Solution.—What is the best disposition of these certain classes of preparations which, though primarily intended for legitimate purposes, and mainly employed for such purposes, nevertheless can be used by the confirmed alcohol or opium habitué in partial assuagement of a clamoring appetite?

They are not satisfactory substitutes from the standpoint of the habitué, because of their expensiveness and low content of the narcotic drug, and because of the generally disagreeable tastes and effects of the associated drugs.

As a rule, the preparations of this class constitute no menace whatever to the non-habitué, since they are adapted only for the emergency treatment of sudden ailments, usually do not possess attractive flavors, and are not at all likely to be taken for a sufficient length of time to create a drug habit.

There ought to be, and I believe there is, a possible middle ground between the total prohibition of the sale of these articles and their unrestricted sale—a middle ground which will permit reasonable liberty in the use of these preparations without providing the means for gross evasion of the law.

This reasonable regulation is to *make the purpose of the sale determine the legality or illegality of the transaction*, that is, to make the transaction a legal one if the article is sold in good faith for medicinal purposes, and an illegal one if sold with the intent to evade the law, or if sold under circumstances which should raise the suspicion of bad faith on the part of the seller, the burden of proving the perfect good faith of the transaction being placed on the dealer or dispenser.

The difference in the largest quantities of the several articles which could properly be consumed for medicinal purposes and the least quantities which would be sufficient to satisfy a drug habit is so great that there could be no mistaking them. For example, if a customer should require no more than a pint of spirit of camphor, or no more than four ounces of cholera mixture in a period of three months, it would be absurd to conclude that he purchased the articles for the sake of the alcohol or opium they contained, whereas if he offered to purchase the same quantities every day, which would be the least a regular habitué would require, it would be unreasonable to assume that he purchased them for legitimate personal use.

Of course it will be objected that by making these rounds of all the drug stores in a city, an alcohol or drug habitué might be able to secure sufficient quantities of these preparations to satisfy his cravings without purchasing an unusual amount at any one store. But if any reasonably efficient system of inspection is carried out—and there must be efficient inspection to make any law effective—notice of such cases can be given to all druggists in the city and the sale to such persons be discontinued.

It will also be objected that the necessity of showing evil intent on the part of the seller will make it more difficult to secure convictions, but I am not yet ready to admit that the rights and liberties of thousands of legitimate consumers are of less importance than the convenience of prosecuting officers, or even that the worst that could happen—which would be the occasional escape of a guilty dealer here and there—would be comparable to the injury to the careful physician and pharmacist and the public at large which would result from making the sale of such articles absolutely illegal.

As a corollary to making the legality or illegality of the sales of these classes of preparations depend upon the purposes for which they are sold, the anti-liquor and anti-narcotic laws should be reformed so as to provide suitable penalties for those who obtain them, either surreptitiously or otherwise, to use for other than proper and legitimate purposes. The penalties will then be fitted to the criminal as well as to the crime.

Those who seek to close up every possible loop-hole in the law, so that there cannot be any conceivable opportunity for evasion, labor under the delusion that absolute perfection can be attained in legislation and law enforcement, a delusion that is contradicted by the experience of all recorded history. Extraordinarily drastic legislation has always defeated its own object and always will, kings, parliaments, legislatures and courts to the contrary notwithstanding.

No law can be made to be 100 percent efficient. There will always be some violations and evasions, no matter how rigorous the administration or how complete and specific the prohibitions may be.

As a matter of fact, unreasonably severe restrictions will have a greater tendency to limit legitimate commerce and consumption than to limit the illegitimate kinds. If the regulations are made too strict, the law-abiding pharmacist and physician will refuse to handle the drugs at all rather than take the risk of being caught up for some technical violation; and the legitimate consumer will go without a necessary medicine rather than go to the trouble and expense necessary to obtain

it. On the other hand, the confirmed drug fiend or the hopeless alcohol habitué, crazed for want of his accustomed narcotic, will go to any length to satisfy his craving, and the unscrupulous dealer, tempted by the increased profits, will take a chance in evading the law. The legitimate and proper use of the drugs will have been restrained; their illegitimate use will simply be made more expensive.

I have spoken particularly of legislation against the sale of legitimate and useful preparations containing alcohol and opiates, because general attention is at present focussed upon them, but similar legislation has been proposed, or is being proposed, concerning practically everything in the drug line. For years the drug trade has served as a sort of experimental guinea-pig for the doctrinaire reformer to try his fads upon, and, unless we learn to oppose effective resistance to such efforts, the day is not far distant when the drug store will become merely a museum of the things which we were once permitted to sell.

Those who propose new restrictive legislation should be made to prove its necessity by stronger evidence than the untrustworthy declarations of emotional reformers, and they should also be made to prove beyond a reasonable doubt that the benefits of the proposed reform will not be outweighed by the damage to legitimate interests and to the welfare and convenience of the well-behaved portions of the community.

We must resist the exaggerated idea of the danger of drugs that obsesses the public mind, and insist that they be dealt with legislatively in the proportion to the damage they do and the useful purposes they serve, just as if they were articles of hardware, and that they shall not be discriminated against simply because they are kept in drug stores and have dog-Latin names.

Drugs and chemicals do not produce a tithe of the damage that is caused by edged tools, and yet there is an almost universal tendency to treat them with greater severity. When a crime is committed with a hatchet, we do not pass laws restricting the manufacture and sale of hatchets, but against their use for criminal purposes.

We are asking only what is just when we demand that drugs and chemicals be dealt with in the same way, and that the law should hold to account those who would make a wrongful use of them, or who knowingly supply them for wrongful use, and not those who supply them for the normal purposes of life and commerce.

The tendencies in legislation I have described are not imaginary. They represent a condition that constitutes a serious menace to the welfare of every business unit of the drug trade, whether manufacturer, wholesaler or retailer, but which bears with especial force upon the retailers. Your association can do much to help the retailer obtain just consideration before federal and state law-making bodies, and on behalf of the American Pharmaceutical Association I bespeak your hearty coöperation to this end, and extend to you the cordial greetings of that association and the wish that you may have a successful and enjoyable meeting.