American Landmark Legislation

PRIMARY MATERIALS

Compiled and Edited by
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To my Harvard Law School 1950 classmates:
Herbert Glaser, Richard K. Fink, Gerald Halpern
and Robert B. Ross on the occasion of our
twenty-fifth anniversary, 1975.

INTRODUCTION TO THE SERIES

The legislative background of our country reflects its past, its critical events, conflicts, and problems. More than this, legislation has a central place in America's governmental system. Acts of Congress increasingly control every citizen's political, social, and economic life. In selecting the laws for this series of *Landmark Legislation,* the editor used two criteria. The first of these was the important national significance they had at the time Congress passed them. Secondly, these laws carry principles that continue to be of great import to one dimension or another of American life. Even when particular laws are no longer in effect, either because they accomplished their purpose (*viz.,* the Homestead Act of 1862) or were declared unconstitutional at a later point by the judiciary (*viz.,* the Civil Rights Act of 1875), their legislative history helps us deal with contemporary issues. Thus public land use and civil rights have something of their genesis in the Homestead and Civil Rights Acts of the nineteenth century.

This series will provide general readers and students, as well as professional workers, with primary legislative materials not now readily available except in the largest library systems. And even there, the task of sifting out and distilling the specific and relevant materials takes skills, time, and energy a very limited number of people have. Hopefully, the *Landmark Legislation* series will make a study or investigation of these important pieces of legislation a pleasurable as well as a viable pursuit.

Reproducing as we have the actual legislative and judicially-related materials will give readers a sense of authenticity as well as "flavor" that cannot be conveyed with ordinary narrative texts.

The full, unabridged, and unedited primary sources are offered for each of the statutes covered. Editing or abridging would have resulted in selection, which in turn reflects an editor's point of view. While unedited accounts require the reader to wade through more than he may be looking for or wants to know, they have the advantage to alerting him to information he did not know existed and should have! In any case, the full reproduction of the congressional debates during the session of the Congress that passed the law is a feature of this series that distinguishes it from anything presently available.

Each "landmark" statute is preceded by a detailed narrative legislative history prepared either by the editor or adapted from an authoritative source. Following the statute are a variety of pertinent documentary sources.. In addition to the complete congressional debates already mentioned, there are committee reports, presidential messages, contemporary news or editorial accounts, and finally, judicial decisions that either interpret the legislation or some part of it or deal with its constitutionality. Together, such a set of materials relating to America's leading legislative enactments will fulfill a great variety of needs and purposes among our citizenry.

Irving J. Sloan
Scarsdale, New York

THE PURE FOOD AND DRUG ACT OF 1906

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THE PURE FOOD AND DRUG ACT OF 1906

The first bill designed primarily to prevent the adulteration of food was introduced in the House of Representatives on January 20, 1879. From that date to the signing of the Pure Food Law on June 30, 1906, exactly 190 measures to protect in some way the consumer of food and drugs appeared in Congress. Of these, eight became law, six passed the House, twenty-three were reported favorably from the committee to which they had been referred, nine were reported back adversely, and 141 were never heard of after their introduction.

The enactment of the general pure food law came as the result of a long evolutionary process in which the education of public opinion was the prime moving force. Although from the beginning of the crusade food regulation bills of a sweeping nature were introduced, even the most sanguine realized that such an important departure could not possibly be taken at one plunge. One can observe, therefore, a gradual working from specific laws, such as those concerning glucose, tea, candy, drugs, canned fish, and patent medicines to the general law of 1906. One can also note that it was comparatively easy to pass a measure governing the importation of foreign goods, less easy to regulate exported goods, less easy to improve food conditions in the District of Columbia, and exceedingly difficult to prohibit adulterated foods in interstate commerce.

Indicative of the growing sentiment for purer food products was the introduction into the third session (December 6, 1880—March 3, 1881) of the forty-sixth Congress of a score of petitions, resolutions, and memorials, the first of their kind, praying for remedy of alleged deplorable conditions in the manufacture and sale of foodstuffs. In the second session of the following Congress, the forty-seventh, there was passed a bill, the first of a series of eight food regulatory measures that were approved between 1883 and 1906, prohibiting the importation of adulterated and spurious teas. Upon the acceptance of several amendments that would meet the objections of tea importing firms in New York, the House approved the bill on February 24, 1883, without a call for the yeas and nays. In the Senate the same measure was passed on February 26, 1883, under a unanimous consent agreement without amendment and without roll call. It was signed by the President on March 2, 1883. The easy passage of this law, which did not seriously interfere with the business of large interests or with states' rights, is quite in contrast with the struggle over later proposals concerning interstate commerce.

That the necessity for food legislation as a national problem had not made much headway in the early eighties is indicated by action taken in the House on April 21, 1884, at which time a resolution was introduced authorizing an investigation of adulterated food and drugs by the Committee on Public Health. To some, who vigorously expressed their objections, even a general investi-

gation constituted too great meddling in the private affairs of the people. At the close of the discussion the resolution received only fourteen affirmative votes.

The Forty-ninth Congress (December 7, 1885—March 3, 1887) was deluged with petitions concerning imitations of butter and cheese, most of them referring to oleomargarine. Inasmuch as most of the advocates of oleomargarine regulation were sponsoring a tax to prevent deception in the marketing of that product, financial as well as regulatory matters were badly mixed in the discussions of this problem. A bill designed to control by taxation the sale of imitation butter passed both houses of Congress after a bitter debate and became a law on August 2, 1886. In the House the Southern representatives, opposed to the extension of the internal revenue system and to the alleged abuse of the taxing power, were aligned almost solidly against the measure. The Chicago packers, who were to be the heaviest losers if the law were passed, were vigorously defended by Representative Lawler of Illinois. In spite of what developed into a serious filibuster, the bill passed the House on June 3, 1886. In the Senate the same arguments were advanced by the same interests. Even at this early date Aldrich of Rhode Island, a Republican senatorial leader, evidenced on two conspicuous occasions his lack of sympathy with this kind of legislation. At length, after the contemplated tax had been materially reduced, the bill passed the Senate on July 20, 1886, and was approved by the President on August 2, 1886.

An important step in the movement for a general pure food statute was the enacting of a law, signed by the President on October 12, 1888 to prevent the sale of adulterated food in the District of Columbia. Although a few unimportant objections were expressed in the House, the opposition to this proposal in both branches was practically negligible. The ease with which this measure relating to the District of Columbia passed is quite in contrast with later struggles to enact general legislation of a similar nature.

On August 30, 1890, there was approved a bill providing for an inspection of meats for exportation and prohibiting the importation of adulterated articles of food and drink. It is to be noted that much of the stimulus for this act was provided by the rejection of our allegedly diseased meat by German and French health authorities. Although substantially the same measure had passed the Senate on two other occasions, it had not been favorably received by the House. The bill that was finally enacted into law was approved by both houses with little opposition, no roll call being demanded in either the House or the Senate.

The struggle on the part of various interests to secure the enactment of a law requiring the manufacturers of so-called compound lard to market their products as such, provides an interesting chapter in the fight for a pure food law. It was not until the first session (December 5, 1887—October 20, 1888) of the fiftieth Congress that an attempt was made to impress the seriousness of this problem upon Congress. During this session there appeared for the

first time petitions, over one hundred and fifty in number, urging or opposing a law regulatory of compound lard. It was not, however, until August, 1890, that the Conger Bill, designed to tax and regulate the manufacture, sale, importation and exportation of compound lard, was seriously considered by the House. Here again, as in the case of the oleomargarine bill, financial and regulatory matters were commingled, and the familiar arguments against the extension of the internal revenue system and the abuse of taxing power were vigorously advanced by Southern representatives. In the end, the debate devolved into a battle royal between cotton state representatives, who were concerned with marketing cottonseed oil under the guise of lard, and hog state representatives, whose constituents were suffering from the competition with the cheaper product. As in the case of the oleomargarine bill, this measure was not designed to destroy compound lard, but merely to protect the consumers from buying the cheaper article when they were paying for the more expensive. Despite a most determined struggle, in which the public, as is indicated by the presentation of over four hundred petitions to Congress, shared a deep concern, the Conger Bill passed the House on August 28, 1890, and was referred to the Senate. Although deluged by hundreds of petitions, that body in the second session of the same, the fifty-first, Congress passed over the measure on two occasions, ostensibly because of the pressure of appropriation legislation, and the lard bill failed of enactment. In the first session (December 7, 1891—August 5, 1892) of the following, the fifty-second, Congress, neither House, although flooded by even more petitions than in the preceding session, went so far as to report a lard bill from the committee. Thereafter the agitation for such legislation collapsed with remarkable speed, and in no succeeding Congress was the problem mentioned either in bill or petition.

In the Senate, Paddock of Nebraska did yeoman service for the cause of pure food. During the second session (December 1, 1890 — March 2, 1891) of the fifty-first Congress, when about two hundred petitions praying for prevention of food adulteration indicated an awakening public consciousness, Paddock sponsored a bill, the first general pure food measure to be considered by congress, which was designed to prevent adulteration of food and drugs. On four separate occasions, ostensibly because of the pressure of appropriation legislation, this proposal, a commitment which was unwelcome to a great many senators, was passed over and finally buried when the session came to an end. A close study of the parliamentary tactics employed to shelve this measure explains why it was so difficult during the ensuing fifteen years to induce the Senate to act favorably upon such a proposal.

The first bill to be introduced into the Senate in the first session of the following, the fifty-second, Congress was a pure food proposal similar to the one just considered. In urging the passage of this measure Paddock of Nebraska, who was its chief sponsor, stated that 10,000 petitions regarding it had come to Congress. From the Democratic minority, especially from the Southern senators, came most of the opposition to this bill. Their objections were based

upon a too liberal construction of the general welfare and commercial clauses of the Constitution, and upon a delegation of too great power to the Secretary of Agriculture. After the chief criticisms of the measure had been met by amendments, the bill passed the Senate on March 9, 1892, without a call for the yeas and nays. Although several months of this session remained, the act was never taken from the House calendar.

On February 8, 1897, the House, without a call for the yeas and nays, passed a bill supplementary to the act of October 12, 1888, relative to the adulteration of food and drugs in the District of Columbia. Although the Senate could not have objected seriously to this bill, owing to the ease with which the original act had been approved in that body, the measure was shelved and never considered thereafter. A proposal of a similar nature, however, limited to candy adulteration in the District of Columbia, passed both Houses without debate or roll call and became a law on May 5, 1898.

During no Congress since the approval of the oleomargarine act of August 2, 1886, did there fail to appear proposals for the purpose of strengthening or weakening the original law. Most seriously considered of all of these measures was one designed to supplement this piece of legislation by making imitation dairy products subject to the laws of the state or territory into which they were transported. During the second session (December 7, 1896 — March 2, 1897) of the fifty-fourth Congress a bill looking to this end passed the House, despite the familiar objections of the Southern states rights advocates, by a vote of 126 to 96, but was summarily passed over in the Senate. Undaunted, the oleomargarine opponents introduced the Grout Bill into the House, where, despite the opposition of Southern representatives and the conspicuous hostility of Wadsworth of New York, a Republican, it was passed on December 7, 1900, by a vote of 197 to 92. In the Senate, amid the heated objections of the Southern Democrats, the measure was laid aside at the request of Allison of Iowa, a Republican, ostensibly because of the pressure of appropriation legislation, and it was never considered again in that Congress.

It was in the fifty-seventh Congress (December 2, 1901 — March 3, 1903) that there occurred the final struggle between the cattle men and the dairy interests over the oleomargarine question. A measure similar to the proposals that had previously passed the House twice came before that body and encountered vigorous objection, the most conspicuous of the opponents again being Wadsworth of New York. Particularly determined was the opposition of the cattle men of the Southwest and West, who claimed that one industry was being taxed out of existence to favor the other. It should be noted, however, that the bill placed no appreciable obstacle in the way of the sale of oleomargarine as such, being aimed chiefly at the disposal of the imitation for genuine butter. On February 12, 1902, after prolonged debate, the measure was approved by the House and went to the Senate, where the cattle interests made a determined stand. On April 3, 1902, the bill passed by the vote of 39 to 31 and was signed by the President on May 9, 1902.

It was in the fifty-seventh Congress (December 2, 1901 — March 3, 1903) that there began the final stage of the struggle, particularly bitter in the Senate, which resulted four years later in the passage of the general pure food law of 1906. In the early days of this Congress Hansbrough of North Dakota, a Republican, introduced into the Senate a bill to prevent food adulteration in the District of Columbia, in the territories, and in interstate commerce. McCumber of North Dakota, a Republican, who was the chief sponsor of the proposal, experienced great difficulty even in getting his measure called up. With the obvious intent to provide a peaceful burial, the Senate quietly passed over this bill on three separate occasions. At the objection of Aldrich of Rhode Island, one of the outstanding opponents of pure food legislation in the Senate, the measure was finally laid aside on June 25, 1902, and was never heard of again in this Congress. No better example of the snags that legislation of this kind encountered in the Senate is to be found in the annals of pure food legislation. Very few of the opponents of such proposals came out openly and voiced their objections; the plea was usually the need for discussing more pressing legislation, agreement with the principle but opposition to the construction of the bill, the desirability of permitting the states to handle their own problems, or the necessity of preventing hasty and ill-considered legislation.

Another landmark on the road to a general pure food law was the approval by the President on July 7, 1902, of an act to prevent false branding or marketing of food and dairy products as to the state or territory in which they are made or produced. This bill passed the House without a call for the yeas and nays and with practically no debate. The same may be said of its progress in the Senate, although here two minor amendments were added. But under the surface things were not so harmonious in the latter body as might be supposed. Indicative of the desperation with which the opponents of the proposal tried to kill the bill without having to commit themselves openly is the fact that it was passed over on four separate occasions before it was finally considered; and when it did come up for discussion, there being no valid objections, the measure passed. In these days the biggest struggle, as is well exemplified in this instance, was to get the matter before the Senate.

Another serious attempt to pass a general pure food law occurred in the second session (December 1, 1902 — March 3, 1903) of the fifty-seventh Congress. On December 10, 1902, Congressman Hepburn of Iowa, a Republican, who was sponsoring the bill in the House, complained that although his measure had been reported to two or three Congresses, it had been on the calendar since April 2, 1902, without consideration having been accorded to it. In the course of the ensuing debate in the House, the codfish interests, who used boracic acid as a preservative of their product, were warmly defended by Gardner of Massachusetts, a Republican. The measure finally passed the House without a call for the yeas and nays. In the Senate, however, a different story was to be told. Here McCumber of South Dakota made valiant efforts to have his bill brought before that body. When, early in the session, he asked unanimous consent to take it up after the routine morning business, Lodge of Massa-

chusetts, ever alert for the codfish, objected, stating that there were several bills on the calendar of greater importance. At length, on February 5, 1903, a vote was recorded for taking up the measure, the result being 40 yeas and 18 nays. Among the latter there appeared Cullom of Illinois, Gallinger of New Hampshire, Elkins of West Virginia, Platt of Connecticut, Spooner of Wisconsin, Stewart of Nevada. Among those not voting were Aldrich of Rhode Island, Hale of Maine, Hawley of Connecticut, and Lodge of Massachusetts. It should not be supposed, however, that all of these men, who were Republicans, voted against the motion because they were opposed to the bill, but the principal objectors to pure food legislation raised their heads at this time.

As the session rapidly neared an end, McCumber in desperation delivered himself of a vigorous indictment of the obstructionists on February 25, 1903. Despite his best efforts, a vote to take up the measure failed by 28 yeas to 32 nays on March 3, 1903, and its doom was sealed. Here, as before, a good many Republicans voted negatively because they felt that an eleventh hour attempt to shove the bill through Congress was unwise, although it was not without significance. Aldrich of Rhode Island, Lodge of Massachusetts, Hale of Maine, Kean of New Jersey, Frye of Maine, Wetmore of Rhode Island, Foraker of Ohio, Platt of Connecticut, Spooner of Wisconsin, and Hanna of Ohio, all Republicans, were arrayed against the proposition. Whether sincerely or not, Aldrich gave as the reason for his opposition his sponsoring of a financial measure, and Lodge and Foraker pleaded the necessity for attention to the Philippine Islands tariff bill.

In the second session (December 7, 1903 — May 7, 1904) of the fifty-eighth Congress a general pure food bill was reported to the Senate but was passed over at the objection of Kean of New Jersey and never considered again. In the House, however, another Hepburn-sponsored measure was more favorably received, and after the usual gauntlet of states' rights arguments it was passed on January 20, 1904, by a vote of 201 to 68. Action on the bill was delayed in the Senate at the instigation of Kean of New Jersey. But in the third session (December 5, 1904 — March 2, 1905) of this Congress the measure did receive sufficient notice to be debated at some length. Its chief advocate, Heyburn of Idaho, a Republican, encountered considerable opposition from Lodge of Massachusetts, from Platt of Connecticut, and, to a lesser degree, from Cullom of Illinois, Aldrich of Rhode Island, and Gallinger of New Hampshire.

As a final move to dispose of the bill in as inoffensive a manner as possible, Spooner of Wisconsin, explaining that it was too late in the session properly to amend and debate the bill, moved on March 1, 1905, that it be recommitted. With considerable heat Heyburn replied that such action would reflect most unfavorably upon the committee and described the maneuver as a "very neat way at this late hour of the session of killing the bill." Realizing the futility of further pushing his measure at this time, Heyburn finally requested that the measure be laid aside in such a way as not to destroy public confidence in it. In the end the bill was passed over for a proposal to restore three dismissed midshipmen to their class in the United States Navy.

In the latter months of 1905 Roosevelt threw himself into the pure food and drug fight and in his annual message to Congress of December 5, 1905, unqualifiedly recommended the enactment of a law to regulate interstate commerce in misbranded and adulterated foods, drinks, and drugs.

The outstanding figure in the crusade for pure food and drugs which was going on outside the legislative halls of Congress was Dr. Harvey W. Wiley. Not only was he an efficient scientist and investigator, but also an effective writer and speaker. After a short but brilliant career as a chemist in Indiana, particularly at Purdue University, he was appointed Chief Chemist in the Department of Agriculture. This position he held from 1883 to 1912. When Congress created the Bureau of Chemistry in the Department of Agriculture, he was made the chief of the new bureau.

When he entered upon his government duties he found much work to be done. After years of unrelenting activity in behalf of unadulterated food, he published his *Bulletin No. 13*, Bureau of Chemistry. This covered practically all classes of human food, and did much to create interest in the subject. Other reports, books, and articles followed from his prolific pen. In 1902 he organized what came to be known as "Doctor Wiley's poison squad." This was an attempt to test the effect of commonly used food preservatives on the health of certain young men of the Department of Agriculture. These experiments were carried on for five years and proved conclusively that such preservatives are harmful to health. The press carried the reports of these investigations all over the world.

About the time when Wiley organized his poison squad, the so-called muckrakers appeared upon the scene. They ruthlessly exposed a great variety of corruption and fraud, including all those interests which opposed the passage of a pure food and drugs act. Among these may be mentioned all those who were preserving foods by means of chemicals; the manufacturers of articles which were used in the adulteration of food and drugs; the "rectifiers," or producers of fraudulent whisky out of alcohol, colors, and flavors; the patent-medicine manufacturers; and the dishonest misbranders and mislablers of food and drug products.

While all of this clamor was going on, coupled with President Roosevelt's call for legislation, Congress could no longer hold back the issue by obstruction. In the same month that the President's message was received, Senator Heyburn reintroduced his bill, Senate bill No. 88, "for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicine, and liquors, and for regulating traffic therein, and for other purposes."

On January 10, 1906, he got the bill up for consideration. In his speech he pointed out the new features of this bill. In the first place, it held the officers of a corporation personally responsible for offenses, and in the second place, it separated liquors from food. Heyburn then proceeded to discuss the difficulty in which the states found themselves:

> There are a number of fraudulent articles that are under the ban of this legislation, not a pound or ounce of which is offered for sale in the state in which it is manufactured, because they are provided against by the legislation of that state; but they are manufactured in one state and sent to another in unbroken packages under the rules of law that is now established, perhaps forever. So that the state into which they are sent is helpless against a flood of these impure articles sent in unbroken packages under the protection of that rule of law and then offered for sale upon the retail market.

In some states, he went on to say, sixty per cent of the drugs were adulterated, and Congress must meet the states half way. Heyburn later (February 21) had a resolution and a report read from the American Medical Association which endorsed the Heyburn bill. It claimed to represent the conviction of 135,000 physicians in 2000 counties.

McCumber said the public and the press demanded action. "A great number of the leading magazines" were devoting considerable attention to the contents of this bill, and all the honest manufacturers were for it. He, then, proceeded to explain from what sources the opposition came. The whisky blenders, who were organized in the National Association of Liquor Dealers, had boasted that they alone had prevented the Senate from acting on this bill in the last two Congresses. Then there were the wine merchants and those merchants who sold cotton-seed oil for French olive oil. Besides these, there were some manufacturers of jellies. Those were practically the only opponents of the bill, he said. He later included the patent medicine fraternity, pointing out that ninety-five per cent of patent medicines were frauds and that ninety-five per cent of the drugs sold were patent medicines or proprietary medicines. The annual value of adulterated food, he estimated at three billion dollars.

Senator Aldrich, the Republican leader in the Senate and an old enemy of pure food legislation, found himself obliged to fight in the open this time, a thing he rarely did. Early in the debate he made a one-minute speech in which he tried to make the measure seem ridiculous by raising the question as to whether the time had come when Congress should prescribe for the people of the United States what they eat and drink. To this McCumber replied, in effect, that the contrary was the truth, that this bill was intended to make it possible for everybody to buy the kind of food he wanted to eat.

Senator Money of Mississippi offered a substitute for S. 88. His bill had been drafted by the secretary of the National Food Manufacturers' Association and had the approval of three hundred food manufacturers. McCumber pointed out that the substitute bill would interfere with state pure-food laws, would be very difficult of enforcement, gave the manufacturers undue protection and advantage, and did not cover the patent medicines.

The two Senators who bore the brunt of the fight for the bill were Heyburn, who was in charge, and McCumber. Among those who raised objections

were Aldrich, Money, Bailey, Foraker, Spooner, Gallinger, Hemenway, Lodge, and Penrose. The vote in the Senate was taken on February 21, 1906, and passed by 63 to 4, not voting 22. The four voting against the bill were Bacon of Georgia, Bailey of Texas, Foster of Louisiana, and Tillman of South Carolina. All four objected to the bill on constitutional grounds. Bailey insisted that the bill was "purely and only an exercise of the police power, and therefore not within the power of the federal government."

Four months elapsed before the House of Representatives gave the bill its serious attention. Then it gave parts of three days — June 21, 22, 23 — to its discussion. Hepburn of Iowa was in charge of the bill, but Mann of Illinois opened the debate. He stated that the delay had been due to appropriation bills, and that the leaders of the House had constantly assured the proponents of pure food legislation that this measure would be taken up. He said that after S. 88 had been referred to the House Committee on Interstate and Foreign Commerce, this committee had struck out everything after the enacting clause and substituted for it the House bill. He explained the differences between the two bills, which were not important, except that the House bill provided for the fixing of food standards and that it had a provision on narcotics, which S. 88 did not have. He showed that many people had been misinformed as to the difference between the two bills. They had been led to believe that it was the Senate bill which dealt with narcotics, and so they demanded that the Senate bill be passed. He intimated that it was the Proprietary Association which had inspired this impression.

A long minority report was submitted by members of the committee, signed by Adamson and Bartlett of Georgia and Russel of Texas. The whole contention of the minority report was that the federal government had no right to extend its police powers into the states. This was also the import of the speech which Adamson, as leader of the opposition, made on this occasion:

> The truth about it is the bill from first to last, violates every principle of our government by proposing to go into sumptuary legislation for the regulation of the table menu, and I suppose the next step will be to prescribe the table etiquette and dress. I believe there are millions of old women, white and black, all over my country, who know more about vicyuals and good eating than any friend Doctor Wiley and all of his apothecary shop.

After a lively, though not acrimonious, debate in which there were frequent allusions to Wiley, Adams, and the excitement of the public, the House passed its own bill with a vote of 241 against 17. In the ensuing conference committee Heyburn, McCumber, and Latimer represented the Senate, and Heyburn, Mann, and Ryan, the House. All the important features of the Senate bill were retained, and the provision on narcotics was added. The House clause for the creation of food standards was eliminated. In this form both houses agreed to the conference report on June 29, 1906. The next day it received the President's signature.

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