BUSINESS AND GOVERNMENT UNDER THE NATIONAL RECOVERY ADMINISTRATION

THEODORE J. KREPS

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AMERICAN COUNCIL
INSTITUTE OF PACIFIC RELATIONS

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THEODORE J. KREPS

ASSOCIATE PROFESSOR OF STATISTICS
GRADUATE SCHOOL OF BUSINESS, STANFORD UNIVERSITY

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FOREWORD

It is sometimes assumed that the ambitious experiment in industrial control undertaken in the United States in 1933-35 constituted a complete innovation in the traditional relation of government to business. The fact is, however, that the National Recovery Administration had back of it a long sequence of historical development which was an important factor in shaping both its procedures and its objectives. The following paper, prepared under the auspices of the American Council of the Institute of Pacific Relations as documentation for discussion at the Yosemite Conference of United States recovery policies as they affect Pacific area relations, attempts to evaluate the significance of the NRA in relation to this historical background. Its author, Dr. Theodore J. Kreps, was associated for some time with the NRA Division of Research and Planning, and is thus able to draw upon his own experience as well as upon the printed documents. An accompanying paper by Dr. Robinson Newcomb on "How the NRA Worked" gives a more detailed picture of the operations of the National Recovery Administration. Taken in conjunction, the two papers present, it is believed, so far as they can in such brief compass, the essential facts upon which judgment of the NRA must be based. The fact that two different minds have worked on the problem makes possible a more comprehensive approach than would treatment by a single author. In presenting this paper the American Council, naturally, assumes no responsibility for statements of fact or of opinion. This responsibility rests upon the author alone.

May 1936

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BUSINESS AND GOVERNMENT UNDER THE NATIONAL RECOVERY ADMINISTRATION

INTRODUCTION

PROBABLY no piece of legislation since the World War has aroused such diverse public discussion as that which created the National Recovery Administration or NRA. Brought into being by Congress with the expectation that it would put millions of men back to work, urged upon the consumers by publicity methods highly reminiscent of war-time propaganda, the NRA as a recovery measure from its inception was received by conservative economists with skepticism.(1) By liberal economists, including many of the so-called "brain trust" in Washington, it was opposed with open hostility as a mere "continuation of the share-the-work movement," and by those with leftist leanings it was denounced as "a first step toward capitalistic Fascism."(2) By labor leaders, on the other hand, it was regarded as the "fulfillment of a thesis which organized labour in the United States had proclaimed for a long time, namely, that a high level of purchasing power was essential for prosperity."(3) By business men, as will appear later in this paper, the NRA was either accepted as a substitute for the Black 30-hour bill and other pending regulatory legislation or it was welcomed as the long-sought-for goal of prominent developments in business thinking and business practice.

The skepticism of conservative economists grew in little more than

(1) Members of the Institute of Pacific Relations will recall the discussions upon the NRA at the Fifth Biennial Conference held at Banff, Canada, in the summer of 1933. See Bruno Lasker and W. L. Holland, eds., *Problems of the Pacific,* 1933, chap. VII, "The United States Recovery Programme."

(2) Ibid., p. 165.

(3) Ibid., p. 168. See also Sidney Hillman, "The NRA, Labor and Recovery," *The Annals of the American Academy of Political and Social Science* (hereafter cited as *Annals*), March 1934, p. 73.

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a year to practically unanimous disapproval. At Chicago in December of 1934 at the annual meeting of the American Economic Association[4] the task of defending the NRA as a recovery measure rested almost exclusively upon members of the Administration. This disapproval found competent and adequate expression in the volume cooperatively written by the well-known economists, L. S. Lyon, Paul T. Homan, Lewis L. Lorwin, George Terborgh, Charles L. Dearing and Leon C. Marshall,[5] which, in the words of a reviewer of their book, characterized the NRA "as a recovery effort which handicapped recovery, as a rather planless attempt at planning, and as a reformulation of trust policy which knew neither its objectives nor how to achieve them."[6]

While substantial agreement upon the effects of the NRA on recovery is possible, provided a single definition and uniform method of measurement of "recovery of what and for whom" is rigidly adhered to, no such agreement is likely concerning the significance of the NRA as an attempt to solve the problem of relations between business and government. The reason is not far to seek. No final criteria of what such a relationship ought to be have as yet been established. From the point of view of the employer, the desirable aims are the preservation of individual freedom of action and individual use of property. According to the foremost protagonist for the NRA, Mr. Donald R. Richberg, the NRA was designed to "leave business men free under the Constitution to make private gains out of fair competition," with the government supervising "all combinations of competitors so as to prevent them from eliminating competition and exacting monopolistic profits from consumers."[7]

From the point of view of labor, the criterion is, of course, full and regular employment at jobs suited to the laborers' capacities, with security against bad working conditions, illness, injury, old age and arbitrary treatment by the employer, and with "wage rates as nearly as possible commensurate with the value of service rendered."[8]

(4) See *American Economic Review,* March 1935, Supplement, vol. XXV, no. 1, pp. 1-20.

(5) The Brookings Institution, *The National Recovery Administration* (Washington, 1935).

(6) Edward S. Mason, "The National Recovery Administration," *Quarterly Journal of Economics,* vol. XLIX, no. 4, August 1935, p. 668.

(7) Donald R. Richberg, "The Recovery Program, Its Progress and Difficulties," *The Consensus,* vol. XIX, no. 1, March 1934, p. 5.

(8) For a full discussion see R. W. Stone, "Basic Labor Issues in a Future Industrial Statute," *Annals,* March 1936, p. 107.

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For the public as a whole supplementary criteria have been formulated by the Brookings Institution as follows: "(1) the production of the largest possible national income, (2) the lowest possible cost in terms of resources and work."[9] These diverse touchstones of sound economic constitution-making are obviously contradictory, and lead to contradictory evaluations. Even when balanced in their "togetherness," such evaluations are likely to be poles apart depending on the preconceptions, financial interest, class and climate of opinion of the evaluator. Yet they must constitute the terms of reference for an evaluation of the contribution which the NRA experience has made toward a permanent solution of the problem of satisfactory governmental relations to business.

HISTORICAL BACKGROUND

Previous Regulatory Measures

At the outset it should be realized that the NRA was the logical outgrowth not only of American experience with business regulation but of important developments in business practice and business thinking. Its antecedents go back far into the industrial experience of the United States, for government intervention is by no means a new phenomenon in the United States. Even in the colonial period wages, hours, prices and quality of product were regulated in the interest of the farmer. Business has constantly clamored for government interference, whether in the form of tariffs, in the form of laws giving special privileges to corporations, land grants to railroads, subsidies to steamship lines and loans to banks, or in the form of injunctions in labor disputes, and so forth. Business secured the passage of the Sherman Anti-Trust Act in 1890, the small business men wishing protection against the real and apprehended predatory practices of certain large trusts. Again, it was the clamor of business men which led to the establishment of the Federal Trade Commission in 1914 and the outlawing of a number of practices as unfair competition. In fact under the stimulation of business a host of laws regulating business were enacted by Congress. Thus it forbade the manufacture, sale or transportation of adulterated or misbranded foods or drugs (1906), prohibited dumping in the United States of articles produced abroad (1916), legislated against discriminatory practices in ship-

(9) Brookings Institution, op. cit., p. 558.

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ping (1916) and regulated unfair competition in the marketing of perishable agricultural commodities and in the import trade in 1930.[10]

Gradually, however, it became a matter of common agreement that the federal anti-trust laws were ineffective. Numbers of business men began to speak in terms much like the following:

"These laws in their effect have worked to achieve the exact opposite of what was intended. Those things which large-scale business should admittedly do for general economic welfare are illegal, while those things which it was intended to prohibit are still possible to large-scale business. Meanwhile, smaller business and labor groups are put at a disadvantage while the farmer, the exporter, and the railways are placed in the position of being urged to do precisely what the Sherman Law declares illegal."[11]

Even in authoritative treatises on the subject economic scientists, after observing that the Sherman Law "obviously ran counter to the interests of important people," stated that as a result "it was denounced as an infringement of the liberties which the Constitution was intended to establish. Quite in accordance with established custom in such matters, the law was flouted and ignored by many people."[12]

Non-Enforcement of Anti-Trust Laws

As a result attempts to enforce the Sherman Act were sporadic and steadily diminishing. In a report made by the Attorney General of the United States to the Senate in 1930, it was found that up to that time only 42 persons had gone to jail for violating the Sherman Law, or about one a year. Of these, only eight had been found guilty of contempt of court and served terms for violating the act, or one in five years, on the average. The government had won 1,104 decrees enjoining combinations and succeeded in securing the acceptance of 80 consent decrees. Less than $1,800,000 had been collected in fines, and only six cartons of cigarettes had been confiscated in forty years for shipment in violation of its provisions, and these were later released under bond. The constant shift in enforcement personnel, the

(10) For a short summary of these among many other measures of industrial control before NRA see George Galloway, *Industrial Planning Under Codes* (New York, 1935), chap. II. For a more extended treatment see, among many other competent treatises on the subject, R. E. Curtis, *The Trusts and Economic Control* (New York, 1931), Parts II, III and IV.

(11) J. George Frederick, ed., *The Swope Plan* (New York, 1931), pp. 126-27.

(12) R. E. Curtis, op. cit., p. 5.

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notorious lack of judicial familiarity with the economics of monopoly and monopolistic practices, the attendant introduction of irrelevant legalisms, the use of decisions in cases arising in a simple agricultural economy as precedents for the doing of justice in modern industrialized society — these factors made it difficult even in the days of "trust-busting," of Theodore Roosevelt's "Square Deal," and of Woodrow Wilson's "New Freedom," to secure effective enforcement.[13]

With the passage of time and as popular clamor died down, the efforts of executive departments became less vigorous. "The place of dissolution suits was taken by such prophylactic measures as consent decrees, trade practice conference rules and stipulations so that attempts to apply the criminal penalties of the law were infrequent and unimportant."[14] In fact, in the twenties, open statements began to appear frequently that the pendulum of activity in executive departments had swung in the other direction. It was alleged, for example, that "the Department of Commerce, by its paternal attitude toward the innumerable combinations in restraint of trade that are masquerading as trade associations, has lent every encouragement to regulation of production and price."[15] Thus it was that in April of 1935 when General Johnson testified before the Senate Committee investigating the NRA concerning the "deadly lethargy toward effective control of our economic system of the past quarter century, with its ensuing destruction of employment and small enterprise,"[16] not even his most rabid opponents raised their voices in protest.

Growth of Trade Associations

Contrasted with the failure of government in its anti-trust legislation to enforce so-called laissez faire there existed considerable discussion of economic planning and in particular the record of continued successes of economic planning for profits. The most prominent place in this form of economic planning was traditionally that of the tariff. In the words of Professor J. G. Smith of Princeton, "in fact in the United States there has been economic planning (called 'the American System') which dates back at least as far as Henry Clay and the 1820's. Avowedly this was planning for the general welfare,

(13) For considered comment on the lack of enforcement of the anti-trust laws see, e.g., *Annals*: *The Anti-Trust Laws of the United States,* January 1930, passim.
(14) George Galloway, op. cit., p. 16.
(15) R. E. Curtis, op. cit., p. 499.
(16) Testimony of General Hugh Johnson before the Senate Finance Committee investigating the NRA, mimeographed copy, p. 65.

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while permitting profits; but in practice it degenerated predominantly into planning for special interests through log rolling."[17] He goes on to state that this planning

"has a close affinity to fascism and indeed to the so-called 'trickle theory of prosperity,' which is in effect to abolish poverty by increasing the riches of the rich. This type of planning means to evolve a social plan subservient to the most dominant special interests of the country, on the theory that they are *representative* of the majority interests in a democracy."[18]

But the tariff, including the infamous tariff of 1930, was by no means the only accomplishment of industrial economic planners. Mergers grew apace. Large-scale production increased in spectacular fashion. In many lines of industry stabilization plans discussed and attempted in piecemeal fashion by pools over a long period of time began to achieve realization, particularly by virtue of the activity of trade associations.

In fact during the twenties the trade associations developed from embryonic organizations primarily concerned with collecting and publishing statistics to a movement whose "major concern was with the control of industry. Such listed policies and procedures as control of production, control of capacity, no selling below cost, control of wages and other costs, control of machine hours and inventory, control of capital investments and cash discounts, and the exchange of statistics disclose their dominant motives."[19] "Indeed," states the head of the Brookings Institution in a notable article summarizing the results of research contained in four of its recent volumes, "under the Hoover regime the stabilization of prices was regarded as a means of preventing market disorganization and hence as a key to stable production and permanent prosperity."[20] The resultant situation has been somewhat unsympathetically summarized by another economist as follows: "The Mellon-Coolidge-Hoover industrial regime had little in common with private, competitive capitalism. The visible hand of monopolistic price and product control has been widely substituted

(17) J. G. Smith, *Economic Planning and the Tariff* (Princeton, 1934), p. 7.

(18) Ibid., p. 2, italics in original.

(19) George Galloway, op. cit., p. 13. For a full discussion see, for example, in the extensive literature on the subject, Dr. Simon N. Whitney's *Trade Associations and Industrial Control* (New York, 1934).

(20) Dr. Harold G. Moulton, "The Trouble with Capitalism is the Capitalists," *Fortune*, November 1935, pp. 77 et seq. See reprint by the Maurice and Laura Falk Foundation of Pittsburgh, p. 38. The four volumes summarized are *America's Capacity to Produce, America's Capacity to Consume, The Formation of Capital* and *Income and Economic Progress.*

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for the invisible hand of flexible price in the presence of competitive supply and demand."[21]

Trade Associations and the Government

The ineffectiveness of government regulation, and the effectiveness of individual industries when organized, naturally led to the suggestion that possibly a solution could be found by universalizing the cure for instability of profits which individual industries had found, namely, business self-government. But how in the absence of gigantic mergers or unchallengeable leadership can an industry bring into line the fringe that continues to practice competition — unfair competition, those seeking cooperative action would say? The answer was, bring in the compulsory powers of government. For this, authoritative precedent of more than fifty years' standing could be cited. As early as 1887 Professor Henry C. Adams wrote in a book on *The Relation of the State to Industrial Action:*

"when the large body of competitors agree respecting some given method of procedure, but are powerless to follow it because a few men engaged in the same line of business refuse to conform to the proposed regulations, it becomes the province of the state to incorporate the wish of the majority in some practical law. In this manner there is established a legal plane of competition higher than that which could be maintained in the absence of legal enactment. This is no curtailment of competitive action but a determination of the manner in which it shall take place."[22]

In addition, as has been pointed out by the Brookings Institution, "in the various aspects of its operation, the NRA strongly resembles the ICC [Interstate Commerce Commission] and similar agencies"[23] though none of these earlier governmental attempts at regulation utilized the representatives of organizations within the industries affected as agents of enforcement.

It took the World War to bring out the possibilities in this direction. For not only in the United States but in practically every belligerent country the extraordinary need for maximum utilization of productive plant capacity and resources with millions of workers at the front was met by collective, cooperative action. In the United

(21) H. L. McCracken, "An Appraisal of the Possibility of Plenty," *The Society for the Advancement of Management Journal,* March 1936, p. 59.

(22) Quoted by Dexter M. Keezer, "The Consumer under the NRA," *Annals,* March 1934, p. 90.

(23) See Brookings Institution, op. cit., p. 33, footnote for details.

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States the War Industries Board set up a number of industry committees and gave them substantially similar powers to those which were given to code authorities under the NRA. After the war it occurred to many groups[24] that scarcity and the economics of scarcity were not wholly due to lack of producing capacity but in part due to wastes, especially the wastes of unscientific management, non-cooperation and useless competition. Continuance of organization and self-government in industry was seen to contain possibilities not only of repairing the losses of the war but also of securing higher levels of production and standards of living.[25] The impetus given to the trade association movement has already been mentioned.

Of singular importance for the NRA was the work of General Hugh Johnson, Bernard Baruch, George Peek, Alvin Brown and others on the War Industries Board, for these not only worked together again in charge of the NRA, but, as shown abundantly in Johnson's book,[26] they had virtually a complete conception of it as early as December 1918, when General Johnson wrote:

"what is needed is a statute (a) validating trade associations for mutual help, (b) validating acts done by these organizations or members of them in pursuance of agreements with or direction by government, (c) authorizing license by the Government to individuals to pursue specific courses of conduct shown to be in the public interest."

He went on to state that to administer such an act a new mechanism was required, an organization set up on a different theory from that of any permanent organization then existing — "not a policeman, not a passive or a negative agency, but a cooperator and adjuster and friend; in short, any agency set up on the theory of the war organi-

(24) See, e.g., the report of Secretary Hoover's committee on *Waste in Industry* (Washington, 1922).

(25) Some of these early discussions came to have peculiar importance in 1931 and 1932 and undoubtedly helped to prepare the climate of American business opinion for the NRA. Note, for example, the series of articles by William H. Smith in *Industrial Management* for 1919, the one in March having the title "Technocracy—Practical Suggestions for National Reconstruction" and that in the May issue having as title "Technocracy—Ways and Means to Gain Industrial Democracy." See also the publications of the guild socialists in England (for example the writings of Mr. G. D. H. Cole), who brought the term "self-government in industry" into the common vocabulary, and advocated the Plumb plan for the railroads here; and especially Thorstein Veblen, *The Engineers and the Price System* (New York, 1921), the fountainhead of no small proportion of the literature of depression discontent such as David Cushman Coyle's recent volume entitled *Brass Tacks*.

(26) General Hugh S. Johnson, *The Blue Eagle from Egg to Earth* (New York, 1935), passim. The blue eagle was the symbol of NRA, displayed in shop windows, on stationery, on product labels etc. by firms which were operating under its provisions.

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zations, the Food, Fuel, and War Industries administrations."[27] He also suggested that there should be a bureau of planning and statistics and that the central agency should report to the President direct.

Throughout the decade of the twenties the agitation for amendment of the anti-trust laws grew apace, so that even from highly conservative sources statements began to emanate that the "Sherman Act of 1890 was in reality a step backward" and that "what we really need are many combinations in control of trade, in restriction of trade so to speak, all interpreted in terms of the rule of reason and supervised by official authority."[28]

The Drive for "Planning"

As the depression set in, the unworkability and undesirability of the anti-trust laws was in business circles almost uniformly taken for granted. The debates there centered almost altogether on plans for modification. Most important among such plans was that of the United States Chamber of Commerce, which suggested that business concerns be allowed to "enter into contracts for the purpose of equalizing production to consumption, contracts to take effect and to remain effective unless the governmental authority having supervision finds on its own initiative or on complaint that such agreements are not in the public interest."[29] They also urged the establishment of a National Economic Council.

In governmental circles there existed a similar feeling. Secretary of Labor James J. Davis, for example, as early as 1928 suggested in connection with the coal industry a form of governmental regulation which would "permit operators of coal properties to consolidate and to mine only enough coal to meet the fuel needs" and went on to emphasize that such an arrangement would "serve to stabilize business, standardize methods of operation, and provide steady employment at good wages for the needed number of miners, while returning reasonable profits to the operators. The benefit of such a program would be a steady flow of coal to the consumer at a fair price."[30]

(27) Testimony of General Johnson before the Senate Finance Committee investigating the NRA, mimeographed copy, p. 8.

(28) President Nicholas M. Butler of Columbia University in C. A. Beard, *America Faces the Future* (New York, 1932), pp. 144-45.

(29) Chamber of Commerce of the United States, *Referendum No.* 58, *On the Report of the Special Committee on Continuity of Business and Employment* (Washington, 1931), p. 10.

(30) James J. Davis, "Shall We Change Our Trust Laws?" *Nation's Business*, October 1928, p. 11.

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In legal circles a similar trend of thought led to the advocacy by the Commerce Committee of the American Bar Association of a proposal that "administrative agencies upon which Congress has already conferred regulatory power . . . be authorized to approve agreements voluntarily submitted" by business. It went on to state, "Legal status will be given to the Federal Trade Commission's Trade Practice Conferences, now without statutory sanction. . . . The proposed legislation would give great impetus to the movement for self regulation of industry."[31]

Even in liberal circles where confidence in the ability of business to govern itself was not quite so sanguine, it was proposed that the Federal Trade Commission be given jurisdiction over all corporations engaged in interstate and foreign commerce, requiring each to have a license, with the Commission given free access to the books of account not only of individual corporations but of trade associations.[32]

Undoubtedly the most influential of the plans advanced by business men was the Swope Plan, which, because advocated by so prominent a person as the president of the General Electric Corporation, received nation-wide attention. The Swope Plan provided for self-government. All industrial or commercial companies with fifty or more employees and doing an interstate business were to form trade associations, which on the one hand were to evolve and enforce suitable plans for granting employees of member companies life insurance, old age pensions and unemployment insurance and which, on the other hand, could prescribe fair trade practices, require standard accounting and cost systems, effect stabilization of prices etc. Companies and trade associations were to be supervised by the Federal Trade Commission or by a bureau of the Department of Commerce, or by some federal supervisory body specially constituted. Each trade association was to form a general board of administration in which three members were to represent the association, three were to represent employees of member companies, and three were to be appointed by a federal advisory board. In the words of one of its foremost exponents, Mr. J. George Frederick:

"The Swope Plan is a fine step toward national regulation in cooperation with organized industry, wisely looking forward toward the true community

(31) Rush C. Butler, "Needed Changes in the Anti-Trust Laws," *Annals,* vol. 147, no. 236, January 1930, p. 189.

(32) R. E. Curtis, op. cit., p. 499, quoting radio speech in 1929 by Samuel Untermeyer.

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of interest which the public through the government has in the prosperity of planned, well-governed industry. Acting mutually, they will place brakes against waste, confusion, upset, unemployment, low standards, unfair competition, profiteering, and destructive competition."(33)

The Swope plan received very wide endorsement not only from industry and trade but even from the ranks of organized labor. While craft unionism remained somewhat aloof, inasmuch as the Swope plan and later the NRA contemplated organization by industries, the leaders of industrial unionism such as John L. Lewis of the United Mine Workers and Sidney Hillman of the Amalgamated Clothing Workers (who was later to become a member of the National Industrial Recovery Board), were enthusiastically in favor of the plan; with the modification, however, that the board of emergency control

"be instructed to reduce the hours of labor and the number of days in the work week to a point where the industrial machinery of the nation can substantially take up the slack of unemployment, and under conditions where labor is accorded the right of collective bargaining through representatives of its own choosing."(34)

The Legalization of Monopoly

It is clear from the above that the NRA was not something that sprang wholly new upon the horizon in 1933. In fact one observer, Mr. Walter Lippmann, has gone so far as to say in his stimulating book, *The New Imperative,* that

"if we strip the NRA of its ballyhoo, of the more or less unenforceable and unenforced labor provisions, we find the trade associations (which Mr. Hoover did so much to promote as Secretary of Commerce) freed of the menace of anti-trust laws (which Mr. Hoover, as President, did so little to enforce). The National Industrial Recovery Act was little more than the substitution of legal for companionate marriages in the realm of private monopoly. . . .

"It was Mr. Hoover who abandoned the principles of laissez-faire in relation to the business cycle and established the conviction that prosperity and depression can be publicly controlled by political action."(35)

(33) J. George Frederick, *Readings in Economic Planning* (New York, 1932), chap. XIV, "The Swope Plan," p. 346. See also B. A. Javits, *Business and the Public Interest* (New York, 1932), among other volumes advocating the Swope plan.

(34) See W. Jett Lauck, "Coal Labor Legislation: A Case," *Annals,* March 1936, p. 132, where the part played by Mr. Lewis and other leaders of organized labor in formulating the NRA is set forth.

(35) Walter Lippmann, *The New Imperative* (New York, 1935), pp. 26 and 12. See also Henry C. Simons, *A Positive Program for Laissez-Faire* (Chicago, 1934), p. 36, where the statement is made, "The NRA is merely Mr. Hoover's trust policy and wage policy writ large."

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Historically it thus seems clear that the NRA represented the result primarily of business thinking upon the vexed question of industrial control. It grew out of the experience and successful practice of business leaders in bringing stabilization into individual industries. It sought to universalize these solutions through the agency of trade associations. Convinced that the negative, cease-and-desist devices of anti-trust legislation were ineffective, if not mischievous, in preventing socially desirable cooperative action, business men, trade association executives, lawyers and political administrators turned hopefully but experimentally to the NRA because it provided constructive, positive methods.

THE ACT

But brief attention needs to be paid to the National Industrial Recovery Act itself. Its main purpose was that of recovery through reform. It sought not only to "provide for the profitable operation of sound trade and industrial enterprises," but also to build "a sound basis for continuing industrial advance."[36] For it was keenly felt during the depths of the depression that the collapse of democracies abroad, especially in Russia, Italy and Germany

> "proceeded not from the mere desire to apply a political creed, but from the necessity of establishing some form of government in industry in the absence of which no political government could endure. Those who faced this problem in America sought a solution more in keeping with our democratic institutions than the dictatorship in behalf of property and privilege which can be roughly described as fascism, or the dictatorship in behalf of labor which can be described as communism. In the search for a solution, a large percentage of the influential leadership of industry in this country, together with a potent leadership in labor and politics, arrived at the concept of self-government in industry."[37]

The act was primarily an administrative statute not prescribing certain practices or designating others, but merely laying down the objectives of Congress and imposing on the administrative agency the working out of details. Obviously, an act of this type requires "the

[36] Donald R. Richberg, "Six Months of the NRA," *Harvard Business Review,* vol. 12, no. 2, January 1934, p. 130. That it operated to increase profits more than payrolls is statistically shown in my article "Dividends, Interest, Profits, Wages, 1923-35," in the *Quarterly Journal of Economics,* vol. XLIX, no. 4, August 1935, pp. 561-99.

[37] See Richberg, loc. cit., p. 133.

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widest industrial and statistical knowledge, the most incisive and best-balanced economic analysis and judgment."[38]

The substantive content of regulation was furnished by business men themselves in codes of fair competition. The multitudinous provisions on fair trade practices in the codes merely totalized as a general rule what trade associations had been seeking for years and represented "usually the work of trade association officials or of dominant personalities within the industry."[39] These codes, when accepted by a majority truly representative of the industry and approved by the President, had the effect of law. Business men had full leeway to put their own house in order. In most instances all the government activities were directed toward seeing to it that labor received protection in its right of organization and collective bargaining. No employee was to be required to join a company union or to refrain from joining a labor organization. Hours were to be limited, minimum wages set. In essence, the code of fair competition was a bargain between business and the government whereby business men were allowed to attempt certain cooperative measures looking toward stability of price and production in exchange for concessions to labor. The provisions of codes, therefore, were determined by the "criteria of compromise rather than the criteria of judicially considered public interest."[40]

TRADE PRACTICES

No attempt will be made even to list the variety of trade practices and the details of regulation which were written into the thousands of pages of code law.[41] Some of them merely restated prohibitions already valid under the anti-trust laws as, e.g., false and misleading advertising, defamation of competitors, espionage etc. But for the most part the codes laid down elaborate programs of price control, production control and market control.[42] But these paper provisions should not be taken too seriously, for it ought to be remembered that

(38) Joseph B. Hubbard, *Current Economic Policies* (New York, 1934), p. 375, quoting John Dickinson, "Controlled Recovery," *Atlantic Monthly,* September 1933.

(39) Brookings Institution, op. cit., p. 568.

(40) Ibid., p. 583.

(41) For a complete discussion see Brookings Institution, op. cit., Part V, "The NRA and the Trade Practice Problem," pp. 551-748.

(42) For alternative methods of classification see George Galloway, op. cit., pp. 94-100.

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the codes contained only revealed original intentions, not what actually happened. For example, "of 408 cost formulas submitted under no sales below cost provisions and requiring approval by NRA only 33 were actually approved."[43]

Business Writes Its Own Ticket

What needs to be emphasized here, however, is the fact that the NRA embodied a new relationship between government and industry, that of partnership.[44] So the President intended.[45] So Administration spokesmen proclaimed it.[46] Thus it was hailed by business men, who in the words of one of their number agreed that

"most industrialists believe that the greatest good in the NRA lies in its mandatory requirement that industry shall make its own rules of fair practice. Expert, honest regulation of business by those who understand its problems may thus take the place of inexpert, prejudiced rules for business made by legislators who may be uninformed or misinformed regarding the factors involved and often influenced by well-meaning amateurs without practical business experience."[47]

In fact, in quarters hostile to the Administration it was precisely the fact that business men wrote their own ticket which was the object of greatest attack. One of the more vitriolic critics states:

"The men of industry and the business-like, business-trained, and business-administered recovery administrators work out their code provisions in secret and efficient preliminary conferences. The whole system of setting up codes of self-government in industry in whose operation not even government itself, much less the consumers, have a dominating voice or one that is clearly heard or even mentioned in the public prints, is a situation so patently opposed to the public right and interest that it is but necessary to mention it to indicate its absurdity and the abdication which it represents of the government as regulator, arbiter, and controller."[48]

In view of what the attitude of business came to be later concerning the NRA, the point must be made emphatic that the NRA was a device conceived by business, put into effect by business, administered

(43) NRA, *Code Revision Memorandum No.* 1, May 2, 1935, p. 13.

(44) A. N. Holcombe, "Business Takes a New Partner," *Harvard Business Review,* vol. 12, no. 2, January 1934, p. 265. See also Carl F. Taeusch, "Business Ethics and the NRA Codes," ibid., pp. 167 and 172.

(45) See his message on June 16, 1933 outlining the policies of NRA.

(46) See, for example, John Dickinson, "Understanding and Misunderstanding the Recovery Program," *Annals,* March 1934, p. 3.

(47) Herbert J. Tily, "Codes and Consumers," *Annals,* March 1934.

(48) Frederick J. Schlink, "Safeguarding the Consumer's Interest, an Essential Element in National Recovery," *Annals,* March 1934, p. 115.

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by business men, and finally, in the Schechter decision of May 1935, demolished by the Supreme Court on the instance of business men.

Stabilizing the Price Structure

Turning now to the theory of the trade practice provisions, we need but mention the extraordinarily low level to which agricultural prices had fallen in 1932 to account for the alarm existing in industry which made them welcome almost any device that would promise to aid them in keeping up industrial prices. The depression brought out the fact that inefficient producers were not eliminated by deflation. Bankruptcy of large-scale modern plants does not mean liquidation of surplus capacity, but merely intensified competition from plants that under receivership do not even have to meet fixed charges. Moreover, "it is often the inefficient producer who, by violating desired employment standards and underpaying his labor, is able to keep a larger percentage of his production capacity employed than some of his more fundamentally efficient rivals."[49] As a result, cut-throat competition ensues, limited only by the out-of-pocket expenses of plants with large overhead, so that competition "far from amounting to a system of checks and balances and an agency of adjustment, suggests more accurately a continually descending spiral pointing through industrial anarchy towards ultimate destruction for everyone."[50] In short, theoretically the trade practice provisions were supposed to put bounds to competition, which like other natural forces is likely to run amuck, whether destroying itself and ending in monopoly (as it once did in American railroads), or becoming chaotic and threatening irreparable demoralization (as it has in the bituminous coal industry).

The middle course so far as prices are concerned, for example, required the establishment on the one hand of a price ceiling to avoid predatory competition and monopoly and on the other of a price floor to protect labor and quality standards.[51] But the difficulties far exceeded the expectations of even the most skeptical economists.

Complexity of the Problem; Lack of Information

In the first place, past governmental experience and even the most detailed discussions in economic textbooks relative to prices

(49) John Dickinson, "Economics of the Recovery Act," *American Economic Review*, Supplement, March 1934, as reprinted in Joseph G. Hubbard, op. cit., p. 407.

(50) Ibid., p. 408. See also Henry I. Harriman, *Hearings on S.* 6215 *before a subcommittee of the Committee on Manufactures, United States Senate*, 72nd Congress, 1st session, 1932, p. 167.

(51) George Galloway, op. cit., p. 91.

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and price control had not revealed more than a minor fraction of the complex interrelationships of prices to other marketing factors. While it was known that a price is but a "short-hand expression for an aggregate of conditions and events which constitute a going industry,"(52) nowhere did there exist more than a catalogue of the arrangements, usages and customs which form with prices the marketing technology of the industry — as significant and as complicated as its production technology. Dr. Willard Thorp, chairman of the Advisory Council in NRA, recently estimated that there are more than thirty ways of lowering prices other than that of making a lower quotation — devices, for example, such as customer classification, quantity, discounts, advertising allowances and the like.

None of these devices can be categorically described as either good or bad; consequently none can be made the basis of blanket statute prohibition.

> "The merit or demerit of each comes from the use to which it is actually put. Nor can any device be judged alone, for it always appears in combination with other devices. Moreover in considering the totality of a business in operation, all these devices together must be judged in relation to its technical operation and the character of its growth."(53)

The amazing amount of economic knowledge required by government for intelligent regulation, even of prices, is obvious. It simply did not exist.

Coupled with this utter lack of adequate economic knowledge was the lack of some of the most elementary statistical information. Despite sincere attempts to secure statistical data, at no time even for the major industries was a fraction of the statistical information available concerning "the economic consequences of the code system as reflected in changes in production, productive capacity, costs, prices, employment, wage rates, pay rolls, sales, profits, small business, geographic distribution of industry, trade practices, imports, and other aspects of industrial behavior."(54) Studies of a planning nature forecasting the trend, determining normal demand, keeping in touch with intra- and inter-industry competition, etc., were obviously out of the question. As a matter of fact even the most informed business men

(52) NRA Report No. 1, *The Price Study*, Walton H. Hamilton, "A Prologue to Prices," October 1934, p. 6.

(53) NRA, *Administrative Steps for Application of Policy,* Memorandum No. 1, May 1935, pp. 4 and 5.

(54) George Galloway, op. cit., p. 53.

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called to Washington failed to foresee the extraordinary ramifications of relatively simple attempts at price, production or market control. Economic literature was lamentably inadequate.

The Trend toward Monopoly

In the third place, self-government in industry under the NRA almost irresistibly tended toward monopoly. Indeed, not only had this been anticipated,[55] but any other tendency was hardly to be expected. For in the absence of uniformly accepted criteria of good public policy and in view of the utter inadequacy of reliable information concerning the conditions and industries in which various code control devices furthered or harmed the public interest, what more natural for the administrators largely recruited from business than to draw upon their experience in trade association activities, mergers and the like, and to confuse profitability with public welfare, especially when officially strengthened in the fallacy that stabilization of competition and raising of prices constituted the key to the return of prosperity?

As a result the trade practice provisions in the codes on balance merely gave legal sanction to the devices that trade associations had been attempting to put into operation for years. A foreign expert on the cartel problem concludes a study of this aspect of the NRA by commenting: "owing to the influence exerted by the representatives of the trade association movement on the process of code-making, among 677 codes no less than 560 have some sort of provision relating to minimum prices and cost methods."[56] With even greater emphasis a well-known American economist writes: "The diversity and the subtlety of price control provisions sought by trade associations constitute a monument to the ingenuity of American business men, while the brazenness with which in some cases an unadulterated and uncontrolled monopoly was asked for is a tribute to the complete failure of some business groups to comprehend the essentially social function of business and industrial activity."[57] The very same trade practice provisions which business men were less than two years later to

(55) Mr. Donald R. Richberg, in "NRA Ideals: A Reply to Critics" (*New York Times Magazine,* February 1934, p. 1), candidly admitted the two major problems to be monopoly and bureaucracy.

(56) Karl Pribram, "Controlled Competition and the Organization of American Industry," *Quarterly Journal of Economics,* May 1935, p. 376.

(57) W. N. Loucks, "Price Fixing: The Consumer Faces Monopoly," *Annals,* May 1934, p. 114.

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denounce as a colossal invasion of liberty originated in no other place than in business itself.

That the NRA in many instances increased the power of monopolies is hardly subject to doubt. The publications of NRA itself, such as the famous Darrow report,[58] the charts showing almost perpendicular rises in prices, notably of building materials, in *Prices and Price Provisions in Codes,* and various other studies of the Research and Planning Division show repeatedly the use of code provisions to effect monopolistic or quasi-monopolistic control. In fact various industry studies begun under the direction of Dr. Meredith Givens were, to use the vernacular, so "hot" that they were promptly interred in the files under lock and key and have never been exhumed.

The nature of the evidence contained in these reports appears clearly from the bit which is taken in the table below from a study that because of senatorial pressure escaped this fate. Space does not permit telling the whole story, a long and interesting one. Suffice it to say that this study examined the experience of public purchasers with prices quoted to them by firms under the codes. As a sample were taken all the contracts let for comparable periods of time by the most vigilant public purchasing agents[59] that exist in the United States, i.e. those best able to resist monopoly. A small part of their experience is shown in the table (one of scores in the report) reproduced on page 23.

The table is so arranged that perfect monopoly is represented by the diagonal. Notice that despite the lack of enforcement of the anti-trust laws but before the permission of controls under the NRA code there were (to call attention by way of example to the figures in parentheses) only two cases in which eight bidders made an offer of identical iron and steel products and eight of them were tied. Notice that *after* the NRA there were ten cases in which eleven bidders made an offer on a public contract and all eleven of them were tied. Note the scatter in the upper portion of the table showing competition, and the tendency in the lower portion for bids to con-

(58) In March 1934 the President appointed a commission, headed by the eminent lawyer, Clarence Darrow, to investigate and report on the NRA. Its three reports, which appeared in May and June 1934, and contained a sweeping denunciation of the NRA's monopolistic practices, attracted wide attention. See National Recovery Review Board, *Reports to the President of the United States.*

(59) These were the Procurement Division of the United States Treasury, the Bureau of Accounts and Supplies of the United States Navy, the purchasing departments of the cities of Boston and Philadelphia and of the states of New York and Pennsylvania.

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IRON AND STEEL CONTRACTS BEFORE THE NRA

(February 1 to August 1, 1933)

Number of Ties	Number of Bids																	Total No. of Orders	Total No. of Tie Bids
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18		
2	14	5	3	4	7	5	4	6	2	5	2		2					59	118
3		3		1	1		1		2	2	1	1				1		13	39
4				1	3		3					1						8	32
5							3	1		1	1		1	1				8	40
6								1	1	1								3	18
7						2	1			2			1				2	8	56
8							(2)	1				1	2		1			7	56
9											2	2	1					5	45
10										1								1	10
11																			
12													1	1				2	24
Number of Orders	14	8	3	6	11	7	14	9	5	12	6	5	8	2	1	1	2	114	438
Total No. of Bids	28	24	12	30	66	49	112	81	50	132	72	65	112	30	16	17	36	926	

Ratio of Ties to Bids = .473

IRON AND STEEL CONTRACTS WITH BENEFIT OF CODE

(July 1 to December 31, 1934)

Number of Ties	Number of Bids																		Total No. of Orders	Total No. of Tie Bids
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19		
2	2	2	2	2	3	2											1	1	15	30
3		2	1	1	4	4	3		1	1				1					18	54
4			3	3	3														9	36
5				6								1							7	35
6					8	2	2	2											14	84
7						1	2	2	2	1									8	56
8							4	3	1	1	1								10	80
9								9	2										11	99
10									8	3	1								12	120
11										(10)									10	100
12											4	1	1						6	72
13														2					2	26
14														3	1				4	56
15														2					2	30
16																	2		2	32
Total No. of Orders	2	4	6	12	18	9	11	16	14	16	6	2	1	9	1	0	3	1	138	1153
Total No. of Bids	4	12	24	60	108	63	88	144	140	176	72	26	14	135	16	0	54	19	1424	

Ratio of Ties to Bids = .817

Source: NRA Research and Planning Division, *A Study of the Effects of Executive Order No. 6767 on the Maintenance of Standards of Fair Competition to Public and Private Purchasers*, by T. J. Kreps, February 1935, p.36.

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centrate toward the diagonal line, showing uniformity of bidding, and perhaps monopoly!

That the opportunity afforded by the NRA to control not only unfair competitive practices but also price-cutting and excess capacity should be seized to effect monopoly need cause no surprise. After all, as has already been noted, "code authorities were controlled by business men concerned primarily with maximum short-run profits. The code system was clearly dominated by business interests and business ideas. The code authorities were composed either of leading business men and members of trade associations or of the executive organs of the trade associations themselves."(60) In fact the chance to give full trial to devices forbidden by the anti-trust laws, euphemistically called devices of business stabilization or rationalization, led them to exert pressure for passage of the NRA in the first place.

Rigid Prices Retard Recovery

To be sure, business desired protection against wage cuts by the unscrupulous fringe. It also was nervous lest the Black 30-hour week bill which had already passed the Senate should likewise pass the House and become law. But, says one observer, "there can be no doubt that a large proportion of industry believed that the codes would give them the opportunity of reducing total output below what it would otherwise have been, of raising the prices of their products above even the level of fair competition, and of protecting themselves against potential competition."(61) It is obvious that in so far as the NRA strengthened monopolistic price rigidities it not only failed dismally as a measure of industrial control but also retarded recovery. For it is pretty well agreed upon by economists that "price rigidities during the depression have tended to increase its severity and duration."(62)

Wherever the NRA device, namely, permitting business men to organize cartels with legal status, has been in effect, and notably in Germany, the same results have been experienced. Cartelization or

(60) Dr. Lewis L. Lorwin, "Industrial Planning and Fair Competition," George Galloway, op. cit., chap. 22, p. 416.

(61) Paul H. Douglas, "The Role of the Consumer in the New Deal," *Annals,* May 1934, p. 98.

(62) Donald H. Wallace, "Monopolistic Competition and Price Policy," *American Economic Review,* Supplement, March 1936, vol. 26, no. 1, p. 83. For an early statement of this principle see E. S. Meade, "The Limitations of Monopoly," *The Forum,* April 1901.

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stabilization efforts in Germany have "tended to further over-investment and by so doing to aggravate booms and depressions. . . . During the depression the non-cartelized industries suffer increasingly, the more the cartelized industries augment their rigidity."[63] In the words of an international authority on the trust problem, "it is a fallacy to think that the functioning of strong, collective monopolies is promotive of stabilizing general business conditions. Rigid administered prices are paralleled by heavy fluctuations of production and employment."[64]

On the whole, then, it is evident that in so far as the codes restated the prohibitions which had already been developed by the Federal Trade Commission they may have been socially beneficial, but in so far as they brought about the phenomenal increase in prices that took place in the summer of 1933 and in so far as they were able to put into effect provisions for no sales below cost and other price control devices, production control devices, allocations of sales territory and the like, they tended toward monopoly, toward a decrease of employment, toward an increase of the abuses of concentrated economic power, and by so doing, aggravated the conditions which were prolonging the depression. The new relationship between government and business — so far as the definition and enforcement of unfair trade practices are concerned — cannot be said to have proved itself successful.

LABOR STANDARDS

Previous Labor Legislation

Before the NRA the government had done comparatively little for labor. While in other civilized industrial nations there had been enacted a considerable amount of protective legislation, establishing minimum wages, maximum length of work week and the like, in the United States the primary concessions to the labor vote had been the establishment of free public schools, the Mechanics Lien law, non-imprisonment for debt, the Homestead Act, restriction of immigration, workmen's compensation laws, factory legislation, the establish-

(63) Otto Nathan, "The NRA and Stabilization," *American Economic Review,* vol. 25, no. 1, March 1935, p. 53.

(64) Karl Pribram, loc. cit., p. 389. For a series of charts establishing this fact industry by industry see NRA Research and Planning Division report on *Prices and Price Provisions in Codes,* January 1935, Part VII.

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ment in 1884 of a Federal Bureau of Labor later to become a Department of Labor, certain labor legislation affecting only the railroads, and the anti-trust laws.

The Courts and the Trade Unions

Labor's experience with the courts had been particularly unfortunate. For years labor had suffered from a peculiar development in the United States (it is practically unknown in Great Britain and elsewhere) of the injunction in labor disputes; as the American judges developed this old equitable remedy it operated in many instances to deprive labor of its constitutional rights of freedom of speech, freedom of press, freedom of assemblage and trial by jury.[65] Attempts to secure protection through legislation were usually nullified by the Supreme Court, frequently in 5-4 decisions. Even elementary humanitarian attempts to put an end to child labor twice ran afoul of the eighteenth-century economic fallacies which the politicians and ex-corporation lawyers on the Supreme Court in their ignorance of legal philosophy seemed unable to distinguish from constitutional principles despite the irrefutable arguments which their colleagues on the bench who *were* legal scholars, notably Holmes and Brandeis, advanced in minority opinions.[66]

Not only did labor receive little aid from legislation, but even labor's efforts at self-help through organization and collective bargaining encountered no little opposition from the courts. "Wage earners banded together to equalize their bargaining strength only to be confronted with the judge-made doctrine of criminal conspiracy," a doctrine which is still "the law of labor in all but a few states."[67] Even the anti-trust laws, while ineffective in general and specifically ruled inapplicable in the case of the United States Steel Corporation, were held in 1927 to "deny to the members of a small craft of workingmen the right to cooperate in simply refraining from work despite the fact that this was their 'only means of self-protection against a combination of militant and powerful employers.' "[68]

Now it is a truism in economic science that under individual bar-

(65) See Felix Frankfurter and Nathan Greene, *The Labor Injunction* (New York, 1930), especially chap. III.

(66) For a brief resumé of the history of labor before the Court see Professor A. T. Mason, "Labor and Judicial Interpretation," *Annals,* March 1936.

(67) Ibid., pp. 112, 113.

(68) Ibid., p. 115, quoting Justice Brandeis dissenting in *Bedford Cut Stone Co. v. Journeymen Stone Cutters Association,* 274 U. S. 37 (1927), p. 65.

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gaining the laborer is at a very serious disadvantage for his product is of all articles the most perishable. He usually lacks the reserves to wait. He lacks market information on his labor. Often the needs of his family make his sale a forced sale in the locality in which he happens to live, for it is usually inconvenient and expensive to go any great distance from home. Moreover, frequently he is inarticulate, unskilled in bargaining, and because of the waste of effort involved in personal canvassing for a job accepts almost any wage at a differential from his fellow laborers which reflects neither geographical, occupational or personal differences in productivity nor differences in conditions of supply and demand. No wonder he is dissatisfied with such a contract made under economic duress.

The bargaining power of the employer, on the other hand, is guaranteed not only by his reserves, his skill in buying and by the fact that he is buying labor wholesale and can readily do without any particular laborer, but by a number of other factors. "Ownership of limited natural resources, patents and patent pools, large investment in plant and machinery which it is difficult for others to duplicate, command of distributive channels, consumer demand created by advertising and publicity, political defenses such as tariffs and other economic legislation — these are the bulwarks of bargaining power."(69)

Consequently, in the words of an eminent authority on labor problems, Professor Sumner H. Slichter of the Harvard Graduate School of Business, "trade unions appear to be needed in order that the workmen in the vast enterprises of modern industry can acquire liberty and security, liberty to participate in determining conditions under which they shall work and security against arbitrary treatment by management."(70)

A New Labor Policy

The advent of the NRA marked an entirely new chapter in the relations between government and labor. Where before the government had failed to perform its duties even according to the philosophy of laissez faire,(71) it now conceived of its obligations in broad human terms. These as stated by Madam Secretary Frances Perkins comprise not only the provision of "minimum basic standards for

(69) George Soule, "Organized Labor's Role in Our Economic Life," *Annals,* March 1936, p. 7.

(70) Sumner H. Slichter, *Modern Economic Society* (New York, 1931), p. 868.

(71) See below, pp. 36 et seq.

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labor below which competition should not be permitted to force standards of health, wages, or hours" but include the prevention of industrial warfare and the encouragement of "mutuality between labor and employers in the improvement of production and in the development in both groups of a philosophy of self government in the public interest."[72] The implications of such a conception of governmental obligations to labor obviously included as a sine qua non the encouragement of collective bargaining not only as an integral part of NRA in the famous Section 7(a) but as a prerequisite to the realization of the fundamental ideals of American democracy. For, states an eminent authority on labor problems, Professor Selig Perlman, "Collective bargaining is not just a means of raising wages. Nor is it merely democratic government in industry. It is above all a technique whereby an inferior social class or group carries on a never-slackening pressure for a bigger share in the social sovereignty, as well as for more wealth, security and liberty for its individual members."[73]

The embodiment of these ideals in code provisions resulted in several thousand pages of extremely diverse labor law.[74] Not only were the minimum wages set at different levels in different occupations and trades, but these varied for different sections of the country, for communities of different size, and for other specially selected groups. The hours provisions were similarly diverse — a multitude of exceptions, special stays of provisions, and so forth being given. These differences, while in part economically justifiable because of differences in cost of living, in market competition, in climate, in special historical factors influencing particular industries, etc., were in the main haphazard products of chaotic bargaining confusion.

The NRA brought not only new rules for labor but a new administrative agency to handle the problem of industrial relations, modeled somewhat after the war-time Labor Adjustment Board in 1917 and the War Labor Administration in 1918. At first this new agency consisted of a bipartisan body of leading industrialists and labor representatives under the chairmanship of Senator Wagner and was called

(72) Frances Perkins, "A National Labor Policy," *Annals,* March 1936, p. 1.

(73) Selig Perlman, "The Principle of Collective Bargaining," *Annals,* March 1936, p. 154.

(74) See Brookings Institution, op. cit., Part III, "The Wages and Hours Provisions" and Part IV, "The NRA and Industrial Relations." Also Leon C. Marshall, *Hours and Wages Provisions in NRA Codes* (Washington, 1935), and Ruth Reticker, "Labor Standards in NRA Codes," *Annals*, March 1936, pp. 72-82.

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the National Labor Board. It was succeeded by the National Labor Relations Board of July 1934, an impartial three-man board which has since been continued under the provisions of the National Labor Relations Act of July 1935. If this act is not nullified by the Supreme Court, American governmental procedure in the settlement of industrial disputes may soon begin to compare not too unfavorably with the practice of the civilized industrial nations of western Europe.

If collective bargaining through the National Labor Relations Act finally gains the recognition here that it has in Canada, Great Britain and other English-speaking countries, the gains of labor from the NRA may yet be substantial. Otherwise they are limited largely to an "appreciable increase in real income and in employment experienced in the industries operating under codes, particularly on the part of laborers working for less than twelve dollars a week and more than forty-two hours per week in low-paid occupations, in low-paid industries, in low wage small towns and in low wage areas of the United States."(75) If in addition the fact is mentioned that the American Federation of Labor increased its membership by approximately a million paid-up members from August 1933 to August 1935, a fact in part but only in part due to NRA, the enumeration of benefits is about complete.

Obstacles to Enforcement

None of these benefits, be it noted, apply to labor as a whole.(76) And even within the NRA the intended benefits realized fell far short of possibilities. For the difficulties of enforcement of labor standards were fully as great as those already mentioned in the enforcement of fair trade practice provisions. While the latter involved only conflicts *within* an industry, small business vs. large business, wholesaler vs. manufacturer, etc. the former aroused *class* antagonisms. In the first place, there was considerable opposition from open shop employers who feel that unions discourage the introduction of new machinery and processes, that they compel putting on less efficient workers, that they exhaust their ingenuity in make-work devices and attempt to make the job last by sabotage if necessary, that at their worst they lead

(75) From a report which I wrote for the NRA Research and Planning Division on "Hours, Wages and Employment under the Codes" (Washington, January 1935), p. 108.

(76) There the story may be considerably different. See Brookings Institution, op. cit., chap. XXXVII, where Terborgh concludes that real income per laborer in *all* industries was not increased.

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to racketeering and civil violence and at their best to dissatisfaction among employees. "In short, the anti-union employer's belief is that they contribute to general poverty and insecurity."(77)

In the second place there took place a considerable increase in the number of strikes, which was readily alleged to be due to NRA and was undoubtedly a factor which caused code authorities and other NRA officials to go slow with labor compliance. It should be pointed out, however, that the upswing of business usually brings an increased number of strikes. This was true even during the World War, when "despite the fact that the principle of no strikes during war time was accepted as fundamental policy by employers, trade unions, and governmental industrial relations boards, more strikes occurred than in any previous period of similar length in American history. This situation was due to the sharply rising cost of living and to the provocative anti-union attitude on the part of many employers."(78)

In the third place an ambiguity in that portion of Section 7(a) which provided that "employees shall have the right to organize and bargain collectively through representatives of their own choosing" was interpreted by employers, inasmuch as codes represented an organization of industry along industry lines, to mean or at least to permit so-called "company unionism" to the exclusion of craft-unionism, whereas organized labor, of course, interpreted this clause to mean trade unionism. In several instances a minority group representing a company union would agree to terms which were unacceptable to a majority group representing a trade union. In such instances the National Labor Relations Board adopted the simple first principle of democratic government, majority rule, Mr. Lloyd K. Garrison, its chairman, stating: "I have never yet seen a case in which these theoretical arguments of the minority were advanced by a minority group genuinely concerned with negotiating a collective agreement applying to all. They are invariably put forth by employers who do not wish to bargain collectively and who therefore wish their responsibility to be kept as diffused and uncertain as possible."(79) But General Johnson and Mr. Richberg, on the other hand, interpreted Section 7(a) in the Captive Mines Case and the automobile settlement to call for proportional representation. As a consequence enforcement of labor provisions broke down. In a study published

(77) George Soule, loc. cit., p. 4.
(78) Twentieth Century Fund, *Labor and the Government* (New York, 1935), p. 156.
(79) Ibid., p. 340.

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since NRA has been done away with, the Twentieth Century Fund, an independent foundation, summarizes its findings of the whole situation by saying:

"The NRA as a reform instrument ameliorated only the most glaring and indefensible abuses, and did not correct the conditions out of which they sprang. Thus 'merit clauses' were allowed to slip into the automobile and chemical manufacturing codes, the newspaper publishers and certain agricultural and first-processing industries were permitted to employ child labor, discrimination against negroes in industries continued unabated. . . . Again and again throughout the course of the NRA the administration stopped short of reforms which it considered desirable because it did not wish to antagonize employing interests."(80)

These difficulties were aggravated considerably by the fact that the government had no policy on competition, which could be used to evaluate the contents of labor standards and the patterns of industrial relations. Encouragement of price flexibility and a policy of attempting to secure stability through price rigidity, obviously require fundamentally different implementation. There seemed to be little realization of the fact that "Labor issues are an integral part or aspect of the problem of developing a more efficient, stable and beneficent industrial order."(81) Consequently the NRA could not speak with one voice on labor policies.(82)

Helping Labor to Help Itself

In the final analysis, none of the code provisions and boards utilized by the NRA can be said to have got at the bottom of the industrial relations problem. For ultimately the problem of labor unrest lies beyond the devising of a new relationship between business and government. It results from a complexity of employment, economic, social and psychological conditions. "These include the worker's ability to earn an adequate livelihood, the duration, extent and intensity of the labor exacted from him, the security of his employment, continuity of his income, his status on the job, his opportunities for promotion and advancement, and so forth."(83)

Therefore, it was not to be expected that the NRA would help to any great degree to yield conclusive evidence, one way or another, on

(80) Ibid., p. 353.
(81) R. W. Stone, loc. cit., p. 111.
(82) See conclusions of the Brookings study, op. cit., p. 533.
(83) Brookings Institution, op. cit., p. 546.

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such issues as: Should the United States maintain a system of minimum wage legislation? Should it attempt to limit hours of work? Should it encourage collective bargaining through trade unions operating on the principle of majority rule? These and similar questions will have to be answered on other grounds.

But the experience of the NRA did show conclusively that such measures of protective labor legislation should not be the subject of higgling and bargaining, granted as concessions to government by business. They should be given to labor as a matter of right and economic feasibility, and enacted, if at all, in separate statutes, and not administered by agencies also dealing with fair trade practices. Above all, the experience of the NRA showed that the greatest efficiency of control is obtained when the government helps labor to help itself. Labor legislation and labor agreements give much more adequate voice to the needs of labor than codes wholly drafted by employers ever can.[84]

The primary task for labor thus remains that of developing as soon as possible "an economic strength equal to that of industrial management in order that, first, through equality in bargaining power, the maximum possibilities in the way of cooperation and productive accomplishment may be established; and secondly so that our political democracy may be supplemented by the adoption of the enlightened principles and standards of industrial democracy."[85]

ADMINISTRATION

Who Should Regulate and How?

Possibly no aspect of the vexed problem of the relations between business and government, and no question of what should be regulated is as perplexing as that of administration: who should regulate and how. On the one hand business fears and rightly fears the development of an arbitrary and incompetent bureaucracy unfamiliar with the problems of the industry. On the other hand society demands and rightly demands that control be exercised as far as possible by administrative agents who say no to all special interests and seek solely to maximize the public welfare. The NRA attempted to cut the Gor-

(84) See Solomon Barkin, "Collective Bargaining and Section 7(b) of NIRA," *Annals*, March 1936, p. 171.

(85) John L. Lewis, "Adapting Union Methods to Current Changes. Industrial Unionism," *Annals*, March 1936, p. 176.

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dian knot by giving business the chance to govern itself on the theory that business men not only had intimate knowledge of the details of business but had developed sufficient social-mindedness to be able to handle problems in which they had a direct pecuniary interest, without prejudice to the interests of laborers, consumers and the general public.

While, as has been shown above, a large section of business had been asking for a long time for business *self*-government, social scientists and economists have uniformly been skeptical. Long before the passage of the NRA, competent economists who had written on the problem of the social control of business had foreseen the difficulties which administration in the hands of trade association executives or other representatives of business would encounter. To cite but one example, Professor J. M. Clark, recent president of the American Economic Association, in his book on *Social Control of Business,* published in 1926, while recommending an industrial council in each industry composed of representatives of employers, laborers, consumers, engineers and bondholders, to act in an advisory capacity,(86) clearly foresaw the difficulties of control by such councils. Under handicaps to state action he emphasized particularly that the state would find

"its experts definitely pitted against higher paid experts, presumably of greater ability. . . . Questions are likely to be settled by popular clamor, by judicial conservatism leaning on an outworn economics, or worse yet, by the political process of log-rolling [i.e. code bargaining]. . . . The actual working of such control is full of fakes and perversions and the arguments which furnish social justification for such control too often become mere pretexts to cover the conferring of privileges on some private interest."(87)

In another place he points out "that successful control rests largely on the willingness of good concerns to cooperate, and this willingness may be exhausted by too great a multiplicity of exactions. The energies of business itself are partly diverted from the pursuit of efficiency in management to propaganda and political strategy."(88) This passage seems unusually prophetic.

Even at the time of the adoption of the NRA there was uniform doubt among economists on the score of administration, even among economists called in by the "New Deal" to serve as advisers. Thus

(86) J. M. Clark, *Social Control of Business* (Chicago, 1926), p. 463.
(87) Ibid., p. 186.
(88) Ibid., p. 188.

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Dr. Gardner Means, one of the reputed "Brain Trust" in Washington, stated in no uncertain terms that "A body of business men constituting a code authority will almost necessarily make the wrong decisions on industrial policy."[89] Similarly in a symposium of economists on the subject of government control of the economic order held at the University of Minnesota early in 1934, the conclusion was reached that "to date NRA has been a government too much in the interests of dominant industry and not enough in the interests of small industry, or labor, of the consumer, and of the economic system as a whole."[90]

Political scientists seem to have had similar misgivings. In January 1934 Professor A. N. Holcombe of Harvard University writes: "Code authorities are frequently identical with the governing board of the trade association for the industry and were practically always selected by the trade association or institute or a combination of them." Then he notes: "One of the public representatives is usually the Division or Deputy Administrator . . . in charge of the code. He is likely to be a corporation executive on leave of absence from his business, and the others have generally been men of the same type." He concludes: "Too often the representatives of the public seem to have been NRA officials without sufficient attachment to the public service or business men without sufficient detachment from their private businesses."[91] Those with any experience in the NRA readily recall a number of instances where persons on leave from business did not permit their zeal for public welfare during their tenure of office in NRA to prejudice their advancement in the corporations which sent them to Washington. The agency was an emergency agency: employment might easily prove temporary, in many instances being but a stopgap, or a springboard toward wider opportunities in business.

Government of Business, by Business and for Business

The fundamental difficulty proved to be that business men simply could not act as detective and judge against their fellows.[92] Negative prohibitions are usually easier to enforce than affirmative actions. It is vastly easier to prevent murder than to make people love each other.

(89) *Senate Document No. 13,* 74th Congress, 1st Session, "Industrial Prices and their Relative Inflexibility" (Washington, 1935), p. 16.

(90) Benjamin S. Lippincott, *Government Control of the Economic Order* (University of Minnesota, 1934), p. 112.

(91) A. N. Holcombe, loc. cit., pp. 270, 271.

(92) Williams Haynes, "American Chemicals Under Political Economics," *Chemical Industries,* vol. 34, no. 1, January 1934, p. 18.

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And the NRA tried precisely the latter in that special groups in the industries affected were supposed to behave affirmatively in a manner which would diminish advantage, or cause them disadvantage and relative loss of profits. Because of somebody else's notion of public welfare (this somebody else in some cases being regarded as none other than a political administration to which they had never given political support), business men were supposed to pay higher wages, reorganize their methods of handling their employees, and comply with other decisions of code authority executives who in private business were their large competitors. As one observer has well stated, "such decisions simply do not lend themselves to enforcement. The active forces set in motion are quite as likely to be the forces of avoidance as of compliance."(93)

Thus it was to be be expected that the National Association of Manufacturers would find in December 1935 that the "failure of NRA was due to faulty administration. 'Lack of enforcement,' 'failure of government to cooperate,' 'ignorant NRA officials,' 'red tape,' 'divided responsibility,' 'unsympathetic' were some of the milder phrases and terms used in describing the NRA."(94) It is also peculiarly significant that they thought the most important benefit derived from NRA was the "stabilization of price structure."

An excellent summary of the problem of administration under the NRA is contained in the Brookings report. After expressing grave doubts "whether the collective pursuit of special self-interest by separate self constituted groups furnishes a sound foundation upon which to build a permanent reconstruction of economic relationships," the report goes on to state: "All paths of examination of code administration converge upon one fundamental conclusion: that the primary problems arise out of the desire to control the market, and that no real simplification of the problems is in prospect so long as the separatist interests intent upon market control furnish the foundation upon which NRA is built." With respect to the long-range problems of industry the report is equally emphatic: "The character of the preoccupation of code groups makes it highly questionable whether their administrative agencies are in a position to make much socially useful contribution to thought and action in this field."(95) In short, business

(93) Harry Eaton, "Human Elements in the Recovery Program," *Annals,* March 1934, p. 18.

(94) Press release, December 6, 1935, by National Association of Manufacturers.

(95) Brookings Institution, op. cit., pp. 257, 258.

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self-government, i.e. administration by business men of laws of their own drafting, failed to harness self-interest to the chariot of public interest. Government of business by business proved to be too largely for business, at the expense of consumers and the public.

THE NRA AND LAISSEZ FAIRE

What Is Laissez Faire?

To many the question, how far the NRA put into operation the principles of laissez faire, seems void of meaning. And, indeed, so it is for those who conceive of laissez faire as identical with "no government interference." For this is a caricature of the true ideal, which has been ridiculed by a noted economist, now a member of the Republican Brain Trust in Washington, as follows:

> "Most of us are quite willing that the government should control, or even suppress, a business in which we are not personally interested, but up in arms against any attempt to regulate our own businesses. No one seems to care for liberty in the abstract; the only liberty we want seems to be the liberty to do what we want to do. In short, most of us merely believe that the end of laissez faire is the beginning of government control over others than ourselves."(96)

Such, however, is not the true conception.

Historically the laissez faire ideal of government was

> "precisely the ideal of an all around renunciation of and binding guarantee against special interest legislation. . . . If we roughly translate laissez faire as 'let alone' it never meant that government should in all matters let business alone, or let the people as individuals or as groups and classes alone in their business dealings and relations with one another. It meant rather that the government should compel all classes and individuals to let one another alone, or keep their hands off wealth belonging to others."(97)

Laissez faire thus distinctly does not mean "no government in business." That in fact is a radical anarchistic doctrine, practiced at a cost of millions of dollars in bribes, by racketeers and outlaws. It likewise is not synonymous with a ruthless struggle for survival. "The term free or unrestricted competition," says an eminent Harvard economist, "is a misnomer. There is no such thing in any civilized

(96) Professor T. N. Carver, "What Liberties Shall We Fight For," *Nation's Business*, March 1934, as reprinted in Joseph B. Hubbard, op. cit., p. 9.

(97) Professor O. H. Taylor, "Economics versus Politics," in *Economics of the Recovery Program*, by seven Harvard economists (New York, 1934), p. 175.

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country and there never was. The thing which distinguishes economic competition from the brutal struggle for existence is regulation, standardization, or the determination of what may be done and what may not be done in the pursuit of self-interest. The suppression of violence and fraud, even if nothing else is done is a regulation of competition."[98]

The policy of laissez faire thus requires the state to maintain a framework within which competition can function effectively as an agency of social control. For the substance of liberty has an economic basis, beginning as was repeatedly stated by the late Justice Holmes where inequality of bargaining power ends. Consequently by suppressing monopoly and other devices which freeze competition, such as the tariff, the state permits the market place automatically to mediate between competing classes of buyers and sellers, whether of goods or of services. These evaluations of the market are quickly made and usually instantaneously accepted without question, whereas if such prices, say the price of labor, were the subject of negotiation between highly organized pressure groups they would and do entail endless bickering, jockeying for position and other power tactics. In order to maintain such a free market, the state must prevent monopoly, manipulation and exploitation by any group, whether capital or labor. This places upon the state "heavy responsibilities and large 'control' functions,"[99] for under the philosophy of laissez faire it is precisely the function of government to govern, that is, to promulgate rules of the game and enforce them.

The Government as Referee

The ideal of laissez faire, be it noted, is in substance the American ideal of the athletic field where, to realize the noble ideals of fair play and equal opportunity, referees continuously exercise control over competitive activities in order that a maximum of liberty may be enjoyed by the contestants, so that each may secure the maximum individual reward commensurate with individual effort and individual ability, lanes or areas are marked out within which competitors must stay. In order to ensure a better playing of the game all the rules, no matter how old, are regarded as being constantly on trial and

(98) T. N. Carver, *This Economic World and How It May Be Improved* (New York, 1928), p. 139.

(99) Henry C. Simons, op. cit., p. 3. See also inter alia J. M. Clark, op. cit., pp. 91, 110, 111.

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changed when necessary by a rules committee which meets frequently for that purpose.

Moreover, in the same manner that the establishment of fair athletic competition is not achieved merely by promulgating rules, but demands a referee and other neutral officials on the job who will impose the rules without fear or favor, so the creation and maintenance of freedom of competition and the prevention of monopoly and cut-throat chaos cannot be obtained merely by drawing lines of rigid prohibitions or permissions across the economic map by uniform legislative fiat. Industries vary so greatly that an administrative referee is necessary who will adapt administrative policies to the configuration of individual industries according to their peculiar price and production technologies.

Furthermore, in the same manner that a biased referee or one controlled by outside forces is the chief enemy of fair athletic competition, so "*the great enemy of democracy is monopoly, in all its forms:* gigantic corporations, trade associations and other agencies for price control, trade unions—or, in general, organization and concentration of power within functional classes."(100) These non-political sovereignties exercised before the NRA an inadequately restricted and irresponsible power over not only their own businesses, but over labor, over supplies of raw material, over customers, over other businesses and in some instances possibly over government itself.

In some quarters, and by no less eminent a business man than Mr. E. A. Filene, the Boston merchant, it is alleged that

> "there had to be government in business whether the visible government furnished it or not, so an invisible government furnished it,—an invisible government composed of employers and financiers. The invisible government presently controlled the visible government. It furnished the campaign funds. It exerted financial pressure on legislatures and courts. . . . There is nothing new in government's decreeing the hours which working men shall work. The invisible government did that. What is new is that our government is again becoming visible and that it is *our* government again in fact as well as in theory."(101)

Now in its inception there seem to have been some advocates of the NRA who believed that it would work out in accordance with the historical principles of laissez faire. Mr. Donald Richberg, who was

(100) Ibid., p. 4. Italics in original.

(101) E. A. Filene, "The New Relations between Business and Government," *Annals*, March 1934, p. 40.

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later to become chairman of the National Industrial Recovery Board, wrote: "The economic planning by the NRA is not designed to regiment individual lives to serve the state, but to free individuals from being regimented in the service of huge private organizations of industrial and financial resources which accept little legal responsibility to the public welfare."[102] He speaks of the government acting "not as dictator but as moderator — an umpire to insure fair play and a fulfillment of public obligations."[103] Even eminent political scientists pronounced "the NRA — as an adventure in government — consistent with the spirit of American institutions."[104]

NRA Restricts Competition

But while theoretically the NRA may unwittingly have been designed to put into practice the policy of laissez faire, actually, "The principal characteristic of the misguided activities of business to run away with the NRA and to establish their concept of industrial self-government was the effort to restrict competition much further under legal sanction,"[105] in short, to demolish laissez faire. This, to some observers, meant not only monopoly but the beginnings of fascism, for, so it was argued, "It is not to be expected that fascism in its various forms will be quickly reversed merely because there are those who decry excessive regimentation by government over industry. The dictatorships to which we now refer are not dictatorships of politicians but are dictatorships of business blocs which use their influence in forms of government to dominate those interests, including labor, which restrict their attempts to retain their power."[106]

As the full import of code provisions began to be realized, observers in increasing numbers saw that the NRA was doing and would do little to set free economic competition, that is to stimulate rivalry in efficiency of service to the public at prices as low as possible. Instead it became clear that the NRA was rapidly intensifying what has been called the "politics of business,"[107] that is the rivalry for power to

(102) D. R. Richberg, "Constitutional Aspects of the New Deal," *Annals*, March 1935, p. 28.
(103) Ibid., p. 29.
(104) A. N. Holcombe, loc. cit., p. 273.
(105) H. S. Person, "The Future Relations of Government to Business," *The Society for the Advancement of Management Journal*, March 1936, p. 40.
(106) Norman J. Silberling, "Limitations of Government Control of Industry," in *Papers and Proceedings of the Thirteenth Annual Conference of the Pacific Coast Economic Association*, December 1934, p. 13.
(107) Professor O. H. Taylor, loc. cit., p. 180.

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control the market. It became a struggle for power to deprive the public of alternatives in order to obtain the rewards of superior strategic position rather than of superior competitive efficiency. It was this politics of business which came to absorb so much of the administrators' time, and which on several occasions ultimately forced its way not only through the chairman of the National Industrial Recovery Board but through congressmen and cabinet officers on to the very desk of a much overworked President (as e.g. the automobile settlement of April 1935); it was this politics of business operating through newspapers and even specially formed propaganda agencies; it was this politics of business and of labor unions completely drowning out the voice of the consumer and the public; it was this politics of business which became so large and indissoluble a part of NRA as to make nearly every economist in the country jubilant when in May 1935 the Schechter decision by a unanimous verdict of the Supreme Court put an end to the National Industrial Recovery Act.

THE NRA AND FUTURE RELATIONS OF BUSINESS AND GOVERNMENT

Need for Careful Research

The NRA experience has by no means solved the problem of industrial control but it has been extremely valuable in that it has revealed hitherto unsuspected and too lightly estimated difficulties. It has demonstrated first, that the extent of knowledge which is possessed both in industrial and in academic circles concerning the economic problems and practices of particular industries is woefully inadequate. This makes it imperative that any future experiment in industrial control be preceded by considerable inquiry and research concerning the present status of competition, on a scale at least as comprehensive as that completed last year by the Royal Canadian Commission on Price Spreads.[108]

Dangers of Pressure Politics

In the second place, NRA experience indicates that future relations between government and business for some time to come are likely to be seriously disturbed by pressure politics both in business and in government. Common interests will be shelved in order to satisfy

(108) See their *Report*, Ottawa, 1935.

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special interests, much in the manner that public welfare was ignored in the purchasing of silver and in giving a bonus to war veterans. This promises no small amount of obstruction to economic progress for, obviously, "unless the power of pressure groups can be restricted, economic management by the government will be diverted in a large measure to promoting or protecting special interests, to protecting established enterprises and organizations against innovation and change and to keeping prices rigid rather than to making them flexible."[109]

Impartial Administration Imperative

In the third place, it appears that both in government and in business little has been really learned from the experience of the NRA. In many quarters within the Administration there has been a notable reluctance to abandon the NRA, no doubt in part for reasons of political face-saving. But business men similarly reveal an astonishing lack of insight into the real evils of NRA. Even so eminent a body as the Chamber of Commerce of the United States has gone on record to the effect that "any new legislation should give a special right of termination corresponding to the right of initiation and presentation of rules for fair competition, which have been approved, upon giving reasonable notice to the governmental agency. There should be a similar right in the governmental agency to terminate upon reasonable notice."[110] This procedure, characteristic of treaties and agreements between sovereign powers, not only implies an untenable relationship between the citizen and society, but virtually amounts to granting business men the right to obey the laws only so long as it suits their convenience. Even more curious is the further recommendation "that the remedy would appear to call for the creation by Congress itself of precise standards of fair competition, making the laws to operate without the introduction of administrative agents or decisions."[111] While obviously rules should be precise, imagine a football game, or any other competitive athletic activity with only rule books but no referee!

Certainly if NRA experience has demonstrated anything it has shown the imperative necessity of placing future administrative con-

(109) Sumner H. Slichter, "The Adjustment to Instability," *American Economic Review,* Supplement, March 1935, vol. 26, no. 1, p. 213.
(110) U. S. Chamber of Commerce, Referendum No. 68, Washington, 1935, p. 10.
(111) Ibid., p. 13.

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trol in the hands of an impartial board which can maintain continuity of policy and method. "An impartial board is the only sort of superior administrative body that could rescue NRA from its bargaining plane and establish it on a basis of important administration."[112] Even when public officials owe no allegiance to pressure groups, they often hesitate to enforce the law, especially when controlled newspapers and lobbies threaten the finances and officials of the party in power. Under-officials know that they cannot expect to gain favor by making new enemies. How much more unlikely is the prospect of sound public policy in a board composed of representatives of the interests concerned.

Diversity of Techniques

In the fourth place, the experience of NRA has shown that the problems of American industry like those of British industry are "wide and diverse and a wise industrial policy must be correspondingly many-sided. No one trying to deal with a real problem has ever found the smallest assistance either in the platitudes of inaction or in the grandiose formulae of revolutionary change."[113] This will mean in practice that future relations of government and business are likely to take a larger diversity of forms than in the past. It seems highly probable that "as a direct consequence of the conditions that have developed in recent years from the abuses of liberty and extreme individualism we are in an era of greater government interference and control"[114] than ever.

But this control should conform to the principles of laissez faire. It should economize coercion. It should scrupulously avoid the "heart of the contract," i.e. relative prices. It should seek to secure equality of opportunity and liberate workers, consumers and enterprisers from arbitrary economic coercion. And it should not hesitate to be resourceful in its techniques.

The implications of this last point are not often fully understood. For, so far as the laissez faire idealist is concerned, there is no one way that is good while all others are wrong. "The liberal creed," says one of the foremost present-day apologists for laissez faire, "would involve a large measure of political control: outright collectivism in

(112) Brookings Institution, op. cit., pp. 82, 748.

(113) *Britain's Industrial Future,* The Report of the Liberal Industrial Inquiry (London, 1928), p. 453.

(114) Michael F. Gallagher, *Government Rules Industry* (New York, 1934), p. 181.

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some areas; deliberate enforcement of competition in others; prevention of extreme inequality largely via taxation in the distribution of property, income, and power."[115] Markets and industries differ so widely that no one device can be exclusively relied upon to make sure that monopoly power makes its maximum contribution to abundance of goods at low prices. Government regulation, consumer cooperation, fair government competition through government corporations, government encouragement and subsidy, government participation in management — but first and foremost individualistic competition guided by industrial leaders keenly aware of the social responsibilities of economic statesmanship — all of these techniques should be utilized, in appropriate areas, as instruments of social control[116]

A distinguished foreign scholar of conservative persuasion in a notable passage in a notable book has summarized the conservative economist's position as follows:

"It is a mistake to look upon governmental or municipal enterprise and on every form of governmental interference with private business as an expression of an anti-liberalistic economic policy, incompatible with the liberal capitalistic system. Even at the height of the sway of liberalistic economic policy and, what is more, in consequence of this policy, governments interfered with private industry and carried on their own industrial enterprises. One cannot consider governmental railroads, municipal slaughter-houses, market halls, gas- and waterworks, and electric-power stations as fundamentally opposed to the capitalistic system, or regard an extension of these plants on the part of the government as a step toward socialism."[117]

For those whose thinking penetrates no deeper than such empty clichés as "bourgeois," "class exploitation," "regimentation," "socialistic," "less government in business," or what have you, the suggestion that no panacea either of system or of technique exists which can cure all the ills to which modern technology has made us heir, seems to betray confusion and lack of loyalty. Despite the experience of the NRA there still seem to be many who fail to see that the problem of industrial control should be tackled piecemeal, industry by industry, practice by practice, after careful research and experimentation. They would revive a blanket control such as existed under the NRA. And there are many more who see the solution in terms of business

(115) Henry C. Simons, "Rules versus Authorities in Monetary Policy," *Journal of Political Economy,* February 1936, p. 1.

(116) Donald H. Wallace, loc. cit., pp. 85, 87.

(117) H. von Beckerath, *Modern Industrial Organization* (New York, 1933), chap. IX, "Government and Industry," pp. 298, 299.

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self-government without government supervision and resist every attempt at social control, merely because it *is* social control, without examining its social and economic desirability.

Other Lessons of NRA

In the fifth place, the NRA experience has lent additional emphasis so far as the relations between business and government are concerned to a number of "don'ts" which while recognized long ago in the literature on the subject were temporarily shoved aside with the adoption of the NRA. In any future attempt to put into practice a measure of industrial control, let us hope that no amount of argument about emergency or economic collapse will eclipse the importance of such fundamental imperatives as: make haste slowly; first get the essential data; keep at a distance the pressure of bargaining groups, which brought so much "horse trading" and "bare-faced poker playing" into the NRA[118]; don't bite off more than you can chew; remember that even the simplest policies if not precisely defined have a multiplicity of ramifications and complications that can hardly be removed even by miracles of administrative efficiency. Moreover, do not place too much reliance upon the concord of business men to secure enforcement, even within an industry, for conflicts due to differences between large and small businesses or due to geographical sectionalism cannot be removed. Furthermore, make the regulations as few, as uniform and as simple as possible. Do not muddle the administration of fair trade practice legislation with other legislation, such as labor legislation. Above all, remember that few persons, especially in business, can afford to forego short-run profits. Do not place in positions of public administrative responsibility too many persons whose training has been mostly confined to maximizing profits, for they cannot learn over night the longer view. Insist on years of expert scientific training and career service, for without excellent administrators even the best of techniques availeth little. These are some of the maxims developed in the experience of the past which seem not to have lost power or validity.

The Location of Power

In conclusion, the fact should be emphasized that the passing of the NRA has, far from solving the social problem, actually made it more

(118) Galloway, op. cit., p. 414.

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acute. For as Professor J. M. Clark remarked in his presidential address to the American Economic Association last December,

"This present crisis marks an epoch in the relation of government to business. Earlier controls dealt with localized sections of industry, applying standards devised from the unregulated field, or dealt with particular incidental aspects other than the central question, 'what and how much to produce and at what price.' Now we are dealing with industry as a whole and going to the core of the matter. Earlier attacks left unquestioned the main redeeming feature of private industry, its power to produce goods plentifully and efficiently. Now this main feature is called into question and apparently few leaders of private industry actually realize the seriousness of the situation."(119)

The ultimate issue, of course, is who shall have the power — government or business? How secure liberty to the laborer, the farmer and the consumer, if, as Justice Holmes was wont to say, "liberty of contract begins where inequality of bargaining power ends," i.e. how and how much should society equalize bargaining power? How eliminate undue concentration of economic power and advantage or ensure to the public a proper use of such power wherever it may happen to lie? Toward an answer to this question, the contribution of the NRA was important but largely negative. Many economists feel that a renewed attempt should be made to enforce anti-trust laws, that monopoly price structures should be broken by removing tariffs and other barriers to competition, or even by providing government competition, and that self-help among laborers and consumers should be encouraged and assisted in order to increase their bargaining power.

But the ultimate issue will no doubt remain to harass this generation as did the conflict of Church and State one hundred years ago. In concluding a notable volume on the trust problem, an eminent American economist formulated in excellent fashion the status of the problem as it exists today. Long before the NRA he epitomized the situation in a passage which forms a fitting conclusion to this paper. He said:

"Projected economic systems differ essentially only in the matter of location of power. The greater issues of reorganization and reform turn principally upon this one point. It is the excess of power and the abuse of power in the hands of a few together with the consequent limitation upon the opportunities of the many, at which complaint is directed. . . . Differences in personal fortune weigh less than does the fact that wages and employment and all other things

(119) J. M. Clark, "Accomplishments and Prospects of American Economics," *American Economic Review,* Supplement, March 1936, vol. 26, no. 1, p. 9.

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upon which personal fortunes depend are so largely under the control of people who are entrenched in positions of power. . . . The feelings of helpless dependence, involuntary subordination, and personal humiliation which are the recurrent experiences of the man underneath, open the doors to the forces of revolution more quickly than do poverty and physical hardship.

"The people yield every conceivable honor to the military chieftain who brings his talent to the service of his country in time of need, but they do not reward him with perpetual power which he may pass down by method of inheritance to his descendants or others. The greatest of our statesmen bow to the will of the people and depend upon the suffrage of the latter for position. The divine right in government and hereditary aristocracy in control of the state have passed away. It is much the same feeling that causes people to question how far one individual may go in the domination of our economic life, how much control may safely be given to an exceptional capitalist, and what are the relative rights of a powerful employer and the laborers under his control."(120)

(120) R. E. Curtis, op. cit., p. 505.

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