

COWLES COMMISSION
FOR RESEARCH IN ECONOMICS
MONOGRAPH No. 2

NRA ECONOMIC PLANNING

NRA ECONOMIC PLANNING

By

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THE PRINCIPIA PRESS, INC.
BLOOMINGTON, INDIANA

1937

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FOR RESEARCH IN ECONOMICS

SET UP AND PRINTED
IN THE UNITED STATES OF AMERICA BY
DENTAN PRINTING COMPANY
COLORADO SPRINGS, COLORADO

TO
ALFRED COWLES 3RD AND
ELIZABETH STRONG COWLES
WITH ADMIRATION AND AFFECTION

FOREWORD

Within less than a year after the National Industrial Recovery Act became law on June 16, 1933, a large area of American industry and trade had come under its sweeping powers. Four hundred and fifty codes had become statutes. Five million employers and twenty-three million workers were subject to its supervision — in this far-flung effort, amid a grave emergency, “for the preservation of American standards.” Acclaimed by both industry and labor at its inception as a “New Magna Charta,” it became the object of the most intemperate adulation and most violent condemnation. No institution has been accorded more space in the discussions of the press within an equal period of time. Reaching with its broad powers into the farthest corner of economic life, it was the most bitterly debated governmental agency in American history.

In a symposium, to which seventeen specialists contributed, George B. Galloway has declared that, “an authoritative, accurate and expeditious treatment of such a large subject was beyond the mental and physical powers of one person.”¹ With this statement the author fervently agrees. For much detail in the processes of code making and administration, therefore, the reader should consult other sources which together give somewhat comprehensive descriptions² supported by more or less interpretation of the NRA.

What the present study attempts is to reveal first of all the more important fundamentals in the evolution of NRA policy. The inner reasons for decisions, it will be realized, could not properly be disclosed as long as the organization was a functioning agency. But on May 27, 1935 what President Roosevelt had proclaimed as “the supreme effort to stabilize for all time the many factors which make for the prosperity of the nation” came to an abrupt end. The great experiment, unprecedented in the history of the United States, was finished: the Supreme Court had ruled the Act unconstitutional. It remained to liquidate the vast code organization, which was finally ac-

¹George B. Galloway and Associates, *Industrial Planning under Codes*, New York, 1935, p. xi.

²For a painstaking discussion of permanent value on administration, code-making, and the nature of code provisions, the reader should consult the volume of the Brookings Institution, *The National Recovery Administration: An Analysis and Appraisal*, 1935. For analyses of special industries and discussions of economic planning, see George B. Galloway and Associates, *op. cit.*

completed on December 24, 1935 by a Presidential order, transferring personnel to the Departments of Commerce and Labor.

In each chapter, to a greater or less degree, as seems useful, an attempt is made to outline the rapidly changing decisions and the reasons therefor. A further aim is to provide more complete statistical data and a more searching analysis, from the point of view of economic theory, of the objectives and efforts of the NRA. It is hoped that economic theory itself has been advanced as a result of these appraisals. And, finally, an endeavor is made to appraise constructively the experience afforded by this great undertaking. Thus, in the light of this experience, there is attempted an answer to the all-important question: What can we expect from economic planning?

In justification of such an ambitious endeavor, the author should indicate that he enjoyed an exceptional, indeed unique, opportunity in the NRA, holding the position of principal economist and director of research on policy matters from July, 1933 until September, 1934. During that time he served continuously under all four of the chiefs of the Research and Planning Division (Alexander Sachs, Stephen M. DuBrul, Robert Montgomery, and Leon Henderson) in the supervision of the reports on policy problems — costs, purchasing power, open prices, wage differentials, hours of labor, effects of codes on small firms, etc. Most of these studies, totalling over twenty-five, prepared by a staff of some sixty investigators, are more thorough than published material on such questions in relation to the NRA. It is from this extensive reservoir that the author has been able to draw for a good deal of the statistical data presented in the present study. Moreover, having had access to files relating to policy, and having been called upon constantly for memoranda on policy and criticisms of proposals of various groups, he is enabled to provide here much source material hitherto inaccessible.

In some instances the author, with the permission of the writers, has edited the texts of documents so as to make them conform more nearly with what was really meant. It should be appreciated, however, that no more extensive change in phraseology has been attempted than the occasional choice of a more precise word or phrase. The justification is that most memoranda were written hurriedly with a view toward attracting sufficient attention from an administrative officer to cause him to call a conference. In such conferences obscurities which had crept into the hastily written notes were cleared up. Thus, the texts as printed herein represent the actual situations much more clearly than what might perhaps be called their tentative drafts.

The constant criticisms and objections which the author made in the line of his duty as an adviser of the Administration, it should be clearly recognized, were naturally confined to the councils of the organization and could not properly be made public as long as the NRA remained in active operation. But now, two years after the Act has been declared unconstitutional, at a time when moves to re-enact some of its features are developing, publication of a critical analysis of the general social and economic objectives and accomplishments of the NRA, and the facts, both favorable and unfavorable, is a public necessity. In this connection we add that, although the author and his NRA staff often uncovered severely unfavorable evidence, they enjoyed a freedom in carrying out these studies and presenting complete conclusions without fear of administrative reprisals, which perhaps was without precedent in government work: the author, in June, 1934, when asked for an appraisal to guide the President in making recommendations to Congress, even felt free to recommend the abandonment of the NRA as then constituted.

The author wishes to make clear at the outset his conception of the proper domain of the social scientist. In general the social scientist does not prove theses regarding social matters; he obtains evidence in support of or against particular doctrines, and interprets this from the point of view of related experiences or social philosophies. He may therefore properly assemble facts pertaining to any public policy, criticize it freely in the light of these facts and whatever social philosophy he wishes, and also offer alternative suggestions which he should criticize even more searchingly. But it is for the public and the statesmen to decide what is best for the public. The social scientist has no business doing this; his task should end when he has presented facts and analyses based upon experience and knowledge of general rules. Once a social scientist urges a particular public policy he is not then a scientist; he is a politician or reformer. Therefore, the author's aim has been to give the facts on all sides as found by his organization within the NRA and also by the Cowles Commission for Research in Economics. In some instances they favor the Administration; in others they do not; and in no case is it claimed that the facts presented are all-inclusive. Much remains yet to be said on all sides. But there is certainly no excuse for brushing aside lightly the evidence presented, because it disagrees with one's prejudices or conceptions of situations about which one lacks facts. Correlations do *indicate* relationships and facts otherwise unknown and must be given considerable weight in all judgments.

The critical reader will find much in the present volume in disagreement with published interpretations of the NRA. In instances where disagreement is evinced the reader will have to make his own choice. But he should be advised that the present work was begun on July 27, 1933, the day the author joined the NRA, and represents a careful attempt extending over three years to sift facts from rumor and conjecture.

While a substantial number of the original fundamental policy memoranda to Alexander Sachs and Stephen M. DuBrul, prepared by the author's staff, were phrased in mathematical language, the author has deliberately avoided all use of mathematics in the present volume. By such procedure he believes that the text will be understandable to a larger group. The mathematical reader who is interested in applications of mathematics to governmental policy making is referred to the author's *Dynamic Economics*, Bloomington, Indiana, 1934.

Also in order here is some explanation of the author's extensive use of footnotes. Briefly, this plan of presentation has been employed with the aim of widening the number of readers. Footnote material has been addressed to the following two classes: (1) the professional economist who wishes to pursue various points of classical economic theory challenged in the text or further implications of new proposals, and (2) the non-professional reader who may occasionally welcome more elementary explanations. The main text, representing as it does a compromise, can, it is hoped, be read easily and with profit by all who are interested in the experience of a super-agency for economic planning and the social and economic consequences of its major policy decisions. The professional economist, the author hopes, will tolerate what will appear to him as unnecessary explanations, and the layman will patiently read on when he fails to understand a technical point which, after all, may not be essential to the main story.

The author is very much indebted to Stephen M. DuBrul, now of the General Motors Corporation; John P. Frey, vice-president of the American Federation of Labor and formerly a member of the NRA Labor Advisory Board; and James W. Hook, president of the Geometric Tool Company and formerly a member of the NRA Industrial Advisory Board. All have read the manuscript; all have made important criticisms and suggestions; and all have furnished significant additional source material. Alfred Cowles, 3rd, Gerhard Tintner, and the late W. F. C. Nelson of the Cowles Commission for Research in Economics have also read the manuscript and offered constructive criticisms. Alexander Sachs has made available valuable documents

throwing light on the framing of the Act and the early organization. Leon Henderson and Guy C. Gamble have provided friendly help in supplying studies made after the author left the NRA. Paul Kaufman, formerly an editor in the Research and Planning Division, has critically examined the manuscript and has given numerous suggestions regarding the structure and form of the volume. Dickson H. Leavens has assisted in seeing the book through the press. Forrest Danson and Herbert E. Jones of the Cowles Commission have helped greatly in the preparation of the various tables and charts. Harold T. Davis, James W. Hook, Stephen M. DuBrul, Frank Horack, Vera Manning, Kathryn E. Withers, Edward Pelz, Claire Proctor, and Margaret Simpson have assisted in the proof reading. The Dentan Printing Company has patiently incorporated changes in the text and in general extended every possible courtesy to the author. To these and to all who have given permission to quote from reports, memoranda, or other documents, the author is deeply grateful.

The author also acknowledges indebtedness to all his staff of the research section of the Research and Planning Division and especially to the project directors, Henry B. Arthur, Spurgeon Bell, Orton W. Boyd, Eunice Coyle, Andrew T. Court, Arthur O. Dahlberg, Arthur H. Holden, George W. Jones, H. S. Kantor, Walter Keim, Y. S. Leong, Walter Mitchell, Jr., Robinson Newcomb, Victor Perlo, Emily C. Pixley, Henry H. Pixley, W. H. Rastall, Max Sasuly, Gustav Seidler, Jr., Peter Stone, H. F. Taggart, T. K. Urdahl, Simon N. Whitney, and Gertrude Working; to their technical assistants, Ralph Barsodi, H. C. Biscoe, Anne Golden, R. A. Neary, Louis J. Paradiso, John H. Payne, C. R. M. Tuttle, and Clement Winston; and to his administrative aids, Mildred Chisholm and Lucile Armentrout, all of whom, while serving the NRA, helped to uncover and analyze material upon which the present study is based. It is hardly necessary to add that the author alone is responsible for the interpretations and conclusions of the volume.

CHARLES F. ROOS.

Colorado Springs,
January 25, 1937.

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CORRECTIONS *to* NRA ECONOMIC PLANNING

BY CHARLES F. ROOS

- P. 34, footnote 41, paragraph 4, line 1: *for 5% read 3%.*
- P. 36, paragraph 2, line 11: *for the Moulton proposal of subsidies read the proposal of general subsidies.*
- P. 38, paragraph 3, line 4: *for Moulton read others.*
- P. 374, paragraph 1, last line: *for ally of read ally or friend of.*
- P. 374, paragraph 2, lines 5-7: *delete In particular, . . . such loans.*
- P. 374, paragraph 2, line 7: *for failure of Congress read failure of Congress and the Roosevelt Administration.*

CHAPTER I

THE EVOLUTION OF THE NRA IDEA

1. *The Nature of Economic Planning*

Obviously, any adequate understanding of the NRA must take account of its foundations both in respect to immediate origins and to more remote antecedents of time. For, although to the country as a whole it appeared to be created as a revolutionary innovation, all of its elements were, potentially, at least, existent in separately organized forms or in long-agitated measures, and its main features were actually in force as essential instruments of America's program in the Great War. In fact, as we shall see, a strikingly similar experiment was attempted by England more than a century ago and abandoned after one year. What was proclaimed in 1933 as a novel sweeping experiment was in effect a close co-ordination of several factors, some more fully developed than others yet all fused and administered by a single, federal agency.

It is this background of evolution and contemporary origins which has, rather strangely, been so little realized and which it is hoped will give this and the following chapter special value, at least in supplying the basic facts and the citation of most relevant sources.¹ Clearly, the "great experiment" cannot possibly be viewed in its true perspective without the aid of such historical light.

To begin this story of evolution, we recall that for nearly two centuries industrial capitalism has flourished in something like its present form with relative freedom from government supervision and regulation throughout the world. All such economies have, in general, relied upon competition to establish prices which would determine what products and what amounts of these should be produced, and to whom they should be distributed. In such systems, when prices of certain commodities rose in relation to prices of others, their consumption was discouraged, and their production encouraged; when prices fell, their production was discouraged, and their consumption

¹The omission by previous writers of much specific analysis of activities and policies of the NRA is entirely explained by the inaccessibility of confidential data and the lack of continuous intimate contact of interpreters with the policy-making groups of the organization. But the neglect of the broader historical perspective is puzzling.

encouraged. Under these conditions, production and consumption of goods have persistently wavered around an unstable equilibrium. And when production and consumption have attained equilibrium values or climbed above them, few have demanded changes in fundamental economic mechanisms; but when the pendulum has swung in the opposite direction and want has become acute, agitation has almost always arisen for far-reaching changes, even for the abolition of the price mechanism.²

In considering governmental modifications of the price system arising from such social pressures the English experience of the early nineteenth century is particularly significant because of the striking parallelism between parliamentary measures then passed and the American National Industrial Recovery Act. Prior to 1824, English Parliaments passed between thirty and forty laws³ designed to pro-

²Several attempts to establish economies which would function without price are well known. The famous Owenite community of 1828 at New Harmony, England offered to provide food, clothing, education, and housing for its members without charge, each participant being expected to "render his or her best service for the good of the community." Two years later the communal property was sold at a great loss to the founders. All such ventures in the United States except in a few small religious communities have met similar fates. In 1917, Russia startled the world by embarking on a communist scheme of unprecedented scope and boldness. This early moneyless experiment soon crumbled, however, and has now been replaced by a plan in which the state decides what goods and what amounts of each shall be produced, and actual distribution has been accomplished by means of rationing plus the pricing of certain goods. Staples like bread, for example, have been rationed to the workers and peasants, but luxury products, such as soap, perfume, and automobiles, have been sold. There has been no free market for capital, the utilization of all investments and savings being regulated by the Gosplan. This agency, by the help of statistical and other information, has decided what amounts the Government should invest in new plant and equipment. For an explanation of the Russian plan see Calvin B. Hoover, *The Economic Life of Soviet Russia*, New York, 1932.

Efforts to improve social conditions have been numerous. In Europe the influence of Karl Marx and his followers has been very great. In Germany they were able to force economic revisions of the capitalistic structure—old-age pensions, unemployment insurance, accident insurance, social medicine, and shorter hours of work.

In the United States social reform of the capitalistic system has been advocated chiefly by Thorstein Veblen and his school and by Henry George and his followers. To the former group belong many who were instrumental in formulating the policy of the Roosevelt Administration.

³It is of some interest to note here that in 1256, the city of Norwich, England, was granted a charter by Henry III on condition that "no guild whatsoever be held in the aforesaid city to the detriment of the same city." As a result of this provision of the charter, in 1288 and again in 1291 the tanners of Norwich were brought into court for attempting to organize and code their industry, and in 1293 the fullers, cobblers, and saddle-makers ran afoul of this law. By 1307, however, the rulers of Norwich had changed their point of view and embraced some of the principles of "economic planning." In that year, they passed a city ordinance ordering every craft or industry to be coded "so that no scandal should arise against the city from faulty goods or bad workmanship." In 1406 the mayor and aldermen of London ordered a code of wages for the brewers' em-

hibit and prevent organization of both employers and employees. Nevertheless, in the last half of the eighteenth century and the beginning of the nineteenth, illegal associations pursuing a secret existence became more numerous. In 1824 a committee of the House of Commons reported that the combination laws "had not only not been efficient to prevent combinations either of masters or workmen, but on the contrary had, in the opinion of many of both parties, had a tendency to produce mutual irritation and distrust, to give violent character to the combinations, and to render them highly dangerous to the peace of the community." It recommended that "masters and workmen should be free from such restrictions as regards the rate of wages and the hours of working, and be left at perfect liberty to make such agreements as they mutually think proper." In pursuance of recommendations of this report, a statute was created abrogating the anti-combination laws. But the immediate results were so far-reaching and alarming that the House of Commons appointed another select committee to re-examine the various problems. Without delay this agency recommended the total repeal of the act of 1824; and in 1825 the House passed a measure, the preamble of which declared, as did American political parties in 1936, that combinations were "injurious to trade and commerce, dangerous to the tranquility of the country, and especially prejudicial to the interest of all who were concerned in them." Under the law of 1825, however, according to

ployees on the initiative of the brew masters, the ordinance reading in part: "No one of the mistery [shall] pay a journeyman more than three pence a day and his table between 29 September and 25 March and four pence a day between 25 March and 29 September and if said journeymen refuse to work on these terms, they [the journeymen] may be arrested and brought before the mayor, warden, or chamberlain to be punished." Thus, the masters coded maximum wages and it was illegal for labor not to accept these awards.

In 1466 the tailors of Exeter obtained from the Crown a charter of incorporation that permitted them to exercise control of their trade without regard for local demands or needs. To accomplish their purposes, they used such "modern" methods as boycotts, moral and physical pressure, and various forms of racketeering. As a result, the borough decided that, in the public interest, the royal charter should be revoked and the recalcitrant guild brought under the control of the city. It accomplished the cancellation by spending various sums for horse hire, wines, procuring of documentary evidence, personal expenses of the mayor and recorder, and the final *greasing of the legislative ways* for parliamentary repeal of the charter, the last costing £8. The revoking of the charter so angered the tailors that they armed themselves and went through the shops of the non-guild tailors and compelled them either to join the guild or to leave the city. After the guild depended upon its militant strength rather than upon its charter rights, Exeter became a 100 per cent Tailors' Guild city. The city corporation then changed its policy of antagonism, presumably because the determination of the tailors to organize was too strong to resist. See, for instance, Erwin F. Meyer, "English Mediaeval Industrial Codes," *American Federationist*, Vol. 41, 1934, p. 161.

Arthur Greenwood, formerly general secretary of the British Labour Party's Advisory Committee:

. . . no persons were liable to punishment for meeting together for the sole purpose of consulting upon and determining the rate of wages or prices which they, being present, would require for their work or pay to their workmen, or the hours for which they would work or require work in any trade or business, or for entering into any agreement, verbal or written, for the purpose of fixing the rate of wages or prices which the parties to it should so receive or pay. But all persons were subjected to a maximum punishment of three months' imprisonment with hard labour who should by violence, threats or intimidation, molestation or obstruction, do, or endeavor to do, or aid, abet or assist in doing or endeavoring to do, any of a series of things inconsistent with freedom of contract which the act defined.⁴

So much for the early English experience. As regards the United States we may say that so long as a high production of goods and services has been maintained, unregulated⁵ capitalism has remained, in general, quite satisfactory to the American people. Yet, even as early as 1918 as a result of experiences of the War Industries Board, some industrial leaders cherished the notion that planning through the co-operation of Government and trade associations was desirable. For instance, this view was held by General Hugh S. Johnson who, as we shall see, took a leading part in the writing of the National Industrial Recovery Act.⁶

⁴*Encyclopaedia Britannica*, 14th Edition, Vol. 22, p. 374.

⁵With the exception of such industries as railroads and utilities, and a few trade practices.

⁶In a report in December, 1918 for the War Industries Board Johnson wrote: "No one will contend that there can ever be any peacetime necessity or reason for such close-held control over industry as was practiced during the war, when, under price-fixing, allocation, and priority policies, the manufacturing facilities of the Nation were almost as effectively transformed into governmental agencies as though the Government had absorbed them. Their production was scheduled and allocated, their compensation was fixed, and their contracts directed. Still the great lessons remain: efficiency is attainable only by co-operation; second, industry is susceptible of such regulatory control as would prevent the abuses aimed at by the Sherman Act and yet attain the efficiency of co-operation without impairing the advantages of individual initiative.

"Nor need these principles be stated in any vague and general terms. What is needed is a statute:

"(a) Validating trade associations for mutual help, not conducted for profit and open to all.

"(b) Validating acts done by these organizations or members of them in pursuance of agreements with, or directions by, Government.

"(c) Authorizing license by the Government to individuals to pursue specific courses of conduct shown to be in the public interest, validating acts done in pursuance of such licenses, and providing for the revocation of such licenses when-

Also during the nineteen-twenties some American economists advocated a mild type of economic planning which would embrace production control of the natural-resources industries. Essentially this idea was expressed by Alexander Sachs, who later became the organizer and first director of the Research and Planning Division of the National Recovery Administration. He believed, with many American business men and economists, that planning of certain important elements within the capitalistic structure was possible and desirable. In essence, he preferred to retain the advantages of a capitalistic system but to eliminate waste and various abuses by general controls.⁷ A much broader and more revolutionary view was expressed by Rexford G. Tugwell, who, in the volume *The Principle of Planning and the Institution of Laissez-Faire* (1931), contended that planning must be universal in application and, hence, national in scope. Such planning he defined as the opposite of what he termed laissez-faire conflict, asserting that it should endeavor to accomplish expertly-determined and well-directed public aims and not be devoted to private money-making ventures. According to Tugwell economic planning could not, "in any social sense," leave out of its calculations any industry or group of industries. In a more precise manner, George B. Galloway, who was chief of the planning section of the Research and Planning Division of NRA, has defined industrial planning, as visualized by others who held general views somewhat similar to those of Tugwell, in the words:

The term "industrial planning" has come in recent years to have increasingly precise meaning and content. . . .

ever their continuance appears to be not in the public interest for any reason whatever.

"To administer such an act a mechanism is required, an organization set up on a different theory than any permanent organization we now have—not a policeman, not a positive or negative agency, but a co-operator, an adjuster, a friend; in short, an agency set up on the theory of the war organizations, the Food, Fuel, and War Industries Administrations. . . .

"Such an organization should be composed of a member for each of the proven divisions of the task, Food, Fuel, Raw Materials, Finished Products, Labor, Railroads, Shipping, Finance, Imports and Exports. . . .

"The whole should be served by a central bureau of planning and statistics with a central mechanism for the investigation of costs and prices, and for the study of conservation and standardization. The Federal Trade Commission should be retained as a separate body to investigate abuses and to report and recommend action to the central agency. It should serve in close co-operation, but it should not be a part of the central agency, which should report to the President direct. Duplicated functions in executive departments should be removed from them and given to the central agency . . . the demonstrated necessity of taking such an organization out of partisan politics should be studiously considered."

Committee Print Number 3, Nye Munitions Committee, United States Senate.

⁷For a further elaboration of Sachs' views see footnote 41 of this chapter.

"To those who have given it more definite form, industrial planning implies the stabilization of production, employment and prices; the standardization of materials, products and methods, and the substitution of concerted action and forethought for unco-ordinated and predatory competition, either within a single industry or over the entire area of industry. It means the shaping of individual and corporate industrial activities into a co-ordinated whole, and involves large and coherent policy-making, deliberately implemented in such fashion as will make those policies effective.

Industrial planning is the conscious guidance of our industrial life by collective methods. . . . To be sure, the execution of group plans involves some limitation upon the economic decisions of individuals or corporations whose activities must be adjusted to the policies adopted for the industry as a whole. The decisions subject to limitation include those pertaining to production, prices, hours, wages, savings, investment, trade practices and the use of property.⁸

It appears, therefore, that almost all shades of industrial planning, ranging from government control of a few major factors to con-

⁸George B. Galloway and associates, *Industrial Planning Under Codes*, New York, 1935, pp. 3 and 4. See also William N. Loucks, *Annals of the American Academy of Political and Social Science*, July, 1932, and Lewis L. Lorwin and A. Ford Hinrichs, *Final Report*, National Planning Board, 1934.

Professor James G. Smith of Princeton University has made the following able observation on the meaning of economic planning:

"Not long ago, to advocate economic planning meant something definite, even if it was utopian. Economic planning connotated socialism or communism. While there may be no logical sense in permitting the socialists and communists to have a monopoly on the term, or the idea, still there was some advantage in knowing clearly the political complexion of anyone who permitted himself to use these words with approval. More recently, the argumentative advantage inherent in the very idea of 'planning' has been recognized in this propagandist age by the wily capitalists. In fascist countries the capitalists are stealing the thunder of the critical liberal and socialistic or communistic groups by developing an economic planning of their own. Then too, we find a liberal Democratic party in power in the United States with a slogan advocating economic planning; and finally (shades of Alexander Hamilton!) some formerly regarded staunch Republicans have indicated approval of economic planning.

"What is the meaning of this change? As things were in the beginning this term was anathema to practical men of all political flavors excepting only the extreme lefts; and now we have everybody, or nearly everybody, vigorously favoring it. Can it be that we have really attained psychologically that utopian condition of socialism which has been so feared by some? This would be a sanguine view! What has really happened, on the contrary, is that it has been taken up as a fad; and it has come to a point where no one really knows what exactly he is favoring, or what really is meant by economic planning. Each group has a 'plan' and that is what he advocates, and is struggling to have put into effect. But that was true in the old era of rugged individualism! We are all one hundred per cent in favor of economic planning when we do the planning." *Economic Planning and the Tariff*, Princeton, 1934, p. 1.

trol of almost all economic activity in the United States, including the use of private property, had been advocated prior to the NRA. However, even during the depression the economic planners remained in a distinct minority. From the beginning of the great depression to the end of 1931 the most prominent intellectual, political, labor, business, and banking figures of the United States had persisted in denying that the economic system required fundamental reorganization or reform. In general, until the end of 1931, these referred to the business decline as a recession and predicted that normal forces would soon reverse the trend. Consequently, at the instance of organized labor, President Hoover even urged industry to refrain from cutting wages and proposed that political subdivisions, railroads, and industry launch construction programs which would employ members of the building trades even though their wage rates were highly inflated.

It was only after much of the havoc of depression had been wrought⁹ that even feeble attempts were made to correct a few maladjustments. Such early efforts to arrest the decline as the bonus payment of one and one-half billion dollars in the spring of 1931 failed to produce more than a momentary spurt of activity. Even the work of the Reconstruction Finance Corporation in 1931 and 1932 and the open-market purchases of the Federal Reserve Banks in 1932 merely served, if at all, to cushion the precipitous decline in business. In discussing this state of affairs Sachs, for example, expressed the view that the nation had, "through interference with proper readjustments and misconceived and misguided inflationary and deflationary devices, produced a situation of such unsettlement, doubt and paralysis as to have thrown economic life into a stage where the feudalism, barter and scrip of ages gone by" had become contemporary history.

The facts in the case are that there had been a 40 per cent decrease in wholesale prices coupled with a 50 per cent decrease in the national income (current dollars) and an unemployment total of 14,000,000 in the spring of 1933. This extraordinarily low level of activity caused many to believe that the deflation and depression had

⁹Between 1929 and 1932 the production of all capital or permanent goods in the United States declined 80 per cent as against about 52 per cent for Germany and 31 per cent for Great Britain. In the same period production of consumers' goods in the United States dropped 33.5 per cent as compared with 18.2 per cent for Germany and 11.2 per cent for Great Britain. Indeed, the low level of activity in the production of capital goods in March, 1933 was not quite equal to the annual depreciation on buildings and plants, whereas, for over 50 years there had been an increase in such goods amounting to an average of about 3 per cent per year.

been completed and that it was time to start the forces of reconstruction through government action. As a result, following the inauguration of President Franklin D. Roosevelt on March 4, 1933, the people of the United States were compelled to give immediate attention to the subject of economic planning. The Federal Farm Relief Act, the first major piece of new legislation, would give the farmer a greater share of the national income than he could obtain by bargaining under the existing capitalistic system. A banking reform, security-exchange regulation, and the NRA itself followed in rapid order. Simultaneously Tugwell, who had been appointed Assistant Secretary of Agriculture, began writing articles and making speeches which boldly announced that laissez-faire conflict was about to be replaced by a planned economy of well-being for everyone.¹⁰

Although Americans have become widely interested in economic planning only since 1932, measures which, in one form or another, have produced widespread economic effects comparable to those envisioned by planners, have always engaged the interest of governments. Every tax or excise may be regarded as a device to deflect income from one group to another by creating new profit incentives or by destroying old ones. Similarly, each time the United States Congress has raised a tariff, it has decided, consciously or not, to divert business activity to the production of the protected article or to increase the share of the national income received by its producers. Likewise, whenever a state or county has constructed a new highway, it has indirectly determined that parts of its population should settle along the highway and that gasoline filling stations and garages should be built beside it. Similarly, municipal parks have, to an important degree, determined the location and types of housing in their vicinity.

Internal industrial planning, which may be defined here as planning within an industry itself, has likewise existed to some extent ever since the beginning of capitalism. Before an article is produced, experts usually estimate its costs of production and its possible reception by the public. Companies such as the General Motors Corporation require their various plant units to bid on the cost of certain articles, and allocate production to the most efficient units. Similarly, corporations have sometimes purchased and junked the plant and equipment of rival companies, which in some cases had been dissipat-

¹⁰It is of some interest to note that so thoroughgoing was his repudiation of the capitalistic system, that in 1934 Congress conducted an investigation into his "communistic activities," and his philosophy was an important issue in the 1936 presidential campaign.

ing their capital. In such instances, the production of the defunct plant has been taken over by the purchaser. American companies have even attempted to pool financial and production information and, on this basis, to set production quotas and fix prices for industries. This co-operation, however, has been entered into for the purpose of increasing the incomes of the participants, and not with any social motive. Planning by such groups or trade associations has invariably been for private gain or profit.

2. Development of American Trade Associations

The trade association¹¹ movement began in America in 1861 when manufacturers of writing paper assembled and formed the Writing Paper Manufacturers' Association. By 1880 several additional groups had been created for the similar purpose of discussing common problems of pricing, price fixing, and production control; in addition, some of these organizations collected price and production statistics which were made available to their members. Thus, their activities were invariably monopolistic, and by 1890 their operations had become so flagrant that Congress enacted the Sherman Anti-Trust Law partly to curb them.¹² This restrictive legislation has since been strengthened several times and, in consequence, trade associations have found themselves so hampered that they have often been unable to benefit their members, at least openly.

Despite such curtailment of trade association activities, according to an estimate of the National Industrial Conference Board, there were in 1925 about 1000. Thus, it appears that, although operating within narrow legal limits,¹³ some of these organizations have found useful services to perform. Closer examination reveals that several have developed uniform cost-accounting methods and thereby en-

¹¹According to the American Trade Association Executives, a trade association is "an organization of producers or distributors of a commodity or service upon a mutual basis for the purpose of promoting the business of their branch of industry and improving their service to the public through the compilation and distribution of information, the establishment of trade standards, and the co-operative handling common to the production or distribution of the commodity or service with which they are concerned."

¹²It must be recognized, of course, that competitive abuses attributable to the railroads and other large industrial organizations, especially arrogant uses of their money power, furnished compelling additional motives for the enactment of the Sherman Anti-Trust Act.

¹³There have always been trade associations which operated suspiciously close to the limits prescribed by the anti-trust laws. Indeed, the Federal Trade Commission, which is charged with the responsibility of administering the federal anti-trust laws, has frequently challenged in the courts the large trade organizations of today.

sured a common understanding as to the meaning of such items as overhead, cost records, and control of raw-material inventories. Another important activity has been more comprehensive collection and analysis of statistics relative to production, shipments, sales, orders, stocks, and employment. But these functions alone have not offered compelling membership inducements, and consequently trade associations have been forced to develop services yielding more concrete returns to members. Some have promoted standardization resulting as a whole in an annual saving to industry estimated to be as high as \$500,000,000. Research on this and other problems has been supported to the extent of \$25,000,000 or more annually. Several organizations have even endowed professorships in various universities throughout the country to assure research on their problems. Again, quite a large number have made attempts to find additional markets for products of their industries. For example, up to 1926 members of the Associated Salmon Packers had been finding trouble in selling an important proportion of their catches, the pink as distinguished from the red salmon, and to overcome this difficulty the trade association in that year carried on a three months' national campaign featuring a contest for dishes prepared from the pink variety. By expending \$200,000 in this way sales were increased by 500 per cent, and profits secured for the industry.

In another direction some trade organizations have proved of substantial value to their members and the public by effecting the elimination of trade abuses and unethical practices. The principal method employed here has been commercial arbitration, some groups even expelling members who refused to arbitrate disputes. Also, the progressive associations have been active in attempts to reduce industrial accidents and labor turnover, to encourage the training of workers and understudies, and to develop teamwork and morale in industry. Thus, the more alert organizations have found useful services to perform without violating the anti-trust acts.

Although trade associations have thus eliminated some of the competitive abuses arising under a capitalistic system, they have not been particularly interested in curbing trade practices leading to monopoly. Indeed some of these organizations have been, at times, almost completely dominated by a few large companies. Consequently, they have done almost nothing to discourage various monopolistic practices such as sales below cost by large corporations intent on destroying weaker competitors. Neither have they done much toward fostering better labor conditions in their member offices and factories. In brief,

the associations have been mainly dominated by large industrial units actuated often by selfish motives.¹⁴

3. *Trade Agreements Under the Federal Trade Commission*

Combinations of interests, it is almost needless to say, have always sought special privileges from government. In the United States, in particular, they have evoked the criticisms of Washington, Jefferson, Lincoln, Theodore Roosevelt, Wilson, and other presidents. As is well known, at certain periods the public has so revolted against the abuses by trusts that restrictive federal legislation has been enacted, the most important being the Sherman Anti-Trust Act (1890) which prohibited "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations," and declared it to be a violation of the law to "establish or attempt to establish a monopoly, or to combine or conspire to establish a monopoly of commerce between the several states or with foreign nations."

But the Sherman Anti-Trust Act did not dispose of the issues. In 1898, an Industrial Commission created by Congress recommended greater publicity regarding the operation of corporations and the establishment of a federal bureau which would be a clearing house for such publicity. After five years of agitation a Bureau of Corporations was organized in the United States Department of Commerce and Labor¹⁵ to investigate the organization and conduct of corporations and combinations engaged in interstate commerce and to make reports and recommendations regarding them to the President. Following up this idea during the panic of 1907, President Theodore Roosevelt, on the recommendation of the Bureau, permitted the United States Steel Corporation to absorb its southern competitor, the Tennessee Coal and Iron Company, on the theory that, if this were not done, a business depression of tremendous proportions would follow. As a result, after the panic passed, a period of extraordinary concentration, mergers, and combinations occurred in many lines of industries.

Within a few years these combinations had become so menacing as to create a political issue, public indignation forcing both the Democratic Party and the Republican Party to propose safeguards in the platforms of 1912. The Democratic Party, in particular, felt that it

¹⁴For a further discussion of trade associations see, for instance, Simon N. Whitney, *Trade Associations, A Critique of NRA*, New York, 1933.

¹⁵The Department of Labor and the Department of Commerce operated as one department until 1913.

should also do something about "loss-leader merchandising"¹⁶ which had become so important at the beginning of the century. Its platform proposed to regulate competition so as to protect the public from big business and to check loss-leader merchandising which, it was claimed, had greatly increased the mortality of small firms. To carry out this campaign promise, the newly elected Democratic Administration proposed a federal trade commission; and on January 20, 1914, President Woodrow Wilson recommended that Congress establish a federal agency which would be assigned two tasks: (1) to prevent unfair competition and (2) to investigate and report upon the organization and activities of corporations alleged to be infringing the anti-trust laws. In transmitting this recommendation the President explained that the proposed body would be expected to secure justice to business where the processes of the courts had proven inadequate. As was to be expected under the circumstances Congress promptly enacted the legislation setting up a Federal Trade Commission, outlining its jurisdiction in the words: "Unfair methods of competition in commerce are hereby declared unlawful," and authorizing it to require a reply under oath from any corporation believed to be using an unfair method of competition, and, after consideration of all evidence, to issue an order to cease and desist from the offending practice, or to dismiss the case. About the same time Congress passed the Clayton Act which was designed to close some of the loopholes of the Sherman Act.

Almost as soon as the Commission was established, it was deluged with complaints of unfair trade practices, and has been ever since, approximately 95 per cent of the charges being made against competitors. At first, the Commission held private hearings, but when this ceased to be effective as a means to curb unfair practices, it made complaints public. Since the latter procedure aroused a storm of protest from business interests, the Commission has more recently allowed defendants to escape publicity by signing confidential agreements not to continue the questionable practices. But whenever a stipulation has been violated, the Commission has made complaints public and prosecuted the offender.

It should be recognized, however, that large industrial units and their trade associations have not always been in public disfavor. Cooperation of trade associations with the War Industries Board during

¹⁶This practice was developed by large retailers who offered well-known articles at less than cost to convince the public that all their goods sold at reasonable prices. See also Chapter IX, Section 4.

the World War created the belief that if they were released from some of the fetters of the anti-trust laws, they would function to the greater advantage of the public. For a better understanding of the development of this attitude it is worth noting that when the War Industries Board contemplated the inauguration of a policy affecting an industry, it called together the representatives of the trade association affected and discussed the various ramifications of the proposals. Following these conferences the Board drafted and issued to the various trade associations specific directions for carrying out the agreed policy. According to General Hugh S. Johnson, a member of the Board, "sometimes these orders involved an agreement to sell within certain price limits, sometimes to sell only under certain conditions and to certain classes of purchasers, sometimes they involved curtailment in production and sale throughout the industry, sometimes standardization of type, restrictions in the use of materials, and instructions as to shipping. In a few instances the Government actually directed a monopoly in a particular commodity." All these acts were, of course, violations of the Sherman and Clayton Acts: the only defense for this was that the Government itself was a party to the agreements. Thus, in effect, under the War Industries Board, the manufacturing facilities of the country were almost as completely transformed into federal agencies as though the Government had absorbed them.

Some have even maintained that in an emergency the Government required complete co-operation. For instance, in a report written in 1918 for the Board, General Johnson declared:¹⁷

Conservation, priority, curtailment, price fixing, all required such co-operation and agreement within each industry that the Government was constantly exhibited as requiring in its hour of peril the very things which it had been for years denouncing as criminal.

Thus in wartime emergency arose a tendency to question the wisdom of prohibiting all co-operation of industries, and to ask whether it should not be allowed to some extent under a certain degree of regulation.

Largely as a consequence of experiences of the War Industries Board, the Federal Trade Commission began in 1919 to call fair-trade-practice conferences, the first being held October 3, 1919 for the creamery industry. From the point of view of industry the conferences were not at first very successful—the Commission adhered

¹⁷*Committee Print Number 3, Nye Munitions Committee.*

too strictly to the anti-trust laws. But a change finally occurred and business apathy disappeared. Then in 1925, following a liberalization of the membership of the Commission by new appointments, the United States Chamber of Commerce appointed a Trade Relation Committee to stimulate interest, and on April 19, 1926, the Federal Trade Commission created a Division of Trade-Practice Conference. Almost immediately a new era of legislative and judicial procedure began: industry essentially wrote its own laws but was subject to the guidance of the Commission and the latter enforced them. Rules adopted at conferences were transmitted to the Federal Trade Commission for review and, if passed, were then sent for consideration to a committee of the industry appointed by the conference. If this committee approved the rules, every member of the industry was furnished with a copy and a form providing for individual acceptance. Non-signers were subjected to various forms of pressure by the industry and the Commission, and violators of agreements were cited to the Department of Justice for prosecution in the courts.

In these agreements there was little uniformity of content. In addition to general types of fair-trade-practice clauses, ten types of provisions appear most frequently in the codes in effect in 1933.¹⁸

¹⁸The rules most commonly appearing in codes of fair competition approved by the Federal Trade Commission are:

1. "The selling of goods below cost with the intent and with the effect of injuring a competitor, and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice."

2. "It is an unfair trade practice for any person engaged in interstate commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided* that nothing herein contained shall prevent discrimination in price between purchasers of the same class on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for differences in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *and provided further*, that nothing herein contained shall prevent persons engaged in selling the products of this industry in commerce from selecting their own customers in bona fide transactions and not in restraint of trade."

3. "The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges, not extended to all purchasers under like terms and conditions, with the intent and with effect of injuring a competitor and where the effect may be to lessen competition substantially or tend to create a monopoly or to restrain trade unreasonably, is an unfair trade practice."

4. "Contracts, either written or oral, are business obligations which should be performed in letter and spirit. The repudiation of contracts by sellers on a rising market, or by buyers on a declining market, is equally reprehensible and is condemned by the industry."

There were also, of course, specialized provisions which had import only in the particular industry making the code. It should, however, be noted that important individual differences in trade practices, so highly publicized by the National Recovery Administration, do not appear in the 1933 codes of the Federal Trade Commission: briefly if those of the 10 most typical rules which appear in a Federal Trade Commission Code (not all 10 provisions occur in every agreement) are subtracted from it, very little of substantial value is left.

The Commission's opinion of the importance of these trade-practice conferences, called at the request of industry from time to time, is summarized briefly in the following quotation from the foreword of its bulletin:

Trade-practice conferences have proven of incalculable benefit to the public by the voluntary elimination of unfair methods of competition. These conferences also result in a great saving of time and expense by obviating the necessity of investigation and trial by complaint.

A prominent authority on trade-practice conferences has stated that through voluntary action, which is fundamental in trade-practice-conference procedure, an industry can accomplish in an hour or two what might otherwise consume years of prosecution; that during the last few years this method of settling such problems has been featured and encouraged to the great advantage of the public; and that

5. "The false marking or branding of products of the industry, with the effect of misleading or deceiving purchasers with respect to the quantity, quality, grade, or substance of the goods purchased, is an unfair trade practice."

6. "The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, with the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice."

7. "Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonations of one in authority, and the wrongful use thereof to unduly hinder or stifle the competition of such competitors, is an unfair trade practice."

8. "The circularization of threats of suit for infringement of patent or trade mark among customers of competitors, not made in good faith, but for the purpose and with the effect of harassing and intimidating customers, is an unfair trade practice."

9. "Directly or indirectly to give or permit to be given or offer to give money or anything of value to agents, employees, or representatives of customers or prospective customers or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employer or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice."

10. "Maliciously enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their business is an unfair trade practice."

every industry willing to come into a trade-practice conference and clean its own house encourages other industries to adopt the same method.

Study of the trade-practice-conference rules in effect in 1933 shows that almost every mention of price in codes includes a reference to monopoly and restraint of trade. The uninformed may conclude, therefore, that the Federal Trade Commission looked upon all price proposals suspiciously, expecting them to lead to monopoly. But such was not always the case: this position was forced by the Department of Justice in 1930 when it threatened to invoke the anti-trust laws if the Commission did not cease to sanction and if it did not begin to condemn trade agreements which, it appears, were essentially smoke screens to permit price fixing. When the Commission realized that it had exceeded its jurisdiction, it undertook drastic revision of all outstanding conference rules, and by the end of 1931 it had revised previously promulgated rules for sixty-two industries, thereby causing consternation in the affected industries.¹⁹ Thereafter began intensive agitation to amend the Federal Trade Commission Act.

4. Congressional Proposals to Extend the Authority of the Federal Trade Commission

On January 5, 1932, Senator Gerald P. Nye of North Dakota introduced a bill to amend the Federal Trade Commission Act so as to provide for more general codes. Under the proposed measure, agreements, which were to be voluntary, would be limited to (1) the prevention of "unfair methods of competition," (2) the establishment of "business practices" which "tend to keep the channels of commerce free from the use of unfair methods of competition," and (3) "the establishment or discontinuance of any business conduct or practice which would, in the judgment of the Commission, tend to promote the public interest and the use of fair methods of competition." On the same day Senator Nye introduced another bill making it "an unfair method of competition for any person in the course of commerce (a) to sell or offer to sell, as a trade incentive or for the purpose of injuring a competitor, any article or commodity at or below his cost price to be determined in accordance with any basis or method prescribed by the Commission; (b) to discriminate in price between different purchasers not including discrimination

¹⁹See also Galloway, *op. cit.*, pp. 22-23.

made in good faith to meet competition (c) to violate any rule adopted at a trade-practice conference by the industry of which he is a member”

These were not the only efforts to extend the authority of the Federal Trade Commission: in 1932 Senator David I. Walsh of Massachusetts, for instance, introduced an extraordinarily comprehensive bill which defined unfair competition as price discrimination, commercial bribery, espionage, procuring breach of contract, enticing design piracy, false or disparaging statements, intimidation, concealed subsidiaries, bogus independents, all acts tending to deceive competitors or the public, false advertising, untrue claims to be selling at reduced prices, all acts which artificially or intentionally enhance or depress prices, selling at or below gross cost, including selling expense, overhead, and other proper charges, except sales in good faith to dispose of slow-moving or out-of-date goods, and specific trade practices designated as unfair by the Commission. Moreover, his measure provided that the Commission could approve a contract among persons or groups of persons if it believed that this was in the public interest. It declared further that it would be “presumptive evidence that such contract is in the public interest if it results in a fair and reasonable compensation to producers of average ability and efficiency and to labor and does not result in a selling price of the goods or commodities in excess of a fair and reasonable price based on all fair and reasonable items of cost plus fair and reasonable profit.” Such contracts could fix prices, consolidate ownership, control or allocate production, or initiate other procedures which were “prohibited or which might be considered prohibited by the Anti-Trust Acts.”

It is thus evident that industry was able to muster influential congressional support for its proposals to allow co-operation through trade associations. We have also seen that some bills even went so far as to state, in a broad way, what constituted unfair competition. In particular, sales below gross cost including selling expense, overhead, and other proper charges, were to be outlawed and, under certain conditions, price fixing was to be permitted. In general, however, these bills differed from the NIRA in that they were specific and that they proposed to enlarge the powers of the Federal Trade Commission instead of creating a new organization.²⁰ Moreover, no mention was made of public works.

²⁰The congressional support which industry was able to secure in support of its trade-practice conferences is astonishing when it is considered that President Hoover's Attorney-General reported that it was impossible to police the codes and recommended their abandonment.

5. *Proposals of Committees of the United States
Chamber of Commerce*

During 1931 and 1932, as the depression deepened without prospect of relief, immediate recovery measures received more and more urgent attention, not only in Congress but also among business leaders throughout the nation. Conspicuous among efforts to frame practical plans was the appointment by the United States Chamber of Commerce in February, 1931 of the Committee on the Continuity of Business and Unemployment (*sic*) with Henry I. Harriman as chairman. After making a survey of industrialists' opinions this committee reported that: (1) control of production was desirable, (2) the Sherman Anti-Trust Act should be modified, (3) unemployment insurance was desirable, and (4) shorter working hours were inevitable. Then, on September 16, 1931, Gerard Swope, president of the General Electric Company, announced the "plan" associated with his name, in which he put forward and elaborated views similar to those expressed by this committee, and proposed that the anti-trust laws be modified so as to give trade associations power to outline trade practices, which would include the regulation or stabilization of prices and production, the setting up of methods of accounting, and the establishment of workmen's compensation, unemployment insurance, disability and old-age insurance, and employee representation. This plan received wide publicity and, in general, editorial approval.²¹

In the following year the Chamber named another group called the Committee on Work Periods in Industry under the chairmanship of Paul W. Litchfield, president of the Goodyear Tire and Rubber Company. Working through the summer, this committee in September made a preliminary report endorsing the share-the-work movement, which, it should be noted, had previously been urged also by the American Federation of Labor. The more complete report, which went to the Chamber in March, 1933 for action early in May, 1933, was reported (*New York Times*, April 1, 1933) to contain the following recommendations:

²¹For the text of this plan see the *Commercial and Financial Chronicle*, Vol. 133, Part 1, Sept., 1931, pp. 1819-1821.

Reference is also made to a speech delivered at Silver Bay, New York, August 13, 1931, by James W. Hook, chairman of the Connecticut Unemployment Commission, as indicating industrialist thought of the times. See *Mechanical Engineering* for October, 1931. Certain parts of the Swope Plan were suggested in this speech of Hook's and in his previous one reported in the May 30, 1931 *Service Letter* of The National Industrial Conference Board. Both speeches received wide publicity.

1. Employers should determine the extent to which reduction in working time can be effected without seriously impeding efficiency or adversely affecting the welfare of the employed and should adjust working schedules to provide employment for the maximum number of workers normally attached.

2. While substantial unemployment exists, employers should apply the principle of sharing work with a maximum of 40 hours weekly during the present emergency of excessive unemployment.

3. Trade organizations should examine their employment situation and institute a vigorous program to encourage prompt adoption of *spread-work policies*. Government officials should act to bring about the most equitable division of work among government employees.

4. When measures for sharing work are introduced, reduction in working time should be adjusted to the requirements of different classes of employees, in order to safeguard employees already on the pay roll. The minimum hours of work should be sufficient to provide employees with *earnings to meet their essential living requirements*.

5. Business enterprises should permanently follow the policy of utilizing *flexible working schedules* and, whenever major technological changes in production methods are introduced, should adjust hours of work and reallocate trained employees, to permit retention of the maximum number of workers consistent with the attainment of legitimate economies of operation.

6. Gains accruing to business enterprises from increases in productivity and technical efficiency should be shared with consumers in *lower prices* and with the wage earners in *advanced earnings*.

7. Business enterprises should *plan labor requirements in advance*, and in applying the principle of a flexible work week as a permanent policy should effect moderate downward or upward adjustment in hours before curtailing or expanding personnel.

8. With due allowance for changes in living costs, business enterprises should *periodically adjust wage and salary rates* to assure that the resultant earnings of their employees will be at least sufficient to permit their consuming power to keep pace with advances in the productive capacity of industry and commerce.

9. The absolute *minimum wage* paid to full-time workers should at all times be sufficient to permit them to provide for their own essential living requirements.

10. Wages during periods of full-time employment should be sufficient to *permit employees to accumulate reserves* to meet the con-

tingencies of unemployment, illness, and old age, and the accumulation of such reserves should be facilitated by employers through establishing sound employee thrift and benefit plans.

11. Because of the necessity for wide variations in hours of work and wage rates for different groups of employees within single industries and for different fields of business, *no state or national legislative measures should establish permanent, fixed standards for maximum hours of work or minimum wage rates* which would apply uniformly to all wage earners in every branch of industry and commerce.

12. Through specific legislative enactment, an appropriate *government agency should be authorized to approve agreements entered into voluntarily* by the majority in interest of enterprises within an industry, establishing minimum-wage scales and maximum hours of labor which, in the judgment of the agency, would tend to promote public interest and prevent unfair competition. The agency should be further authorized to restrain violation of these agreements by any enterprise within the industry.

These sweeping recommendations, constituting a new American industrial program, were widely publicized at the time the National Industrial Recovery Act was being drafted, and undoubtedly influenced legislative opinion and the final form of the NIRA. Furthermore, various other reports made by the United States Chamber of Commerce and addresses delivered by its officers contained many of the features of the National Industrial Recovery Act, so that it is with some justice that congressmen have referred to it as the brain-child of the Chamber. Nevertheless, there were other important developments, especially those pertaining to the organization of labor, which influenced the character of the Administration's recovery bill.

6. *Development of American Labor Unions*

The first union in the United States, that of the Philadelphia Shoemakers, was organized as early as 1792, but, nevertheless, a significant labor movement developed much later than in most countries. The early American unions were little more than mutual benefit associations, and it was not until about 1830, after a rapid expansion had taken place, that they began to exercise economic power. Then in 1842 the courts (*Commonwealth v. Hunt*) recognized the rights of workmen to organize for the advancement of their own interests, thus definitely elevating the union from the class of illegal conspiracies. By 1850 numerous small local and national organizations had come into

existence, but these were for the most part secret societies. The Knights of Labor, organized in 1869 and for eleven years pursuing a secret existence, came into the open in 1880 as a union of all workers, skilled and unskilled, manual, clerical, and professional. By 1886 the union had attained a membership of 1,000,000 and an influence far greater than its size. Spontaneous strikes which were successful in the early eighties greatly increased its membership, but as later strikes failed it declined in prestige. Then the Haymarket riot of 1886 brought the organization into disrepute, and by 1890 the Knights had completely disbanded. In 1881, another significant movement started, the Federation of Organized Trades and Labor Unions. This developed in protest over the action of the Knights in seeking to absorb the existing craft unions and to involve them in disputes in which their own direct interests were not at stake. Then in 1886 this new organization became the American Federation of Labor under the leadership of Samuel Gompers, with the original aim of preserving the principles and autonomy of the craft unions and of formulating narrow and attainable economic objectives instead of the broad programs of economic reform sponsored by the Knights.

As landmarks in the history of the new organization, it may be recalled that in 1890 Gompers waged a partially successful fight to exempt labor from the Sherman Anti-Trust Act, and that in 1914 he mustered sufficient strength to secure an amendment to the Clayton Anti-Trust Act declaring labor not to be a commodity or an article of commerce. Thus, almost from its birth, the Federation has not hesitated to employ its strength to secure legal measures defining the status of organized labor. As another instance, the Federation, recognizing that alien workers impaired its efficiency in collective bargaining, has repeatedly urged restriction of immigration.²²

²²The American Federation of Labor, born shortly before the depression of 1890-1900, attained a membership of 868,500 by 1900, despite the fact that a depression period is not generally regarded as favorable to the growth of unions. Moreover, its membership grew steadily from 1900 to 1916, numbering 2,808,000 at the later date. The World War gave a great impetus to the American unions, and by 1920 the Federation represented 5,110,800 workers, unionism winning distinct influence in the textile and clothing industries, packing houses, machine shops, railroad shops and others. Despite this expansion, by 1927 sixty per cent of its membership was in the building trades.

It is of some interest to note that the Federation has been agitated almost constantly by internal strife over jurisdictional problems. Although it has invariably thrown its influence to the craft having the best claim, hard feeling has often resulted and occasionally unions have seceded. Thus, the independent Amalgamated Clothing Workers Union was formed in 1914 from members of the United Garment Workers.

It is well known that manufacturers have, in general, opposed unionization of their employees. During the World War and in the decade following, various plants encouraged their workers to join company unions or accept employee-representation plans designed to satisfy the urge of workers to organize without admitting professional union leaders into collective-bargaining conferences. To encourage the formation of company unions, workmen frequently were offered valuable privileges and favors previously denied them, such as the right to purchase stock for less than its market value. Sometimes these employee organizations provided liberal compensation for loss of time arising from accident or sickness, and occasionally workers received wage increases after joining. Also, many concerns recognized the importance of maintaining satisfactory relations between management and employees, and many established personnel departments for this purpose. In some instances these departments, it is true, busied themselves wholly with the problem of selecting productive workers, but often they took considerable pains to grant all reasonable requests of employees. As a result of various methods of encouragement on the part of plant owners and managers, membership in company unions in 1929 totaled about 1,500,000.

The parallel existence of these two kinds of unions has, of course, led to bitter rivalry and constant strife. The most significant struggle from the point of view of influence on the NIRA involved the Brotherhood of Railway Clerks which was not affiliated with the American Federation. Here we recall that in 1924 the Texas and New Orleans Railroad denied the brotherhood's request for increases in wages of clerical employees on the ground that the union did not represent a majority of the employees. At the same time, the railroad served on this union notice of cancellation of its working agreement and then negotiated a new one with its employees. The union responded by filing suit in the Federal District Court and secured an injunction to restrain the company from canceling its contract, the case finally going to the United States Supreme Court which sustained the District Court. This decision eventually led to an amendment to the Bankruptcy Act of 1932, drafted in part by Donald R. Richberg, later general counsel of the NRA and finally Administrator, and offered by Senator George W. Norris of Nebraska. This provided that no judge, trustee, or receiver, shall "deny or in any way question the right of employees on the property under his jurisdiction to join a labor organization of their choice," and declared it to be unlawful "for any judge, trustee or receiver to interfere in any way with the organiza-

tion of employees, or to use the funds of the railroad under his jurisdiction in maintaining so-called company unions, or to influence or coerce employees in an effort to induce them to join or remain members of such company unions." Shortly after this prohibition of use of company funds to support employee-representation plans, the Brotherhood of Railway Clerks displaced company unions in the Union Pacific system and in several smaller roads.

7. *The Yellow-Dog Contract*

Another development pertaining to company unions was even more significant for organized labor. During the last two decades, an increasing number of managements have forced employees to sign contracts agreeing, as a condition of employment, not to join any trade union, and, if already affiliated with any such organization, to resign their membership. The first mention of contracts for this purpose seems to have been made about 50 years ago, when they were called "ironclads." Labor leaders explain that this name was given to the documents because in signing one the worker forfeited certain rights as long as he retained the job in question.

The primary purpose of these agreements was not to give the employer an action for damages against employees for breach of contract, but to permit the securing of injunctions to prevent labor organizations from unionizing the workers. According to Hutler,²³ in the late eighties and early nineteen hundreds, nineteen states passed "anti-coercion" acts to prohibit the use of such agreements, now called "yellow-dog" or individual-employee contracts, but courts, both state and federal, decided that these laws were unconstitutional. Repeated court decisions upholding the validity of the individual-employee contracts have usually been based on the fifth and fourteenth amendments to the Constitution, and have declared in substance:

Every man has a natural right to hire his services to anyone he pleases, or refrain from such hiring, and so likewise it is the right of everyone to determine whose services he will hire . . . Government, therefore, cannot exert any restraint upon the actions of the parties.²⁴

²³Albert Hutler, "The 'Yellow Dog' in Contracts," *American Federationist*, Vol. 40, 1933, p. 1339-1340.

The use of such instruments before the World War was occasional, but since 1918 it has increased markedly. In fact, union leaders have declared that in 1933 there were 1,250,000 workers subject to such terms, but industry has denied this contention.

²⁴Tiedeman, No. 204, Vol. 2, "States and Federal Control of Persons and Property."

Another form of decision has been:

It is complainant's legal right to hire men unaffiliated with labor unions, and to make continuance of unaffiliation a consideration of employment. That is as assured to the employer as the right of unions to make it a condition of membership that those members shall not work in shops where non-union men are employed. The right of each to lawfully prosecute his affairs is equally within the notice of the law, and if in their competition for labor, harm falls to one from the lawful promotion of the other's business, the injury is an inevitable accident, legitimately inflicted and excusable.²⁵

The history of such court actions is indeed a long one and cannot be given adequately here, but a few cases which are particularly noteworthy because they show the evolution of the important Anti-Injunction Act of the 72nd Congress must be considered briefly. In one of the most important of these suits the United States Supreme Court in 1917 decided the case of *Hitchman Coal and Coke Company v. Mitchell*²⁶ by common law and granted the company an injunction to stop the United Mine Workers' Union from inducing the company's employees to break their contracts by joining the union. The language of the Court, which referred to the deception and misrepresentation practiced by the labor organization, indicated that it might not have granted the injunction if these had not been present. Then a few months later the Court, using the *Hitchman* ruling as a precedent, again decided in favor of the company in the case of the *Eagle Glass Manufacturing Company v. Rowe*, previously cited, and in 1921, in the case of the *Tri-City Trades Council*, the Court limited the *Hitchman* decision by interpreting it to mean that, whenever lawful persuasion was unaccompanied by threat or intimidation, deceit or misrepresentation, the "inducing to breach a contract" is lawful and should not be enjoined. But in 1927 Federal Judge John J. Parker of North Carolina, in a case which, as we shall point out shortly, became far-reaching, disregarded the limitations set forth by the *Tri-City* decision.

At this point we recall that legislatures, which have been friendly to labor, have attempted in various ways to frustrate court action on "yellow-dog" cases. They have usually justified their measures by the following statement made by Donald R. Richberg, who later helped in the drafting of the NIRA:

²⁵*Eagle Glass Manufacturing Company v. Rowe*, 245, U. S. 276 (1917).

²⁶208, U. S. 161.

If courts will not recognize the facts and hold that the employer acts illegally when he interferes with the employee's natural right to associate with his fellow men, and thus to designate representatives to advance their common interests, then it is time to have the legislatures write this law and to make it binding in the courts.

And labor, in attacking the individual-employee instrument, has repeatedly maintained that only the legalist could adjudge it to contain the essentials of freedom of contract. They have asked how there can be freedom of contract when workers seeking a job are told to sign an agreement not to join a union before they are given such work as will enable them to buy food for their wives and children. In addition, they have insisted that the courts should uphold anti-coercion legislation as a valid exercise of police power enabling a worker to join a union of his own choosing.

Even the Federal Government has directed legislation at the "yellow-dog" contract, the first statute making it a criminal offense against the United States for an agent or officer of an interstate carrier to discharge an employee because of membership in a labor union. But this law was tested before the Supreme Court in 1908 in the case of *Adair v. United States* and was declared unconstitutional on the ground that it invaded personal liberty and the right of property without due process of law, in direct violation of the fifth amendment. Such a decision naturally led to the belief that the Supreme Court would generally uphold the individual-employee contract. The second attempt of the United States to outlaw the "yellow-dog" contract was embodied in the Clayton Act (1914) which declared that the courts were not to issue restraining orders in any case between employer and employee involving or growing out of disputes concerning terms or conditions of work unless necessary to prevent irreparable injury to property. But according to Hutler²⁷ the courts were "prone to interpret this phrase 'to prevent irreparable injury to property' as an adequate basis on which to grant as many injunctions as had heretofore been granted The courts could interpret 'irreparable' as they wished; they could interpret the word 'lawful' as they wished — in other words, the employee could never be certain what the courts would do with the Clayton Act."

In 1929 United States Senator Henrik Shipstead of Minnesota offered a bill which he said was a "national proposal in which the

²⁷Albert Hutler, "The 'Yellow Dog' in Contracts," *American Federationist*. Vol. 41, 1934, p. 509.

hopes frustrated by the Clayton Act sought new fulfillment."²⁸ The measure, which was really a redraft of Senate Bill 1482 of the 70th Congress, was referred to the Senate Judiciary Committee. Shortly thereafter, the committee reported a substitute, practically identical with 1482 of the previous Congress on which John P. Frey,²⁹ Professor Felix Frankfurter of Harvard University, Professor Herman Oliphant of John Hopkins University, Professor Francis B. Sayre of Harvard University, Edwin F. Witte of Madison, Wisconsin, and Donald R. Richberg, had all worked. The Senate, however, did nothing about this bill until the "yellow-dog" contract was brought to national attention by the nomination for the Supreme Court in 1930 of Judge John J. Parker who was bitterly opposed by organized labor for his decision of 1927 upholding the individual-employee agreement. When the Senate failed to confirm his nomination, the "yellow-dog" contract assumed national importance.³⁰

In consequence the Senate Judiciary Committee was forced to take some action on the anti-injunction bill, and so, uncertain of constitutionality of the measure, the committee referred it to Attorney-General William D. Mitchell; when he refused to give an opinion, the committee rendered an adverse report in the closing days of Congress. Then, the anti-injunction bill was resurrected in the next Congress

²⁸*Congressional Record*, 71st Congress, December 1929.

²⁹Early in 1924, John P. Frey, while President of the Ohio State Federation of Labor, came to the conclusion that unless protective legislation could be secured, the existing unions in the metal trades would be annihilated whenever employers generally chose to give their employees the choice between signing contracts or being discharged. He was particularly alarmed because at the time the Ohio association of employers in the metal trades industry was quite active in advising its own members and even other employers to use individual-employee contracts. Frey discussed the situation with Dean Roscoe Pound of Harvard University in the winter of 1923-1924, immediately afterwards with Francis B. Sayre, and then later with Herman Oliphant. All agreed something could be accomplished. A committee consisting of John B. Andrews, Professor Joseph P. Chamberlain of Columbia University, and Judge Victor J. Dowling, assisted Frey in drafting legislation. The first draft was rejected by Frey who insisted on a short bill. After some time a satisfactory version was produced in language almost identical with the Norris-La Guardia Anti-Injunction Act which is discussed later on. Frey then had the bill introduced in the Ohio Legislature and sent copies to other State Federations of Labor. Five states had enacted the bill before it became a Federal statute.

³⁰As illustrations of public attitudes we note that the *New York World* in commenting on the defeat of Judge Parker declared that, in an unprecedented way, public opinion had damned such contracts, and on May 7, 1930, Senator Hiram W. Johnson of California excoriated them in the words:

"Legally they are void as against public policy; socially they are wicked and destructive of ordinary human relations; economically they are unsound as resting upon necessity upon the one side and coercion upon the other; and morally, sir, they are infamous, decrying fundamental right and disrupting the dearest human associations." *Congressional Record*, 72nd Congress, p. 8787.

by Senator George W. Norris of Nebraska and Representative Fiorello H. La Guardia of New York. Arguments began in the House Judiciary Committee on Feb. 25, 1931, the first witness being Donald R. Richberg who cited decisions of the Supreme Court purporting to show that Congress has the right to limit the jurisdiction of the inferior courts as proposed in the bill.³¹ Shortly afterwards, James A. Emery, counsel for the National Association of Manufacturers, opposed the bill on the ground that the effectiveness of the injunction, which was the universally recognized weapon by which the Government could control and dissolve undesirable combinations, should not be impaired. He argued that the public policy declared in the bill was arbitrary, contrary to the facts of American social and industrial life, and in violent conflict with the public policy of the people of the United States as provided in the Constitution. Also, Alfred P. Thom, representing the Association of Railway Executives, opposed the bill, his reason being that "it would, if valid, impair the power of the federal courts so substantially as to make organized labor a special and unduly privileged class before the law." The criticisms of opponents, however, were unavailing: the Senate passed the bill on March 1; shortly thereafter the House approved the measure; and President Hoover signed it on March 23, 1932.

Under the Act no injunction can be issued against a union for "advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 3 of this Act."³² Restraining orders could only be issued against unions which fraudulently misrepresented conditions or which committed or induced acts of violence against the employer. At last after a bitter struggle lasting for several decades, labor had destroyed the effectiveness of the principal anti-union weapon of manufacturers — the injunction. But manufacturers were not helpless in their opposition. They could still give bonuses to employees who "chose" to join company unions; and more important they could still prevent employees from joining national unions by threatening them with loss of jobs. Thus, labor had

³¹The new act met the objection of courts to previous anti-"yellow-dog" legislation by limiting the powers of the inferior courts in such a way as to make the contracts unenforceable. This was done by Section 3 which reads, in part:

"Any undertaking or promise such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in Section 2 of this Act is hereby declared to be contrary to the public policy of the United States, and shall not afford any basis for the granting of legal or equitable relief by any such court."

³²Section 4, subsection i.

won only a partial victory; it still had to find a way to discourage employers from influencing employees in their choice of unions. This, we shall see, it attempted under the NIRA.

8. *Shorter-Work-Week Legislation*

Another important concern of labor unions has been the shortening of hours of work either through agreement or, whenever possible, by law. With respect to the latter we note that the United States has been slower to adopt legislation restricting hours of work than have other countries; Australian statutes make the arbitration of labor disputes (including hours of work) compulsory, and provide for the legal enforcement of the resulting awards; in Germany and some other countries collective agreements on hours of work, under certain conditions, may be given the force of law, and in Germany after the World War the legal maximum for all industry was set at eight hours per day. An impetus to legislation limiting the work day to eight hours was provided by a resolution approved at a conference called in 1919 by the International Labour Office.

Most of the early legislation in the United States limiting the hours of work was designed to protect women. The chief exceptions are an act of 1868 establishing a standard of eight hours per day for all federal employees, and the Adamson Law of 1916 providing an eight-hour standard day for railway employees with overtime pay for all work in excess. Almost half of the states have also placed restrictions on the length of the work period for men engaged in transportation, and half of the states and many municipalities in 1933 had laws or ordinances fixing an eight-hour day for public works.³³ Some states have merely set maximum working time per day, but a considerable number have also fixed maximum hours per week. Also more than a dozen states have enacted legislation pertaining to hours in and about mines. In 1927 Colorado, which had a law of this last type, extended its eight-hour-work-day limit to cement and plaster mills.³⁴

In 1929 a limitation in terms of days per week was brought conspicuously before the country by the report of the National Industrial

³³Before the twentieth century there was considerable question regarding the constitutionality of hour-limiting legislation, but favorable decisions by the United States Supreme Court, in cases involving the Oregon 10-hour law in 1908 and the California 8-hour law in 1915, removed most of these doubts.

³⁴Although as late as 1929 the constitutionality of general eight-hour legislation had not been fully established, the Supreme Court decision in 1908 in the Oregon case clearly established the right of state legislatures to restrict to some extent the hours of all workers in factories.

Conference Board (on December 16) that at least 220 manufacturing establishments in the United States were operating on a five-day week schedule with about 400,000 employees, representing 2.6 per cent of all industrial workers, affected. Many of these, it was further shown, were employed in the plants of Henry Ford who was at that time leading an effort to secure shorter working hours in American industry. Following this report, agitation for a shorter work week was accelerated, but stubborn opposition soon arose. Most important, on January 22, 1930, the New York State publishers rejected a request of the International Typographical Union for a five-day week and adopted a resolution urging all newspaper publishers to offer every possible resistance to such demand.³⁵ Then on April 24, 1930 the American Newspaper Publishers' Association followed the lead of New York publishers and formally announced opposition to a five-day week.

To meet this kind of opposition, William Green, president of the American Federation of Labor, on April 1, 1930 launched a strenuous campaign for a shorter work week by telling a Senate committee that technological advances had made such a step inevitable. Specifically, with particular point in the light of recent unemployment, he urged that work be spread so that no one should be made dependent upon charity. A few months later, James J. Davis, then Secretary of Labor, and Fiorello H. La Guardia, then a Representative from New York, also advocated shorter hours; and by April, 1932 President Hoover had publicly announced that he favored limiting the work week, after recovery began, to five days. Also influential in molding public opinion was the report issued on July 20, 1932, by the New England Joint Conference on Re-employment which declared that unemployment was continuing to increase despite all efforts, and that national action to achieve job security by work sharing seemed imperative. That industry of itself also had initiated a move in the direction of job sharing is shown by a report released on September 27, 1932 by the National Industrial Conference Board and based on returns from a nation-wide survey.³⁶ Then, on November 20, 1932, the

³⁵Ironically enough, at this same meeting Frank E. Gannett, head of the Gannett newspaper chain, announced that the teletypesetter, an invention which would set news into type as it was telegraphed into the office, and so reduce the volume of human labor, would soon be on the market.

³⁶This demonstrated clearly that many plants had just previously shortened the work period, usually without change in hourly rates of pay.

In particular, the survey showed that 114 out of a random sample of 1503 reporting plants were operating on a five-day week, whereas only 25 of these had employed the five-day week before the depression.

Executive Council of the American Federation of Labor proposed a distribution of man-hours so that all might have an opportunity to earn a living and, in addition, demanded higher wages. Several days afterward Green declared that labor would use all its strength to compel industry to adopt a five-day, thirty-hour week, and that labor would begin its campaign by urging the Federal Government to set the example.

In view of this attitude of organized labor, shown more emphatically by its resolution, "So long as one workman is unemployed, the hours of labor are too long," and also that of the United States Chamber of Commerce, it is not surprising that Congress should have begun a study of shorter-work-week legislation almost immediately after the inauguration of President Roosevelt. With dispatch typical of the Administration a bill was quickly drawn. On April 3, 1933 we find Senator Hugo L. Black of Alabama introducing a measure to prohibit interstate shipments of goods produced by labor working more than six hours per day and five days per week, making exceptions, however, of railroad, agricultural, and general office employment. Significant for the understanding of later developments under the NRA is the fact that Senator Black, under questioning by Senator Millard E. Tydings of Maryland, admitted that the bill which he had introduced would not compel employers to raise their costs and that it would not accomplish its purpose of increasing purchasing power if the reduction in working hours were followed by a commensurate decrease in pay; but in defense of his measure he argued that the pressure of organized labor and public opinion would maintain wages. In the course of the debate he said:

Labor has been underpaid and capital overpaid. This is one of the chief contributing causes of the present depression. We need a return of purchasing power. You cannot starve men employed in industry and depend upon them to purchase.

Three days after the Black bill had been introduced, the Senate, by a vote of forty-eight to forty, rejected the amendment of Senator Joseph T. Robinson of Arkansas that the specified hours be changed from thirty to thirty-six, and later on the same day passed the bill by a vote of fifty-three to thirty. Thus, so strong was sentiment that within only three days the Senate had considered and passed an extraordinarily far-reaching piece of legislation by almost a two to one majority. Meanwhile the House Labor Committee had unanimously agreed on April 3 to a favorable report on a companion bill sponsored

by Representative William P. Connery of Massachusetts. But the measure would be deferred in the House, Speaker Henry T. Rainey announced at a press conference the day after the Senate had acted, pending passage of all President Roosevelt's "reconstruction legislation." He thus hinted that the thirty-hour bill was not part of the Administration's program. Then, five days later, Miss Frances Perkins, the Secretary of Labor, testified before the House Committee that, while President Roosevelt was in sympathy with the purposes of the thirty-hour bills, he felt that the limitation clauses should be more elastic and the embargo clause should be eliminated.³⁷

During consideration of shorter-work-week legislation several industrial leaders made comments which now take on considerable significance in appraising subsequent recovery developments. For instance, James W. Hook, chairman of the Connecticut Unemployment Commission and president of the Geometric Tool Company, who was later to play an important role in the National Recovery Administration, made the following prophetic observation:

There are so many objections to the Black Thirty-Hour Work-Week bill that it just frightens me to think of the country embarking on it. I feel the division of present available work in this country would put the burden largely on the workingman himself by providing fewer hours of employment. I believe this would lead to many complications, including attempts at fixing wages and prices, and increased cost; and would lead to disastrous competition from foreign products.

Another important objection was raised by Carl F. G. Meyer, president of the National Wholesale Druggists' Association, who said that, because there were relatively few unemployed workers qualified to carry on work for wholesale druggists, the thirty-hour plan would impose a distinct hardship on members of his organization.

Giving no heed to such objections by industrial leaders, on April 17, 1933 the Senate, by a vote of fifty-two to thirty-one, refused to reconsider its passage of the Black bill and sent the measure to the House. Then, evidently to forestall passage of this bill, on April 18 the Secretary of Labor submitted a substitute measure to the lower branch of Congress throwing into consideration a minimum-wage pro-

³⁷The embargo clause would have prohibited the entry into the United States of goods made in countries where the working week exceeded thirty hours. The suggestion of elasticity submitted by Miss Perkins would have permitted industries, under certain conditions, to operate forty hours a week for a limited number of weeks upon approval by a commission of which the Secretary of Labor and representatives of industry would have been members.

posal.³⁸ Immediately William Green was reported by the press as dissenting from the Perkins proposal on the ground that it would vest in industrial boards the power to stipulate minimum wages which would eventually become the maximum wages. Thus, as a result of differences in opinion, the inflexible Black and Connery measures were at least temporarily sidetracked.

9. *Proposals for Public Works In Time of Depression*

It has been shown that the NIRA was to crystalize and give legal recognition to several far-reaching movements which had their origins years ago — relaxation of the anti-trust laws, co-operation of industry through trade associations, codes of fair competition, shorter hours of work, and collective bargaining. Also it was to recognize another movement: it was to provide funds for carrying out an unprecedented experiment testing the contention of various business-cycle theorists who have long held that public work could be planned to stabilize employment.³⁹

³⁸The National Recovery Act, which contained minimum-wage clauses, was being drafted at this time, and its labor provisions were almost identical with those proposed by Miss Perkins. The main provisions of the bill presented by the Secretary of Labor were:

1. The thirty-hour week would be applied to all industry, with the exception that certain industries might operate on a forty-hour basis with the approval of the Secretary and for a period not to exceed ten weeks per year.

2. Wage-control boards, composed of representatives of the employer, the employee, and the consumer, would seek to fix wages, either from the standpoint of a locality or of an entire industry.

3. The Secretary of Labor would be authorized to control "overproduction," and in many instances the anti-trust laws would be abrogated for this purpose.

For the labor provision in this measure Miss Perkins is reported, in an interview with a representative of the *New York Times* on April 19, to have ascribed credit to the New York State Legislature, making the following explanation:

"There has been an alarming fall in wages. With a curtailment of hours to thirty and a further raid on weekly earnings, unless wages were increased, it seemed to me there was danger of a further drying up of purchasing power. It was then that I attached the minimum-wage provision to the bill.

"The minimum-wage provision was lifted from the terms of the New York minimum-wage bill which passed the last legislature. The boards provided for in my proposal follow those provided in the New York Law.

"Instead of giving me broad powers, the bill would limit my powers and would enable me to distribute rather than control production. It is in no sense a complete plan for the management of industry.

"Please remember, also, that the Black bill is limited to two years. I was rather astonished and somewhat amused that my modest plan to make the Black bill workable should be regarded as a bid for unlimited power."

³⁹In brief the argument has been that governments have made their largest expenditures simultaneously with large private expenditures for building and have curtailed their work program when private building was being curtailed: in this way public expenditures have exaggerated booms and depressions.

In this connection we note that long before the depression and even while he was Secretary of Commerce, Herbert C. Hoover had been deeply interested in the possibility of using public works to stabilize employment. In our story we merely recall that, as far back as November, 1928, Governor Ralph O. Brewster of Maine had read a lengthy paper in New Orleans in which he advocated the setting up of a \$3,000,000,000 public-works-construction fund to be used for stabilizing industry. In preparing this paper, in which he proposed that public works should begin when the index of employment fell off five per cent, increasing as industrial unemployment increased and diminishing as it decreased, Governor Brewster had the active assistance of William T. Foster. After the address was ready but not yet delivered, a 1500-word abstract was radioed to President-elect Hoover who at the time was on his South American tour. Since Mr. Hoover promptly gave his approval, Brewster's proposal was really made with the full assent of the President-elect.

When employment was at a peak, President Hoover appointed a committee to study the relation of public works to employment, and about a year later this committee issued a report⁴⁰ stressing the importance of timing public works to stabilize employment, and urging the creation of a national planning commission. Public opinion seemed to favor the conclusions of the committee's report, and, consequently, in the spring of 1931 Congress considered and passed a bill, originally introduced by Senator Robert F. Wagner of New York, which provided for advance planning of public works, and created a planning board for the systematizing and timing of public works. Then, in the spring of 1932, President Hoover, following a recommendation of this board, sent a bill to Congress calling for an expenditure of \$2,200,000,000 for the construction of self-liquidating public works. But the Democratic Congress did not accord the measure a hearty reception. A special complication was created by Speaker John N. Garner of the House who promptly attempted a modification to provide for the erection of a large number of post offices, and thereby made the bill appear political. The result was that on June 27, 1932 the House passed a bill embodying Garner's amendments,

⁴⁰National Bureau of Economic Research, *Planning and Control of Public Works*, New York, 1930.

The survey, which was directed by Professor Leo Wolman of Columbia University, pointed out that during 1927 and 1928 annual expenditures of federal, state, county, and municipal governments for public works had been about \$3,500,000,000 and had provided jobs for 900,000 men, and, as we shall see, these are essentially the figures mentioned by sponsors of the NIRA.

but the Senate failed to enact it because the public, having become aware of the political importance of the huge appropriation, had objected. Thus ended President Hoover's public works program.

Senator Wagner, however, continued to agitate for public works, and the accession of his friend Franklin D. Roosevelt to the Presidency encouraged him sufficiently to push his program. Moreover, by March, 1933 unemployment had mounted to 14,000,000, and the unemployed were rapidly exhausting their reserves. If they were not given work, they would soon become public charges. It is not surprising therefore that in March, 1933 Senator Wagner and representatives of the American Federation of Labor, which organization wanted jobs and not relief, began to draft a measure intended to embark the Federal Government on a huge spending program. As originally conceived, this bill, by removing the limitation requiring the Reconstruction Finance Corporation to restrict its loans to self-liquidating projects, would have provided for large federal loans to states and municipalities for various kinds of public works. Drafters of the proposal felt that, whereas state and municipal credit for constructing such work had been largely exhausted, the federal credit was still sound.⁴¹

⁴¹It is worthy of note that Alexander Sachs, who later held the post of chief economist in the NRA, did not share Wagner's optimism regarding the effectiveness of public works. In a letter written to General Hugh S. Johnson on May 20, 1933, in which the burden of advice was to use public works chiefly as a prelude to private-capital activity, Sachs declared:

"In the past month I have discussed with you my opposition to some current panaceas venturing on what I called monistic planning akin to state capitalism or state socialism and my advocacy of pluralistic planning for recovery suited to a political and economic democracy. Thus the attempt of the Black bill to dragoon American business into the uniform of a thirty-hour week will, as I urged in my letter of April 27, contract work and activity when we need liberation and expansion of both. Similarly, I have opposed the Wagner-LaFollette kind of public works as too inadequate for our need and as apt, unless carefully planned, to deflect attention from and insert obstacles to the inevitably greater and more far-reaching private works which alone can provide re-employment and recovery in an economy like ours. While I have no doctrinaire objection to public works, I have urged that the few billions which it would take so long to set in motion had to be matched against the manifold larger amount which must be synchronized with the publicly aided but privately undertaken capital works.

"My own alternative program has been concerned with the following:

(1) Lowering of long-term money rates toward a 5% and lower gilt-edged rate (as justified in my "Present-Worth Bonus-Payment Plan," September-October, 1932) and reinstating in the present emergency the regenerative monetary sequence that was so stimulative to the recovery after the depression of the 90's in the then leading creditor economy, Great Britain, and also in our debtor economy. (2) Provision of ample government credit at low rates on a contingent basis or guaranty against losses after a three to five year period for (a) housing modernization and building; (b) industrial re-equipment; (c) railroad rehabilitation. (3) Deliberate co-ordinate economic and financial treatment of the

As thus outlined, both industry and labor had been focusing attention upon these movements: (1) efforts of trade associations to secure exemption from the anti-trust laws as enjoyed under the War Industries Board, (2) congressional bills to empower the Federal Trade Commission to define and forbid certain unfair trade practices through codes or agreements made with industry, (3) recommendations of the United States Chamber of Commerce to recognize the needs of labor and plan requirements in advance, (4) endorsement of shorter-work-week measures leading to the Senate enactment of the Black Thirty-hour bill, (5) long agitation over company unions and individual-employee contracts, and (6) proposals to initiate public works in time of depression to stabilize employment. These proposals were ready to be shaped into a co-ordinated effort to meet the evident national emergency. How they were fused into the NIRA is described in the next chapter.

structurally maladjusted sectors of our economy, such as (a) railroads, (b) urban mortgages, (c) rural mortgages — thus (a) requiring a co-ordinator office to lay the foundations for railroad co-ordination, equalization with competitors, and eventual restoration of financial solvency; (b) requiring liquefaction, as with banks, and establishment of a Credit Foncier or Hypothekbank reserve system; and (c) requiring interest descaling and governmentally aided liquefaction."

The railroad plan was submitted by Sachs in a memorandum entitled "Integral Reorganization of the Railroads" (see Appendix III) which led to the Co-ordinator bill. Here the kind of planning which he endorsed is outlined. Unfortunately, however, the final draft of the Co-ordinator Bill included a section preventing labor economies, thus enormously reducing the effectiveness of the bill. This memorandum also influenced the inclusion in Title II of the NIRA of a section enabling the Public Works Administration to issue loans to the railroads for capital goods activities. A report of the NRA prepared by Sachs and Albert J. Hettinger played a part in the inter-departmental work which, under the leadership of Co-ordinator Eastman, culminated in the provision of credits by PWA for the purchase of one million tons of steel rails. This report is also reproduced in Appendix VII, and discussed in Chapter XI, Section 2.

CHAPTER II

THE CREATION OF THE NIRA

1. The Work of the Moley-Johnson Group

Before the inauguration of President Roosevelt, General Johnson (then a business associate of Bernard M. Baruch), Alexander Sachs of the Lehman Corporation, Rexford G. Tugwell and Raymond Moley of Columbia University had corresponded about plans for economic recovery. All these men, in fact, had prepared material for Mr. Roosevelt's campaign speeches. They had formed a campaign "brain trust" which was undoubtedly instrumental in formulating the pre-election policies of the President. In recognition of their important aid all were later appointed to important governmental positions. Moley, in particular, became Assistant Secretary of State and the President's most intimate adviser.

At the beginning of the new Administration Moley, like every other prominent official, was receiving hundreds of letters outlining plans to end the depression. Some naïvely contended that the depression was caused by the practice of selling below cost for the purpose of ruining a competitor: if all sales below cost could be stopped, the depression would end. Others held that considerable "chiseling" of wages had occurred, thus demoralizing markets:¹ the prime need was to set minimum wages. More carefully formulated suggestions included the Rorty plan for a subsidy to industry, the Kent suggestion for increasing production under a guarantee of the Government to buy all surplus products, the Moulton proposal of subsidies to industry for working-capital purposes, the Swope plan, and a variety of

¹Although it may be difficult for the trained student of business cycles to appreciate that many people seriously believed selling below cost and chiseling were the "causes" of the depression, the author's experience in the National Recovery Administration warrants the assertion that perhaps a quarter of American business men considered the depression to be due to these practices. These were chiefly small business men.

A study of the wholesale price index of the Bureau of Labor Statistics indicates that, on the average, prices fell about 45 per cent between October, 1929 and March, 1933. Moreover some had declined even as much as 75 per cent. There can be no doubt that all business men were acutely conscious of this situation, resulting, as it did, in great inventory losses. It is not surprising, therefore, that so many believed that the depression would end if sales below cost could be stopped.

others. Then, there was Johnson's plan submitted to the War Industries Board in 1918.²

Early in March, 1933, while these plans were being received, Johnson and Baruch started on a hunting trip and en route stopped in Washington. Moley had dinner with them and proposed that Johnson remain in Washington to draft a plan for industrial recovery. The idea appealed to Baruch, and he promptly granted Johnson leave of absence from his regular duties. Then Johnson and Moley, after some study of the various proposals believed by the latter to have merit, proceeded to draw up a bill which would organize industry in an attack on the depression. Johnson's first draft contained only one paragraph and was written on less than two sheets of foolscap paper. It provided for suspending the anti-trust laws, contained authority for the President to license industry, and gave the President practically unlimited power to do whatever he believed was best. It was, of course, rejected by the Administration, since it would have made the President a dictator, and such power was not desired. Shortly thereafter Tugwell, who, as stated in the preceding chapter, had written a book entitled *The Industrial Discipline* and wanted government planning of industry to replace laissez faire capitalism which he regarded as too haphazard, joined the Moley-Johnson team. These three men proceeded to draft a bill which was much more comprehensive.

After a considerable amount of work had been done on the industrial sections of the bill, Johnson, not feeling entirely qualified to pass upon its labor aspects, added to the group Donald R. Richberg, a labor lawyer of Chicago, who had been highly recommended to him as brilliant, astute, progressive, and having the confidence of labor.³

In the meantime, several other groups were considering ideas which later became incorporated in the President's recovery bill. However, Johnson has written in the *Saturday Evening Post* that he did not know about these efforts until early in May. At this time, he showed his own proposals to a member of a group headed by Senator Robert F. Wagner, which, as will next be noted, had already prepared a similar bill. We merely observe here that the Johnson draft, as first shown to Wagner's associate, closely resembled the final NIRA ;

²See Chapter I, Section 1.

³We noted in Chapter I that Richberg had been a leader in labor's fight for reforms which would guarantee it the right of collective bargaining.

As mentioned in Chapter I, the labor provisions of the President's recovery bill should not be credited entirely to Richberg and Johnson. Before Richberg had entered upon the scene a great deal of discussion of the shorter work week had already taken place, and the Secretary of Labor had made proposals to Congress similar to those which ultimately found their way into the Recovery Act.

it gave the President power to organize and license industry, and to regulate prices, production, wages, hours, and fair trade practices, but said nothing whatever about collective bargaining or public works which latter were featured in the Wagner draft (see also footnote 41 of Chapter I).

2. Contributions of the Wagner Group

At this point, we indicate in some detail how impacts of various groups, such as that led by Senator Wagner, brought about modification of the Moley-Johnson industrial recovery bill. We call to mind first that Meyer Jacobstein, a former Congressman from Rochester, New York, in the latter half of March, 1933 interested Senator Wagner in a bill to provide federal guarantees to industry for inventories and pay rolls.⁴ Shortly thereafter Jacobstein, following a suggestion of Wagner, discussed this idea with Harold G. Moulton, president of the Brookings Institution. Moulton agreed that working capital of American industry was in a precarious situation, and urged that something be done. A few days later, Wagner analyzed Jacobstein's proposal and his own public-works plan in conference with the President, who, without approving, suggested that interested parties be called together to exchange their ideas.⁵ Senator Wagner promptly carried out this plan.

Wagner's group certainly did not lack plans. Fred I. Kent wanted a governmental guarantee of profits; David L. Podell advocated relaxation of the anti-trust laws; Wagner proposed public works; Moulton urged governmental loans to industry for working capital; and Rorty presented a plan to subsidize capital-goods expenditures. Thus, one finds the group with a public-works program, a plan for credit to industries for working capital, a proposal to modify the anti-trust laws, and a plan to provide a bonus to industry through federal contributions for purchasing capital goods. Since almost each conferee wanted something different, many meetings were required to reach an agreement. Moulton, through an able report of these con-

⁴For conditions of American working capital see Chapter XIII, Section 2.

⁵Those present at the first meeting, held around the first of April, 1933, included Meyer Jacobstein, Harold G. Moulton, Virgil D. Jordan, president of the National Industrial Conference Board, Fred I. Kent, vice-president of the Bankers' Trust Company of New York, Colonel Malcolm C. Rorty, James H. Rand, Jr., president of Remington Rand, Inc., Representative M. Clyde Kelly of Pennsylvania, W. Jett Lauck, a labor economist and writer, David L. Podell, a New York lawyer who had written on trade associations and the anti-trust laws, and Simon Rifkind, Wagner's secretary.

ferences, pointed the way to a partial accord, and Jacobstein, Moulton, and Podell were then named to draw a tentative bill.

The first draft of this measure began with a provision for credits to industry; the second section appropriated large sums for public works; the third allowed trade associations to regulate production and prescribe rules of fair trade practice; the fourth called for shorter hours of labor through agreements among employers who belonged to trade associations; the fifth outlawed price cutting; and the sixth provided for various miscellaneous agreements between business groups. Both the Kent and Rorty proposals were completely ignored in this bill, and, consequently, these men promptly showed their disapproval. Moreover, Wagner did not fully accept any of its sections and decided to do nothing until further conferences were held. But the proposed measure was sent to the Department of Labor for scrutiny, and soon it was returned with a clause added which guaranteed labor the right to bargain collectively. Meanwhile, Jerome Frank, general counsel for the Department of Agriculture, and John Dickinson, Assistant Secretary of Commerce, who had a collection of plans for reviving industry closely resembling those of the United States Chamber of Commerce, were invited to attend the next meeting of the Wagner group. Also, at this point the United States Chamber of Commerce, through its president, Henry I. Harriman, became active in the deliberations of this committee; and John P. Frey, the president of the Metal Trades Section of the American Federation of Labor, joined in the discussions.⁶ Thereafter, Dickinson, Podell, Frank, and Rifkind carried on the work of drafting a recovery bill.

Before the end of April, 1933, at least six different texts had been accomplished, no one of which was satisfactory either to Senator Wagner or to President Roosevelt. Also by this time the Moley-Johnson group was producing almost daily drafts of a very similar bill.

3. Co-ordinating Efforts of the White House

Early in May, 1933 the President brought together all groups which had been working on recovery bills and urged that they lock themselves in an office until they could compose their differences. Fol-

⁶At a conference with Rorty and Frey in January, 1934, the author learned from the former that, before the recovery bill was drafted, the United States Chamber of Commerce and the American Federation of Labor had reached an agreement: labor's demand would be for jobs alone and industry would do everything possible to provide them. As will be shown in Chapter VII both promptly ignored the agreement.

lowing out this suggestion, General Johnson, Senator Wagner, Donald Richberg, and Lewis W. Douglas, the Director of the Budget, together with more or less occasional visitors such as Tugwell, Miss Perkins, Rorty, Baruch, and Henry I. Harriman, met daily in Douglas' office.⁷

In about a week a document was produced which was acceptable to all conferees, and Douglas submitted it to the President. But the latter, after some study, suggested further revision. A few days later when the Moley-Johnson-Wagner coalition had finally written tentatively acceptable industrial, labor, and public-works provisions, the recovery bill was sent to the Secretary of Labor for careful study. Her part at this time was to modify slightly the labor sections which, however, already resembled similar provisions in her thirty-hour bill submitted to the House Labor Committee.⁸

4. Introduction of the Recovery Bill in Congress

As the drafting of the recovery bill approached completion, the President took advantage of an address before the United States Chamber of Commerce on May 4, 1933 to discuss its fundamental premises. On this occasion he requested not only that employers refrain from cutting wages but also that they increase wages "in conformity with and simultaneously with, the rise of the level of commodity prices in so far as this" was in their power. In urging this move he said that, during recoveries from past depressions, wages had lagged behind prices with the result that an unfair burden had been placed on labor. He then added that this condition had prevented labor from securing its "just and equitable share in the profits of industry" and had "limited the purchasing power of the overwhelm-

⁷Early conferences held by the above group in Douglas' office and especially at the White House in general ignored other members of the Wagner group as well as representatives of the American Federation of Labor. Although Rorty was generally identified with big business, the American Federation of Labor asked him to represent it in these conferences. Thus, organized labor co-operated with "big business" to the extent of entrusting important labor negotiations to one associated with the United States Chamber of Commerce. Later, at the suggestion of Rorty, Secretary Perkins invited the Federation to name a representative to the White House conferences, and in this way organized labor entered into negotiations on the proposed legislation which was to affect it so vitally. Once it had gained this recognition it took an active part in shaping policies.

⁸See Chapter I, Section 9. It is of some interest to note at this point that Miss Perkins had not consulted the American Federation of Labor on the various proposals she had made to the House committee. It was during this period that officials of the Federation were publicly showing their displeasure over her appointment as Secretary of Labor.

ing majority of our population.”⁹ Following his discussion of wage increases and purchasing power, the President declared:

During the past four years, what previously had been considered to be an orderly industrial system has degenerated into one of the highest disorder. You and I acknowledge the existence of unfair methods of competition, of cutthroat prices and of general chaos. You and I agree that this condition must be rectified and that order must be restored. The attainment of that objective depends upon your willingness to co-operate with one another to this end, and also your willingness to co-operate with your Government.

In almost every industry an overwhelming majority of the units of the industry are wholly willing to work together to prevent overproduction, to prevent unfair wages, to eliminate improper working conditions. In the past success in attaining these objectives has been prevented by a small minority of units in many industries. I can assure you that you will have the co-operation of your Government in bringing these minorities to understand that their unfair practices are contrary to a sound public policy.

This speech by the President was, of course, designed to test the public's initial reaction to his important recovery bill. It is quite clear that the President already knew the essential features of his forthcoming legislative recommendations — increased wages and mass purchasing power, elimination of “cutthroat” prices, establishment of fair trade practices, bringing into line of recalcitrant minorities, and co-operation of industry with the Government.

Returning now to the drafting of the Act, we record that by May 15, the White House group had perfected a recovery instrument so nearly satisfactory to the President as to cause him to announce at a press conference his intention of sending his proposals to Congress two days later. The text of the bill introduced on May 17, 1933 is reproduced in Appendix I.¹⁰

⁹Compare with R. G. Hawtrey's theory of recovery from depression as given in *Good and Bad Trade*, London, 1928.

¹⁰In his message to Congress transmitting the bill, the President said, in part:

“My first request is that the Congress provide for the machinery necessary for a great co-operative movement throughout all industry in order to obtain wide re-employment, to shorten the work week, to pay a decent wage for the shorter week and to prevent unfair competition and disastrous overproduction.

“Employers cannot do this singly or even in organized groups, because such action increases costs and thus permits cutthroat underselling by selfish competitors unwilling to join in such a public-spirited endeavor.

“One of the great restrictions upon such co-operative efforts up to this time has been our anti-trust laws. They were properly designed as the means to cure the great evils of monopolistic price fixing. They should certainly be retained as

5. *Public Reception of the Recovery Bill*

The public reaction to the President's recovery bill was in the main exceptionally favorable, the chief criticism being focused on its failure to provide higher import duties. But the omission was calculated, because the President had intended to negotiate lower tariffs and also in some degree because the United States had already abandoned gold.¹¹ In particular, the monetary policy was expected to produce an adjustment of international exchange rates so that foreign prices of American goods would be lowered even though domestic prices were slightly increased to cover additional labor costs, and so that American prices of foreign goods would be raised. And, even though the recovery bill should increase costs, there was the Democratic Party's campaign pledge to lower tariffs.¹²

a permanent assurance that the old evils of unfair competition shall never return. But the public interest will be served if, with the authority and under the guidance of Government, private industries are permitted to make agreements and codes insuring fair competition. However, it is necessary, if we thus limit the operation of anti-trust laws to their original purpose, to provide a rigorous licensing power in order to meet rare cases of non-co-operation and abuse. Such a safeguard is indispensable.

"The other proposal gives the executive full power to start a large program of direct employment. A careful survey convinces me that approximately \$3,300,000,000 can be invested in useful and necessary public construction, and at the same time put the largest number of people to work.

"Careful estimates indicate that at least \$220,000,000 of additional revenue will be required to service the contemplated borrowings of the Government. This will of necessity involve some form or forms of new taxation. A number of suggestions have been made as to the nature of these taxes. I do not make a specific recommendation at this time, but I hope that the Committee on Ways and Means of the House of Representatives will make a careful study of revenue plans and be prepared by the beginning of the coming week to propose the taxes which they judge to be best adapted to meet the present need and which will at the same time be least burdensome to our people. At the end of that time, if no decision has been reached or if the means proposed do not seem to be sufficiently adequate or certain, it is my intention to transmit to the Congress my own recommendations in the matter.

"The taxes to be imposed are for the purpose of providing re-employment for our citizens. . . .

"For this reason I urge prompt action on this legislation."

¹¹Some part of the gold export just prior to the abandonment on April 23, 1933 may be ascribed to knowledge that a recovery bill, which would raise costs, was being prepared. As early as April 8, intimate advisers of the President, who knew that such a bill was being drafted, believed that the United States would be forced off gold within a month.

¹²In an address to the Brookings Institution on May 19, Bernard M. Baruch said that lower tariffs, which had been promised by the Democratic Party, would be impossible if the recovery bill was passed. Baruch also intimated that steps would be taken to mobilize public opinion behind the bill by means of insignia. Thus, on this early date, he prophesied the use of the Blue Eagle. See Chapter III, Section 5.

Despite the impounding of gold on April 23, 1933 and consequent adjustment of exchange rates resulting in American tariffs becoming less important, some business men were quick to make a fight for higher import duties. The National Association of Manufacturers immediately demanded that Congress modify the bill to permit higher tariffs. On the other hand, President Harriman of the United States Chamber of Commerce, ignoring lack of tariff protection, on May 21, 1933 referred to the President's recovery bill as "The Magna Charta of Industry and Labor," and announced that the Chamber's legal staff would immediately begin preparation of rules of fair trade practice and work out a model draft of a code.

On the same occasion Harriman volunteered the opinion that industries would first come to agreements on minimum wages and maximum hours of work and then, if the nature of the industry warranted, on minimum prices and other more specific measures to prevent "over-production." His remarks are peculiarly significant in appraising the NRA because they indicate clearly that, while Congress was considering the bill, industry expected to fix prices and control production and said so publicly. In fact, Harriman made industry's point of view unmistakably clear by adding that the Chamber had received many inquiries from its members regarding the operation of the German cartels. In making this public, he prophesied that the eventual use of the cartel system would depend upon "the economic outlook of the administrator" of the act. It is clear, therefore, that Congress should not have passed the bill unless it was willing to allow industry to indulge in price fixing and production control.

As might be expected from Harriman's remarks, the introduction of the recovery bill in Congress was almost universally regarded as bullish. On May 21, nearly all investment firms advised their clients to invest in stocks and industrial bonds. Such a spirit of optimism seemed to prevail that business, or rather that part of business which is represented by the United States Chamber of Commerce and Wall Street, could not have shared the view of the Secretary of Labor that wages were about to be increased at the expense of capital earnings (see Chapter I, Section 8). It believed the depression was about over; there was to be no more cutthroat competition, and no more sales below cost; the Government was planning to guarantee a profit to every one. Possibly to demonstrate its faith, but more likely to buy before prices increased as a result of the threatened monetary devaluation and the expected price-raising policy of the Administration, business once more began to place advance orders and thereby greatly

stimulated production and employment in the manufacturing industries.

That builders were eagerly anticipating government control of industry was emphatically stated in the *Dow Service Daily Building Reports* of May 22, which also contained the following statement on price fixing:

The average man in the building business can scarcely realize that the day has come when the Government will say not only what the cost of a building commodity is, but actually will determine what the seller shall allow for transportation and distributing cost, and finally, fix the price at which the commodity shall be sold. Yet that is the purport of what the building construction industry gathered from President Roosevelt's radio talk.

Further evidence that industry in general was expecting profits is found in the publicly expressed belief of Charles F. Abbot, Director of the American Institute of Steel Construction, that the codes would presumably contain provisions permitting the fixing of prices at not less than the cost of production and distribution *plus a reasonable profit*. These expressions indicate forcefully that business expected increased earnings to follow passage of the bill, even if they had to be obtained by *government fixing of prices to include a reasonable profit*.

Other advantages to industry arising from the opportunity offered for self-government by the recovery bill were stressed by Gerard Swope, President of the General Electric Company, in addressing the National Electrical Manufacturers' Association on May 22 at Hot Springs, Virginia. To impress upon industry the necessity for putting its own house in order, now that a chance was being presented, he intimated that strict governmental supervision might otherwise follow by saying:

Laws have been passed which were much worse for industry than the public would have been glad to accept had regulations been imposed upon industry by itself, with its truer perspective and knowledge of the practical extent of such regulation.

Despite such strong support and the conscientious attempts of the framers of the bill to meet the demands of both industry and labor, the measure was not entirely satisfactory to either group. Briefly here and more fully in Section 7, we note that it was unsatisfactory to manufacturers because (1) it offered no protection to them against

imports, (2) its licensing feature was sufficiently broad to confer dictatorial powers upon the government bureau chosen to administer it and created uncertainty, and (3) its collective-bargaining section seemed to them to grant too much to labor. Organized labor, for its part, did not approve the section providing for the establishment of minimum wages; but the guarantee of collective bargaining was especially desired and, rather than risk its loss, labor accepted the labor sections *in toto* and lobbied for the enactment of the entire measure. The bill was subject also to desultory attack because it made no provision to protect the consumer from gouging by labor and business.

6. *Challenges of Constitutionality*

Attacks on the recovery bill by congressmen paralleled in the main the objections of manufacturers. Thus, several members of the Senate Finance Committee feared that the measure might confer undue powers upon the President. In particular, on May 22, Senator William H. King of Utah asked in committee whether the bill had been modeled after the German cartel system or Mussolini's edicts. Also Senator Thomas P. Gore of Oklahoma inquired if the authority granted was not too much to vest in anyone, and Senator Thomas T. Connally of Texas challenged the contention that Congress could so broaden or delegate its power even in emergencies. But, in reply, Senator Wagner said that that the authors of the bill wanted to substitute efficiency and industrial planning for the prevailing lack of planning and that, in an emergency, Congress could reach over the wide area proposed and yet remain within its constitutional authority.¹³

When Senate debate began on June 7, 1933, Senator David A. Reed of Pennsylvania reopened the question of delegation of authority by saying that Congress was selecting an individual, whom it did not know and over whom it could have no supervision, to legislate fair trade practices for the nation's industries. He prophesied that, within a year, there would be more controversy over this question than had arisen over the highly debated veterans' legislation. On June 8 Reed continued his opposition, declaring heatedly that the plan was insane, and in particular severely criticizing the licensing provision.

Senator William H. Borah of Idaho also challenged the constitutionality of the bill and, in addition, objected to the measure on the ground that it would encourage monopoly and thereby unduly restrict

¹³Compare Sachs' statement below.

opportunities of individuals. He sardonically asked if the Senate believed that anti-trust legislation should be enforced by suspending it, and declared that whenever the giant movers of industry met, even for the purpose of holding a dance, they talked over the possibilities of raising prices.¹⁴

Nor did all important Administration advisers believe the recovery bill constitutional. For instance, this aspect was questioned on May 20, 1933 by Alexander Sachs who wrote a long letter to Johnson in which he also objected to the general character of the bill.¹⁵ In fact, Sachs' remarks on the constitutionality of the measure, which follow, might have been used in part by the U. S. Supreme Court in its decision on May 27, 1935, invalidating the Act (see Appendix VIII):

Finally, as one who, though a layman, once studied jurisprudence and administrative law at Harvard, and continued since to be interested in American and European administrative law in relation to economic organization, may I express with due humility, but deep sincerity, my conviction that such wholesale undefined and indeterminate social legislation is incompatible with what I understand to be the logic of our Constitution and Federal Government. From that standpoint I consider it a sad commentary on certain former classmates of mine who are now floating in Washington, that at this critical turn they should lightly brush aside the plain import and logic of constitutional provisions that are obvious to the layman. Thus, I find it difficult to understand how they and some others feel warranted in so expanding the concept of interstate commerce as to leave nothing to intrastate business; making the remote consequences from the expected codified hours, wages and trade practices a sort of Tennysonian flower in the crannied wall from which all the political and economic problems are to be deduced and resolved. In such snatches of conversation as I

¹⁴So forceful was Borah's logic that the Senate was compelled to adopt an amendment which, if allowed to remain in the final bill, would have prohibited price fixing and other monopolistic practices and code agreements in the restraint of trade. See Section 7.

¹⁵Sachs began his letter with the statement:

"The bill just introduced on May 17th, bearing the name National Recovery, differs so markedly from the plans that I as a workaday economist have sought to evolve as suited to and evoked by the crisis that I feel it necessary as a matter of intellectual integrity to utter at the start my misgivings and concern about the economic and juridical validity of the bill as drafted and as being rushed into enactment. I'm afraid the diversity of authorship—ranging from Dickinson, Richberg, Wagner, Podell to yourself, from such divergently motivated bodies as the Chamber of Commerce, the A.F.L., to social-welfare agencies—has produced instead of a synthesis, a conglomeration of purposes, an obfuscation of ends and a stultification of methods."

have had with them in recent hectic visits to Washington I have searchingly inquired whether they had ever read the *Federalist* or any other original American source book, or whether, in their all-embracing mental fog, their words and concepts have lost all shape and definition. The terms and concepts, "commerce with foreign nations and among the several states," have their roots in a unique type of federalism that the United States established. The word "among" itself implies the separateness and the integrity of the units through which the flow of commerce takes place; the word "among" cannot be the equivalent of the word "within" or the word "through." In logical terminology "among" assumes an externality of connection for the traffic flow, not an internality and interpenetrability, so that the flow within the states cannot be assimilated on account of indirect results with the flow between the several states.

The American Manufacturers' Association's contention that the law now being discussed in Congress would be declared unconstitutional seems to me well taken. On sheer logic you cannot stretch words to mean the opposite of what the founders were so anxious to keep clear — the preservation of the distinction between intra- and interstate commerce and the preservation of the principle of specific and definite delegation instead of unspecified, endlessly discretionary delegation of power by Congress to the Executive, who will in turn have to function through a hierarchy of administrators and agents, each of whom could not be responsible for the undefined discretionary delegations of power to his successor in the hierarchy. Speaking bluntly, so-called liberals have gotten off on the wrong foot from the start in trying to make of the United States a centralized government like France, and to attempt to legislate by omnivorous acts whose only validity would rest upon the vague welfare clause of the Preamble to the Constitution. Had they been better informed and more genuinely liberal they would have emulated the British liberalism in working out detailed and specific legislation for specific economic problems upon specific record and study.

I must pass by the correlative fundamental objection that the omnibus bill can only be administered by a bureaucracy operating by fiat and such bureaucracy would be far more akin to an incipient Fascist or Nazi state than to a liberal republic. Not only is this type of legislation impractical and unwise but it tends to negative the very fundamentals of our political and economic order. Precisely because our Congress, political system and constitution are so interlinked with the *Federalist* System of states, it seems to me all the more necessary, from a constitutional as well as an economic point of view, to have proceeded on a clarified pluralist in-

stead of confused monistic planning of objectives and administrative instrumentalities.

7. Congressional Additions and Modifications

The President, realizing that any tax proposals which he might make would arouse some opposition in Congress, left this question to the legislators, thus concentrating the attention of Congress on taxation rather than on modification, constitutionality, and other matters. So, in spite of underlying dissatisfaction of manufacturers and labor with the President's recovery bill, the House accepted the Administration's draft without question and confined itself to writing the tax section. To raise revenue for the purposes of the proposed act, the House Ways and Means Committee increased the federal income tax rates in the lower income brackets, made these rates applicable to corporate dividends, and changed the federal refiners' gasoline tax from one cent to one and three-quarter cents a gallon, a tax program essentially identical with the first of four proposals submitted by the Director of the Budget. The committee also added a "Buy American" provision. On May 24, it reported the entire bill favorably to the House and recommended that debate be limited to the extraordinarily brief period of five hours and that all but committee amendments be excluded from consideration. In reporting the bill, the committee issued the following utopian statement:

By establishing maximum hours of work and minimum wages, we may insure the continued employment of those now employed and furnish work for a substantial percentage of those now idle, and this brings about security of employment for millions of our people at wages sufficient to provide for living in decency and comfort.

As a result of such a program we may confidently expect a further stimulation of industrial operations, greater security of capital, greater security of labor and a steady increase in the prosperity of the nation.

Such golden and comprehensive promises won many House converts to the measure and, although manufacturers did not endorse the bill which the Ways and Means Committee reported, the measure was passed by the House on May 26 by a vote of 323 to 76. Manufacturers then began a determined effort to revise the Senate bill. On May 28, James A. Emery, counsel for the National Association of Manufacturers, chided Congress in a public statement which expressed the

warning that Congress should look before it leaped and not make haste to repent at leisure. In particular Emery declared that manufacturers would have to mark time on commitments awaiting administrative approval of wages, hours, fair trade practices, and so forth, and that this would delay business revival. The mere limitation of the life of the measure to only two years, he believed, indicated the doubt felt by its framers regarding its alleged benefits to industry.¹⁶

The objections of Emery did not go unheeded, for, on June 2, a Senate revolt against the Administration broke out and the Senate Finance Committee undertook drastic revision of the recovery bill. Upon a motion of Senator William G. McAdoo of California, the licensing provision was eliminated by a vote of twelve to seven. Next, the addition of a section sponsored by the Administration providing for control of the oil industry was prevented by a vote of eleven to seven. Following this, an embargo amendment, offered by Senator David A. Reed of Pennsylvania, was adopted by a vote of ten to eight. An amendment was also accepted specifying that the Act should be administered by a large body rather than by an individual, and that those administering the Act, and receiving more than \$5,000 annually, should be subject to Senate confirmation.

Then, on June 3, the National Association of Manufacturers at a meeting in Washington, attended by more than 1000 representatives of American industry, virtually endorsed the Senate Finance Committee's amendments passed the preceding day, and, in addition, suggested that the labor sections be modified to prevent interference with existing relationships between employers and employees. This stand on labor, however, drew the fire of William Green, who declared indignantly that the opposition of the manufacturers placed them in the inconsistent position of accepting the right to organize, fix prices, and compel all employers to conform to their price-fixing agreements or forfeit the privilege of engaging in industrial production, and yet of denying workers the right to organize and bargain collectively. He concluded with the threat:

Labor will appeal to its friends in Congress to vote against the bill if the labor sections, as adopted by the House of Representatives, are eliminated or modified.

As a result, no further serious attempts to modify the section on

¹⁶He made also the prophecy:

"Our examination of the bill forces the conclusion that, in its present form, apart from every other consideration, it will, if enacted into law, tend to retard rather than promote business recovery. It will in fact nip in the bud the business recovery already manifesting itself. It will hurt rather than help."

collective bargaining were made, but opposition to other sections continued. Thus, on May 22 Senator Alben W. Barkley of Kentucky questioned the emergency character of the bill by asking what would happen at the end of the proposed two-year period. To this, Wagner replied that, if it proved to be better to have organized industry than chaos, Congress would enact permanent legislation. Also Senator Reed, continuing his opposition, asked why the licensing provision had been included and what its effect would be. To these queries, Senator Wagner also replied, saying that the provision was put in as a club over "recalcitrant" business men who, by wage cutting and sweatshop methods, might imperil fair-wage scales. The bill, he said, was to protect the small business man. To this last statement, Reed retorted that big business was sponsoring the bill and that it was unfair to accuse everyone who failed to support it of favoring the sweatshop. Senator Borah also continued his attack on the measure, asserting that it would favor big business and adversely affect the consumer. Another objection was raised by Senator Connally who suggested that the measure would raise industrial prices and thereby nullify the Farm Relief Act. In meeting this last criticism Senator Wagner agreed that it would be absurd to increase agricultural prices and then raise industrial prices still higher. He then declared that the Administration intended to create and maintain a satisfactory parity.

Despite further important objections based on constitutional grounds, by June 5 the Administration had regained Senate support for its measure, and on that date, by a vote of twelve to six, the Senate Finance Committee rescinded its action of June 2 on the licensing provision, and then limited its operation to one year instead of two. To replace increases in income taxes voted by the House, the committee next adopted a tax proposal of Senator Harrison, which imposed a corporate tax of 1/10 of one per cent together with certain provisions of the old excess profits tax to make it effective. Following this the committee rejected a "Buy American" provision similar to the one in the House bill, and reported its measure favorably to the Senate. Once more Congress was co-operating with the White House.

8. The Passage of the Act

Since Congress had been invited to write the tax sections, it was in these that the Senate, both in committee and as a whole, had the fullest opportunity to make amendments. First, on motion of Sena-

tor Robert F. LaFollette of Wisconsin, the Senate provided publicity for income-tax returns under regulations to be drawn by the President. It then extended for one year all special excise taxes voted by the preceding Congress and made administrative changes in the tax law to prevent carrying over into subsequent years losses on sales of stocks and bonds when the losses exceeded the gains in the year in which they occurred. At all times during this session at which amendments were voted upon, senators were on the alert to see that ample provision was made for public-works projects in their states, attendance being better than at any time since consideration of the measure first began. Thus, various measures were specified as having the approval of Congress, the list including almost every conceivable project. Indeed the Senate called a halt only when it was proposed to spend the Federal Government's funds on privately-owned amusement parks.

Finally, on June 10, the recovery bill was passed by the Senate and sent to a conference committee to compose differences. Although about 100 amendments required adjustment, agreement was reached in a few hours and a report made the same day. The committee's attitude seemed to be that it was more important to pass any bill speedily than to enact carefully considered legislation. The House itself was equally disposed to hurry the legislation and immediately passed the amended bill.

Almost as soon as the Senate convened on June 13, debate began on the conference report. Senator Borah was outraged because the conference committee had emasculated his anti-monopoly amendment. In sarcastic comment he declared that those sponsoring the legislation must have been of the opinion that neither price fixing nor combinations in restraint of trade characterized monopoly. Further elaborating his objections to price fixing on the basis of cost, he contended that the cost of production in industries would never be known, even if attempts were made to establish uniform accounting systems. Senators Bennett C. Clark of Missouri and LaFollette of Wisconsin also scored the conference report, charging virtual betrayal of the Senate in yielding to the House without a fight. But the Senate was not moved and shortly thereafter Senator B. Patton Harrison of Mississippi, chairman of the Senate Finance Committee, concluded the debate with a brief successful appeal for the adoption of the conference committee's report, the vote being forty-six to thirty-six. Immediately Vice-President John N. Garner and Speaker Henry T. Rainey signed the completed bill and sent it to the President.

The two versions of the National Industrial Recovery Bill, (1) as submitted to Congress by the President and (2) as finally enacted, are compared in Appendix I. This comparison shows that the chief additions which Congress made to the bill as drawn by Moley, Johnson, Richberg, Perkins, *et al.*, were (1) some general remarks about foreign commerce, restriction of production, and purchasing power, in Section 1; (2) the strengthening of the monopoly prohibitions of Section 3a; (3) a declaration that the powers of the Federal Trade Commission were not limited by the Act; (4) a restriction on those imports which tended to defeat the purposes of the Act; (5) a limitation of the licensing provision to one year instead of two; (6) a statement that no labor classifications were to be introduced which might tend to make the minimum wage a maximum wage; (7) the addition of an oil-regulation section essentially as proposed by the Administration; and (8) the inclusion of a plan of taxation.

President Roosevelt required only a short time to study congressional amendments and signed the Industrial Recovery Act on June 16, 1933. At the same time he outlined the Administration's policy and detailed methods of procedure under the Act, his statement of policy containing the following significant paragraphs:

In my inaugural I laid down the simple proposition that nobody is going to starve in this country. It seems to me to be equally plain that no business which depends for existence on paying less than living wages to its workers has any right to continue in this country. By "business" I mean the whole of commerce as well as the whole of industry; by workers I mean all workers — the white-collar class as well as the men in overalls; and by living wages I mean more than a bare subsistence level—I mean the wages of decent living.

Throughout industry the change from starvation wages and starvation employment to living wages and sustained employment can, in large part, be made by an industrial covenant to which all employers shall subscribe.

It is greatly to their interest to do this because decent living widely spread among our 125,000,000 people, eventually means the opening up to industry of the richest market which the world has known. It is the only way to utilize the so-called excess capacity of our industrial plants. This is the principle that makes this one of the most important laws that ever came from Congress because, before the passage of this act, no such industrial covenant was possible.

On this idea, the first part of the act proposes to our industry a great spontaneous co-operation to put millions of men back in their regular jobs this summer. The idea is

simply for employers to hire more men to do the existing work by reducing the work hours of each man's week and at the same time paying a living wage for the shorter week.

No employer and no group of less than all employers in a single trade could do this alone and continue to live in business competition. But if all employers in each trade now band themselves faithfully in these modern guilds — without exception — and agree to act together and at once, none will be hurt and millions of workers, so long deprived of the right to earn their bread in the sweat of their labor, can raise their heads again. The challenge of this law is whether we can sink selfish interest and present a solid front against a common peril. . .

This law is also a challenge to labor. . . .

This is not a law to foment discord and will not be executed as such.

It is, further, a challenge to administration. We are relaxing some of the safeguards of the anti-trust laws. The public must be protected against the abuses that led to their enactment, and to this end we are putting in place of old principles of unchecked competition some new government controls. . . .

Let me make it clear, however, that the anti-trust laws will stand firmly against monopolies that restrain trade and price fixing which allows inordinate profits or unfairly high prices. . . .

I am fully aware that wage increases will eventually raise costs, but I ask that managements first give consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public. This is good economics and good business.

If we now inflate prices as fast and as far as we increase wages, the whole project will be set at naught. We cannot hope for the full effect of this plan unless, in these first critical months, and even at the expense of full initial profits, we defer price increases as long as possible.

Within less than a month after the recovery bill had been introduced, Congress had passed and the President had signed what he termed "probably the most important and far-reaching legislation ever enacted by the American Congress" and "a supreme effort to stabilize for all time the many factors which make for the prosperity of the nation and the preservation of American standards."

That the Act itself was contradictory in its basic provisions, I believe, never was fully realized by its sponsors.¹⁷ As we shall see in the remaining chapters, no directions were given for reconciling such

conflicting proposals as: drastic social reforms and economic recovery; the curtailment of production and increased use of productive capacity; the restriction of private investment in new plant and the undertaking of public works to stimulate the heavy-goods industries; the setting of minimum wages which would not permanently close any plants; drastically shortened hours of labor and higher standards of living within two years; price fixing and preservation of the freedom of competition; and minute regulation of industrial practices, including price and production control by industry, without development of monopolistic practices.

¹⁷As an exception, it may be noted that on May 20, 1933, Alexander Sachs wrote General Johnson as follows:

"I submit that it is not too late to re-think or think for the first time what is really needed and how it can practically be secured. I fear, and fear profoundly that the present device that has emerged from the many authors who have not reached a common basis is too intellectually muddled to produce codes that would work in practice or stand up in the courts when challenged. The danger is that the codes that will be rushed through will be like economic nebulae or even chaos. There is no substitute for hard thought and co-ordinated competence, for rigorous determination of objectives and critical construction; without these wholesale planning is worse than no planning.

"Having uttered my protest, I am still ready to try to get you to rewrite the bill, and if not re-written to aid you in putting definite and national content in implementing what I am afraid will turn out to be a confused and dubious experiment, except for the psychological stimulus initially given."

CHAPTER III

PERSONNEL AND ADMINISTRATION

1. Administrative Personnel

Confronting every employer, whether private or governmental, are the problems of selecting honest, efficient, and impartial employees. All employers must consider such difficulties as these, and a government by the people must guard against additional moral hazards. In the case of the latter, individuals who control a few votes must be recognized — perhaps given work, a job with trivial duties, or one which automatically yields a competitive advantage. Moreover, at times a public officeholder may feel compelled to grant an order for goods at a price higher than the market, or an exemption from some rule or regulation. In the United States armies of political cohorts demand “harmless little favors” of almost every variety. Perhaps no one recognized these problems more clearly than Franklin D. Roosevelt, for, while he was yet Governor of New York, he said in a nationwide radio broadcast:

The doctrine of regulation and legislation by “master minds” in whose judgment and will all the people may gladly and quietly acquiesce has been too glaringly apparent at Washington during these last ten years. Were it possible to find “master minds” so unselfish, so willing to decide unhesitatingly against their own personal interests or private prejudices; men almost God-like in their ability to hold the scales of justice with an even hand, such a government might be to the interest of the country, but there are none such on our political horizon, and we cannot expect a complete reversal of the teachings of history.¹

Less than a year afterwards, this unbeliever in the innate fairness of government personnel was preparing to launch a colossal new federal agency which would hold the scales of justice on wages and labor disputes in almost every industry, on “fairness” in business, on the minutest terms of sale, and even on prices themselves. Moreover, before he as President had decided upon the final form of his sweeping industrial bill, he had offered to General Hugh S. Johnson the posi-

¹Political speech of Presidential Candidate Roosevelt, 1932.

tion of Administrator, the chief arbiter of competition in the most complex industrial economy of the world.

General Johnson, brilliant, dynamic, and possessing a rare sense of justice, appreciated the magnitude and grave responsibility of his task. Here was an undertaking equalling, if not surpassing, the War Industries Board which mobilized all American resources, yet not having a patriotic support that made treason of failure to co-operate or of disobedience to orders. Although doubtful of his own ability to carry on the purposes of the measure, he, nevertheless, determined to try; and so to prepare himself for the herculean task, he sought various opinions of the bill while Congress debated its provisions. Contact with some industrialists was planned by Bernard Baruch who also arranged introductions to Felix Frankfurter, Professor of Law at Harvard University and intimate friend and adviser of the President, and to Professor Leo Wolman of Columbia University, who later became chairman of the NRA's Labor Advisory Board. Nor was organized labor neglected: General Johnson talked at length with William Green, president of the American Federation of Labor, and told him that he would be expected to suggest a personal assistant for the NRA Administrator.² Possessing a likeable, forceful personality, radiating confidence, and offering logical, even if, as we shall see, somewhat incomplete arguments that the proposed agency would conquer the depression, and promising (1) profits for profitless industry, (2) shorter hours and increased pay for labor, and (3) greater purchasing power for the consumer, General Johnson rapidly gained the respect and support of labor and business leaders.

During this same period General Johnson and his close friend, Alexander Sachs of the Lehman Corporation, spent much time formulating possible administrative needs of the proposed agency and drawing elaborate diagrams of duties and responsibilities. A cabinet board would be established to give general advice; Johnson would report directly to the President. Assistant and deputy administrators, technical and administrative divisions, and advisory boards would be needed: one assistant administrator would be responsible for labor policy, another for industrial policy, and a third would co-ordinate the efforts of these two; a code analysis division would analyze proposed codes for an administrative division consisting of deputy administrators. These last would negotiate agreements among labor, industry, and consumers. A research division would report on labor

²Green was pleased by this recognition and suggested his associate Edward F. McGrady, whom General Johnson later appointed assistant for labor.

and industrial conditions; a legal division would render opinions on the legality of proposed codes; a labor advisory board would be appointed by the Secretary of Labor, an industrial advisory board by the Secretary of Commerce, and a consumers' advisory board by the Administrator for Industrial Recovery.

No difficulty was experienced in securing the President's approval of such an administrative organization, and, as passage of the bill became assured, General Johnson proceeded to gather a staff. As his own personal assistants, he chose Robert K. Straus and Miss Frances M. Robinson. Also John M. Hancock, a high executive in Lehman Bros., Inc., would become assistant administrator for general policy; Edward F. McGrady, an officer of the American Federation of Labor, would accept the position of assistant administrator for labor policy; and Dudley Cates, vice-president of Marsh and McLennan, Insurance, would become assistant administrator for industrial policy. John W. Powers would serve as chief of an administrative division and as deputy administrators would have Arthur D. Whiteside, Clay C. Williams, Kenneth M. Simpson, William L. Allen, Carl D. Howard, and H. Nelson Slater. Alexander Sachs would direct a research division, Donald R. Richberg, a legal division, and Stephen M. DuBrul, economist of the General Motors Corporation, a code analysis division; Mrs. Mary H. Rumsey would become chairman of a consumers' advisory board, Leo Wolman, an international authority on labor problems, would serve as chairman of a labor advisory board; and Pierre S. du Pont of Wilmington, Delaware, would accept the position of chairman of an industrial advisory board.

Perhaps no administrator ever surrounded himself with such a galaxy of able, conscientious men, generally recognized as leaders in at least their own fields of industrial endeavor. An emergency had arisen; strong men were needed; and strong men had rallied to the cause. And so, when such an administrative personnel was later announced, the various industries were electrified with hope.³ With such

³On June 19, the Secretary of Commerce, Daniel C. Roper, announced the personnel of the Industrial Advisory Board to be as follows: Pierre S. duPont, chairman; Alfred P. Sloan, Jr., president of the General Motors Corporation; Walter C. Teagle, chairman of the Board of the Standard Oil Company of New Jersey; Gerard Swope, president of the General Electric Company; Edward N. Hurley, chairman of the Board of the Hurley Machine Company; Louis Kirstein, vice-president of William Filene's Sons Company; William J. Verreen, former president of the American Cotton Manufacturers' Association; and Austin Finch, president of the Thomasville Chair Company.

On the same day, the Secretary of Labor named the personnel of the Labor Advisory Board as: Dr. Leo Wolman of Columbia University, chairman; John P. Frey, president of the Metal Trades Department of the American Federation

a state of mind already prevailing, Boaz Long, director of NRA publicity, in essence added a picture of General Johnson as Moses leading his people out of the wilderness of depression — a touch of the General's wand and jobs would flow freely; a tablet of stone would establish the ten commandments of fair competition; and business was to be carried to a new plane of brotherly love and profits for all. But, we shall see, there were two fundamental weaknesses.

First, when the President announced the official organization of the NRA, he made two important deviations from the plan so carefully drawn by Sachs and Johnson: (1) General Johnson would report to a board⁴ instead of directly to the President, and (2) Harold L. Ickes, Secretary of the Interior, instead of Johnson, would be Administrator for Public Works. The first, as we shall see, ultimately led to constant bickering, jealousy, and, one might even suspect, deliberate sabotage by cabinet officers or their subordinates. The second, as we shall see in Chapter XIV, Section 1, severely hampered the NRA and sentenced, I believe, the nation to additional years of depression.⁵

of Labor; Joseph Franklin, president of the International Boilermakers' Union; William N. Green, president of the American Federation of Labor; Sidney Hillman, president of the Amalgamated Clothing Workers; Father Francis Haas, of the Catholic Welfare Council; and Rose Schneiderman, secretary of the Women's Trade Union League.

⁴Known as the Industrial Recovery Board and composed of the Secretary of Commerce, chairman, the Attorney-General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Labor, the Director of the Budget, the Chairman of the Federal Trade Commission, and the Administrator for Recovery.

⁵This action of the President almost resulted in Johnson's refusing to serve as Recovery Administrator, for he then felt very definitely that public works were an integral part of the recovery program: the funds should be spent quickly to support industry while it was shortening hours of work and increasing wages, and allotments should be used to compel adjustments which would lead to better balance between wages and prices in the various industries. To Johnson, the President's change implied a lack of confidence in him as Administrator; it meant fettering his freedom of action with administrative red tape. Various cabinet members had to be kept satisfied and this could not be done if indicated adjustments were to be accomplished. But before Johnson voiced his intention to withdraw he discussed the situation with Miss Perkins and she persuaded him to remain.

Although Johnson's original draft of a recovery bill did not mention public works, before the Act was passed he had become converted to the idea of using public works to induce economic changes that were in the interest of recovery. See also Chapter I, Section 9, and Chapter XIV, Section 1.

Once Johnson had accepted appointment his troubles began: the codes had to contain provisions favoring the farmer; wage rates had to be increased; even if industry was operating only thirty hours, it had to operate less; statistics on labor and industry had to be gathered immediately, almost without regard to the cost to industry; public-works funds would be spent only upon projects of permanent value even though these required two years to get under way; and finally, as a last straw, wages paid on public works would be higher than the corresponding rates in industry — an example had to be set by the Government.

Another weakness was the political patronage system in vogue under all previous administrations, but about to be raised to new levels of impudence. It was difficult enough to obtain competent subsidiary personnel even disregarding political affiliations — many of the best men were already employed and could not accept these government jobs—but to this were added the clamorous demands of politicians, even in the White House,⁶ that jobs be given their constituents. The situation might be described thus: a friend of Congressman — was an expert on the chemical industry — he had spent three months as an assistant in a laboratory; another knew the electrical industry — he had once sold electrical appliances; and a third was an able lawyer — he had passed a correspondence-school course and while not yet admitted to the bar, expected to be shortly. All bore letters from officials of the Democratic National Committee and all had to have jobs.

At the same time, General Johnson's administrative heads found difficulty in securing appointments of their own choices. In several instances, especially in the non-technical divisions, appointments were refused point-blank unless the applicants had proper endorsements. A requisition would be filled by a party favorite possessing the qualifications on paper; he would fall below the administrator's expectations; and since firing was difficult and often impossible, a new requisition would be filed. Before long an original staff of sixty had grown to six thousand and at least half of these were thoroughly incompetent. Conditions of appointment were so bad that, once an able youngster had in some way joined the NRA, he was rapidly promoted as administrators bid against each other for his services. Thus, a green doctor of philosophy in economics was appointed at \$1800, an adequate salary for one of his training and experience, and within six months was receiving \$4500; and similar stories could be told almost without end.

Thus, at the beginning of NRA, we find General Johnson possessing an able general staff, including leaders in the fields of business,

⁶In 1934 shortly after General Johnson had issued an order banning the hiring of additional workers, the author needed assistance in the preparation of the Administration's report to Congress on the accomplishments and future of the NRA. When he asked Henderson for such a technician, he was reminded of Johnson's recent order. One man was, however, available, for someone in the White House had sent a note to the NRA telling it to find employment for a certain person. The qualifications for economic-statistical analysis possessed by this applicant were that he had once engaged in detective work.

This occurred when the NRA was settling down to highly technical work. Nevertheless, the man was given a position which carried a high salary and duties which entailed but a low intelligence. The author went without his expert.

labor, and economic and statistical theory; and favored with unprecedented publicity depicting him as a God-inspired leader who would accomplish miracles. Nevertheless, his administrators were experiencing difficulties in securing competent personnel; he was forced to satisfy a cabinet board having contradictory interests and beset by jealousies; and he was deprived at the very outset of his most powerful weapon, public works. Such conditions alone were an almost insurmountable handicap at the start; but, as we shall see, to these were added a tremendously complex task and a self-contradictory law.⁷

2. The Research and Planning Division

At the time the President signed the NIRA, he directed that a deputy administrator should hold a public hearing on every code submitted and that, at the conclusion of these hearings, the Administrator for Industrial Recovery should present the proposals and facts to him for action under the law. Questions of legality of proposals quite naturally went to the NRA's Legal Division; the assembling of other available facts became an activity of the Research and Planning Division; and to the Code Analysis Division fell the task of preparing appraisals of the code proposals in the light of these facts.

The history of the Legal Division must be written by Donald Richberg, Blackwell Smith, or someone else intimately associated with it. The record of the Code Analysis Division is essentially a story of Stephen M. DuBrul's able and determined, but often ineffectual, resistance to what he regarded as unsound proposals covering all phases of economic life, and is given in some detail throughout this volume. At this point we need only add that DuBrul's division possessed little personnel — chiefly himself and Albert J. Hettinger, brilliant economist for a Detroit investment house — and after a few months the entire division was combined with the Research and Planning Division, DuBrul becoming chief of the merged organization.

The functions of the Research and Planning Division as visualized by Dr. Alexander Sachs, its creator and first chief, were to prepare economic and statistical reports for industries to be codified and to consider and formulate further plans for general economic recovery. Whatever promised economic well-being could be considered: finance, housing, railroads, and the like were within its range of study. So we find Sachs establishing a capital-goods unit, the per-

⁷See Chapter II, Section 8, and footnote 17, and all later chapters.

sonnel consisting of Peter Stone of the F. W. Dodge Corporation, Robinson Newcomb of the U. S. Bureau of Standards, Arthur Holden of Philadelphia, and Roy Wenzlick of St. Louis. To study plans for increasing purchasing power and to make diagrammatic reports, he secured the appointment of Arthur O. Dahlberg. Max Kossoris of the Illinois Department of Labor joined the organization to advise on labor matters; Victor S. von Szeliski of the Lehman Corporation became chief statistician; and to the author fell the lot of organizing research studies⁸ on matters of general policy — the general theory of the NRA, balance among industries, effects of the codes on various groups, wage policies with special reference to capital-goods industries, and loss leaders. Then, there were specialists for various industries—Joseph E. Pogue for petroleum, Andrew T. Court for automobiles, Fred E. Berquist for coal, and so forth — who rendered detailed analyses of the problems confronting their industries. All principals reported directly to Sachs: von Szeliski, Kossoris, Dahlberg, Wenzlick, Pogue, Berquist, the writer, and others conferred with him on policy and research matters and wrote him memoranda outlining their views. Although Sachs did delegate certain functions to von Szeliski and to his administrative assistant, Dr. George B. Galloway, he was the co-ordinator of the Division's activities: he assigned problems, personally read reports, and passed or disapproved codes.

When DuBrul succeeded Sachs, an organization chart was drawn placing all functions of the Division in three sections — (1) code statistics, the members of which wrote analyses of industries' proposals and attended code hearings as representatives of the Division, (2) editorial, the members of which edited reports with a view to obtaining uniformity of style and content, and consistency with "policy," and (3) recovery analysis and research, which had jurisdiction over all other functions of the Division, and in particular criticized general policies in the light of statistical and economic studies. DuBrul then appointed, as respective chiefs of these sections, John R. Riggleman, George B. Galloway, and the author, at the same time directing that lines of authority be respected and that weekly written reports of activities be made through these officers.

About this time, difficult questions relating to NRA policy sprang

⁸Early personnel of the research group consisted of Harold Hotelling of Columbia University and James A. Shohat of the University of Pennsylvania, who were special advisers, Max Sasuly and Y. S. Leong of the Brookings Institution, Henry H. Pixley of Wayne University, Victor Perlo and Anne Golden, doctoral candidates at Columbia University, and a number of minor employees. This group expanded to sixty-five in the spring of 1934.

up in rapid succession, and each was assigned to the research section for study and report. To researches previously initiated by Sachs were added investigations of wage differentials, handicapped labor, sales below cost, open prices, discounts, price fixing, cartelistic code devices, and a host of others, each requiring an economic specialist. Much new personnel was needed and it was difficult to find. In fact, economists throughout the world were ridiculing the NRA theory — even those employed by the NRA freely criticizing its policies — and as a result the whole class had become *persona non grata* to the administrative officers.⁹ It was much easier to obtain the appointment of a mathematician than of an economist. Several times the author unsuccessfully requested the appointments of certain persons classified as economists; when he later submitted requisitions for the same positions, calling for statisticians or mathematicians, administrative sanction was readily given although the same persons had previously been refused positions as economists. And, of course, to avoid serious delay, all persons wanted had to be asked to secure political endorsements before requisitions were submitted. Such safeguards and carefully drawn requisitions, which eliminated from consideration many political endorsees,¹⁰ were essential to avoid delay in obtaining competent personnel to study the NRA's most difficult problems. As further evidence, we record that on three different occasions, twice in 1933 and once in 1934, the writer attempted to establish a planning board of economists who would criticize and under-

⁹As illustrations of the disdain with which high NRA authorities regarded economists may be cited Richberg's reference to them as "dodos" in *Fortune*, September, 1934, and Johnson's term "economic kibitzers" used in his articles in the *Saturday Evening Post*.

But the author wishes to make it plain here that he has a good deal of sympathy for the views expressed by Johnson and Richberg. Economists as a class had failed notably in their analysis of the perplexing problems confronting the country and the entire world. In fact they had led us far astray by their failure to divorce their economic theory from their political prejudices. Some, in their passion to uphold classical economic dogmas, had even failed to adhere to the facts. In this state of affairs we can do no better than agree with John Maynard Keynes who, referring to classical Ricardian economics, says:

"But although the doctrine itself has remained unquestioned by orthodox economists up to a late date, its signal failure for purposes of scientific prediction has greatly impaired, in the course of time, the prestige of its practitioners. For professional economists, after Malthus, were apparently unmoved by the lack of correspondence between the results of their theory and the facts of observation; — a discrepancy which the ordinary man has not failed to observe, with the result of his growing unwillingness to accord to economists that measure of respect which he gives to other groups of scientists whose theoretical results are confirmed by observation when they are applied to the facts." *The General Theory of Employment, Interest, and Money*, 1936, p. 33.

¹⁰It seems that the personnel office classified as experts all business-school graduates who had the proper political endorsements.

take to modify policies relating to hours of work, wage differentials, prices, small firms, and so forth. Each time the Administration disapproved, but no difficulty was found in securing the appointment of "statisticians" to undertake some part of this work.

The abler economists of the NRA clearly understood that the organization was being forced into various fallacies. A few, like Hettinger, objected publicly and then left the NRA. Others, like Sachs, DuBrul, Mitchell, and Court, resigned first and then criticized. Still others, Dahlberg, Whitney, Leong, and the author, who were in the research section, criticized policies internally and remained with the organization in the hope that sooner or later developments would force the Administration to accord them attention.

3. Statistics and Economic Planning

One of the greatest handicaps under which the NRA labored was the dearth of relevant statistical material. It is true that long before the emergency organization had been created, some industrial leaders had appreciated advantages of making decisions based on facts and, therefore, had participated in the development of statistical programs of varying scope through trade associations, and had co-operated with governmental agencies in many ways. Yet, industry was by no means willing to bare its secrets. Even to secure co-operation in supplying data on such matters as pay rolls, employment, sales, and prices, governmental bureaus had to refrain from exhibiting figures which would identify plants. No country had spent more in collecting statistics than the United States and yet, with it all, definite answers were available to comparatively few questions: data for even the simplest forms of economic planning have been and still are lacking.¹¹

Moreover, many of the NRA administrators had little appreciation of statistics and frequently they ignored accurate information which had been supplied to them. In fact there were comparatively few of the later deputy administrators and their assistants who did not act in accordance with their preconceived ideas: available statistical material offering strong evidence to the contrary was unconvincing. In fact, at times, research workers had to threaten to resign because high administrative officials accepted and published studies fav-

¹¹For a discussion of fresh statistics collected by the Roosevelt Administration, see C. F. Roos, "Annual Survey of Statistical Information," *Econometrica*, Vol. 3, 1935, pp. 366-375.

orable to their own views, but ignored or dogmatically labeled as faulty those which were unfavorable. For instance, an adverse report of the Consumers' Advisory Board was not released until after a high official and the author had insisted that its facts were essentially correct and that they should be given to the public even if members of the board had to resign and publish in protest.

Yet, even if administrators of the NRA had been willing to demand all necessary statistics and to base decisions on them, there would have been instances in which data could not have been obtained within any reasonable period of time. In many cases the cost to industry of securing the material would have been prohibitive, and always there was the important question of reliability.

We recall that the various difficulties of launching an adequate statistical program, of which those cited are only a small part, were recognized by several statisticians of the Research and Planning Division who frequently supported NRA administrators in refusing demands of other government departments that large-scale statistical reporting be required immediately; that is, before codification had caused industrial administrative bodies to be cognizant of the needs of their industries. They even threw their influence against the Central Statistical Board, which in August, 1933 was urging early establishment by the Federal Government of a comprehensive statistical program for all industry. Here the principal issue was whether the Government itself should immediately begin collection of comprehensive statistics¹² or wait for business men to recognize the need and

¹²A memorandum of Meredith Givens of the Committee on Government Statistics to the Central Statistical Board, dated August 8, 1933, contains the following:

"Under National Industrial Recovery Administration codes the statistical activities of trade associations will be greatly stimulated. Code provisions as thus far developed indicate that the provision of information will be a major responsibility of trade groups.

"To develop an articulated statistical set-up, the following principles should be considered:

"(1) The basic statistical reporting for industry and trade must be planned by the Government, presumably in consultation with industrial and trade groups.

"(2) Such reports must be available to the Government in such detail as may be required for analytical and other general purposes.

"(3) It may be presumed that trade groups will require some information in greater detail than will be required by the Government. This detail, however, should be available to the Government.

"(4) The reporting system for industry and trade should be planned as a whole, and not piecemeal, in order to insure uniformity of classification and sampling, and comparability between various types of data.

"(5) To comply with the above requirements, a unified reporting system should be devised, whereby all reports will be filed with the Government, with duplicates or segments thereof available for deposit with trade groups or such agencies as may be designated."

then to collect them through their trade associations. The second view was held by business leaders themselves who pointed out that the immediate need was to encourage the installation of cost-accounting systems and educate business men to the value of statistics. Also they felt that so much delay would be encountered by the Federal Government in collecting and tabulating data that their statistics when published would have no practical value: they might be of academic interest, but this alone was not sufficient.

An impasse was soon reached, and so, on September 7, 1933, was held a conference of trade-association executives with representatives of the NRA, the Department of Commerce, and the Central Statistical Board. Here spokesmen for industry expressed the view that since trade associations were featured in the NIRA and in approved codes, and represented industrial self-government, they should not be legislated out of existence through the creation of extra-association administrative agencies nor should one of their major activities, the collection of statistics, be pre-empted by government. As an alternative they urged that, as codes became effective, the NRA in collaboration with the trade associations should work out, from time to time, minimum statistical requirements having a logical, consistent application to all industries under code, for comparison and use in broad planning. But even so, opinion of the government experts was divided, the majority holding that statistics must be collected by the Government to be adequate. Thus, from the beginning, industry and Government were at loggerheads on the matter of statistical reporting.

By October, Spurgeon Bell of the Ohio State University Bureau of Business Research, who had joined the NRA to formulate statistical requirements for industry, had prepared a comprehensive questionnaire which received the approval of the Central Statistical Board. DuBrul, who at the time was chief of the Research and Planning Division, agreed that it might be mimeographed for exclusive internal use, advising Bell that even this should not be done until the approval of the Industrial Recovery Board had been received. Then, as a sequel, on November 6, 1933, General Johnson, on the recommendation of this board, approved a suggested outline for codes containing an agreement by industry to provide all information desired whether it was directly related to the administration of the code or not.¹³ DuBrul, who had not been consulted, immediately initiated

¹³This was contained in Article VI, Section 76, which read: "To obtain from members of the trade/industry such information and reports as are required for

strenuous objection to the clause on the ground that, once an industry had submitted to it, all constitutional rights would have been waived: the industry would have made itself liable to furnish data long regarded as private property and confidential. In his own words, the plan would have given the NRA "unlimited power to require that an industry conduct all sorts of expensive surveys, the purpose of which might be obscure and the value of which subject to serious question."¹⁴

But before any action could be taken on this protest George B. Galloway, one of DuBrul's assistants, secured approval by the Central Statistical Board of a reporting form prepared by Bell. When he solicited DuBrul's approval, the latter, believing that the form was too elaborate but not wishing to overrule the board without careful consideration, gave a non-committal reply. Galloway interpreted this as assent, and, as a result, then secured the approval of General Johnson's office. But almost immediately several industrialists saw the form and registered strong protest, one estimating that it would cost his company \$100,000 per year to furnish the information requested. A hornet's nest had been rattled. In fact so strong were the protests that DuBrul experienced no difficulty in having the NRA immediately suppress the forms and nullify the model code.

Following this experience, General Johnson hesitated to approve any order pertaining to statistics: he nursed the suspicion that he had been tricked by the Central Statistical Board and the Industrial Recovery Board. He even ignored DuBrul's obviously practical suggestion of November 13, 1933, that an order be issued requiring industry to report employment, man-hours, and pay rolls to the Bureau of Labor Statistics.¹⁵ Then, members of the brain trust, ignorant of the real situation, began to snipe Johnson, accusing him of

the Administration of the Code and to provide for submission by members of such information and reports as the Administrator may deem necessary for the purposes recited in Section 3(a) of the Act, which information and reports shall be submitted by members to such administrative and/or government agencies as the Administrator may designate; provided that nothing in this code shall relieve any member of the industry of any existing obligations to furnish reports to any government agency. No individual reports shall be disclosed to any other member of the trade/industry or any other party except to such governmental agencies as may be directed by the Administrator."

¹⁴This is quoted from, "Statistical Requirements Section of Suggested Outline for Codes," Memorandum of Stephen M. DuBrul to Colonel R. W. Lea, Nov. 11, 1932, p. 2. After criticizing the board's provision for statistics DuBrul offered an alternative which would have permitted industry to *arrange with the NRA to collect whatever additional information was necessary to further the purpose of the code*. He believed that the provision as thus limited would have been satisfactory.

¹⁵It was not until April, 1934, after painstaking negotiation, that the General would approve such an order.

a wanton disregard for facts: in their opinion he did not know what was happening and showed no desire to find out. He must be replaced by someone who was sympathetic to scientific economic planning, by someone who would gather statistics! This was accomplished in October, 1934.¹⁶

Following Johnson's departure from the NRA new vistas for the statisticians were opened. Field studies to determine this and that reaction to the NRA program, questionnaires on costs and labor conditions in various industries, a search through deputy administrators' files for "hidden" data, new statistics on consumer preferences or on such matters as the optimum size of olives, were the vogue. Old data of existing governmental agencies were republished in another form — as a graph instead of a table or vice versa — and some application to the NRA implied. Studies which had been completed in the early days of the NRA were dressed up in slightly different form and released, often with unintentionally distorted meaning. Others, perhaps containing more truth but less favorable to the NRA, were judged to be poorly done and were burned. Abundant data but woefully inadequate and often misleading analysis!

4. The Codification Process and Administrative Difficulties

We have seen how NRA officials possessed inadequate statistics. Therefore they had to negotiate settlements. Indeed, the facts are that such compromising was the foundation of both NRA code-making and administration; statistics counted but little. All that was needed was a referee who would guarantee equality of strength by favoring one and then the other contestant until an agreement was

¹⁶The opposition to General Johnson grew by leaps and bounds. In various places little fires began to be built under him — the codes were unenforceable, the General was a price fixer, the NRA was operated solely for big business, the farmer was paying for industrial recovery, the work of the Research and Planning Division overlapped that of other governmental agencies, and a board was needed to administer the NRA. In characteristic fashion the General fought back at his critics — public-works funds had not been allotted, the farm plan of contrived scarcity was asinine, the Department of Labor had erred in recommending the abolition of wage differentials, and relief wages were too high. As dissension increased the General began to show signs of nervous strain, frequently leaving the NRA to rest. With the break in his health, internal strife became more intense, sabotage of his plans soon invading the NRA itself. Before long the General's rests became more frequent. Then the President, solicitous for his aide's health, ordered a vacation. The General need have no thought of the NRA; a board would function in his absence. General Johnson accepted and went away for several weeks. On his return the President suggested that the board continue to function and there was no alternative for Johnson but to resign. A master had been struck down by his own creature!

reached. In brief, under the NRA, with a deputy administrator as referee, labor and industry jostled with each other to divide the spoils — the consumer's purchasing power.

In more detail, a code committee appointed by an industry drafted proposals and submitted them to the NRA, together with copies of the constitution and bylaws of the association sponsoring the code. Shortly thereafter the NRA registered and classified the proposed agreement according to industrial groupings essentially like those of the Census Bureau, but much more extensive. Following this, copies were distributed to deputies, the Legal Division, the Research and Planning Division, and the three advisory boards — Industrial Advisory Board, Labor Advisory Board, and Consumers' Advisory Board. Each of these units then began a study of the proposals, but not from the point of view of formulating a general co-ordinated NRA policy: each represented a particular group of somewhat different interests and consequently each was concerned chiefly with securing the best possible bargain. However, since each board employed technical experts to help prepare its arguments, and clashes of interests often bared all phases of a particular issue, it was not uncommon for a policy to be clearly indicated as a result of the work of these experts. Although in this way the advisory boards occasionally originated a policy proposal, the deputy administrator was, from beginning to end, responsible for all modifications by industry and labor: he negotiated all changes from an industry's proposal. Consequently, while the boards and divisions were studying a code it was also being analyzed by one of the deputy's assistants, who was supposed¹⁷ to be a specialist for this particular one of the industries coming under the deputy's jurisdiction. This expert made certain that the mandatory provisions had been included, and then looked for clauses which did not agree with NRA "policy" as it had been established in approved codes. Deviations from "policy" were next taken up by the deputy in private conferences with the committee of the industry, attended by representatives of the advisory boards, and of the Legal and Research and Planning Divisions. The divisions often voiced objections. After each conference, the code provisions were revised to meet the objections raised and were often shortened in accordance with suggestions made.

¹⁷More often than not these "specialists" were nothing more than young men who at some time or other had held minor positions in the industries. Many were recent graduates of business schools who had secured only the usual introductory training in economics, accounting, and business organization.

Sometimes many trying private conferences of this character, occupying days or weeks, were needed before a code was ready to be brought to a public hearing in which all elements, within or without the industry, could state their positions regarding the code or any of its provisions. Such a public hearing was attended by the deputy administrator and his aides who called the meeting to order and explained the rules of procedure. Also present were representatives of the advisory boards, and any other persons who had indicated their desire to be heard. First, a representative of the committee of the industry outlined the benefits which its proposed code was expected to secure for industry and labor; then, spokesmen for various groups contributed their criticisms, sometimes supporting their positions with legal and statistical evidence. Only after all persons had been heard was a hearing closed. In consideration of the various opinions presented it was usually necessary to make adjustments, compromises being worked out between the code committee of the industry and the different factions. Finally, a compromise code, satisfactory to all elements of the industry, was evolved. Few members of the industry favored all its provisions, but the instrument as a whole was satisfactory. Perhaps Section 5, for example, meant a loss to one member but Section 6 or 10 gave him sufficient profit to offset this loss, and he, therefore, accepted the code. As for labor, it always demanded and received shorter hours and minimum wages: its problem was to secure as great concessions as possible along these lines. In all these bargainings the President's thesis that hours had to be shortened and wages raised, and the NRA's threats to invoke the licensing provision hung like guillotine knives over the heads of industry. Consequently, every code as first submitted guaranteed some reduction in hours and increase in wages, even for the industries which asked for no monopolistic concessions. Fear of the Government was the compelling motive. The bargaining with labor was over further concessions. When an industry in which unions predominated refused to yield to labor's demand or vacillated too long, a strike call was sounded, and generally such threats were sufficient to force rapid compromises. In other industries a more perfunctory fight for shorter hours and increased pay was made; and consequently concessions to labor were smaller. However, even here labor's demands had to be met in part to avoid unionization.

The consumer's part in this bargaining was negligible: we may liken him to the unorganized taxpayer who in general has no program and receives little attention. The facts are that although Alex-

ander Sachs' memorandum¹⁸ of June 10, 1933 to General Johnson emphasized the importance of gaining the confidence and respect of consumers and warned that the NRA program would stand or fall on their reaction, yet the Administration had no definite plan for guarding their interest, confused the consumer with the housewife and householder, and therefore seemed almost completely to disregard their interests. A protective board, as proposed in the Sachs note, was actually created, with Mrs. Mary Rumsey, a sister of W. Averell Harriman, as chairman, and William F. Ogburn of the University of Chicago as economic adviser, but some officials of the NRA promptly ignored it. For example, as we shall see in Chapter XII, Section 4, the writers of the cotton textile code, the first to be approved, expected purchasers of clothing to pay for raising wages thirty per cent and overhead costs about fifty per cent through machine-hour limitations even in the face of a fifty per cent increase in the price of raw materials.¹⁹ Then, a few weeks later the Administration approved the electrical manufacturers' code which embodied a price-fixing scheme based on (1) prohibitions of sales below "cost" and (2) price filing. Almost every code submitted in August contained some kind of a price-fixing plan,²⁰ and unfortunately too many NRA officials, including some members of the Consumers' Advisory Board, looked with sympathy upon the proposals. As a result of this attitude, Ogburn called on General Johnson to protest, but without avail. Feeling that he was being ignored, he shortly thereafter resigned from the board, at the same time making public a letter in which he charged that the NRA was giving no protection whatever to consumers.

¹⁸See Appendix III.

¹⁹Next to the President's assigning the administration of public works to the Department of the Interior instead of to the NRA, the most important single event leading to the collapse of the NRA was the circumstance that the cotton textile code was the first to be introduced. Here was an industry in which sweatshop wages and overcapacity abounded. No government could conscientiously refrain from urging higher wages, and to compensate the industry a grant of monopoly was necessary. Industry and labor generally interpreted the NRA's action here as essential parts of the recovery program. As a result, in various later situations, the NRA found itself unable to accomplish very much needed adjustments in the opposite directions.

²⁰It is worthy of some note here that a majority of the members of the Industrial Advisory Board as well as many business men opposed price fixing whether it was direct or through various schemes of prohibiting sales below "cost." However, entirely too many industrial leaders were afflicted with the brazen-serpent complex that fixing prices above costs would cure all economic ills (see Sachs, *America's Recovery Program*, p. 178), and much agitation for inflation was in the air (see Chapter XI, Section 2). Moreover they and labor leaders mistakenly believed that raising prices in all industries would not appreciably affect demand.

Ogburn's successor, Dexter M. Keezer,²¹ fared somewhat better: he began by insisting that deputy administrators be required to secure the approval of codes by the Consumers' Advisory Board as well as by the other advisory boards, and that he be given a staff of economic and statistical experts who could analyze proposals. Moreover, consumer interests, alarmed by Ogburn's resignation, now became active. And Keezer wisely did not confine his activities to the NRA; on various occasions he furnished complainants — purchasing agents, consumers' organizations, and the like — with information enabling them to carry on the consumer's fight. Also other government agencies, particularly the Central Statistical Board and the Treasury Department, allied themselves with Keezer.

Too often, however, Keezer's allies were not sufficiently practical-minded, and their aid was of somewhat doubtful value. To illustrate this, we find the Central Statistical Board proposing that the NRA make a continuing check on price increases of *all* commodities²² and the Treasury Department recommending that the Government be made a favored purchaser.²³ Nevertheless, such proposals did lead to practical substitutes which were important in retarding unwarranted price increases. Outstanding was the suggestion of Albert J. Hettinger, DuBrul's assistant, that the NRA keep a record of movements of representative wholesale prices and investigate those which seemed to advance much more rapidly than the average. This led to the creation of a price unit in the Research and Planning Division under the leadership of Henry B. Arthur, a price expert trained at Harvard University.²⁴ One of the new chief's first acts was to suggest a plan for handling price complaints: the Consumers' Advisory Board should receive, acknowledge, classify, and tabulate all protests, and make cursory appraisals of the problems involved; the Research and Planning Division would next sift the complaints and make formal reports to the board which could then lodge complaints. This proposal was approved in a short time and about two weeks later so many complaints had been received as to indicate the need for a public hearing on price increases.

²¹Keezer, a newspaper writer and economist, had been criticizing the NRA publicly in the *Baltimore Sun*. He was invited to join the Consumers' Advisory Board in an effort to establish consumer confidence in the NRA.

²²The NRA once estimated that over 100,000 distinct articles of commerce are sold regularly in the United States. Moreover, these are sold under widely varying conditions, and there is a noteworthy lack of consumer standards.

²³See Chapter XI, Section 3 for criticisms.

²⁴It was this act and its consequences which later led industry to refer to the Research and Planning Division as another Consumers' Advisory Board.

The consumer's purse was, however, the prize²⁵ which had been offered to industry and labor to write codes, and consequently, if the NRA wished the support of these two groups to continue, it could not now ignore earlier promises. Therefore approval of a request for a price hearing was delayed, considerable negotiation being required to have a date fixed, and even then the NRA reconsidered and postponed the hearing.²⁶ A second postponement was proposed, but, as a result of a determined fight by both Keezer and Arthur, the hearing was held as scheduled.

The principal effects of the price hearing and the Research and Planning Division's report²⁷ on the evidence presented were (1) a sobering influence on industry, (2) encouragement afforded the Consumers' Advisory Board,²⁸ and (3) the shaping-up of events leading to the appointment of Leon Henderson, first as assistant administrator for consumers, and later as director of the Research and Planning Division.

Thus, in the later days of the NRA, deputy administrators refereed three-way bargaining among industry, labor, and consumers. A deputy was the judge who determined for the NRA when a code was satisfactory; technical experts of the Research and Planning Division merely advised. A similar arrangement prevailed from September 11, 1933, when approval by the Consumers' Advisory Board

²⁵See Section 1, above.

²⁶The first date set was December 12, 1933. On December 8 General Johnson announced that the hearings would be postponed until January 9, 1934, giving the excuse that no properly authenticated evidence of unjustified price increases had been filed with the NRA. Arthur and Keezer, of course, did not agree with General Johnson; they believed that the General's procrastination was unwarranted and unfair to consumers.

In announcing the price-hearing postponement General Johnson, however, did issue the following warning:

"Trade and industrial groups are not exempted from the provisions of the anti-trust laws except insofar as they are expressly authorized to act in accordance with specific provisions of a code or agreement under the Act approved by the President. Arrangements between members of an industry or trade to fix or maintain prices not expressly sanctioned by an approved code or agreement are therefore in violation of the anti-trust laws to the same extent as before the NIRA."

²⁷The report was prepared by Walter Mitchell, Jr., who succeeded Arthur as price chief a few days before the hearing began. It was released to the press by Deputy Administrator Arthur D. Whiteside. For a summary see Appendix VII.

²⁸Following the hearing this board took a much more positive bargaining position in code negotiations, refusing to approve certain provisions, offering substitutes, insisting upon quality standards, and even issuing reports condemning the NRA's treatment of the consumer. But, of course, by this time many of the important codes had been written and the damage already done.

For a more complete story of the consumer's part, the reader is referred to the book by Dexter M. Keezer, *The Consumer under the National Recovery Administration*, New York, 1936.

was first required, but until the price hearings the board was not particularly positive in its bargaining. Before September 11 the measure of influence possessed by the consumer was derived from the work of the Consumers' Advisory Board operating under the handicaps indicated and aided by the Division and the economic adviser who recognized consumer problems and endeavored to meet them constructively. But it should be clearly understood that Sachs' primary interest was in economic recovery. The divergences between this economic outlook and administrative policy were at first resolved by concessions and compromises but by the end of the summer he made it clear he would not compromise over price fixing and imposition of economically unsound codes: in the brief period of concessions he passed codes which he did not regard as undebatably sound²⁹ because

²⁹For example, although Sachs did not unreservedly approve the provision of the cotton textile code which specified that new installations would be made only upon approval of the Administration, but permitted the replacement of obsolete equipment provided no addition to plant capacity was made, he nevertheless passed it. He has defended his position as follows:

"Such limitation of investment, regardless of present adequate capacity to meet prosperity demand, appears to us wrong in principle and its mere inclusion appears like creating artificial vested interests in the existing industrial arrangement so that depreciation of such plant equipment as is now obsolescent could be stretched over a desired period without the natural competitive check of the introduction of new and improved technological plant and equipment. . .

"The scrapping of obsolete equipment if coupled with replacement in industries like the textiles and railroad shops, which in some instances have machine units going back to Civil War days, can be quite regenerative." *America's Recovery Program*, p. 172.

In amplification of his views, Sachs has written the author as follows:

"Of course, it is an accepted capitalistic practice when you have overproduction to bring a balance between consumption and supply. It is true of tin, copper and the whole practice of concentrating production in the most efficient plants. This should not be confused or distorted into any proposal for creating economies of scarcity. After all, capitalism is an economy of maximized profit and volume and capitalism will not produce a commodity or product indefinitely at losses. Profitivity conformable with the largest possible volume is a limiting factor upon abundance. A survey of recent economic history makes one question the advisability of such overproduction and such low prices, as was the case in let us say the oil industry in 1932 and has at various times been the case with other commodities. As it threatens the solvency and stability of a given economic order, that kind of abundance, in the interest of the immediate consumer, runs counter to the principle of economic conservation. Keynes presented such an argument in the *Manchester Guardian* some years ago in defense of such restriction on rubber as would prevent the plantations going native. Obviously, this principle has to be balanced against the evils of a Stevenson Restriction Act, which pushed rubber much too high. Under competition, excessive profits attract capital and produce the excess investment, which brings down the price. But there are chronic cases of maladjustment, like Lancashire or our own cotton industry, that do require some control, and that is the meaning of the reference from page 172 which you quote."

After Sachs left the NRA, codes were accepted without the approval of the Research and Planning Division or any other technical body.

he hoped to modify them later, and in addition it was physically impossible for him and his limited staff, without policy boards, to appreciate fully in the short time allowed the ramifications of the multitude of proposed code devices.

Finally, when a code satisfactory to industry, labor, and the NRA, as represented by the advisory boards and deputy administrators, was drafted, it was sent to the President for his signature together with a report from the Administrator. Then, the original copy bearing the President's signature was sent to the Department of State to be filed with the nation's statutes.

From the nature of code-making — bargaining for one group's purse by two other groups possessing different strengths among the various industries, and inadequate or frequently lacking technical coordination — it was inevitable that queer conglomerations should emerge. Thus, if truck drivers were organized in industry A and not in industry B, the minimum wage was higher and hours of labor shorter in the former than in the latter; and as an obvious result, an integrated company operating in both industries found itself under mutually contradictory sets of rules. In other instances, plants located on opposite sides of the street under separate ownership and different codes operated subject to different wage rates and hours for similar or even identical work. In these circumstances labor disputes and general confusion were, of course, inevitable.

Even more disturbing to industry was the multiplicity of overlapping codes attributable also to the NRA's method of writing codes. For instance, when a large industry was granted a code, some subsection, which perhaps was less subject to labor unions or which felt that it could wage a stronger fight for a special privilege than had been conducted by the larger group, submitted another code, and too frequently secured its approval.³⁰ Almost always such policy led to overlapping definitions of industries and subjected plants to multiple code assessments: each code authority was ambitious and needed funds, and, therefore, stretched its own definition to include every possible plant. To make matters worse, any employer objecting to such multiple assessments was threatened by the code authorities for violation of federal law. He might invoke the Constitution, but this was slow and expensive and in the meantime there was the federal boycott of non-compliers: in fact, a vast volume of mail received

³⁰Some "industries" having as few as 200 employees received codes. One "industry" having only 50 employees actually proposed a code, but the application was denied.

by the NRA indicated that mob rule and racketeering³¹ had to a considerable degree replaced orderly government.

In summary, then, every industry was compelled to make hour and wage concessions, and so at the outset of code-bargaining was placed upon the defensive. To combat this disadvantage a *quid pro quo* in the form of a profit-protective device was frequently demanded and granted. Such bargaining of opposing interests without adequate technical co-ordination of the bargains led to contradictory laws, overlapping codes, and multiple jurisdiction and assessments.

5. Administration by Coercion

Perhaps no one recognized more clearly than General Johnson that the NRA wage and hour program would entail sacrifices upon industry and that either compensatory rewards had to be offered or coercive administrative devices invented. Therefore, from the beginning we find the NRA offering "fair-trade-practice" rewards, threatening the boycott of a firm by the Government, or as a last resort openly prosecuting "chiselers" in the courts. Special privileges to compliers, business death to non-compliers, were, we are sorry to say, the ruling practices.

The most important coercive administrative devices either were to be found in the President's Re-employment Agreement or arose from the use of the symbol of compliance, the Blue Eagle.³² As we

³¹It is a truism that, in any broad scheme of economic planning such as that contemplated by the NRA, personnel must be chosen carefully. Here use of public office for political or personal gain would have to be made a serious crime: a civil service comparable to that of England or Russia would need to be instituted. That a thoroughly competent NRA personnel could not be assembled in the emergency period of code-making must, of course, be recognized, but the NRA might have done better.

³²Bulletin Number Four, issued in August, 1933, explained how employers might obtain this emblem of assent to the PRA code provision, laying special emphasis on ways by which those who found difficulty in complying with certain code provisions might petition the NRA for exemption from these and still secure the emblem. Since only a fraction of the petitions were granted, this device secured several thousand signers who otherwise might not have accepted the agreement.

Article 3 of this bulletin read:

"If there are some peculiar reasons why a particular provision of the President's Agreement will cause you, individually, a great and unavoidable hardship, you may still get the Blue Eagle by taking the following steps:

- "(a) Sign the Agreement and mail it to your District Office of the Department of Commerce.
- "(b) Prepare a petition to NRA setting out the reasons why you cannot comply with certain provisions, and requesting that an exception be made in your case.
- "(c) Have this petition approved by your trade association. If there is no

shall see in the next chapter, all industry was invited to sign an agreement to observe minimum wages and maximum hours of work, to abolish child labor, and to refrain from unnecessary price increases. But most important from an administrative point of view, all signers here agreed to support and patronize other signers. Thus, those who did not subscribe to the President's Re-employment Agreement (hereafter sometimes designated as the PRA) found it difficult to do business because their best customers had contracted to deal, so far as possible, only with code signers. Essentially, a boycott or economic death faced the non-conformers: they had the alternatives (1) of accepting the agreement or a code superseding it, or (2) of closing their shops. Some, of course, chose the latter because signing the code meant business ruin to them by the way of dissipated assets. Thus, within two months after the NRA had publicly announced that it was not going to compel industry to sign codes (a position clearly enunciated in the second NRA bulletin³³ issued on June 19, 1933, with the approval of the National Industrial Recovery Board), a comprehensive code had been imposed which branded non-conformers as outcasts. Moreover, when the President's Re-employment Agreements were distributed on July 27, 1933, an attempt was made to get every consumer in the United States to sign a statement of co-operation reading as follows:

I will co-operate in re-employment by supporting and patronizing employers and workers who are members of the NRA.

trade association for your business, have your petition approved by your local chamber of commerce or other representative organization designated by NRA."

"(d) If the trade association or other organization approves your petition, send it to the NRA in Washington with this approval.

"(e) Comply with all the provisions of the Agreement except the one you are petitioning to have excepted.

"(f) Sign the certificate of compliance, adding to it the following clause: 'Except for those interim provisions regarding wages and hours which have been approved by the Trade Association.' Deliver this certificate of compliance to your post office. You will receive a Blue Eagle, but before displaying it, you must put a white bar across its breast with the word 'provisional' on it. If your petition is finally approved by NRA you may take the bar down. *If your petition is not approved by NRA you must comply with the agreement in full.*"

³³This bulletin read in part:

"(6) It is not the function of the National Recovery Administration to prescribe what shall be in the codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself. Neither is it the purpose of the Administration to compel the organization of either industry or labor."

Nor did the pressure to secure code compliance end here. Around the Blue Eagle symbol of assent was built a governmental boycott of unprecedented magnitude, the first move being the President's Executive Order 6264 which required every contract for supplies entered into by the United States or any of its agencies to specify that the contractor comply with all the provisions of his code or, if there were no code of fair competition, with the PRA. By this move, the President closed the door to governmental contracts for all non-compliers: shoe factories not operating under a code could no longer supply the army with shoes; lumber plants must either comply or forgo the rich awards of the Public Works Administration. These in turn had to purchase only from code signers in other industries: a contractor using a brass door knob (1) had to observe the construction code, and (2) had to purchase the knob from a wholesaler who was observing his own code; and the latter in turn was compelled to buy the article from a fabricator observing his code and purchasing from a copper mining company itself a complier. In short, the President had instituted a government boycott of non-compliers which was almost complete: it remained only to encourage state and local governments to issue similar orders and this, as we shall see in Chapter XI, Section 3, was later done.

Critics of the NRA have estimated that, if all employers of labor had signed the PRA and it had been enforced, at least 200,000 small business firms would have been bankrupted within the year 1933. As it was, those firms which were least hurt by the agreement accepted it, and many of the others presumably operated without regard to it. Recognizing this situation the critics argue that the NRA probably fared better because the Government did not enforce its terms upon industry: by failing to use force to secure compliance, the Administration preserved public support of the NRA from June until November, 1933, when production had decreased for three successive months and it appeared that the employment gains could not be held. (See Chapter VI, Chart II.) But a sufficient number heeded the PRA to insure the submission of codes. In fact, 2,300,000 employers signed the President's Re-employment Agreement, with the result that 16,000,000 workers out of a possible 25,000,000 to be covered by codes were placed under agreements within two months after the Act was signed. Thus, in a burst of patriotism, fired by a magnificent appeal from the President, and faced with economic boycott, a large part of American industry pledged itself by contract to support the NRA program. And so we have the anomaly of a govern-

ment having on its statute books anti-boycott measures, yet itself indulging in the practice on a nation-wide scale.

Even more unfortunately, this same government entrusted the enforcement of its boycott to code authorities, who were essentially competitors of code violators. To consider one important case, we note that early in July, 1934 the cotton garment code authority refused to issue the Blue Eagle label to L. Greif and Brothers, Inc., of Baltimore, the second largest clothing manufacturer in the United States, *because the company declined to pay the arbitrary higher-than-minimum wages ordered by the authority for some employees, and also back wages, based on these scales, aggregating \$100,000.* As might have been expected, the company sought relief in the courts. On July 18, 1934, it obtained a temporary restraining order from Federal Judge W. Calvin Chestnut of Baltimore, who was departing for a vacation. The temporary relief consisted in restraining the NRA Compliance Director for Maryland, the United States District Attorney, and Benjamin Lebow, a member of the code authority, from withdrawing the Blue Eagle or withholding garment labels signifying compliance. At a second hearing before Federal Judge William C. Coleman held on July 23, 1934, a representative of the NRA Legal Division told the court that none of those named in the order had the right to withdraw the Blue Eagle or to withhold the garment labels: the authority resided only in the President and the NRA Administrator, and the court order was, therefore, without legal force. To this the judge sharply replied that he did not like the evasive attitude shown by government counsel, pushed the objection aside, upheld Judge Chestnut's temporary order, and scheduled arguments for September. Still clinging to a technicality, the NRA announced on July 25 that it would withdraw the privilege of using NRA labels, but the company announced that it would operate under the restraining order and continue to use the labels.

In August, before the trial, several NRA officials³⁴ reviewed the case and conducted an extensive investigation into comparative labor costs in the industry. The facts as stated in their report were that in November, 1933 the company had petitioned the cotton garment code authority to allow the establishment of a piece-rate system which would reward employees according to their skill and efficiency, stating in the petition the belief that this plan would carry out the purposes

³⁴The officials were Leon Henderson, chief of the Research and Planning Division, H. F. Taggart, chief cost accountant of the NRA, and Morris Greenberg, deputy administrator.

of the code. The code authority at first objected to such a bonus system, but in June, 1934 approved it, and then ordered the company to pay back wages in accordance with its terms from November, 1933. But the latter contended that it should pay back wages only from June 9, 1934, the date the plan was approved, arguing that it had not been put into effect by the company until approved.³⁵ the code authority's ruling, it believed, was, therefore, unfair and confiscatory. Other large companies followed the same course in seeking relief from arbitrary rulings regarded as unfair, but thousands of small firms suffering under similar decisions were unable to risk the expense of lawsuits and were, therefore, coerced into submission. Here again we find a very striking anomaly: a frequently approved NRA code provision outlawed, as an unfair trade practice, threats of unjustified lawsuits, and yet the Government itself tolerated or even encouraged them as a means of code enforcement.

Too often NRA boards were arbitrary and partisan in their decisions. Outstanding in this category were the National Labor Board, which the NRA established to adjudicate labor disputes, and its successor, the National Labor Relations Board. Noteworthy instances of the former's arbitrary rulings will be discussed later when collective bargaining is considered; here we merely note that the board's decisions reflected undue influence of the Department of Labor which seemed to claim a proprietary interest. Labor was almost always right and industry wrong.³⁶ Therefore industry lost re-

³⁵Although not specifically approving the company's contention, Leon Henderson, chairman of the NRA committee, agreed to it and congratulated the company, its counsel, Leonard Weinberg, and his associate, H. J. Green, together with the code authority, for the fine spirit of co-operation shown in providing a basis for settlement of the controversy. The company withdrew its injunction suit and the Department of Justice requested the court to dismiss a counter action.

³⁶For the sake of the record it must be recalled that, before the NIRA was passed, General Johnson had realized the possibility of numerous labor disputes and had proposed the creation of an independent tribunal to consider them. In his earliest organization charts for the NRA he included such a body, but someone in the cabinet objected with sufficient force to cause the proposal to be disapproved by the President. Shortly after the Act was passed, labor trouble which developed in the bituminous coal industry was settled by Johnson through patient negotiation. About this time he once more suggested a labor tribunal, and as a result the National Labor Board, often called the Wagner Board, was established, with Senator Robert F. Wagner of New York as chairman and supposedly equal representation for employers and employees.

The following is General Johnson's statement of his views regarding a proper labor court:

"There comes a stage in every dispute where the intervention of an impartial tribunal is an absolute necessity if we are to preserve the peace. And before that time comes, it is necessary to see to it that such a tribunal actually is impartial in appearance as well as in fact. It must be possessed of no dogma favoring one side or the other. It must make no expedient decision or interpretation of law.

spect for it and flouted its decisions at every opportunity promising any sort of immunity from punishment. We are sorry to have to say that a chaotic condition prevailed in industrial relations.

Even when an impartial agency, the National Labor Relations Board, had been established³⁷ by President Roosevelt in June, 1934, serious administrative difficulties remained. Chief of these was consumer hostility to the NRA and its Blue Eagle method of enforcement. For example, in the important case of the Chicago Motor Coach Company, the board decided on August 2, 1934, that the company had discharged employees solely because of union activities in violation of Section 7a of the NIRA; the company had been guilty, not only of the violations originally charged at a hearing held by the National Labor Relations Board on June 29, but also of fresh violations. Following these findings, Lloyd K. Garrison, chairman of the board, asked the Compliance Division of the NRA to remove the Blue Eagle of the company. At the same time, he stated publicly that he believed the recommended action would be taken immediately; but A. R. Glancy, chief of the Compliance Division of NRA, felt that he could secure compliance with the board's ruling, and consequently delayed action. He was encouraged in this stand by General Johnson who was extremely loath to withdraw the Blue Eagle because the company operated a suburban line which was the only means of transportation to the city for hundreds of commuters, and, in the circumstances, withdrawal of the insignia would have been futile. Attendant publicity would have greatly damaged the NRA in the eyes of the public, especially since all newspapers in Chicago were already actively hostile. General Johnson, therefore, sent Glancy to explain the situation to

It must be under no shadow of influence, either political or from any administrator or head of any governmental body having any statutory duty to conserve the position of one side or the other." Hugh S. Johnson, "The Blue Eagle from Egg to Earth," *Saturday Evening Post*, February 16, 1935, p. 18.

³⁷On June 16, 1934, Congress passed a joint resolution authorizing the President to establish a board or boards "empowered and directed to investigate labor issues, to order and conduct elections by secret ballot to determine representatives of employees for collective bargaining, and to order the production of such pertinent documents, or the appearance of such witnesses to give testimony under oath, as it might require in order to carry out the provisions of the resolution," and a few days later a board was formally established. The new board was composed of three impartial members — Lloyd Garrison, Dean of the University of Wisconsin Law School, chairman, Edwin S. Smith, Commissioner of Labor and Industries of Massachusetts, and Harry A. Millis, Professor of Economics at Chicago University. It much more nearly resembled a court than the old one. In particular, the Secretary of Labor was denied the power to modify its proceedings, findings, orders, regulations, or recommendations. She was merely expected to supply it with data and other pertinent information, and to receive each month a report for transmittal to the President.

Garrison and secure approval of a delay. The latter was, however, unconvinced, criticized Johnson's administration, and complained to the Secretary of Labor. Thus, an inherently difficult administrative task was once more made impossible of even reasonable success by a colleague's failure to recognize the complexity of the problems.

To the various difficulties previously discussed was added another of prime importance: the NRA's ablest advisers were often unconvinced of the soundness of code provisions they were asked to defend. For instance, there was the request of the Legal Division for an affidavit on the economic soundness of the cleaning and dyeing code. Here the code adviser told the Research and Planning Division that the code was so bad he did not wish to defend it and asked what to do. No imagination is needed to visualize the position in which he found himself when told to prepare the "best affidavit possible in view of all the facts because the courts have so far been friendly to the NRA." Much more important, however, the economic brief presented to the United States Supreme Court in the Schechter case was prepared under similar conditions. Yet the people who prepared this material were among the NRA's ablest, most intelligent employees.³⁸ The reason for this lack of faith is easily understood: the codes had been attained through trading various labor provisions for fair trade practices and, therefore, represented a hodgepodge collection of contradictory or loosely defined economic oddities which logical minds could not embrace.

* * * * *

In summary, the task of administrating the NRA was of herculean proportions — the delicate balancing on the scales of justice of wages, hours, and conditions of work, and of prices, terms of sale, and rules of competition, in the most complex economic order in the world; the selection of efficient and honest personnel under most adverse conditions; and with all this, the necessity of rendering decisions acceptable to a politically-minded cabinet board. When a self-contradictory and unconstitutional law, pre-NRA promises to labor and industry, inadequate or lacking statistics, and constant inter-departmental strife were added, and, most important, when the President had removed from General Johnson's jurisdiction the PWA—the one tool that would have made possible the writing of and compliance with economically sound codes not requiring strongly coercive

³⁸There is no doubt but that these people gave their best thoughts, and judging from the author's contacts with the NRA these were almost surely better than could have been expected from the organization's most partisan defenders.

devices—little possibility of successful administration remained. Consequently to General Johnson must go everlasting credit for the large measure of success that he obtained in inciting in business men a desire to go forward in their efforts toward economic reconstruction. That he was able to provide an important psychological stimulus when it was greatly needed, only rabid critics will deny.

CHAPTER IV

THE EVOLUTION OF GENERAL POLICY

1. *The Early Issues of the Codes*

Before the recovery bill was sent to Congress, and also while it was being debated there, General Johnson conferred with leaders in the textile, iron and steel, lumber, and bituminous coal industries, urging them to have codes prepared for immediate submission. Leaders of labor and management in the first three of these industries, after considerable urging, began drafting codes. But the coal groups found difficulty in agreeing on provisions, since labor and management in various sections of this industry had long been engaged in desperate survival struggles which were not easy to forget.

With inflation in the air and costs of new materials rising, thousands of small firms suffering from depleted working capital were threatened with destruction at the hands of financially powerful competitors who had joined in the speculative fervor of the day. Consequently the chief demands of industries were for price fixing and control of production, rather than for increased business.

As originally conceived the NRA would have aimed to stimulate activity by providing additional markets through carefully considered use of the \$3,300,000,000 public works appropriation. When this section of the NRA was divorced from the remainder of the Act and given to Harold Ickes, Secretary of the Interior, the NRA virtually had its heart torn out. In fact, from this point forward the NRA was limited to the task of distributing, through shorter hours, the meager total of then existing work, devising various schemes for protecting portions of industries against aggression of others, and granting monopolistic privileges which would make possible the orderly elimination of burdensome surpluses.

Thus the proposals for the steel, lumber, and bituminous coal industries contained price-fixing elements, disguised as protection against sales below cost. The codes for these industries and the cotton textile code¹ provided means for controlling production, and

¹The cotton textile industry was the first to submit a code of fair competition. Its proposals, which were presented on June 19, three days after the signing of the Act, were scheduled by Johnson for public hearing on June 27.

two of the four limited new investment. Further evidence of pressure for price and production control are contained in a memorandum which Sachs submitted to General Johnson on June 10, 1933, three days before the recovery bill was passed by the Senate. In particular, Sachs here referred to the cartel proposals of various

The texts of the code, as submitted and as finally approved, are compared in Appendix II.

Following is an extract from significant notes prepared by Alexander Sachs on the economic theory of the NRA and early policy issues:

"What hindered the working out of our plan, among other things, was the severance of Title II from Title I of the Recovery Act. The moment that was done it limited the NRA to the task of re-distribution of the quantum of labor through work sharing with the adjustment of a higher wage so that the re-distribution should not be a sharing of the poverty among the poor. Accordingly, once deprived of the second lung, the economy had to bear too great a burden on the NRA lung — inasmuch as the PWA was scarcely palpitating for almost half a year after the NRA was organized. Additionally, we were handicapped because of the mistaken notions of price inflation and production restriction which held business spellbound, so that if you were opposed, as General Johnson and I were (he for a time and I continually) to regimenting business and wanted codes to be voluntary, you had a tough time.

"My advice was not to yield on that issue because its consequences would be subversive from the start. The General gradually switched over, but I believe that, in all fairness to him, it must be stated that a major cause for his yielding was the plan of certain industrialists for preventing the NRA from beginning to function by attacking its constitutionality. It is well known to a number of people that, even before the Act was passed, doubts as to its constitutionality were expressed by me. It is noteworthy that these doubts were also shared by General Johnson, who then had the time to approach these problems very much differently than in his subsequent engulfment by work and by consideration of public propaganda and the political myths that were conjured up. Then and since I differed markedly from Donald Richberg. In the case of the General, however, the concern over the constitutionality of the Act led to a strategy deliberately calculated to circumvent the National Manufacturers' Association. Specifically, the strategy was to secure the co-operation of major industries to come in with the codes. The textile industry wanted a code. The other industries were hesitant to hostile.

"Even while the Act was in Congress, we started conferences with heads of steel companies with a view to securing their co-operation. The chief argument was that if you could increase the volume through PWA orders, they could afford to make up some of the wage cuts. In the case of steel, I had even then worked out certain estimates of the amount of steel that could come from the PWA \$3.3 billion program on certain assumptions of concentrated use of the fund in capital goods. Suffice it to say that a judicious and planned handling of the PWA could have brought the steel industry to a break-even level within a year. Conversations were all in a key very different from the notion that if wages were increased, that itself would generate purchasing power, which purchasing power would validate the wage increase. It was the addition of new sources of activity, rather than further subdivision of the inadequate activity existing, that constituted the main plan. Since, in the case of the capital-goods industries, the wage level had not gone down as much as in the consumer goods — the statistical series, as reported in the last year of the depression, afforded quite a misleading impression of the discrepancies and the distortions between industries and between companies within the same industry — it was felt by me that both on the side of reflation of activity and partial restoration of wage cuts the real start to be made was with the basic industries. As these basic industries were indiffer-

industries, expounded the role of price rigidities at the onset of the depression, and discussed some of the difficulties encountered by Germany with its cartels. Sachs' memorandum (see Appendix III), together with the statements made by industrial leaders, such as H. I. Harriman of the U. S. Chamber of Commerce and various others

ent to the point of reluctance, and as some of them threatened to tie up the Act before it could be applied, we decided to continue on a voluntary instead of coercive basis.

"But before we got very far with that plan, someone who had helped the General with the war draft began talking to him about the 'Blue Eagle' and that served to attract him to the idea of creating social compulsion as a substitute for what I insisted was a lack of legal compulsion in the Act. What is more, his industrial advisers kept impressing upon him that even if the Act were not challenged, the competition from intrastate companies would become too great for the major companies doing an interstate business, which would, for prudence or other reasons, decide to play along. This competition from intrastate businesses, he was urged, could only be met by adopting some social compulsion. Once the idea of social pressure was broached, the representatives of the distributive lines of business, including the so-called economists for retailing, were very keen on tackling the whole problem from the distribution end. Since it was the ultimate buyer who would have to exert the pressure, the new standards to be imposed by the NRA had to be illustrated and written large in the field of retailing above all.

"The underlying reason for their importuning him — however unaware they were of it — was in the inflation policy initiated to help agriculture which had its repercussions in the commodity markets and the equity markets, and in the incantation of which speculative fervor the business community joined.

"The rising costs threatened the congeries of small units that were not able to acquire stocks of goods at lower costs: primarily of the commodities, and secondarily of the labor in them. I kept on saying that it was a misfortune that the first code attacked was that of textiles, for that industry was nearest to agriculture in taking its deflation licking on the chin of prices, both of material and labor, instead of on the chin of volume, characteristic of capital-goods industries. Hence increases in the two elements had to be passed on to the consumer, and as that industry was closest to the ultimate consumer, the differentials as between those who had inventory at low prices and who had goods made up at low prices, as against those who had to make them at the higher levels, were so great as to create a new deflation and bankruptcy threat. Had the focus of activity been, as we wanted it, on the capital-goods industries — on the side of volume instead of on the side of present price of commodities and price of labor — then even the inflation situation could have been mitigated. As it was, the PWA was side-tracked and the activity became canalized in a program of combined wage lifting and aiding of distraught industries. What is more, the impact of inflation introduced new disequilibria.

"It was to deal with the complex of these factors and the pressures from the distribution end that discussions started on an all-embracing wage realignment for all lines of activity. The reminiscences of the draft experiment created a predisposition for such a grandiose experiment. Thus the President's Re-employment Agreement came into being. It must be stated, as a matter of undisclosed historic record, that the group surrounding the General voted against imposition of the P.R.A, and that the Secretary of Labor was very skeptical.

"The main factor was the inflationary situation. To be sure, some rise in commodities and in labor was inherent in the very fact of emergence from depression, particularly in view of the dynamic deflation to which our economy was subjected — greater and deeper and more disturbing than that of the British industrial economy. When, in the middle of 1932, I felt that the commodity price deflation had reached bottom, I forecasted that something like a 25% rebound

while Congress was considering the recovery bill (see Chapter II, Section 5), indicates clearly that industry supported the measure in the expectation that it would permit price fixing.² It therefore becomes obvious that General Johnson was forced to reconcile the price-fixing views of industry with those of such anti-trust Congressional leaders as Borah and Nye. Aiming for such a goal on June 23, 1933, he expressed NRA policy on price fixing as follows:

In these codes it will be proper for an industry to say that it will not sell below cost of production, but if it uses the code to fix extortionate prices, I would have to step in immediately in conformance with the law.

Such a statement, of course, left much still to be determined and, consequently, early submitted codes contained provisions reflecting almost every possible shade of opinion on the subject of price fixing. Neither the law nor the General's statement was explicit, and, therefore, Stephen M. DuBrul, chief of the Code Analysis Division, wrote to John M. Hancock, Assistant Administrator for Policy, on August 2, 1933, asking for general rulings and declaring that the diversity of plans indicated the need for careful study of the issues. He then proposed that the NRA announce publicly its intentions to approve no such plans until a committee appointed to formulate policy should sub-

in our commodity price level was to be expected on a sheer reversal of trend, combined with a removal of the excess deflation due to debt dumping. But this rebound, due to natural causes — even though they were not appreciated, at the time, by the very banking and economic interests who disapproved of the effort that Governor Meyer of the Federal Reserve Board was making, with my urging, to institute a commodity credit corporation — came to be accelerated and magnified by monetary devaluation and currency experimentation.

"One of the places where all these pressures reached a fever pitch was in textiles, and that industry ramifies through the whole retail field. If, then, there was to be a code, there was a danger of feverish overproduction to beat the gun of the increased costs. No industry could undertake an additional labor burden unless all the others became fairly synchronously and uniformly adjusted as regards certain minima of increased labor costs. The industries did not sense that the origin of the trouble lay in the commodity inflation which they, as a matter of fact, welcomed and did not have enough of. They did want to keep the low labor costs, and in order to accept increases, they insisted on having everybody similarly handicapped. The process of codification would necessarily have had to be serial and slow. But as there could be no first to take up greater burdens unless, pending the working out of detailed codes, the labor burden was imposed by a sort of fiat. That idea — because of the variety of pressures and the plausibility, emotionally at any rate, of the appeal to a co-ordinated campaign-timed act — is what produced the P.R.A."

Unpublished memoranda, prepared originally in March, 1934, for a chapter in *America's Recovery Program*.

²See also the remarks of Henry I. Harriman given in Chapter II, Section 5.

The failure of the conference committee of the Senate and House to approve Senator Borah's amendment which would have prohibited price fixing may be recalled at this point. See Chapter II, Section 8.

mit an analysis of the whole problem.³ But General Johnson did not act on this suggestion and, therefore, on August 8, 1933, DuBrul wrote another memorandum asking for policy on cost accounting, this note containing the significantly prophetic paragraph:

Until such time as the cost-accounting profession itself comes into agreement with respect to those highly controversial problems in cost accounting, such as allocation of burden charges and idle plant expenses, developmental costs, and the valuation of fixed assets for burden purposes, such provisions as those which make it mandatory upon members of an industry to accept a cut-and-dried cost-accounting system are bound to lead to difficulty of enforcement, legal complications, and to create discord in the association.

It is of considerable importance to observe that this proposal was made primarily to offset Johnson's contention that prices should never be less than costs. DuBrul felt that a capitalistic system could not function properly unless there was freedom of opportunity to fail in business: he believed that pressure on business was necessary for progress. He wrote the memorandum with the knowledge that economists and accountants would not agree and that in the meantime the NRA could refuse to sanction clauses prohibiting selling below cost. Later DuBrul was willing to admit such provisions if the phrase "for the purpose of injuring a competitor" were included.

The question of labor policy was not so agitated in the NRA: the President had already said publicly that the agency should shorten hours and raise wages to prevent their lagging behind profits.⁴ The policy obviously pleased organized labor, and industry did not object to it provided approval could be secured of fair-trade-practice proposals. Nor could the consumer easily dissent, since the President had laid down the principle that no sweatshop had the right to exist in the American economy and, also, had created the impression that wages in all industries were approaching sweatshop levels. The NRA therefore considered that it had a mandate to shorten hours of labor and raise wages in all industries. In carrying this out it generally urged reduction in hours so that whatever decrease in employment

³On July 31, 1933 DuBrul had previously urged that the NRA appoint a joint committee of the American Economic Association, the American Institute of Accountancy, and the National Association of Cost Accountants, to bring in recommendations on controversial questions pertaining to cost. In particular, he had pointed out that the accounting and economic professions were both divided on many basic questions of cost determination and said that, if codes were allowed to contain carelessly worded provisions, the effort to enforce them would result in confusion and tend to discredit the whole program.

⁴Statement issued at the time the Act was signed. See Chapter II, Section 8.

had occurred during the depression would be wiped out if there were no further decline in production,⁵ and increases in wages so that, notwithstanding reduction in hours, the worker would have a slightly higher weekly income. Several NRA advisers, of course, realized that because of unequal production declines from 1929 to 1933, such policy would lead to inequalities among industries, and different pay and hours of work for the same type of labor under the various codes. But there were no policy boards to which appeal could be made: each deputy administrator had his own notions regarding what should be accomplished in the way of shorter hours and increased pay, and frequent changes in personnel further accentuated the confusion. Practically the only guide for the deputies was the President's Re-employment Agreement promulgated in August, 1933: there was no labor expert who could co-ordinate their efforts and develop a satisfactory labor policy.

2. The President's Re-employment Agreement

Shortly before the National Industrial Recovery Act was signed, there was an exceptional boom in the production and sale of almost all goods. Although it absorbed unemployment, the Administration viewed this movement with uneasiness, believing that it was of an extremely volatile and untrustworthy nature: the consensus of government opinion was that the upward surge in business was chiefly the result of the stocking of goods in anticipation of higher costs and restrictions under the NRA. Consequently, the President and members of the Cabinet concluded that it was necessary to impose a code or codes on all industries at once and "thus march forward in an orderly way which would avoid speculation."⁶ The point of view of the Administration with regard to the instability of recovery and the necessity for a blanket code has been expressed by Sachs in the follow-

⁵Anyone suggesting in the summer of 1933 that a decrease in manufacturing production might occur was stamped as a reactionary. Incidentally, it is perhaps worth recording that the NRA contained several such reactionaries besides the author.

⁶Although the PRA was under consideration even before the Act was passed, Johnson felt that several of the major industries must voluntarily submit codes before a blanket code would be accepted by a sufficient number of industries to assure its success: he reasoned that, if several major industries declined to sign a general agreement, smaller industries would also refuse and the whole program would fail. He was able to force this point of view and delay the blanket code until August, 1933. Under the blanket-code plan, all goods produced by co-operating producers would bear an appropriate emblem of a patriotic nature and sellers would also display this emblem, which turned out to be the Blue Eagle. It was hoped that in this way public opinion could be used to compel the signing of the agreement.

ing words descriptive of the situation to be met:

Even before the completion of the first code, it was apparent that against the inflation background and the equally if not more important prospective, enormous increases in labor costs under codes, flight from liquidity and inactivity was taking the form of inventory stocking-up, overproduction, and even hoarding of goods. To the prospects of discounting of artificial price advances, unrelated to corresponding advances in consumer demand and artificial overproduction — to beat the guns of inflation and codification — was added the differential and inequitable timing of cost offsets to the realized price advances, as industries would serially come up with their draft codes and receive their final codes, with the result that the social-minded would be disadvantaged in their competition for the consumer dollar, let alone the inherent competitive disadvantage that the Act left to interstate as distinguished from intrastate business. Furthermore, the unexampled economic improvement between Inaugural and Independence Day already disclosed grave disparities and maladjustments in the recovery to date: the gain in manufacturing production was of the order of 50% while the gain in manufacturing pay rolls for the same period was of the order of 25%; contrariwise, the emergence from the depression of a decade or so earlier showed for the period conditions of better internal balance. This gap between value of production and mass income appeared much wider when the manufacturing workers were, in the calculations and estimates, merged in the whole body of employees and consumers which experienced a far smaller improvement in purchasing power.⁷

As a result the preparation of a comprehensive blanket agreement was begun. But this was believed to be too drastic by DuBrul and Deputy Administrators R. B. Paddock and H. B. Ludlum. They felt that if it was enforced, it would bankrupt several thousand small businesses by raising their direct costs too greatly and too quickly. Consequently, in an attempt to head off what they regarded as an unsound proposal, these men met on July 4, 1933 to draw up an alternative simple blanket code which would not too greatly change the *status quo*. They believed that successful raising of mini-

⁷*America's Recovery Program*, pages 132-133.

DuBrul, however, took a contrary position denying that the recovery which had taken place was lopsided. He pointed out that automobiles had moved into the hands of the consuming public and that other goods were also being bought by it. Although he admitted that there had been speculative activity in some lines, such as cotton gray goods, he denied that speculative activity was general. But his views were not accepted by the Administration, and a blanket code to be offered to all industry was prepared.

imum wages above the low levels existing, and restricting hours so as to broaden employment required almost simultaneous action by all industry. If this were not done immediately, discrepancies would arise which would cause confusion and fatal delay.⁸ Thus, at this time they argued as follows:

Few industries are sufficiently organized to tackle the job. Furthermore, if any "stalling" begins (i.e., sabotage through passive resistance), it will torpedo the whole program in 60 days.

The solution under these circumstances seems to be to obtain a rigid minimum code from every industry at once, including only the fewest possible requirements, which can be applied to all industries practically simultaneously.

To accomplish this, it is suggested that the Administration issue the following statement:

In order to expedite the application of the National Industrial Recovery Act program, the following regulations are hereby announced:

"1. Associations or groups representative of every industry shall each submit a code by August 1, 1933, with the following minimum provisions only.

- (a) A minimum wage of not less than \$12 per week for a working week of not more than 40 hours per employee, except that any employee may work for 48 hours per week for a period not exceeding 10 weeks in one year.
- (b) The prohibition of employment of minors under 16 years of age.
- (c) The provision for labor as defined in Subsection A of Section VII of the Act.
- (d) A committee of not more than 5 and preferably 3 to represent each industry in dealing with these and other provisions of the Act.

"2. In these codes there should be no restriction on the number of shifts per plant or any other restrictions on the operation of the individual producer. Such restrictions as the industry may desire should be embodied in a separate code which may be submitted at any time after the Primary Code is submitted. These will be dealt with at a later date, since it will be physically impossible to deal with these matters by industries until the problem of minimum wages and maximum hours is dealt with on a national basis.

"3. These minimum provisions are in no way to be considered as final. They constitute only the absolute mini-

⁸Secretly they hoped that it would be possible to get all industry on a simple code basis, so that the NRA could take its own time about negotiating fair trade practices. Johnson used other tactics such as trading wage and hour agreements for fair trade practices.

ma which will be acceptable at this time. Later on, as it becomes possible to deal with each industry in more detail, any inadequacy in these provisions will be remedied.

"4. If within 30 days after the approval of these minimum provisions any employer of labor coming within the scope of the Act has failed to meet these provisions, the licensing features of the Act will be invoked."

On the same day DuBrul, Paddock, and Ludlum convinced Arthur D. Whiteside, a division administrator, that the proposal which they had drawn up was sound and went with him to General Johnson's residence. Johnson, however, refused to consider the plan on the ground that it was impractical.⁹ DuBrul, undaunted, on July 9, 1933 wrote a long memorandum to Sachs criticizing the proposed Re-employment Agreement of the Recovery Board, hoping that Sachs would throw his influence against it. This time he pointed out that compelling business to accept codes would be a complete reversal of announced policy to allow industries to write their own codes and that forcing the acceptance of the controversial Section 7a (collective bargaining) would put the blame for labor troubles upon the Administration.¹⁰ It was in this memorandum that DuBrul branded as unsound economics the whole theory of "increasing purchasing power by raising wages without raising prices," and thereby cutting down or eliminating industrial profits. In addition he argued that a sharp rise in wages might force many employers out of business and accentuate rather than mitigate the unemployment problem. Admitting that many of these businesses might be unsound from the social point of view, he nevertheless suggested that their sudden slaughter at the behest of an agency of the Federal Government might produce an unbearable political situation (see also Chapter XIII, Section 3). He then urged the Government to show that the *share-the-work program* "is not the crux of recovery, but simply a device to make sure that the benefits of such a recovery are most equitably distributed among industries and among workers." Finally, he explained that this would require a demonstration that the public-works program was the real key to recovery after the threat of inflation had contributed its part by inducing a flight of capital from liquidity to goods. But the Recovery

⁹It is worthy of note, however, that the automobile manufacturing code conforms to the principles of this memorandum.

¹⁰The DuBrul-Ludlum-Paddock proposal would also have forced business to accept a prescribed code, but of a simpler nature. Realizing that the Administration was determined to impose a comprehensive agreement, which he regarded as highly objectionable, DuBrul used all arguments against it, even though, to a lesser degree, they were also arguments against his own compromise suggestion.

Board brushed aside his argument, holding that industry should be invited to sign a comprehensive blanket agreement pending submission of codes for specific industries.

With further respect to the final form of the general agreement we note that during its drafting the point was made that there might be shortages of various skilled workers if the contemplated rigid thirty-five-hour week were adopted. Then, as a solution, it was agreed that skilled operators might work longer than thirty-five hours, if they received pay at the rate of time and one-third for all hours worked in excess of that time (see also Section 4). To prevent additional bottlenecks due to expected shortages of certain kinds of labor, two sets of maximum hours — 35 for manufacturing industry and 40 for white-collar workers in trades and services — were established. Also, since the Secretary of Agriculture objected to applying minimum-wage agreements to small towns lest prices paid by farmers should rise, instead of the single low minimum wage suggested by DuBrul *et al.*, the agreement established minimum wages by size of city: \$14 per week in towns between 2500 and 250,000; \$14.50 in cities between 250,000 and 500,000; and \$15.00 in cities having over 500,000 in population; in towns of less than 2,500, wages were to be increased 20 per cent, provided this did not raise them to more than \$12.00 per week. Moreover, compensation of employees receiving in excess of the minimum was in no case to be reduced notwithstanding reduction in hours, and was to be increased by "equitable adjustment." The employer signing the code would thereby agree "not to use any subterfuge to frustrate the spirit and intent of the agreement which was, among other things, to increase employment by a universal covenant, to remove obstructions to commerce, and to shorten hours and to raise wages for the shorter week to a living basis." He would further agree not to profiteer through arbitrary price increases which were not justified by higher costs. Also, as we have already seen (Chapter III, Section 5), the signers promised to support and patronize other signers and to do everything possible to get their industry to submit a code before September 1, 1934.

In short, when stripped of promises to support the NRA, chiefly by urging the submission of codes, and of such social reform measures as the provision to abolish child labor, the PRA was purely a scheme for directing a larger part of the national income to labor. Farmers, professional workers, investors, and others were to be divested of income by means of higher prices and this purchasing power was to be given to the unemployed worker benefiting from distribution of

labor and to those employed workers who received wage increases. Profits were not to be increased; in fact, the few who had been making profits were pledged not to raise their prices by more than the increased labor costs. Since these included the highly mechanized plants which had relatively low wage costs, marginal entrepreneurs were, it seems, to be forced into bankruptcy.

3. The Code Demands of Industry and Labor

The President's Re-employment Agreement, we may add, offered no monopolistic powers to industry and, consequently, the high wages imposed by it were burdensome. On the other hand, business generally understood that the NRA would approve grants of quasi-monopoly. Limitation of new investment in the cotton textile code, price fixing in the lumber and timber products code, control of production in the petroleum code, cartelization in the iron and steel industry, and semi-cartelization in other industries seemed to indicate that the Government planned to guarantee profits to all. Consequently, once industry found itself enmeshed by the PRA and the almost simultaneous executive orders affecting governmental contracts (see Chapter XI, Section 3), it lost no time in submitting codes.

A majority of such industries, taking a hint from General Johnson's announcement of June 23, 1933,¹¹ wanted to prohibit sales below cost and, in this way, set up a kind of price fixing or price stabilization. Others believed that control of production was absolutely essential if they were to survive. The usual plan, we believe, was to ask for everything and be satisfied with what passed the deputies, who, provided satisfactory hour concessions were made, were generally sympathetic to industry. Whenever any industry received approval of a new type of clause, others rushed to see if they also could get it, and, as a result of this mad scramble to secure everything which had previously been permitted, some curious situations developed. At times, industries felt that they should either ask for everything permitted under the codes or explain why they did not want particular provisions. For example, shortly after the glass container industry was granted control of production, the funeral supply code was presented, and in all seriousness, the code petition started off apologetically by saying that the industry was not asking for production control, because its demand was steady and, therefore, such regulation was unnecessary. Often industries did not consider with

¹¹See Section 1 of this chapter.

sufficient care whether a new provision would benefit or hurt them. The steel industry, for instance, requested limitation of new installations, thus unwittingly inviting various other industries also to retard developments requiring the use of steel.¹²

Some industries were most interested in circumventing the Sherman Anti-Trust Law. Printers, for instance, had once circulated a cost book which had led to prosecution for restraint of trade, and the courts had enjoined them. Cost as defined in this book included profit and all other elements which determine price as distinguished from cost in a dynamic economy (see Chapter IX, Section 1). Under the codes, sales below these "costs," which were really profitable prices, were prohibited and the same cost book that had been banned by the courts was circulated by the code authority.

In short, industry asked for everything and negotiated agreements with labor to assure its support in obtaining some of the things desired. Labor, of course, wanted collective bargaining, minimum wages, and short hours, and, in order to secure the best possible concessions, often consented to fair-trade-practice provisions which later became embarrassing to the NRA. Unfortunately, neither labor nor industry had the interests of the consumer in mind and there were times when they seemed to be guided by no intelligent social concepts whatever, both industry and labor adopting the slogan, "Get all you can while it is being given away free."

4. *The NRA Policy Boards*

It will be recalled that, although the NRA had an assistant administrator for policy, his office did not have an adequate technical staff and did not function well as a maker of policy. Moreover, as has

¹²But the compelling reason for this particular request, it should be recognized, was to restrict the buying advantages of automobile producers.

As is fairly well known, the automobile industry for some time had been telling the steel industry what the price of steel should be: the former had always offered to purchase at a price which was insufficient to cover material, labor, and overhead expenses. It was a question of taking what the automobile industry offered or not producing steel, since there was always a mill which would accept the order for the purpose of holding its personnel together. To stop this practice, the steel industry asked for compulsory fixing of prices and the granting of power to the code authority to raise prices arbitrarily whenever they were too much below the average for the industry. In order to prevent automobile producers from installing their own mills to escape these prices, the steel industry asked, in addition, for power to limit new investment. The code was thus definitely drawn to force the automobile industry to accept the prices quoted by the steel mills.

In fact, it was not unusual for an industry to seek code provisions which would curb other industries.

been shown, DuBrul and others made various pleas for decisions on broad policy matters without success. Even DuBrul's urgings that expert policy committees be created to consider such fundamental questions as costs were ignored. We consider now the evolution of later policy committees or boards.

Shortly before Sachs left the NRA, he and DuBrul had insisted that several policy committees be established, and after some delay such committees were actually set up, the personnel being chosen chiefly from the regular staffs of other government departments. Some of these committees, such as the Price Policy Committee and the Committee on Production Control,¹³ did actually function, at least in a small way, but for the most part their existence was in name only. For example, the author was named to a subcommittee on Price Policy for Durable Goods Industries, but the chairman never once called a meeting. Similar inactivity characterized other committees. That such committees not forming an integral part of an organization often do not function well was clearly recognized by DuBrul; and therefore, partly as an insurance against such non-functioning, in November, 1933 he established a Division Advisory Committee, efforts of which laid the foundation for the three policy boards later established.

At the first meeting of the Division Advisory Committee¹⁴ some problems discussed were discounts, methods of reporting statistics, and the effects of codes on the negro population, and, after some debate for purposes of clarification, research on each problem was ordered. Questions such as the limitation of machine-hours and adjustment of wage rates above the minima were considered at a meeting on November 13, 1933, and once more research assignments were made. Then, on January 3, 1934, Max Kossoris, a unit chief, reported that codes requiring the average number of hours over a period of time to be less than some limit, and also some containing open-price systems, were giving considerable trouble. Accordingly, a study of open prices was ordered to be made by the price unit. At the next meeting, January 11, 1934, someone announced that cost-accounting provisions were causing difficulty, especially the relation of profits to costs in integrated industries, and H. F. Taggart, the cost accountant,

¹³For a description of some of the work of these committees, see Chapter IX, Sections 3 and 4, and Chapter XII, Section 3. Sachs left NRA in October, 1933.

¹⁴DuBrul's Division Advisory Committee was composed of himself as chairman, Galloway as secretary, von Szeliski, Riggleman, the author, and various unit chiefs — Andrew Court, Henry B. Arthur, Albert J. Hettinger, Fred E. Berquist, E. Christopher Meyer, James A. Hughes, Spurgeon Bell, and Roy Wenzlick. The first meeting was held on November 8, 1933.

was directed to investigate this and closely related problems. Again, on January 22, 1934, Stanley I. Posner, Division representative on the NRA Compliance Board, advised the committee that ten per cent of all complaints of violations of codes related to the price-fixing provision of the cleaning and dyeing code, and the committee instructed him to make an issue of this code so that the Administration could thereby be forced to realize the difficulties of price fixing. Finally on January 26, 1934, Colonel Robert H. Montgomery, who about this time succeeded DuBrul as director, suggested that the Division again give serious attention to Blackwell Smith's proposal on lowest reasonable cost (see Chapter IX, Section 3) which it had previously rejected as unworkable. In fact, as the committee's minutes clearly show, in 1933 and 1934 the NRA gradually became more and more enmeshed in difficulties which might have been avoided if definite policies had been established early in 1933 or if the NRA had followed DuBrul's suggestion that no provisions relating to cost or price determination be approved until a report on the whole subject had been submitted.

Too frequently the Administration failed to heed the reports of the Division Advisory Committee, and to circumvent this, DuBrul, just before leaving the NRA, presented a memorandum to the Administrator suggesting that an advisory board of industrial economists be appointed, the personnel to consist of the foremost economists in industry. In particular, he proposed that the economists be invited to come to Washington once or twice a month for the purpose of discussing leading questions which were perplexing the NRA. He hoped that they would approve the recommendations of the Division and by the weight of their authority influence the Administration to accept such policy proposals. The plan appealed to administrative officers, received the immediate approval of General Johnson, and the first and only meeting¹⁵ of the Advisory Group of Industrial Economists was called for January 19 and 20 by the writer, who had been made secretary.

The group began its deliberations by asking for a brief account of the philosophy and history of the work of the Research and Planning Division. Did the Division guess the answers to questions or did it work them out from facts? What was its attitude towards in-

¹⁵Those in attendance included Dr. Alexander Sachs, Stephen M. DuBrul, Dr. Winfield W. Riefler, Dr. Joseph E. Pogue, Dr. Nathaniel R. Whitney, Dr. Albert J. Hettinger, Dr. Nathanael T. Engle, Professor Edwin B. Wilson, Victor S. von Szeliski, and Dr. Edmund E. Lincoln.

efficient concerns? Did it wish to foster increased efficiency in business? Was the NRA correct in raising costs before demand and profits rose? Did the Division feel that profits should be eliminated or encouraged? These and other fundamental questions were answered at length by representatives of the Division. Then, following elaboration of points of view, the question of enforcement of codes was discussed; and, after a short debate, it was agreed unanimously that code provisions had to be self-policing if they were not to be widely violated. At this point, the belief was expressed that, "if regulation is based on detailed rules instead of on principles, it will get so crystallized that it will break down. As nearly as possible, rules and regulations should be automatic and self-policing. Every code prohibition or restriction should be examined with this principle in mind." After discussing this proposition somewhat further, the conferees decided that competition offered an effective, self-policing method, and relieved of some of its abuses, should be relied upon for most of the enforcement. They agreed that there should be no tendency to freeze the situation then existing, or some ideal one that might be imagined.

Then one of the economists, directing the discussion in a somewhat different channel, indicated that taxation was, in many instances, the real cause of the apparent overproduction in the natural resource industries. To illustrate his point he said that the chief factor leading to overproduction of timber was the land tax which forced the cutting of immature trees to avoid taxes, without regard to price. He did not believe that price fixing was the remedy. Next followed a discussion of overcapacity and investments. Some urged, but not all agreed, that there were certain borderline situations where limitation of investment was desirable. The consensus of opinion was that, if such cases existed, the burden of proof should be put on the industry to show that new investments would be contrary to the social ends of the Government; all agreed that a particular vested interest should not itself be allowed to make the decision.

In addition, the economists considered various matters pertaining to wage differentials and maximum hours. They discussed at length the proposition as to whether workers preferred short daily hours, or longer daily hours and extended vacations with pay, thus questioning a fundamental premise of the NRA. In analyzing this proposition, DuBrul, in particular, said that the shorter-work-week plan assumed labor to be infinitely fluid, both geographically and from the standpoint of skill, and that this was not true. Interrupting him, someone remarked sardonically that the NRA theory seemed to be

based upon the statement in the Declaration of Independence that all men are created free (to move about) and equal (in skill). It was finally agreed that, to achieve maximum employment, hours should not be limited rigidly; for instance, overtime should be allowed, provided penalty wages were paid. The economists then expressed the opinion that greatly increased costs could not be redistributed immediately and, hence, that attempts to shorten hours materially could lead only to greatly decreased production with products at prices higher than would be required to meet increased wage costs. There would be an expansion while higher costs were being threatened and then a reaction to levels perhaps far below those previously existing. In the long run there might or might not be a net gain in employment.

Following agreement on this question, someone suggested that, unless a wage differential were made in favor of the older worker, the relief groups would ultimately contain large numbers of such people. In elaboration, he pointed out that the problem of the older worker was aggravated by group-insurance schemes which placed an approximate limit of forty-five years on members of an insured group, and thereby operated to force the discharge of the older employees. This must ultimately lead to pension demands. Thus, the old-age-pension movement was accurately forecast. Also, the economists declared that,

in favor of recovery and in line with fair competition between Government and industry, it is essential that governmental works, adopted as emergency measures and not from pressing governmental necessities, should carry wage rates markedly below those authorized in the codes for the different industries, for, otherwise, such works tend to draw workers from private industry and thereby greatly increase the need for additional governmental expenditures.

Many of the recommendations of the Advisory Group of Industrial Economists were afterwards translated into NRA policy by a roundabout method. Thus, shortly after these conferences, the Administration decided to call meetings of all the code authorities, and directed the Research and Planning Division to prepare outlines of speeches to be made by administrators. In the line of duty, much material for the speeches was prepared by von Szeliski and the writer, who made sure that the various ideas developed by the industrial economists received adequate attention. Then, following the code-authority conferences, the Recovery Administration appointed economic policy boards to study the problems constantly and to make frequent decisions. At last the NRA had established the policy groups

which DuBrul and Sachs had insisted upon over eight months previously.¹⁶

A Fair Trade Practice Board, having jurisdiction over all fair trade practices, including price policy, was headed by Leverett S. Lyon with James A. Hughes as the representative of the Research and Planning Division. Its first activity was to develop a policy for prohibiting selling below cost, which was accomplished by H. F. Taggart, Simon N. Whitney, James A. Hughes, Blackwell Smith, and the author, as explained in Chapter IX. The Board next attacked the problem of open prices, and in this was largely guided in its decisions by recommendations contained in Whitney's report for the Research and Planning Division.

Also, a Labor Policy Board, having jurisdiction over all labor matters, was established under the direction of Leon C. Marshall, with Arthur O. Dahlberg as the representative of the Research and Planning Division. The first question which it considered was that of wage differentials, the Division's reports being explained at length by Henry H. Pixley and Dahlberg, the authors. Upon the board's request these two men and their associates also prepared material on various other allied problems. Following a decision on differentials, the board next devoted its attention to the problem of limiting hours and, in particular, considered favorably the flexible maximum based on overtime pay at time and one-third for all hours in excess of the code maximum.

Finally, we note that a third policy board had jurisdiction over problems of code administration and economic planning, especially between industries, and was headed by Colonel George S. Brady. One of its earliest activities was to consider plans for merging parts of various codes and thus work towards simplification. Later on it employed Paul T. Homan to study such problems as code jurisdiction and statistics.

To understand NRA "policy" properly, it must be recognized clearly at this point that General Johnson repeatedly insisted upon the experimental nature of the codes and held that the best way to determine policy was to try everything reasonable. Moreover, this belief

¹⁶The discussion of the development and work of these policy boards as given in the Brookings volume is quite misleading and inaccurate, since the boards are represented as initiating important policy. When they began to function, nearly all codes had been written, and the few policies actually initiated were based upon competent reports, the contents of which were known to NRA officials. The boards chiefly lent authority to the findings in these reports. But in some instances their modifications even led to later disaster.

was held also by Major A. Heath Onthank, Assistant Administrator for Policy, who succeeded Hancock, for in an article on code making he wrote:

I wish to impress you emphatically with this thought now that the process is one of evolution; that there are no hard and fast rules that can be followed day after day. And that, therefore, much of the bewilderment can only be corrected by the passage of time.¹⁷

But the NRA carried this principle entirely too far. In fact, many of its troubles can be traced directly to its failure to establish broad policies resting on long-established economic principles based upon common sense. To cite a single example here, early in 1933 DuBrul proposed that industries using the same type of labor should operate under the same wage and hour agreements; that is, that hours of work and minimum wages should be the same for truckmen whether they handle coal, sand, or gravel. Despite this proposal's evident common sense, it went unheeded, with the result that plants operating under several codes found themselves working under contradictory wage and hour agreements.¹⁸

As we now turn to somewhat detailed studies of specific policies — shorter hours, minimum wages, cost, price, fair trade practices— we shall see more clearly that this same confusion pervaded the entire code structure.

¹⁷*America's Recovery Program*, pages 69-70.

¹⁸About a year and a half after DuBrul made this proposal, the NRA began a study of the problem, but announced no constructive policy.

CHAPTER V

HOURS OF WORK

1. *Replacement of Men by Machines*

In 1932 an influential group of engineers and scientists called Technocrats publicly announced that technological progress had reached such a high stage of development as to cause competition to break down and be in need of fundamental reorganization. To back up their arguments, they cited the great strides toward mechanization made in such industries as cigarette and automobile body manufacturing; and unwittingly choosing such extreme examples, which supported their thesis, they were able to give some plausibility to their claims — especially to the uninformed. Then, as a remedy they urged *shorter working hours and production for use*,¹ which made the movement popular. In a relatively short time literally thousands of converts were won by Technocracy, but its contentions did not go unchallenged. For instance, three speakers at the scientific congress in Atlantic City in December, 1932 presented contrary points of view which received wide publicity. One of these, Dexter S. Kimball, dean of the Cornell University Engineering College, summarized his beliefs as follows:

Scientific progress we shall surely see, and this is sure to be reflected in our industrial methods. But there are reasons also for believing that retarding factors are already at work. The most important of these is the old law of diminishing returns which, so far, has never failed to put in appearance where economic progress has been active. . . .²

¹It is of particular contemporary interest that some doctrines of Technocracy closely resemble those presented in 1819 by the Swiss economist, J.C.L. Simonde de Sismondi in his *Nouveau Principes d'Economie Politique*. Although Sismondi pointed out that technical advances were imposing undue hardships on certain classes, he made it plain that he did not wish to impede the advance of science and invention. He demanded only that the advantages accruing be spread to all society as rapidly as possible, and closed his book by making the following four recommendations:

1. Abolition of child labor.
2. Shortening the length of the work day.
3. Setting of minimum wages.
4. Encouragement of labor organization and collective bargaining.

²Dexter S. Kimball, "Social Effects of Mass Production," Chapter III, *Stabilization of Employment*, edited by C. F. Roos, Bloomington, 1933, pages 66 and 68.

Although many claims of Technocracy were quickly proved to be false or to represent exaggerated or unusual situations, it is undoubtedly true that great technological developments have occurred throughout the period of American industrial expansion, and especially in the twenties. And in view of the many misconceptions still pervading current popular discussion of technological unemployment and the need for shorter hours and, in particular, in view of the position taken by President Roosevelt and a number of his chief advisers, it is necessary to examine here some of the fundamental facts.

With respect to the hours of work we find the U. S. Census of Occupations showing that, in 1900, the average work week was 57 hours, which compares favorably with average weekly hours around 72 in 1880.³ More significant, however, is the fact that the average work week was reduced from 50 hours in 1929 to slightly over 32 in 1933. The reason for this last precipitate decline is clear: instead of permitting one man to work 50 hours and another to remain idle, industry tended to divide up the income of the employed with the unemployed through decreases in hours without increases in hourly wages, entailing, of course, considerable reductions in average weekly money wages. On the other hand, the gradual decrease in working hours from 1880 to 1929, we believe, can be explained on the assumption that American civilization has demanded and received such a steady shortening of working hours as was necessary to allow the leisure needed for the mass consumption of luxury goods and services. The two cases contrast sharply: in the period 1929-1933 shorter hours meant sharing reduced production and lower general standards of living; whereas, in the earlier period, shorter hours were the means by which the benefits of improved technology were spread to the masses and, as we shall see, greater total production and consumption made possible.

How the percentages of gainful workers in different classes varied from 1880 to 1930 is illustrated by Chart I. For example, the percentage of workers in trade and transportation rose from fourteen in 1880 to twenty in 1930; the proportion engaged in agriculture and fishing declined from forty-three per cent in 1880 to twenty-two in 1930; but the proportion employed in manufacturing and mining increased from nineteen to twenty-three per cent in the same period.

While American industrial expansion was taking place, that is, prior to 1929 when the proportion engaged in manufacturing was increasing, new manufacturing industries were opened almost continu-

³Exact figures are not available for 1880, but explanatory paragraphs of U. S. Census blank report forms for manufacturers mention 72 hours.

ously and larger industrial plants were built for established industries. Improved manufacturing technique displaced workers and thus proportionately fewer were needed per unit of product, but the number and quantity of commodities rose rapidly. Moreover, the proportion of employment in the services was rising and employment in trade expanding rapidly. In this period of expansion the United States, except for short periods of depression, had something for everyone to do.

On occasion a man might have to change his trade, but few seriously questioned how many hours he should work. In fact, careful examination of the length of the work week seems to have begun only subsequent to 1930, after the country appeared to have more office buildings than it could use, more gasoline stations than could meet their fixed charges, and more industrial plants than could make profits. Such general vanishing of profits and curtailment of production to prevent further losses naturally led to high unemployment (especially, as we shall see, in machinery production) and low real incomes, and these conditions in turn lent plausibility to the demands of the Technocrats that production be for use.

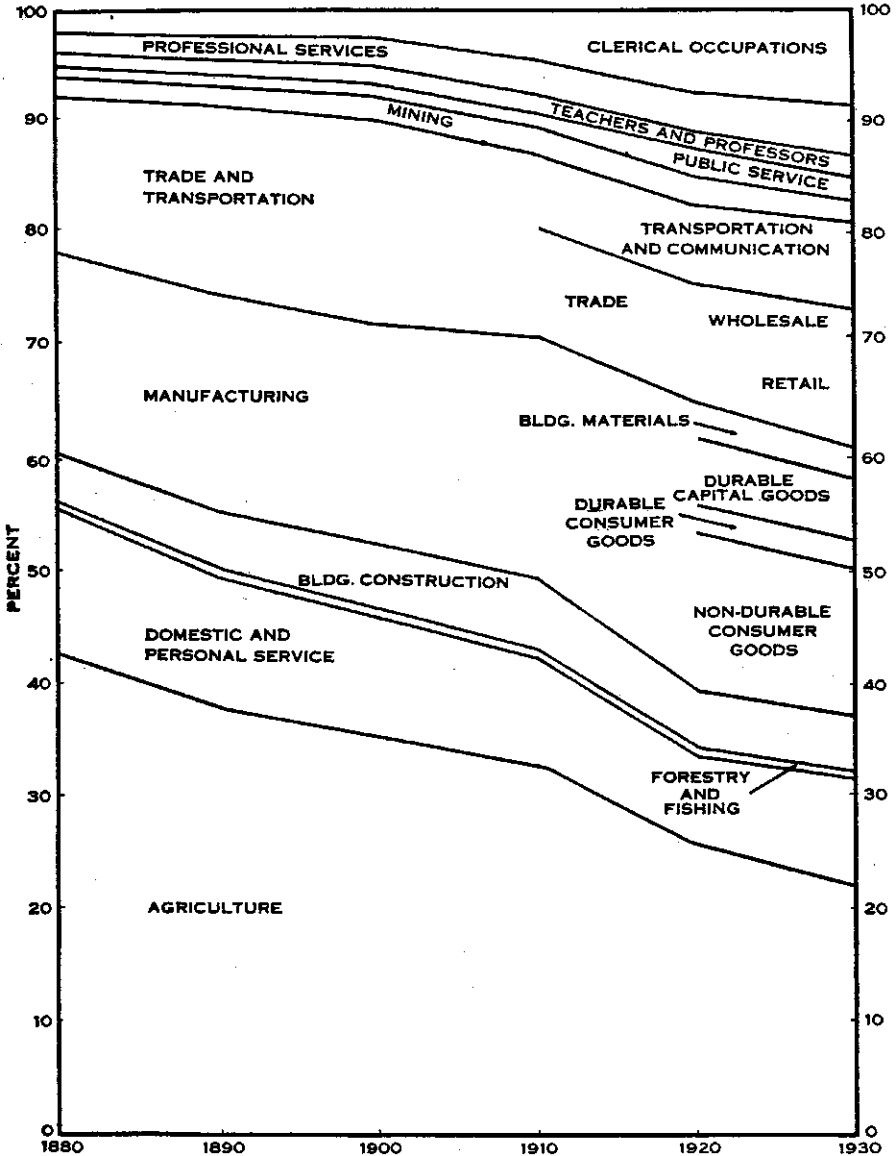
Contrary to widespread popular belief, Chart I shows that (1) agriculture had previously declined so materially in relative importance that currently resurrected political claims of a generation ago, that industrial prosperity is built upon agricultural prosperity, became questionable, (2) there was apparently no great disproportionate gain in the distribution industries in this period, and (3) the replacement of men by machines in the twenties had only slight effect on the proportion engaged in manufacturing, including the production of machines. Moreover, the Brookings Institution has recently shown that rapid displacement of men by machines could not have occurred during the depression when the activity of the machinery-manufacturing industries almost vanished. Thus, notwithstanding widespread popular belief, the large unemployment of 1932 was not created by machine installations during the preceding years of business decline. More precisely, the Institution has reached the following pertinent conclusion:

It is also a well-known fact that the building of new plants almost entirely ceased during the depression and that expenditures on equipment have in many cases been confined to the making of indispensable repairs . . . The drastic curtailment in production schedules during the depression in the so-called capital-producing industries affords rather conclusive evidence that, in general, the productive

CHART I

PERCENTAGE EMPLOYMENT BY GROUPS

Source: Compilations by the Cowles Commission from U. S. Censuses of Population



This chart, in general, shows stability in the proportion of employees in various types of industries. However, the proportion in agriculture has declined

greatly and domestic and personal services somewhat less, the decreases being absorbed chiefly by (1) trade and transportation, (2) clerical and professional services, and (3) manufacturing. The proportion in domestic service has declined principally because of the development of household appliances and a decrease in the size of the family. Wages of domestics have risen also as a result of more attractive opportunities in other lines of work and because of the decreased supply of new immigrants. In fact, it may even be argued that the increase in wages has greatly stimulated the adoption of the appliances. With an extraordinary advance in the complexity of civilization in the fifty-year period covered, it is to be expected that the proportion engaged in clerical and professional positions should increase.

capacity of our industrial establishment, so far as plant and machinery are determining factors, has not been increased materially since 1929.⁴

We merely add our belief that serious unemployment cannot develop so long as technology continually progresses. When an entrepreneur installs a machine, he expects payment for it in the form of savings in wages over a period usually in excess of three years. If, therefore, only 50 per cent of the cost of the machine went for labor, there would be a net gain in employment during the year of installation of about 33 per cent. Actually, the gain is much higher, because the entire cost of the machine becomes purchasing power of some kind.

We need have no fear of the machine as long as leaders in the molding of business opinion clearly understand this principle and think in terms of greater total production and higher standards of living. But trouble will always arise when they begin to promulgate widely the mistaken notion that we cannot adjust to such gradual increase in general efficiency as occurred in, say, the nineteen-twenties. In fact, we have already become subject to so much of this kind of philosophy that there is a real need to probe the facts more deeply.

The common term, technological unemployment, is too vague to enable us to go far in our appraisal of conditions. In fact, since almost every manufacturer is continually changing his product and adding or dropping various side lines, there is no satisfactory precise term that can be used. But we can get some notion of actual conditions by studying the ratio of an index of production to either man-hours required or employment. The first ratio we may call man-hour productivity and the second, employment productivity. The first indicates in a rough way the quantity produced per average unit of labor, and the second combines this factor with reduction in hours of

⁴Maurice Leven, Harold G. Moulton, and Clark Warburton, *America's Capacity to Consume*, Brookings Institution, 1934, page 129.

work. Neither allows for changes in quality of product, and hence we must also consider collateral information on this matter before reaching even tentative conclusions.

2. *Increases in Man-Hour Productivity*

For all industry, the increase in man-hour productivity during the depression appears to have been somewhat under twenty-five per cent;⁵ that is, 100 men working the same hours in 1933 as in 1929, on the average, could produce slightly less than twenty-five per cent more product. Probably half of this increase in productivity, according to fragmentary evidence, resulted from discharge of inefficient labor. Another large part surely can be attributed to higher output of various groups of workmen obtained by rearranging production processes. Then, of course, there have been some machine installations, but from the Brookings study it may be estimated that not more than one-fifth of the increased productivity can be credited to this particular factor, that is, a total of five per cent.⁶

If the foregoing is a correct statement of the technological situation, and a sudden increase in demand should occur, unit production costs might increase considerably with re-employment, since man-hour productivity would decline appreciably as a result of possible inferiority of new workers and losses in adjusting them to their jobs. Some of the gain in productivity, however, would undoubtedly persist; there will probably be a net gain as a result of the improvements in operating efficiency made necessary by the depression. Nevertheless, because of the lower rate of machine installations, the net effect will be a lower productivity and lower real wages than might have occurred without a depression.

As shown by Table I there clearly have been increases in labor productivity for industry as a whole during the business decline. But it seems that these were not caused in any appreciable degree by

⁵Unpublished study directed by the author at the NRA.

⁶Thus the rate of improvement in technology was materially retarded during the depression, for, according to Carl Snyder, the long-time average rate of increase in productivity due to machinery has been slightly over three per cent per year.

Carl Snyder, "The Concepts of Momentum and Inertia in Economics," Chapter IV, *Stabilization of Employment*. This estimate, however, is not corrected for the effect of the shorter work week, so that the rate due to machinery alone is slightly higher than is indicated by Snyder's figure. Yet even if only his rate had been maintained during the depression, at least half of the twenty-five per cent increase in man-hour productivity might have been attributed to new machines, which was not the case.

installation of new machinery, and industry had already voluntarily made more than a sufficient adjustment on the basis of 1926-1929 production rates.

Only about eight industries for which there was sufficient information to make possible definite conclusions regarding technological changes⁷ were found by the Research and Planning Division of the NRA. Data for three of these are shown in Table II, the particular ones being chosen as representatives of different technological situations.

The change in productivity shown by Table II in the meat packing industry has resulted primarily from the introduction of handling devices and also from the readjustment of production methods. The policy of the industry has been to lower cost by changing production processes, so as to make a given number of men turn out more work. Moreover, when great pressure to reduce costs existed, the inefficient workman was, of course, the first to be eliminated. Since the demand for the product is inelastic with respect to price, some technological displacement undoubtedly occurred.

That man-hour productivity in the boot and shoe industry increased from an index number of 116 in 1929 to one of 144 in 1933, or 24.1 per cent, is also shown by Table II. Man-hour productivity rose slightly or remained stationary until after 1925, when it began to increase very rapidly. Interestingly enough, this change was not due chiefly to the introduction of laborsaving devices, but rather to a change in the product itself. Thus, in 1926, the industry began mass production of cemented instead of sewed-sole footwear, the labor required for the new product being much less than what it had been for the old. Demand also greatly increased, but as a result of changes in consuming habits rather than because of price reductions.⁸

In the rubber tire industry, the data for which are also shown in Table II, man-hour productivity increased about fifty per cent between 1929 and 1933, and by nearly one hundred per cent between 1923 and 1933. In other words, five men in 1933 could do the work of ten in 1923, assuming a constant number of hours per man. The introduction during this period of several important technological

⁷Man-hour data are available for something like 17 industries, but, as will be shown, man-hour data alone are not sufficient.

⁸Before 1926, shoes were expected to last for a long time, but today style is as important to the consumer as wear, so that the cemented sole, which of course can be used on stylish shoes, is generally accepted.

For information on demand factors see Victor S. von Szeliski and Louis J. Paradiso, "Demand for Boots and Shoes as Affected by Price Levels and National Income," *Econometrica*, Vol. 4, October, 1936, pp. 338-355.

TABLE I
PRODUCTION, EMPLOYMENT, AND MAN-HOURS IN
MANUFACTURING INDUSTRY

Source: See below

Year and quarters	F.R.B. Index of Mfg. production (unadjusted)	Average number employed (thousands)	Average hours per week per worker	Total Man-hours per month (Millions)	
				Actual	On basis of Production 100
1920 — 1 (peak)	95.3	9721	50.0	2109	2213
1923 — 2 (peak)	107.0	8883	49.9	1924	1798
1926 — 1 (peak)	110.3	8665	48.6	1828	1657
1929 — 3 (peak)	121.7	9134	48.5	1923	1580
1930 — 1	107.0	8145	46.2	1633	1526
2	104.7	7936	45.1	1553	1483
3	89.0	7483	42.4	1377	1547
4	81.0	7115	41.7	1288	1590
1931 — 1	86.7	6721	41.6	1213	1399
2	88.0	6679	42.0	1217	1382
3	77.3	6469	39.8	1117	1445
4	69.3	6067	38.1	1003	1447
1932 — 1	68.7	5774	36.6	917	1334
2	60.3	5330	33.6	777	1288
3	59.7	5095	33.2	734	1229
4	62.7	5305	36.1	831	1325
1933 — January	63	5045	37.4	819	1300
April	68	5020	38.0	828	1217
July	97	5992	42.3	1100	1134
October	77	6670	35.7	1033	1341
1934 — January	75	6143	33.7	898	1197
April	89	6897	36.2	1084	1217
July	71	6587	33.4	955	1345
October	73	6587	33.9	969	1327
1935 — January	87	6690	36.4	1057	1214
April	91	6905	36.7	1100	1208

Employment has been calculated from the Federal Reserve Board unadjusted index of employment in manufacturing industries, by multiplying by 83.3, a number which secures agreement with the Census of Manufactures in the Census year 1930. Hours per week have been taken from National Industrial Conference Board *Service Letter*. The Board has estimated average hours in 1899, 1909 and 1919 respectively as 56.8, 54.6, and 50.3. See *Machinery, Employment, and Purchasing Power*, 1935.

Monthly hours equal number employed times weekly hours times 4.34, there being that many weeks in a month on the average. The Federal Reserve Board index is adjusted for working days but not for seasonal variation.

The last column is merely actual monthly man-hours divided by the ratio of the production index to 100. The increase shown, when production suddenly drops, probably indicates a tendency on the part of industry to carry more personnel than is actually needed so as to keep the organization intact.

TABLE II
MAN-HOUR PRODUCTIVITY FOR THREE INDUSTRIES
(1923 = 100)

Source: Research and Planning Division, NRA

Year	Slaughtering and Meat Packing	Boots and Shoes	Rubber Tires and Tubes
1920	77.3	-----	-----
1921	92.2	99.2	-----
1922	99.5	100.6	-----
1923	100.0	100.0	100.0
1924	106.3	101.1	119.0
1925	101.8	100.1	121.2
1926	101.1	104.7	120.7
1927	100.6	109.5	125.6
1928	102.0	115.7	140.7
1929	97.6	116.5	132.0
1930	99.7	115.1	147.0
1931	112.7	114.5	184.9
1932	118.1	128.5	195.7
1933	125.9	144.6	199.2

*This table and Table III were adapted from material prepared by Emily Fixley as part of a report of the Research and Planning Division. It is not strictly correct to divide production by man-hours to obtain man-hour productivity as done here. In fact, since the production $y(t)$ is defined by $y(t) = A(t)m + B(t)M$ where $A(t)$ and $B(t)$ are functions of time, m is indirect man-hours, and M direct man-hours, as production changes, both m and M vary. To obtain the index in the table, $y(t)$ has been divided by $M + m$ so that it represents "productivity" only when $A(t)m/(m+M)$ is small. However, it is likely that this condition holds for the three industries reported.

improvements effecting an almost wholly automatic process, accounts for nearly all the increase in productivity. Since the labor cost of making tires has thus decreased considerably and man-hour productivity has correspondingly increased and, as we know from other sources, the demand for tires has not risen sufficiently to offset these factors, machine displacement of men has occurred.

It appears, therefore, that important technological changes in some industries, such as rubber tire manufacturing, have required many fewer man-hours per unit of product in 1933 than in 1923. Moreover, in this industry and also in shoe manufacturing, changes in quality have had extraordinary influence on demand and consequently on employment. In the former, increased durability of product coupled with depression in the automobile industry has greatly decreased demand even though prices have been drastically reduced. In the latter, an opposite change in durability, an important change in the institutional factor of style preference, and lowering of prices

have resulted in increased demand, causing the rise in labor productivity in the industry to assume less importance as a cause of unemployment. In other industries, such as meat packing, data for which are also shown in Table II, much of the increased man-hour productivity can be attributed to the selection of more efficient labor and the elimination of unnecessary operations.

Before leaving this question of changes in man-hour productivity we want to make it clear that the three industries here chosen represent somewhat extreme cases. They were all very dynamic in the twenties. Nevertheless, the last column of Table I indicates that important changes in man-hour productivity did occur in this period, about one-third fewer hours being required in 1929. We next consider the extent to which these changes affected the length of the work week, employee productivity, and total employment.

3. Increases in Employee Productivity

Employee productivity, defined as the ratio of a production index to the number of workers, is more useful in describing the relation of men to machines. It usually increases less rapidly than man-hour productivity as technological improvements are made; hours may be shortened concomitantly with, or shortly after, the introduction of improved machinery, but, of course, in some instances hours even may be increased.

Comparisons of employee productivity are shown in Table III which presents indexes of this quantity for five industries, including the three for which man-hour data were just given. One fact of fundamental importance is demonstrated: the great increase in employee productivity indicated in the previous section by increased man-hour productivity did not occur because working hours were gradually decreased; employee productivity did not change nearly so much as man-hour productivity. Moreover, very little uniformity in changes of employee productivity for the five industries is in evidence. In one case, that of the shoe industry, changes in man-hour productivity between 1923 and 1933 amounted to forty-four per cent, but, as indicated by Table III, employee productivity increased only about twenty-six per cent; that is, employees were working fewer hours. Similarly in the tire and tube manufacturing industry, man-hour productivity increased approximately 100 per cent between 1923 and 1933, but employee productivity showed an increment of only about forty-six per cent. A similar story of the latter index increasing less

TABLE III
INDEXES OF EMPLOYEE PRODUCTIVITY
1923 = 100

Source: Unpublished Reports of the Research and Planning Division

Year	Slaughtering Meat Packing	Boots Shoes	Rubber Tires	Cement Portland	Carpets & Rugs
1920	75.3	.....	.....	83.1	.....
1921	87.0	99.4	.....	97.9	.....
1922	98.6	102.0	.....	87.3	.....
1923	100.0	100.0	100.0	100.0	100.0
1924	106.5	97.7	122.9	102.3	86.7
1925	101.5	100.4	120.7	107.2	89.9
1926	101.3	102.4	121.2	111.3	83.4
1927	101.5	108.4	127.3	120.9	86.1
1928	104.0	119.1	135.8	131.6	92.9
1929	99.8	112.7	132.2	130.4	95.4
1930	100.3	101.8	135.9	131.9	78.7
1931	111.1	111.8	156.5	131.9	82.4
1932	114.5	115.7	144.7	117.4	76.6
1933	113.7	126.0	146.0	105.6	91.8

rapidly than the former holds for the other industries for which statistics are available. In fact, such statistics as we have apparently indicate that in all industries the workman has shared in the technological advances by securing shorter working hours;⁹ but in no industry have variations in man-hour productivity corresponded exactly with changes in employee productivity.

Ignoring these widely different variations in technological conditions, for all increases in productivity, both man-hour and employee, regardless of cause, and frequently of extent, the NRA prescribed the same remedy — such shortening of working hours as would make the man-hours required in 1933 sufficient to give jobs to about as many workmen of the industry as were employed in 1929. And as will be explained more fully in the next chapter, the NRA wrongly assumed (1) that this prescription would not appreciably change demand and (2) that labor was sufficiently fluid to accommodate itself to whatever jobs were available. Moreover, the NRA seldom recognized

⁹This situation is not at all surprising for the chief characteristic of American manufacturing has been its ability to make mass distribution possible through reduction in labor costs; and short working hours in general have promoted the consumption of many goods, including automobiles, electrical appliances, and various home comforts.

changes in labor productivity among the crafts of an industry. In fact, it frequently limited all workmen in the same industry to exactly the same hours. Yet indirectly it made allowance for pre-NRA voluntary efforts of industry to share work by its insistence that the 1929 level of employment be attained.¹⁰

As we shall see also, efforts to reach 1929 employment levels by limiting working hours created new competitive discrepancies among industries. Thus, on occasion, the NRA reduced employee productivity to the 1929 values in industries where production had not greatly declined, and to much lower values in cases where production in 1933 was vastly lower than in 1929. In other words, in some instances, industries already suffering greatly during the depression were forced to contend with new competitive handicaps, and, as will be shown in the next two sections, at the same time other economic divisions not even coming under the jurisdiction of the NRA were favored to a marked degree by the shorter-hour program.

4. *Unemployment and Business Cycles*

To appreciate fully the effects of the NRA's plan of shorter hours on industry, some observations on business cycle theory are necessary here. Years ago economists explained business depression on the basis of **general overproduction**, and the facts are such as to indicate that in this depression there may have been temporary surpluses of certain lines, such as office buildings, apartment houses, gasoline filling stations, copper, and wheat. But it would be quite unreasonable to maintain that we had an excess of electrical appliances, electricity, **furniture**, automobiles, and plumbing fixtures. However, production of all fell.

Consequently from even these cursory considerations it would seem to be obvious that any explanation of a business cycle based on the hypothesis of general overproduction is far too simple and decidedly misleading. A more careful analysis of causes, which at least takes into account the rate of spending and the distribution of income, is necessary. In fact, economists have now, for the most part,

¹⁰If industry A had voluntarily, or through agreements with unions reduced average hours from fifty to forty-five per week during the depression and as a result maintained employment at ninety per cent of its 1929 value, while industry B in the same period had failed to decrease working hours from fifty per week and had allowed its employment to shrink, say, twenty per cent, the NRA would have asked each to limit hours to forty per week. Thus, industry A would have experienced only slightly more than a ten per cent further reduction whereas industry B would have suffered an immediate reduction of twenty per cent.

discarded the theory of general overproduction for much more complicated explanations involving the rate of spending, the amount and use of money and bank credit, and international factors.¹¹

Consider first the rate of spending of national income. It appears that, as far as number of shoes manufactured is concerned, the boot and shoe industry in March, 1933¹² was doing about eighty-eight per cent of its normal business (1926 to 1929 average). The flour milling industry produced about eighty per cent of normal output, cigarettes around seventy to seventy-five, and chemicals nearly fifty-five. On the other hand, cement mills operated at only thirty-five per cent, automobile tire manufacturers at about thirty-two, and building contractors around eleven per cent of their respective 1926 to 1929 averages. Therefore, as far as these data are concerned, the boot and shoe industry and the building contractors' industry, represented two extremes of business activities during the depression. From these figures it is also clear that the consumers'-goods industries suffered relatively little retardation in activity; the decreases which actually occurred there developed chiefly in the later stages of the depression. Even in 1933, when the savings of the unemployed were almost exhausted, few, if any, Americans were perishing of hunger. It is true that large numbers were on relief or were receiving charity, or family aid, yet they were eating, and most of them had adequate clothing. Thus, even those on charity were using ordinary consumers' goods, but of inferior quality in reduced quantity.¹³

It is reasonable to suppose that the unemployed live on savings until these are exhausted. While their resources last, they spend frugally, buying only the necessities of life. Consequently, the first industries to suffer in a depression are those producing and distributing luxury and semi-luxury products and such durable consumer goods as automobiles and furniture. People must buy food and clothing, but when uncertain of the future, they can forgo non-essentials. In fact, surveys of the Bureau of Labor Statistics corroborate the production figures which we have just quoted above by showing that during the depression little decline in employment in ordinary consumers'-goods industries occurred. On the other hand, there were

¹¹A very stimulating book (J. M. Keynes, *The General Theory of Employment, Interest and Money*, New York, 1936) on these matters appeared shortly after this manuscript had been completed. Several ideas of Keynes are similar to some expressed in the present study. See also Chapter X, footnote 27.

¹²*Standard Trade and Securities*, March, 1933. See also the discussion in Section 2 regarding a change in quality which makes this index somewhat illusory.

¹³But prices of consumers' goods as measured by the cost of living had declined about thirty per cent, so that the amounts spent had dropped materially.

TABLE IV
NEW INDUSTRIAL CAPITAL BY CLASSES OF INDUSTRY
 (Millions of Dollars)

Source: Special Compilation, Standard Statistics Corporation

INDUSTRIALS	TOTAL 1925	TOTAL 1926	TOTAL 1927	TOTAL 1928	TOTAL 1929	TOTAL 1930	TOTAL 1931	TOTAL 1932	TOTAL 1933	TOTAL 1934	TOTAL 1935
Automobiles & Trucks	178.4	89.1	42.7	58.9	29.5	6.0	1.5	.....	.....	.2	9.8
Automobile Accessories	31.7	17.6	31.4	51.5	79.1	8.2	.....	.4	1.1	.2	4.3
Auto Tire & Rubber	65.3	41.7	76.0	80.6	127.5	45.0	.....	1.9	.....	.....	6.0
Building Supplies	102.1	172.1	206.0	168.2	133.7	41.1	18.2	.....	.6	2.3	26.7
Chemicals	56.2	35.0	26.1	86.5	237.7	57.8	1.7	.7	10.8	.....	.7
Coal	44.3	20.1	44.5	50.1	57.3	32.2	.....	.1	.2	.....	.....
Copper	15.3	41.0	4.0	27.4	136.5	23.8	.....	3.5	.4	.....	54.2
Electrical Equipment	49.3	39.4	22.2	38.7	91.6	90.1	.6	.4	.....	.....	.....
Total Food	192.8	83.1	166.4	181.9	214.1	70.2	9.0	12.4	93.4	13.7	186.0
House & Office Equipment	32.8	41.7	54.7	68.7	36.2	2.1	.8	.....	.....	.....	2.1
Machinery	48.2	26.5	125.2	100.4	182.5	18.2	5.8	1.5	.9	.2	17.4
Paper and Pulp	73.4	184.4	149.4	231.0	76.1	31.0	9.0	.1	.....	.7	8.3
Petroleum	252.3	490.7	441.8	257.9	387.6	396.3	13.2	1.3	5.8	4.0	106.3
Publishing and Printing	23.9	21.5	77.7	62.5	41.5	65.8	5.3	.....	.1	.....	2.3
Radio & Musical Instr.	9.5	3.8	49.6	29.8	61.3	4.7	5.0	.2	3.2	.1	.....
Railroad Equipment	29.8	50.5	33.6	20.2	22.2	36.1	14.2	.....	.....	.....	.....
Total Retail Stores	134.5	78.2	203.0	342.1	285.2	67.0	1.1	.3	1.0	.2	10.2
Shipping	16.2	25.4	15.2	17.3	63.0	10.3	3.6	.....	.3	.....	.3
Steel & Iron	63.7	98.0	123.8	199.4	435.2	106.3	91.3	1.4	3.5	.....	195.6
Textile	44.4	56.7	39.5	125.2	34.3	5.8	1.1	.4	2.0	.....	4.5
Theatres, Motion Pic. & Amusements	91.1	100.8	141.2	77.9	50.3	172.7	47.3	.....	41.3	1.0	10.6
Tobacco	27.3	43.6	47.5	9.5	74.0	13.1	.....	1.0	.1	.....	.....
Wearing Apparel	14.5	27.6	27.7	52.3	28.9	1.6	2.6	.2	.3	.1	4.0
Other Industrials	189.4	292.7	339.1	504.7	639.7	203.6	118.7	12.0	17.5	29.1	29.1
Total Industrials	1786.5	2082.5	2518.3	2837.7	3430.0	1509.0	350.0	37.9	182.5	51.8	673.9

TABLE IV (Continued)

	TOTAL 1925	TOTAL 1926	TOTAL 1927	TOTAL 1928	TOTAL 1929	TOTAL 1930	TOTAL 1931	TOTAL 1932	TOTAL 1933	TOTAL 1934	TOTAL 1935
RAILROADS	479.7	367.2	910.5	717.6	980.6	967.9	486.7	21.7	12.0	238.5	159.9
UTILITIES											
Electric Gas & Traction	617.2	764.9	1450.3	599.5	586.8	772.3	1000.4	423.9	66.2	114.3	948.0
Holding Companies	401.9	532.9	883.5	1104.9	1038.6	647.6	325.7	55.5	2.0	14.6	14.6
Hydro-Electric	99.8	185.0	103.5	103.5	103.5	161.1	129.9	43.7	2.3	28.7	38.6
Natural Gas	15.5	39.3	100.5	107.5	51.9	59.7	9.6	1.4	7.3	.4	16.9
Tel., Tel. & Cable	337.2	268.2	153.0	383.1	383.1	811.1	31.8	9.7	1.0	1.1	110.5
Traction & Bus	54.5	52.1	64.4	28.8	27.0	28.5	7.2	.....	.....	.....	5.1
Miscellaneous Utilities	58.7	74.9	148.7	120.4	23.7	26.5	18.1	15.3	6.4	1.2	41.1
FOREIGN											
Foreign Governments	891.3	645.0	911.1	678.7	161.8	731.2	400.5	189.4	65.1	14.2	151.0
Foreign Corporations	354.9	435.4	521.8	788.4	210.1	161.4	22.8	.1	.....	.....	1.3
FINANCIAL											
Banks	53.5	51.0	170.5	413.4	744.1	38.3	11.0	15.9	13.2	193.3	1.5
Land Banks	189.5	192.8	183.5	54.5	.....	36.0	101.0	160.5	14.2	433.2	664.2
Insurance	31.5	36.5	70.7	213.8	145.4	24.5	14.3	5.0	.....	3.0	.....
Investment Trusts	208.5	96.6	418.7	1026.8	2961.5	401.7	11.1	2.5	14.0	15.9	160.0
Small Loan & Acceptance	53.8	58.0	91.5	96.9	214.7	42.5	13.5	12.1	.....	.9	35.7
REAL ESTATE											
Apartments & Hotels	268.2	235.3	214.4	250.8	102.7	42.9	6.3	.....	.....	1	.....
Mortgage Companies	51.3	114.0	119.5	142.1	33.1	32.9	4.8	.....	.....	177.1	102.8
Office & Store	252.0	243.3	200.6	300.0	153.9	38.5	4.5	.6	.....	.....	.2
Misc. Real Estate	114.0	105.2	126.1	138.8	162.5	47.7	17.5	7.7	.9	1.6	15.4
SUMMARY											
Total Industrials	1786.5	2082.5	2618.3	2887.7	3430.0	1509.0	350.0	37.9	182.5	51.8	678.9
Total Railroads	479.7	367.2	910.5	717.6	980.6	967.9	486.7	21.7	12.0	238.5	159.9
Total Utilities	1584.8	1917.3	3004.1	2380.8	2119.6	2491.8	1522.7	549.5	86.2	145.7	1173.8
Total Foreign	1246.2	1080.4	1432.9	1447.1	371.9	892.6	433.3	189.5	65.1	14.2	182.3
Total Financial	536.8	434.9	935.0	1806.3	4055.7	543.1	168.9	186.1	41.4	666.3	861.4
Total Real Estate	675.5	697.8	660.7	831.7	452.2	162.0	33.1	8.3	.....	178.8	118.5
Grand Total	6309.5	6580.1	9461.5	10070.2	11410.0	6566.4	2972.7	993.0	388.1	1285.3	3144.8
PURPOSE OF ISSUE											
Foreign	1246.2	1080.4	1432.9	1447.1	371.9	892.6	433.3	189.5	65.1	14.2	182.3
Non-Productive	884.9	831.8	1727.0	2813.3	4896.7	1147.6	463.1	229.5	43.4	655.4	844.6
Operating and Producing	1671.4	1782.5	3100.8	2477.5	2473.6	1486.8	1080.5	263.5	107.3	259.2	1798.9
Refinancing Basis	2597.0	2535.4	3200.8	3062.3	3667.8	3039.4	1005.8	320.5	176.3	356.5	348.0
New money	6309.5	6580.1	9461.5	10070.2	11410.0	6566.4	2972.7	993.0	388.1	1285.3	3144.8

great declines in employment in capital-goods industries. Pursuing the facts further, we note that, according to Table IV, new capital issues of private industry decreased over ninety per cent during the 1928-1933 period. Since these are the sources of most of the purchasing power for the heavy-goods industries, it is not surprising that in 1933 many producers of such goods were operating at ten per cent of their average volume for 1926 to 1929.

In more detail, in 1926 private building activity began to diminish. For every unit constructed in 1918, there were 150 or more units in 1926, the latter year marking an all-time peak in the industry. The decline in residential building beginning in the autumn of 1926, after a rise in building costs not compensated by higher rentals, soon attained the sharpness of the increase of 1920-1921, yet for the two subsequent years the slack in private building was taken up by expanded public and factory construction. But after 1927 a marked decrease in public works occurred and late in 1928 unemployment in the building trades began to be acute. General unemployment soon followed the decline in building.¹⁴ Then, efforts to liquidate inventories in the latter half of 1929 were strong contributing causes to the downward spiral of

¹⁴There was no appreciable decrease in dollar volume of building. But as a result of higher costs employment seems to have decreased materially.

The repercussions of unemployment, which may arise from a variety of causes, are often enormous. To illustrate, during their first days of idleness, the unemployed, as indicated in the text, use their bank deposits or other savings to purchase necessities. Consequently profits in the consumers'-goods industries may be temporarily supported by this transfer of wealth. But the luxury and semi-luxury industries obviously experience losses of customers and declining, if not vanishing, earnings. Of course, if the preceding years have witnessed increased security prices and speculation is rife, the momentum of such a movement will provide windfall profits for the purchase of luxury goods even after some unemployment has shown itself. Eventually, however, the luxury and semi-luxury industries and later the consumers'-goods industries find their profit margins reduced and the speculative boom collapses. Security prices fall with declining earnings and distress dumping that follow. Prices of commodities either decrease or threaten to decrease and inventories are liquidated. Bank loans are voluntarily curtailed as less working capital is needed, and in addition banks call loans to protect their reserves. Obviously, as profits decline and are expected to decline further, orders for machinery and plant equipment slacken or stop entirely. Fewer workers are then needed in the capital-goods industries. The new jobless, in turn, cease to buy at their old rates from consumers'-goods industries.

This spiral of increasing unemployment, decreased wages, and destruction of values, apparently has no bottom if it is allowed to continue unchecked. It stops when large groups, because of such events as a new government, the announcement of a promising invention, a gold discovery, or new trade pacts, have sufficient confidence in the future favorable course of prices and profits to place forward orders for goods leading to increased inventories and credit expansion. But the liquidation which first occurs may be terrific and perhaps socially intolerable.

For a mathematical model of such a theory of business cycles the reader is referred to the author's book, *Dynamic Economics*, especially Chapters VI, IX, and

business activity, for during such liquidation productive labor was idle. All these factors have contributed to the end result that the Federal Reserve Board index of production showed a rate in March, 1933 less than two-thirds of the average for the ten-year period 1920-1929. Consequently, it is not surprising that, as shown by Chart VI, Chapter VI, in March, 1933 the heavy-goods industries, including construction, employed 4,000,000 fewer than in 1929, other manufacturing industry 1,800,000 less, agriculture and mining 700,000 less, and the service industries—trade, transportation, banking, domestic help, etc. — 4,200,000 less.¹⁵ But, of course it is not meant that those unemployed in 1933 were formerly attached to the industries wherein the unemployment was indicated. During the depression, as is inevitable in a competitive system, many carpenters and machinists replaced barbers, shoemakers, tailors, and farmers, and executives at times became clerks or day laborers.

5. *Some Economic Implications of Shorter Hours*

No long search is necessary to reveal the startling fact that economic theorists have, for the most part, glibly referred to the supply of labor without specifying the length of the work week, whereas, obviously, if all were employed on a forty-hour average week, some would be unemployed, at least temporarily, if there were a sudden increase to fifty hours. Some investigators have even sought verification of economic theories by dividing production figures by number of days worked to obtain labor productivity, thus ignoring influences of changes in the length of the work day. The reason for this neglect is obvious: economic theory has been concerned chiefly with long-time effects. Short-time movements have usually either been ignored or treated casually as minor fluctuations about equilibrium positions.¹⁶

XIII, and his paper, "A Mathematical Theory of Price and Production Fluctuations and Economic Crises," *Journal of Political Economy*, October, 1930.

The timing of movements, of course, need not be just as described above. The particular sequence used was for the purpose of illustration.

¹⁵Of the remaining 2,600,000 idle in March, 1933, 1,600,000 represented new workers arising from increased population and 1,000,000 those unable to work. About 2,000,000 of this total of 13,300,000 unemployed represented casual workers, those unwilling to work except under pressure, and those changing jobs.

For more detailed estimates of employment and unemployment, see Chart VI, Chapter VI.

¹⁶For modern treatments of labor problems see J. R. Hicks, *Theory of Wages*, London, 1932, and F. W. Taussig, *International Trade*, New York, 1934. The first author, while considering the effects of decreased hours of work on the supply of labor and production, is concerned chiefly with equilibrium rather than how it is obtained; the second defines productivity loosely.

An interesting theory claiming a need for shorter hours was developed in 1930 by Dahlberg's critique of capitalism¹⁷ in which it was maintained that if hours were shortened, a severe depression could be avoided. In particular, he reasoned that owners and workers were both better off if a slight chronic shortage of labor existed; the resulting distribution of income would lead to greater industrial activity through an increased velocity of circulation of money. His thesis, however, was quite different from that which inspired a resolution of the American Federation of Labor¹⁸ endorsing shorter hours, since obviously all workmen are most prosperous during periods of labor shortage, but it does not easily follow that owners are also aided.

Like most fundamental plans for reform, Dahlberg's proposition is open to serious objection. In the first place he attributes great prosperities, which have occurred when labor was scarce, to this scarcity whereas the causal relationship may have been the opposite: increased monetary supply, resulting from new gold discoveries, etc., might easily have led to increased business activity and this in turn to labor shortages. Similarly a nation through business or political leadership might be led to take much foreign paper in exchange for goods, just as the United States did in the twenties, and the resulting activity lead to labor shortages. But let us ignore further discussion of this broad phase of the theory and consider more special problems.

If, as advocated by Dahlberg, hours should be shortened on occasion, it is clearly necessary to make careful estimates of the effects upon employment of technological changes in major industries. But whether or not decreasing cost through replacing workers by machines results in technological unemployment in an industry depends upon many factors, such as the flexibility of demand for the product, the length of the work week before and after mechanization, the ratio of white-collar workers in the factory and in distribution to machine employees, and, of course, national purchasing power.

¹⁷Arthur O. Dahlberg, *Jobs, Machines, and Capitalism*, *loc. cit.* See also J.C.L. Simonde de Sismondi, *loc. cit.* and the theory of Marx.

¹⁸Dahlberg's book was taken up by several members of Congress in 1933 and to some extent influenced the passage of the Black Thirty-Hour bill, but, of course, by that time the situation had changed. Dahlberg has himself told the author that by 1932 unemployment had become so severe that a reduction of hours sufficient to produce a shortage of labor would have caused serious dislocations of industries and possibly greater depression.

It should not be supposed that Dahlberg was a technocrat. For example, as opposed to them, he believed it unlikely that technological unemployment could be generated in a large economy. He proposed to shorten hours of labor only on occasion to induce, through labor shortage, what he regarded as an advantageous distribution of income.

The interactions of all these are intricate beyond imagination. We illustrate briefly the effects of only one of these factors — the elasticity of demand. For this we note here that consumption of certain products is so inflexible that the lowering of their costs and prices does not greatly stimulate demand; for example, at a given purchasing-power level the people of the United States probably would buy very nearly as many hats at \$4 each as at \$3. For many other commodities the elasticity of demand (rate of change in demand per unit demand, the quantity divided by rate of change in price per unit price) is also much less than one. In cases where a demand is highly inelastic, large savings in cost do not mean greatly increased production. In fact, if the rate of increase of population is less than the rate of saving in cost, it is obviously necessary that the workmen displaced in such industries as hat manufacturing be re-employed by shortening hours of labor in their industries, or that they find jobs in others. As we have shown in Sections 2 and 3, both developments have actually occurred in nearly all the stabilized industries of the United States. Further support of this view is given by a comparison of Tables II and III, indicating that, although prices may be greatly decreased to offset improved efficiency, demand may not always increase sufficiently to prevent technological unemployment. For instance, employee productivity in the tire manufacturing industry doubled between 1923 and 1933 and, in addition, the tires of 1933 possessed over twice the useful life of those of 1923; whereas the number of cars in operation increased only about fifty per cent.¹⁹ Technological unemployment necessarily occurred.

¹⁹The entire problem of technological unemployment is extraordinarily complex; but if sufficient simplifying assumptions are made, much useful information can be obtained. In fact, the author has elsewhere developed mathematical formulas making possible several fundamental calculations. See C. F. Roos, *Dynamic Economics*, Bloomington, 1934, pp. 176-181, and also D. I. Vinogradoff, *Econometrica*, 1933, pp. 410-417. Also after this study had been written the author had the privilege of examining an interesting manuscript by Dr. J. J. J. Dalmulder.

Gustav Cassel has the following to say regarding the idea that increasing efficiency must necessarily lead to a reduction in the number of laborers employed:

"The figures published by Professor Mills with regard to manufacturing in the United States (*Economic Tendencies in the United States*, National Bureau of Economic Research, 1932) are particularly instructive. From them it may be calculated that in the thirty-year period, 1899-1929, the physical volume of production (value added by manufacture) has increased 3.86 per cent annually. This increase has been made possible by an annual increase in the number of wage earners of 1.67 per cent and by an annual increase of output per wage earner of 2.16 per cent. As the rate of increase of the population between 1900 and 1930 was 1.61 per cent per annum, manufacturing was able to increase its number of employed persons a little more than would correspond to the growth of popula-

Thus it is obvious that there are industries for which demand increases little with decrease in price so that technological changes require shorter working hours unless workmen displaced can be employed in other industries. In general, such technological changes have resulted in somewhat shorter hours and this leisure in turn has led to new employment. To put the problem somewhat differently, if every man should now begin to work twelve hours daily, there would be decreased need for moving-picture theatres and a great variety of the services and goods which characterize modern civilization. A workingman employed twelve to fifteen hours per day would hardly require more than food, clothing, and a comfortable bed. Without leisure, he would need his automobile only to go to and from work, and possibly to use in his business. Certainly, leisure for workers is essential to promote consumption of many modern goods and services, and to create and maintain values.

That the NRA's plan of spreading work throughout industry to attain a practically uniform maximum work week of forty hours must have affected in varying degree the different divisions of industry should be obvious. We believe that the application of such a plan after a long depression should at first benefit the producers and sellers of such necessities as food and clothing. After buying such consumers' articles and certain services, new income recipients should next rent houses. Statistics show that this order of spending actually occurred. In fact, housing vacancy in major cities was reduced from 13 to 15 per cent at the beginning of 1933 to 5 to 7 per cent at the end of 1934, and during the latter year sales of house furnishings greatly increased. Moreover, a careful examination of all the facts

tion." Gustav Cassel, *On Quantitative Thinking in Economics*, Oxford, 1935, pp. 145-146.

It should be of some interest to consider the proposition that theoretically it should be possible to have machines do most of the manufacturing work and men engage almost exclusively in such activities as distribution, services, and professions. Prices in a preponderantly machine economy might, however, be somewhat unstable since the contributions of machines to value added by manufacture would be based on the "value" of the machines, here a rather arbitrary quantity depending perhaps chiefly upon the sales of goods. In fact, it may even be argued that economists have been able to simplify economic theory by regarding a machine as a product of previous efforts of labor and capital, primarily because the price of its product has been greatly influenced, if not largely determined, by costs of production of competitors using hand labor. Thus, it is possible that such labor has acted as a stabilizer of values. A question naturally arising is what percentage of direct hand labor is required to maintain an adequate basis of value. Admittedly, over long periods of time, such as we are accustomed to using in economics, there is no problem regarding stability of "values," but over short periods of time, often several years in extent, there are real issues not adequately treated by economic theory.

would make it difficult indeed to credit all of these gains to emergency spending.

Granting a surplus unutilized mass purchasing power, an expanded production of necessary consumer goods should occur under a program of redistributing income, as employed by the NRA; and this should ultimately call forth demand for additional transportation and more capital goods leading to a greater rate of investment, so that the economic effects produced by sharing work should eventually spread, in varying degrees, to all industries. On the other hand, if, by spreading the employment without decreasing weekly earnings, costs and prices in the capital-goods industries are increased, as under the NRA, capital-goods purchases may be delayed and, in some instances, lost entirely.²⁰ Consequently, decreasing hours simultaneously in all the industries, as was done by the NRA, may definitely slow down improvement in the standard of living as measured by the total of goods and services produced. We cannot say whether this occurred under the NRA, for it is clearly impossible to measure accurately any such effect when there were also other fundamental movements sponsored by the Federal Government.

And, lest the reader jump to the conclusion that the NRA might have caused a change in income distribution conducive to recovery, he is warned that, as we shall see in Chapter XIII, the assumption of a surplus unutilized mass purchasing power is itself tenuous, if not entirely incorrect.

²⁰The rate of technological advance in an industry obviously depends upon the relation of its prevailing wages and hours of work to the same factors in other industries, especially in those producing its capital goods. There must always be a balance between wage rates, productivity, prices of capital goods, and prices of consumers' goods. A rise in the wages in a consumer-goods industry in relation to wages in capital-goods industries obviously creates a strong incentive to replace men by machines. And conversely a rise in wages in a capital-goods industry makes possible, without displacement, higher wages in consumer-goods industries, but retards the rate of progress of technology.

CHAPTER VI

THE COMPULSORY SHORTER WORK WEEK

1. *Changes in Hours Under the NRA Codes*

It seems obvious indeed from the discussion of the preceding chapter that the United States has gradually moved toward fewer hours of labor per week per man: savings in labor effort accruing from technological advances have been shared by capital and labor. This trend, we believe, would have continued uninterrupted if there had been no depression. But, as the depression deepened, industry tended to shorten hours greatly.

Some economists, scientists, and congressmen, growing impatient with unemployment, urged that if, by law, the existing work were divided up and every workman paid a living wage, unemployment would cease to exist and a greater distribution of goods would be accomplished. To attain this end the Black bill limiting the work week to thirty hours passed the Senate, and a similar measure would have passed the House if the Administration had not requested delay while it prepared a substitute. The Recovery Act was this substitute and, therefore, one of the NRA's first obligations was to reduce hours of work. Moreover, since the Black bill had not distinguished between durable and nondurable goods, the NRA was not expected to make such distinction. In addition, the American Federation of Labor had strongly urged that hours be shortened and wages be raised in all industries, its position with regard to the durable-goods industries later being stated officially in the *American Federationist* (Vol. 41, 1934, p. 810) as:

In a group of 12 heavy industries, wages constitute only 24 per cent of the value of the products produced. An increase in wages of 10 per cent would increase total costs of production less than 2.5 per cent.

If wages are increased the burden is negligible to these industries; if wages are cut, the industries save little on wages and lose by the cumulative effect in lowered sales in the consumer industries. Practically all of the wage increase would go into retail trade and in paying retail accounts, with indirect aid to the heavy industries.

Also important were the equivocal reports of the United States De-

partment of Labor which were interpreted by organized labor to call for decreased hours and increased rates of pay in construction and other durable-goods industries. The net result was that, although such men as Sachs,¹ Hettinger, DuBrul, Roy Wenzlick — code adviser for durable-goods industries—and Deputy Administrators, Malcolm Muir and Malcolm Pirnie, who were in charge of construction and other durable-goods codes, realized the importance of not increasing wage costs and hence prices in such industries, the NRA was forced into the position of approving shorter hours and increased wage costs in all industries regardless of recognized effects of such policy in delaying recovery.

Moreover, some NRA administrators failed to see the error in labor leaders' reasoning. They did not appreciate that: (1) labor could not stop at increasing direct wages in the heavy-goods industries—it had already moved to increase wages in the mines and railroads which supplied the raw materials and helped distribute the product, so that its figure of 2.5 per cent of added cost resulting from a 10 per cent increase in wages in the manufacturing industries was grossly in er-

¹Before the NIRA had been enacted Sachs had expressed the following view on high wages in the capital-goods industries:

"In the course of this depression American labor has suffered more than labor in other countries as a result of the misguided effort early in the depression at artificial wage-rate maintenance comparable to the artificial price maintenance. The attempt to hold the nominal wage rate rigid led to an excessive pressure and contraction in the time worked, so that the weekly pay roll of the workers employed went down more than that of the workers in other industrial countries." (*Impacts of Public Works*, etc., p. 17.)

Albert J. Hettinger repeatedly pointed out fallacies in the policy of reducing hours of work and increasing wages in the durable-goods industries. In March, 1934 he told the code authorities that, of the seventy-eight industries for which data were available, the thirty-hour week at that time would have absorbed the unemployed in only twenty-nine industries, assuming no decrease in demand. For the other forty-nine industries, work weeks varying all the way from thirty down to six hours were required. In 1933, the situation with regard to capital goods was even worse than in 1934.

Malcolm Muir and Malcolm Pirnie resigned from their NRA positions as assistant and deputy administrators when they became fearful that hours were to be reduced and wages raised in all industries, including the capital-goods producers coming under their jurisdiction.

It is of some interest to note that General Johnson did not ask for a separation of industries into durable and nondurable goods until March, 1934. About 5:00 P.M. one day during the Code Authority Conferences General Johnson's office called the author, who had been urging such a division, and requested lists showing the separation by 7:00 P.M. so that they could be made a part of a speech which the General was giving at 8:00. Some thought had been given to the matter so that it was possible to scan lists of coded industries and make a separation in the time allotted. Such industries as goldfish and coffins the author arbitrarily assigned to one or the other group. Others, such as automobiles, were placed in the durable-goods group because their demand obeyed the same laws as articles in this group.

ror; and (2) organized labor had given no recognition to the fact that the whole value of goods produced is distributed to labor, management, and the owners of property, and that each dollar so distributed is purchasing power. They ignored the accepted view that since savings are invested — used as purchasing power — only if adequate profit incentives are offered, any program which lowers the profit incentive at the onset of recovery must tend to induce less use of savings and thus sterilize purchasing power. Statements to the effect that the corporation which makes large profits and uses these to build factories to produce new “automobiles, tires, textiles or shoes when we already are able to produce all that are actually needed, wastes the national wealth,” although wholly unsound, were preferred. They ignored the fact that man-hours are entirely transient in character: if today’s supply is not used today, it is forever lost. Consequently, to employ today’s labor supply in producing goods, even though their market value is very much less than their cost of production, cannot fail in any sense to add to the national wealth. Money spent for their production cannot, when viewed in terms of national wealth, be wasted; for savings spent to produce new plants, even in industries which have permanent excess capacity — and those mentioned do not — are of necessity distributed to the workmen, who mine the material for the plant, fabricate it, transport it, and erect it, and each of these, in turn, is enabled to buy consumers’ goods. If technology was static, and plants did not wear out, the building of additional ones would have been a waste, but this Utopia had not yet been reached. Indeed some estimates indicate that, if *every employable worker* in the United States in 1933 had worked only thirty hours per week, there would have been just about enough labor to produce and distribute clothing and food adequate for the population.

For a proper understanding of NRA policy regarding hours of work and wage rates it must, of course, be remembered that the NRA was subject to considerable pressure from the labor groups, and that in general the strongest unions were to be found in the capital-goods industries. Aiding the NRA was the fact that activity in the capital-goods industries was at such a low ebb and hours of work had already been so drastically shortened as to make shorter hours obviously impracticable. Therefore, the NRA’s chief obligations, if recovery was to be promoted, were to deny wage increases, strive to reduce prices, and strongly resist all price-raising devices in these industries. However,

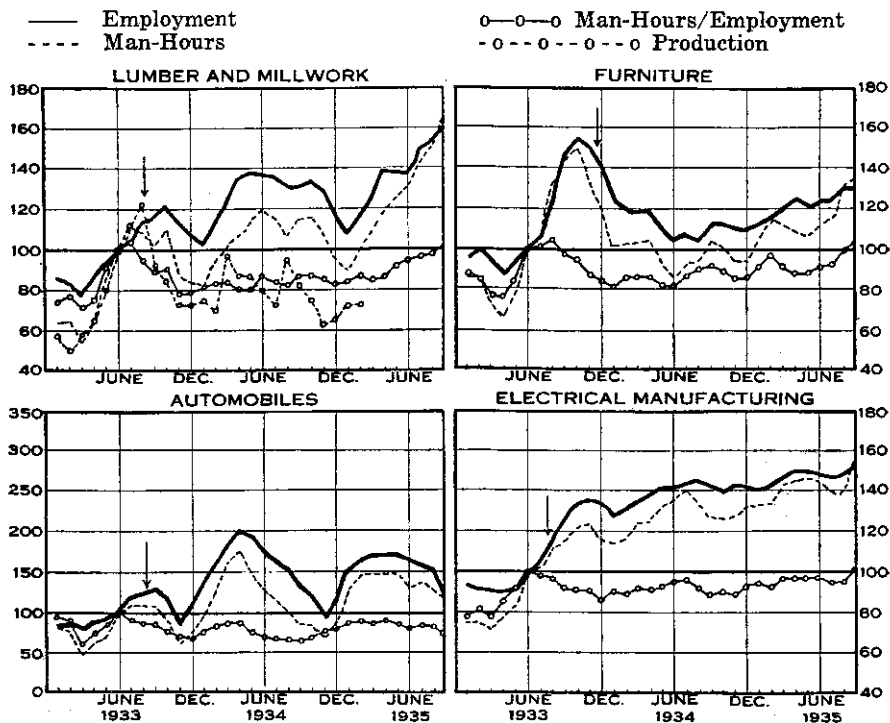
CHART II

EMPLOYMENT, TOTAL MAN-HOURS, AND AVERAGE HOURS FOR CODED INDUSTRIES

Source: U. S. Bureau of Labor Statistics whenever statistics are available and otherwise the National Industrial Conference Board.

It is nonsensical to compare pre-code and post-code indexes of employment, and production or man-hours for all industries in order to arrive at the effects of the NRA; the changes in these indexes depend (1) on the character of the industry, that is, whether it is manufacturing or trading and, if the former, whether the product is a consumer or capital good, (2) the dependence on other industries, (3) public appropriations, (4) monetary policies, and (5) various other factors. However, it is possible to treat somewhat separately each of the factors and to synthesize the results into a fairly accurate appraisal of the effects of the NRA. This is attempted in the following series of charts beginning with a consideration of durable consumers' goods.

A. DURABLE CONSUMERS' GOODS.

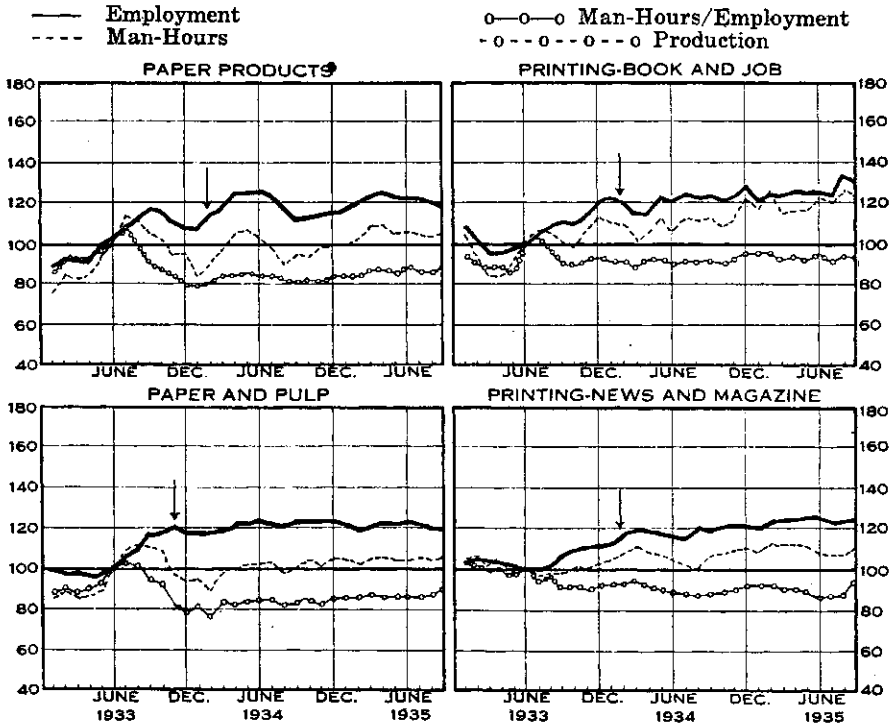


In the United States, at least, demand for durable consumers' goods, such as housing, furniture, automobiles, and electrical appliances, depends considerably on dollar purchasing power. Therefore, with an increase in bank deposits resulting from bank credit expansion and various other inflationary elements, the demand, and hence production, of such commodities should increase. For three of the industries above, employment, average hours per week, and total hours per week decreased shortly after codification. In all cases, both before and after codification, employment rose as total man-hours (production) increased under

CHART II (continued)

EMPLOYMENT, TOTAL MAN-HOURS, AND AVERAGE HOURS
FOR CODED INDUSTRIES

B. DURABLE CONSUMERS' AND PRODUCERS' GOODS



the effects of such inflationary stimuli as threatened monetary devaluation before codification and rising bank deposits afterward.

The importance of industry's efforts to stock up prior to codification in order to profit from the expected increase in labor costs is illustrated very well by data for the furniture industry which waited until the end of 1933 to adopt a code.

Another striking point illustrated by these charts is the rapidity with which the pre-NRA employment-man-hour relation was resumed; by the time the codes were abandoned in June, 1935, the old relationship had been restored. The reason probably lies in industry's efforts to meet the increased wage costs by selecting workers of higher productivity.

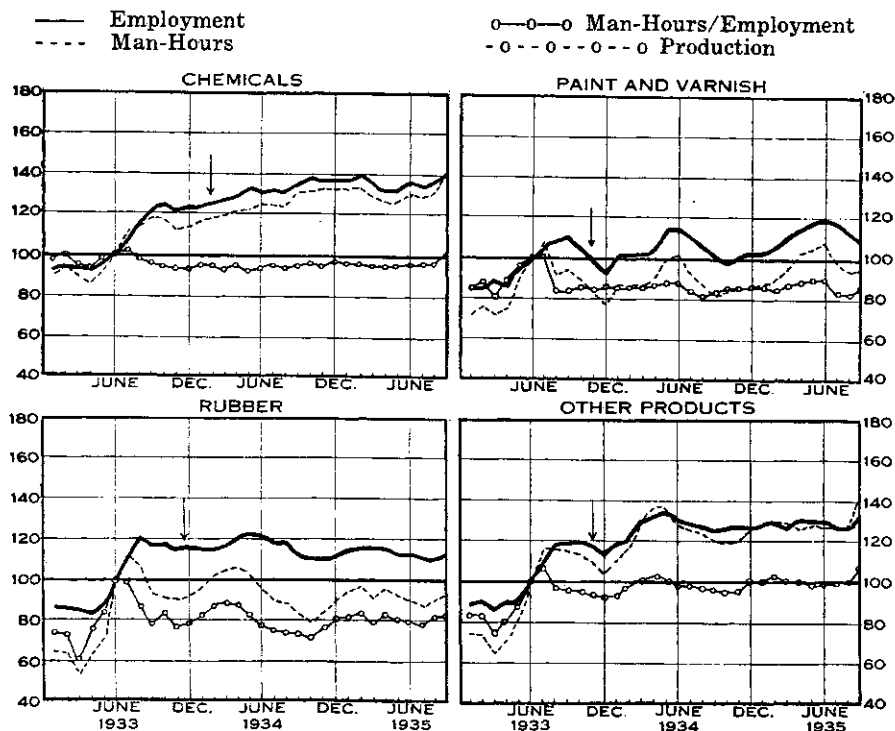
Such commodities as books and magazines also respond readily to changes in purchasing power. In Group B above, the supplier of raw materials — the paper and pulp industry — was able to maintain pre-NRA employment despite a drastic reduction in hours. For comparison, data for the paper-products industry are also shown.

Changes in employment and man-hours or production in all producers'-goods industries depend largely on conditions in their consumer industries. Chemicals, shown in this set of charts, received considerable increase in business, which was reflected in employment, as a result of such increases in demand as occurred in the fertilizer industry (the farmer's effort to offset decreased acreage) and in

CHART II (continued)

EMPLOYMENT, TOTAL MAN-HOURS, AND AVERAGE HOURS
FOR CODED INDUSTRIES

C. PRODUCERS' GOODS



the rayon industry which displaced cotton. Employment in the paint and varnish industry depends upon activity in the construction and automobile industries, the yearly cycle shown being a composite of the cycles in automobile production and construction. The rubber industry is largely dependent upon the production and use of automobiles, the intense cycles in automobile production being smoothed considerably by the summer demand for replacement tires coming in the troughs of automobile production.

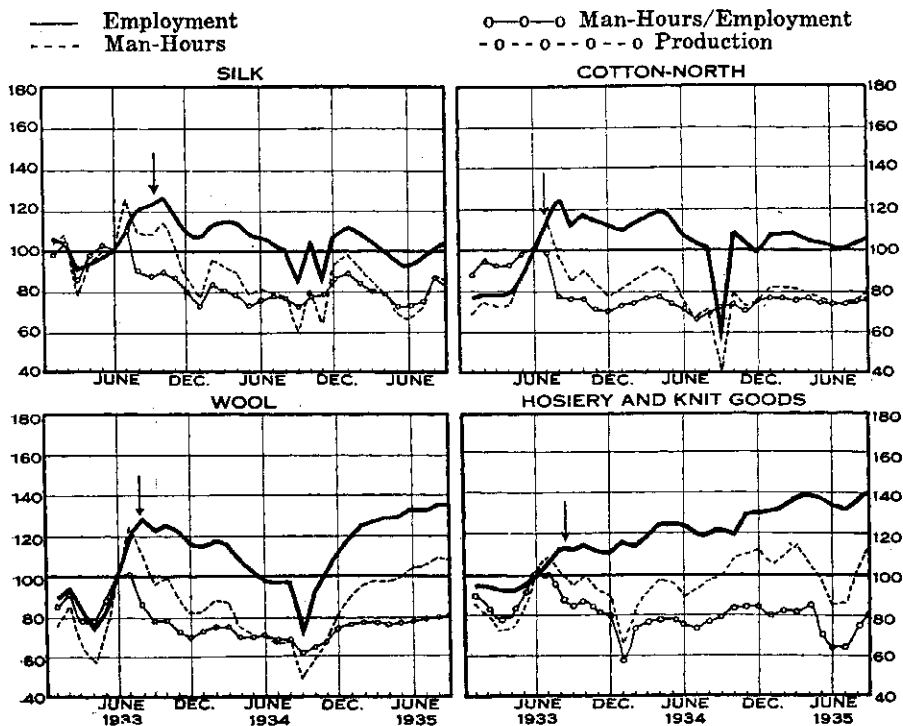
To determine the principal effects of NRA policy on employment in producers' goods industries the effects of the entire recovery program on the customer industries must be carefully studied. This is quite difficult; for instance, increased automobile demand was effected by at least the factors: (1) vastly improved quality of product at greatly lowered prices, (2) dollar devaluation leading to increased agricultural income and still further lowered prices of cars in foreign markets, and (3) an improved secondhand car market brought about by purchases of used cars by recipients of federal relief and new jobholders.

In each textile industry shown below there was an upward swing in production (as measured by man-hours) in May and June, 1933, and almost proportionate increases in employment. Following code adoptions in mid-1933, employment in all increased further, but total man-hours greatly decreased, also average hours worked per employee, the decline being about 20 per cent. After this initial adjust-

CHART II (continued)

EMPLOYMENT, TOTAL MAN-HOURS, AND AVERAGE HOURS
FOR CODED INDUSTRIES

D. NONDURABLE CONSUMERS' GOODS — COMPETING

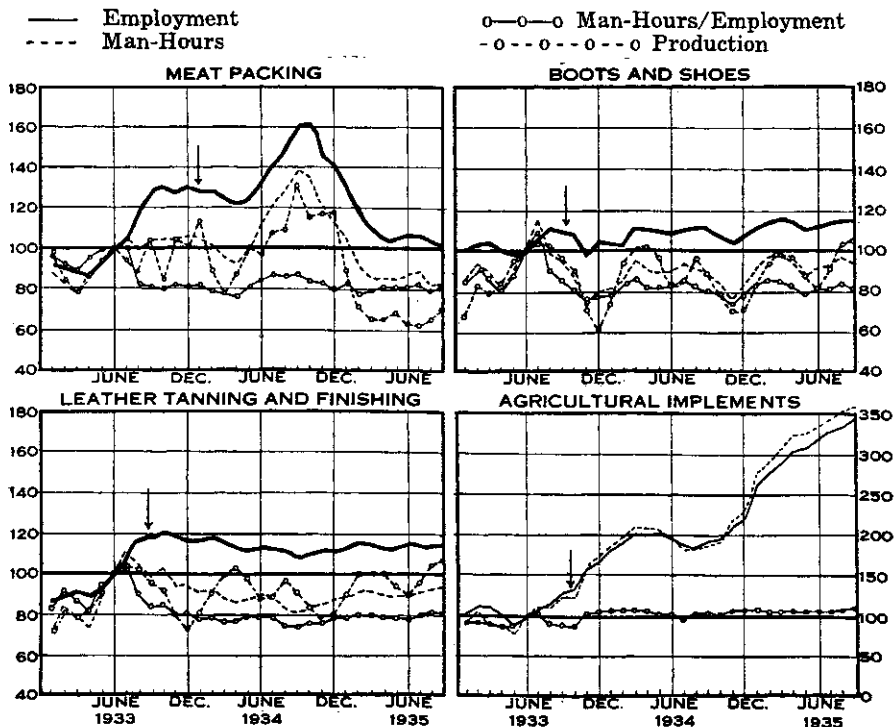


ment, employment again was almost proportional to total man-hours, but on a different level. Then, average hours per man began to increase as mills running part time gained business at the expense of mills operating in pre-NRA days above the code minimum. In the silk and cotton industries, which suffered drastic pay-roll increases and foreign competition, employment in June, 1935 was no higher than in June, 1933 and great decreases in total man-hours (production) had occurred.

Thus, although demand for these nondurable consumers' goods is essentially inelastic with respect to price, the changes initiated by the NRA were sufficient to lower production without compensatingly increasing employment. Where increases are shown in this competing group, business was shifted, silk and cotton losing to rayon for which data are not shown here. Moreover such industries as textiles, of course, faced competition from foreign products, so that the demand, after all, was not inelastic.

The story for boots and shoes, leather tanning and finishing, and meat packing is essentially that of other nondurable-consumers'-goods industries; man-hours (production) and employment increased just before codification and then the former decreased while employment remained practically stationary after code adoption. The sudden rise in meat packing in 1934 was caused by the slaughter of cattle forced upon the market by a wide-spread drouth.

CHART II (continued)

EMPLOYMENT, TOTAL MAN-HOURS, AND AVERAGE HOURS
FOR CODED INDUSTRIESD. NONDURABLE CONSUMERS' GOODS (Continued) AND CAPITAL
GOODS

Agricultural implements, for which indexes are shown in D above, were favorably affected by (1) devaluation (this is an export industry), (2) farm benefit payments, (3) other increases in farm income, and (4) various forms of loans to farmers.

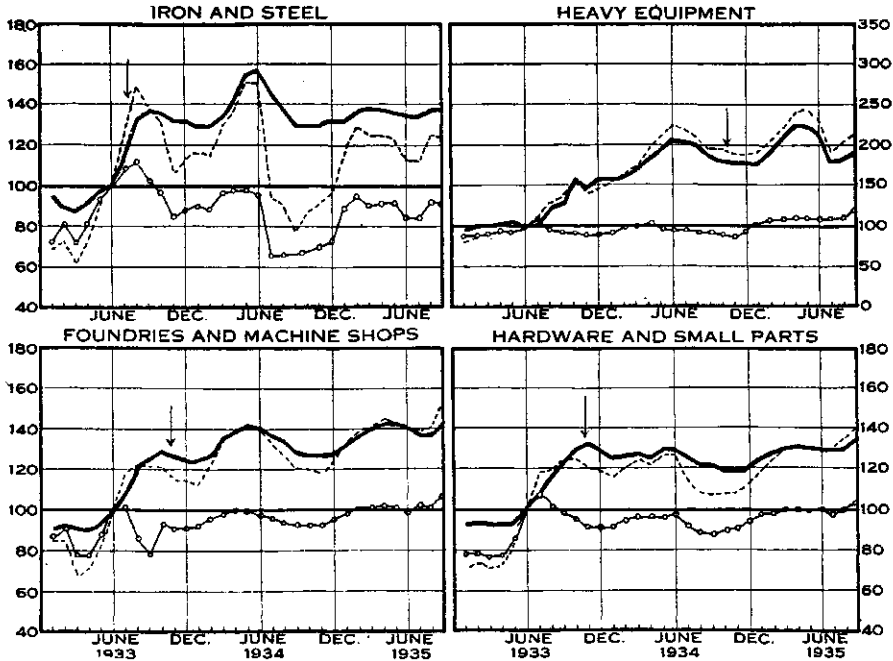
Capital-goods industries, like iron and steel, heavy equipment, and foundries and machine shops, should show improved employment and man-hours when wages rise in consumers'-goods industries, since the incentive to install machines is increased. In such industries as heavy equipment and foundries and machine shops, activities were so low at the inception of the NRA that hours were not shortened. These industries may be said to have definitely benefited by the NRA, because of pressure placed upon the consumers'-goods industries which they served.

The indexes for the iron and steel industry illustrate clearly the effects of a threatened price increase. At the beginning of the NRA there was much forward buying to beat the price increases and as a result employment and production soared. When the code went into effect, production (man-hours) dropped precipitously but hours were shortened and employment declined very little. Again in the spring of 1934 an increase in prices was threatened and a flood of orders raised employment above the 1929 levels; but in July and August after the

CHART II (continued)
 EMPLOYMENT, TOTAL MAN-HOURS, AND AVERAGE HOURS
 FOR CODED INDUSTRIES

E. CAPITAL GOODS

— Employment
 - - - - Man-Hours
 o—o—o Man-Hours/Employee
 - - - - - o - - - - - Production



increase became effective almost a fifty per cent decline in production (man-hours) occurred. By reduction in hours through a temporary share-the-work program, employment dropped much less than production.

In brief, apparently, the NRA (1) lowered standards of living as measured by the production of particular consumers' goods, (2) diverted activity to foreign producers, or (3), in some cases, shifted production among competing groups. On the other hand, in all consumers' goods industries employment and production increased markedly just prior to codification and in many instances these higher levels were again reached or surpassed following codification; but one can debate whether the increased activity was in anticipation of higher costs due to codes or followed from the abandonment of the gold standard. My experience at the NRA inclines me to the former point of view, and this is reinforced by the fact that there were no upward swings in October and November when the Administration was carrying out a devaluation by changing the price of gold, and there were in March and April, 1934 when shorter hours and increased wages again were threatened.

The complete set of charts seems to indicate that one must bend over backwards to say that the NRA helped employment throughout industry. While employment has risen since the NRA was first conceived, most of the increase ac-

tually occurred before codes were adopted and at the best the pre-code gains have been maintained. In view of the uncertainties arising from codes and the jerky stimulating and retarding effects, it now seems reasonable to conclude that the NRA did not aid economic recovery in the United States.

as we have seen, the NRA had no policy boards; it left decisions to deputy administrators who as a group had little appreciation of economic principles, and usually yielded to the advice of the Department of Labor as given to the NRA Labor Advisory Board.

A study of Table VII provides an answer to those critics of the NRA who have said that, with industry operating less than an average of forty hours per week, a spread of work could not be accomplished by fixing maximum hours at forty. These data show that the average work week was 31.54 hours; yet, assuming no decrease in demand due to increased costs, a forty-hour maximum would have actually resulted in some re-employment. In fact, the total number of employees working forty hours and over is the sum of the last four numbers of column nine of Table VII, which is 19,000. If each worked exactly forty hours, the total time of this group would be $40 \times 19,000 = 760,000$ hours as against the 862,930 shown by the sum of the last four entries in column ten. Consequently, at least $862,930 - 760,000 = 102,930$ hours would be available for distribution among new employees. If each of the new employees worked forty hours, such an industry, if no decrease in production occurred,³ would employ about 2.6 per cent additional workmen and average hours would be decreased from 31.5 to 30.7.

Pre-code and post-code frequency distributions of hours worked by employees in the leather industry are shown in Table VIII. A short calculation shows that, if hours of those working more than forty per week were divided up among new employees working forty per week, and there were no decrease in production, there would be a 10.6 per cent increase in employment. Pre-code and post-code average hours in a number of industries are shown in Table IX which indicates clearly that even by setting maximum hours above pre-code average hours per week the NRA was able to spread employment. In all industries, except electrical manufacturing and iron and steel, average hours were reduced as a result of code limitations; and statistics of production show that greatly increased business made it

³We saw in the preceding chapter that hours of work and wages cannot be changed in an industry without affecting demand. Hence the assumption here made is to be regarded as a hypothetical one not to be expected in practice unless other factors exactly counterbalance the effect of shorter hours. The occurrence of such a balance, we believe, is very improbable.

possible for the two exceptional industries to operate longer average hours.

In considering how such reductions in hours as encouraged by the

TABLE V
SUMMARY OF CODES BY LENGTH OF WORK WEEK
Factory or General

Source: Research and Planning Division, NRA

The various lengths of work week for factory or general help (some codes apply to non-manufacturing industries) as provided by the first 393 codes, whose approval numbers (except for those with a 40-hour week) are given, are as follows:

- 27-hour week* — One code: 18.
- 32-hour week* — One code: 344.
- 35-hour week* — Twelve codes: 5, 64, 98, 108, 131, 143, 161, 194, 220, 276, 318, 368.
- 36-hour week* — Thirteen codes: 2, 4, 10, 15, 25, 123, 128, 171, 174, 192, 262, 363, 373.
- 37½-hour week* — Two codes: 151, 336.
- 40-hour-week (flat maximum)* — 98 codes.
- 40-hour week (averaged over various periods)* — 97 codes.
- 40-hour week (with additional allowances)* — 146 codes.
- 42-hour week* — One code: 20.
- 44-hour week* — Four codes: 28, 46, 163, 196.
- 45-hour week* — One code: 232.
- 48-hour week* — Fifteen codes: 10, 20, 28, 33, 37, 43, 66, 162, 182, 191, 278, 280, 282, 308, 372.
- 52-hour week* — One code: 346.
- 54 hour week* — Two codes: 121, 282.
- Miscellaneous* — Eleven codes had work weeks of various lengths, depending upon different factors or other special provisions:
 - Retail Trade — 40-44-48 hrs. (according to store hours)
 - Retail Drug — 40-44-48-56 (according to store hours)
 - Air Transport — 40-48 (by classes of employees)
 - Retail Jewelry — same as Retail Trade
 - Motor Vehicle Storage & Parking — 44-54 (class of emp.)
 - Retail Farm Equipment — same as Retail Trade
 - Inland Water Carrier — 40-44 (periods of the year)
 - Advertising Distribution — 40-44 (classes of employees)
 - Outdoor Advertising — 40-48 (classes of employees)
 - Fishery — 90 in 2 weeks
 - Coal Dock — 40-56 (by divisions and seasons)

NRA would affect plants within an industry it is necessary to remember that the forty-hour maximum would not adversely affect those plants which were working fewer hours. On the other hand plants

TABLE VI
DISTRIBUTION OF CODES AND EMPLOYEES AMONG
CLASSES OF INDUSTRIES

Source: Research and Planning Division, NRA

INDUSTRY	EMPLOYEES (In thousands)				C O D E S			
	Total	Week Less Than 40	40 Hour Week	Week More Than 40	Total	Week Less Than 40	40 Hour Week	Week More Than 40
Food	811	81	451	279	31	2	24	5
Textile Fabrics	935	.....	935	.....	33	....	33	....
Textile Apparel	1,459	952	507	.....	47	11	36	....
Leather and Fur	314	26	283	5	12	3	8	1
Ferrous Metals	420	.....	420	.....	2	....	2	....
Non-Ferrous Metals	55	.....	55	.....	8	....	8	....
Non-Metallic Products	355	135	220	.....	47	3	44	....
Fuel	560	560	.....	.....	2	2	....	....
Lumber and Timber	731	.....	731	.....	19	....	19	....
Chemicals	184	.....	179	5	26	....	25	1
Paper	263	9	254	.....	32	1	31	....
Rubber	97	49	48	.....	3	1	2	....
Equipment	1,386	401	977	8	91	8	82.5	0.5
Manufacturing	931	11	907	13	70	4.3	64.7	1
Construction	2,464	.....	2,464	.....	3	....	3	....
Public Utilities	1,680	.....	19	1,661	13	....	3.3	9.7
Finance	449	.....	324	125	5	....	3	2
Graphic Arts	394	.....	394	.....	4	....	4	....
Amusements	490	.....	354	136	5	....	4	1
Professions-Services	1,664	.....	400	1,264	16	....	11	5
Wholesale Distrib.	1,288	25	964	299	32	1	27	4
Retail Distribution	5,092	23	289	4,780	16	1	7.3	7.7
TOTAL	22,022	2,272	11,175	8,575	517	37.3	441.8	37.9

Although the NRA was partial to the forty-hour week there was little uniformity in the maximum-hour provisions of codes. Thus, as is shown by Tables V and VI, twelve codes, almost all in the consumers'-goods industries, such as the manufacturing of suits, dresses, furs, and dyes, provided for a thirty-five hour week; thirteen codes limited hours to thirty-six per week; one code, that for the millinery and covered button industry, named a limit of thirty-seven and one-half hours. The lowest maximum, twenty-seven hours per week, was established by the gray iron foundry code which, because of greatly decreased demand, had been operating only eighteen hours per week. The highest maximum was fifty-six hours per week in certain seasons and was granted to the retail drug and coal dock industries. As an interesting variation of the maximum work week, the fishing code allowed ninety hours in two weeks, which, of course, meant that the industry could work seventy hours one week provided it operated only twenty hours the next. In another variation the coat and suit industry specified forty hours for non-manufacturing and thirty-five hours for manufacturing. The factory codes usually limited the general help to a maximum of forty hours per week but special processes were granted forty-eight hours. Deputy Administrator Arthur D. Whiteside handled many of the service codes. Most of the Whiteside codes named a forty-hour week and a minimum of forty cents an hour.

operating more than forty hours would either spread work and attempt to keep their sales in the face of shrinking earnings, or abandon the least profitable part and partially spread work. In the latter event, pre-code high-cost plants using part-time schedules would probably show longer hours and larger sales. It seems, therefore, that spreading work by law may produce increments in costs and prices which are greater than the wage increases; under pressure of high

TABLE VII
PRE-CODE DISTRIBUTION OF WAGES AND HOURS IN INDUSTRY
(Hypothetical Figures in Accordance with Actual
Fragmentary Data Presented to NRA)

Hours per Week	Number of Workmen Receiving Wages (Cents per Hour)							Total Workmen	Total hours per week
	25-29	30-34	35-39	40-44	45-49	50-54	55-59		
5- 9	100	300	300	400	400	300	200	2,000	15,150
10-14	200	500	450	650	500	400	300	3,000	37,440
15-19	500	1000	1400	1600	1500	1000	1000	8,000	141,000
20-24	500	1500	2000	2400	2600	1250	750	11,000	247,520
25-29	750	1800	2250	3200	2500	2000	1500	14,000	385,110
30-34	1100	3000	3900	4900	5500	2600	1500	22,500	715,020
35-39	500	2700	3600	4500	5100	2600	1500	20,500	749,780
40-44	600	1400	2000	2600	2400	2000	1000	12,000	509,970
45-49	200	600	700	850	950	400	300	4,000	190,340
50-54	50	150	250	450	500	400	200	2,000	105,290
55-59	35	65	125	225	350	150	50	1,000	57,330
Total	4535	13015	16975	21775	22300	13100	8300	100,000	3,153,960

wages, some plants discontinue the production of those goods normally selling at prices near prime costs, and in this way the supply of the product is reduced. After a sufficient increase in price occurs, high-cost plants begin operations but in the meantime production of goods is lowered. In the long run, under a program of rigid maximum hours, the most efficient plants are not utilized so as to contribute at their optimum rate to national income. A nation embracing such a program must content itself with lowered standards of living, and, we believe, with inferior products also, for the new efficient plants produce, on the whole, a higher quality of product.

2. Skilled-Worker Problems

Before the NIRA was enacted several groups indicated publicly that because of shortages of skilled workers a rigid shorter work

week would lead to decreased production. The President's Re-employment Agreement carefully guarded against expected skilled-worker bottlenecks by allowing work above the maximum hours, provided

TABLE VIII
PERCENTAGE DISTRIBUTION OF HOURS WORKED PER WEEK
Leather Industry

Male Workers in the North: 1932 and October, 1933

Source: Research and Planning Division, NRA.

Hours of Work Per Week	FREQUENCIES			CUMULATIVE FREQUENCIES		
	Per Cent of Wage Earners			Hrs. of Work Per Week	Per Cent of Wage Earners	
	1932	Corrected	Oct. 1933		1932	Oct. 1933
	(a)	(b)	(c)			
Under 15.0	2.5	2.3	2.0	15 and under	2.5	2.0
15.1 — 17.5	1.2	1.1	1.2	17.5 and under	3.7	3.2
17.6 — 20.0	2.0	1.8	1.5	20.0 and under	5.7	4.7
20.1 — 22.5	2.8	2.5	1.5	22.5 and under	8.5	6.2
22.6 — 25.0	3.5	3.2	1.7	25.0 and under	12.0	7.9
25.1 — 27.5	4.0	3.6	1.7	27.5 and under	16.0	9.6
27.6 — 30.0	5.5	5.0	1.8	30.0 and under	21.5	11.4
30.1 — 32.5	4.1	3.7	3.9	32.5 and under	25.6	15.3
32.6 — 35.0	4.9	4.4	3.7	35.0 and under	30.5	19.0
35.1 — 37.5	4.7	4.2	5.2	37.5 and under	35.2	24.2
37.6 — 40.0	6.8	6.1	75.8	40.0 and under	42.0	100.0
40.1 — 42.5	8.4	7.6		42.5 and under	50.4	
42.6 — 45.0	10.7	9.7		45.0 and under	61.1	
45.1 — 50.0	26.9	24.3		50.0 and under	88.0	
50.1 — 55.0	8.0	7.2		55.0 and under	96.0	
55.1 — 60.0	3.2	2.9		60.0 and under	99.2	
Over — 60.0	.8	.7		All	100.0	
Total	100.0		100.0			

(a) Computed from data given in Table D, of Bulletin Number 579, Bureau of Labor Statistics, *Wages and Hours of Labor in the Boot and Shoe Industry, 1910-1932*.

(b) Corrected for 10.6 per cent increase in employment attributable to codes.

(c) Computed from data in *Wages, Hours and Employment in the Leather Industry, October, 1933*, Tanner's Council of America.

workmen were paid for the excess at the rate of time and one-third. Yet despite these public warnings, the vast majority of codes operated within rigid maximum-work-period rules, making no provision whatever for overtime.

Troubles arising from such inflexible work weeks developed early. Some were aired publicly in March, 1934, when industrialists loudly proclaimed shortages of skilled workers. Although there might be

a job in Maine, the skilled worker fitted for it often lived in California or Texas. It was impracticable to transport a worker across the

TABLE IX
PRE-CODE AND POST-CODE AVERAGE HOURS IN VARIOUS INDUSTRIES

Source: *Hours, Wages and Employment under the Codes*, Research and Planning Division, NRA, January, 1935

Industry	Average Hours per Week		
	Jan. to June 1933	Jan. to Nov. 1934	Per Cent Change
All Manufacturing	38.9	34.7	-10.8
Automobile	35.5	33.3	- 6.2
Boot and Shoe	41.3	34.6	-16.2
Cane Sugar Refining	50.3	37.2	-26.0
Cement	34.6	33.1	- 4.3
Chemicals	42.0	38.7	- 7.9
Cotton Goods	46.1	33.0	-28.4
Electric Machinery	31.7	33.6	+ 6.0
Knit Goods	42.0	33.4	-20.4
Leather	43.4	36.7	-15.4
Iron and Steel	29.5	30.5	+ 3.4
Lumber and Timber Products	37.0 ^a	33.6 ^a	- 9.2
Paper and Pulp	41.4	36.3	-12.3
Rubber Tires and Tubes	31.9	30.9	- 3.1
Silk Goods	39.3	32.9	-16.3
Woolen and Worsted Goods	44.2	33.1	-25.1

Note: The averages shown in this table are simple arithmetic averages computed from average weekly work hours for the months noted, as reported to the Bureau of Labor Statistics (*Trend of Employment*).

^aThe Bureau of Labor Statistics reports average hours per week only for the subdivisions of this industry. The average shown above, therefore, is an average of the monthly weighted averages of hours per week for the sawmill and millwork subdivisions. These were computed from the average hours per week and the number of employed persons reported to the Bureau of Labor Statistics. In the latter case, some adjustments to census figures were made by NRA.

continent in order to give him employment, perhaps lasting for only a month,⁴ and so forth.

⁴This difficulty was anticipated months before by DuBrul. See Chapter IV, Section 2. In a hearing on the Black Thirty-Hour bill in the spring of 1934, James W. Hook explained the skilled-worker problem in a forceful way. Although he drew on his experience in a durable-goods industry for his arguments, they apply equally well to consumers' goods. His statement follows:

"The bill is based on the false assumption that each unemployed person is a potential employee in any and all classes of work. It overlooks the character of the jobs that are available in the productive processes of the manufacturing industry in this country. It assumes that if I need a man to operate the specialized machines in my factory, all I have to do is to go to the relief committee in my town and get him. It ignores the variable abilities and limited skill of workers, also their desire and willingness to work. It shows an astonishing ignorance of factory personnel problems and modern methods of working to close limits in present-day metals and materials. . . .

Shortly afterward a problem in the shipbuilding industry was cited to the NRA as one of the best examples of how important difficulties can arise from skilled-labor bottlenecks. Because of limited room for work, only a few employees, nearly all of whom are master craftsmen, can be used in the first stages of construction, and much of this early work, such as pattern making, is creative. Clearly, therefore, shortening the work week for skilled labor in such an industry by delaying early construction postpones the time at which unskilled laborers can be employed. Similarly in other industries, limiting hours of work to the point at which shortages of skilled labor occur forces unemployment for common workmen, since the latter are useless until the former have laid out their jobs.

Another problem involving skilled workers on which much discussion centered was that of fitting hours into shifts, especially in continuous process industries where it is difficult to arrange shifts so as to stay below the prescribed limit and yet provide sufficient work. Obviously, daily hours in such industries must be factors of twenty-four, that is, four, six, eight, or twelve, and, consequently, maximum

"In 1929 the work week in the durable-goods industries ranged between 50 and 60 hours depending upon the industry. Today under codes it averages slightly above 40. Here at once is a reduction of 20 to 33 1/3 per cent in effective skilled-worker efforts. But this is not all. It takes time to make a skilled workman. In 1929 and before it required 4 years of apprenticeship to make a toolmaker. That was when the work week was much longer. Today on a proportionate basis it would take 20 to 33 1/3 per cent more time, or from 5 to 6 years. Since 1929 business has been so bad that apprenticeship courses have languished, so much so, in fact, that the losses of skilled workers by the normal processes of death, change in occupation, disability and old age, have not nearly been offset by new workers to take their places. Conservative estimates indicate that there are now available for employment in the durable-goods industries at least 30 per cent fewer skilled workers than in 1929. Practically all of them are already attached to some pay roll.

"From what I have said I think it is not necessary more than to mention the extra-shift idea that some believe would overcome the bad effects of suddenly shortening the work week. The extra-shift solution is a fallacy. It makes no difference how many shifts a factory may want to run, its ability to do so depends upon its being able to man each shift with a proper proportion of skilled workers. But suppose, for sake of argument, that we eliminate the skilled-worker factor. Would the extra-shift idea be tenable even then? I think not. Business, with little regard for the rights of anyone, does not fluctuate so as to make an extra shift suddenly necessary or unnecessary. It goes up and down in irregular movements, requiring weeks and sometimes months for a definite trend to appear. If an individual unit of business was running full time on a 40-hour week and it was forced by law suddenly to cut its week to 30 hours, then the addition of an extra shift would require that the work week for the individual worker be cut to 20 hours. If later that business crept up so that 65 hours of work per week were necessary, it would mean the addition of a third shift and an adjustment of hours of individual workers back to slightly over 20 again. Would such adjustments be fair to employees? I think they would not only be unfair but positively unmoral."

Hearings on the Thirty-Hour Bill, S. 87, p. 258.

hours in a plant operating six days per week should be twenty-four, thirty-six, or forty-eight.

If, as industry contended, shortages of skilled workers developed under the NRA, a drastic shortening of the work week such as that which was contemplated by sponsors of the Black bill, would surely have required the retraining of millions of semi-skilled and skilled workers; the unemployed carpenters, plumbers, painters, and other building craftsmen would have had to learn the trades of manufacturing industries.⁵

3. Exceptions to Maximum Hours

A reference to the President's Re-employment Agreement shows that it permitted employees to work more than the maximum hours on condition that they should be paid for overtime at a rate of one and one-third the usual hourly wage. The logic of this was that an employer spreads work rather than pay time and one-third, and the employee generally does not work beyond the ordinary maximum without demanding the extra pay to which he is entitled. But although the PRA contained such a self-policing provision, few codes used it. As a result, the vast majority of the hour provisions, as written by the NRA, were almost completely unenforceable;⁶ it was to the advantage of both employers and employees to disregard them in cases of rush orders and, in general, reports of violations were made only by disgruntled workers or by former employees who hoped thereby to secure work. And organized labor frequently charged that non-complying employers asked their workers to swear out false affidavits. If such conditions prevailed, it was obviously extremely difficult for the Federal Government to prepare court cases.

⁵At least one employer who asked the NRA for exemption from the minimum wages certainly trained his share of workers. He had ninety employees whom he was paying twenty cents per hour as against a code minimum of thirty cents. Although he made specialties which required workmen of some skill and his average force was about ninety, he hired a total of 300 in 1934, employing 210 people in a period of six months following the code. Since labor did not stay long with him, he was constantly forced to train new workers. Later, when he raised wages, he reduced his labor turnover and began to make profits. But such cases were the exception rather than the rule. Moreover, when he began to hire only labor that had been trained he ceased to fill the important function of training workers in his industry.

Russia sends workers from over-manned industries to trade schools and quickly retrains them. In the United States, however, there are inadequate schools of this nature, and, in addition, no reliable information exists on the number of trained workers in each trade.

⁶James W. Hook of the Industrial Advisory Board urged this point of view from the beginning, even before the NIRA became law.

We might also argue that industry and labor can be excused for violating such obviously ill-conceived rules; in some emergencies, both workmen and employers were almost compelled to violate a fixed-hour law. Only the most conscientious could turn down orders or postpone them as was otherwise necessary since it was usually not feasible to hire additional help for a few hours.⁷

One naturally inquires why the extra-pay-for-overtime principle, known from the beginning, was not widely adopted by code-makers. The answer is that organized labor, in objecting to its use, stated that foremen, who did not themselves have to meet added costs, worked their employees overtime rather than incur the trouble of hiring additional help. Yet it seems that the real ground for opposition was that labor wished to legislate power into the hands of the unions so that they could thereby obtain monopolistic control of wages; its leaders therefore fought all attempts to prescribe flexible hours even though they promised the worker extra pay. Moreover, the opposition was not confined to labor; industries also refused to accept the provision for the different reason that they preferred to insert exceptions in the codes to avoid the expense of overtime pay.

As might be expected from the method employed in writing codes there was no uniformity of provisions for the exceptions; each situation was handled in an individualistic way by the particular deputy in charge. Some codes made provisions for seasonal loads,⁸ others exempted emergency repair crews,⁹ still others stated that maximum

⁷On the other hand, it is to the advantage of both the employer and the employee to enforce a flexible work week based on overtime pay.

⁸The most common type of such code exception permitted hours above the maximum during seasonal peaks, the first of these provisions appearing in the electrical manufacturers' code. Here all workers in branches having emergency peak or seasonal loads were exempted from the hour provision. The lumber and timber products code, which was the ninth to be approved, allowed forty-eight hours in any one week and additional hours whenever authorized, but provided that the average weekly hours over the year were not to exceed forty per week. The automobile manufacturing agreement sanctioned forty-eight hours during seasonal peaks on condition that such peaks be absorbed in the forty hours average for the year.

The retail trade agreement, the sixtieth to be approved, allowed eight hours per week above the maximum for two weeks in the first six months of the year and for three weeks in the last six months. The carpet and rug code, the two-hundred-second to be approved, while limiting hours to forty per week, sanctioned six forty-eight hour weeks in each six months.

Other codes making provision for peak loads contained additional variations of these types of exceptions.

⁹The cotton textile code merely specified that overtime for emergency repair crews should be reported to the fair-trade-practice agency of the industry; the wool textile code, the third to be approved, excepted repair-shop crews, the men's clothing code, the fifteenth, merely required that repair crews average forty hours

hours did not apply to workers in emergency situations in which products might be spoiled or destroyed while in a perishable condition. Others allowed more than the maximum hours in various situations. The leather code, for instance, specified that emergency employees should receive pay for the excess hours at the rate of time and one-third; the provisions code, on the other hand, placed no limitations on the hours of those handling green vegetables. Also, many agreements excused night watchmen, engineers, and firemen, but others merely set their maximum hours above the limit for other workers. There were also a few general exceptions. Thus, in all industries, employees in a professional, executive, administrative, or supervisory capacity who received \$35.00 or more per week were exempted for reasons that should be clear. NRA shorter-hour rules, of course, did not apply to research workers because it was believed impossible to divide up creative work. Then also, a large number of codes provided exceptions or special tolerances for employees peculiar to the industry; the cotton textile code, for example, specified that outside employees should work forty-four hours as against forty hours for other employees.¹⁰

It is thus seen that the NRA approved a wide variety of clauses granting exception from the hour limitations to one group or another. These provisions were, moreover, so worded as to be almost completely unenforceable. Yet the penalty overtime provision of the PRA, opposed by labor and industry for selfish reasons, might have met satisfactorily every situation without making evasions easy. In addition this flexible provision would have tended to smooth out seasonal peaks without stopping increases in production and employment.

4. The Incidence of the NRA Hour Program on Industrial Costs

Obviously some part of the economic and statistical background of American industry must be considered in any attempt to estimate the effects of shortening hours of work on costs. For this we first note that working-capital ratios differ from industry to industry and also according to size of firm and, second, that the average wage also differs greatly by region, by industry, and by size of firm (see also Chapter XIII, Section 2). Thus, it was obviously impossible for

per week for the year. Several codes, such as textile machinery manufacturing, silk textile, fertilizer, and rock crusher manufacturing, granted repair workers a ten per cent tolerance above the maximum.

¹⁰Negro organizations charged that this was a discrimination against their race because nearly all *outside employees* were Negroes.

the NRA to prescribe uniform conditions of labor even within an industry without injuring concerns in small cities and, because of intra-city variations, even some plants in the same city. Some concerns had to gain and others lose from the NRA shorter-hour plan.

We turn our attention now to the much broader problem of changing to uniform hours of work for all industry. First we note from Table X that the ratio of wages to value added by manufacture differs widely from industry to industry. Thus, there is a wide dispersion of the ratios, and wages form a greater proportion of value of product as one progresses from nondurable to durable consumer goods and thence to capital goods. Consequently, an application to all industry of a shortening-to-uniform-hours, no-wage-reduction pro-

TABLE X
FREQUENCY DISTRIBUTIONS OF THE RATIO OF WAGES TO VALUE ADDED
Source: U. S. Census of Manufactures, 1929

Ratio Wages to Value Added	Nondurable Consumer Goods	Durable Consumer Goods	Number of Industries Capital Goods
.00 - .04	2	0	0
.05 - .09	2	0	0
.10 - .14	7	0	0
.15 - .19	9	1	0
.20 - .24	5	1	2
.25 - .29	7	3	5
.30 - .34	10	4	4
.35 - .39	14	12	9
.40 - .44	10	9	14
.45 - .49	7	6	8
.50 - .54	3	1	5
.55 - .59	1	0	1
.60 - .64	0	0	2
	77	37	50

gram would affect the capital-goods industries most adversely, unless, as under NRA, hours in these industries were less than the norm. Since the ratios given in this table changed very little between 1919 and 1929 (see Charts III and IV) it may be assumed that they held approximately in 1933. Moreover, Table VII indicates that there are great differences in hours worked per week and in rates of pay in industries. From these facts it should be evident that shortening of the work week must of necessity encourage displacements and disparities in industry and labor; in fact, as pointed out in Chapter V, Section

CHART III

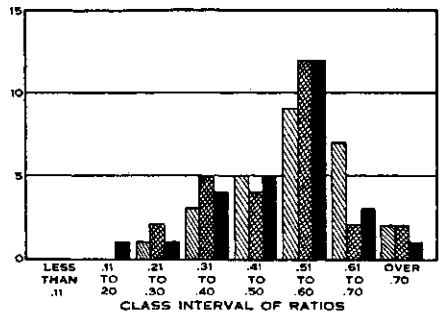
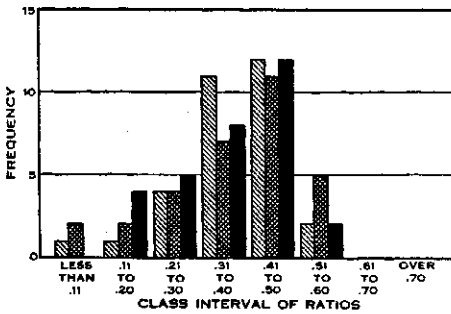
FREQUENCY DISTRIBUTION OF COST RATIOS

Source: Compilations by the Cowles Commission from U. S. Census of Manufactures, 1929

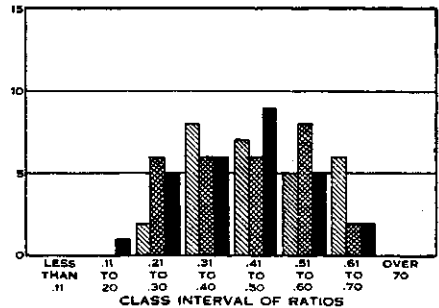
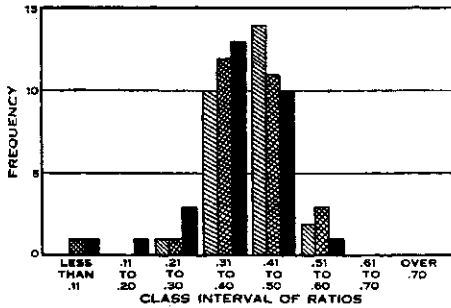
I. RATIO OF WAGES TO VALUE ADDED BY MANUFACTURE FOR THREE GENERAL CLASSES OF INDUSTRY

II. RATIO OF COST OF MATERIALS TO VALUE OF PRODUCT FOR THREE GENERAL CLASSES OF INDUSTRY

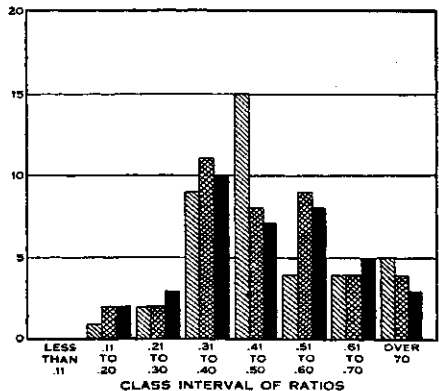
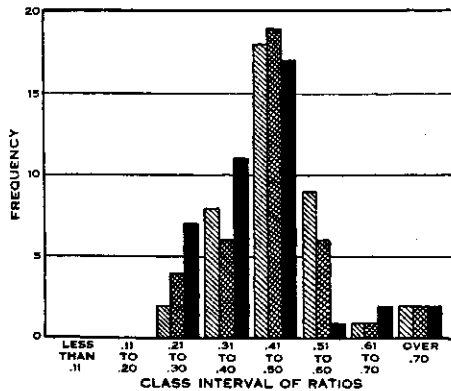
1919 1927 1929
A. NON-DURABLE CONSUMER GOODS



B. DURABLE CONSUMER GOODS



C. CAPITAL GOODS



The proportion of wages to value added by manufacture differs widely among industries—from less than ten per cent to over seventy per cent—and also among broad industrial groups. Consequently, all measures which aim at uniform or nearly uniform decreases in hours of work, with or without decrease in pay, or more or less uniform increases in wages, are necessarily inequitable. Industries with low proportions of wages (frequently due to high mechanization, see also Chart V) are thereby granted special competitive advantages.

Since the ratio of wages to value added is higher in the capital-goods industries, the NRA, by increasing wage rates very nearly proportionately, unduly penalized these industries. It is, therefore, open to the charge that it delayed recovery in the industries upon whose condition general economic revival rests:

5, the first stimulus of mass purchasing power is felt by distribution and service industries and the common consumers' goods, such as food and cheap clothing; business stimulation for the heavy industries comes later. Therefore, industries not benefiting immediately from "increased" purchasing power, if they were to avoid bankruptcy, had to find ways to meet the increased pay roll by reducing costs.¹¹

Further reinforcement to the view that the codes created industrial unbalance is provided by Table XI, which shows that percentage re-employment under the President's Re-employment Agreement was not uniform by size of industry. The failure of the small firms to increase employment in the same proportion as the larger ones, as indicated by this table, may mean either that business of the small firms did not generally benefit from the codes as much as that of the large firms or that, prior to the codes, they were working shorter hours than large firms. Available information does not give the answer.

Another inevitable dislocation resulting from the indiscriminate use of NRA's hour-reduction plan is found in the indicated higher labor productivity in large towns as compared to that in the small, and, in general, in the somewhat longer hours of work in the latter at slightly lower hourly rates.

We must also point out that an Administration, having NRA's au-

¹¹That so many did survive is probably due to the abundant supply of labor which made it possible to select help able to earn the higher wages accompanying shorter hours under the codes. In almost all industries, there has been an increase in the productivity of workers, indicating that, whenever an employee did not earn the code wage for the shorter work week, he was replaced by some one who did. A harmful effect has been a lag in the training of apprentices.

Another very important reason why firms survived is to be found in the widespread violation that existed. Moreover, the owner of a small firm frequently manages the business and, in addition, performs part of the work. Therefore, if he had had two employees who worked fifty hours each, the employer might be forced to assume the additional twenty hours of labor himself; he had insufficient work for a third man. This was especially true if each of the artisans was skilled in a different line, since the alternative then was to employ two additional workmen for ten hours per week each. Since the owner was not subject to the hour limitation, his increased work resulted in higher employee productivity.

CHART IV

FREQUENCY DISTRIBUTION OF CHANGES IN COST RATIOS

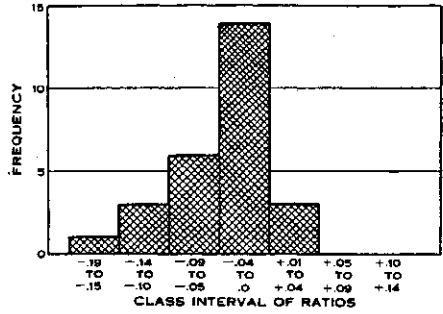
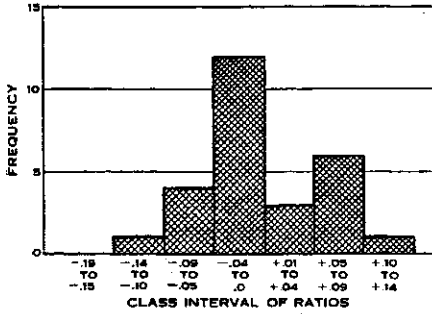
FROM 1919 TO 1929

Source: Compilations by the Cowles Commission from
U. S. Census of Manufactures

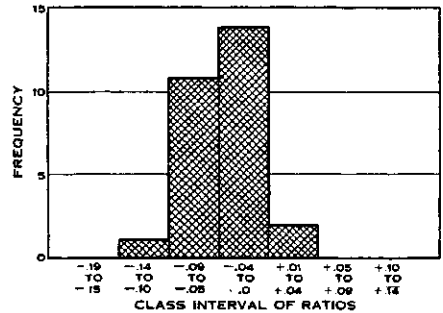
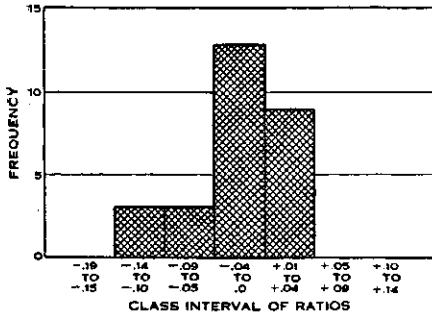
I. CHANGES IN THE RATIO OF WAGES TO
VALUE ADDED BY MANUFACTURE FOR
THREE GENERAL CLASSES OF INDUSTRY

II. CHANGES IN THE RATIO OF COST OF
MATERIALS TO VALUE OF PRODUCT FOR
THREE GENERAL CLASSES OF INDUSTRY

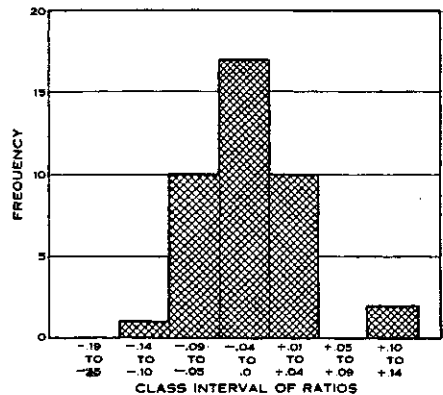
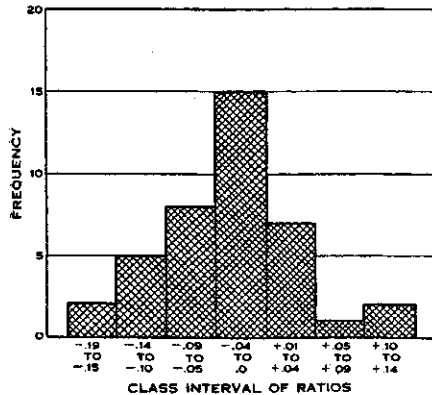
A. NON-DURABLE CONSUMER GOODS



B. DURABLE CONSUMER GOODS



C. CAPITAL GOODS



Inequities resulting from the NRA program were not, as has been maintained by high officials, a result of wage cutting by some industries during the depression: our chart shows that there was remarkable stability in the distributions of the ratio of wages to value added even under the widely different price conditions prevailing in 1919, 1927, and 1929. When the ratios did change, the displacements were usually very small indeed as is shown by the frequency distributions of Chart IV. In general, the tendency between 1919 and 1929 was to lower the ratio of wages to value added by manufacture, although in a few instances increases occurred. Essentially the same frequency pattern held for both durable and nondurable consumers' goods and for capital goods.

The same kind of stability is shown by the ratio of cost of materials to the value of the product. By making use of the fact that the average change in this factor from 1919 to 1929 was negative, and applying a short arithmetical computation, it follows that the average percentage decrease in cost of raw materials was not so great as the average percentage decrease in other costs. Since average hourly earnings increased in this period, it is clear that industry tended to pass on to the consumer a considerable portion of its savings in cost due to improved technology. Thus industry accomplished, in some measure at least, the recommendations of the Brookings Institution in *America's Capacity to Consume*.

thority, could punish a recalcitrant congressman by revoking an exemption previously granted¹² to factories in his district and thus pauperizing it. Similarly, an unscrupulous Administration conceivably could destroy political opponents in an entire section through the co-operation of its party cohorts in a program of shortening hours drastically in an industry so as to affect the section quite adversely. It is true that the present Administration did not use this power, but it did sanction an agreement between Appalachian coal producers and the United Mine Workers to eliminate southern wage differentials, a proposal having the effect of greatly discomfiting southern coal mines in which labor was unorganized. And it is but a step from such action to that discussed here.

5. *Effects of NRA Hour Shortening on Employment*

Notwithstanding the difficulties mentioned in the preceding sections, it should be recognized that large increases in employment occurred during 1933. Thus, as indicated by Chart VI, employment in September, 1934 was about four million greater than in June, 1933. To the NRA and its work-spreading plan, which may have consolidated gains arising from the fear of inflation, probably two million of this additional employment can be attributed. And some additional jobs, perhaps another quarter million, undoubtedly can be credited to an

¹²Even in the short life of an emergency measure, such as NIRA, irreparable damage could be done. Once a plant is forced to close, its trained personnel may easily be dispersed and great expense in renewing operations imposed.

The question of whether there would have been a greater increase in employment without the codes than with them will, of course, never be answered. It is possible that this might have hap-

TABLE XI
PERCENTAGE DISTRIBUTION OF EMPLOYEES ACCORDING TO
SIZE OF ESTABLISHMENT IN JUNE AND OCTOBER, 1933

Source: President's Re-employment Agreement Data (Special Tabulation)

No. of Employees	Per Cent of Establishments, June	Per Cent of Employment, June	Per Cent of Employment, October	Per Cent of Added Employment
New firms	3.7	0.0	1.2	8.4
1 - 5	64.0	6.7	7.0	8.8
6 - 20	20.2	9.0	9.0	9.1
21 - 50	5.8	8.1	7.9	6.9
51 - 100	2.7	8.5	8.2	6.4
101 - 500	3.0	27.7	26.6	20.0
501 - 1000	0.4	12.4	11.8	8.3
1001 - 2500	0.1	13.1	13.0	12.3
over 2500	0.06	14.5	15.2	19.7
	99.96	100.0	99.9	99.9

pened, but different views are held by Alexander Sachs and others who were instrumental in creating the NRA. Thus, in December, 1933, Sachs expressed the opinion:

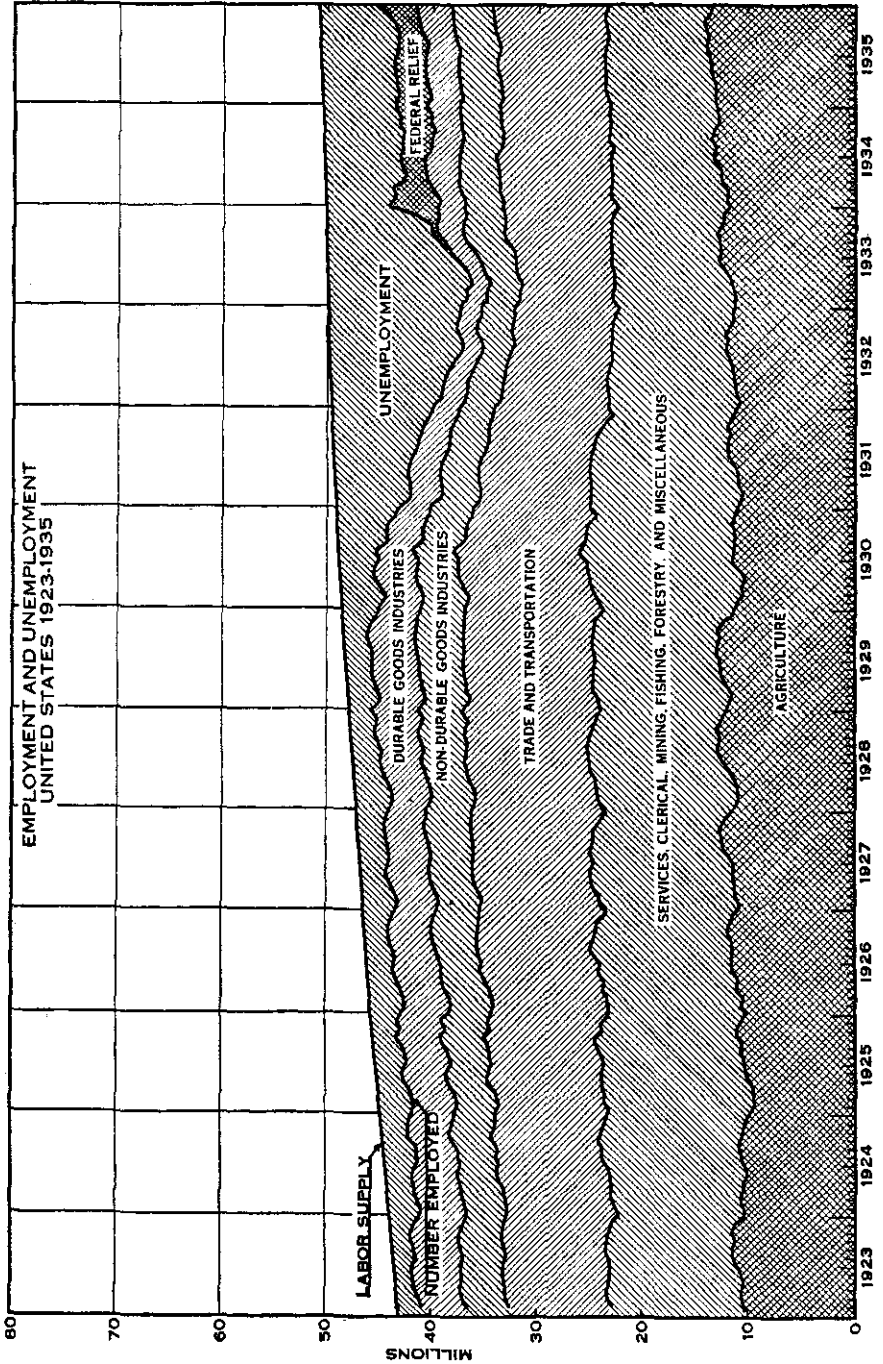
Even on the face of the reported data the noteworthy fact is that in the seven months since the NRA the recovery in the wage rate has been 70%, against only 60% in the whole 1922-23 recovery. In respect to pay rolls and employment, the extent of the recovery for workers in the industries covered by the Federal Reserve Board's indices has been in the neighborhood of half of what was accomplished in the two years of business revival from the 1921-22 bottoms and, when adjustment is made for changes in the cost of living, the purchasing power of the workers employed has thus far increased a third of that experienced in the much longer period of recovery which had the stimulus of wide and intense activities in building and the capital-goods industries generally.¹⁵

increase employment during the period under consideration. Moreover, as food products increased in price, consumers were able to buy fewer industrial products. It is true, of course, that this shift in income resulted in some re-employment in the agricultural implement industry and in certain other lines supplying farmers' needs. But I question whether total employment of the nation was increased, and believe it was actually reduced.

For the possibility that the agricultural program created unemployment which had to be taken up by other agencies see Chapter XIV, Section 3.

¹⁵*America's Recovery Program*, pp. 136-137.

CHART VI
EMPLOYMENT AND UNEMPLOYMENT IN THE UNITED STATES (1923-1935)



No accurate indexes of employment and unemployment for the United States exist. In an attempt to arrive at reasonable approximations the Cowles Commission constructed the indexes shown here.

Ordinates of the straight line at the top of the shaded area represent the available labor supply as calculated from census figures in 1920 and 1930 and linear interpolation for other years. This is admittedly somewhat crude since no correction has been made for changes in age of the population; but the error involved at any point is quite negligible in the general picture.

The numbers employed in durable-goods industries and in consumers' goods were calculated by using census figures in 1920 and 1930 and applying Leong's indexes for these classifications to arrive at intermediate values. The calculation of the number in trade and transportation was more complicated and perhaps somewhat less reliable. For the period 1929-1935 the indexes of retail and wholesale trade given in the *Survey of Current Business* were combined into an index of trade by weighting in the ratio of 3-1/2 to 1 respectively. For the period 1923-1929 a linear interpolation of census figures was corrected for seasonal variation as indicated for the period 1929-1935. This assumption is not arbitrary as it might seem for the rate of growth in production in the period 1923-1929 was rather steady. For transportation the index of employment of the Standard Statistics Corporation for railroads and buses and Census figures for 1930 were used for the period 1929-1935. For the earlier period a linear interpolation of Census figures was adjusted as in the case of trade. An estimate of the number employed in trucking was then made by multiplying linear interpolations of annual figures for truck production by the average number of transportation workers per truck as obtained from NRA reports of a special survey. The sum of these employment figures is presented here as employment in trade and transportation.

Number employed in agriculture was obtained from five-year-farm-census figures giving the number of paid and unpaid workers. The latter were assumed to vary linearly between census periods. The numbers of the former were adjusted about linear interpolations by using the U. S. Department of Agriculture index of paid agricultural workers per farm corrected for census discrepancies.

Unemployment figures for 1930-1935 are those of the National Industrial Conference Board. We have accepted them as the best estimate available, but believe they are somewhat too high for the period 1933-1935 because of changes in occupations not reflected in indexes from which they were constructed. For the earlier period census figures of 1930 were adjusted backward to 1920 by use of the U. S. Department of Labor index of applicants at employment agencies, the discrepancy with 1920 census figures then being distributed linearly. The approximation is rough but probably gives a fair picture of the situations prevailing in this period.

Employment in services, clerical, mining, fishing, forestry, and miscellaneous was obtained by subtracting the sum of the above figures from the total labor supply. Since all non-compensating errors are included here, this is probably least accurate of all our estimates.

Although the indexes have thus been constructed from various bits of fragmentary data, it is believed that they represent fairly well the actual situations, except that in the latter years actual unemployment was probably somewhat less than shown.

But two years after the enactment of the NIRA, the total employment was no greater than it was in December, 1933 when Sachs made his analysis.¹⁶ It appears, therefore, that the gain to which he refers was perhaps somewhat illusory. Furthermore, if the codes had

¹⁶See Chart VI.

been rigorously enforced, employment at the expiration of NRA might have been considerably less than it was, since marginal firms which had been violating wage and hour agreements would have closed their plants. However, suppose that we grant Sachs' contention that the NRA should be credited with "contributing to the telescoping and concentration of activity up to July, and the cushioning of the ensuing decline . . . and on the whole for sustaining activity and employment and prices of finished goods on a cumulative average level considerably above that of the bottom phase of the depression despite the inevitable weakening which occurred in the potency of the inflation stimulus for raw materials and inventories, once the stocking-up was completed."¹⁷ It is true, nevertheless, that raising wage rates and increasing prices in the heavy-goods industries delayed the revival in residential building and machinery replacement; a study made by the author¹⁸ in 1933 indicates that a considerable building revival might have taken place by 1935 if the June, 1933 prices could have been lowered ten per cent. Instead they were raised, and as a result building in 1935, despite the propaganda and easy loans of the Federal Housing Administration, scarcely exceeded the almost non-existent level of 1932.

In further appraising the NRA's effects on employment it is extremely interesting to compare its prophecies of increased jobs, made at the time codes were signed, with the actual increases. Unfortunately, data for such a comparison are available in only a few industries,¹⁹ but some of these which are given in Table XII, are sufficient to indicate that the agreement between the NRA estimates and the actual re-employment figures are not particularly close. But in defense of the NRA estimates it must be said that they were based on hour distributions in limited samples of the industries, or on knowledge of the average hours and estimates of dispersions. Moreover, all NRA estimates assumed no change in demand.²⁰ Consequently, these estimates must be revised to allow for changes in production as shown in Table XII.

¹⁷*Ibid.*, pp. 149-150.

¹⁸*Dynamic Economics*, Chapter VI.

¹⁹The author on several occasions tried to persuade officials of the NRA to find out what had been accomplished by spreading work under the codes, but without success. Incredible as it may seem, in 1933 and 1934 the Government did not have information on this point, nor did it know to what extent the code hours were being observed.

²⁰A method for calculating employment when the frequency distribution of hours is known was explained in Section 2. As pointed out there, the assumption of no change in demand was incorrect.

6. The Case For and Against Compulsory Shorter Hours

While the Administration's theory of NRA was essentially a "bootstrap method" it seems that industry might have been expected to disregard completely Section 9 of the President's Re-employment

TABLE XII
ESTIMATED AND ACTUAL RE-EMPLOYMENT UNDER CODES

Source: Compilations by Cowles Commission

Industry	Official Estimate *	Production Ratio	Re-employment	
			Corrected Estimate **	Actual
SIX MONTHS AFTER CODE				
1. Lumber	112,500	.57	64,125	—30,300
2. Cotton Textiles	100,000	.99	99,000	— 3,300
3. Leather -				
Boots & Shoes	64,000	1.12	71,680	—11,000
4. Automobiles	41,000	1.55	63,550	74,200
5. Chemicals	37,000	.78	28,860	—12,300
6. Paper & Pulp	28,000	1.07	29,900	6,028
TWELVE MONTHS AFTER CODE				
1. Lumber	112,500	.78	87,750	—12,900
2. Cotton Textiles	100,000	1.19	119,000	8,700
3. Leather -				
Boots & Shoes	64,000	.90	57,600	—17,800
4. Automobiles	41,000	.90	36,900	18,800
5. Chemicals	37,000	1.09	40,330	— 4,000
6. Paper & Pulp	28,000	1.00	28,000	5,667
EIGHTEEN MONTHS AFTER CODE				
1. Lumber	112,500	.59	66,375	— 9,200
2. Cotton Textiles	100,000	1.01	101,000	—41,300
3. Leather -				
Boots & Shoes	64,000	1.09	69,760	8,400
4. Automobiles	41,000	2.10	86,100	96,600
5. Chemicals	37,000	.89	32,930	— 9,000
6. Paper & Pulp	28,000	1.15	32,200	9,283

*Announced when the code was signed by the President and based on the assumption of no change in production.

**Corrected for change in production.

Agreement, by which signers pledged themselves not to increase prices by more than was necessary to meet increased pay rolls, realizing full well that there was no way to enforce its observance. Moreover, it might, perhaps, be argued that the consumer was for the most part ignorant, and that in a burst of patriotism he paid more than was necessary to cover increased labor costs, thus possibly creating an increased velocity of circulation of money and ensuring the necessary profits to industry. It is possible that salaried workers and wage earners whose annual incomes were above \$1800, that is, above the

\$35 per week limit²¹ to which codes applied, were attempting to save excessively in 1935. If such was the case higher prices reflecting profits and higher wages under the codes would have prevented these money savings and thereby forced a higher velocity of money. This in turn might conceivably have led to some recovery. But such a hypothesis is quite tenuous. (See Chapter XIV, Section 2.)

Raising labor costs in consumers'-goods industries through spreading work could force mechanization and, since the wages paid to labor for constructing, transporting, and installing new machinery are twice or thrice as great as the annual outlays for labor displaced by the machines (see Chapter XIV), this could have resulted in an increase in employment, at least during the first two or three years. It is probable, however, that the codes as a whole led to the installation of only a few new machines, since, although labor costs were raised to a point which would have made such changes desirable at pre-NRA machinery costs, machinery prices were also raised and an advantage of part of the NRA program was thereby destroyed. The NRA plan was, therefore, almost wholly a bootstrap method for emerging from depression.

These considerations naturally lead to the question of whether compulsory shorter hours applied only to consumers'-goods industries could stimulate recovery from depression. Conceivably they might, but more probably other effects, such as the creation of competitive inequalities, consumers' strikes, and business uncertainties in cases where additional decreases in hours could be expected, would offset the stimulus to business to install new machinery. There would be in addition some obscured consequences such as the creation of overhead burdens. Suppose, for example, that a plant was forced to limit its employees to thirty hours per week after it had previously employed them on a forty-five hour week. Its overhead burden would then be greater because it would not be feasible to spread work so as to continue to operate 45 hours per week; an additional shift would therefore have to be introduced or production decreased. In such instances, since foremen and supervisors must be added when more shifts are used, the cost of manufacturing, and hence the price to the public, would be raised by more than the amount of the increased workmen's wages. Moreover, a substantial decrease in the hours of labor must result in a shortage of skilled labor and greatly increased industrial costs.

²¹Most codes arbitrarily set \$35 per week as the maximum wage to any employee subject to its provisions.

A different type of problem created by such changes is also important. Under a mandatory shorter work week the problem of housing for workers might readily become a very difficult one. Lack of adequate housing in small towns to meet the needs of workers who would have to be imported under a drastic program of reduction in the work period might easily result in greatly decreased production, at least for several months or a year. This problem would not be so acute in the large cities, since normally a greater housing vacancy exists there and skilled workers both come and go constantly. Consequently, in view of this difference, important shifts in population and markets must accompany mandatory changes in the work week.

Despite all such criticism, the NRA plan of spreading work probably made one important contribution towards recovery; during 1933 and 1934, housing vacancy decreased from about fifteen per cent to five per cent for the United States as a whole. Although much of this decrease in vacancy should be attributed to the public works and relief programs, parts of it can undoubtedly be credited to the NRA.²² As a consequence of this phenomenal shrinkage of vacancy, an increase in rents may be expected in the next year or two and when rents catch up with the high building costs created by the codes, a revival in home building will occur (see Chapter XIV, Section 1).²³

In essence, we believe that mandatory shorter hours, on a basis which reduces them proportionately in all nondurable-consumers'-goods industries and services, can be applied profitably once during a depression to prevent needless further declines in wages in such industries and to increase the demand for machinery. But the changes must not be drastic and must be confined to the industries named. If the shorter hours are forced also upon the durable-goods industries (capital and consumers') the net result will be much less favorable and may even be harmful. Finally, lest the reader deceive himself by concluding that we now urge still shorter hours, we must state emphatically our belief that such shorter hours, even if applied only to the nondurable-consumers'-goods industries, would actually induce unemployment. The time for such a program has long ago passed. The present need is reasonable certainty regarding all the cost factors — labor, raw materials, taxes, and interest rates.

²²Some critics have sardonically suggested that, if the NRA had possessed control over rents, this greater use of housing probably would not have occurred, since increases in rents would have been legislated.

²³Although the discussion in this section has assumed implicitly that wages were increased concomitantly with reduction in hours, it applies with obvious changes to the situation in which hour reduction is not accompanied by wage increases. But, of course, some effects would be lessened in the latter case.

CHAPTER VII

WAGE CHANGES AND DISTRIBUTIONS

1. Pre-NRA Wage Differentials

With crusading zeal the NRA eliminated or very drastically reduced sectional wage differences which had persisted almost unchanged through several cycles of prosperity and depression. Without adequate appraisal of facts¹ it faithfully followed the dogmatic advice of the Department of Labor that pre-code differences should not have existed, and proceeded so zealously to eliminate them that few, if any, of its policies upset business interrelation and balances to a greater degree. It is of prime importance, therefore, to consider here (1) what wage differentials have existed, (2) how long they have persisted, (3) what caused them, and (4) to what extent industry could have raised sub-minimum wages by adjusting downward higher ones.

With respect to the first proposition we note that wages have long constituted a flexible part of the cost of production of American industries. In consequence, wages per hour and per worker have varied considerably between peaks and troughs of business cycles. In fact as is shown clearly by Table XIII neither average hourly wage rates² nor average weekly earnings have been even nearly constant for any appreciable period of time. Thus, during the twenty years for

¹There were, of course, several code committees which insisted on careful study of differentials, notably that of the retail trade. After most codes had been written and much trouble had developed, the NRA authorized a general study of differentials. See Section 2 of this Chapter.

²Although such average wages in themselves tell little about the effects of minimum wages and wage increases on cost, they may be used with other data to reveal significant information. For instance, fragmentary evidence available in 1933 indicated that the frequency distribution of wages was given approximately by a bell-shaped curve, or, more precisely and technically, by a normal probability function. This fact, together with information regarding the spread of wages in an industry and the average wage, made it possible for some of the more able NRA statisticians to estimate the additional pay-roll burden imposed by a minimum wage. But only a few code advisers or their staffs made such estimates.

The method is too technical to present here. The mathematical reader is referred to books on the theory of errors and normal probability functions.

One might also argue that the distribution should follow the Pareto curve, but for the information available the use of the normal curve gives close enough results.

which data are presented, average hourly wage rates have fluctuated from a low of about 24 cents in 1914 to a high of 59 cents in 1934. Between 1919 and 1934 average weekly earnings have varied from a low of \$17.06 in 1933 to a high of \$26.29 in 1920. Again, Chart VII shows that wages have increased materially during war years and that the resulting higher wage level has been maintained subsequently.

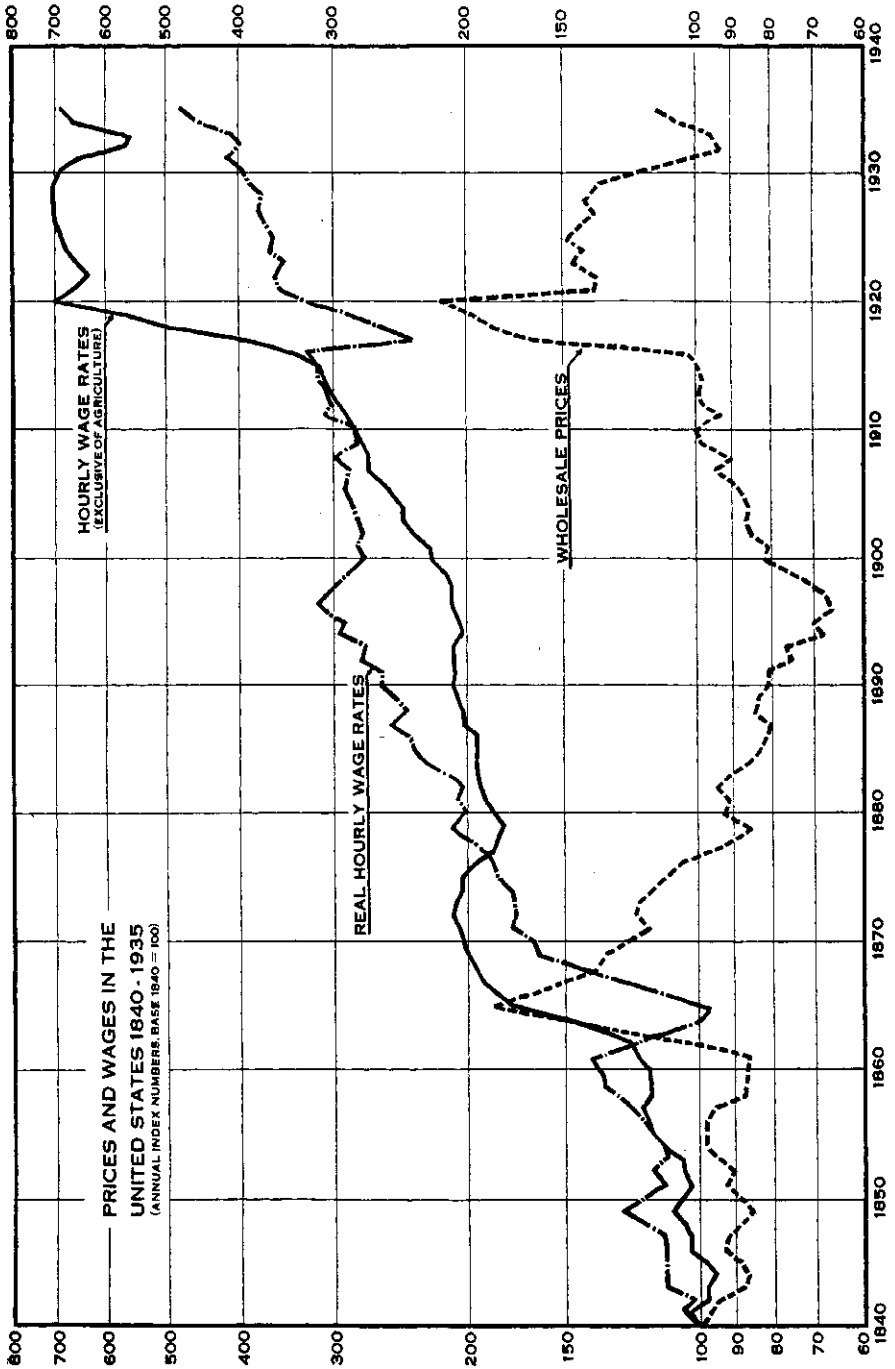
TABLE XIII
MONEY EARNINGS IN THE UNITED STATES (1914-1935)
Source: National Industrial Conference Board

Year	Hourly Money Earnings (cents per hour)				Weekly Money Earnings
	Anthracite Mining	Railroad Transportation	Building	All Manufacturing	All Manufacturing (Index Numbers)
1914	28	25	50	24	
1915	29	25	50	25	
1916	32	26	52	28	
1917	40	32	56	33	
1918	53	43	63	41	
1919	56	53	76	48	
1920	69	65	99	60	
1921	72	66	95	53	
1922	74	58	90	49	
1923	75	59	99	55	100
1924	81	59	106	56	99
1925	85	60	107	56	101
1926	89	60	113	57	102
1927	89	61	116	57	103
1928	84	62	115	58	104
1929	84	63	117	58	107
1930	82	64	124	59	97
1931	81	64	124	57	85
1932	81	60	110	50	64
1933	79	61	104	45	67
1934	80	62	106	59	75

Despite such extreme movements in wages, sizable wage differentials between large cities and small towns and between the North and South in all industries are of long standing.³ More specifically in the industries for which the Bureau of Labor Statistics reports wages

³The mill cities in the South which have low rates are usually small as compared with northern manufacturing cities. Hence the North-South wage differential itself is not as large as some data seem to indicate.

CHART VII
THE TRENDS OF HOURLY EARNINGS AND PRICES AND THE EFFECTS OF INFLATION ON WAGES
Source: National Industrial Conference Board



For at least one hundred years both money and real hourly wage rates have followed sharp upward trends, the former gaining at the average rate of about six per cent a year and the latter at four and a half per cent. The only noteworthy interruptions to these trends occurred in periods of war inflations when both wages and prices advanced but the latter much more rapidly. Generally, in periods of falling prices, labor has been able to hold its gains in money hourly wage rates and add considerably to its real hourly wage rates.

In view of these considerations it is hardly amiss to observe that the increase in real hourly wages of over 600 per cent in slightly less than one hundred years represents a substantial gain in standards of living under American industrial capitalism.

and hours, the average hourly wages paid in southern plants for the year, in the period 1928-1933 have ranged from 48.4 per cent (for the hosiery industry) to 87.6 per cent (for machine shops) of the average wages paid by northern plants in the same industries. And for most of the twelve industries for which wage data are adequate, the relative variations in northern and southern wage rates during these five years were small. In fact, the ratio remained fairly constant, except in the hosiery industry which showed a rise from .484 to .627 between 1928 and 1932, and rayon and other synthetic yarns industries, in which the ratio between southern and northern wages rose from .721 to .824 between 1930 and 1932. In both of these cases the average northern hourly wage rates fell decidedly faster than did the southern.

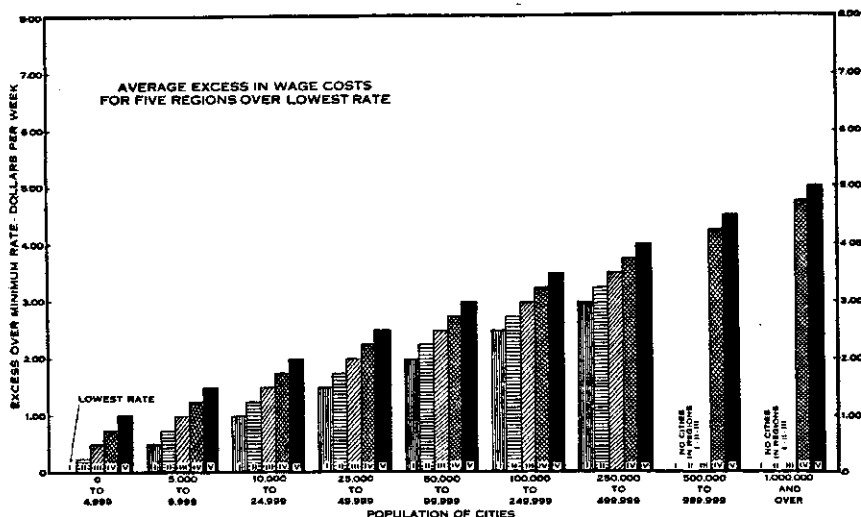
The North-South differential status for six industries is more fully explained by Table XIV, which shows how very wide the regional differences in wages within industries really have been. But the large differences exhibited here are not universal; in fact, in the automobile industry, for instance, wages have been fairly uniform throughout the United States, primarily because this industry, in order to obtain a more productive type of labor, customarily pays wages which are higher than those prevailing in a community. Further evidence of wage differences is presented in Tables XV and XVI which rank a number of states according to average hourly earnings, the former table in terms of the average for the United States as 100 and the latter presenting actual wages for two periods. In particular, Table XVI shows that average monthly wages in the high-wage states — Nevada to, say, Oklahoma — changed little, if any at all, from 1933 to 1934, whereas in the low-wage states — Ohio to South Carolina — average monthly wages increased markedly in most instances. Thus, as was obviously to be expected, the NRA effected its chief increases in wages in the low-wage states; it thereby granted a competitive advantage to high-wage states.

CHART VIII

VARIATIONS IN WAGES BY SIZE OF CITY

AVERAGE EXCESS IN WAGE COSTS OVER LOWEST RATE FOR FIVE
REGIONS AND NINE SIZES OF CITY

Source: NRA Estimates, Unpublished



Average wages show significant differences for each size of city in each of the five geographical regions of the United States; I, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas; II, North Carolina, Tennessee, and Arkansas; III, Virginia, Kentucky, Oklahoma, and New Mexico; IV, Delaware, Maryland, District of Columbia, West Virginia, Missouri, southern Indiana and southern Illinois; V, New England, Middle Atlantic, North Central and Mountain and Pacific states, excepting southern Indiana, southern Illinois, Missouri, and New Mexico. Within a given size group, the maximum regional difference between Region I and Region V, is only about one dollar per week. On the other hand, the differential between a city of less than 5000 in Region V and one of 1,000,000 or more in the same region is as much as four dollars per week.

Although the above chart is based on interpolations from somewhat fragmentary data pertaining to a number of industries, errors of estimate have been minimized by various cross-checkings and the picture presented is essentially accurate.

The wide differences among states, indicated in Chart VIII and both Tables XV and XVI, is not due to variations in types of industries in the states, as can be shown by other evidence; in Kansas, for instance, we find that in March, 1933 the average monthly wage for the hotel industry was \$42.93, for the laundry industry, \$51.58, for the retail stores, \$75.00, and for the wholesale industries, \$99.39; whereas, in Michigan the average wage for hotels was only \$40.01,

TABLE XIV
AVERAGE HOURLY EARNINGS BY REGIONS

In Cents Per Hour

Source: see notes below

Industry	Region	1929	1930	1931	1932	1933	
						July	December
Furniture (1)	North	51.5	.....	44.9	.....	32.4	44.8
	South	34.2	.....	28.4	.....	26.1	38.7
Iron and Steel (2)	North	45.3	.....	45.9	.....	48.1	59.4
	South	27.9	.....	28.3	.....	35.2	42.5
Cotton Goods (3)	North	.....	39.6	.....	32.4	25.9	42.0
	South	.....	27.9	.....	23.9	19.3	34.3
Leather (4)	North	.....	.....	.....	.....	40.2	53.5
	South	.....	.....	.....	.....	36.5	45.7
Paints and Varnishes (5)	North	.....	.....	.....	.....	47.2	54.3
	South	.....	.....	.....	.....	37.1	45.1
Lumber (6)	West	.....	55.8	.....	38.9	36.6	53.0
	South	.....	26.0	.....	17.0	15.0	29.0

(1) North: Middle Atlantic and East North Central States. South: South Atlantic States. Source: Special tabulation of the Bureau of Labor Statistics, prepared at the request of Henry H. Pixley, NRA Research and Planning Division.

(2) North: Pittsburgh, Johnstown, Mahoning Valley, and North Ohio Valley districts. South: Southern and Birmingham districts.

(3) North: New England and Middle Atlantic States. South: South Atlantic, East South Central, and West South Central States.

(4) North: New England, Middle Atlantic, and East North Central States. South: South Atlantic States.

(5) North: New England, Middle Atlantic, East North Central, and West North Central States. South: South Atlantic, East South Central, and West South Central.

(6) West: Douglas Fir States (Oregon and Washington). South: Southern Pine States (Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Texas).

for laundries, \$44.73, for retail stores, \$67.32, and for wholesale industries, \$89.30.⁴ Within a single state, furthermore, considerable variation in average earnings may be found in identical industries, associated with the fact that plants are located in towns or cities of different sizes. Indeed, before the codes, wages in the small towns were lower than in large cities for nearly all industries; data of the Bureau of Labor Statistics show that the larger the city, the larger

⁴Monopolies or semi-monopolies, such as the public utilities, seem to have paid the highest average wages in all states. These data were taken from a service bulletin of the National Industrial Conference Board.

the average wage paid, but not strictly on a proportionality basis.⁵ More specifically, Chart IX for the boot and shoe industry shows very clearly that there were more people receiving wages above the minimum in the larger cities.

TABLE XV
HOURLY EARNINGS IN MANUFACTURING INDUSTRIES BY STATES
(1931-1932)

Source: *Wage Differentials: I, Regional*, Research and Planning Division, NRA

State	Wage Index	State	Wage Index
Washington	133.8	New Hampshire	101.2
California	129.0	Minnesota	101.1
Oregon	123.2	Indiana	100.0
New Jersey	114.8	Pennsylvania	98.6
New York	112.4	Maine	98.4
Massachusetts	111.4	West Virginia	94.0
Connecticut	109.6	Maryland	90.2
Colorado	109.5	Kentucky	88.6
Illinois	107.8	Texas	86.7
Rhode Island	107.2	Tennessee	77.3
Ohio	102.8	Virginia	77.0
Wisconsin	101.6	N. Carolina	73.1
Michigan	101.3	Louisiana	72.0
Missouri	101.3	Alabama	70.4
		Georgia	63.5

Hence, from the facts even so far presented, we must conclude that for identical industries, average wages differ markedly by localities and by size of city, and for such wage differences to persist some fundamental factors must have been operative. Yet, as will be demonstrated, under the NRA differentials were as a rule greatly reduced; there was truly a new deal.

2. The Development of NRA Wage Differential Policy

From a consideration of the wide dispersion of average wages just shown to exist among states and among cities of varying size, it seems that in many industries it would be practically impossible to establish a single minimum wage low enough to allow the industry

⁵In a study made by the NRA, the average wage was found to be approximately proportional to the logarithm of the size of the city. See *Econometrica*, Vol. 3, p. 350, reporting paper of H. H. Pixley.

TABLE XVI

AGRICULTURAL AND NON-AGRICULTURAL OCCUPATIONAL GROUPS

Source: Unpublished Report, Research and Planning Division, NRA, based on:
for Non-Agricultural group — Bureau of Labor Statistics, *Trend of Employment*; for Farm labor — Bureau of Agricultural Economics, *Crops and Markets Bulletin*.

State	All Non-Agricultural Occupational Groups			Hired Farm Labor Without Board
	Average Monthly Wage (a)	Average Monthly Wage (b)	Changes in Monthly Wage	Average Monthly Wage (c)
Nevada	\$106.62	\$107.29	\$.67	\$45.06
South Dakota	102.82	103.65	1.03	25.56
New York	102.14	105.60	3.36	35.87
Montana	101.79	101.59	— .20	35.37
California	101.66	104.19	2.53	48.75
Wyoming	98.57	101.19	2.52	38.44
Kansas	95.13	95.44	.31	26.75
New Jersey	94.14	95.89	1.75	43.44
Texas	92.31	91.23	—1.08	21.37
Michigan	91.61	98.23	6.62	24.69
Nebraska	90.51	91.09	.58	26.31
Minnesota	88.88	90.17	1.29	25.31
Massachusetts	88.88	90.93	2.05	51.62
Illinois	88.72	91.71	2.99	25.75
South Dakota	88.17	86.17	—2.00	25.25
Delaware	87.20	91.65	4.45	30.06
Washington	87.18	89.47	2.29	36.25
Arizona	87.11	86.04	—1.07	36.25
Colorado	86.96	88.24	1.28	31.06
Missouri	86.12	88.03	1.61	24.62
Oklahoma	84.72	84.71	— .01	22.37
Ohio	82.94	87.05	4.11	26.37
Utah	82.81	84.40	1.59	40.75
Maryland	82.79	85.53	2.74	30.00
Pennsylvania	82.07	89.65	7.58	31.69
Oregon	81.82	87.92	6.10	35.81
Iowa	80.83	81.82	.99	24.69
Connecticut	79.89	83.64	3.75	46.81
Indiana	79.64	81.82	2.18	25.56
Vermont	79.06	79.34	.28	36.19
Rhode Island	78.78	80.97	2.19	55.75
Idaho	76.57	79.41	2.84	35.25
New Mexico	75.07	78.12	3.05	28.62
West Virginia	74.33	82.85	8.52	26.44
Wisconsin	73.57	78.71	5.14	25.87
Maine	71.61	74.77	2.96	35.62
New Hampshire	69.88	74.24	4.36	44.75
Virginia	68.41	71.77	3.36	23.69
Florida	68.10	68.91	.81	19.94
Kentucky	67.56	73.17	5.61	20.19
Louisiana	66.26	69.55	5.29	17.31
Tennessee	61.85	65.79	3.94	17.81
Arkansas	60.06	61.27	1.21	17.06
Georgia	54.86	58.00	4.04	11.94
Mississippi	54.85	57.23	2.38	13.87
North Carolina	51.56	54.78	3.22	16.69
Alabama	51.35	58.26	6.91	12.44
South Carolina	48.19	54.83	6.70	12.50

(a) Mean wage, January, 1933 through February, 1934.

(b) Mean wage, January, 1934 through February, 1935.

(c) Mean wage for 1933.

to survive and yet high enough to avoid offending organized labor.⁶ We recall that in an attempt to surmount these difficulties the President's Re-employment Agreement established several kinds of minima — according to section and size of city. But the problems are not susceptible of any such easy solution; arbitrary boundaries introduce inequalities of competition, and the classification of towns and cities is often difficult. For instance, in a number of NRA codes, the Ohio River became the boundary line and thus, in some cases Covington, Kentucky, was given a fifteen per cent lower minimum wage than Cincinnati, Ohio, across the stream. Similarly, Wheeling, West Virginia, was allowed the same differential over Pittsburgh, Pennsylvania, about fifty miles away. With respect to this important question, and the broader one of the attitude of labor toward differentials, John P. Frey, vice-president of the American Federation of Labor, has made the observation:

There are a large number of manufacturing industries bordering on the Ohio River. To give those on the southern side the 15 per cent wage differential, results in lowering employment standards on the northern side of the river and taking away much business formerly done on the northern side and transferring it across the river into another state. These differentials create a problem as vital to the manufacturer's welfare as to the wage earners

The International Unions affiliated with this Department have no desire to place any handicap upon southern industries. But where southern manufacturers, because of much lower wage rates and lower standards of living invade other states with their cheaper products, and as a result tend to lower conditions of labor in states where higher standards of labor have been established, then the policy to be pursued becomes clearly evident.

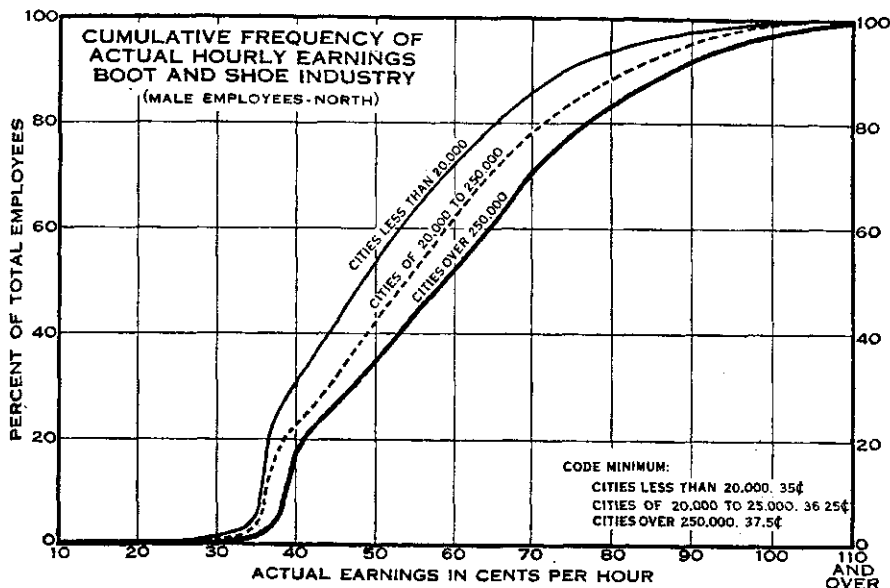
The trade union movement can not permit the higher standards of living and of labor established in other states,

⁶In 1909, Great Britain decided to try a minimum-wage law. Although under the law the British boards were given discretionary authority to prescribe different minima in different localities, they chose, as a rule, to fix one minimum wage for a trade over the entire country. In England, as in the United States, some sections of a trade which on the average pays very high wage rates often pay very low wage rates. As a result of this situation, all efforts in England to apply a minimum wage to such an industry as a whole were fought by the trade unions and employers. To attempt to apply a minimum wage to a section of the trade world, in the opinion of British observers, involves great difficulty in drawing lines of demarcation.

The experimental act of 1909 in Great Britain covered only a few trades which were suffering from notoriously low wage rates and even the broader act of 1918 was intended to be applied only to trades having abnormally low wages or insufficient organization for collective bargaining.

CHART IX
 VARIATIONS IN WAGES BY SIZE OF CITY
 CUMULATIVE FREQUENCY OF ACTUAL HOURLY EARNINGS FOR THE
 BOOT AND SHOE INDUSTRY

Source: Special Tabulation, U. S. Census Bureau



For the boot and shoe industry actual data are available showing the number of workmen receiving less than any given hourly earnings by size of city for male employees in the North. In cities of less than 20,000 population, seventy-two per cent of the workmen were receiving sixty cents per hour or less, whereas in cities of over 250,000 population only fifty-three per cent were receiving these wages.

One thing is certain: the most equitable minimum wage would approximate the average wage for Region I in cities of less than 5000 population, and such a low minimum would offer little protection against the sweating of labor in the large cities. An alternative, which would be extraordinarily difficult of administration, would be multi-minima based on the size of city and possibly on temperature.

to be reduced because of lower standards permitted in the South.⁷

Then the NRA had to face the question of whether a town suburban to a large city should have exactly the same minimum wages as

⁷Officers' Reports to the Twenty-Sixth Annual Convention of the Metal Trades Department of the American Federation of Labor, Sept. 26, 1934, p. 22.

The argument is very similar to the popular argument for tariffs. Thus, from this point of view, the Roosevelt Administration may be accused of an inconsistency in endorsing lower tariffs and, at the same time, trying to eliminate regional wage differentials.

the city. In fact, in one anomalous situation arising from proximity of small and large cities a manufacturer actually paid different minimum wages in the same plant. There was also the problem of deciding what range of city size should be fixed within a group. As a guide to answering various questions of this type the NRA had only Section 7d of the National Industrial Recovery Act, which simply authorized the President to sanction differences in minimum wages for dissimilar localities. Hoping to obtain a better understanding of how this section of the Act should be administered, the NRA, early in the summer of 1933, asked the Department of Labor for an opinion on wage differences. Were the alleged North and South wage differentials really dependent upon economic considerations or did industry pay lower wages in the South because labor there was unorganized and industry was profiteering? And the NRA, unquestioning, accepted this Department's supposedly authoritative advice that there were no economic reasons for wage differences between regions and that these should be eliminated as soon as feasible; in general, therefore, pre-code wage differentials of four to six dollars per week were reduced to a mere dollar.

Illustrative of how the NRA changed wage differentials, is the fact that wages in the lumber industry⁸ in South Carolina were raised seventy per cent by its code, whereas in certain western states they were increased only five per cent. In other industries the disturbances in pre-code conditions were somewhat less, but the vast majority of NRA codes having wage-differential provisions did not recognize differences attributable to size of town, except indirectly through North-South differentials. Most frequently codes specified minimum wages of \$13.00 per week for the North and \$12.00 per week for the South; and although, as previously demonstrated by Chart VIII, wages show an almost continuous downward gradation from North to South, and from large to small towns, a code seldom set more than two minima.

As a result of hardships created by this program, the general problem of wage differentials quickly assumed importance and late in 1933 Colonel Robert W. Lea, an assistant administrator to General Johnson, was assigned the task of investigating the issues. About this time, John E. Edgerton, former president of the National Association

⁸Since the timber in the South is so scattered that it is impossible to introduce machinery as widely as on the Pacific Coast, it is not surprising that southern lumber manufacturers experienced such difficulty as to lead to widespread violations of the code. The rout of the NRA in this industry was almost complete.

of Manufacturers, who had led the early fight to retain the pre-code North-South differentials, and several associates called on Lea and Johnson, as well as on a number of southern congressmen, and urged the retention of pre-code differences.⁹

Shortly after this protest Lea gave the problem to the Research and Planning Division, which authorized an extensive study of wage differentials under the direction of Henry H. Pixley. The results of this investigation, which indicated that the Department of Labor had been almost completely wrong in its viewpoint, will be given later in this chapter, but we may note here that the study showed wide discrepancies of long standing existing among various geographical regions and various sizes of towns.

3. Economic Background of Wage Differentials

Factors reported by Pixley as affecting wage differentials are (1) the productivity of labor, (2) the availability of markets to the industry, and (3) the rate of growth of the industry and of the town. Moreover, he suggested that these differences had been accepted by the workmen with slight, if any, variation in real income because of differences in either the cost or the standard of living.

As to the first factor we note that the causes of differences in productivity are usually cited as variations in (a) degree of mechanization, (b) the type of labor employed, (c) climate, and (d) the efficiency of management. Each of these factors is difficult to measure

⁹But in this fight to maintain differentials Edgerton was not supported enthusiastically by many southern industrial leaders; resistance to reducing wage differentials was somewhat desultory. Indeed, only a relatively small number of important complaints against the inequitably increased wages were made.

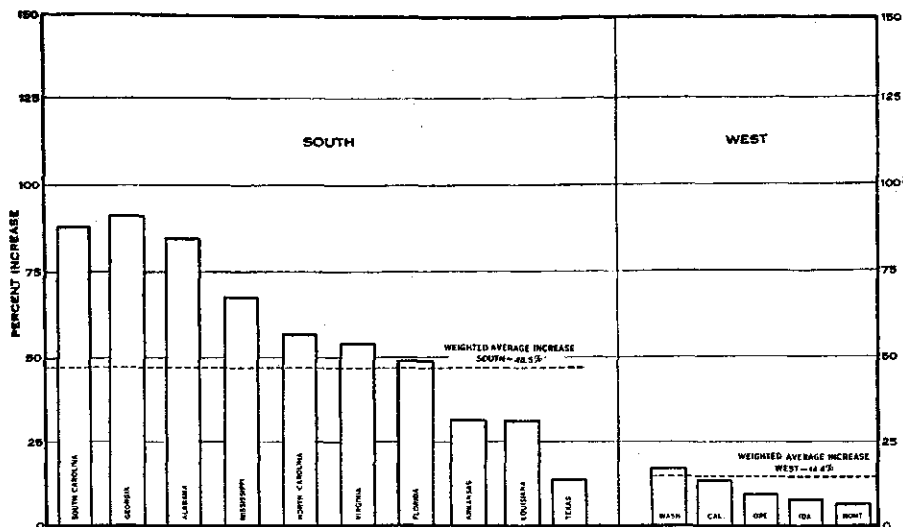
The small number of complaints may be attributed to the large proportion of federal relief funds and cotton benefits, largely contributed by northern taxpayers, which were being poured into the South by the Government. Increase in purchasing power due to these funds made it possible for some southern businesses to pay higher wages and still enjoy handsome profits. As a result, it may happen that federal expenditures plus NRA wage increases will cause southern wages to be raised for several years without bankrupting large numbers of factories. It is also possible that in three to five years technological and labor changes will take place and perhaps make this higher level permanent.

There were also other factors preventing the bankrupting of southern firms. Wages of the cotton textile workers in the South were raised about 50 per cent by the minimum-wage provision of the cotton textile code, as compared with an increase of about half of this percentage for northern mills. This did not close the southern mills, because about 70 per cent of the industry is now located in the South and wages in this large portion essentially determine prices for the entire industry. Moreover, southern operators have the advantage that many of the northern mills are operated inefficiently by absentee owners who pay little attention to factory conditions.

CHART X

PERCENTAGE INCREASE IN TOTAL LABOR COSTS DUE TO INCREASING
SUB-MINIMUM WAGES TO THE CODE MINIMUM — LUMBER INDUSTRY

Source: NRA Computations from Data supplied by U. S. Bureau of Labor Statistics.



If the workers receiving in June, 1933 less than the minimum wage established by the lumber and timber products code were increased to the minimum, and wages of other workers remained unchanged, the percentage increases shown above by regions would have occurred. This chart indicates forcefully how inequitably a minimum wage in such an industry affects regions of the United States. In view of these data it is not surprising that lumber business was diverted from the South to the Pacific Northwest.

In general, however, the inequities arising from minimum wages were less pronounced than shown here; in fact, in a few industries regional wage differentials were introduced which had the effect of shifting business from the North to the South. But, as a rule, differentials by size of city were wholly inadequate to protect the small centers.

and consequently it is exceedingly hard to determine the importance of their effects. Yet there are some data providing bases for evaluations, and in other instances several philosophical arguments can be advanced.

Lack of mechanization, which is rather general but by no means universal in the South, may be due to the abundant supply of cheap labor from the farms (see Table XV). Such would tend to make it unnecessary and unprofitable to install laborsaving devices; but southern industrialists assert that much of the native labor cannot learn to operate complicated machinery like that used in the North.

Both claims very probably contain an element of truth. At hearings asking revisions of the differentials of the lumber code (see Chart X for conditions) it was stated that about nineteen times as many man-hours were required to produce a thousand feet of lumber in the southern pine region as in the western Douglas fir region, and this agrees with an estimate obtained by combining data on employment, average weekly hours, and production collected by the Bureau of Labor Statistics and the Bureau of the Census. But somewhat in contradiction to this, we note that, although stevedores at New Orleans and other southern points receive lower wages than in the North, an analysis by the Department of Labor of the time required for unloading bananas (made in 1926-1928) found the number of stems per man-hour unloaded from steamships to be as follows: in New Orleans, 14.48 for one line and 13.36 for another; in Baltimore, 14.53; in Boston, 13.39; in New York on one line, 18.37, and on another, 12.42. Moreover, statistical tests applied to these figures and the average time for all groups, show that the differences are not significant. Apparently, therefore, there is no statistically significant difference in the productivity of a stevedore in Boston, New York, Baltimore, and New Orleans, provided time required for unloading bananas is a proper measure. An NRA investigation of the candy industry showed that in the northern plants there were serving belts which carried the candy along and the workmen were expected to perform a certain specified number of operations per unit time. These belts, according to testimony of representatives of the industry, cannot be used successfully in the South with negro labor because the workmen's practice of singing and playing causes them to lose time.

When other occupations requiring more skill are considered, it is almost impossible to measure differences in labor productivity. One obvious difficulty, already treated for unskilled labor, is that conditions of work may not be the same; more often than not conditions are not identical even in factories which are operated by the same company and for which executives are rotated among regional branches. Several plants, which wanted costs investigated so that differentials could be established, reported to the NRA that they had identical machinery and working conditions, but careful study revealed that this was not the case. For example, in the investigation of a Kentucky manufacturer of electrical goods, the NRA found that the output of his workers per man-hour was one-ninth less than that of the more efficient of his northern competitors; yet undesirable working conditions, such as crowding at the work tables, were uncovered

in the Kentucky plant which were not present in the northern plants.

Despite the obvious importance of the problems, few groups carefully investigated regional cost differences. Chart V, based on one such study, shows widely varying labor costs of finishing a cotton garment in plants throughout the United States. Also, somewhat similar results were found by other garment industries. It seems, therefore, that despite the lack of completely convincing statistical evidence, significant regional differences in labor productivity probably exist in all industry.

We believe that the most enterprising youths of the small town tend to go to the large cities to seek their fortunes, so that in the latter there tends to be an abundant supply of young, alert labor: an employer in the large city can either bid for trained workers who leave the small towns for high wages of the city, or he can apprentice the capable youths who have not already been trained in the small town. In general, he prefers to bid for the skilled or semi-skilled labor, thus raising the wage scale. The skilled worker in the small town, on the other hand, is usually too old to stand the competitive pace of the city, or else he is the young man who, possibly because of inferior initiative, did not go to the city.

Personal observations corroborating these contentions were made by the author in July and August, 1934 on a motor trip through West Virginia, Virginia, Kentucky, Tennessee, Arkansas, and Texas. Extensive inquiries into employment conditions in the small towns (those from 1,000 to 5,000 in population) brought out virtually the same story everywhere: the local mill had shut down because it could not afford to operate on the hour and wage schedules of the NRA, or the mill was going to move to some larger town (10,000 or more in population) because workers who could earn the code wages were not to be secured locally. If the mill was operating, it was running only two or three days per week because it could not obtain sufficient orders at the increased price made necessary under the code; for, under the President's Re-employment Agreement, owners had agreed not to raise prices more than was necessary to meet increased wages, and, consequently, the highly mechanized plants in the larger population centers were now underselling the local mill.

Towns to which industrial plants moved under such a program were obviously helped, but those losing the factories were seriously hurt, if not completely ruined. In a small community there must be some kind of manufacturing, tourist attractions, or trade supplying an agricultural region. In general, once the industries of a town leave,

the people themselves must move or suffer lowered standards of living, and real estate values decline to practically nothing. Some migration of plants is probably necessary for progress, but clearly any government which artificially stimulates unnecessary relocation of industry, even only to reverse a movement which has already begun, places itself in the indefensible position of having destroyed the wealth of its citizens.

Now regarding the effects of availability of markets, it may be noted that, because of the sparseness of population in the South, mass-production methods cannot be introduced except in a few cities and even in these instances the products to which these methods can be applied are strictly limited. Therefore, a southern producer instituting mass-production techniques must ship over long distances; his higher distribution and transportation costs are presumably balanced by lower factory wages. On the other hand, the northern producer having access to large markets in the vicinity of his factory is assured an adequate volume to cover fixed charges arising from mass production; he needs merely to secure a price in southern markets sufficient to cover the marginal cost under mass production plus transportation charges. Consequently, he determines, in a large measure, the market price and indirectly influences the southern wage rates.

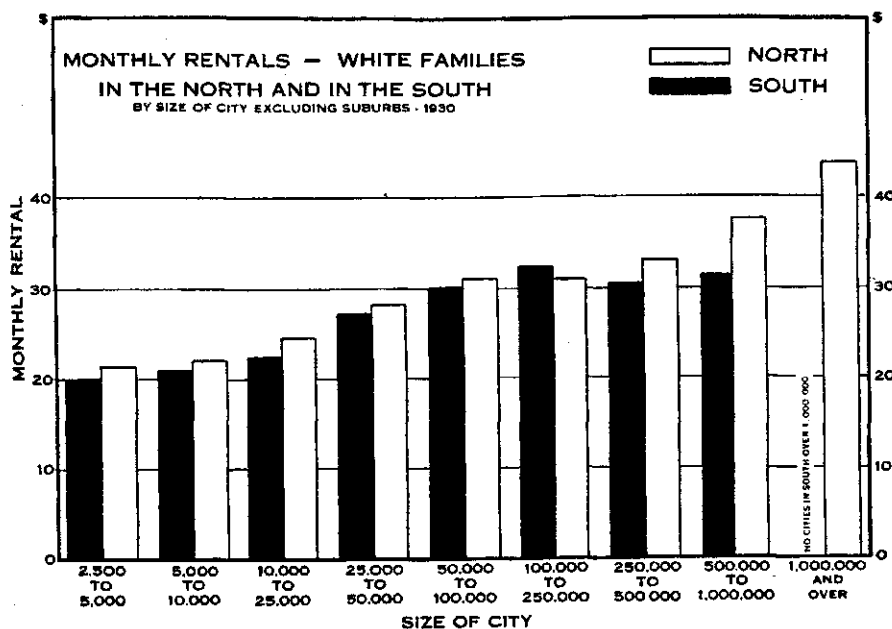
In brief, the arguments and facts so far presented make it reasonable to conclude that southern labor has been paid almost in proportion to its productivity, but that productivity has been kept below northern standards by physical factors handicapping mass production. Moreover, at least in some instances, southern management has not used its labor as efficiently as it might have.

Next consider the point of view of workmen, for whom differences in cost of living may justify some wage differentials. To understand why differences in the cost of living between large and small cities may exist without being shown by the indexes, it must be appreciated that such indexes are constructed from prices of the articles in the regions for which they are made, and in many instances relatively few people purchase the articles so priced. Clothing for instance, is usually dearer in the small towns because mass distribution is not possible; yet many residents there purchase most of their clothing in the cities or through mail-order houses. Similarly, luxuries and semi-luxuries cost less in the cities; but small-town residents, for the most part, do without or buy the articles in the cities. On the other hand, total personal transportation charges are frequently less in small towns since less of such service is needed. Similar expenditures

CHART XI

VARIATIONS IN RENTALS BY SIZE OF CITY IN THE NORTH AND SOUTH

Source: NRA Compilation of data of the U. S. Census Bureau



In general, average monthly rentals, like wages, increase with the size of city and are higher in the North than in the South. This situation tends to reduce the discrepancy in hourly earnings as between cities of different sizes; the real income of workers in small towns is slightly less than that of workers in large cities.

In all cases except the 100,000 to 250,000 grouping, the average northern rental exceeds the southern. The single reversal can be explained by the fact that here resort cities, like Miami, raise the southern rentals. Assuming that rent is thirty-five per cent of the workingman's budgetary expenditures, a North-South average differential of about one dollar is indicated. In popular discussion this differential appears larger because of the predominance of small cities in the South.

for other personal services are often less in the small town, whereas food prices are very much the same in cities of all sizes except that some small towns in agricultural regions have lower prices than cities.

The cost-of-living factor showing greatest variation by size of city or by region is rent, which accounts for thirty to fifty per cent of the workingman's budget. That there is an appreciable difference in this quantity, both by size of city and between cities of the North and South, is shown by Chart XI, in which the white bar is the average northern rental per month, as taken from United States Census

Bureau reports, and the black bar, southern rental obtained from the same source. Since a worker paid a minimum wage of \$16 per week uses about forty per cent of the wage for rent, the difference between the minimum wage in the North and the South on this basis alone would be about \$3.

The importance of rent in initiating and maintaining wage differentials is illustrated by the fact that many plants in the South are able to pay lower wages because they offer free housing; in some instances, at least, southern factory-owned houses have been sold to employees on very reasonable terms. In fact, by building towns on farm sites, southern mills have avoided high land prices and municipal tax waste of older cities. It is apparent that, in this way, operating revenue was increased for the southern plants, in part because the worker through decreased cost of living accepted a lower wage. Statistical proof that there is a definite relationship between rentals and wages was established by Pixley¹⁰ who reported to the NRA on the subject of differentials as follows:

In industries where it is found desirable to establish a North-South wage differential, such a differential can be taken care of in part by differentials based on size of city. The rest of the differential can be obtained by use of an interpolation formula which has the effect of establishing a central zone or zones in such a way that wage differentials do not vary greatly as any of the frontiers are crossed. The boundaries can be determined by comparison with contours of different rental levels, which, in general, follow the wage levels as shown by a study of Bureau of Labor Statistics average monthly earnings for the fourteen months beginning January, 1933.

The remaining factor which influences differences in wages — growth of city — affects wages both directly through the supply of labor and indirectly through rentals. In the cities of the West which showed phenomenal growth there was frequently some particular natural advantage which industry quickly exploited and which, therefore, demanded a constant supply of new labor. Such labor was well paid as an inducement to flow freely into the region, but housing was not always adequate. Consequently rentals were high. But this situation was not realized by the workman attracted by the high industrial wage until he had already moved and then it was too late; insufficient

¹⁰ Henry H. Pixley, "Mathematical Relations Between Rental and Other Economic Factors," Unpublished paper abstracted in *Econometrica*, Vol. 3, July, 1935, p. 350.

funds would not permit him to leave. Other incoming workmen realized the situation but planned to construct their own homes. When they arrived they found building costs were also high.

4. The Incidence of Minimum Wages on Special Labor Groups

In the preceding three sections it has been briefly indicated how fixing minimum wages different from those existing under the pre-NRA conditions might affect industry differently in various geographic regions. Even more striking is the effect of such changes on various classes of workers under our competitive labor conditions. For instance, workers in the United States belong to at least three important racial groups, White, Negro, and Mexican. The average wage for the White race has, in general, been higher than that for the Negro; and this in turn has been higher than the average for Mexican labor, a relationship which has persisted for several decades. In the South, in particular, the Negro has received from one-half to three-quarters of the white man's wage.

Such a historical condition leads to the important question: If a minimum wage is to be established, should a negro differential be introduced, or should the minimum be established so low as to make such a differential unnecessary? That great difficulty would arise from any treatment of this issue was realized very early by NRA officials who sought the advice of negro committees and organizations, pointing out that the choice appeared to be between establishing a racial differential or allowing the Negro to be displaced by white workers. Faced with these alternatives every negro organization so approached opposed racial wage differentials, on the ground that they would imply branding the Negro as an inferior race. As a result of such opposition, racial differentials were not established directly in any of the codes. Sometimes, however, they were set indirectly by a type of code provision known as the grandfather clause. To establish a racial differential by this scheme, the wage minimum was placed at "40¢, except where the rate in July, 1933 was less, in which case not less than the rate at that time, and in no case less than 32¢ an hour." But after the development of active and powerful opposition to this clause from Negroes and also from other affected classes, it was included in only a few codes.

As a result of the NRA's failure to establish racial differentials in many regions, and especially in the South, white men were given preference for the new jobs created by shorter hours, and, in some

instances, white men even replaced Negroes.¹¹ In fact, estimates have been made indicating that, directly or indirectly because of minimum-wage provisions of codes, about 500,000 negro workers were on relief in 1934. Indeed, indirect discrimination of the Administration against Negroes through minimum wages under the NRA and the AAA displacement of tenants was so great that in February, 1934 an interdepartmental committee was appointed to study the problems. At an early meeting of this group the author, as the committee representative of the NRA, presented a study previously prepared for General Johnson on problems affecting the Negro under the NRA. Following this analysis of facts, several indignation meetings of the committee were held and a confidential report prepared on the effect of the agricultural program on the Negro. About this time the group was informed that General Johnson had considered the NRA report and was aware of difficulties, and that the committee could be most useful by offering solutions. To begin with the committee should recognize that only three courses were open: (1) to lower code minimum wages, (2) to establish racial differentials, or (3) to expect displacement of Negroes and take care of them by a relief program. But none of these choices was satisfactory; yet, since the group could offer no acceptable solution and disbanded, the Administration selected (3).

In the case of another important class, that of women workers, the average wage in the United States has for various reasons been about twenty-five to thirty per cent less than the average wage for men. It seems that some women who enter industry readily accept less than the prevailing wages because they have partial support and desire only to earn pin money; and in this way the bargaining power of other women workers has been lowered. Under such circumstances, we might expect that female workers would displace males until a new balance between the sexes were reached, but other factors have prevented this adjustment. For instance, employers have generally feared that a woman would marry and resign her position almost as soon as she had been sufficiently trained to be useful; and to a certain extent they have insured against this financial hazard by paying lower wages. Then, of course, sex prejudice has operated against the woman; many male employers have refused to admit that women, in general, are as intelligent or as able workers as men.¹² As a conse-

¹¹This displacement occurred chiefly among the unskilled help, the skilled negro workman being well able to hold his own.

¹²Part of this prejudice is, of course, due to the age-old popular notion that women are the weaker sex.

quence of these factors, and various other minor ones, wages of female workers have for decades been less than wages of male workers.

These facts quite obviously confronted the NRA with the necessity of deciding whether it should establish sex differentials. Clearly such differentials would have been superfluous if the minimum wage had been set low enough, but a sufficiently low minimum wage would have invariably called forth complaints from men who feared that their wages were about to be reduced. Therefore, the automobile manufacturing code, the seventeenth to be approved, specified that females should receive not less than 87½ per cent of the minimum wage set for males. Following this lead, the wall paper manufacturing, salt producing, and leather codes, which were numbers nineteen to twenty-one, also provided sex differentials. This made it appear that the NRA was preparing, as a matter of policy, to include such differential provisions in every code. But about this time women's organizations began determined protest.

Despite continuing opposition of influential women, sex differentials, varying from 2½ to 8 cents per hour for those receiving minimum wages, found their way into about fifteen of the first 500 codes to be approved. All the while such women leaders as Miss Elizabeth Eastman of the Young Women's Christian Association, Miss Dorothy Dunn of the National Federation of Business and Professional Women's Clubs, Miss Josephine Daggett of the General Federation of Women's Clubs, and Mrs. Harvey W. Wiley of the Council of the National Women's Party, continued to protest vigorously against the inclusion of sex differentials. They wielded almost every conceivable honorable weapon. To secure the support of the men's unions some prominent women leaders cited certain instances where sex differentials had already caused the displacement of male by female workers. Yet when the NRA sought their advice as to remedies, their attitude, like that of the various negro groups, was not helpful. Under no circumstances would they subscribe to sex-differential provisions: they believed that these amounted to a declaration by the United States Government that it considered women workers inferior to men; it was preferable to see women workers lose their jobs to men. And so, under economic planning in a democratic country, they were displaced.

Just as minimum wages without differentials brought about racial and sex displacements, so they affected two other types of workers — the old and the handicapped. Although the President's Re-employment Agreement indirectly granted a differential by means

of a *grandfather clause* similar to that previously quoted, many codes did not do as much, and even the PRA made no direct provision for them. More precisely, of the 286 codes approved up to February 17, 1934, only 141 provided for the employment of handicapped workers.¹³ As a consequence of the rigid code provisions which failed to recognize handicapped labor, in January, 1934 a factory in New York State employing only very old people was forced to suspend operations. This attracted a vast amount of unfavorable newspaper comment, and can, in a sense, be taken to mark the beginning of an avalanche of additional criticism.

More difficulty arose from the NRA's neglect to make adequate provision for apprentices: no consistent recognition was taken of the fact that the setting of high minimum wages obviously prevents minors between the ages of sixteen and twenty-one years from securing such work as might enable them to learn a trade.¹⁴ In other words, a high minimum wage, taken by itself, constitutes a kind of vested interest for middle-aged workers; exemptions therefore have to be made for both the old and the young.

The apprenticeship problem was attacked in the cotton textile code by simply exempting learners from the minimum wage for a period of only six weeks. Shortly afterward, the shipbuilding code, the second to be approved, also merely exempted apprentices from the minimum wage, but for the entire two years' life of the code. Some codes, such as electrical manufacturing, the fourth to be approved, were more definite in that they specifically fixed the wages of learners at not less than eighty per cent of the minimum. Nearly all subsequent codes that made provision for apprentices named this eighty per cent, but several, such as men's clothing, adopted seventy per cent.

Organized labor quickly realized that the NRA apprentice provisions offered opportunities for evasions leading to wage cuts and, to combat these, it insisted that the percentage of pay roll going to learners be restricted. As a result of such pressure from labor the photographic manufacturing code, the twelfth approved, and various

¹³The majority of the 141 codes specified that minimum wages for subnormal employees should not be less than eighty per cent of the general minimum wage established for the code and that their number should not exceed five per cent of the total employees, a provision similar to that in the first code — cotton textiles. About a dozen agreements allowed each employer to have at least one handicapped worker.

¹⁴It is of some interest to note here that the minimum wages of the codes might also have displaced child labor even if no provision for banning it had been adopted. For a discussion of child labor under the NRA see Chapter XV, Section 2.

other codes specified that wages paid to learners should not exceed five per cent of total wages in any one month.¹⁵

The establishment of a minimum wage to apply to all labor in the United States must, therefore, lead, at least while large unemployment exists, to loss of jobs, (1) for sub-standard labor, such as the old and the physically handicapped, (2) for the minority races, (3) for women workers, and (4) for the young worker. And to set differentials to prevent or lessen these displacements leads to new difficulties such as opposition of (1) the minority races to being classed even indirectly as inferior, (2) women's organizations for similar reasons, and (3) organized labor to any exception or differential on the ground that these lead to evasions of the minimum wage. But of at least equal importance is the fact that successful administration of minimum wages and the various exceptions deemed necessary requires a large, competent governmental agency. To this last aspect we may now turn.

5. Minimum Wages and the Growth of Bureaucracy

On February 17, 1934, a few weeks after the highly publicized experiences encountered by the plant employing old workers, which was cited in the previous section, President Roosevelt issued the following executive order regarding handicapped employees:

(1) A person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the minimum established by a code, if the employer obtains from the state authority, designated by the United States Department of Labor, a certificate authorizing such person's employment at such wages and for such hours as shall be stated in the certificate. Such authority shall be guided by the instructions of the United States Department of Labor in issuing certificates to such persons. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work, for such employee.

(2) Any approval order of a Code of Fair Competition, agreement, or license heretofore approved, prescribed or issued pursuant to Title I of the National Industrial Recovery Act if any necessity exists therefor, in order to make these regulations effective, is hereby modified so as to per-

¹⁵The cast iron soil pipe code, number eighteen, met the problem somewhat differently by stating that learners should not exceed five per cent of the total workers.

mit and be conditional upon the full applications and operations of these regulations.

These regulations shall become effective immediately and shall thereon be binding upon all industries and members thereof unless, and only to such extent as, prior to that date good cause to the contrary shall be shown to the Administrator for Industrial Recovery by an affected party or parties with reference to any trade, industry, or subdivision thereof.

So many additional difficulties had arisen by the end of the spring in almost all industries because of failure of codes to make special provision for apprentices that on June 27, 1934 the President issued another executive order containing the following rules and regulations applicable to apprentices:

(1) A person may be employed as an apprentice by any member of an industry subject to a Code of Fair Competition at a wage lower than the minimum wage, or for any time in excess of the minimum hours of labor established in such code, if such member shall have first obtained from an Agency to be designated or established by the Secretary of Labor, a certificate permitting such person to be employed in conformity with a training program approved by such Agency, until and unless such certificate is revoked.

(2) The term "Apprentice," as used herein, shall mean a person at least 16 years of age who has entered into a written contract with an employer or an association of employers which provides for at least 2,000 hours of reasonably continuous employment for such person and his participation in an approved program of training as hereinabove provided.

(3) A Committee shall be established by the Secretary of Labor to advise such Secretary in the exercise of the powers herein conferred, and to perform such other functions as the Secretary may direct. Such Committee shall be composed of one or more representatives of the Office of Education, the National Recovery Administration, and the United States Department of Labor.

The Secretary of Labor is hereby authorized to prescribe such further rules and regulations as may be deemed necessary to supplement, amplify, or carry out the purposes and intent of this Order, and to take such other steps, not inconsistent herewith, as may be deemed advisable to effectuate this Order.

Any approval order of a Code of Fair Competition or agreement heretofore approved, prescribed, or issued pursuant to Title I of the National Industrial Recovery Act, if any necessity exists therefor in order to make these regula-

tions effective is hereby modified so as to permit and be conditioned upon the full application and operation of these regulations.

PROVIDED, HOWEVER, that nothing in this Order shall be construed as modifying any Code of Fair Competition except insofar as an employer subject thereto may elect to become subject to the provisions of this Order.

This Order shall become effective on July 15, 1934, unless prior to that date good cause to the contrary is shown to the Administrator for Industrial Recovery by any affected party or parties, and he otherwise directs.

An absolute dictator could hardly ask for more power than was laid down *under an unconstitutional act* by this executive order. Miss Perkins, the Secretary of Labor, was thereby authorized to determine how many apprentices should be allowed in each industry, and consequently, since the apprentices eventually become the skilled workers, she could ultimately decide the number of the latter in each industry. Indirectly, she was "empowered" to determine the flow of national income to be received by workers in each industry, since control of the supply of labor implies some regulation of the price it is paid.¹⁶ Therefore, if the NRA had not been declared unconstitutional, this executive order, together with the previous one of February 17, 1934 relating to handicapped employees, would have made it possible for the Secretary of Labor to influence greatly, if not actually to determine wages, hours of work, and conditions of work, for almost all industrial and commercial employees.¹⁷

6. *Adjustments in Wages above the Minimum*

No consideration of minimum-wage fixing would be adequate without some discussion of wages above the minimum. Moreover,

¹⁶Suppose, for instance, that a stabilized industry normally requires 300,000 skilled workers. If the Secretary of Labor, under her broad "powers," should limit the number of apprentices so that only 275,000 skilled workers were available, members of the industry would bid against each other for this labor until the added cost of production raised the price of the commodity to the point at which the demand was equal to the total output of the 275,000 available workers.

However, it should be clearly recognized that regulatory bodies are frequently given more power than they choose to exercise.

¹⁷In view of the above considerations it seems that James W. Hook was entirely correct in his opinions (see Chapter I, Section 8) concerning the extensiveness of efforts of the Government to fix wages if it attempted to regulate hours of work. It may be recalled here that Hook's statement was made when Congress was considering the Black Thirty-Hour bill, which, incidentally, did not provide for the fixing of minimum wages.

since minimum wages were tried under almost all conceivable conditions,¹⁸ it might be expected that an evaluation of these experiments would reveal some interesting facts regarding the behavior of the wage structure when it has been subjected in this way to arbitrary restraints.

As regards the background of issues centering on wages above the minimum, we note that organized labor very early recognized the possibility of a minimum wage forcing a depression of wages above the minimum, and to prevent wage cuts urged provisions which would preserve the higher wages. On the other hand, Congress clearly did not intend that wages above the minimum should be fixed, for Section 7c of the Act stated that no attempt should be made to introduce in codes "any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage." This clause indicates that Congress did not wish to authorize the NRA to approve multi-minima, which, of course, could have been used to establish wages at maximum levels. Nevertheless, in all except ten of the first 400 codes to be approved, labor was successful in securing provisions calling for "equitable adjustments" of wages of employees who had pre-code wages above the minimum. Although many codes failed to define just what the term meant. The lime industry code, for instance, merely stated: "There shall be an equitable readjustment of compensation now in excess of the minimum wages herein established."

The wide variety of code provisions pertaining to wages above the minimum is difficult to envisage.¹⁹ Surely, if the NRA had any policy on this question it was not to be found among such provisions. The explanation is simple: each code adviser of the Research and Planning and Legal Divisions was left to work out an individual

¹⁸Economic experimentation was fashionable in the United States in 1933 and 1934. In this connection it is of some interest to note that in England the fixing of minimum wages in trades for which wage rates showed wide variations had long been opposed by organized labor on the ground that a minimum wage tended to depress higher wages.

¹⁹Some codes merely required that the employer report to the code authority what changes he had made in wages above the minimum; several codes, such as retail lumber, simply stated that the weekly wage of employees receiving more than the minimum named in the code should not be reduced, notwithstanding any reduction in the working hours of such employees. On the other hand, a few agreements specified in detail how wages of those in the higher levels should be adjusted; the iron and steel industry code, for instance, provided that all employees, receiving pay on July 14, 1933 at a rate per hour in excess of the common-labor rates then in effect, should be given a rate per hour at least fifteen per cent above that of July 14, but not above similar rates in the same district paid by other members who had made the fifteen per cent increase.

TABLE XVII
 OCCUPATIONAL DIFFERENTIALS FOR SELECTED INDUSTRIES
 Average Weekly Earnings for Skilled and Unskilled Workers
 Source: National Industrial Conference Board
 Skilled Workers here are semi-skilled and skilled workers of N.I.C.B. classification

Period (Quarters)	Hosiery and knit Goods Industry				Cotton Industry				Wool Industry			
	Un- Skilled	Skilled	Differential		Un- Skilled	Skilled	Differential		Un- Skilled	Skilled	Differential	
			Weekly	Hourly			Weekly	Hourly			Weekly	Hourly
1928-1	24.06	36.08	12.00	.255	19.39	23.50	4.11	.104	18.71	25.58	6.87	.113
2	23.62	36.29	12.67	.274	19.48	23.42	3.94	.131	20.21	23.95	3.74	.119
3	23.74	36.61	13.87	.268	19.43	23.60	4.17	.124	20.76	25.69	4.93	.115
4	23.44	36.70	13.26	.286	19.53	24.51	4.98	.146	22.00	26.91	4.91	.100
1929-1	21.47	39.66	18.19	.391	20.31	25.22	4.91	.138	21.15	26.51	5.36	.109
2	20.87	40.40	19.53	.412	20.15	25.14	4.99	.136	21.27	26.23	5.01	.110
3	20.39	39.79	19.40	.418	18.88	24.44	5.56	.134	22.05	26.20	4.15	.089
4	19.61	39.88	20.27	.435	18.54	23.28	4.74	.135	20.33	25.17	4.84	.090
1930-1	17.05	37.27	20.22	.443	18.28	22.94	4.66	.133	20.01	24.47	4.46	.101
2	14.38	31.83	17.45	.468	18.41	22.81	4.40	.135	20.40	24.01	3.61	.118
3	12.81	28.44	15.63	.376	16.95	21.66	4.71	.130	21.09	24.61	3.52	.130
4	15.30	33.47	18.17	.413	17.46	21.19	3.73	.137	19.59	24.40	4.81	.136
1931-1	14.08	30.77	16.69	.390	17.62	21.40	3.78	.121	20.35	25.05	4.71	.154
2	14.33	31.61	17.28	.389	17.73	21.82	4.09	.123	20.75	24.94	4.19	.145
3	12.66	26.89	14.03	.313	16.71	20.38	3.67	.116	20.08	24.76	4.68	.141
4	13.62	27.55	13.93	.322	15.95	18.77	3.42	.108	16.85	21.56	5.01	.139
1932-1	14.85	25.86	11.01	.241	16.14	19.20	3.06	.087	16.79	21.55	4.76	.128
2	13.60	18.05	4.46	.197	13.08	16.28	3.20	.086	14.37	17.46	3.09	.110
3	13.71	19.70	5.99	.179	13.47	16.35	2.88	.080	14.76	16.99	2.23	.098
4	15.43	23.07	7.64	.191	14.03	17.04	3.01	.063	15.50	18.56	3.06	.100
1933-1	12.93	17.71	4.78	.145	13.73	16.63	2.90	.074	14.29	17.02	2.73	.095
2	13.80	18.96	5.10	.157	14.31	17.45	3.14	.069	15.21	18.15	2.95	.084
3	15.69	23.08	7.39	.176	16.00	18.65	3.55	.080	16.88	18.44	1.56	.093
4	16.71	25.47	8.76	.233	14.84	17.62	2.78	.083	16.80	19.89	4.09	.110
1934-1	14.55	22.22	7.67	.255	15.08	18.32	3.24	.088	15.44	20.43	4.99	.120
2	16.41	25.37	8.96	.277	16.41	18.45	3.04	.097	16.18	20.31	4.13	.142
3	16.58	24.56	7.98	.271	15.52	17.35	1.83	.094	15.67	19.89	4.22	.153
4	16.79	26.37	10.07	.261	15.48	18.15	2.67	.080	15.95	20.32	4.37	.149

WAGE CHANGES AND DISTRIBUTIONS

TABLE XVII (Continued)

Period (Quarters)	Boot and Shoe Industry				Leather Tanning and Finishing Industry				Meat Packing Industry			
	Un- Skilled	Skilled	Differential		Un- Skilled	Skilled	Differential		Un- Skilled	Skilled	Differential	
			Weekly	Hourly			Weekly	Hourly			Weekly	Hourly
1928-1	20.32	24.96	4.64	.133	24.10	27.34	3.24	.100	23.52	28.33	4.81	.096
2	18.28	23.15	4.87	.111	23.62	27.29	3.67	.102	23.98	28.33	4.36	.091
3	20.52	25.67	5.15	.129	23.35	27.73	4.38	.115	24.30	28.09	3.79	.093
4	18.35	24.51	6.16	.134	23.34	27.93	4.59	.105	24.11	28.90	4.79	.092
1929-1	20.21	24.25	4.04	.125	22.95	27.72	4.77	.093	23.69	28.14	4.45	.096
2	19.58	23.57	3.99	.123	23.17	28.02	4.85	.115	23.68	28.77	5.09	.075
3	21.91	26.89	5.28	.132	22.75	29.30	6.55	.118	24.34	28.25	4.91	.092
4	20.18	25.22	5.04	.125	23.34	29.43	6.09	.109	24.20	29.38	5.18	.095
1930-1	19.62	23.40	3.78	.133	22.77	27.52	4.75	.106	24.04	28.96	4.92	.096
2	17.87	21.75	4.08	.112	21.67	27.42	5.75	.104	25.21	29.35	4.64	.090
3	18.19	21.87	3.18	.101	21.21	26.57	5.36	.122	23.99	29.82	5.83	.104
4	15.21	19.59	4.38	.075	19.72	25.76	6.04	.115	22.63	29.69	7.01	.130
1931-1	17.33	20.96	3.63	.077	18.85	26.44	7.59	.139	22.98	28.82	5.84	.116
2	16.93	23.38	6.45	.077	19.76	27.32	7.56	.120	22.65	28.61	5.95	.115
3	17.97	24.71	6.74	.083	18.31	26.83	8.52	.128	21.98	28.66	6.68	.113
4	14.86	21.08	6.22	.071	16.39	24.62	8.23	.121	21.18	27.30	6.12	.113
1932-1	15.30	19.90	4.60	.079	14.90	22.87	7.97	.111	19.43	25.53	6.10	.121
2	14.34	17.61	3.27	.095	13.32	19.37	6.05	.115	19.64	25.16	5.52	.117
3	15.40	19.69	4.29	.096	14.65	19.54	4.89	.107	17.76	23.86	6.10	.103
4	13.69	19.12	5.53	.099	13.75	21.48	7.72	.119	18.03	22.77	4.74	.108
1933-1	14.01	17.44	3.43	.095	13.58	19.05	5.47	.099	16.52	21.93	5.40	.102
2	15.55	19.00	4.46	.110	13.48	20.00	6.54	.123	17.63	23.02	5.39	.095
3	17.25	24.15	6.90	.135	16.46	21.88	5.42	.096	17.30	22.67	5.37	.105
4	16.67	21.64	5.97	.151	16.60	21.78	6.18	.144	17.89	22.85	4.96	.108
1934-1	17.55	23.65	6.10	.171	16.03	22.30	6.27	.157	18.83	23.35	4.52	.106
2	16.49	23.98	7.49	.185	17.04	22.99	5.95	.169	19.10	24.07	4.97	.124
3	17.24	23.16	5.92	.170	16.58	22.44	5.86	.158	20.66	26.35	5.72	.127
4	14.87	21.31	6.44	.163	16.75	22.31	6.05	.155	20.38	26.53	5.70	.129

TABLE XVII (Continued)
OCCUPATIONAL DIFFERENTIALS FOR SELECTED INDUSTRIES
 Average Weekly Earnings for Skilled and Unskilled Workers
 Source: National Industrial Conference Board
 Skilled Workers here are semi-skilled and skilled workers of N.I.C.B. classification

Period (Quarters)	Chemical Manufacturing Industry						Rubber Industry						Paper Products Industry					
	Un-Skilled		Skilled		Differential		Un-Skilled		Skilled		Differential		Un-Skilled		Skilled		Differential	
	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly
1928-1	28.99	.069	30.45	1.46	28.83	.069	34.55	5.72	1.54	28.16	.154	28.16	7.38	30.48	7.38	30.48	7.38	.159
2	25.46	.077	30.59	2.23	28.56	.077	32.99	4.43	1.32	22.98	.132	30.18	7.20	30.18	7.20	30.18	7.20	.159
3	25.53	.070	30.61	2.08	29.66	.070	32.94	3.28	1.02	23.85	.102	28.94	5.09	28.94	5.09	28.94	5.09	.160
4	28.87	.068	30.75	1.88	28.58	.068	33.19	4.61	1.25	23.26	.125	31.10	7.84	31.10	7.84	31.10	7.84	.168
1929-1	26.24	.068	31.58	2.34	30.19	.068	34.94	4.75	1.33	24.57	.133	30.85	6.28	30.85	6.28	30.85	6.28	.186
2	28.16	.066	30.80	1.66	30.31	.066	34.88	4.52	1.26	22.99	.126	31.91	8.92	31.91	8.92	31.91	8.92	.179
3	28.52	.075	30.86	2.34	27.84	.075	31.23	3.39	1.06	23.88	.106	30.91	7.23	30.91	7.23	30.91	7.23	.168
4	29.18	.071	30.93	1.75	26.00	.071	29.76	3.75	1.41	24.01	.141	32.40	8.39	32.40	8.39	32.40	8.39	.169
1930-1	27.87	.040	28.99	1.12	28.04	.040	33.34	5.30	1.87	22.68	.187	32.15	9.47	32.15	9.47	32.15	9.47	.163
2	27.56	.096	28.52	0.96	28.49	.047	32.87	4.18	1.40	21.97	.140	31.49	9.52	31.49	9.52	31.49	9.52	.157
3	25.59	.060	27.40	1.81	24.70	.060	30.32	5.62	1.29	22.52	.129	30.14	7.62	30.14	7.62	30.14	7.62	.145
4	27.57	.033	27.68	0.11	21.54	.033	25.87	4.33	1.83	19.32	.183	29.98	10.66	29.98	10.66	29.98	10.66	.189
1931-1	26.31	.056	26.87	0.56	24.06	.031	29.61	5.55	1.48	20.52	.148	29.89	9.27	29.89	9.27	29.89	9.27	.191
2	26.02	.023	25.97	-0.05	24.46	.023	31.66	7.20	1.71	21.86	.171	29.97	8.11	29.97	8.11	29.97	8.11	.185
3	25.43	.024	25.27	-0.16	20.77	.024	26.81	5.54	1.88	21.83	.188	30.16	8.33	30.16	8.33	30.16	8.33	.182
4	23.71	.052	23.09	-0.62	17.97	.052	21.98	4.01	1.69	20.23	.169	28.78	8.55	28.78	8.55	28.78	8.55	.199
1932-1	21.25	.034	22.22	0.97	20.48	.034	24.94	4.45	1.56	18.57	.156	26.68	8.11	26.68	8.11	26.68	8.11	.180
2	21.00	.041	21.41	0.41	19.29	.041	23.86	4.07	1.45	18.15	.145	24.58	6.43	24.58	6.43	24.58	6.43	.145
3	20.70	.023	19.98	-0.72	17.01	.023	20.56	3.54	1.58	18.09	.158	24.51	6.41	24.51	6.41	24.51	6.41	.143
4	20.52	.005	20.44	-0.08	16.52	.005	18.52	3.00	1.65	18.43	.165	25.15	6.72	25.15	6.72	25.15	6.72	.166
1933-1	17.42	.024	19.66	2.24	12.28	.029	17.25	4.97	1.92	17.63	.192	23.20	5.57	23.20	5.57	23.20	5.57	.145
2	18.03	.163	19.65	1.63	16.80	.047	21.88	6.08	1.87	19.36	.183	23.46	4.10	23.46	4.10	23.46	4.10	.183
3	18.47	.067	21.20	2.73	18.74	.212	24.58	5.84	2.12	18.50	.185	24.87	6.37	24.87	6.37	24.87	6.37	.156
4	18.80	.062	21.80	3.00	17.79	.062	23.78	5.99	2.39	15.89	.159	23.52	7.63	23.52	7.63	23.52	7.63	.183
1934-1	19.26	.077	22.87	3.61	19.83	.077	26.53	8.80	2.76	15.90	.159	22.13	6.23	22.13	6.23	22.13	6.23	.143
2	19.46	.104	23.55	4.19	20.94	.104	28.13	7.19	2.76	17.12	.172	22.96	5.84	22.96	5.84	22.96	5.84	.118
3	20.17	.107	24.83	4.66	18.78	.107	24.86	6.08	2.84	17.96	.179	22.92	4.96	22.92	4.96	22.92	4.96	.118
4	20.33	.120	24.78	5.45	18.96	.120	26.70	7.76	2.70	17.58	.175	23.48	5.90	23.48	5.90	23.48	5.90	.125

WAGE CHANGES AND DISTRIBUTIONS

TABLE XVII (Continued)

Period (Quarters)	Paint and Varnish Industry				Furniture Manufacturing				Automobile Industry			
	Un-Skilled		Differentials		Un-Skilled		Differentials		Un-Skilled		Differentials	
	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly	Hourly
1928-1	22.76	.163	9.49	.166	29.28	7.76	29.94	.143	34.84	4.90	4.90	.143
	23.64	.158	7.14	.168	28.60	8.39	30.09	.166	35.79	5.70	5.70	.160
	22.86	.171	9.84	.171	21.83	7.21	28.56	.165	35.91	7.85	7.85	.165
	22.60	.166	9.50	.166	22.36	7.21	26.84	.160	31.01	4.17	4.17	.137
1929-1	23.84	.188	8.43	.188	20.73	8.07	29.93	.143	34.70	4.77	4.77	.145
	23.41	.186	9.10	.186	20.02	8.82	29.43	.166	34.90	6.47	6.47	.146
	23.04	.141	9.44	.141	22.23	6.01	29.79	.150	36.14	6.35	6.35	.144
	23.04	.185	9.01	.185	21.27	7.39	26.76	.178	31.11	5.85	5.85	.146
1930-1	22.47	.128	9.00	.128	19.81	7.43	26.86	.134	29.12	2.76	2.76	.138
	22.76	.159	8.97	.159	19.40	6.84	27.25	.131	30.84	3.59	3.59	.135
	21.51	.142	7.15	.142	19.88	6.42	25.11	.139	27.30	2.28	2.28	.130
	20.94	.166	7.66	.166	19.70	6.27	25.11	.138	25.89	0.78	0.78	.132
1931-1	21.46	.149	8.32	.149	18.50	4.31	26.22	.140	26.56	0.34	0.34	.130
	20.49	.143	8.47	.143	17.34	4.52	26.96	.163	29.82	2.86	2.86	.128
	19.02	.145	8.08	.145	17.54	6.53	21.36	.134	23.49	2.13	2.13	.122
	18.07	.143	7.88	.143	15.57	5.35	22.17	.148	22.29	0.12	0.12	.112
1932-1	17.81	.149	8.17	.149	13.98	5.29	22.92	.102	23.28	0.36	0.36	.087
	17.58	.143	8.03	.143	12.09	3.26	17.67	.111	18.27	0.60	0.60	.115
	16.93	.153	8.91	.153	11.92	4.10	13.01	.116	13.29	0.28	0.28	.129
	15.90	.169	8.56	.169	12.15	3.56	13.77	.099	20.22	1.46	1.46	.116
1933-1	15.26	.112	6.36	.112	10.40	4.16	18.77	.109	21.01	2.24	2.24	.104
	16.99	.129	6.70	.129	8.99	5.23	21.03	.133	22.18	1.15	1.15	.111
	17.35	.145	6.59	.145	12.97	3.96	20.09	.149	24.17	4.03	4.03	.116
	18.59	.132	5.69	.132	13.45	3.48	18.25	.031	23.24	4.99	4.99	.152
1934-1	18.90	.141	5.51	.141	12.34	5.01	21.06	.116	23.96	2.90	2.90	.125
	16.98	.140	6.04	.140	13.26	6.93	20.39	.131	24.64	4.25	4.25	.142
	19.22	.160	6.64	.160	14.26	4.19	19.14	.123	21.98	2.84	2.84	.162
	19.63	.143	6.71	.143	15.49	4.08	19.96	.134	25.74	2.78	2.78	.171

TABLE XVII (Continued)
 OCCUPATIONAL DIFFERENTIALS FOR SELECTED INDUSTRIES
 Average Weekly Earnings for Skilled and Unskilled Workers
 Source: National Industrial Conference Board
 Skilled Workers here are semi-skilled and skilled workers of N.I.C.B. classification

Period (Quarters)	Electrical Manufacturing Industry				Agricultural Implements Manufacturing Industry				Iron and Steel Industry			
	Un-Skilled	Skilled	Differentials		Un-Skilled	Skilled	Differentials		Un-Skilled	Skilled	Differentials	
			Weekly	Hourly			Weekly	Hourly			Weekly	Hourly
1928-1	22.04	31.76	9.72	.189	33.03	7.45	.155	28.72	38.29	9.57	.188	
2	22.72	32.15	9.43	.196	32.88	7.73	.165	28.04	37.94	9.90	.198	
3	23.01	31.74	8.73	.196	32.88	6.73	.158	27.70	36.21	8.51	.195	
4	23.28	33.38	10.10	.209	33.15	7.35	.156	28.43	38.25	10.82	.222	
1929-1	22.80	34.01	11.21	.226	33.24	6.08	.138	28.54	38.95	10.42	.195	
2	22.74	34.12	11.38	.226	32.24	6.13	.141	28.69	38.23	9.54	.174	
3	22.85	34.11	11.26	.240	32.52	7.11	.152	29.73	38.27	8.54	.155	
4	23.58	33.30	9.72	.221	32.39	7.13	.149	28.12	36.18	8.06	.167	
1930-1	22.96	32.94	9.98	.229	32.63	6.80	.139	27.87	35.75	7.88	.163	
2	22.72	33.20	10.48	.230	31.00	7.01	.148	26.39	34.38	7.99	.189	
3	21.65	30.57	8.92	.229	24.62	4.14	.137	21.84	31.07	9.73	.232	
4	21.35	27.64	6.29	.220	24.92	4.88	.146	20.14	29.22	9.08	.230	
1931-1	23.27	26.20	5.93	.211	24.55	4.89	.137	20.30	29.23	8.93	.207	
2	19.43	24.63	5.20	.214	21.46	3.86	.152	19.92	27.95	8.03	.220	
3	18.17	24.03	5.86	.209	23.79	5.63	.150	18.25	25.16	6.91	.195	
4	16.99	23.11	6.12	.216	21.02	4.75	.132	13.93	20.33	6.40	.179	
1932-1	14.92	20.22	5.30	.191	19.87	4.06	.124	14.73	21.87	7.14	.193	
2	13.13	17.94	4.81	.180	18.14	4.11	.142	12.91	17.31	5.10	.185	
3	12.33	17.12	4.79	.181	18.17	4.16	.149	11.18	16.56	5.38	.140	
4	13.22	17.41	4.19	.177	19.47	6.14	.166	11.63	19.12	7.49	.147	
1933-1	12.01	16.52	4.51	.183	18.98	5.58	.160	11.84	18.12	6.28	.141	
2	14.10	18.06	3.96	.178	18.25	4.99	.143	13.69	20.22	6.53	.140	
3	15.91	21.00	5.09	.177	20.43	5.56	.148	17.80	26.10	8.30	.186	
4	15.09	21.07	5.98	.194	20.23	4.21	.151	16.16	24.46	8.30	.162	
1934-1	15.25	20.86	5.71	.221	23.57	6.79	.140	15.81	24.17	8.36	.162	
2	17.13	23.39	6.76	.187	24.07	6.08	.140	17.61	25.32	7.71	.186	
3	17.50	24.08	6.28	.195	24.50	6.74	.160	10.19	16.24	6.05	.188	
4	17.43	23.66	6.23	.201	25.71	6.59	.156	11.63	18.05	6.42	.140	

policy with his deputy administrators. As a result, even as late as May 3, 1934, there was no agreement on type or phraseology; the five codes approved on this date (numbers 412-416) contained somewhat different instructions for adjusting wages above the minimum. Nevertheless some uniformity developed in related industries simply because related codes were handled by the same advisers. For example, the various paper codes contained provisions identical with the one given for the paper and pulp industry in Appendix V; yet the later

TABLE XVII (Continued)

OCCUPATIONAL DIFFERENTIALS FOR SELECTED INDUSTRIES

Average Weekly Earnings for Skilled and Unskilled Workers

Source: National Industrial Conference Board

Skilled Workers here are semi-skilled and skilled workers of N.I.C.B. classification

Period (Quarters)	Lumber and Mill Work Industry			
	Un- Skilled	Skilled	Differentials	
			Weekly	Hourly
1928-1	18.79	23.84	10.05	.228
2	19.36	29.63	10.27	.221
3	20.17	30.92	10.75	.226
4	19.07	30.58	11.50	.272
1929-1	21.54	30.10	8.56	.214
2	21.38	29.53	8.15	.212
3	20.47	30.41	9.94	.203
4	21.13	28.24	7.11	.196
1930-1	19.58	29.56	9.98	.218
2	18.91	23.76	9.85	.209
3	18.52	26.51	7.99	.192
4	17.80	26.35	8.55	.188
1931-1	17.49	23.13	8.64	.168
2	18.42	24.79	6.37	.145
3	17.05	24.13	7.08	.175
4	15.36	20.96	5.60	.190
1932-1	11.73	17.53	5.80	.172
2	12.06	17.98	5.92	.158
3	11.89	17.46	5.57	.152
4	11.61	17.16	5.55	.170
1933-1	10.70	14.79	4.09	.160
2	11.57	16.40	4.83	.136
3	13.42	18.00	4.53	.117
4	13.43	17.76	4.33	.114
1934-1	14.62	17.36	2.74	.083
2	14.90	18.35	3.45	.068
3	14.92	18.92	4.60	.092
4	14.90	19.46	4.66	.079

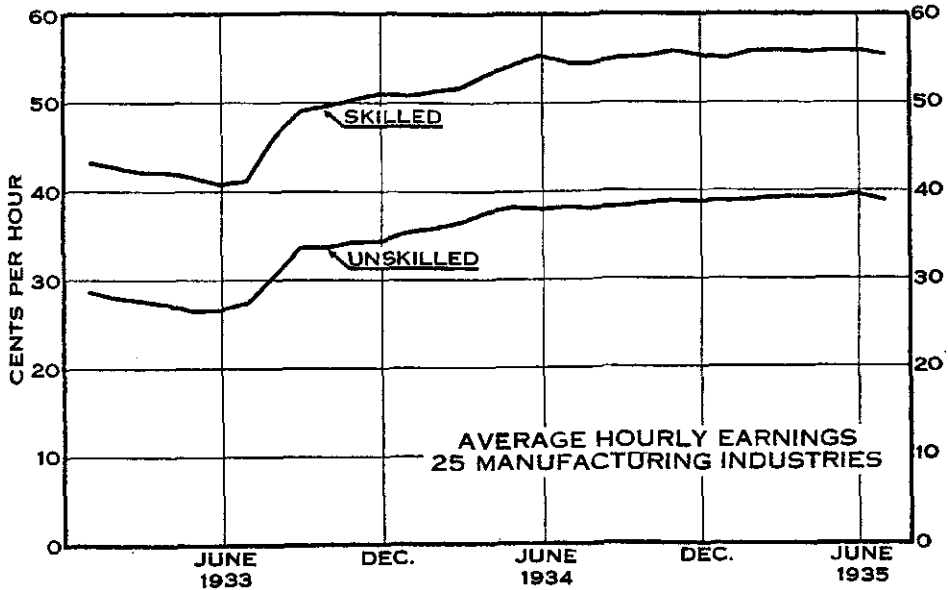
codes of this group also specified that in no case were wages to be reduced.

Notwithstanding the loose wording of many code provisions, and the vast amount of administrative machinery which would have been required to enforce them, Chart XII shows that industry usually increased wages of both unskilled and skilled workers and, at least in

CHART XII

WAGES OF SKILLED AND UNSKILLED WORKERS UNDER THE CODES

Source: National Industrial Conference Board.



That the NRA is not guilty of the charge of reducing the average differential between wages of skilled and unskilled workers is shown here; in fact the differential increased slightly between June, 1933 and June, 1935. But data for individual industries demonstrate that, in some instances, the differentials were reduced.

general, tried to observe the spirit of the code provisions, which was to increase weekly earnings of all workers. Thus, Table XVII shows that, with the exception of the paper products industry, weekly earnings of both skilled and unskilled workers in all the sixteen industries for which data are available increased under the NRA. Moreover, increases in weekly earnings ranged from five per cent for skilled workers in the cotton industry to as high as thirty per cent in the electrical manufacturing industry. Since a significant part of the wage increases developed during the period in which the PRA was being signed, it appears that the President's magnetic appeal to employers, reinforced by public opinion, produced large wage increases for both skilled and unskilled labor.

Now with further regard to the maintenance of pre-code differentials between skilled and unskilled labor, we note that in eleven of the sixteen industries the difference between weekly earnings of the

two classes has definitely increased since the codes became effective; and in the cotton, leather tanning, and paint and varnish industries, no significant change in this differential is discernible. On the other hand, weekly earnings of both skilled and unskilled workers in the paper products industry were less in 1934 than they had been at any time in the period 1928-1934 and the differential was not maintained. Also definite decreases in differential weekly earnings appear in the meat packing and lumber and millwork industries, the codes for which set high minimum wages.²⁰ Wages in both industries materially in-

TABLE XVIII

PRE-CODE AND POST-CODE WEEKLY EARNINGS—PAPER BAG INDUSTRY

June, 1933 to March, 1934

Source: NRA Pay-Roll Reports, *Wage Differentials: II*

Classes Dollars Per Week	NORTH				SOUTH			
	Percentage of Employees				Percentage of Employees			
	Male		Female		Male		Female	
	1933	1934	1933	1934	1933	1934	1933	1934
0 - 4	1.1	1.2	4.4	1.2	2.5	3.2	4.2	8.8
5 - 8	3.6	1.5	18.7	6.2	7.5	9.1	78.5	4.9
9 - 12	9.7	2.5	42.6	32.1	34.8	17.2	15.0	62.6
13 - 16	13.7	26.6	29.2	54.6	32.8	37.0	2.0	23.6
17 - 20	26.3	30.1	3.5	3.7	12.8	23.2	.3	.1
21 - 24	19.0	16.2	.9	1.9	4.6	3.3	0	0
25 - 28	11.7	10.1	.4	.2	2.8	3.9	0	0
29 - 32	6.5	4.7	.3	0	1.1	2.1	0	0
33 - 36	4.5	3.2	0	0	.7	.3	0	0
37 - 40	1.8	2.1	0	.1	.3	.7	0	0
41 - 44	.8	.5	0	0	.1	0	0	0
45 and above	1.3	1.3	0	0	0	0	0	0
Total Employees	1800	2030	1851	2090	720	759	698	753

²⁰Wage experts of the Research and Planning Division predicted in the beginning that the spread between the minimum and maximum wage would be substantially reduced whenever the former was placed higher than two-thirds of the average wage, arguing that in such event great inter-industry pressure arising from such competitive increased labor costs would compel reductions in wages above the minimum.

But the setting of high minimum wages did not always result in the lowering of the differential. To illustrate, although some of the cotton mills in Georgia and the Carolinas had such low pre-code minimum wages as \$6.00 per week, and the average wage for southern mills (80 per cent of the industry) was about \$16.00, the codes set the minimum at \$12.00 per week (about three-fourths of the average) and provided for equitable adjustment of pre-code higher wages. As a result of the high minimum a large increase in wages of the unskilled labor group occurred, and yet the differential wage of the skilled worker over the unskilled was increased; there was little or no tendency for the minimum wage to become the maximum. The explanation is simple: the cotton textile code granted the industry several monopolistic privileges, such as machine-hour limitation and

creased after the codes became effective. Although such a comparison of average weekly earnings for skilled and unskilled workers gives interesting indirect information on the maintenance of differentials, it indicates but crudely whether minimum wages have tended to reduce the wage spread. For instance, it is conceivable that some groups of wage earners in the highest weekly-earning classes suffered reductions notwithstanding an increase in the average for all skilled workers.²¹ To settle definitely this question of maintenance of differentials,

TABLE XIX

DISTRIBUTION OF ACTUAL HOURLY EARNINGS—WAX PAPER INDUSTRY

Source: NRA Pay-Roll Reports, *Wage Differentials: II*

Classes Cents Per Hour	% Male Employees			% Female Employees		
	May 1929	May 1933	Jan. 1934	May 1929	May 1933	Jan. 1934
10.0-19.9	.2	.3	0	5.7	20.2	0.4
20.0-24.9	.1	3.8	0	7.8	20.2	0
25.0-29.0	1.9	3.7	0	28.7	21.1	0
30.0-34.9	4.2	10.4	2.2	16.0	22.4	3.1
35.0-39.9	6.3	10.5	3.5	11.3	13.6	89.8
40.0-44.9	12.7	16.7	23.3	29.1	2.2	5.6
45.0-49.9	16.9	15.0	13.4	1.4	.3	.7
50.0-54.9	26.3	21.3	25.3	0	0	0
60.0-69.9	14.8	10.3	16.8	0	0	0
70.0-79.9	8.2	2.7	7.6	0	0	0.4
80.0 and above	8.4	5.3	7.9	0	0	0
Total	100.0	100.0	100.0	100.0	100.0	100.0
Number Employees	1486	1638	2570	282	317	285
Number of Plants	39	52	52	39	52	52

restriction of new investment and, furthermore, the workers were highly unionized and insisted on wage increases. When mill owners attempted to get additional productivity out of workers to compensate for wage increases, labor leaders ordered a strike in the entire industry. About 50 per cent of the employees obeyed the strike order. (See Chart II).

²¹Suppose, that prior to a code, a plant employed two skilled mechanics at the rate of 90 cents per hour each, and that one of these was working 50 hours per week and the other 20. The total wages of these two workmen would be \$63.00 per week. Then, if the first workman was raised from \$.90 per hour for the 50-hour week to \$1.00 for the 40-hour week instead of to \$1.25 as specified in the code (that is, his weekly wage was cut from \$45.00 to \$40.00) and the second workman was given the rate of pay of \$1.00 per hour and ten hours additional work, the total wage bill for these skilled workers would be \$70.00, an advance of \$7.00 above the pre-code level. If similar adjustments were made in the unskilled class, existing average differentials might be maintained, and yet weekly earnings for many individuals might be decreased.

individual pay rolls would have to be examined, which, of course, would be a tremendous task. As a compromise, pre-code and post-code weekly earnings and hourly earnings could be grouped in several classes and compared as in Table XVIII which refers to paper bag manufacturers. This industry apparently interpreted with literalness "equitable adjustment without decrease of weekly earnings," for, while not increasing, they at least did not reduce weekly earnings of those who were getting more than the minimum wage; low-wage earners received weekly-wage increases while high-wage earners did not, and therefore, strictly speaking, the spread between the minimum and the maximum wage was reduced.

TABLE XX
PRE-CODE AND POST-CODE COMPARISONS OF WAGE SPREADS
CORRUGATED AND SOLID FIBRE SHIPPING CONTAINER INDUSTRY
Source: NRA Pay-Roll Reports, *Wage Differentials: II*

Of the Employees	NORTH				SOUTH			
	Male		Female		Male		Female	
	April 1933	March 1934	April 1933	March 1934	April 1933	March 1934	April 1933	March 1934
10% get less than	25.7	41.2	17.0	35.3	15.1	32.7	15.6	30.3
50% get less than	38.0	47.8	24.8	36.9	28.2	36.7	21.0	31.7
90% get less than	57.6	67.4	36.9	44.7	47.0	55.1	29.2	38.0
Percent of employees below and just above minimum*	70.6	39.4	92.7	76.0	78.3	51.5	99.4	81.5

Similar but more detailed data are shown in Table XIX for the wax paper industry, which reported figures for several operations and percentage distributions of actual hourly earnings for 1929, 1933, and 1934. This table, presenting distributions for hourly earnings of both male and female employees, indicates how the depression affected the various classes. Between May, 1929 and May, 1933 the mode shifted from the 45.0-49.9 to the 40.0-44.9 class interval, increases were shown in all lower intervals, and decreases in all higher ones. Moreover, this table also shows an interesting concentration of female workers at the minimum wage, and since the data are for identical establishments, a definite displacement of female workers by male workers. And, of course, to make the record more complete it may be noted on the other side that those workers benefited who had been receiving less than the minimum wages and who were able to hold their jobs at the higher rates of pay prevailing under the NRA.

Slightly different data for another industry (corrugated and solid fibre shipping container, 13,200 employed in April, 1929, 10,800 in April, 1933, and 16,400 in August, 1933) shown in Table XX, reveal a high concentration of workers around the minimum wages. For instance, forty per cent of the male workers in the North received in March, 1934 rates between 41.2 and 47.8 cents per hour, and eighty per cent of the female workers in the South received between 30.3 and 38.0 cents per hour. Nevertheless, large post-NRA increases in wages

TABLE XXI

PERCENTAGE DISTRIBUTIONS, ACTUAL HOURLY EARNINGS OF MALE AND FEMALE WORKERS IN THREE SIZES OF CITIES IN THE NORTH

Boot and Shoe Industry — March, 1934

Source: NRA Pay-Roll Reports, *Wage Differentials: II*

Classes Cents Per Hour	Cities above 250,000		Cities Between 20,000 and 250,000		Cities Below 20,000	
	% of Employees		% of Employees		% of Employees	
	Male	Female	Male	Female	Male	Female
0.0-19.9	0.1	0.2	0	0.1	0.1	0.3
20.0-24.9	0.1	0.4	0.1	0.5	0.2	3.8
25.0-29.9	0.2	1.9	1.1	3.3	1.7	3.6
30.0-34.9	1.0	29.5	.9	38.2	2.6	47.2
35.0-39.9	16.1	20.1	20.5	19.9	26.7	17.8
40.0-44.9	8.7	20.3	9.0	13.3	11.5	10.8
45.0-49.9	9.1	11.7	10.7	9.7	11.2	6.8
50.0-59.9	16.5	10.9	19.7	9.5	18.2	6.8
60.0-69.9	19.7	3.5	16.6	3.8	13.9	2.2
70.0-79.9	12.2	1.0	10.1	1.2	7.8	0.6
80.0-89.9	8.9	0.4	6.5	0.4	3.8	0.1
90.0-99.9	4.4	0.1	2.5	0.1	1.5	0
100.0 and over	3.0	0	2.3	0	0.8	0
Totals	100.0	100.0	100.0	100.0	100.0	100.0
Total Employees	20,980	15,160	26,719	23,283	48,377	40,229

were made in all groups in the North and in the South and for both male and female labor. In brief, the industry had been paying low wages before the NRA and following the adoption of a code increased the wages of all employees, moving the many sub-minimum wages to the minimum and giving somewhat smaller raises to other employees.

Additional interesting conclusions can be drawn from a study of the data in Table XXI, which applies to the shoe industry. Here as in several other industries just considered we find great concentrations for all classes of workers, at the minimum wages, but also by size of city. More detailed data on which this table was based give

the following concentration of wage earners within a range of 2½ cents per hour of the minimum: (1) in cities below 20,000 population, females 44.2 per cent and males 24.3 per cent, and (2) in cities between 20,000 and 250,000, females 37.1 per cent and males 20.0 per cent. Thus despite the setting in the code of a differential by size of city and for the sexes,²² the greatest concentration at the minimum occurred for female workers in the small cities, the next for female workers in larger cities, and then for males in the smaller cities.

So far, more or less detailed statistics pertaining to only a few industries have been presented to illustrate the adjustment which took place under the NRA wages above the minimum. But from a consideration of testimony offered to the NRA and from certain other scattered facts, the author is confident that the conclusions presented are valid for most industries. Criticism that some wage reductions followed in the wake of the NRA are undoubtedly valid, at least so far as some wages above the minima are concerned, such reductions occurring to the greatest degree in industries setting high minimum wages. On the other hand, the NRA induced many increases in rates above the minimum and, at least, did not cause a reduction in average wages for all industry. In illustration of the latter point we note that in all industry exclusive of agriculture, average wages in 1933 were: in January, \$18.47; in March, \$17.68; in May, \$19.37; in July, \$19.47; in October, \$19.76; and in December, \$19.87. The July figure of \$19.47, essentially represents the situation before the NRA became effective, but, of course, a few employers, anticipating mandatory wage increases, made them voluntarily at this early date. Since the October and December, 1933 average wages of \$19.76 and \$19.87, respectively, are above the July, 1933 values of \$19.47, the NRA certainly did not cause a reduction in the average wage. Furthermore, in February, 1934, the average wage stood at \$22.32, indicating an increase of \$2.85 during the first seven months of the NRA.

7. *Some Effects of Minimum Wages*

Several important and far-reaching conclusions emerge from the preceding considerations. In the first place, wage differences among geographical regions of the United States have persisted for long periods of time and have not, as sometimes held, arisen during the

²²Minimum wages were, for females, thirty cents per hour in cities with less than 20,000 population and thirty-two cents in other cities, and, for males thirty-five cents in the small cities and throughout the South and thirty-seven and one-half cents in the other cities of the North.

present depression; they have developed over several decades as a result of differences in various factors. In particular, variations in the most important factor, labor productivity, probably have been caused by (1) migrations of the more efficient help to population centers, (2) varying degrees of mechanization attributable to a variety of causes, and (3) climatic and health conditions. Other factors determining wage differentials are (1) variations in the efficiency of management and (2) the degree of compactness of markets. With regard to the last, it has been pointed out that only in the large population centers can mass-production methods be used effectively, and that, in less densely populated areas, transportation charges are so high as to reduce the amount of operating revenue which can be given to workmen.

Moreover, sizable wage differentials have persisted also among cities of different sizes in the same region, and the factors described above have operated to cause them. When the effects of size of city are taken into account a large part of the North-South differentials disappear.

Variations in the cost of living, especially in the items of (1) rent, and (2) produce grown by the worker or his farmer relatives, have enabled workmen in the small towns and in the cities of the South to accept lower money wages with little reduction in real wages. And what little difference has existed in real wages has been a result of lower productivity in the small town.²³

Despite these variations in regional wage rates, and those by size of city the NRA frequently set only one minimum wage for an entire industry. Even when multi-minima were established, they were usually set so as to lower materially pre-code differentials. As a result of this policy, the NRA placed economic pressure on employers in small towns and in the South, and discriminated among the states; some employers actually moved their plants to larger towns and cities and even across state lines. In other instances, minimum-rate zones introducing abrupt changes in the minimum induced manufacturers to migrate into the low rate areas. In particular, Baltimore, Maryland, often placed in the southern zone, received several northern plants operating under higher minima, which would not have located there under the pre-NRA wage conditions. Thus, in a country as non-homo-

²³More technically, the pre-NRA differentials can be reconstructed to a high degree of accuracy by a regression depending upon rentals and mean temperature. Mean temperature is correlated with house rental, but has also an independent effect.

geneous as the United States, the introduction of either a single minimum wage or multi-minima must cause migration of industry and population.

In addition, it has been demonstrated that a minimum wage benefits some classes but imposes hardships on others. It definitely causes displacement of both the young, inexperienced worker and the old one whose productivity has decreased. Therefore, it is not surprising that, following a year of the NRA, the United States was compelled to provide funds for keeping the young in school and for old-age pensions. And yet to have substituted government control over exemptions for apprentices and handicapped workers would have led to a huge bureaucracy with discretionary powers. Truly the problems involving minimum wages are enormously difficult.

As regards the effects of the NRA on wages above the minimum, we must conclude that, since many of the NRA code provisions for adjusting the higher wages were vague, it will never be fully known whether they were accepted even in spirit. In fact, no one knows just what the spirit of these adjustments really was. As a rule, whenever employees did not complain, the wage adjustments were assumed to be satisfactory. Viewed a little differently, some administration leaders apparently hoped that labor would force manufacturers and merchants to make "equitable adjustments," and were content to permit the matter to rest there. Thus, the manufacturer and the worker frequently were expected to assume the responsibility of deciding just what constituted equitable adjustments. And although some codes contained a provision authorizing investigations to determine what adjustments should be made, these studies rarely were undertaken and, in the few instances in which investigations were made, results were usually inconclusive.

Available data on wage distributions indicate that after the NRA codes became effective an abnormally large number of workers received wages near the minimum. Such concentration in general was almost complete in industries where the minimum was set higher than the wage formerly obtained by at least one-third of the workers. There was more concentration at the minimum among the women than among the men, and for each sex this was greater in the small than in the large cities. But, in general, industry did not reduce average weekly earnings below pre-code levels despite greatly curtailed hours, and in many instances weekly earnings were actually increased. In only a few cases has the weekly differential between earnings of skilled and unskilled workers decreased while the hourly dif-

ferential has been maintained or even increased.²⁴ Therefore, the concentrations of workers at the minima are to be explained chiefly by increases in wages of workmen previously receiving lower wages; the groups for which pre-NRA average hourly earnings were increased by the greatest percentage show, in general, the most unsatisfactory post-code wage distributions, at least in the sense of a high percentage of employees near the minimum. In some few cases manufacturers' cost was increased while weekly earnings decreased; the wage of the employed skilled worker was divided with the unemployed.

Finally it should be recognized that, beginning with the passage of the NIRA, labor leaders while not denouncing minimum wages, did not hesitate to direct criticism at industry for failing to raise average wages. Their policy was to encourage major strikes as a means of settling difficulties relating to wage reductions, stretch-outs (additional specialized work for operatives), and collective bargaining. Thus, they vigorously fought adverse labor situations arising from minimum wages without, however, actually openly attacking the principle.²⁵

²⁴For instance, the paint and varnish industry reported an hourly differential increased sixteen per cent and a weekly differential decreased twelve per cent.

²⁵But William Green did denounce the minimum-wage proposal of the Secretary of Labor in April, 1933 before the NIRA was passed. See Chapter I, Section 8.

CHAPTER VIII

COLLECTIVE BARGAINING

1. *Methods and Objectives of Labor Unions*

For a proper appreciation of the issues involved in the various conflicts over collective bargaining arising under the NRA, some understanding of the methods and objectives of labor unions is necessary. To begin our discussion we note that organized labor has always had difficulties to overcome before it could greatly enlarge its membership. For example, in May, 1934, a secretary of a local union complained that workers expected their organization to do great things for them overnight, but that they would not deprive themselves of any pleasure in order to attend a union meeting.¹ This attitude, of course, has long been a handicap to unionization. In its early days the Federation concentrated its organizing efforts on disgruntled workers, hoping that those who were at the time indifferent to unions would sooner or later become dissatisfied with working conditions and then would organize.²

On occasions even the labor leaders have been unable to give adequate reasons for unionization. Nearly all organizers, of course, have regarded unionization and higher wages as synonymous, but obviously a higher wage argument has not appealed to workers in plants paying more than prevailing scales.³ Moreover, various managements, which have sensed intentions of their employees to join labor

¹*American Federationist*, Vol. 41, 1934, p. 501. See also *ibid.*, p. 963.

²The following statement made in 1934 by a secretary of a local branch of the United Automobile Workers' Federal Labor Union illustrates labor's position: "There are many ways of getting a man to join a union, but there is no way as sure and effective as when his fellow-workmen convince him right on the job that Labor must be organized. When the company established a company union, we got members by the hundred, but they only joined because they didn't want a company union." *American Federationist*, Vol. 41, July, 1934, p. 710.

³Colonel Malcolm C. Rorty, while with the American Telephone and Telegraph Company, often made elaborate studies of prevailing wages and then, as a matter of policy, offered wages which were higher by at least ten per cent, thereby securing capable, contented workmen.

The author is acquainted with a successful home-builder who always pays his workmen twelve per cent more than union wages only on condition that they disregard the petty jurisdictional disputes of the building craft unions.

It is likely that the 1936 wage increases in steel and other industries were made with some regard to the possibility of forestalling trouble with union organizers.

unions, have instituted employee-representation plans and, at times, increased wages, or eliminated some other item of discontent. Also employers have made it a point to suggest reasons for not belonging to trade unions. In particular, those sponsoring company unions have asked their workers so frequently why they should pay dues, that William Green, president of the American Federation of Labor, felt compelled to prepare an answer. Although not entirely convincing, his views on this issue are well worth quoting in part at this point:

There are difficulties and problems growing out of the work; there are difficulties and problems growing out of the need for individuals to work together to complete the product; there are problems and difficulties growing out of work orders which management issues and there are fundamental problems and difficulties growing out of the terms and conditions upon which men and women do production work . . .

The individual wage earner has no way to discuss problems, grievances or wages with his employer. But if wage earners belong to a union with paid executives, these executives can take up all these matters with management and serve as the union's counsel.

When wage earners believe that they have a right to a voice in deciding terms and conditions under which they work, they will build up their economic power so as to force recognition of their rights.

When wage earners believe that they owe it to themselves and their families to better their economic conditions, they organize a union and pay for the services of a business representative.

When wage earners believe that those who carry on the production process of an industry perform just as indispensable a service as those who invest money, they will organize to put themselves on an equitable status in the industry and to set up those safeguards which will protect their labor investment.

These are the things for which wage earners pay dues.⁴

In another editorial⁵ Green declared that the first and great interest of a union lies in establishing contact with the management, the ultimate object being the utilization of collective bargaining to reach an agreement on wages, hours, and working conditions. In this same editorial he maintained that these contacts should be established immediately by new organizations even though there was no hope of reaching an agreement within a few weeks or even a few

⁴*American Federationist*, Vol. 41, June, 1934.

⁵*ibid.*, Vol. 41, 1934, p. 604.

months after organization, and declared that a new union has made real progress if it has (1) induced improved working conditions within the plant, (2) succeeded in bringing about better understanding between the workers and the management, and (3) given the workers a chance to voice their complaints. Furthermore, according to Green, the union should place itself in a position to give its members adequate protection against discharge or discrimination because of their union activities, and should keep in close touch with the Federation for, "otherwise, it cannot expect the immediate help in the solution of its problems which the Federation can give." Finally, Green pointed out that a union is much more than a purely "fight" organization: it is an educational center for its members; and therefore it can influence them very considerably through the type of educational work undertaken.

Many instances in which Green's picture very accurately describes employer-employee relations undoubtedly can be cited at length, but there are certainly exceptions. In fact, unions themselves often have recognized that some managements are the workers' friends. There is, for instance, the report of the president of a local of the United Automobile Workers' Federal Labor Unions, which says in part:

In meeting with the management we have up to this time shown them various grievances, which are not only beneficial to the employees but the management as well. Thus we are building up a mutual confidence that is desired. By so doing they are more than willing to meet with us at any time that they find it necessary to do so.⁶

Several national and international unions have even gone very much further and made notable advances in encouraging co-operation with management through an economic policy intended to increase production and standards of living. For instance, under the plan adopted in 1923 by the Machinists' Union and the Baltimore and Ohio Railroad Company, officers and members of the labor organization working in the shops of the company undertake to contribute to efficiency; and, in turn, the company gives the union a share of the gains from increased output. This plan has been so mutually successful that it has spread to various other roads of the United States and to the Canadian National Railways. Another example is furnished by the Amalgamated Clothing Workers, a union of men's clothing workers, which assumed the obligation to discover and reduce the

⁶*American Federationist*, Vol. 41, 1934, p. 707.

wastes of the industry, to control overhead costs, and to raise the efficiency of its own members. In fact this labor organization has even taken over many of the functions of supervision to reduce costs, has made loans to manufacturers, and has also assisted manufacturers in organizing new shops.⁷

But not all unions have endeavored to help management. Consider, for instance, the building crafts of the American Federation of Labor and some of the railway brotherhoods, which have succeeded very well in increasing their wage rates or maintaining them even in a severe depression. Even admitting that the railroads are in general over-capitalized and that bondholders are earning high rates on actual values, it is true, nevertheless, that the railway brotherhoods, by so persistently insisting on very high wages, which have in the past been passed on to the consumer in the form of high railway tariffs, have contributed greatly to the high costs of building materials and other heavy goods which must be purchased in quantity before a typical business revival can get under way. And the building crafts with close combinations, through intimidation and coercive acts directed at legislators making appropriations for public buildings, have pushed construction costs still higher. Even the unions in industries producing building materials have contributed their share to these high costs. Thus, a lumber-union letter in the November, 1934 issue of the *American Federationist*, showing this tendency then to incite labor to demand higher wages, reads in part:

If you are a union member, your union can watch every increase in production and every technical improvement which reduces costs. Your officers will know when to drive for restoration of the 1929 wage level, and you need not stop with the 1929 level. Since you are now producing 7 per cent more than you produced in 1929, your wages should eventually be above 1929 by a proportionate amount.

Because of resulting high costs of construction, the workers in other industries must pay scandalously high prices for even the most modest homes. Similarly, in the almost completely unionized anthracite coal mining industry, the wage scales in 1934 were so high that price was prohibitive; the industry was prostrate and thousands of miners were on public relief. Too often labor leaders have forgotten the consumers who are mainly their own members and the workmen

⁷It is of some interest to note that the president of this organization, Sidney Hillman, was a member of the Industrial Recovery Board, and was active in promoting his ideas.

in other industries.⁸ And such unreasonable demands as have been made have not added to the public's esteem of organized labor; the good and the bad unions often have been placed in the same category.

Now as regards labor leaders themselves we note that unions have repeatedly hired as organizers workers fired because of minor combative activities in plants. This has, of course, offered job protection to workers desiring to start unions and has enabled organized labor to grow. Yet, on the other hand, these agitators at times have turned out to be unworthy to lead labor or any other law-abiding group. Thus, we find that Harold Seideman writing in the *Nation* has condemned labor racketeering in the words:

Unfortunately, union leadership in this country is, for the most part, notoriously lacking in social conscience, and more often than not union officials use their position to further their own interest.

Tribute exacted from both the employers and union members swells the already oversized income of labor racketeers who, according to federal estimates, are entrenched in 47 trades. Protesting victims are soon silenced by strong-arm squads, and the czar's political influence is usually sufficient to quash any court action. . . .

Members of local 3 of the International Brotherhood of Electrical Engineers brought a suit against the local officials to account for \$7,500,000 of union funds, much of which they claim had been used illegitimately. This is the same union which contrary to all union principles entered into an agreement with the New York Edison Company not to organize its employees.⁹

Nor is the American Federation of Labor entirely blameless for the racketeering of some officers of its affiliates. The usual excuse which it has offered for failing to prosecute racketeers in its rank has been "lack of jurisdiction." And in so doing it has subjected itself to caustic public criticism. For example, in appointing receivers for local 306 of the motion picture operators, Judge Salvatore A. Cotillo of New York said:

The American Federation of Labor was dilatory in protecting the property and working rights of local 306 of the

⁸On October 8, 1934, Stephen M. DuBrul told the National Conference of Catholic Charities: "It is simply that wages do not come out of employers—they come from the consumer, just as the profits of owners do. This is just another way of saying that wages are good when business is good, and are poor when business is poor — just like profits."

⁹Harold Seideman, "Labor Racketeering — How Corrupt Union Leaders Have Betrayed the Rank and File," *The Nation*, Aug. 16, 1933.

motion picture operators. When organized labor neglects to clean its own house, under its own laws, until conditions become so bad that it finds itself in a court of equity, it must not be surprised to suffer the consequences of its own indifference.

The foregoing considerations clearly show that, in 1933 at the onset of the NRA, there were various hindrances to unionization. Chief among these was labor's inability to define clearly a constructive union program meriting the support of industrialists and the public. Union objectives have been set forth as collective bargaining to obtain higher wages, shorter hours, and correction of grievances, which incidentally have been both real and alleged; and activities of some have included the intimidation of legislators making appropriations for public works. On the other hand, some labor organizations, such as the Machinists' Union and the Amalgamated Clothing Workers, have co-operated with management in reducing waste and promoting constructive policies. Thus, not all unions have failed to present constructive objectives meriting the support of management.

Other hindrances to unionization have included (1) the inability of union leaders to offer the great inducements for joining unions expected by workers, (2) the general failure of unorganized workers to show discontent during the depression, perhaps largely as a result of fear of losing jobs, (3) the development of company unions through special inducements offered by employers, (4) the degeneration of some unions into rackets largely as a result of labor's policy of hiring in organizing positions workers discharged as agitators, and (5) public linking together of unions and racketeers as a result of organized labor's failure to clear its ranks of offenders.

2 . Development of Unions Under the NRA

Clause 1 of Section 7a of the NIRA,¹⁰ guaranteeing the right to labor to organize and bargain collectively through representatives of its own choosing, probably evoked more discussion than any other

¹⁰Section 7a of the National Industrial Recovery Act, which it will be recalled, was suggested by the Department of Labor and incorporated in the Act by Donald R. Richberg, read:

"Sec. 7a; Every code of fair competition, agreement, and license approved, prescribed or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or pro-

part of the law. It was interpreted to have every meaning from the contention of some that it was an outright charter to organized labor to bring about the unionization of all employees covered by the Act, to the insistence of others that no fundamental change in employer-employee relationships was necessarily implied. No one knows exactly the intent of Congress, but Richberg, who helped draft the NIRA, stated on August 29, 1933 that the section was not intended to enthrone any national labor organization or to dissolve any local organization. At this time, he declared further that the law did not destroy the right of an employer to manage his business but that it did establish the right of his employees to manage their own affairs, and that it did recognize the fixing of wages, hours, and conditions of employment, as equally the business of management and workers. Then on September 4, 1933, General Johnson, who took an even more important role in drafting the Act, said the section had the additional meaning that no employer could enter into a contract with a union to employ its members unless it had 100 per cent membership in his plant; for, otherwise, such a contract would interfere with the workers' freedom of choice of representatives or with their right to bargain individually.

Clause 2 was patterned after and even employed much of the phraseology of Section 2 of the Norris-La Guardia Anti-Injunction Act which limits the jurisdiction of courts (see Chapter I, Section 7). Clause 3 required the setting of maximum hours of work, minimum rates of pay, and other conditions of employment approved by the President.

Because of uncertainties as to the meaning of the entire Section 7a many employers followed the policy of taking no official cognizance of changed conditions thereby created, merely letting events take their course. But according to the National Industrial Conference Board¹¹ "the trouble with such a policy was that, while the employer remained inactive, labor-union organizers were likely to be exceedingly active, and it was reported that some of these organizers, in expounding to workers the significance of Section 7a, were giving to it an interpretation more favorable to their cause than strict ac-

tection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

¹¹*Individual and Collective Bargaining Under the NRA*, National Industrial Conference Board, New York, November, 1933, p. 7.

curacy warranted." Thus placed on the defensive, some managements chose to discuss the situation frankly with their workers, explaining what they believed the provision meant; but others were afraid to take this action because they felt it would give undue prominence to the question and imply a fear on their part as to what moves the workers might make. Some employers followed a more positive course: they called in their workers and simply said "by all means organize, but would it not be better to confine membership in such an organization to employees of this company?"

Illustrating a co-operative attitude toward unionization the National Industrial Conference Board published in November, 1933 an extract of a letter from an industrialist who declared that the manufacturers in his industry were working with the American Federation of Labor in the hope of organizing the industry.¹² Even organized labor reported that some companies favored one hundred per cent unionization. Thus, the secretary-treasurer of a local branch of the United Rubber Workers' Federal Labor Union advised the American Federation of Labor that it took his union six weeks to get all workers into his organization even though it "had the backing of the company."¹³ The president of another local of the same union reported that the management had admitted gaining more from the workers than if a company union had been formed as originally suggested by company officials.¹⁴ Again, the president of the Hudson Motor Car Company Local of the United Automobile Workers' Federal Labor Union declared that, thus far, the union had presented only grievances of such a nature that their correction would be beneficial both to employees and management, and that a mutual confidence was being created.¹⁵ In one interesting case an employer writing to the National Industrial Conference Board expressed complete indifference to the action taken by workers, declaring that his business was to make flour and not to fight employees and that he was quite willing to go along on anything reasonable.

But some managements seem to have been actively opposed to unionization of their shops. For instance, the recording secretary of a rubber workers' union in Ohio advised the American Federation of Labor that, shortly after a movement to form a union was started, company officials called in the recognized leader of the movement and tried to dissuade him through the use of flattery, appeals to his loy-

¹²*ibid.*, p. 33.

¹³*American Federationist*, Vol. 41, 1934, p. 488.

¹⁴*ibid.*, Vol. 41, 1934, p. 495. See also p. 496.

¹⁵*ibid.*, Vol. 41, 1934, p. 707.

alty, and threats. According to this complaint between September 22 and October 27, 1934, company officials employed every means of intimidation and coercion that could be devised to dissuade workmen from joining this Federation union.¹⁶ And the recording secretary of a rubber workers' union in Los Angeles declared that although the Regional Labor Board ordered an election to determine the choice of representatives of employees, company "officials were present from the opening of the polls to closing time for the purpose of intimidating employees."¹⁷ More important, on September 19, 1933, William Green presented to General Johnson documents which he declared proved that many employers were coercing employees to join company unions in violation of Section 7a, naming several well-known corporations in various fields of manufacturing.

It is thus seen that industrialists adopted widely varying attitudes toward the meanings of Section 7a. Nevertheless there was some agreement in the interpretations made by leading corporations, labor leaders, and Government. Important because of the size and influence of the General Motors Corporation is a pamphlet issued by the company and bearing the approval of its Executive Committee, in which collective bargaining is defined in the words:

Collective bargaining is to be understood as a method of intercommunication and negotiation between employees and management whose objective is the maintenance of harmonious and co-operative relations through mutual understanding and agreement with respect to terms and conditions of employment. It may be practiced informally as well as formally. . .

Management should recognize the importance of social considerations as influencing broad policies governing industrial relations.

For example, if medical research discovers that certain conditions of employment are inimical to the health of the employees, management should take such action as is practicable to remedy the harmful conditions. . . .

It must be made clear that collective bargaining does not imply the assumption by the employee of a voice in those affairs of management which management, by its very nature, must ultimately decide upon its own responsibility. It does not mean collective employer-employee management and must be limited to employer-employee relationships.

Management cannot agree to submit to arbitration any point at issue where compromise might injure the

¹⁶*ibid.*, Vol. 41, 1934, pages 492-493.

¹⁷*ibid.*, Vol. 41, 1934, p. 500.

TABLE XXII-A
COLLECTIVE-BARGAINING PLANS CLASSIFIED ACCORDING TO
DATE OF INTRODUCTION

Source: National Industrial Conference Board, *Individual and Collective Bargaining under the NIRA*

Periods in which Plans were Established	Number		Per cent of Total	
	Companies	Wage Earners Affected	Companies	Wage Earners Affected
Employee Representation				
Before 1920	76	176,748	11.6	15.2
1920 to June, 1933	127	178,637	19.4	15.3
Exact date not given, but before June, 1933	20	10,552	3.1	0.9
Total before NIRA	223	365,937	34.1	31.4
After NIRA	400	678,141	61.3	58.3
Partly before and partly after NIRA	12	115,107	1.8	9.9
No date given	18	5,109	2.8	0.4
Total	653	1,164,294	100.0	100.0
Union Agreements				
Before 1920	170	84,945	40.9	35.3
1920 to June, 1933	36	12,427	8.6	5.2
Exact date not given, but before June, 1933	26	9,324	6.3	3.9
Total before NIRA	232	106,696	55.8	44.4
After NIRA	174	131,272	41.8	54.4
Partly before and partly after NIRA	-----	-----	-----	-----
No date given	10	2,898	2.4	1.2
Total	416	240,866	100.0	100.0

long-term interests of the business and, therefore, in turn, damage the mass of employees themselves.

Finally, collective bargaining, by its very nature, implies an effort to reach a satisfactory agreement and is not fulfilled when the management merely listens to the proposals of employees or their representatives and rejects them. The responsibility rests on both sides to make every reasonable effort to compose any difference of opinion.¹⁸

With respect to the interpretation of Section 7a made by the American Federation of Labor we note that in June, 1934 it issued a guide to collective bargaining stating: "Where labor is concerned,

¹⁸A Statement of General Motors Corporation's Basic Policies Governing its Relations with Factory Employees, General Motors Corporation, August 15, 1934.

TABLE XXII-B
EMPLOYEE-REPRESENTATION PLANS CLASSIFIED ACCORDING
TO TYPE OF PLAN

Source: National Industrial Conference Board, *Individual and Collective Bargaining under the NIRA*

SIZE OF ESTABLISHMENT	Companies with Various Types of Employee Representation					Total
	Employee Committee	Joint Committee	Both Employee and Joint Committee	Industrial Democracy	Not Specified	
	Number					
1- 49 Wage earners . . .	11	3	35*	----	----	49
50- 99 " " . . .	22	7	2	----	----	31
100- 199 " " . . .	68	24	2	1	2	97
200- 499 " " . . .	107	54	5	----	5	171
500- 999 " " . . .	76	49	7	2	1	135
1,000-2,499 " " . . .	52	38	3	----	1	94
2,500-4,999 " " . . .	10	25	4	----	1	40
5,000-9,999 " " . . .	6	3	3	----	----	12
10,000 and over " " . . .	1	20	2	----	----	23
Total	353	223	63	3	10	652
	Per cent					
1- 49 Wage earners . . .	22.5	6.1	71.4*	----	----	100.0
50- 99 " " . . .	71.0	22.6	6.4	----	----	100.0
100- 199 " " . . .	70.1	24.7	2.1	1.0	2.1	100.0
200- 499 " " . . .	62.6	31.6	2.9	----	2.9	100.0
500- 999 " " . . .	56.3	36.3	5.2	1.5	0.7	100.0
1,000-2,499 " " . . .	55.3	40.4	3.2	----	1.1	100.0
2,500-4,999 " " . . .	25.0	62.5	10.0	----	2.5	100.0
5,000-9,999 " " . . .	50.0	25.0	25.0	----	----	100.0
10,000 and over " " . . .	4.3	87.0	8.7	----	----	100.0
Total	54.1	34.2	9.7	0.5	1.5	100.0

*Includes 2 city-wide employer-employee associations, having 22 and 12 employing members, respectively.

collective bargaining is the central point of the whole recovery program. Wages, hours, and other working conditions are the subject for collective bargaining, when real collective bargaining is once established."¹⁹ And in this same article the Federation declared that the employer must meet the representatives of the union in good faith with the intention of making a real effort to establish a basis of understanding and agreement, and that there must be compromise

¹⁹*American Federationist*, Vol. 41, 1934, p. 599.

TABLE XXIII
DISTRIBUTION OF COMPANIES BY INDUSTRY AND BY METHOD OF CONDUCTING EMPLOYER-EMPLOYEE
RELATIONS, NOVEMBER, 1933, AND MAY, 1934
 Source: National Industrial Conference Board: *Individual and Collective Bargaining under the NIRA*

Industry	November, 1933					May, 1934				
	Companies Dealing					Companies Dealing				
	Individually	Through Employee Representation	Through Labor Unions	Through Various Combinations	Total	Individually	Through Employee Representation	Through Labor Unions	Through Various Combinations	Total
Manufacturing										
Chemicals	132	12	2	9	156	124	14	2	15	155
Clothing	31	9	23	7	70	28	9	23	10	70
Food products	163	21	24	17	226	157	20	25	23	225
Leather and its products	52	20	8	4	84	47	19	11	7	84
Metal working	817	250	19	82	1,168	749	255	20	144	1,168
Paper and its products	112	26	7	14	159	103	24	10	22	159
Printing and publishing	46	68	6	14	134	44	16	5	69	134
Rubber products	16	8	2	3	29	14	6	3	6	29
Stone, clay, glass products	81	14	17	20	132	73	14	19	26	132
Textiles	194	40	21	34	289	177	37	22	53	289
Wood and its products	179	24	5	9	217	173	26	5	13	217
Miscellaneous Manufacturing	138	21	7	12	178	126	19	10	23	178
Total manufacturing	1,961	513	141	225	2,840	1,815	489	155	411	2,840
Extraction and refining										
Mining — coal	1	3	54	5	63	....	3	54	6	63
Mining — metal	3	6	1	....	10	3	6	1	....	10
Petroleum	28	14	....	7	49	22	14	....	13	49
Total—Extraction and refining	32	23	55	12	122	25	23	55	19	122
Grand Total	1,993	536	196	237	2,962	1,840	482	210	430	2,962

and bargaining. The National Labor Board later sustained this view by ruling that collective bargaining involves an obligation on the part of the employer to discuss differences with the representatives of the employees and to exert every reasonable effort to reach an agreement on all matters in dispute.²⁰ At the same time, the Board laid down the further principle that employers must match unacceptable labor proposals with counter offers.

It is clear, therefore, that at least some industrial managements, some labor organizations, and the National Labor Board, held somewhat similar definitions of what constitutes collective bargaining. Yet we must emphasize that some industrial managements adopted points of view in direct conflict with Section 7a by insisting that their employees form company unions and bargain through employee representatives.

As a result of the impetus given by wide discussion of collective bargaining under the NRA both labor and company unions increased in number and strength. In fact, a study made by the National Industrial Conference Board,²¹ reproduced in Table XXII-A, shows that, of 1069 companies reporting collective bargaining plans according to date of introduction, 400 company unions and 174 union agreements were made after the NIRA, as compared with 223 company unions and 232 union agreements before the NIRA. Moreover, Table XXII-B, showing plans of collective bargaining by size of establishment, indicates that the employee-committee type of plan, in which the workers' representatives meet by themselves and confer with the management's representatives only when there is some matter to be negotiated, was especially favored by the small concern. Also the proportion of companies with joint committees, usually comprising equal numbers of representatives elected by the workers and representatives appointed by management, rises as the size of establishment increases.

With further respect to the development of company unions it is interesting to note that although proponents of such organizations held a two-day meeting on Long Island in October, 1933 to discuss methods by which this type of organization could be encouraged, "there was comparatively little change between November, 1933 and May, 1934 in methods of conducting employer-employee relations in plants which had dealt exclusively through employee representation

²⁰*Federal Labor Union No. 18830 vs. National Lock Company.*

²¹*Individual and Collective Bargaining Under the N.I.R.A., National Industrial Conference Board, November, 1933.*

in November."²² Of the total workers in the companies replying in May to a questionnaire of the National Industrial Conference Board ninety-seven per cent of those reporting the previous November still dealt through company unions; of the remaining three per cent, 2.2 per cent had changed to labor union dealing, and only .8 per cent had returned to individual dealing. Thus the Long Island conference served, if at all, merely to decrease the trend towards labor unions, and to cause plants previously dealing individually with employees to change to employee-representation plans or more generally to combinations of this with labor unions and individual dealings. As shown by Table XXIII every industrial group, with the exception of metal mining in which there was no change, showed a smaller proportion of companies dealing exclusively individually in May, 1934, than in November, 1933, the decline from 57.1 per cent to 44.9 per cent in petroleum refining being the greatest.

In view of the activity of various employers in promoting company unions and of some labor organizers in interpreting Section 7a to their own advantage even to the extent of misinterpreting its intention, it is not surprising that intense industrial strife followed the enactment of the NIRA. The ink with which the President signed the Act had scarcely dried before there broke out a series of strikes claimed to be unparalleled in history. Thus, Noel Sargent, secretary of the National Association of Manufacturers, in October, 1933 was reported to have declared that the 1000 strikes occurring in the first ninety days of the NRA could not in any circumstances be described as a normal phase of recovery and said: "during the first six months of this year there were only about 2,400,000 working days lost by strikes, and in the three months preceding NIRA there were only 339 strikes. More working days were lost in the first quarter of the NIRA period than in each of the entire years of 1930, 1931, or 1932."²³ He then attributed the strikes to the failure of labor unions to recognize that the Recovery Act outlawed the closed-shop agreements which employers had formerly made with them, and contended that the strikes were delaying recovery.²⁴ Strikes and labor disputes continued with little abatement even after the ninety days named by Sargent and reached a high point in September, 1934 when 4,159,000 man-days

²²*Individual and Collective Bargaining in May, 1934*, National Industrial Conference Board, p. 15.

²³*Wall Street Journal*, October 25, 1933.

²⁴Yet that part of the President's message at the signing of the NIRA (see Chapter II, Section 8) shows clearly that he did not expect the Act to foment labor disputes.

TABLE XXIV
STRIKES AND LOCKOUTS, 1929 TO JANUARY, 1935

Source: B. L. S. *Monthly Labor Review*, March, 1935

Year or month (1)	Number of strikes and lockouts					Workers involved in strikes and lockouts		Man-days lost in strikes and lockouts during year or month (9)
	Beginning—		Total in progress (4)	Ended in year or month (5)	In effect at end of year or month* (6)	Beginning in year or month (7)	In progress during year or month* (8)	
	Prior to year or month †(2)	In year or month (3)						
1919	---	3,630	---	---	---	---	---	---
1920	---	3,411	---	---	---	---	---	---
1921	---	2,385	---	---	---	---	---	---
1922	---	1,112	---	---	---	---	---	---
1923	---	1,553	---	---	---	---	---	---
1924	---	1,249	---	---	---	---	---	---
1925	---	1,301	---	---	---	---	---	---
1926	---	1,035	---	---	---	---	---	---
1927	---	734	---	---	---	---	---	---
1928	58	629	687	656	31	357,145	438,374	31,656,847
1929	31	903	934	913	21	230,305	266,305	9,976,213
1930	21	653	674	667	7	158,114	170,457	2,730,868
1931	7	894	901	880	21	279,299	284,443	6,386,183
1932	21	808	829	817	12	242,826	244,144	6,462,978
1933	12	1,562	1,574	1,544	30	812,134	813,134	14,818,846
1934	30	1,607	1,637	1,526	111	1,297,000	1,337,000	18,666,000
1933								
January	12	75	87	55	32	20,172	21,169	251,829
February	32	67	99	64	35	11,114	19,989	113,215
March	35	98	133	94	39	40,548	47,463	343,459
April	39	80	119	72	47	23,793	36,874	551,930
May	47	140	187	137	50	44,589	64,891	664,689
June	50	137	187	135	52	42,233	61,330	576,635
July	52	240	292	208	84	111,051	139,099	1,505,408
August	84	246	330	231	99	167,953	211,524	1,670,612
September	99	223	322	197	125	244,636	298,480	3,373,862
October	125	129	254	156	98	56,164	219,846	3,669,502
November	98	67	165	113	52	38,062	139,208	1,298,113
December	52	60	112	82	30	21,822	45,612	404,993
1934								
January	30	80	110	73	37	38,913	78,165	653,202
February	37	79	116	73	43	83,507	115,542	915,873
March	43	141	184	130	54	88,205	120,830	1,345,310
April	54	184	238	154	84	133,640	170,812	2,258,684
May	84	195	279	188	91	152,211	224,201	2,079,047
June	91	141	232	117	115	39,521	101,028	1,583,103
July	115	124	239	151	88	151,127	214,764	1,955,916
August	88	150	238	140	98	57,868	114,444	1,684,197
September	98	119	217	142	75	412,668	484,491	4,001,386
October	75	176	251	153	98	76,194	102,392	861,448
November	98	108	206	94	112	34,153	97,077	863,894
December†	112	110	222	111	111	29,000	79,000	465,000
1935								
January†	111	125	236	107	129	67,000	99,000	748,000

*Column 2 indicates the number of strikes and lockouts which were still in progress at the end of the year (see figure in column 6 for the preceding year). The yearly figures in column 8 are not totals of the 12 monthly figures. Since many strikes and lockouts last more than 1 month, each monthly figure is larger than the number involved in strikes and lockouts beginning in that month. The annual total is the sum of the number involved in strikes and lockouts beginning in each of the 12 months (see column 7), plus the number carried forward from the single month of December.

†Preliminary.

were lost through such strife. A relative comparison of strikes in this period with preceding years is given in Table XXIV which shows the number of industrial disputes beginning in each year from 1919 to 1934, the number of workers involved, and the man-days lost from 1928 to April, 1935. While the sweeping claims of NRA opponents are not substantiated by these figures, there was a considerable increase in the number of disputes following the enactment of the NIRA.

3. Some Typical Conflicts Over Collective Bargaining

Important from the point of view of publicity received and the effects on attitudes of industrialists towards the NRA and collective bargaining in particular, is the case of the Weirton Steel Company, a subsidiary of the National Steel Corporation. The facts are that in June, 1933 the management of this company submitted an employee-representative plan to its workers, and, according to an employee named John Larkin, there was unanimous opinion among employees in favor of the plan;²⁵ officers and representatives were chosen the same month in an election in which 88.4 per cent of the employees participated. Then on September 26 a local of the Amalgamated Association of Iron and Tin Workers called a strike in one department of the tin mill, and closed all the gates of the plant. The strikers complained to the National Labor Board and this body requested the management to appear before it to discuss the situation, the board's invitation being accepted by Ernest T. Weir, chairman of the board of directors of the company. Shortly afterwards Weir, the National Labor Board, and the workers, reached an agreement whereby the strikers would return to their jobs and the board would supervise an election under its own rules to choose employee representatives for collective bargaining. Although officers of the company union did not approve of the agreement reached and had not been invited to attend the meeting of Weir with the board, they nevertheless amended the union's rules to permit supervision of the election. Following this, they requested the board to send a representative to oversee the elections stating that, according to the by-laws of their organization, these had to be held on December 15, 1933. Then, after waiting two weeks without receiving a reply, they decided to hold the election without any help from the federal board.

²⁵Hearings before the Committee on Education and Labor, United States Senate, 73rd Congress, S. 2926, April 4 to April 9, 1934, p. 766.

A few days before the election a representative of the board appeared and proposed that nominations be made by petition rather than by secret ballot as provided in the company union's by-laws. But the entire forty-nine incumbent representatives opposed this plan on the ground that those who sign a nominating petition of an unsuccessful candidate are subject to intimidation, coercion, or reprisals by the elected officers. Also the board's representative proposed rules providing for ninety-eight representatives instead of forty-nine. These proposals were quickly rejected by the employees' representatives and the board was then invited to supervise an election under the union's own rules. When this invitation was declined, the employees decided to hold the election without supervision.

As a result of this decision, on December 14 General Johnson sent a telegram to Weir in which he expressed the opinion that a deliberate violation of federal laws was about to be committed and warned that, if this violation occurred, the Blue Eagle would be withdrawn and the Attorney-General would be requested to begin prosecution immediately. Following this, Weir talked with Johnson over the telephone and, according to the former, both agreed that the question was one for the courts to decide. Weir then issued the public challenge: "If the National Labor Board thinks we have violated any law or broken contract, let it proceed in the courts. Meanwhile, we shall not interfere with our employees' holding the election which they are entitled to hold tomorrow under their by-laws." The next day in an interview he declared that his company had been drawn into the conflict only because it believed its duty was to stand behind the great majority of its workers in resisting illegal interference in their organization by the National Labor Board.

But the Labor Board placed a different interpretation on the company's action; and at the board's insistence the United States Government then asked a federal court for an injunction restraining the Weirton Steel Company from interfering with the employees' selection of representatives. About two months later a decision in the case was handed down by Judge John P. Nields of the Federal District Court of Delaware, who declared that no evidence had been presented to show that the company had interfered, and, further, that Section 7a was unconstitutional because the relations between manufacturer and employee were intrastate and not subject to regulation by Congress.²⁶ This was, of course, a major preliminary defeat for the NRA

²⁶For the text of the decision see *Commercial and Financial Chronicle*, Vol. 140, 1935, pp. 1406-1407.

but, rather than abandon Section 7a as this decision forecasted should have been done, the Government immediately gave notice of appeal to the United States Supreme Court. Before the case was tried, this tribunal in a ruling on another action had, however, declared the Act unconstitutional in its entirety.²⁷

Industrial disputes in two other large industries — automobile manufacturing and bituminous coal mining — centered on the open shop question. Both industries submitted codes carefully designed to guarantee the continued existence of this institution, the automobile manufacturers, in particular, insisting on the insertion of the following clause qualifying Section 7a:

Under the foregoing provision, the employers in this industry may continue the open-shop policy under which the selection, retention, and advancement of employees will be on the basis of individual merit without regard to their affiliation or non-affiliation with any labor or other organization.

This provision was bitterly denounced at a hearing on the code, by William Green and Donald Richberg, both of whom declared that the open shop meant a closed shop to union labor. Then the NRA's Labor Advisory Board strenuously objected to codes placing any interpretation on Section 7a, and urged General Johnson to issue a statement clarifying the position of the Administration. As a result, Johnson announced, on August 23, 1933, that neither open nor closed shops were mentioned in the Act and that, therefore, neither could be inserted in codes. Thus denied the use of the words "open shop" automobile manufacturers stated their traditional labor policy in the words:

Without in any way attempting to qualify or modify, by interpretation, the foregoing requirements of the NIRA, employers in this industry may exercise their right to select, retain or advance employees on the basis of individual merit, without regard to their membership or non-membership in any organization.

At the same time some members of the industry informed the NRA that the automobile code would either contain this provision or else no code would be offered; and in the event a code was imposed, they would fight it in the courts. Not wishing at this time to antagonize such an important industry, the NRA, including the Labor Advisory

²⁷*Schechter Poultry Co., vs. United States.* See Appendix VIII .

Board, yielded to the industry's demand. The board, in particular, gave its assent to the code provision, "with the understanding that no section or sentence contained therein modifies, qualifies or changes Section 7a of the NIRA, and the code does not establish a precedent to be followed in the preparation or acceptance of any other code." As a result of this victory of automobile manufacturers, so many other industries attempted to insert similar merit clauses in their codes that on October 28, 1933 President Roosevelt felt called upon to announce publicly that future codes should not interpret Section 7a. The next development was on December 17, 1933, when, despite opposition to the merit clause, the Administration approved the petition of the National Automobile Chamber of Commerce to extend without change to September 1, 1934 the code which had been drawn to expire on December 31, 1933 or earlier if the President by proclamation, or Congress by joint resolution, should end the NRA. General Johnson's attitude in granting this request was that the President's statement of October 28 had disposed of the merit issue and, therefore, he need not attempt to remove the clause.

Then, early in March, 1934, 2000 workers of the Fisher Body Company, a member of the automobile manufacturers' industry, voted to strike for (1) a twenty per cent increase in wages, (2) a thirty-hour week or overtime pay at the rate of time and one-half for all hours worked in excess of thirty, and (3) recognition for collective bargaining. And during the month dissatisfaction with collective bargaining as practiced by several automobile manufacturers steadily grew until an order was issued by the Automobile Workers' Union of America calling a strike of 44,000 workers for March 21, 1934. But on the day before the strike was scheduled President Roosevelt requested and secured a postponement until he could hold conferences of union officials and manufacturers and, after several days of meetings with employers and representatives of employees, succeeded in negotiating a compromise settlement.

The new automobile agreement provided that employees should have the right to elect representatives of their own choosing and that, if there should be more than one employees' group, each bargaining committee should have total membership pro rata to the number of men each represented, a plan of proportional or minority representation leading to important future issues involving collective bargaining. In addition to taking this important step, the NRA agreed to set up a board in Detroit (responsible to the President) which would pass on all questions of representation, discharge, and discrimination,

its decisions to be binding upon both employers and employees. Also, the agreement stipulated that in reductions or increases of force, married men with families were to be given first consideration, and then seniority, individual skill, and efficient service, in the order named.²⁸

Shortly after this agreement, that is on March 31, 1934, the automobile industry voluntarily initiated a ten per cent reduction in hours without reduction of pay; but even so union officials were not yet satisfied. Union disputes occurred throughout the spring and summer and, in September, 1934, when the question of extension of the code arose, labor organizations aggressively fought the inclusion of the merit clause. Yet, despite their opposition, the President permitted retention of the provision and extended the code to November 3, 1934. Then, beginning in October, organized labor made an even more active and determined drive to secure shorter hours, higher wages, and concessions regarding working conditions. Nevertheless the President again extended the code unchanged. In January, 1935 Green vigorously opposed a further extension of the code,²⁹ complaining that in the past labor had not been sufficiently consulted. However, the industry paid little attention to Green, for on January 25 it had found out from figures released by the Automobile Labor Board that nearly 95 per cent of automobile workmen were not members of the Federation.³⁰

We recall next that much disagreement had existed over the open-shop question, which had led to serious disputes in the bituminous coal industry. In fact, twenty-eight different codes had been submitted by September 1, 1933. Then early in September, the United Mine Workers and the Appalachian coal producers reached an understanding, hailed by Johnson as pointing the way to a satisfactory code. But the stipulations on hours of work and wages were unsatis-

²⁸Following this settlement, William Green issued a statement reading in part:

"Let us hope that this means continued peace, the establishment of a better relationship between employers and employees and the recognition on the part of the Automobile manufacturers that the old order is passing and a New Deal which provides for the proper recognition of the rights of labor is here and fully recognized."

²⁹To complete the record it may be said that on January 31, 1935 the code was modified (1) to permit manufacturers to agree to introduce new models in the fall so that the initial new-car production and the seasonal sales would not come at the same time, thereby attempting to regularize employment, and (2) to provide overtime pay at time and one-half for all hours in excess of 48 per week.

³⁰The Automobile Labor Board announced on January 25, 1935, that elections which it had supervised showed only slightly more than 5 per cent of automobile workers belonging to unions of the American Federation of Labor.

factory to the remainder of the industry. On September 7 General Johnson, exasperated by the continuing delay, suggested a code which he threatened to impose if a compromise was not reached within two days, and, as a result, the West Virginia, Ohio, and Pennsylvania producers came to an agreement. This code, containing a clause defining the intent of Section 7a, was passed as proposed but not endorsed by the NRA, and consequently when the President signed it he removed the interpretation. Following this action producers in the non-union mines of Alabama and Western Kentucky refused to sign the code. Thereupon, General Johnson rushed to the support of the President and announced that the code would be imposed upon the recalcitrant minority. Shortly afterward, however, an understanding was reached whereby Alabama mines paid a basic wage of \$3.40 per day against \$4.60 for those in Ohio and Pennsylvania.

This basic-wage agreement, nevertheless, disposed of only one of many issues and strife continued. Almost immediately after the code had been approved, 75,000 employees in "captive"³¹ mines went on strike, demanding the same wages and hours as were granted under the code and also recognition of their unions. At once the President and General Johnson negotiated with the owners of such properties to obtain a settlement. By September 30 the President was able to announce the signing of an agreement to abide by the labor provisions of the bituminous coal code, and to urge the strikers to resume their work. However, only a third of the disputants heeded his plea, the rest demanding recognition of their unions. Then, after much further negotiation, mine operators pledged themselves to recognize the employees' union;³² but even so at least half of the strikers refused to return to work until they should obtain written agreements. At this point, national labor officials, recognizing the absurdity of such a position, intervened to secure acceptance of the President's truce.

Strife was resumed in January, 1934 when the United Mine Workers' Union, which was thoroughly dissatisfied with the \$3.40 minimum wage granted to the Alabama mines, began an active drive for members among southern workers. Now that the Government had sanctioned a wage differential it was easy to organize southern

³¹A captive mine is one producing for the consumption of the owner and not for sale. Steel companies and railroads own most of such properties.

³²Shortly thereafter the Colorado Fuel and Iron Company announced the abandonment of an employees'-representation plan which had been in effect for over twenty years. This was done in accordance with an agreement of the company to abide by the results of an employees' election to decide whether the company-union plan should be retained or a union of the United Mine Workers introduced.

workers by encouraging them to hope that such action would increase their wages to \$4.60. By the middle of March, the union had gained such strength as to cause it to believe it could demand virtual elimination of the wage differential. Therefore, a nation-wide strike of 450,000 miners was called April 1, the demands being a large wage increase in the South and a smaller one in the North.

Promptly following the strike call the Appalachian producers and John L. Lewis, President of the United Mine Workers, petitioned General Johnson for a decrease in hours from forty to thirty-five and an increase in the northern wage from \$4.60 to \$5.00 and in the southern wage from \$3.40 to \$4.60. The petition, which practically eliminated wage differentials, was hastily approved by General Johnson over the protests of Alabama and Georgia producers who even threatened to close their mines. Once the code was amended, many operators made good their threats, and in protest over these lockouts, workers in various neighboring mines, which had continued to operate, went on strike. Moreover, the dissenting Alabama producers quickly sought relief in the courts, Federal Judge Charles B. Kennamer granting on April 6 an injunction restraining General Johnson from enforcing the amendment.

In discussion with Leon Henderson, the author declared unqualifiedly that General Johnson had greatly erred in narrowing the differential. In brief, the NRA would have to stop eliminating differentials and thereby causing sudden economic disruptions or else expect disaster. Shortly afterwards the writer prepared a memorandum in which he emphasized that the Act recognized differentials according to localities and specifically stated that plants were not to be closed except *temporarily*. The evident conclusion was that elimination of wage differentials of such long standing³³ was entirely contrary to the Act since the action would close permanently the Alabama mines.³⁴

A few days afterward President Roosevelt issued a statement embodying several of the views expressed in the memorandum and urging the miners to return to work; and simultaneously General Johnson modified the code by setting the basic wage at \$3.80 for Alabama and Georgia, \$4.60 for Kentucky, and \$5.00 for the Northern Appa-

³³In 1923 the United Mine Workers, through the offices of the United States Department of Commerce, negotiated the Jacksonville agreement, which was primarily designed to eliminate then-existing wage differentials. The results were so disastrous as to place the union in disrepute and to weaken it materially through loss of members.

³⁴The coal veins there were narrower than in the North and not so well adapted to the use of heavy machinery.

lachian region. But difficulties had not yet been concluded: almost immediately thirty-four Kentucky operators, who felt that they had been placed in an unfair competitive position by this arbitrary action, applied for an injunction which was granted³⁵ on May 19, 1934, and was still in effect when the NIRA was declared unconstitutional.

Even Johnson's modification of the code did not end the labor disputes in the coal industry. Strikes and threats of strikes continued unabated. Then, in 1935, Senator Joseph F. Guffey of Pennsylvania, a former executive in oil companies, introduced a bill providing for the federal regulation of the coal industry; the industry would be taxed on each ton of coal produced, but 95 per cent of the tax would be returned to those firms acceding to wage and hour regulations promulgated by the Government. The Appalachian and a few other producers, who expected to benefit through higher prices and no immediate wage increases, heartily supported the measure, but there were objections especially from the open-shop mines. When Congress, doubtful of the constitutionality of the bill, delayed in its passage, the United Mine Workers, emboldened by previous successes following threats to the NRA, warned Congress that, if the bill were not promptly enacted, a nation-wide strike would be called. Then, following what appears to have been complete intimidation by this union, the President, sworn to defend the Constitution, sent his now-famous message to Congress not to allow doubts of constitutionality to prevent passage. And so Congress, only slightly less subservient to the President than in the preceding two years, prostituted itself completely: yielding to the demands of a special group it enacted legislation of a kind which the Constitution was specifically designed to prevent, and which it recognized as being unconstitutional.

Consider next a critically important dispute in the cotton textile industry, revolving around the speeding up of workers (stretch-outs) — an old issue nurtured to full bloom under the NRA. The pre-code difficulties were attacked by the industry through Section XV of the code, which specified that, until adoption of further provisions to prevent improper speeding up of work, no employee of any mill should be required to work in excess of the practice prevailing on July 1, 1933, unless such additional work should be approved by an agency set up to study the question. Then on July 21, 1933 those charged with the responsibility of studying the stretch-out — Robert W.

³⁵In handing down this decision Federal Judge Charles I. Dawson termed the NIRA "the boldest kind of usurpation . . . tolerated by the public only because of the bewilderment of the people in the present emergency." This case although appealed by the Government was never argued in the Supreme Court.

Bruere, B. E. Deer, and George L. Berry — reported that in a pre-NRA period this system of specialization had in many cases been abused by employers through hasty and ill-considered additional machine installations per worker with resultant overload on employees. Next, the committee agreed that it was not then feasible to control the application of the system through the code but that some solution undoubtedly could be found through a progressive study of the problems involved; and to this end it recommended the appointment of a national industrial relations board composed of three members, one for the industry, one for labor, and one to be appointed by the NRA Administrator. A short time later such a board was created, but it was not particularly adept at settling questions relating to the stretch-out and, consequently, organized labor soon took matters into its own hands.

Early in 1934 Alabama textile workers went on strike, the reasons being (1) to protest against the stretch-out, which was intensified by the NRA minimum wages, (2) to protest against dismissal of workers for union activities, and (3) to gain recognition for the union as the collective-bargaining agency of the employees.⁵⁶ The Alabama dispute was not settled quickly, dissatisfaction spread to other regions, and, as a result, on August 13 the national union threatened a nation-wide strike on the issues involved in the Alabama case and, despite the fact that hourly wages in the industry in March, 1934 were 70 per cent higher than in March, 1933, for higher wages and reduction in hours. This brought no settlement in Alabama and so three days later the United Textile Workers of America ordered a walkout of 500,000 textile employees for a date to be announced later. When, on August 30, the American Federation of Labor assured the textile workers of its support, the nation-wide strike was called for September 1.

Offers of mediation made by the National Labor Relations Board, whose functions will be considered in the next section, were curtly refused by the Cotton Textile Institute. In fact, in a telegram to the chairman of the Board declining its services, George A. Sloan, president of the Institute, declared:

First, the Code of Fair Competition for the Cotton Textile Industry was formulated after a full hearing at which representatives of labor and of consumers were heard. That

⁵⁶The issues were precipitated by an NRA ruling which allowed mills to curtail operations by 25 per cent to reduce the large inventories which were accumulating.

code, upon approval of the President, became a law of the land with precisely the same effect as if it had been enacted by Congress. There is now a demand by officials of a labor organization that this code be altered fundamentally by reducing the maximum hours which an employee may work and increasing the minimum rate of pay. The Government, the public and the industry are now confronted with the threat that unless the law is changed and changed immediately, the industry will be closed by strike and kept closed until these changes are made. . . . A strike with certain intimidations is in our view as improper a method of forcing employees into the selection of their representatives in collective bargaining as it is of forcing the Code Authority and the Government into code amendment.

In view of this situation, we are unable to enter into conference with the group threatening the strike.

Apparently the industry had accurately gauged its adversary for on September 19 Sloan reported that 193,367 of approximately 299,000 workers in Southern mills were still working.³⁷ At the same time, he added the warning to the strikers that the mills still had about seven-weeks' stock on hand, whereas they had had at the beginning eight-weeks' accumulation. Two days afterward President Roosevelt intervened by requesting the workers to return to their jobs, and urged the manufacturers to take them back without discrimination. At this time, he also proposed (1) the establishment of a textile labor relations board to consider all labor disputes of the industry, (2) the inauguration of a new and more complete study of the stretch-out system, and (3) a study of wage differentials to be made by the Department of Labor. The next day officials of the United Textile Workers of America, citing the request of the President, ordered the strike terminated, and although the workers returned to their jobs without having won a single point, union officials claimed a great victory!³⁸

³⁷Chart II shows that at least half of the workers in the entire industry were still on the job; apparently, therefore, there were more workers on strike in New England than in the South.

³⁸It is of passing interest to note that the textile strike was probably dramatized to a greater extent than any other ever staged in America; both the public and the strikers were kept informed on the issues and the progress of the dispute by radio, press releases, letters, and speeches. The dramatization began with the strike call itself which was broadcast in the presence of labor leaders from a specially installed telegraphic key in the strike headquarters. Also a prize of a large silk banner was offered to the first union to report that 100 per cent of its members had walked out. In addition, 200 smaller banners were offered for the next 200 unions reporting every member on strike.

See the *American Federationist*, Vol. 41, 1934, pp. 1369-1373.

Another important labor dispute arising from a different issue involved the Harriman Hosiery Company of Harriman, Tennessee. Employees of this Company began in July, 1933 to join a union of the American Federation of Labor. After the alleged dismissal of several workers for union activities, a strike was called for October 26, 1933, and the company immediately thereafter began to import strike-breakers. Unsuccessful attempts to settle the dispute, continuing for several months, were made by both the National Labor Board and the Atlanta Regional Board. Then, in February, 1934, the national board declared that the firm's rejection of a proffered agreement with its employees impugned its good faith and was "indicative of a desire to perpetuate discord, foster industrial unrest and to obstruct the forces of recovery." A few weeks later, Senator Wagner, chairman of the National Labor Board, wrote to General Johnson saying that the company had been offered an opportunity to show cause why the case should not be referred to the Compliance Division of the NRA³⁹ for the withdrawal of its Blue Eagle, or to the Department of Justice for immediate action. The NRA, however, did nothing until April 20 when the Blue Eagle of the Tennessee company was finally withdrawn. Then, in protest at this action, fifty-six business men of the town of Harriman voluntarily surrendered their insignia; and on the same date the mill's counsel publicly declared that facts and justice had played no part whatever in the decision of the National Labor Board. He pointed out that, at the time, the board was composed of three presidents of national labor unions — William Green, John L. Lewis, and George Berry — and of an avowed labor union supporter, Father Francis Haas, in addition to Leo Wolman, and Pierre S. du Pont. Undisturbed by the counterattack, the board, following alleged continued violation of Section 7a, transmitted the evidence to the Department of Justice and requested immediate prosecution. However, after study of the case, Attorney-General Hugh S. Cummings announced on June 28 that he would not prosecute the mill on the evidence offered. Then, on June 30, he wrote General Johnson:

We have given careful consideration to the matter and can find no reason for changing our view, which is to the effect that the available evidence is not sufficient to warrant a criminal action.

³⁹Very early in the life of NRA, General Johnson set up a Compliance Division to arbitrate disputes based on alleged code violations. The chief weapon of the Division was its power to remove the Blue Eagle from a non-complier (see Chapter III). If this action was unsuccessful, the Division could ask the Department of Justice to prosecute for violation of federal law.

Cummings then added that his decision did not require General Johnson to return the Blue Eagle; the rules and regulations governing its use were prescribed by the Recovery Administration and were not part of the Act itself. But, in the circumstances, the NRA was clearly forced to restore the emblem, and so A. R. Glancy, Field Assistant to General Johnson, negotiated an agreement stipulating that the company should immediately re-employ twenty-five of the 300 strikers, unless they refused to accept the terms, and twenty-five additional ones before January 1, 1935. The mills, closed since June 25 as a result of the loss of public contracts (see Chapter XI, Section 3), reopened on July 23.⁴⁰ One month's activity had been lost fighting an arbitrary unjustified threat of a lawsuit under an Act later declared to be unconstitutional.

Most vicious, however, of the various types of abuses developing in labor relations were the swearing out by discharged employees of affidavits to the effect that employers worked them overtime in violation of their code, and the action of regional labor boards in granting back wages to complainants even when employers believed they had shown these affidavits to be false. Because these boards were so biased as almost invariably to prefer to believe the workmen, some employers were compelled to insure against fines by hiring their new help at the minimum instead of the customary higher pre-code wage.⁴¹ The alleged friends of labor in their great zeal to improve labor conditions overlooked justice, and thus labor suffered through having to accept wages lower than might otherwise have prevailed.

From the preceding discussions it should be apparent that frequent causes of industrial disputes have been (1) interference of industrial or union leaders in the election of representatives for collective bargaining, (2) attempts of industrialists to perpetuate open-shop policies on the basis of merit rather than union membership, (3) efforts of employers to establish company unions or maintain them with other unions, (4) the method of selecting a bargaining committee in plants where more than one type of union existed, (5) the dismissal of employees belonging to unions, (6) the necessity to make good on promises of higher wages and shorter hours made by organizers of new unions, (7) the failure of a code to include a sec-

⁴⁰Then, on August 7, the Executive Council of the American Federation of Labor demanded that the NRA again remove the Blue Eagle of the mill; but this request was ignored.

⁴¹This was possible because of ambiguous or meaningless code provisions relating to wages above the minimum. As was noted in Section 6 of the preceding chapter, most codes provided for the maintenance of pre-code wages above the minimum, but many provisions were vaguely worded.

tion of an industry, (8) the establishment of arbitrary minimum-wage differentials unsatisfactory to organized labor, and (9) attempts of industrialists to compensate for increased NRA wages by speeding up production. Moreover, the presumption of dictatorial authority and the adoption of biased attitudes by the NRA and its adjunct, the National Labor Board, had the effects of (1) so inflaming some industrialists as to make settlements of disputes difficult and (2) forcing industry in self-defense to institute suits testing the constitutionality of the NIRA. In some instances where insufficient evidence to obtain court convictions existed, NRA compliance symbols were withdrawn and firms were thereby forced to suffer the loss of contracts and the suspension of operations. Finally, in cases where the evidence consisted merely of contradictory oaths by employers and discharged employees, the latter were almost always awarded decisions by the regional labor boards.

4. The National Labor Relations Board and Majority Rule

In the preceding section it was recalled how the President in part settled a strike in the automobile industry by establishing the principle that bargaining committees of plants having more than one union should be composed of members elected by each group, the relative number being proportional to the members in each group. But this decision did not settle the issue: industry favored the President's method of proportional representation; labor insisted that the union having a majority of workers represent all workers.

On September 1, 1934, less than two months after the National Labor Relations Board was established, it handed down a major decision favoring majority rule. At this time, in the case of the Houde Engineering Corporation of Buffalo and the United Automobile Workers' Federal Labor Union Number 18839, the board, adopting the point of view of labor, ruled that the representatives of a majority of workers in a company should constitute the sole agency for collective bargaining with the employers and should represent all workers for this purpose. The board, in explaining its decision, contended that the negotiation of a contract with a minority would be absurd and that, if a committee representing both unions were recognized, the majority would rule in the end; the principal effect of proportional representation on a committee would be to weaken both sides through confusion arising from conflicting ideas. This decision, it is important to recognize, was a reversal of the policy enunciated by the President when he settled the automobile dispute in March,

1934 and established the Automobile Labor Board. Furthermore, the ruling conflicted with the following joint interpretation of Section 7a made by Johnson and Richberg on February 2, 1934:

The selection of majority representatives does not restrict or qualify in any way the right of minority groups of employees or of individual employees to deal with their employers.

Therefore, on September 12, two days after the Houde Company had announced that it could not comply with the decision, President Roosevelt, attempting to explain the contradiction between this decision and his own, stated that the question of whether labor should be represented solely by those elected by a majority in a given plant or industry, or whether it should have proportional representation in collective bargaining, depended largely on the industry. But he failed to explain in what way this company differed from the automobile industry on this particular point.

On the day the President offered this explanation the National Association of Manufacturers advised employers to ignore the Houde decision. As a result, an issue of national importance was created. The board now had to enforce its ruling or suffer considerable loss of prestige; consequently, it promptly asked General Johnson to remove the Blue Eagle of the company, and on September 15, 1934 this was done. Then, on September 24 officials of the Department of Justice reported preparation of suit against the company for non-compliance.

Eight days later Lloyd K. Garrison announced his resignation as chairman of the board stating as a reason the necessity for returning to his duties at the University of Wisconsin, and a few days later the Department of Justice declared that it would not immediately prosecute. However, the new chairman of the board, Francis Biddle of Philadelphia, requested that the company be prosecuted and, in November, 1934, the Department of Justice instituted suit.

With regard to the merits of the Houde ruling of the National Labor Relations Board, the *American Federationist* has said that majority representation, which had been a trade-union practice for over 50 years, was never questioned until employers began asking for a way to evade Section 7a.⁴² Labor could not compromise, for the policy of dealing with two groups created and continued a spirit of rivalry, suspicion, and friction between the leaders of the committees

⁴²*American Federationist*, Vol. 41, 1934, p. 1102.

and made it possible for the company, by granting special favors to one of the organizations, for instance, the company union, to prevent the growth of the other and to make the employees uncertain as to which they should join. Further reasons why organized labor has insisted on the majority rule in collective bargaining were given in the same journal for January, 1935, where it is contended that successful governments, in general, have used majority rule and that their strength has been due to the acquiescence of the minorities. With regard to proportional representation, the position taken in the article is thus stated:

It is inherently impossible for a committee, composed of members representative of different groups and interests, to successfully negotiate a collective agreement between labor and management. It is a practical impossibility for a minority group to secure an advantage in working conditions over the majority and to hold this advantage over an extended period of time. It has been fully and conclusively demonstrated in practice that proportional representation in collective bargaining is untenable and impossible of application from a standpoint of either labor or management.

Majority rule on the basis of a clearly defined industrial unit must be accepted as the axiom of collective action in industrial relations.⁴³

On the other hand, opponents of the majority rule in collective bargaining declare that it has the effect of setting up a labor monopoly and thereby, in reality, forcing employers to enter into bargaining "at a pistol point." They maintain that minorities have always served the useful function of preventing excesses of the majorities, and to support their contentions that labor needs to be checked cite many instances of labor racketeering. They say that this racketeering can only be stamped out by forcing competition with organizations which enter into friendly negotiations with employers and in consequence of their friendliness receive greater rewards than the racketeers. Furthermore, they point out that there are both Republicans and Democrats in Congress, even though the Democrats are greatly in the majority, and ask if organized labor would unseat the Republicans because they represent minorities. Still other critics have been afraid that the adoption of majority rule in collective bargaining will lead to serious racial problems. For example, C. A. Higgins of the Hercules Powder Company told Congress: "Many of our

⁴³"Why Majority Rule?" *American Federationist*, Vol. 42, 1935, p. 28.

Southern plants employ a large number of colored workers. In some cases such workers are in a majority. It is not difficult to foresee the possible consequences of any attempt to apply and enforce the majority rule provisions of the Wagner bill⁴⁴ at plants where such conditions prevail."⁴⁵

Even some friends of organized labor have feared that the majority rule would be difficult to administer. They have explained, for instance, that in a plant having both a foundry and a machine shop, there might be 1,000 members of the Founders' Union and 500 of the Machinists' Union, and have asked if in such a situation the former should be the collective-bargaining agency of the latter. Some also have expressed the firm belief that the majority rule urged so strongly by the American Federation of Labor would cause great internal strife among its affiliated craft unions, and perhaps become a boomerang. But, of course, what the final outcome will be remains at this time in doubt. Here again we must call to mind that regulatory boards frequently have been given more power than they have chosen to exercise, and that it is difficult to conceive of such stupidity as would provoke the consequences here feared.

5. *The Economics of Collective Bargaining*

Economists differ somewhat in their views towards the broad economic effects of collective bargaining. To illustrate: J. R. Hicks maintains that each employer will hire labor and purchase other factors of production up to the point at which the additional cost of each unit of labor is substantially the same as the increment in total revenue to it;⁴⁶ and, consequently, approximately fair wages as between industries are obtained, at least insofar as competitive demand is effective. Other aspects are considered by H. A. Millis who reaches the conclusion, "that a competitive demand for labor does not go far in protecting the workers against long hours, overtime, fines, discharge

⁴⁴A bill introduced in Congress in 1935 to legalize majority rule in anticipation of the Supreme Court decision that such a far-reaching rule could not be made under authority delegated by Congress. On several occasions New Dealers, afraid of constitutionality of important bureaucratic rulings made under delegations of authority, had Congress pass bills establishing the rulings as duly enacted law. On at least a half dozen occasions Congress was thus asked to act as a rubber stamp.

⁴⁵Congressional hearings on Wagner bill.

⁴⁶J. R. Hicks, *The Theory of Wages*, London, 1935, pp. 7-14. See also Paul H. Douglas, *The Theory of Wages*, New York, 1934; A. C. Pigou, *The Theory of Unemployment*, London, 1933; J. M. Keynes, *The General Theory of Employment, Interest, and Money*, New York, 1936.

without sufficient cause, and objectionable working conditions."⁴⁷ The latter, in amplifying his position, explains that long hours, discrimination, inconsiderate discipline, and bad working conditions, may give rise to a large turnover of labor; but such a turnover, although expensive, has not generally led management to ascertain causes and to remedy them. Admitting that the subject is one that can provoke much argument on all sides, let us here confine ourselves to matters as they were uncovered by the NRA.

One factor which may be important in maintaining sluggishness in wage adjustments is the long-standing custom of the son's continuing the occupation of his father. In a miner's family, for instance, are usually one or more sons who also become miners, a situation promoting an almost chronic surplus of labor in a mature or declining industry and leading to wages below a level providing a decent living. As wages drop in such an industry, the wage earners and the communities in which they live become so poor as to be unable to provide adequate school facilities for their children or as to require early apprenticeship in the decadent industry.⁴⁸ Thus may be set up a vicious spiral of declining wages needing a generation or more to correct. Such a situation could, of course, be remedied without collective bargaining if the state would intervene and provide training for the young workers so as to enable them to enter the growing trades. Too often, however, this succor is not forthcoming and, in rebellion over conditions, workers organize, the principal demand being higher wages.

Quite naturally if their employer has been operating at a profit, organized workers are granted any reasonable requests for higher wages. Also if employees in a whole industry organize, they can demand and secure higher wages, because increases in an entire industry can in large measure be passed on to the consumer: demand for many goods is highly inelastic. But always if prices in an industry are increased in such a way, we are faced with (1) a decrease in demand for the product or (2) the installation of machinery.⁴⁹ In either event

⁴⁷H. A. Millis, "The Union in Industry: Theory of Collective Bargaining," *American Economic Review*, Vol. 25, 1935, p. 5. See also W. H. Hutt, *The Theory of Collective Bargaining*, p. 107.

⁴⁸See also Chapter XV, Section 2.

⁴⁹It should hardly need to be pointed out here that stable money conditions are assumed — no change in the quantity of currency or credit, or in the velocity of circulation. As regards possible changes in velocity resulting from redistribution of income, the reader is referred to Chapter XIV. Strikes for higher wages have often come at a time when a business boom was about to start or was under way so that the industry has been able to bear the increased cost without a decrease in demand. In such instances, the unionists appear to have

there occurs a reduction in the number of workers employed and, at this point, a union almost invariably tries to prevent layoffs by (1) shortening hours of work, (2) limiting the number of apprentices, or (3) preventing non-union workers from securing employment. The first move, of course, may easily aggravate the situation by further curtailing demand, in which event unions usually ask for more of the same ineffective or harmful medicine. The other two methods are, in general, repugnant to the classes affected and usually lead to public agitation to prevent them.

At times unionization has been impelled by monopolistic practices of owners seeking inordinate profits; for instance, employees in the anthracite coal industry were organized because of the intolerably low wages paid in the early part of the nineteenth century as a result of owners' meetings at which such disadvantageous wages were fixed. Obviously by collective bargaining miners were here able to secure higher wages without destroying the industry; there were profits out of which these could come. However, union leaders in this industry did not know when to stop. During the World War, miners' wages were pushed to very high levels, and although these scales could be sustained in such a period of prosperity without loss of demand, chiefly because of them the industry has now been transformed into a declining one. Herein lies a major difficulty in collective bargaining: labor leaders seldom seem to know, or care, what costs their industries can support. They are seldom willing to accept a wage cut which might allow an industry to put itself in a better competitive condition. Usually having only shortsighted objectives, they insist upon higher and higher wages and shorter hours; and always their analysis is based upon a static concept of demand for goods and services. As a result they often make ill-timed requests, which, if granted by industry, bring disadvantages to both sides, and, in some instances, actual disaster. Labor leaders really ought to study modern economic theory.

Whenever only part of an industry is organized, higher wages resulting in higher cost may easily come out of profit. In such events, when wages become too high, plants migrate to places where there is less union activity, usually the smaller towns. Under the NRA, a sizable number of industries moved from the cities of Cleveland, Colum-

improved their status without injuring the industry. This usually encourages other workers in attempts to secure similar benefits, often in industries which cannot sustain their demand at increased prices.

For other aspects of the general problems of collective bargaining, see J. R. Hicks, *The Theory of Wages*, pp. 172-174.

bus, Dayton, and Cincinnati to establish factories in Ohio towns of 10,000 to 20,000 in population.⁵⁰

Even under stable monetary conditions higher wages throughout an industry, forced by collective bargaining, are not always passed on to the consumer or taken out of capital returns; they tend to put a premium on efficient management. And if management is improved to such an extent that the firm can continue in business without increasing prices, labor secures a greater portion of value added by manufacture without burdening the consumer; the plant becomes more efficient.⁵¹ Also there are times at which labor becomes more productive as its pay is increased.⁵² Millis cites an extreme case in which, as a result of union co-operation in introducing piece work, in reducing the turnover of labor, and in maintaining discipline, "the wage advances were more than offset and the labor cost of manufacturing a suit of clothes reduced approximately 10 per cent though the earnings of the workers more than doubled."⁵³ There is also another important aspect; labor difficulties often begin to arise when profits dwindle and owners, still attempting to make withdrawals as they did in prosperity days, find insufficient funds left to install new machinery and safety devices, and perhaps also cut wages or fail to advance them with the cost of living. In such plants, where working conditions are unsatisfactory and wages are low, employees are not greatly interested in their jobs and quit at the first opportunities. Labor-turnover figures become abnormally high and this, in turn, further increases expenses. Therefore, attempting to reduce costs by neglecting working conditions and paying lower wages may sometimes result in even higher costs. In fact, the plant may eventually have to

⁵⁰Thus the NRA initiated a two-way movement of industry to the towns of 10,000 to 20,000 population; high minimum wages induced migration from smaller towns to these and collective-bargaining difficulties encouraged movement from the larger cities. See also Chapter VII, Section 7.

⁵¹Economists usually employ the word "efficient" in a very loose way. Very often in practice "efficient" implies merely that a plant has capital and surplus to tide it over a profitless period. Similarly "inefficient" may imply simply that a firm lacks working capital and is unable to secure a loan because it is suffering losses, although its losses may not be proportionately greater than those of its competitors. Thus, often a plant with very efficient productive equipment and consequently low direct unit costs may be forced to suspend operations for lack of working capital. This would be classed by many economists as a failure of an "inefficient" firm.

⁵²Particularly if wages have been too low to provide adequate diet and medical attention.

⁵³Millis, *op. cit.*, p. 9.

But, of course, general increases in productivity like this could lead to technological unemployment in the industry and the various other effects mentioned would then take place. See also Chapter V, Section 5.

operate as a low-wage training school for workers, since employees have no other incentive for holding their jobs.

On the other hand, in expanding industries, such as automobiles and public utilities during the twenties, wages are invariably good because the plants are obviously in constant need of additional workmen both skilled and unskilled. Moreover, plants which are running nearly at capacity, as almost all are in expanding industries, usually try to keep their workmen contented and to attract others by installing various conveniences and improving working conditions. Consequently, a growing industry is seldom unionized; there is no incentive for its workmen to join unions; their wages are higher than the prevailing scales and working conditions are often better.

Although it is thus very difficult to determine just how wage rates are related to costs except within wide ranges, it seems reasonable to suppose that under ordinary conditions there is an optimum wage for a plant requiring labor of any given productivity. Colonel Malcolm C. Rorty, for instance, empirically assumed that the best wage for his plant was ten per cent higher than the average.⁵⁴

6. Some General Observations

At this point, consider a general aspect of high wages—the contention of organized labor and various economists that high wages are necessary to maintain consumer purchasing power and, therefore, that one way to cure a depression is to extend collective bargaining so that wage increases can be forced throughout industry. Such a purchasing-power theory of high wages has been explained in the words:

Our industrial mechanism is prepared to deliver huge streams of goods and services; the problem of the hour is to place sufficient purchasing power in the hands of the great mass of people — to place purchasing power in the hands of

⁵⁴But such a calculation could not be applied generally to industry, for, obviously, all firms could not pay wages ten per cent above the average, and if they attempted to do this, progressive wage inflation would result.

High wages are effective only to the extent that they allow employers to choose workers on the basis of productivity. All managers obviously could not make this choice simultaneously, so that by universal adoption of the policy total productivity would gain but little, if at all. It is conceivable that, during the first stages of the changes, vocational selection might play an important rôle in placing workers in the jobs best fitted for them and, if this occurred, total productivity might increase. Then increased health of workers resulting from better food and medical care made possible at first by shifts in income might have some favorable effect.

those who will spend it for consumable goods instead of saving, that is, spending it for capital goods.

In order to keep up wages in the face of a decreasing demand for labor power, collective bargaining should be resorted to and the hours of work reduced.⁵⁵

In an article in the *Saturday Evening Post*, similar views have been expressed by General Johnson, who said: "There is never a proper question of what is the most labor can get out of management. . . . the real question is what is the most it (the management) can pay to support its own markets and to live against competition."⁵⁶ Even stronger language has been used by William Green in urging the importance of collective bargaining to economic well-being; recovery and plenty for all will not be possible unless industries accept workers as partners in production and the rights inherent in this relationship are incorporated in American economic, social, and legal structures and practices;⁵⁷ as the union bargaining for the wage earners becomes strong and responsible, it is increasingly able to make consumers' buying balance with production, and this is essential for prosperity.

On the other hand, very early in the life of the NRA, Stephen M. DuBrul labeled this purchasing power theory of recovery "the boot-strap method,"⁵⁸ maintaining that wages come from the consumer just as profits do and that raising wages frequently increases prices by more than the amount of the pay-roll increment. Our own view considers the truth to lie somewhere between these extremes. That prices must increase by more than the wage increases after the initiation of general high wages follows because the supply is restricted by the closing of hand-operated or partially mechanized plants. Nevertheless, a high wage level exerts pressure to replace men by machines, so that after a time prices may fall, and greater productivity result. Some obstacles are: (1) the period of time may, of course, be quite long, (2) during the transition standards of living fall, and (3) savings may not be available to construct new plants even when the need is indicated.

It is quite reasonable and very necessary that the workman should be paid a wage adequate to allow him to live in such comfort and security as is made possible by the existing productive equipment

⁵⁵Frank T. Carlton, "What has the NRA Accomplished in National Reconstructions?" *American Federationist*, Vol. 41, 1934, p. 817.

⁵⁶Hugh S. Johnson, "The Blue Eagle from Egg to Earth," *Saturday Evening Post*, February 23, 1935, p. 19.

⁵⁷William Green, Editorial, *American Federationist*, Vol. 41, p. 1050.

⁵⁸See Chapter XIV, Section 2.

of the economy. Everything possible to increase the production and sales of all products making up the American standard of living should be done by labor and management, even to the extent of lowering hourly wage rates in capital-goods industries, so that weekly or yearly real income can be increased by additional work.⁵⁹ In fact, organized labor is to be censured for failure to recognize this principle and for repeatedly encouraging strikes in major producers'- and durable-consumers'-goods industries at the onset of recovery, and thereby making the total real wage paid by our existing productive equipless than it needed to have been.

* * * * *

From the consideration of all matters represented in this chapter we make the following observations:

(1) The principal union objectives have been the establishment of collective bargaining to secure higher wages, shorter hours of work, and correction of real and alleged grievances, sometimes at the expense of industrial profits but more often at the expense of the consumer. Only a few unions, such as Machinists' and Amalgamated Clothing Workers', have co-operated extensively with managements in reducing waste and promoting constructive social policies.

(2) Unions have on occasions used their organized strength to intimidate legislatures, a climax being reached when the Guffey Coal Law was forced through Congress despite reasonable doubts of constitutionality. Such intimidation was also to be found in the passage of the Walsh-Healey Act.

(3) In some industries monopolistic agreements of owners to reduce wages to low levels have forced unionization of industries. Also some individual owners have so underpaid or mistreated their employees as to make this organization inevitable.

(4) In general, low wages, child labor, and agitation for unionization have been confined to the mature or declining industries or to those protected by high tariffs or otherwise directly dependent upon government action.

(5) Under the NRA issues developed quickly unless the Government sided with labor. When a southern wage differential was recognized in the coal industry, organization of southern miners became

⁵⁹High wages in the durable goods and service industries do not tempt investments in new productive capacity leading to larger production of goods and services. See Chapter VII, and also C. F. Roos, *Dynamic Economics*, Bloomington, 1934, Chapter VI, "Factors Influencing Residential Building."

easier. Eventually, a nation-wide strike developed from this issue, new demands, of course, being added.

(6) To a considerable extent both industrialists and minor labor leaders misrepresented the intent of Section 7a. Even government officials gave contradictory interpretations. The result was an epidemic of strikes in the early days of the NRA.

(7) Some union leaders were unreasonable in their demand upon industry and conversely some industrialists dismissed workers for union activities in violation of Section 7a. Some employers demanded excessive extra productivity to compensate them for increasing wages under the NRA. In the cotton textile industry attempts to obtain such extra productivity (stretch-outs) led to a national strike. But the strike was also called for shorter hours and increased pay, despite the fact that the NRA had previously negotiated a code giving labor extraordinary wage and hour concessions.

(8) A constant source of strife was the demand of industrialists to preserve the open shop. For instance, efforts of the automobile manufacturers to hire, retain, and promote employees on the basis of merit irrespective of union affiliations, led to a series of threatened strikes. Difficulties ceased (or practically so) only after a survey of the industry showed that merely 5 per cent of workers belonged to unions.

(9) Dismissal of workers, who were identified with unions, for almost any cause usually led to a labor dispute. Most significant of of such disputes was that arising in Harriman, Tennessee.

(10) Universal collective bargaining and high wages will not in themselves lead to higher average standards of living. More important is the balance maintained by wages in consumers'-goods and capital-goods industries.

CHAPTER IX

COST AND COST FORMULAS OF CODES

Up to this point we have considered only the mandatory provisions of codes — collective bargaining, and such wages, hours, and conditions of work, as the President should decide. We have seen how he and his aides actively encouraged collective bargaining and insisted that hours be shortened and wages raised. Thus forced to make large concessions to labor — in one industry an increase in pay rolls of over \$100,000,000 annually — industries quite naturally demanded something in return. Most often the *quid pro quo* was some form of price fixing or production control which would make possible the recovery of the additional pay-roll expense and as well some profits. In fact, so insistent were the demands that DuBrul wrote Sachs on July 13, 1933 as follows:

In many industries that have suffered from the evil effects of price deflation of the past three years, the producers are insistent on this point [that Congress intended to permit price fixing], taking the position that, since they are forced to sign Section 7, Sub-section A, which gives their labor the right to organize and bargain collectively, they are entitled to some "*quid pro quo*" in return.

By far the greatest number of the price-fixing plans involved prohibitions of sales below cost. Some were plainly stupid; others were ingenious; but all failed to take some element of cost into consideration. Therefore, to be able to judge adequately such schemes, we must have a reasonable understanding of the complex nature of cost.

1. *The Nature of Cost*

Volumes have been written on the subject of cost and yet from some points of view there are few subjects about which less is known, economists and accountants having long disagreed on its nature and elements, and, indeed, accountants themselves holding widely different views regarding the procedure to be used in treating many of its constituents.

It should be clearly understood at the outset that the NRA obviously was vitally concerned with the effects of its program on inven-

tory values in successive stages of production: cost of unfinished goods had to be considered at the instant a picture was desired and not as an average over some preceding interval of time. Similarly, the NRA was interested in losses and gains in each of the stages of production rather than in totals for the product, and also in possible effects of its program on mergers and consolidations; in other words, interest or profit had to be considered for each productive unit.

The economist generally admits only three cost factors — wages (including salaries within reason), interest, and rent¹ — these being respectively the returns to labor, capital, and land. Resolvable into these are other components usually considered by accountants, such as expenditures for raw materials, power, depreciation, and obsolescence. Short-time effects have been averaged out.

As a result of these considerations the concept of cost best suited for appraising the NRA must more nearly approximate that used by accountants; briefly, it must include more elements than are used by economists. For our part, we define cost or expense of production to include, as individual constituents, wages and salaries, costs of raw material, power, light, and heat expenditures, depreciation and obsolescence, interest on fixed indebtedness but not on capitalization, taxes on plant and other operating taxes, and rent, where it is actually paid. Quite naturally when cost is subdivided in this way, difficulties arise in making allocations. For instance, every accountant knows what is meant by invoice cost or the price of material which is purchased, as shown on a bill, provided cash discounts are not involved, but considerable diversity of opinion exists as to the proper treatment of such allowances. Some argue that they should be deducted from the purchase price; others hold that only companies which have reserve capital can take advantage of them and that, consequently, the resulting savings are really capital earnings.² But it makes little difference how cash allowances are handled as long as one regards the final cost figure as an estimate rather than as a hard and fast

¹According to economic theory, rent tends to equalize productive advantages. It is therefore frequently neglected in theoretical considerations of costs. This view, which assumes rent to be flexible and readily adjustable to economic changes, is correct when the time interval considered is long but, as is well known, rent adjustments take place slowly. Consequently, in short-time studies such as the present, rent must be considered as a separate cost factor.

²Those who support this latter position contend that the sufficiency or insufficiency of cash should not be allowed to affect the value of the merchandise and, hence, that the material should be valued at the invoice price less trade allowances (which amount to reductions in price and may be as high as fifty per cent) but not less cash discounts. See also Chapter X, Section 4.

TABLE XXV

COST RATIOS BY STATES

$$A = \frac{\text{Wages}}{\text{Value added by manufacture}} ; B = \frac{\text{Cost of Materials}}{\text{Value of product}}$$

Source: Compilations by the Cowles Commission from U. S. Census of Manufactures, 1929

NON-DURABLE CONSUMER GOODS

	Printing and Pub. News and Periodicals		Clothing Women's		Clothing Men's, Youths', Boys'		Paper and Pulp		Knit Goods		Cotton Goods		Worsted Goods		Boot and Shoe other than Rubber		Rubber Tires and Inner Tubes		Silk Rayon Manu- factures	
	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B
Delaware	.32	.23	.27	.17	.55	.72	.60	.72	.57	.54	.23	.51	.58	.54	...	...	.30	.59	.48	.51
Connecticut	.17	.19	.55	.46	.29	.30	.47	.48	.47	.48	.64	.58	.58	.54	...	...	...	...	...	...
Maine	.25	.23	.49	.50	.52	.33	.63	.63	.57	.54	.65	.57	.48	.48	...	...	...	...	...	...
Massachusetts	.24	.27	.39	.54	.44	.37	.53	.53	.43	.50	.61	.54	.52	.52	...	...	.30	.59	.43	.56
New Hampshire	.31	.16	.49	.54	.65	.41	.65	.65	.61	.52	.60	.58	.58	.56	...	...	...	...	...	...
New Jersey	.28	.20	.52	.41	.57	.43	.36	.56	.55	.50	.64	.53	.50	.55	...	...	.57	.60	.49	.55
New York	.14	.21	.28	.55	.32	.49	.39	.63	.43	.53	.51	.50	.61	.64	...	...	.30	.59	.34	.52
Pennsylvania	.16	.25	.38	.53	.43	.51	.32	.57	.53	.49	.47	.51	.43	.54	...	...	.32	.55	.40	.54
Rhode Island	.25	.21	.49	.54	.17	.37	.49	.49	.51	.65	.52	.52	.49	.56	...	...	...	...	...	...
Vermont	.29	.15	.33	.33	.17	.64	.29	.57	.41	.46	.65	.57	.58	.56	...	...	...	...	...	...
Indiana	.22	.21	.42	.52	.47	.44	.39	.61	.41	.43	.63	.65	...	...	...	...	...	...	...	...
Illinois	.18	.23	.42	.53	.41	.41	.36	.58	.46	.51	.52	.59	.58	.56	...	...	.44	.60	...	...
Iowa	.20	.20	.11	.49	.36	.58	.38	.56	.29	.41	...	...	...	...	...	...	.40	.56	...	...
Kansas	.23	.20	.63	.48	.55	.55	.33	.56	...	...	...	...	...	...	...	...	...	...	...	...
Michigan	.18	.23	.40	.56	.41	.49	.41	.59	.40	.46	.26	.59	...	...	...	...	...	...	...	...
Minnesota	.20	.23	.35	.56	.51	.58	.30	.60	.32	.42	...	...	...	...	...	...	...	...	...	...
Missouri	.22	.26	.46	.57	.45	.54	.33	.56	.57	.65	...	...	...	...	...	...	...	...	...	...
Nebraska	.24	.21	.36	.58	.17	.54	...	...	...	...	...	...	...	...	...	...	...	...	...	...
North Dakota	.27	.16	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Ohio	.19	.25	.34	.59	.51	.41	.60	.46	.46	.56	.23	.51	.58	.56	...	...	.38	.54	...	...
Oklahoma	.25	.22	.35	.58	...	...	...	...	...	...	.36	.60	...	...	...	...	...	...	...	...
South Dakota	.27	.19	...	...	.17	.64	...	...	...	...	...	...	...	...	...	...	...	...	...	...
West Virginia	.28	.18	.43	.52	.17	.55	.36	.62	.57	.54	...	...	...	...	...	...	...	...	...	...
Wisconsin	.21	.21	.41	.53	.49	.57	.34	.61	.40	.41	.23	.51	.58	.56	...	...	.28	.55	...	...

reality. On the other hand, as we shall see later, the course followed by the NRA of setting arbitrary cost-price figures below which sales cannot be made inevitably leads to confusion regarding this point and ultimately to collapse.

Perhaps the next simplest concept is labor cost and here again there are difficulties in establishing a reasonable figure as a minimum price. These arise in part from variations in the degree of mechanization, the industriousness of the workmen, and the extent to which collective bargaining is developed. Even in the same industry there are often widely varying degrees of mechanization. This is shown clearly by Table XXV which depicts how the ratio of wages to "value added by manufacture" (gross sales minus cost of materials) has differed by states for several industries. In printing and publishing, for instance, the proportion of wages constituting "value added" has ranged from fourteen to thirty-two per cent. Furthermore, since the entries in Table XXV are averages for states, variations within an industry must have been even larger than is indicated by these data.³

With further regard to labor cost we observe that occasionally there may even be an inverse, rather than a direct, relation between the wages paid in a given shop and the labor expense per unit of the product. Millis reports,⁴ for instance, that in a certain clothing shop an increase in wages of over one hundred per cent was followed by a ten per cent reduction in the labor cost per garment and also emphasizes that a low wage may lead to an abnormally high labor turnover and greatly increased unit cost. On the other hand, it must be clearly recognized that increase in wages of a well-paid force sometimes causes the workmen to feel unduly secure in their jobs and may easily lower productivity. Notwithstanding these considerations, when a sufficiently large number of shops is taken into consideration, labor cost per unit, measured over reasonably long intervals of time, is probably fairly closely related to average wages. But the very fact that the relationship holds only on the average over reasonably long intervals of time means that rigid rules based upon such a relation must affect individual plants inequitably, especially over the short period of time for which the NRA was in effect.

³The figures are suggestive of wide differences in costs but they should not be taken too literally, for value added depends upon the amount of fabrication performed in the plant. For instance, an automobile manufacturer has a high ratio of wages to value added if he starts with such raw materials as trees and mines, but a low ratio if he merely buys and assembles parts. Thus, the labor cost depends upon the degree of processing.

⁴See Chapter VIII, Section 5.

Obviously another important element in determining cost is the degree of mechanization, since there are so many instances in which machines can be substituted for labor. Such interchangeability leads to an anomalous situation, for wages are always included in costs and yet machine earnings in the form of profits (receipts minus marginal costs) are often held not to be costs.⁵ But to include machine earnings would require a definition of the value of a machine, which, after all, is rather difficult, since the expected output and its yield above prime costs must largely determine this value, and this in turn affects costs; a circle obviously arises. Moreover, estimates of future output and yield must be subject to large errors.

Despite such difficulties in determining the value of a machine, accountants and economists are generally agreed that depreciation of this "value" is properly an element of cost. And herein arises a new problem: it is often difficult, if not impossible, to distinguish depreciation charges from profits.

The United States Treasury, in connection with income-tax returns, specifies depreciation rates which, on certain items, are ridiculously low; and on the other hand, the custom of some engineering departments of industry, requiring a piece of machinery to pay for itself in two or three years, makes the rate too high. As a further complication, although this engineering requirement may be made by the purchasing agent, the equipment is frequently amortized over eight to ten years by the accounting department. On the other hand, often a machine, the cost of which is being charged off over ten years, is found to be obsolete and practically worthless after, say, only five years. Also of importance in recent years is the problem of close tolerances; a machine expected to be satisfactory for five years of operation under standards existing when it was purchased, may become obsolete after three years or less because the trade, in the meantime, has demanded a product of higher quality. Then, there are always

⁵Most accountants customarily include interest charges, taxes, and rent among the items constituting overhead cost, but they do not so include profit which is merely income minus the sum of these items and such prime costs as raw material expenditures, wages, power, etc. This is, of course, justifiable only on the basis of custom; there is really no valid theoretical reason back of the convention. Interest and rent are just as much a part of capital earnings as is profit; for, obviously, producers have some measure of choice of capital structure as between bonds bearing interest (provided it can be earned) and stock earning profits, and between owning a plant and leasing it.

Under present accounting practices, it is easy to justify a system of wages which would guarantee that certain minimum amounts be paid before profits are taken, plus additional wages which would fluctuate with earnings. Labor costs would then be composed only of the guaranteed wages, and the additional "wages" would be taken out of "profits," as is done under various bonus systems.

risks of damage to machinery which cannot be anticipated; a workman may drop a tool in a delicate set of gears, or various "acts of God" may occur. It appears, therefore, that, in general, depreciation charges merely represent more or less intelligent guesses. At best they can only be estimates, and at worst they may be absurd.

A plant purchased at auction following bankruptcy offers further difficulty in cost determination. Obviously, if a plant acquired for, say, ten per cent of the new price, bases its production costs on such a low valuation, it can easily undersell most of its competitors and, if sufficiently large, demoralize the industry. For the NRA this raised the question: Should depreciation be taken only on the "value" of the plant at such sale or should it be taken on replacement cost less reasonable accumulated charges? Clearly, if the plant owners desire to continue operation after the bargain machinery is worn out, depreciation reserves sufficient to permit replacement must be set up; and yet, the owners can afford to sell their products for prices which only cover depreciation charges upon the bankrupt "value" of the plant.

Additional problems of cost determination are raised when products are manufactured or sold together. We consider this well-known situation at this point merely to demonstrate an unappreciated aspect. Suppose that a shoe factory makes shoes for both men and women. Assume further that the processes are about the same, a single foreman supervises the work on both products, and company administrative expense and general overhead are shared jointly by the products. Even in such a simple situation it is impossible to determine cost except by very arbitrary allocations of the joint expenses and, interestingly enough, accountants are not yet agreed on a formula for such division; each devises his own scheme. Yet, if, for two such jointly made or sold products, an increase of ten per cent in the price of the first decreases its volume of sales by ten per cent, whereas a ten per cent rise in the price of the second results in only a one per cent decrease in sales volume, the manufacturer or merchant obviously can secure greatest profit by allocating little of the overhead to the article sensitive to price changes and pushing its sales. This unproportional allocation is made regularly in the cases of (1) new products introduced by established firms and (2) chain-store merchandising of cosmetics, soaps, and other products, for which competition is keen. Such goods, we emphasize, almost invariably bear less than their proportionate share of overhead.

By-products raise further interesting and perplexing questions. What, for example, is the cost of producing the by-products copper

and silver when gold is refined? In reality the expense is little or nothing, and yet both have value and are regularly produced independently of the refining of gold. Clearly any cost of production set for a by-product must either be indefensibly low compared to the actual expense of producing the commodity alone or else be quite arbitrary and bear little relation to prime cost.

All the preceding cost difficulties are independent of the quantity of goods produced. New problems arise when cognizance is taken of the well-known fact that cost per unit of product frequently decreases as production increases and increases as production decreases. To make the principle more concrete in its application to a particularly difficult code problem, suppose that a factory produces 100,000 shirts to sell for \$1.00 each at wholesale. The price of \$1.00 may well consist of twenty-five cents for material, fifty cents for labor, ten cents for factory overhead, and fifteen cents for selling expense and profit. Then suppose the situation changes, and the plant produces only 25,000 shirts. In such instance, it must pay roughly the same amount per garment for material and labor, but the unit overhead expense increases to almost forty cents.⁶ If the price is to cover overhead, the shirts must then sell for about \$1.15. If sales are lost at \$1.00, then additional ones must surely be lost at \$1.15. Therefore, a factory which has lost some sales at "cost" must sell "at a loss" in order to regain them or else it must ultimately close; each sale lost means a higher cost. Nevertheless, despite this principle, some codes as originally submitted stupidly proposed to outlaw sales below cost when overhead was calculated on the basis of some percentage operation less than plant capacity. Thus, a mass production plant, once it had suffered losses, was almost surely consigned to oblivion.

Other cost vagaries arise in connection with selling expenses. One important question is: What is the maximum percentage of sales income that can properly be used for advertising and included in selling expense? The answer must be arbitrary, for, obviously, during the period of introduction of a new product an undeterminable advertising expense is essential to acquaint buyers with it; and once a business is established, it must continue to advertise so that it will gain some expected number of new customers and keep the old. Although some advertising expense is thus necessary for the growth and continued well-being of an industry, it is possible, of course, to spend ex-

⁶In some cases it is possible to reduce total overhead, but, in general, not in proportion to decrease in output. Perhaps unit overhead in the example would be nearer thirty cents after the decrease in production assumed.

cessive sums in this way. For instance, a firm ploughing large proportions of its income into advertising is sometimes able to create a quasi-monopoly, as in the case of cigarette manufacturers in the United States, and charge excessive prices to its customers. And, to return to our question, as a further complication the proper expenditure for advertising certainly depends upon the nature of the industry — whether it is growing, mature, or declining. Therefore, the making of arbitrary rules regarding the proportion of sales revenue to be allotted to advertising must necessarily invite trouble.

In addition to the above difficulties there are the problems of estimating cost of collections. Such expense, although generally not known till after the event, must be approximated in advance so that it can be included in the price, and this naturally can be done only by means of estimates based upon past experiences which frequently are quite inadequate or even non-existent.

There are also perplexities involving the cost of storage. For example, a cotton textile mill sells a large order, *A*, of yardage at 32.50 cents a pound, the goods to be delivered in four weekly lots beginning December 1, two months from the date of sale. In quoting this price the mill, we may assume, calculated costs on the basis of December cotton futures at, say, twelve cents per pound, allowing only one cent for mill margin. Then another large order, *B*, which had been expected to keep the mill busy until the manufacture of order *A* began, is cancelled. Faced with a shutdown the mill decides to manufacture lot *A* at once and store it. To simplify discussion assume further that the October cotton quotation is twelve cents a pound, the same as the December price. If interest amounts to .2 cents and storage .8 cents per pound, the total extra cost of immediate manufacture is one cent per pound which is equal to the mill margin; and yet a shutdown may be even more costly. In these circumstances, should the cost of storage be entered in the books at .8 cents per pound as actually paid or at a lesser figure?

Further peculiarities develop when transportation is taken into account. It costs less, for example, to ship a finished product from New England to the South than it does from the South to New England. The reasons for this differential, which has been established by the Interstate Commerce Commission, are entirely political and the effects on costs are obvious. Again, freight differentials are set which are discriminatory. Thus, Mine *B*, 100 miles further from a consuming center than Mine *A*, may be so situated that its freight expense for the 100-mile-longer haul over the same road may be

less than that of Mine A because there is a competing road which has such a rate. How then should the NRA have treated transportation charges?

After such expenses as transportation and storage are incurred, a manufacturer obviously tries to add a "profit" before he delivers the article to a wholesale dealer where salaries, wages, advertising, and other selling expenses, and, perhaps, also additional items, are added to its "cost." Before it reached the retailer another profit is likely to be added. When the goods are delivered to the retailer, all these services and profits become a part of what he regards as the cost of the product. He, in turn, adds wages, salaries, advertising expense, and other items. He, of course, tries to set the retail price above this total cost to him so that he too can make a profit; and, consequently, by the time a consumer obtains title to an article several profits or losses have affected its price. But when a manufacturer sells direct to the consumer, intermediate profits need not be taken into consideration in calculating costs, and herein another troublesome cost problem arises. More specifically, one processor buys semi-finished goods for a price including some profit, and another makes the semi-finished goods as well as the ultimate product. Should that part of the latter's plant which produces the semi-finished article charge the other department for a profit as well as "selling expense"? Most accountants agree that it should not, and yet a rival producer must carry the finished goods at a "value" which includes the cost of production plus selling expenses and profit paid to the producer of the semi-finished goods. A similar difficulty obviously presents itself in the case of power generated within a plant and that purchased outside.

So much general confusion has thus pervaded the concepts of cost, and, in particular, the ideas held by some officials of the NRA and industrial groups presenting codes were so vague that the National Association of Cost Accountants felt impelled to supply the following definition:

Cost is defined for this purpose as the sum of material or merchandise at current replacement cost, plus actual wages for direct and indirect labor, plus factory burden distributed on a basis of utilization of plant facilities for the industry as recommended by the Code Authority, plus selling, advertising, warehousing, transportation, collection and all other costs and expenses involved in selling, distributing and delivering the merchandise, including in burden or expense allowances for depreciation and/or depletion and/or obsolescence and/or amortization, computed according to the

rates and upon bases acceptable for Federal Income Tax purposes.

Although this is perhaps as good a definition of cost as can be made, hardly more than a casual reading is required to appreciate its arbitrary features; all important items are left entirely to the judgment of the code authority or of the accounting profession. But it may be argued that any plan to leave so much to be decided by a code-authority or trade-association accountant was open to the criticism that they were very likely to confuse the meaning of cost, trade associations and business men being especially likely to take advantage of any opportunity to include in cost an item of profit. It was a loading of the dice against the consumer, as the following illustration shows:

In an NRA hearing a small confectioner of New York City, who had a capital investment of only \$10,000, in the belief that he was being patriotic, declared that he did not want to make a profit in his business; all he wanted to do was (1) pay his workmen, (2) pay for his materials, (3) pay his rent and taxes, and (4) draw an annual *salary* of \$5,000.

And strange as it may seem this almost naïve attitude may well be taken as typical of that held by many business men with whom the author came into contact at the NRA. To them, whatever sum was necessary to pay all business expenses, *including owners' withdrawals*, unreasonable as they might be, was the cost of operation.⁷ Moreover, almost all insisted on regarding interest as a cost, maintaining that capital has just as much right to a share of the product as has labor. Granting the reasonableness of this thesis, it has been true, nevertheless, that in cases where capital has been assured a share of the product through a guarantee of interest, the value of plant and equipment has risen and usually the industry has added further to its bonded indebtedness.⁸ In the end, such an industry has found itself burdened with an excessive bond structure on which it attempted to

⁷Of course, it is easy to understand why an owner of a business should expect something in return for his services. His expectation has considerable validity, but owners' withdrawals above moderate earned salaries are not particularly different from dividends. The size of either effectively determines the "value" of an enterprise.

⁸Most of the small companies, however, never experienced outside financing or bond issues; but neither have they been guaranteed interest by rate-making bodies.

On the other hand, it may be noted that recently a government in South America has set transportation rates so low as to reduce the value of the operating company by seventy-five per cent. It now proposes socialization at this low "valuation."

pay interest. Well-known cases in point are the public utilities and railroads.⁹

As a further illustration of difficulties which can arise from fixing interest return on investment, consider a situation involving the rubber industry. When rubber was selling at \$1.00 per pound, the search for substitutes was violently stimulated. It is reported that, as a result of intensive research, a motor company has developed a process whereby it can make a synthetic product from cotton, of a quality equal in every respect to natural rubber, but it can only produce the commodity profitably when the difference between the price of rubber and cotton exceeds fifteen cents per pound. To develop this process extensively would, of course, be a boon to American cotton farmers, but the very fact of the inception of this industry would ruin rubber prices and raise cotton prices, thereby making production of a synthetic product less profitable. Although the development would not lower the "cost" of producing natural rubber, it would lower the "values" of rubber groves, rendering it impossible for owners to earn interest on their investment, let alone other profits. How then might a guarantee of their interest be justified?

In view of the myriad difficulties surrounding cost determination — those considered in the preceding discussion and also others — the following memorandum written by Stephen M. DuBrul to John M. Hancock, Assistant Administrator for Policy, in August, 1933, before any of the cost difficulties of the NRA had arisen, makes interesting reading in retrospect:

Most codes coming in at the present time are providing for uniform accounting systems to be designed by a firm of accountants selected by the industry. Each system will become mandatory on companies in the business.

My own experience leads me to believe that such pro-

⁹It is doubtful that either the utilities or railroads would now be overcapitalized by bonds if rates had not been set which guaranteed interest. On the other hand rates set low enough to force the default of bonds would hardly be justifiable. There is thus a delicate point of balance which is difficult of attainment. See footnote 7 of this chapter.

In the textile industry, which is practically free of bonded indebtedness, owners generally accept whatever prices are offered above costs of materials, labor, and management, assuming that any margin, however small, represents capital earnings. Other industries, such as the utilities, which are burdened with heavy bond issues on which interest must be earned before "profits" appear, make every conceivable attempt to sell the product above a cost which includes interest charges, however large they may be. This indicates that two industries having the same amount of capital invested per unit of product but different capital structure may follow entirely different price policies. In the industry with a heavy indebtedness bearing a fixed rate of interest, there will, in general, be a more rigid price structure.

visions are bound to create all kinds of complications. In the first place, no two accounting firms agree on many cost accounting principles. Furthermore, the systems actually designed in many cases will be in conflict with existing cost accounting systems. Is a company that has spent a great deal of money in perfecting its own cost accounting system, which conforms with the present Bureau of Internal Revenue rules in all respects, to be forced to discard this system and to replace it by one which may be less adapted to the peculiarities of its business? If so, the provision of the code is unfair and I would personally feel it is confiscatory.

Another complication will arise where the company is going to be operating under three or four codes each of which specifies a different cost accounting system. If these systems are in conflict with one another who is to be the judge?

Until such time as the cost accounting profession itself comes into agreement with respect to those highly controversial problems in cost accounting such as the allocation of burden charges and idle plant expenses, developmental cost, and valuation of fixed assets for burden purposes, such provisions as those which make it mandatory upon members of an industry to accept a cut-and-dried cost accounting system are bound to lead to difficulty of enforcement, legal complications, and to create discord in the associations.

It is suggested that the administration refuse to sanction mandatory cost accounting provisions until such time as it has laid down the principles which shall be followed uniformly in the design of these systems. It is further suggested that even then such activities should be confined to uniformity as to principle and not as to the systems themselves because of the varying needs of different producers for different degrees of complexity and detail.

There is another complication arising in this connection in that it is quite evident that many industries are looking upon uniform cost accounting as a method for price fixing. To guard against such an event it will be necessary for the NRA to make a detailed analysis of every uniform cost accounting plan to make certain that it is not a subtle form of price fixing. This has not been done to date.

In summary, cost then is an arbitrary or fictitious quantity which enables a business man to conduct his affairs with some degree of intelligence. It is an estimate which vaguely, but usefully, indicates the financial condition of a business and shows with limited accuracy what amounts may be safely withdrawn by owners. And as will now be shown, failure of the NRA to give adequate attention to warnings regarding the complex nature of cost is in no small part responsible

for the tremendous difficulties in which the organization later found itself.¹⁰ But before this story is unfolded, a brief consideration of the motives prompting pre-NRA sales below cost is necessary to show what particular groups were affected by the NRA's policy and what gains they expected.

2. Origins of Sales-Below-Cost Provisions

Most publicized of all reasons for prohibiting sales below cost was that of stopping production of goods made by sweated labor. Thus, according to arguments advanced, when managements were unable to obtain the market price, possibly because of less effective sales policy, they explained the situation to their workmen; these readily accepted wage cuts in preference to losing their jobs; and having lowered costs the firm continued in business. This practice of cutting wages to reduce prices, it should be recalled, so outraged General Johnson, who called it chiseling, that he crusaded against it. Industry, realizing Johnson's attitude, quite naturally often exaggerated the danger of price cuts affecting wages. By playing upon his emotions they were able to obtain much better "cost" protection. Although some wages have undeniably been cut to make adjustments in costs and examples can be cited in every industry, nevertheless, they certainly have not had the demoralizing effects attributed to them by some industrialists. In the first place, wages are only one item of cost—others being power, raw materials, and overhead—and in the United States the ratio of wages to value added by manufacture has been only about .33 on the average. In the second place, within almost every industry there have been widely differing degrees of mechanization, in some instances the ratio of wages to value added by manufacture varying from .15 to .35. Under diverse cost situations such as are indicated here, it is difficult to understand how wage cuts in specific plants could greatly influence price, at least not to the extent of forcing highly mechanized units to sell below cost. But, of course, as we shall see, in industries having overcapacity, such as cotton textiles, and in those requiring little initial capital expenditure, such as garment manufacturing, the effects might be appreciable; each plant through successive wage cuts might sell below the costs of others

¹⁰Strange as it may seem, although the first codes to be presented contained clauses setting up accounting systems, or prohibiting sales below cost, or both, it was not until late in August, 1933 that the NRA appointed a cost accountant. Prior to that time DuBrul, Sachs, von Szeliski, and the author, all of whom had other full-time work, were occasionally called upon to give opinions on cost.

which had not yet cut wages. That such wage cutting can lead to sweatshop conditions is indicated by the fact that the author has seen incontrovertible proof that some pay envelopes contained less than five dollars for fifty hours of work.

Probably the next most important cause for selling below "cost" has been the struggle of a large plant to attain volume. Thus, until a new plant has attained large volume, it must sell for a price which does not include adequate overhead charges; indeed, the plant is practically worthless until it is able to produce in volume. Since its first need is to get business, it inaugurates an aggressive sales campaign, often at a figure near prime costs, that is, below the price sufficient to enable it to continue in business without an expansion in volume. Thus, beginners in a business, unless they are fortunate enough to enter a rapidly expanding field, must "chisel" away sales from their established competitors; and even granting the expanding field they must take expected increments in business from their competitors. Even those who produce goods supplying new wants draw off purchasing power from established industries.

Although such selling below "cost" is a natural phenomenon of competition by which new plants gain business and decrepit ones are forced out of existence, there have been abuses. To illustrate: in 1929 several large plants in a milling industry decided they needed additional volume, and the only way to obtain it was to undersell competitors. When the depression came, these large companies concluded that their sole hope was to annex additional territory and this could be done only by underselling the little miller with insufficient capital to stand losses. They promptly followed this policy. After they had thus annihilated enough competitors and had sufficiently secured the field for themselves, they increased prices to recoup their losses. More generally, large, financially powerful units of industry have, upon occasion and probably in more cases than the public realizes, initiated price wars designed to destroy competitors less able to survive a period of sales below cost.¹¹ So intense had been the deflation by 1933 that such was a common practice.

There were many other reasons for pre-NRA sales below cost. In some cases, a merchant found it impossible to secure a bank loan

¹¹An interesting variation of this kind occurred in a region in which there were three large and several smaller units of an industry. One of the large units secured a heavy court judgment against another large one, and the vanquished concern decided to dissipate its assets rather than pay the judgment. In consequence, for several months most of the industry was forced to sell below cost or cease selling at all.

to meet taxes or pay bills, and rather than lose a business worth several thousand dollars, raised funds by selling certain goods below cost. Also damaged goods, or those which were processed or purchased at a higher price than the consumer was willing to pay, were usually disposed of at less than cost. To choose an extreme example: anyone now deciding to make an automobile entirely by hand would scarcely be able to sell it at or above cost. Again, it has generally been considered good business to sell below cost during a slack season to keep personnel together, and then to sell above cost in a season of great activity, a practice followed extensively by several important industries. Additional reasons arose from the vagaries of accounting. In particular, an industry taking inadequate depreciation charges, sometimes through no fault of its own, often found itself in possession of depreciated or obsolete machinery worth only a fraction of the book-value — it had sold below "cost."

According to classical economic theory the least efficient firms are expected to fail and then (1) either to cease business or (2) to reorganize productive processes so that costs may be lowered. In actual practice the second eventuality is perhaps more usual; in fact, it is very difficult to close a plant permanently. Occasionally, bankruptcy proceedings merely make it possible to repudiate debts and start off on a new deficit spree to be followed by another bankruptcy. More often, however, a bankrupt concern is placed in the hands of a receiver who operates it successfully, possibly because capital charges have been eliminated or at least reduced by the court proceedings. Such plants might, as a result, be able to make sales below the cost of competitors who pay their obligations and charge depreciation on the full value of their plants. Similarly, some new firms by copying old established products to avoid all design and promotional expense can undersell established producers who include these items in their costs.

Finally, we note that an analysis of letters received by the NRA would show that the inefficient business men, those who were having difficulty in meeting competition because of inferior plant and equipment, were the chief advocates of rules prohibiting sales below cost. Their efficient competitors (not necessarily efficient because of greater working capital), who would have nothing to do with such price fixing, they almost invariably called chisellers. Impressed by this situation, DuBrul once remarked to the author that, in general, a chiseler should be defined as "one who can pay the highest wages in an industry, keep his factory busy all the time, sell for less than anyone else,

and yet make a profit." But of course we have recognized that there were important exceptions to this facetious description.

From the foregoing considerations it should be clear that pre-NRA sales below what might be called reasonable cost were not uncommon and that the causes were varied. Some, such as (1) sweating labor and (2) cutthroat competition by large units, were purely predatory; but others were natural outgrowths of (3) endeavors to raise funds denied by banks, (4) new concerns seeking business, (5) ignorance of the constituents of cost, and (6) reduced overhead following bankruptcies and receiverships.

3. *The Development of Cost Policy*

As a result of a variety of difficult situations involving cost and the insistence of business men that Congress intended to authorize them to prohibit sales below cost, we find General Johnson in June, 1933 offering to sanction the banning of such sales, but declaring that if *extortionate profits* were attempted he would be forced to intervene. Therefore, we must conclude that Johnson approved such codes as lumber and timber products and bituminous coal, believing that they only outlawed sales at losing prices. But, as we shall see, here and in nearly all industries the definition of cost was such as to include some profit, so that actually minimum prices were set; indeed, the "cost," below which sales were not to be made, almost always included too liberal allowance for some item.

Thus, even at the risk of repetition it must be made clear that business men repeatedly urged the outlawing of sales below cost and, in general, they considered liberal depreciation, interest, rent, and taxes to be proper items of cost.¹² A considerable number admitted that such a "cost" was arbitrary, but a few agreed with General Johnson that everyone knew what his costs were, or could hire an accountant to find out. Whenever anyone challenged Johnson's contention that it was possible to determine accurate production or selling expense, he brushed all arguments aside and declared anew his dogma. It was extremely difficult therefore, for the NRA to develop a satisfactory cost policy.

Business men, conscious of General Johnson's position, naturally

¹²Economists seldom regard taxes as cost elements, except for special analytical purposes, but they do allow depreciation, although it is dependent upon and often indistinguishable from them. The difference in views is, after all, one of degree.

used the word cost when they meant price,¹³ thereby confusing him and securing his approval of price-fixing schemes. This is important to remember in appraising the NRA because so many code groups faced with high labor bills wanted price fixing, under the euphemism of price stability, through the medium of prohibition of sales below cost. They plausibly asked for the right to recover their expenses, but insisted upon using formulas making allowances for handsome profits. From the business man's point of view prohibition of sales below cost usually implied the fixing of minimum prices sufficiently high to enable the majority of the industry to continue in business; for instance, a formula of the lumber and timber products industry, by including (1) the value of timber, (2) the expense of reforestation, and (3) depletion reserves, in the figure below which sales could not be made, in reality guaranteed a price sufficient to recover several times the value of the timber. As a slightly different example, it may be recalled that the printers' division of the graphic arts code, defined production expense so that it included excessive salaries, depreciation, obsolescence, and various other overhead charges, the formula in general allowing a large profit.¹⁴

In the early days of the NRA, industry usually took the view that sales below individual cost should be prohibited, in general specifying that the code authority should agree upon a suitable cost-accounting system and present it to the Administrator for his approval. Under this plan some systems approved by deputy administrators calculated cost on the basis of past plant utilization, thus prohibiting the establishment of new units, and, as pointed out in Section 1, dooming to

¹³As explained in Section 1, cost is essentially an estimate useful in guiding the conduct of a business. Price, on the other hand, at least over short periods of time, is largely determined by the total supply of the commodity and the active purchasing power available in the market; it may be either above or below any reasonable figure for cost. For instance, if there is an abundant yield of wheat, the price invariably drops below the "cost of production" of many growers, whereas if there is a short crop, it rises sufficiently above any reasonable labor expense and produces farm rent, interest, and, perhaps, handsome additional profits.

Prices are the means by which planning is made possible in a capitalistic economy. For example, there is usually a short supply of a new product, so that it sells considerably above cost during its period of introduction, thus enticing capital. And if an industry holds its prices a little too high, it thereby invites other industries to take away part of its business. Indeed, many industries have developed because others have maintained high prices too long; for instance, the rapid development of pipe-line transportation for petroleum and the increase in motor transportation can be attributed in some measure to continued high freight rates.

¹⁴So many printers complained because they were compelled to charge prices which they believed to be unreasonably high that the code was amended to permit sales at ten per cent under "cost."

bankruptcy certain firms which had lost part of their sales. And, in other instances, high-cost producers were forced to suspend operations while modernizing their plants. Then to relieve the general confusion and ill will arising from such rigid cost plans, DuBrul proposed¹⁵ that sales below individual cost be permitted "to meet competition of producers who were not selling below their cost."

DuBrul realized, however, that the problem of cost determination would continue to plague the NRA and during September, 1933 urged various officials to give serious attention to the problems involved. As a result, on September 12, 1933, Victor S. von Szeliski, the chief statistician, presented a memorandum particularly significant because it recognized the tremendous complexity of the problem of prohibiting sales below individual cost and yet attempted arbitrary definitions which received considerable attention from NRA officials. We find him including the usual direct manufacturing expenses — cost of raw materials, wages, fuel, power, and supplies, salaries other than those of officers and major executives, and commissions, and then arbitrarily specifying that if prices of materials or rates of compensation for personnel changed during a month, values at the end of the month should be used. As items of overhead expense he listed taxes, insurance, officers' salaries and salaries of major executives not to exceed \$17,500 each per annum, interest on borrowed money, and advertising arbitrarily limited to a certain per cent of the direct operating costs, the exact figure to depend upon the nature of the industry. To determine the unit cost below which sales could not be made, he proposed that the sum of the direct and indirect costs as defined above should be divided by (a) the average number of units produced per week, month, or other period during the past six years, or (b) the production for the given week, month, or other period, whichever of (a) and (b) was higher. Moreover, to allow for the liquidation of excessive inventories, he suggested that each code contain a provision reading: "In order to liquidate an excessive inventory, sales can be made at — (the figure to be set for each industry) per cent below cost as above defined." Finally, he expressed willingness to permit sales at any price to satisfy creditors' demands.

¹⁵Although DuBrul did not feel that this provision or any other would operate successfully, he took the view that it would enable industry to experiment with cost problems without rigidifying bad cost procedures. He believed that when industry appreciated some of the difficulties, pressure for price fixing through outlawing sales below cost would subside. Also many of the industrial advisers, James W. Hook, for instance, urged against all kinds of provisions forbidding selling below cost. They were, however, unable to get a definite policy ruling from the Industrial Advisory Board.

Then, on September 30, 1933, Max Kossoris,¹⁶ in a note to von Szeliski, stated that there was much difference of opinion in the Division on clauses prohibiting sales below cost and suggested that each member be requested to state his ideas in a memorandum. His hope was that this would make it possible to "select the most pertinent ideas and weave them into a uniform policy." To start discussion he followed DuBrul's lead and proposed that "code provisions forbid sales at prices less than individual cost as determined by accounting principles to be approved by the Administrator, except to meet the competition of a lower-cost producer who was not selling below his cost." Then, pointing out that clauses outlawing sales below cost were usually coupled with provisions making the filing of prices mandatory, he urged strongly that NRA policy be based upon the provisions of the proposed paper and pulp manufacturers' code, which permitted sales at the lower of (a) cost as determined by accounting principles approved by the code authority and (b) the lowest price filed in accordance with (a), and which also required members to state whether they were filing under (a) or (b).¹⁷ In support of his position Kossoris wrote:

In all probability, the cost of the low-cost producer is at or near — and most likely below — the price level which would prevail under the normal interaction of supply and demand. If this is true, then the operation of the above proposal will not set up any artificial price level or curb demand . . . Competition will not be impaired provided it exists.

This proposal was studied carefully and, in general, was looked

¹⁶Then a code adviser of the Research and Planning Division who handled many of the important codes and, in particular, those of the paper products industries. He later became an assistant deputy administrator.

¹⁷The cost provisions of this code were:

Article No such schedule of prices and terms and conditions of sale filed by any member, or in effect, at any time . . . shall be such as to permit the sale of any product at less than the lower of the following:

(a) The cost of such product to such member during the second preceding quarter, which cost shall be determined pursuant to the method of accounting and cost prescribed by the Code Authority, the said method not to be effective until approved by the Administrator for Recovery.

(b) The lowest price scheduled for such product under the provisions of this article by any other member then in effect.

Each schedule filed under this article shall state whether the prices, terms and conditions therein specified are justified under subdivision (a) or under subdivision (b) of this section, and in case of justification under sub-division (b) shall identify the schedule or schedules of the other member or members of the industry justifying such prices, terms, and conditions. A schedule justified upon the basis of the schedule or schedules of another member or members shall become void forthwith upon the cancellations or revisions upward of such justifying schedule or schedules.

upon with approval. It especially appealed to the Research and Planning Division because it promised to permit competition to work, seemed to offer some price protection, and yet presumably banned predatory sales below cost. Therefore, during October, November, and December, it was tried out in several codes. Moreover, the Price Policy Committee of the Recovery Board (see Chapter IV, Section 4), used it and the proposals of von Szeliski as a basis of Administration policy.¹⁸

¹⁸The memorandum of the Price Policy Committee November 8, 1933, read in part as follows:

"1. No member of the Industry shall offer for sale any services performed by members of the Industry, as described in Article II-1, at less than his expenses of production, provided, however, that any member of the Industry may offer his services below his own expenses to meet the competition of any other member of the Industry whose prices are not less than his expense of production.

"Production expenses as used herein shall include all direct labor and material at cost or market, whichever is lower, plus a proportionate share of all indirect expenses, including maximum depreciation and/or depletion allowances computed according to the income tax procedure, but not including:

- (1) Any reserves for purposes other than depreciation,
- (2) Interest Paid,
- (3) Developmental expenses,
- (4) Selling expenses,
- (5) That portion of executive salaries over \$.....

"The distribution of such indirect expenses shall be on the basis of the average rate of utilization of plant facilities by efficient producers during the period of 1927-32.

"The average rate of utilization of plant facilities of efficient producers shall be determined as follows:

"Each member of the industry shall make a consolidated income tax return for that portion (or all) of his operations devoted to the production of the product(s) covered by this Code, for the years 1927-32, together with a record of their physical production and sales in each of these years.

"From these reports the Code Authority will calculate the average rate of utilization of plant investment by the 1/3 proportion of the industry which reported the lowest average per unit cost of production for this period.

"This rate of utilization (rather than full capacity) shall become the standard for the distribution of all indirect expenses and fixed charges for the purpose of determining per unit burden charges by every producer covered by this code.

"2. Members of the Industry shall either:

A. Use a cost accounting system which conforms to the principles of and is at least as detailed and complete as the uniform and standard method of cost accounting to be prescribed by the Code Authority and approved by the Administrator. This uniform and standard method of cost accounting shall be based on the cost finding procedure outlined in section 1 above.

B. Determine the cost of its services upon departmental hourly cost rates and production schedules based upon the cost and production records of comparable and representative establishments kept in conformity with the uniform and standard method of cost accounting as provided in 1 above. Such departmental hourly cost rates and production schedules shall be established by the Code Authority and shall be determined with due regard for the maintenance of fair competition among the various classes and kinds of establishments, and in relation to products of similar establishments in other industries, and/or geographical areas."

However, business did not relish the idea of permitting sales below individual cost to meet prices of lower-cost producers; at that time it, like labor, did not want competition. In particular, some business opponents of the NRA plan insisted that the proposal would lower the price to the cost of the lowest-cost producer, and that, if this occurred, no unit could operate at a profit.¹⁹ The real objection to the plan, however, arose from a thirst for profits even if they had to be obtained through government fiat; industry wanted a cost floor which would enable at least half of its units to make money. Consequently there developed insistent pressure to ban sales at prices under some kind of an average cost for the industry; in fact, so emphatic were industries in their demands for such cost protection that the NRA had to take cognizance of them.

Various officials, both before and after the adoption of DuBrul's admittedly makeshift plan, attempted to evolve satisfactory policies to meet the demands of industry. In particular, a memorandum to Du Brul from Blackwell Smith, assistant counsel of NRA, bearing the date September 28, 1933, gives an interesting insight into the origin of a "lowest reasonable cost" policy announced by the NRA several months later. In view of the clearness with which Smith discusses the issues and the prominence later given to his proposal, his memorandum is reproduced here in full:

1. The Legal Division is interested in the problem of *price-control* from the point of view of devising a workable system (where some system is found to be unavoidable) and one which will not tend to overly restrain trade (meaning competition). It is recognized that it is proper to set boundaries within which competition must take place if reasonable boundaries are set, and if a workable system is devised.

2. I believe that it is demonstrable that it is impossible to fix actual cost of a single product of a single seller at any given time where the seller manufactures more than one product, due to difficulties in allocating elements of cost of the enterprise to products of different natures, and due to many other difficulties of which you are undoubtedly aware.

3. I believe that an arbitrary definition of the elements of cost which must be included in the sale price, including therein direct disbursements and not any substantially inflationary elements, such as depreciation or return on capital values, comes nearer workability than a provision related to "cost" without tangible definition.

¹⁹In general, this would not happen since the low-cost producer would set the highest price which would allow him to operate at full capacity and this would be sufficiently high to enable some of the other producers to operate at a profit.

4. Policing of any system geared to the sellers' own cost (no matter how defined) is impossible as a practical matter, unless the cost can be ascertained from some objective source, such as wholesalers' published price list, or otherwise, as below suggested. So far as workability is concerned, in distribution levels of trade or industry the system used in the draft retail code is probably as good as any other.

5. For the producing stages of industry, I suggest that the following approximates more closely a workable and socially justifiable scheme than anything that has been publicly proposed to date:

(1) Forbid sales at less than the "lowest reasonable cost" of the particular trade or industry or any properly selected subdivision thereof, either along geographical or industrial lines.

(2) Have such "lowest reasonable cost" ascertained in each instance by an impartial agency of some kind. It may amuse you to consider the possibility of using the accounting staff of the Federal Trade Commission in this connection. If accountants who look to particular large concerns for the bulk of their business were employed, there might be a distortion upward which would vitiate the scheme. The selection of the agency would probably have to be approved by the administrator at any rate.

(3) The findings of the impartial agency above outlined should result in a single schedule of costs for the particular trade or industry, or subdivision thereof, which could be published broadly. Sales below those prices so published would automatically violate the code and there would be no difficult problem of proof or policing.

In fixing the "lowest reasonable cost" sporadic items would be disregarded so that the extreme low cost, traceable to abnormal circumstances in a particular unit of the industry would not be taken into consideration. There would not be any necessity for finding the actual costs of all the units of the trade, industry, or subdivision, but by simple means it could be determined which units were in general the lowest, and then a careful analysis of the actual cost of the lowest units could be made. Naturally, the determination would have to be revised from time to time so as to be up to date.

I believe that this system would be the most legally and socially sound, in view of the complete freedom of competition above the lowest reasonable cost.

The Research and Planning Division, however, failed at this time to ratify Smith's proposal,²⁰ the real issue being whether competition should be abandoned in favor of a kind of price fixing, believed to be impossible of successful administration. Thus, the Division did not agree with Smith that his proposal would permit competition above the "lowest reasonable cost"; on the contrary, it felt that this would soon become the maximum as well as the minimum price.

As a result of these objections Smith's plan was pigeonholed. It soon became apparent, however, that code provisions banning "sales below individual cost except to meet competition" led to disastrous price wars. Thus, although prior to the NRA large businesses had permitted small ones to undersell them, once such a code provision was adopted they refused to be undersold. Moreover, as Smith had predicted, these provisions had given the appearance of being entirely unenforceable; occasionally every one of a group of competitors was making sales at losses, each believing that one of the others had originally filed a low price above his cost. In other words, the old game of finding the pea under the shell had been revived. In consequence, before many months had elapsed, the NRA had received so many complaints that cost had become its foremost problem.

In view of such tangles involving cost it was only natural that, when DuBrul insisted on being relieved of his duties as chief of the Research and Planning Division, General Johnson should try to persuade an eminent accountant to accept the position. Finally the services of Johnson's friend, Colonel Robert H. Montgomery,²¹ of the accounting firm of Lybrand, Ross Brothers, and Montgomery, were secured. Then on January 26, 1934, a few days after joining the NRA, Montgomery proposed to the Division Advisory Committee that the NRA adopt the principle of "lowest reasonable cost" previously suggested by Smith. That the chief of the Division should endorse a plan which had already been discussed at length and rejected on the ground that it was thinly disguised price fixing, obviously produced consternation. For a few seconds no one said anything, and then von Szeliski re-

²⁰A minute of the meeting of the Division's Advisory Committee, on December 4, 1933, reads:

Cost Formula. An inquiry was made whether or not a cost formula acceptable to the Division had yet been evolved. It was stated that Dr. H. F. Taggart is working on the problem, but that no generally acceptable cost formula has yet been evolved."

²¹In addition to being a widely recognized authority on accounting and a lawyer, Montgomery had served during the World War as chief of the price-fixing section of the purchase, storage, and traffic division of the general staff of the United States Army.

marked that he had opposed the plan several months before and nothing subsequently had occurred to make him change his mind. In particular, he declared that the plan was unworkable; it was simply a method of price fixing. To this criticism Montgomery answered that the principle would give price stabilization, and not price fixing, and that if something were not done soon, most of industry would be engaged in destructive price wars. Then, after considerable additional argument, the writer remarked: "I am still convinced that this proposition is merely a proposal to fix prices. It will not work, for lowest reasonable cost will become both the minimum and the maximum price shortly after it is announced. I suppose, however, that the Administration will not be convinced until it has tried the experiment." Montgomery replied that this was a rational attitude to take and asked for a vote. And, with those still opposed not voting, "lowest reasonable cost" was adopted by the Research and Planning Division. Within a week the principle had been approved by the Legal Division and the advisory boards and Johnson had announced it as a general policy.

Because this Smith-Montgomery principle meant a price floor which was higher than the expense of the lowest-cost producer, it was immediately accepted by several industries. Before a month had elapsed, however, industry and the NRA were involved in an argument over the definition of "lowest reasonable cost." Difficulties were aired at length in March, 1934 at the code authority conferences. Then, Blackwell Smith, who had also previously realized that his proposal could not function until proper cost definitions had been made, outlined his current views in a memorandum to Henderson²² and proposed a model code provision.²³ Henderson, in turn, asked the author

²²Shortly before the code authority meetings, Montgomery, recognizing that he could not properly serve his cost-accounting clients and hold the position of chief of the Research and Planning Division, had asked to be relieved of his office. Just prior to the conference Leon Henderson had resigned as Director of the Russell Sage Foundation, to succeed Montgomery.

²³The provision suggested by Smith read as follows:

"(a) When the Administrator determines that destructive price cutting has caused an emergency in the trade/industry such as to render ineffective or seriously to endanger the maintenance of the provisions of this code, the Code Authority may cause an impartial agency to investigate costs in the trade/industry and to determine the lowest reasonable cost of the service(s)/product(s) affected by such practice. Such determination shall exclude all forms of return on capital investment and shall be in all respects subject to such rules and regulations as may be issued by the Administrator and to his approval or modification after such notice and opportunity to be heard as he may prescribe. The Code Authority or the Administrator may, upon its or his own initiative or upon the request of any interested party, from time to time cause such determinations to be reviewed or reconsidered and appropriate action taken. During such emergency,

to select several men from the Research and Planning Division to meet with Smith for the purpose of formulating a satisfactory policy on "lowest reasonable cost."²⁴

After a conference of the committee as a whole and several conferences of a subcommittee composed of Taggart and Whitney, a policy satisfactory to Blackwell Smith and Leon Henderson was evolved; and almost at once the new proposal was given the approval of the Research and Planning Division and the Legal Division.

A few days later General Johnson appointed the policy boards described in Chapter IV, Section 4. One of these, the Fair Trade Practice Board, immediately considered the relation of price fixing to code provisions outlawing sales below cost, and, after several weeks' study of the issues, approved an almost identical policy.

One other point needs to be brought out here: up to February 1, 1934 the Administrator had approved only one cost-accounting system, that for the lumber and timber products industry. Thus, even though many manufacturing codes contained provisions specifying that accounting systems should be set up and that sales below cost,

any sale below the lowest reasonable cost of the particular service/product as determined pursuant to this subsection shall be deemed destructive price cutting.

"(b) When no such emergency has been determined to exist or after a previously declared emergency has passed, it is intended that pricing practices should give due consideration to sound cost-estimating methods. In order to facilitate the estimating of costs hereunder and otherwise, the Code Authority shall cause to be formulated an accounting system and methods of cost finding or estimating capable of use by all members of the trade/industry. Full details concerning such system and methods shall be made available to all members and thereafter members should utilize the principles of such methods in determining and/or estimating costs. The primary purpose of such methods is the guidance of the managers of business in the conduct of its internal affairs and for this purpose the approval of the Administrator is not required, but when a question of selling below cost arises such methods and all determinations made thereunder are subject to the same restrictions, rules, and regulations as in subsection (a) of this Section. No member of the trade/industry shall be deemed to have engaged in destructive price cutting, at a time when the lowest reasonable cost for such service/product determined pursuant to subsection (a) of this Section is not in effect, on account of any sale or offer of sale of any service/product, if such sale or offer is found by an impartial agency, designated or approved by the Administrator, to have been at a price, after all discounts, not less than the estimated cost thereof found as herein provided nor on account of any sale or offer for less than such estimated cost if made to meet any existing competition on a service/product of like quality and specifications, provided that the member selling or offering for sale at less than such cost simultaneously reports such competition to the Code Authority."

²⁴Those selected were H. F. Taggart, chief cost accountant for the NRA, James A. Hughes, a code adviser at the time and later appointed chief of the code administration section of the Division, Simon N. Whitney, chief of the price unit, and the author.

Inasmuch as the deliberations of this special committee led to NRA policy on its most perplexing problem, a considerably detailed story is perhaps justifiable. It is given in Appendix VI.

determined according to certain arbitrary rules to be decided upon, should be prohibited, these provisions were not actually in legal operation until after February, 1934. It was well known, at least to the Research and Planning Division, that, during the period between the signing of a code and the approval of a cost-accounting system for the industry, the conscientious employer who wanted to conform to the code simply set his price high enough to be above cost, however it might be determined. Clearly, therefore, failure to approve cost-accounting systems produced higher prices than would have existed if NRA approval had been given even to those schemes which were obviously designed to guarantee profits to the industries through the medium of monopolistic price fixing.

4. The Loss Leader

In the preceding section was given a brief discussion of demands of manufacturers for bans against sales below cost. Also seeking protection were distributors and particularly retailers who insisted that a restriction be placed on sales below a price including invoice cost and a certain markup to cover wages of clerks, rents, and the like. These latter demands, it should be realized, arose primarily because most consumers are ignorant both of the quality and prevailing price of all except a few articles and are, therefore, subject to considerable exploitation. Taking advantage of this fact, some chain stores and many other large retailing companies had regularly offered certain well-known goods at cut prices, sometimes below cost, in the belief that customers attracted by these easily recognizable low prices would purchase other products on which profits could be realized. For a considerable time, this practice, technically known as loss-leader merchandising, had proved quite profitable. Sugar was one of the first products to be so exploited. Some experimental genius found out that, when its prevailing price was ten cents per pound, a price of, say, eight cents, would attract many customers. Then, another discovered that he could do even better by offering it at, say, six cents. And so the practice of underselling competitors spread rapidly until merchants were generally selling sugar at ten to twenty-five per cent less than their net invoice cost. Cigarettes made another popular loss leader, for most smokers knew their prices and made purchases frequently. That at least 700 drug articles were sold regularly below invoice cost was shown by a survey made by the NRA in the fall of 1933, not every retailer selling all these products at a loss, but each having his

own particular set.²⁵ And as might be expected from our discussion so far, retail tobacco dealers and druggists protested most against the use of loss leaders, the former sending 956 complaints to the NRA in February, 1934 and the latter, thirty-two.²⁶

Few commercial practices, it should be noted, have been so debated as loss-leader merchandising. Its fraudulent aspects have been condemned by such eminent men as Supreme Court Justice Louis D. Brandeis, and a plank in the Democratic platform of 1912 called for its abolition; and yet many progressive retailers still maintain that it is a proper business practice. Its defenders deny charges of fraud and contend that the loss taken on a leader may legitimately be regarded as an advertising expense, and that its use affords an effective way to secure sufficient volume to allow costs to be reduced, thus conferring a public benefit. They admit that a staple loses its effectiveness as a loss leader when it is widely used, but urge that a particular commodity should be used only for a short time. Some advocates even go so far as to declare fallacious the usual assumption of critics that a merchant should mark up all products. They maintain that goods most often used as loss leaders perform services for the seller by attracting customers instead of the sellers' performing services in selling them.

Loss-leader merchandising, it should be repeated for emphasis, has been practiced chiefly by the chain distributors and the large department stores; it is, in fact, essentially a scheme of mass distribution associated with extensive advertising. Moreover, wherever several chains and department stores have been engaged in fierce competition, the use of many goods as leaders by first one and then the other has caused the general vanishing of profits. In view of these two facts, it is not surprising, therefore, that great pressure to restrict the use of leaders should have developed: small firms wished to curb their large competitors, and large firms in some instances wished to be saved from themselves. As a result, in August, 1933, the Retail Trade Committee submitted a code of fair competition, Article VII of which read:

Section 1. RETAIL PRICING — The retailer as the natural distributor of goods for public sale and use believes that it is uneconomic to all to permit the continuance of "loss-leader" selling, with its destructive effect on wages and val-

²⁵Mineral oil and baby foods were general favorites.

²⁶In March the complaints from tobacco dealers had dropped to 137 and those from druggists had increased to 70.

ues. Such practices place a disproportionate burden upon all other goods handled, and are antagonistic to the stated purpose of the national recovery program, which is directed to fair and equal competition as an aid to distributing more merchandise at values based on sound business methods and service to the public.

In establishing this code of fair competition for the retail trade, the associations subscribing to it reaffirm the fundamental purpose of the National Industrial Recovery Act, namely, to provide a return to the employer sufficient to make possible the continuous services of those employed as well as the re-employment of a substantial part of those now out of work. Selling at retail which does not return the cost of goods sold plus a reasonable cost of doing business, is uneconomic and tends to defeat the purpose of the recovery program. It is therefore agreed that no member of the retail trade shall sell or offer for sale any merchandise at less than his net invoice delivered cost or current market delivered cost (whichever is lower) plus 15 per cent to partially compensate for labor and other operating costs.

Section 2. Nothing in the preceding section, however, shall prevent bona fide seasonal clearance of merchandise so advertised or plainly marked or of highly perishable or actually damaged goods so advertised or plainly marked, nor shall any member of the Retail Trade, for the purpose of bona fide discontinuance of the handling of any line, when so advertised or plainly marked, or for the complete, final bona fide liquidation of any business, or the giving away, free of all cost, for charitable purposes, be stopped from selling or giving away said merchandise at less than net invoice delivered cost or current market delivered cost (whichever is lower), plus 15 per cent.

The mention of a fifteen per cent mark-up at first indicates a thirst for profits, but it should be realized that such increase only partially covered the cost of labor and other selling expenses which, on the average, amount to about twenty-eight per cent.²⁷ The propos-

²⁷According to the Retail Survey of the U. S. Department of Commerce, the average expense of retailing ordinary commodities, including rent, is about twenty-eight per cent. For some products it is as low as eight and for others as high as 100 per cent of the invoice cost.

For years, many who have been able to save \$1,000 or \$1,500 have been tempted by the notion that retailing profits were large and, hence, that they should establish themselves in some line. The few who have been dimly conscious of the high mortality among retailers encouraged themselves with the thought that they could do better than those who had failed. They did not know even vaguely what their costs would be, but they felt confident that they could make profits where others had not.

Almost invariably, those entering the field of retail distribution in recent years have not recognized that most of the profits have been made by merchants who have had sufficient working capital to purchase in large quantities direct

al, therefore, was not an outright attempt to create profits by legislative fiat.

The code for the retail drug trade, on the other hand, in attacking the same problem, boldly stated that retailers expected to recover costs and to make a profit on each sale, Section 1 of Article V of the agreement submitted for that industry reading (the writer's italics):

Section 1. No dealer in the products covered by or in this code shall offer them for sale at retail for a price less than costs sold *plus 5 per cent net profit*; "costs sold" means the standard wholesale cost as fixed by the Manufacturer, plus the average cost of overhead expenses as determined by the United States Department of Commerce in the St. Louis Survey on the costs of retail drug store operation.

This proposition, of course, met strenuous opposition from the Consumers' Advisory Board and, since it was indefensible, was quickly deleted. The provision of the general retail trade code, however, appeared to be more reasonable to the board because it guaranteed the merchant only about half of his selling expense. Moreover, it had been urged by the retail industry, although not strictly accurately, that the use of loss leaders resulted in increased markups of other goods.²⁸ Then, the general retail code provision also definitely stated that continued use of the loss leader would tend to defeat the recovery program. In these circumstances, the board felt compelled to approve the markup principle but to insist upon a somewhat lower percentage. The trade, for the most part happy to be allowed any markup at all, since many products had been selling regularly for as low as thirty per cent under net invoice delivered cost, readily agreed to ten per cent. What opposition developed to the provision was desultory, a big New York concern and several other large department stores which had made extensive use of loss leaders being the principal objectors. Moreover, independent small merchants, believing that this opposition was prompted by selfish motives, and not, as the objectors claimed, by a desire to help small business, insisted upon a

from the manufacturer, thus eliminating intermediary profits and selling cost. In the drug industry, for instance, the chains have been particularly successful because they have purchased many products in large quantities direct from the manufacturer at discounts as high as thirty per cent. Such bargains have then been retailed profitably at or below the ordinary wholesale prices. The merchant whose volume of sales has been sufficiently high to reduce his selling expenses to ten per cent can thus make handsome profits selling at or below wholesale cost, whereas the small druggist, who has had to buy at wholesale, has faced inevitable ruin.

²⁸For a theoretical discussion of this point see C. F. Roos, *Dynamic Economics*, Chapter VIII.

guaranteed markup so as to enable payment of the higher code wages. Consequently, since supporters were in the majority, the code received the approval of all requisite boards and divisions of the NRA.

Then, about noon of September 12, 1933, Blackwell Smith remarked to the writer that the retail code had been completed and was at the White House. Somewhat dismayed that the markup provision had not been deleted the author hurriedly explained how the provision would not grant relief to the small merchant because the chains, which received large cash and quantity discounts, could still sell below the other's cost; and, even if this were corrected, they would simply continue to attract customers through low prices on staples by offering a greater number of them at the allowable ten per cent markup; the consequent increased competition among a larger number of articles would quickly lead to a demand for a higher markup, and, finally, for general retail price fixing. Smith and the author then discussed the situation in detail with Sachs, following which the code was recalled and reopened.²⁹

Although the retail code was thus recalled from the White House in order to help small merchants, as soon as it was reopened, this group charged that the Government had sold out to the chains, and that no protection against sales below cost was to be offered. But leaders of the industry given the facts were soon convinced of the unsoundness of the loss-leader provision and began to draw up alternative proposals. The problem, however, was not susceptible of easy solution; in fact in September alone the general retail code committee had submitted over a half-dozen alternative loss-leader sections, each of which, because of indefiniteness on some particular point, had been rejected by a newly established Committee on Price Policy.

During the same time, DuBrul and Sachs, both members of this Price Policy Committee, were also busily drafting substitute loss-leader clauses, their point of view essentially agreeing with that of

²⁹The author had made these points earlier to Sachs in a memorandum which, it developed later, had been placed among a mass of documents not yet read. The memorandum, after showing how approval of the markup would eventually lead to a demand for a higher markup and finally for the fixing of retail prices as explained above, ended with a statement that "increased purchasing power does not flow evenly to all products and wages so that shortly after prices are fixed still more fixing will be necessary. Since it will be difficult to lower any prices, the prices of distress products and wages will have to be raised again and this can be accomplished only by more inflation, which will again lead to unbalance. Thus, one is forced to the inevitable conclusion that the fixing of all prices can only lead to (1) decreased consumption or (2) inflation."

The memorandum contained the ideas of Sections 4 and 5 of Chapter XII of the author's book, *Dynamic Economics*, pp. 230-231.

the author's study of joint demand and loss leaders and a memorandum written by DuBrul.³⁰ Both men clearly visualized the markup problem as one of the most important which had yet arisen and, therefore, spent considerable time studying it and exploring its various implications. As a result, by September 28, 1933, DuBrul was ready to announce that the Price Policy Committee, under the leadership of Sachs, had developed an alternative clause.

The most significant feature of the Sachs-DuBrul proposal was the method of circumventing the constitutional right of individuals to refuse to sell goods to competitors, which, according to some students, had prevented competition from ironing out the abuses of loss-leader merchandising. This was to be accomplished by outlawing sales at less than ten per cent above net delivered cost *unless merchants agreed to sell their wares to competitors at the prices quoted to the public and to give preference to such competitors in filling orders.* Thus, under the Sachs-DuBrul plan anyone offering articles to the public at less than ten per cent above invoice cost plus transportation, by such act signaled that he was making the same offer to his competitors.³¹

³⁰In his memorandum, September 16, 1933, entitled "Maintenance of Markups and Resale Price Maintenance in the Retail Field," DuBrul had declared:

"The small minimum markup (10 per cent) proposed is so small that it will be innocuous, but *the approval of even this markup will be a most unfortunate precedent because when the retailers discover its inadequacy, a demand will arise to increase it, until it is raised to such a point as to subsidize the operation of the marginal retailers . . . this is one of the most important decisions which the Administration has been called upon to make.* In a sense we are at a parting of the ways. One route merely undertakes to civilize competition, but at the same time to preserve it and the whole autonomic price structure. Under this program, we can develop mandatory inventory-control plans for each producer, the 'open price' or open trading associations, standard credit terms, standard sales contracts, and a host of other reforms of business conduct which would go far towards accomplishing true reform and self-government in industry. The alternative route leads inevitably to an economic straight-jacket for all prices and employment, which will mean the substitution of the State for the individual entrepreneur . . .

"It is recommended that no margin guarantees of any kind be permitted in any code, even though such a prohibition delays the signing of the code indefinitely.

³¹The Sachs-Du Brul clause, which the present author believes could be modified slightly and made effective, follows:

"Any retailer who offers any product covered by this code for sale to the public at less than his net delivered cost as hereinafter defined, plus 10 per cent, hereby agrees to sell any or all of his entire stock so offered to other retailers, both individual and chain stores, acting individually and/or collectively, and/or to any wholesaler who regularly handles the same article; and/or to the manufacturer of said article at the proposed price and on the same terms offered to the public, and hereby, also agrees to give first preference to such retailers, wholesalers, and/or manufacturer who offer to purchase such stock, as against other purchasers.

Among those members of the Recovery Board responding to a request for criticisms and suggestions, Wayne C. Taylor, writing for the Secretary of Agriculture, expressed the view that the plan would involve the retailers, wholesalers, and manufacturers in childish controversies, customers flocking to a particular sale being held at bay while competitors divided up the bargains.³² Others objected that merchants might tolerate sales below cost until a large number of customers had entered a bargain-offering store and then together buy the complete stock for the express purpose of creating embarrassment. But such objections now seem trivial since the situations pictured would have had to arise only once in a neighborhood to stop future sales below the ten per cent markup. Nevertheless, the committee took them seriously and therefore on October 2 disapproved the Sachs-DuBrul proposal. But at the same time it was suggested that the plan could be made more acceptable by the inclusion of what the author believes to be an almost wholly unenforceable and entirely unnecessary clause:

Conspiracy or concerted action by retailers, wholesalers,
or other members of a trade to injure the business or repu-

"In the event that any retailer refuses to sell such stock on demand as above provided, on the ground that his price is equal to, or in excess of his net delivered cost, plus 10 per cent, he will furnish upon request within 24 hours a certified copy of his invoice of such goods to the local retail merchants' association to substantiate his claim. Failure to furnish such copy of such invoice shall be a presumption of intention to evade the provisions of this code.

"Net delivered cost as used herein means net invoice price plus transportation. In the determination of net invoice price, no retailer shall deduct any discounts and allowances which are not offered to the retail trade generally, irrespective of whether such discounts and allowances are shown on the invoice or not."

³²Taylor explained his objections in the following picturesque language:

"It is my opinion that the alternative clause is quite unsuitable and, whereas it contains certain technical features which might appear to meet the "Loss Leader" problem, the first paragraph alone would involve the retailers, wholesalers, and manufacturers in such childish controversies that the result would be ludicrous.

"For example, a given retailer has advertised publicly 400 cartons of, let us say, 'Satisfying Sweets,' at 98 cents a carton, instead of the required dollar. Imagine the spectacle: A fine May morning with a crowd of lady bargain hunters waiting outside for the store to open so that they can indulge in their favorite pastime. The doors are opened and the rush starts, only to be halted by the firm arms of the buyers from Consolidated Chains, Mixed Dry Goods, and Lady Lou's Lingerie Layout. The crowd halts, possibly, and watches the buyers from the competing retailers divide up the 400 cartons of 'Satisfying Sweets.'"

"The retailer, who is thus being brought to trial, loudly announces, 'Thirty-five cartons sold to Mr. Whoosis of Consolidated Chains at net delivered invoice cost plus 9½ per cent in accordance with Section 24, of the Master Retail Code; sorry to keep you ladies waiting, maybe they won't take it all.' And so on *ad absurdum*."

tation of any retailer by purchasing merchandise from such retailer in quantities which are not bona fide purchases for resale is an unfair method of competition.³³

While the Sachs-DuBrul alternative was being thus debated, the retail trade industry almost daily submitted new clauses to the Price Policy Committee for approval. Finally, a more or less harmless and ineffective provision was accepted. It made such exceptions as (1) sales to meet competition of sellers observing the code markup but having lower net delivered costs, (2) merchandise sold as bona fide clearance, if advertised, marked, and sold as such, (3) highly perishable merchandise, which must be sold promptly in order to forestall loss, (4) imperfect or actually damaged merchandise, or bona fide discontinued lines of merchandise, if advertised, marked, and sold as such, (5) merchandise sold upon the complete final liquidation of any business, (6) merchandise sold in quantity on contract to public carriers, departments of government, hospitals, schools and colleges, clubs, hotels, and other institutions, not for resale and not for redistribution to individuals, (7) merchandise sold or donated for charitable purposes or to unemployment relief agencies, and (8) drugs or drug sundries sold to physicians, nurses, dentists, veterinarians, or hospitals. In addition the provision stated that where a bona fide premium or certificate representing a share in a premium was given away with any article, the base upon which the minimum price of the article was to be calculated should include the cost of the premium or share thereof.³⁴

At this point we observe that, to have been effective in favoring the small dealer, the loss-leader section of the retail code should have specified that sales could not be made at less than ten per cent above the wholesale price in, say, dozen lots, or comparable quantities to be determined by the code authority subject to the approval of the Administrator. By using net delivered cost as in the code the large distributor who customarily received both cash and quantity discounts was favored; because he had a lower invoice cost he could observe

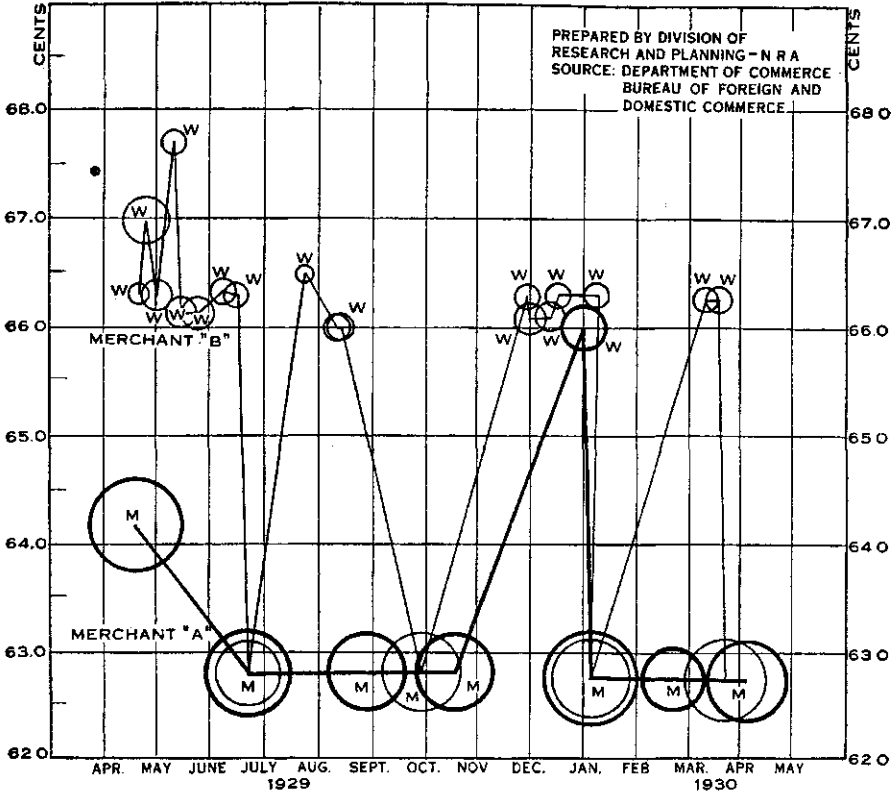
³³It would seem that, if there were a genuine desire to abolish sales below cost plus the markup, it should be of no importance whether the code provision was policed by such coercion or otherwise. The principal point at issue was to secure a clause which would prevent loss-leader merchandising. If a provision turned out to be self-policing, as would have been true in the case of the Sachs-DuBrul proposal, so much the better.

³⁴In order to complete the record it may be noted that in August, 1934 the code was modified so that the total price of two or more articles offered in combination should not be less than the sum of the minimum prices of the articles when sold separately.

CHART XIII

EFFECT OF QUANTITY PURCHASED AND SOURCE OF SUPPLY ON PRICE

Source: See below



The direct cost of goods to the wholesaler or retailer can, of course, be determined from invoices; but the invoice cost has long depended upon the quantity purchased. An example of such relation between price and quantity is graphically shown here, the letters *M* and *W* denoting respectively purchases from the manufacturer and wholesaler, the position of the center of a circle representing a time of purchase, and the area the quantity bought.

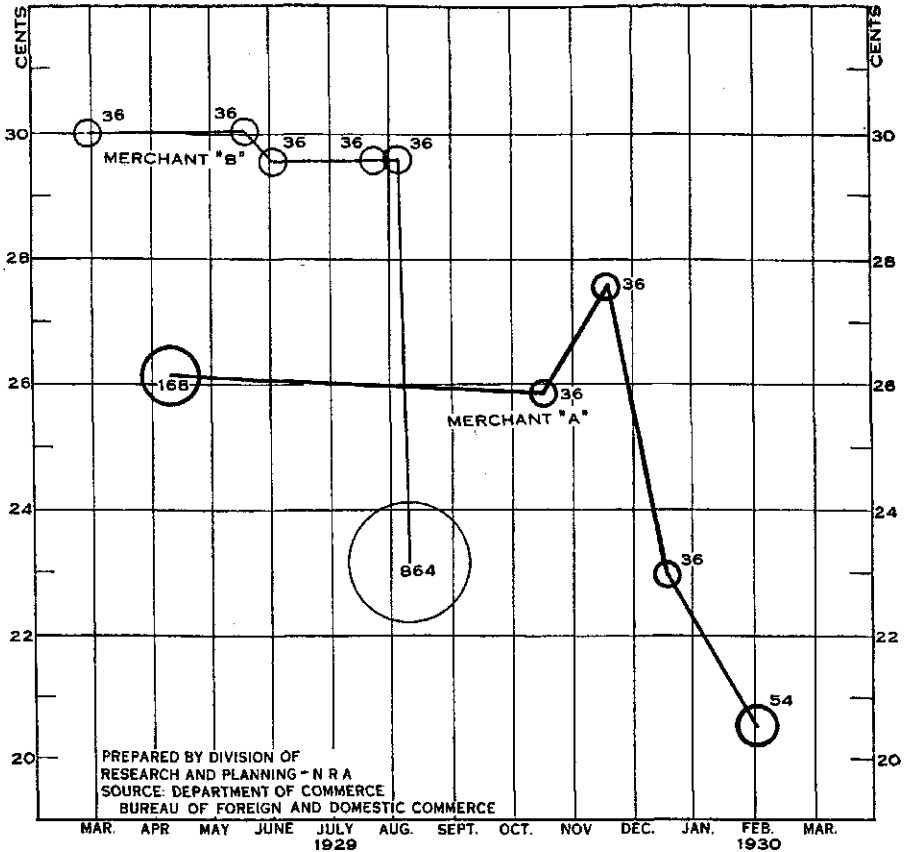
Merchant A usually purchased in relatively large quantities of twenty-four to forty-eight from a manufacturer and paid about sixty-three cents each. Merchant B, as a rule, bought in lots of three to six from a wholesaler and paid about sixty-six cents each, but several times ordered quantities of twenty-four to thirty-six from the manufacturer and paid the same price as A.

The difference between the manufacturer's price for large quantities and the wholesaler's price for small amounts, although only about three cents or five per cent, frequently represents the retailer's profit margin. Many of the large chain stores operate on an even smaller margin.

For further discussion, see E. H. Chamberlin, *Theory of Monopolistic Competition*, Cambridge, 1933, and C. F. Roos, *Dynamic Economics*, Bloomington, 1935.

CHART XIV
EFFECT OF QUANTITY-DISCOUNT COMPETITION ON
MANUFACTURER'S PRICE

Source: See below



The size of each circle indicates, as also does the adjacent number, the quantity purchased. The vertical position of the circle shows the price paid per unit and the horizontal, the time of purchase.

Merchant B was buying thirty-six units of the product at thirty cents each. Then, competing merchant A purchased 168 units at twenty-six cents each and undersold B. The latter then bought 864 units at twenty-three cents each and cut A's price. At this point, Merchant A insisted that the manufacturer sell him as few as thirty-six units at a lower unit cost than he had paid for 168 units. The manufacturer, in order to keep his customer's goodwill granted the request.

the code and still undersell his small competitor. The point of criticism is shown by Charts XIII and XIV which demonstrate (1) that, prior to the NRA price reductions for quantity purchases were large and (2) that retail price policies were often determined by their size.

In truth, the most successful druggists have relied for profit almost entirely on the discount offered for quantity buying.³⁵ Consequently, it is no wonder that retailers were bitterly disappointed in the operation of this general code; the NRA had definitely favored large retailers by treating quantity discounts as cost elements rather than as profits to be earned by firms with large turnover and working capital. On a controversial cost question it had unwittingly taken the side which favored the large firms.

On the other hand the retail drug division, realizing this weakness of the general retail code, in February, 1934 modified its sub-code so as to prohibit sales below the manufacturer's wholesale list price in dozen lots, or for goods not sold by the dozen in comparable units to be determined by the code authority, but permitting any discount, free deal, or rebate, which was made available to all purchasers of dozen lots or comparable quantities to be considered as part of the manufacturer's price list. Yet, even when the complicating quantity-discount factor was thus eliminated, merchants who used loss leaders, finding that a dozen articles priced at, say, ten per cent above cost did not draw sufficient prospective customers, offered two dozen or more at the minimum prices. Thus, an effect of the markup as approved by the NRA was to increase the number of goods used as leaders. It was the operation of this principle which DuBrul and the author had feared would lead to demands for general retail price fixing; since this would be impossible of administration, the inevitable result would be disaster.

As regards the alternative Sachs-DuBrul proposal, it may be noted that it also did not treat adequately the quantity-discount problem. But it could have been modified to meet this problem by requiring that anyone offering goods for less than, say, ten per cent above the current wholesale price in quantities to be determined by some agency thereby agreed to sell the goods in private sale to any competitor at, say, ten per cent less than the price to the public. If such a modified rule had been used, an added incentive would have been given to merchants to buy out the entire stock of a competitor who offered goods at-loss-leader prices. Also, a rule of this type would decrease the spread in quantity discounts since a part would tend to be passed on to small dealers; the large retailer would in effect take over some of the functions of wholesalers. But it should be remembered that even with the extremes of loss-leader merchandising banished, the practice in a

³⁵Problems relating to quantity discounts and customer classification, it may be mentioned here, are discussed in Chapter X.

modified form would continue; a greater number of products would be offered at prices near the minimum.³⁶

Finally, with respect to social questions involved, it may be observed that various administration advisers and staff members of the National Recovery Administration repeatedly questioned the wisdom of attempting to eliminate loss-leader merchandising. For instance, the Price Policy Committee on October 4, 1933 ended a memorandum on loss leaders with the words:

In conclusion then, it is the sentiment of this committee that until it has been demonstrated that (a) the loss leader is a serious *social* problem and (b) that no adequate remedies can be found therefor except through a form of rigid minimum price fixing, this committee recommends the exclusion of any form of minimum price fixing in the master retail code and in all other codes in which it may have been permitted.

5. Resale-Price Maintenance

Another interesting NRA cost-plus experiment concerned the fixing of retail prices by manufacturers, a practice technically known as resale-price maintenance. While the most important industry in which this has been attempted is motor-vehicle retailing, some of the principles involved can best be revealed through a study of unapproved proposals of the retail drug industry. We observe first that in an analysis of the proposed code³⁷ for the retail drug industry

³⁶It is of some interest to record here that a chain on the Pacific Coast stamped out much loss-leader merchandising of competitive chains by a scheme related to the Sachs-DuBrul proposal. Whenever a competitor priced a good at less than cost, this chain offered to buy unlimited quantities from the public at its own cost. The result was that stocks of competitors were soon depleted at a loss, and the public which supplied the chain tarried to purchase from it other goods.

³⁷Section 2 of Article V of a proposed code for this industry read: "Section 2. The manufacturer shall have the right to, and nothing in the Anti-Trust laws as designated in Section 1 of the Act entitled "An Act to supplement existing laws under unlawful restraints and monopolies, and for other purposes" (approved October 15, 1914), shall be deemed to prevent a grower, producer or dealer who sells goods identified by a special brand, name, or trade-mark of which he is the owner, from specifying, by agreement with distributors, the resale price of such identified merchandise. The prices stipulated in any such agreement shall be uniform to all distributors, who are in like circumstances. The agreement may differ only where there is a difference as to the quantity of such merchandise sold, the point of delivery, and the manner of settlement. Provided, however, no contract shall be contrary to the provision of this Code. It is the intent of this section to express explicit agreement with the provision for price stabilization provided in Article V, 'Prices,' in the Code of Fair Competition of the Drug Industry."

DuBrul, on September 16, 1933, listed objections to resale-price maintenance as (a) the putting of a premium on high advertising expenses, thus increasing distribution costs without any compensating gain to the public, and (b) the fact that, whenever manufacturers have maintained a policy of resale prices in the past, the effect has always been to reduce the retailer's margins (per cent markup on invoice cost) to the point where he lost money in handling such products, but could not discontinue them because of public demand. DuBrul, however, did not consider the first objection to be of much importance, arguing that, if resale prices became too high, competition from unbranded or unadvertised products sold on a price rather than on an advertising basis would force reductions. But to minimize difficulties arising from rigidities he proposed that, if a retailer agreed to observe a manufacturer's resale price, the latter should be bound to repurchase the slow moving stock, or else the retailer should be permitted to dispose of it as clearance merchandise.³⁸ He admitted that such a provision did not dispose of the criticism regarding the reduction of margins, but argued that when advertising builds such a strong demand as to enable a retailer to get a more rapid turnover, less margin is needed. In more detail, DuBrul maintained that margins always varied inversely with the rate of turnover of merchandise and cited as examples the fact that a butcher's inventory turns with extreme rapidity and the per cent markup is low, whereas a furniture dealer's turnover is very slow and a high markup is needed to compensate for heavy storage expense and loss due to style obsolescence. After presenting these considerations, DuBrul recommended that resale-price maintenance be tried.³⁹

As a result of DuBrul's analysis, a memorandum giving tentative approval to the code was transmitted on October 4, 1933 by Hen-

³⁸A revised version of the proposed code, if approved, would have adopted this plan through the clause:

"No retailer shall sell standard trade-marked drug products whose retail prices are advertised to the public or indicated on the goods, their packages or containers, at a discount greater than twenty-one per cent (21 per cent) from such declared retail prices. In case the retail sales of such goods are slow or unsatisfactory the retailer may give the manufacturer or wholesaler from whom such goods were purchased, if his address be known, the opportunity to repurchase such merchandise at the wholesale price as hereinafter defined. In the event that the manufacturer or wholesaler fails or refuses to repurchase such goods within five days after the retailer has sent such notice, such goods shall, at the option of the retailer, be classed and treated as clearance merchandise as provided for in Section 2 of this article."

³⁹As a guide in explaining this decision it may be mentioned that DuBrul's philosophy was essentially that of Supreme Court Justice Louis D. Brandeis, who has considered the problems involved in his book, *Business a Profession*, 1914.

ry B. Arthur, the representative of the Research and Planning Division in hearings on the retail drug code, to Deputy Administrator A. D. Whiteside who was in charge of the code negotiations. Even so, Arthur took exception to the ten per cent markup and questioned the outcome of resale-price maintenance. In further discussion of the latter, he admitted that in many lines manufacturers had avoided resale-price-maintenance difficulties by opening their own retail outlets and, without condemning or approving this tendency, pointed out that the NRA by permitting the provision would discourage it. Moreover, to require druggists to sell at prices no lower than the code requirement of seventy-nine per cent of the manufacturers' recommended price would invite abuses: a manufacturer might mark a high price on his goods and then sell them comparatively cheap to druggists, using the high markup as an incentive to push sales. Finally, Arthur disagreed with DuBrul on the effects of advertising, maintaining that the provision would encourage manufacturers to continue to draw the public's attention away from true quality standards toward brand names.

Then, in a more detailed memorandum, Sachs advised General Johnson that resale-price maintenance was dangerous and should not be embraced.⁴⁰As a result of his condemnation of resale-price maintenance the provision designed to establish it was deleted from the code as finally approved. Manufacturers, however, immediately began to notify druggists that, unless marked prices were observed, goods would no longer be supplied; in fact, one large manufacturer refused to sell his product to a New York City chain which had been offering it at cut prices. When the chain began to purchase through wholesalers, the manufacturer then refused to sell to the wholesalers unless they agreed not to supply retail dealers who disregarded the

⁴⁰Sachs' memorandum dated October 7, 1933 read in part:

"The drug provision goes far beyond the general retail provisions: it is obviously a resale-price-maintenance device, despite its verbal disguise. Instead of making the price fixed at the list price it moves it down to the list price minus 21 per cent. Alongside the markup provision for general retailers it cuts a very paradoxical figure: If we assume \$1.00 as a list price, the baseline is set by this provision at 79c or 21 per cent off. Now the costs to the retailer varying with size and importance, and discounts for advertising, displays, etc., vary all the way from 55c to 66c. To the large retailer this provision would give a markup, at the extreme, of 24c on 55c, or approximately 44 per cent down to approximately 20 per cent.

"Considering the magnitude of the difference between the independent and the large retailer in terms of markup on these articles, it is clear that this will merely shift the form of competition from direct to the indirect. What is more, the conversion of the drug provision into terms of a markup means transforming a device for limiting losses into one assuring a high profit and so opening the door to a demand on the part of retailers in general to get as favorable treatment as that accorded the drug retailers."

marked prices. Thus manufacturers, denied resale-price maintenance through a code binding their customers, obtained it in another way.

Consider now the extensive price experiment of the NRA growing out of the long-established practice of resale-price maintenance in the motor vehicle industry, whereby automobile manufacturers have set factory prices and insisted that retailers sell automobiles and other motor vehicles at these prices plus all-rail freight⁴¹ from the factory. So strong has been this control of prices that a retailer who failed to observe a manufacturer's price invited almost certain loss of his agency. Under this plan, as competition developed, dealers, unable to lower prices of their products, quoted higher and higher prices on the secondhand cars accepted as part payment for new ones; it was not uncommon to allow as much as \$100 more on a "trade-in" than was expected from a resale. Indeed, at times, prospective customers for new cars first purchased old ones to be used in trade. In brief, the retailer, faced with the necessity of maintaining manufacturers' resale prices, effectively cut them by offering excessive allowances on old machines. Therefore, to bring trade-in prices of used cars closer to the actual prices which dealers could obtain for them on a resale, the motor vehicle retailing trade code provided in part:

(1) That the value of any model of used motor vehicle, either passenger or commercial, shall be the average price that the public in any given market area is then paying for such vehicle as ascertained by the association from sworn statements of all actual retail sales to consumers, subject to the approval of the Administrator.⁴²

Section 2 provided that no car should be taken in trade at an allowance higher than that given by a certain formula and specifically

⁴¹This is the basing-point system of pricing. See Chapter XI, Section 4.

⁴²The remainder of the provision read:

"The association shall publish the average prices thus ascertained approximately every 60 days. In order to insure fair average value in the interest of the consumer, published averages shall be computed for the preceding period and there shall not be included in computing such average that 20 per cent of sales which represented the lowest sales of all actual sales reported in the previous period.

"(2) That no dealer shall, directly or indirectly, or by subterfuge, accept in trade any used vehicle at an allowance price of more than its value as ascertained in paragraph (1) above less a minimum selling, handling and reconditioning charge, according to the following schedule:

"(a) Five per cent of the allowance price as determined in paragraph (1) above, on (x) the current series model, or (y) the preceding series model.

"(b) Ten per cent of the allowance price as determined in paragraph (1) above on the model preceding the two models described in paragraph (2) subsection (a) above, namely (x) and (y).

"(c) Fifteen per cent of the allowance price as determined in paragraph

forbade the use of subterfuge. Nevertheless, dealers who desired to make price cuts through used-car allowances did not hesitate to circumvent the code. In the spring of 1934, for instance, a retailer in Washington, D. C. offered to accept the author's old car at the full code price of \$180.00 at a time when repairs costing \$35.00 were needed before the machine could be operated. Various similar subterfuges were uncovered by an investigating party sent out by the Consumers' Advisory Board early in 1934; several dealers readily proposed to accept partially wrecked cars at full code prices. One ingenious dealer even offered to sell a secondhand car at considerably less than the code price and then accept it at the code price in trade for a new car. Another was allowing his friends the salesman's commission on new cars. In general, however, retailers were observing the motor vehicle code and prayerfully hoping that it would be their salvation.

From the point of view of economic changes it appears that if rigidly observed for several years, the motor-vehicle-code provision should have either caused loss of sales because of higher new-car prices or forced manufacturers to reduce resale prices to offset lower prices allowed for secondhand cars. Otherwise new-car sales would have been lost through longer use of secondhand ones. Indeed, it is very probable that both loss of sales and price reductions actually occurred in the code's limited life, the former because there was some delay in manufacturers' reduction of their prices.

From the considerations presented in this section it appears, therefore, that resale-price maintenance, or the fixing of retail prices by manufacturers, leads to competition (1) on the basis of advertising or (2) through differences in services; and, in the case of durable goods, artificial secondhand or trade-in values result. After advertising has built a strong demand for a nondurable good, reduction of retailers' margins often follows, and the merchants must still handle the product.⁴³ Attempted correction of such practices as the granting of excessive allowances on used cars encourages various evasions which, while not universal, cause considerable uncertainty and are particularly difficult to prevent; it is probably impossible to write a code or law which would cover all cases of evasions and still be enforceable. If resale-price maintenance should be observed and elimi-

(1) above, on all models other than the three models described in subsections (a) and (b) above."

In the text of the code distributed by the Superintendent of Documents, Washington, D. C., a comma erroneously appears between the words "preceding" and "the" of (b).

⁴³See also Section 4 of this chapter.

nation of excessive allowances for used cars instituted, manufacturers would be compelled to lower prices of new automobiles; retail prices of new and trade-in prices of old machines would decline.

6. *Enforcement of Cost Provisions*

In the preceding sections some observations on enforcement difficulties have been made from time to time. But the problems arising under the NRA's attempts to prohibit sales below some arbitrary cost transcend any such casual treatment; in fact, a large majority of the early policing efforts grew out of noncompliance with these schemes. Moreover, many such enforcements were quite unpopular and undoubtedly created public contempt for the NRA. Thus, for instance, there was hardly a day that a newspaper did not give front-page attention to the prosecution of some merchant for charging too little. Obviously this did not enlist popular sympathy, for the public had been accustomed to complaining when charges were too high and being grateful when they were low.

How hard it really was for the NRA to secure compliance with provisions outlawing sales at less than manufacturer's cost is indicated by an incident arising from one of the NRA's earliest efforts for enforcement. A producer charged with violation of the cost provision was adjudged by the code authority to be guilty and was then prosecuted in court. But at the opening of the trial the judge asked, "Is President Roosevelt here?" Upon being answered in the negative, he inquired: "Is General Johnson here?" When informed that Johnson was not, the judge curtly announced: "Case postponed." The next time the case came up the same questions were asked, the same replies made, and once more a postponement declared.

Similar unfriendly attitudes of other courts toward the NRA in cases brought against violators of manufacturer's-cost provisions, coupled with consumer hostility, made it impractical for the organization to prosecute vigorously those who violated such provisions. Blue Eagles could be removed from firms shown to be making sales below cost, but often this actually increased business for the "culprits."⁴⁴ Furthermore, the NRA was not itself unanimously in favor of outlawing sales made at prices under cost; in fact, early in the summer of 1934, several high officials even discussed the advisability of informing code authorities that the NRA would not prosecute cost

⁴⁴In fact, it is perhaps doubtful whether the removal of a Blue Eagle ever injured any firm which was not supplying the Government.

cases arising under codes which contained provisions not conforming with the official policy which did not grant much "cost" protection.

Enforcement difficulties also arose under the various retail codes. Here imperfect and damaged goods were exempted and it was frequently impossible to establish quality. Also a merchant could shift from one loss-leader product to another; when challenged, he could plead that he was disposing of a line and, to avoid conviction, could actually discontinue it for several months. The mere fact that these goods had to be advertised, marked, and sold as a discontinued line made little difference, for in the case of unbranded articles it was a simple matter to buy up a large stock from Company A, sell it as a discontinued line, then buy from Company B, and do the same thing, and so on. When as many exceptions are made as in the case of the retail code, there may as well be no rule.

To complicate matters further, there were over a million and a half retail outlets in the United States; and in the drug industry alone, over 700 articles had been regularly used as loss leaders. It is likely, therefore, that a check of well over one billion prices would have been required to discover all violations of a minimum-markup provision, so that the chance of a violator's being caught was slight.

* * * * *

In considering the more general problem of enforcing the NRA rules prohibiting unprofitable sales, it must be remembered that cost, however defined, is a purely arbitrary and somewhat fictitious quantity; two accountants assigned to work independently on the same cost analysis, even when employing the same formula, are likely to produce different estimates. In the second place, business men, generally recognizing that situations arise in which sales below cost, at least for short periods of time, are essential for proper conduct of trade, are faced with the necessity of making exceptions which materially reduce the effectiveness of their principles. In the third place, neither publicly-elected officials nor their appointees can be expected to enforce enthusiastically laws which do not have popular support; in fact, they may easily forget that such may be the *quid pro quo* for wage and hour agreements as actually happened under the NRA.

In view of all these considerations, we must conclude that the NRA code provisions prohibiting sales below cost were completely unenforceable. As a member of the NRA staff once remarked, "If the NRA had only adopted price fixing through cost formulas in all codes, all the unemployed would have been needed to check compliance."

CHAPTER X

OPEN PRICES AND TERMS OF SALE

1. *Secret Versus Open Prices*

To facilitate enforcement, code provisions which outlawed sales below cost, or otherwise established price fixing, naturally had to be implemented by rules requiring the posting of prices; it was obviously impossible to send compliance officers around to check prices. Moreover, if filed quotations were to mean anything, whatever their purposes, all terms of sale — cash and quantity discounts, advertising allowances, interest rates on unpaid balances, and premiums — had to be published with the prices. Thus if competition were to function, considerable knowledge regarding prices was needed.

It should be recalled that, before the NRA, business men had obtained the prices of their competitors through at least two methods, (1) securing price lists from friendly customers of competitors, (2) exchanging prices through a central clearing house. The first needs no explanation. As regards the second, we note first that some trade associations, around the last part of the nineteenth century, began to collect price information, organize it, and distribute it to their members. In 1921, according to a survey of the Federal Trade Commission,¹ the number of such open-price associations had grown to 150, and 90 were in existence in 1927 despite almost continuous prosecution on charges of price fixing.

Benefits expected to be derived from the reporting of prices and terms of sale under the NRA included (1) the prevention of a buyer's falsely telling a seller that the latter's competitors had offered a product cheaper, (2) the elimination of secret rebates, (3) various competitive advantages resulting from knowledge of price trends, and (4) the facilitation of clandestine price-fixing schemes which some industrialists wished to initiate but felt would not meet with NRA approval. The first requires no discussion. As to the second, we mere-

¹*Open-Price Trade Associations*, Senate document No. 226, 70th Congress, 1929. See especially pp. XVII, 14-15, 33, 35, and 40.

During the period covered by the report (1921-1927) the number of trade associations declined from 1273 to 860, but some part of the decrease, perhaps ten per cent, arose from the fact that not all trade associations were included in the census of 1927.

ly observe that its usual effect has been to put all buyers on an equal basis, thus improving the process of competition by largely eliminating the possibility of gaining an advantage through sharp bargaining and "unethical" practices; and at times it has intensified competition to the point of causing price wars. In consideration of this last point, we may add that in the oil industry, where prices are posted by all units, large companies usually have not allowed small independent gasoline retailers to undersell them by more than, say, one cent a gallon and, in many instances, have even demanded uniform prices in return for assurance that they would not engage in such wars. Since such terms have not always been accepted by the small companies, price wars have been frequent.

The third benefit is associated with the tendency of open prices toward uniformity. Since buyers will scarcely pay more to one seller when they can secure the article from another for less,² price at any time truly reflects market conditions. Moreover, an individual is to some extent warned of impending prices lower than his cost of production and afforded opportunity to reduce costs before suffering loss, or to suspend operations. Production can be planned and contracts for raw materials let on the basis of known conditions. In other words, competition is placed on a plane of intelligence, and really given a chance to function.

With regard to the fourth "benefit" we observe first that the recent history of open prices is marked with numerous legal challenges by the Federal Trade Commission, several cases being carried to the United States Supreme Court. An analysis of the high court's decisions shows that the reporting of prices in the past and of closed transactions has been sanctioned, unless the reports identified buyer and seller without some evident and legitimate reason.³ On the other hand, the reporting of current prices, while not held to be definitely illegal, has been regarded as evidence that a price-fixing agreement existed. This, we repeat here for emphasis, was an important reason for passing the NIRA. Industries were to be enabled to file prices,

²This rule of uniformity, however, applies only to standardized goods. For such products competition is maintained by the offering of various services along with the standardized goods. A gasoline filling station, for instance, has had its attendants put free air in the customer's tires, wipe off his windshield, dust off parts of his car, check the oil, and so forth. But since all stations are now offering such services, one wonders what will be next. Already some stations are giving lottery tickets to their customers and it is possible that this will be the next development.

³See, for instance, the decisions in the cases, *Maple Flooring Manufacturers' Association et al v. United States*, 268 U.S. 563, and *Cement Manufacturers' Protective Association et al v. United States*, 268 U.S. 588.

past, present, and future, together with terms of sale, without fear of prosecution by the Department of Justice.⁴

2. The Waiting Period.

The first of the NRA codes to include an open-price provision was that of the electrical manufacturing industry.⁵ The next was the iron and steel code, approved on August 19, in which the price posting was related to a multiple-basing-point system.⁶ Of the first 643 codes and supplementary agreements for divisions of major industries to be approved, 383 or 60 per cent (323 in codes and 60 supplements) adopted price filing. This plan as shown by Table XXVI was

TABLE XXVI
DISTRIBUTION OF CODES ACCORDING TO PRICE-REPORTING PROVISIONS
Source: Whitney, "Competition under Secret and Open Prices,"
Econometrica, Vol. 3, Jan., 1935, p. 50

	Open-Price Codes				Codes With- out Price Reporting
	With Waiting Period	Without Waiting Period	Past Price Reporting	Total	
Raw Materials	19	7	1	27	2
Fabricated Producers' Goods	198	41	14	253	129
Total Producers' goods	217	48	15	280	131
Fabricated Consumers' goods	45	24	4	73	73
Services	16	13	1	30	56
Total Consumers' goods and Services	61	37	5	103	129
Total Codes	278	85	20	383	260

most popular among sellers of raw materials and producers' goods — commodities which are fairly well standardized.

A few codes required the posting or reporting of prices on past and closed transactions, but industry was primarily interested in current or future quotations; these gave more accurate information re-

⁴See, for instance, the statement of Senator Robert F. Wagner, *Congressional Record*, June 13, 1933, p. 5939.

David I. Podell and Malcolm C. Rorty, both of whom took part in the drafting of the NIRA, maintained repeatedly that industry ought to be freed from the anti-trust laws at least to the extent of permitting the filing or, whenever necessary, even the fixing of prices.

⁵This was the fourth code to be approved. It was signed by the President on August 4, 1933.

⁶See Chapter XI, Section 4.

garding conditions to be expected. Therefore, early codes set a time required to elapse before prices filed could become effective, that is, a waiting period which varied from one to thirty days, depending upon the industry.⁷ In insisting on such a plan industry argued (1) that the reporting agency is thereby given time to supply the entire industry with the price list, and (2) that "surprise moves" designed to secure special contracts, which tend to demoralize the market, are eliminated, and (3) that buyers are protected to the extent (a) of having time to make complaints of price increases and adjust their plans, buying in advance if necessary, and (b) of knowing that competitors will not be able to obtain materials at bargain prices without notice to the industry. On the other hand, opponents of the waiting period maintained (1) that it enables the dominating companies to bring pressure on the smaller ones to withdraw price reductions or to follow the lead of other companies in advancing prices, (2) that it greatly hampers firms which are forced to make quick price changes, possibly to raise necessary cash, and (3) that it freezes prices for several days.

The arguments in favor of waiting periods seem to require no amplification. With respect to the other side we first observe that, partly to determine the extent of abuse of the waiting period and hardships occasioned by it, the NRA, on January 9 and 10, 1934, held a "field day" for criticism. At this time complaints were made against forty codes, thirty of which provided for open prices and in general specified waiting periods.⁸ Then, following a report on the price hearing,⁹ General Johnson issued an order that waiting periods of unapproved codes should not become effective immediately, and two days later said publicly:

Pending completion of a study of open-price associations now being made as a result of a price-change hearing, no further provisions which prescribe a waiting period before the prices filed become effective will be approved in

⁷Of the 278 codes setting up waiting periods, 89 provided for an interval of 5 days, 141 for 10 days, and 12 each for 3 and 7 days. In 28 of these industries waiting periods were applicable only to price declines.

⁸It is of some interest to note that in only seven instances were open prices actually in effect at the time of the situation leading to the complaint.

⁹Following the price hearing, Walter Mitchell, Jr., who at the time was chief of the price unit of the Research and Planning Division, prepared a report on the testimony for Divisional Administrator Arthur D. Whiteside to submit to Johnson. Mitchell declared that the Research and Planning Division had not yet reached a definite conclusion regarding the advisability of NRA's countenancing open-price provisions with waiting periods, and urged a study of the matter. Whiteside accepted the document almost verbatim for transmittal to Johnson.

codes. Therefore, where such provisions are included in proposed codes not yet approved, they shall be stayed in the executive or administrative order of approval for 60 days, or pending completion of the aforesaid study.

This order is not intended to prohibit or stay provisions for open-price associations which provide that revised prices shall become effective immediately upon filing.

Six weeks afterward Simon N. Whitney, who in the interim had succeeded Mitchell as chief of the price unit and been given direction of this study, submitted a preliminary report condemning waiting periods and urging that the stay not be lifted except in the codes of industries demonstrating a definite need.

We next note that, while Whitney was continuing his investigation of open prices, the Fair Trade Practice Board of the NRA was established, and each new fact uncovered by Whitney was at once brought to the board's attention. Finally the arguments against the waiting period seemed to outweigh greatly those in its favor, and consequently the board, in May, 1934, condemned the compulsory waiting period except where an industry could show special circumstances to justify it.¹⁰ At the same time advantages of voluntary announcement of future prices were recognized and the suggestion made that price lists "become effective immediately upon receipt thereof by said agent" — a designated organization to receive price information.

The board thus proposed to fix a minimum waiting period equal to the time necessary to notify the agency. This might be only a matter of minutes in the case of telegraphic posting but, on the other hand, could be days with mail filing; and a company desiring a longer waiting period could even announce prices to the trade sometime before listing them with the agency.

The situation with respect to waiting periods has been ably summarized by Whitney¹¹ as follows:

It would be naïve to assume that the zeal of organized industry for open prices is based solely on a belief in the values of publicity. The business man who favors price reporting does so normally because he thinks that it will tend to stabilize prices. Occasionally, as in the 28 codes whose waiting periods apply only to declines, the desire to hinder price cutting without blocking increases becomes plain. Often the open-price clause in the code is definitely tied in with other rules. For example, 257 out of the 363 codes providing for

¹⁰See *Commercial and Financial Chronicle*, Vol. 138, 1934, pp. 3886, 4067.

¹¹Simon N. Whitney, "Competition under Secret and Open Prices," *Econometrica*, Vol. 3, January, 1935, pp. 50-51.

reporting of quotations forbid sales of the product below the cost of production. . . Members of the industry are expected to announce the prices applicable to each group of buyers — jobbers, retailers, etc., — and to give all members of each group the same prices. Extra discounts to large purchasers or co-operatives can thus be eliminated — an aim close to the heart of many sellers. . . . These provisions — open prices, prohibition of sales below cost, fixing of resale prices, fixing of discounts, etc., — can easily be combined to establish a reasonably effective price-fixing scheme. This explains without doubt a good part of the enthusiasm which they have excited among industrialists.

3. Monopolistic Tendencies Arising from Open Prices

In objecting to such monopolistic tendencies as are encouraged by price filing, the Consumers' Advisory Board of NRA in its report of February 19, 1934 said, in part:

The basic difficulty, as we see it, is that open-price systems, with or without waiting periods, identify the person or firm quoting the low price and thus facilitate the use of pressure to force his price up to the level generally desired in the industry.

And Whitney, who supported this contention, reported: "There has been a mass of evidence collected, in industries too numerous to mention, that pressure has been brought to bear on the price-cutters."¹² On the other hand, friends of open-price reporting contended that such monopolistic tendencies could be prevented by concealing the identity of the seller, that is, by publishing only the price itself together with the quantity sold. This is, indeed, the open-price service offered by the ticker reporting stock-exchange transactions; but, as Whitney points out, "to announce that there has been a sale of oil burners at \$200 is hardly as illuminating as to announce that there has been a sale of American Telephone common on the New York Stock Exchange at that figure." Nevertheless, in any industry in which products are identical, such as cement, this system would furnish adequate price information without noticeably encouraging monopoly.

Another objection to price filing is that the mere reporting of prices tends to place the small manufacturer at a disadvantage. Thus, in the rubber footwear industry, large companies offering a full line of products, adequate service, assurance of future supply, and well-known and highly advertised brands, were able to take business from

¹²Simon N. Whitney, *op. cit.*, p. 44.

their small competitors simply by filing prices which were identical with those of the small firms. Realizing this situation, three small companies refused to file their prices in accordance with the code. When the code authority attempted to enforce the provision, they appealed to the Federal Trade Commission, charging that open prices constituted a monopolistic trade practice forbidden by Section 3a of the Recovery Act. But let us not jump to the conclusion that price filing always hinders small business. There is much more to the problem: we must explain, for instance, why two *large* manufacturers in a certain producers'-goods industry should petition the NRA to suspend the operation of an open-price provision because it unduly favored a *small* firm. The facts in this case readily reveal the answer: the small concern had a cost of production of only slightly more than half that of the large companies and, having discovered this advantage through trial filing of prices, was constantly posting quotations ruinous to its large competitors. Thus, a consideration of these two examples indicates that, whenever sales below cost are forbidden, price filing can be expected to favor the low-cost producer whether he be large or small, provided adequate safeguards are taken against intimidation.

Some interesting observations on the effects of price filing on the stability of prices have also been made by Whitney.¹³ For instance, his statistics for the five years before and after the establishment of the Sugar Institute as an open-price association, reproduced in Table XXVII, show that, following the adoption of open prices, there was (1) a decrease in the number of different quotations made simultaneously, (2) a decrease in the range between the highest and lowest price, and (3) a decrease in the number of price changes made during each year. After taking into account the extra information that

¹³It is of some interest to note that, in February, 1934, when Whitney's study was initiated, Leon Henderson, later chief of the Research and Planning Division, wrote to eighteen economists, who had previously conducted research on prices, asking their opinions on open prices. Of these, three expressed suspicion that waiting periods would result in price fixing and unwarranted advances and, on general principles, disapproved them; five answered in such a way as to indicate that they were somewhat suspicious of them; five merely urged study; and five in replying failed to mention them. Indeed, few economists have given serious attention to the effects of open prices on competition. Trade association executives and lawyers appear to have monopolized the field.

In 1933, W. J. Donald, a trade-association lawyer, in referring to open prices with a waiting period, wrote: "the plan does not necessarily mean that prices can be maintained; in many lines, it may simply mean that there is a cold sobering period between the announcement of a change in price in order to secure an order and putting the new price into effect." See W. J. Donald, *Trade Associations*, New York, 1933, p. 338.

before the Institute was established sales were seldom made at any quotation other than the lowest, Whitney concluded:

the filing of prices merely meant the making of quotations in a more orderly and reliable manner, as a result of which the latent price uniformity (which always exists in the case of a standardized commodity when buyers and sellers all know the market condition and all are in a position to act) was brought to the surface.

Then, as a further conclusion, he stated that secret discounts were almost entirely eliminated after the establishment of the Institute;

TABLE XXVII
SUGAR PRICE UNIFORMITY AND STABILITY UNDER OPEN PRICES
(Ten Sugar Refineries)

Source: Whitney, "Competition under Secret and Open Prices,"
Econometrica, Vol. 3, Jan., 1935, p. 57

Year	PRICE UNIFORMITY		PRICE STABILITY		STABILITY OF OPERATORS
	Average number of simultaneous quotations	Average range of quotations in cents per 100 pounds	Number of price changes during year	Average Size of price change in cents per 100 pounds	Mean percentage deviation of monthly refinery activity from annual mean
1923	2.5	28.4	67	20.0	
1924	3.1	27.4	48	16.4	
1925	2.7	18.5	43	9.4	18.9
1926	2.9	21.0	42	10.1	12.4
1927	2.7	18.6	36	11.1	16.6
1928	1.4	5.0	28	9.8	13.5
1929	1.1	10.0	19	16.1	15.5
1930	1.3	22.7	22	13.4	15.7
1931	1.0	7.5	21	10.0	19.6
1932	1.1	5.6	16	9.4	16.2

the existence of a single selling price came to mean that there was actually only one price level. And we must agree with him that this was a desirable development.

Results of a different study of uniformity of prices applying to NRA coded industries are shown in Table XXVIII which compares the first prices filed after the adoption of a code and the latest prices available when the study was made (usually for February, 1934). This comparison, covering the thirty-eight industries replying to questionnaires of the NRA Consumers' Advisory Board, shows that

under the codes (1) open prices tended to encourage uniformity of quotations, (2) uniformity increased after the first lists were filed, and (3) prices generally tended to cluster around the highest ones filed, thus indicating general harmony except for a small fringe of price cutters.

TABLE XXVIII
EFFECT OF PRICE FILING UNDER THE NRA ON PRICE UNIFORMITY
Source: Research and Planning Division, NRA

Class	Number of Products	Number of Industries Having Plurality of Products in Class
First list filed		
1. All prices identical	1321	23
2. More than half identical	742	7
3. Half or less identical	55	1
4. None identical	211	7
Total comparable data	2329	38
Latest list filed		
5. All prices identical	1985	28
6. More than half identical	189	3½*
7. Half or less identical	31	2
8. None identical	172	4½
Total comparable data	2377	38
Both lists, identical prices only		
9. Identity found at highest price	638	8
10. Identity found between highest and lowest	219	7½
11. Identity found at lowest price	234	8½
Total data included	1091	24

*Fractions mean that the industries in question did not show a "plurality" for any single degree of identity, but a "tie" for two. Thus, there was one industry, more than half the products of which had identical prices and the rest none. The number of products covered by the report of a single industry ranged from 3 to 537.

A more exhaustive study of relative increase of open and secret prices during the first year of codes was made in the summer of 1934 by the price unit of the Research and Planning Division. Its data of frequency distributions of price changes for both open and secret prices, presented in Table XXIX-A,¹⁴ indicate that prices of commod-

¹⁴In order to eliminate, so far as possible, effects due to comparing goods of quite different economic character, products examined were those in subgroups of the wholesale index of the Bureau of Labor Statistics containing at least two

ities later to be covered by open-price codes (1) declined less than those of other commodities, (2) recovered less between February, 1933 and August, 1933, and (3) after August, 1933 advanced more. And Table XXIX-B shows that among the open-price codes these tendencies were most evident in those naming waiting periods and least in those reporting only past prices. This stability in the open-price group, we believe, was attributable to the facts that (1) it represented chiefly highly fabricated producers' goods and (2) some form of control of prices was exercised by the members of the industries concerned.

A classification of price movements according to commodity subgroups as in Table XXX shows that open prices increased more or declined less in the code period August, 1933 to August, 1934 than secret prices in eight of the fourteen subgroups and, furthermore, the average increase in price in the open-price groups was about five times as great as that in the secret-price groups. Yet we must admit that these data are inconclusive. On the basis of statistical evidence alone we cannot conclude that open prices tend to be higher prices. In such instances we must examine collateral information; that is, we must look behind the data.

Actual evidence of the exertion of pressures by competitors or code authorities to maintain uniform prices was uncovered by the Consumers' Advisory Board of the NRA, which, on February 21, sent questionnaires to representative companies in industries with open-price provisions in their codes, seeking answers to the query: "Has any pressure been brought to bear upon you by the Code Authority and competitors in the industry, or others, either to persuade you to raise the price which you had on file, or to refrain from making effective a price change which you contemplated?" Correspondents in two industries replied that prices were fixed higher than they desired at meetings at which they were outvoted; a third said that the code authority had requested him to file prices as high as the rest; a fourth declared that he had been urged to copy the prices published by others; a fifth charged that his code authority had urged members not to cut prices and had refused to publish lowered prices before attempting persuasion; and a sixth reported that his code authority had open and two secret price series. Only 14 of the 45 subgroups of the Bureau's index satisfied these conditions, but these 14 embraced 181 products under open price codes approved before the end of July, 1934, 130 of other codified industries, and 52 not yet under codes at that time. The first two open-price codes became effective on August 15 and August 29, 1933, but first lists were not filed until the next month. August, 1933 was, therefore, taken as the last "pre-code" month.

TABLE XXIX

PRICE CHANGES UNDER OPEN-PRICE AND SECRET-PRICE CODES

A. Frequency Distributions of Price Changes

Source: Research and Planning Division, NRA

Percentage change	Decline, 1926 (average) to February, 1933		Advance, Feb- ruary, 1933 to Aug. 1933		Advance, August, 1933 to August, 1934	
	open	secret	open	secret	open	secret
—50 to —40.1						3
—40 to —30.1					1	2
—30 to —20.1			1		5	6
—20 to —10.1	2	1	2	3	11	30
—10 to — .1	4	4	10	7	33	26
0 to 9.9	18	9	86	59	75	60
10 to 19.9	29	21	31	20	36	32
20 to 29.9	34	26	14	17	15	10
30 to 39.9	35	23	15	13	2	7
40 to 49.9	27	30	7	12	2	2
50 to 59.9	20	33	3	13	0	3
60 to 69.9	7	23	0	12	0	0
70 to 79.9	5	10	2	7	1	1
80 to 89.9		2	1	4		
90 to 99.9			1	5		
100 to 109.9			0	5		
110 to 139.9			3	5		
140 to 169.9			4			
170 to 179.9			1			
Total Prices	181	182	181	182	181	182
Median Percentage Change	31.0	42.3	9.0	21.2	5.4	4.0

B. Mean Price Declines and Recoveries

Source: Research and Planning Division, NRA

	Number of Prices	Decline, 1926 (Aver- age) to February, 1933	Advance, February, 1933, to August, 1933	Advance, August, 1933, to August, 1934
Codes with waiting period	73	25.7%	8.5%	7.7%
Codes without waiting period	84	33.1	16.7	5.4
Codes with past price reporting	24	40.2	56.7	—5.1
All open price codes	181	31.1	18.5	4.9
Other Codes	130	39.8	35.2	.5
Prices not under approved codes	52	40.0	23.3	8.2
All non-agricultural prices	707	36.3	13.0	8.1

sent out a suggested list of prices which members were afraid to cut.¹⁵ In brief, various kinds of illegal attempts to support prices were made.

For several months after the price hearing of January, 1934 the NRA received hundreds of letters complaining of attempts to fix prices. This and other evidence indicates rather clearly that industry abused the privileges offered by the open-price provisions of codes. It is no wonder, therefore, that Whitney was led to the conclusion:

TABLE XXX
CHANGES IN OPEN AND SECRET PRICES
IN SUBGROUPS OF THE B.L.S. WHOLESALE PRICE INDEX
Source: Research and Planning Division, NRA

Subgroup	Number of Prices		Decline, 1926 (average) to February, 1933		Advance, February 1933, to August, 1933		Advance, August, 1933, to August, 1934	
	open	secret	open	secret	open	secret	open	secret
Fruits and vegetables	13.	6	31.2%	46.8%	8.6%	43.5%	10.4%	20.2%
Other foods	14	22	40.2	49.5	15.3	23.4	5.8	9.9
Clothing	2	18	38.0	39.3	16.7	36.9	16.0	3.6
Cotton goods	8	24	43.5	48.8	127.8	79.1	-11.4	-1.9
Knit goods	3	5	26.0	55.4	13.3	62.8	— .8	— 6.3
Silk and rayon	3	10	69.2	69.0	43.8	27.4	-28.0	-16.0
Other textile products	14	2	45.1	38.9	32.6	26.1	- 2.9	-14.6
Iron and steel	46	17	21.5	16.2	6.1	8.8	8.5	5.1
Nonferrous metals	9	11	46.4	43.6	39.3	40.0	2.1	5.2
Paint and paint materials	7	24	41.1	28.5	18.1	11.9	14.4	4.0
Other building materials	18	6	26.5	26.7	11.5	3.9	3.9	- 4.8
Furnishings	19	20	26.0	32.4	7.5	22.4	7.2	.9
Paper and pulp	7	4	37.6	37.5	19.1	40.0	6.7	- 5.5
Other miscellaneous	18	13	25.1	43.2	5.4	26.6	4.2	5.9
Mean of sub-group means			37.0	41.1	26.1	31.6	2.6	.5

“the known existence of market control in many open-price industries strengthens the belief that open prices tend to be desired by an industry in order to assist in such control.”¹⁶ It would seem, there-

¹⁵Names of industries cannot be given because the questionnaire contained the statement: “Answers to this question will be used only for purposes of this study and not, unless you give specific permission, for any proceedings against persons involved in such instances.”

A report of the Consumers' Advisory Board dated February 19, 1934, stated: “Evidence in our files indicates that much pressure is being applied not only where open-price arrangements have definitely received code sanction, but in instances where there have been efforts to establish uniform prices without code sanction.” But an examination of these files by the price unit of the Research and Planning Division revealed that only forty of ninety-seven complaints were against industries adopting open prices, and only three cases could be charged against the practice.

¹⁶Simon N. Whitney, *op. cit.*, p. 62.

fore, that open-price reporting did facilitate clandestine price fixing at levels higher than might have prevailed under a competitive regime.

In a further consideration of price stability we note that in March, 1934 General Johnson told the Code Authority Conference that the NRA was seeking help in developing policies on twelve points, the first need being:

I. A more uniform and equitable rule of national price stabilization in those cases where it is necessary to maintain wages at a decent standard against the certain results of predatory and cutthroat competition, and further insurance against increase of price faster and further than increase of purchasing power.

The report on these twelve points, prepared by the author and his staff, stated that there were two parts to Johnson's first proposition, (a) price stabilization and (b) protection against rapid price increases, and then went on to say essentially:¹⁷

(a) There are at least five major factors which determine the degree of price fluctuation for a commodity. They are:

1. *Rate of variation in the cost of production.* Raw and semi-finished goods of a standardized nature, for which price variations are important in determining movements of prices of finished goods, are copper, pig iron, cotton yarn, and brass products. Moreover, since wages and overhead costs are almost constant and raw-material prices are variable, price variation depends upon the degree of processing.

2. *The number of independent (or effective) buyers and sellers handling most of the sales of the commodity.* For relatively few sellers the variation in price tends to be proportional to their number. Markets in which there are few sellers are usually characterized by nominal, extremely stable prices, which are shaded only to obtain large orders. Whatever price movement actually occurs is largely the result of suspicion on the part of certain vendors that others are allowing sharply increased discounts to customers.

On the other hand, in industries where there are many sellers and a few buyers, prices tend to fluctuate somewhat widely and on the whole to be low. Included in this group are industries producing goods and services sold according to specifications by bidding, such as pressed metal, job printing, construction, and engineering and architectural services. For some products, such as wheat, corn, and cotton, there are many buyers and many sellers, and in these indus-

¹⁷In the original memorandum (3) and (4) were interchanged. A few minor changes in phraseology and the addition of the last sentence of (1) have also been made in the text presented here.

tries prices, for the most part, undergo only small daily or weekly changes, the trend usually following the general price level.

To summarize, the variation in price depends to a considerable degree upon the ratio of the number of sellers to the number of buyers.

3. *Selling or buying combinations.* Combinations of buyers or sellers have about the same effect upon price variations as reduction in the number of buyers or sellers. . . . Instances of buyers' combinations are chain food and drug stores, and retail co-operatives. Farmers' co-operatives and various holding corporations are examples of sellers' combinations.

4. *Degree of competition among substitute commodities or services.* All commodities compete for the consumer's dollar, but only competition among certain groups is generally recognized by business men. The coal industry, for instance, is aware of competition with natural gas, but probably not with textiles. Some highly competitive groups are (1) lumber, brick, cement, steel, and stone, and (2) rayon, silk, cotton, and wool. Whenever the price balance of such a group is disturbed, consumers shift their purchases and thus one part benefits at the expense of the other.

5. *International character of the product.* The existence of a significant export market for a finished good greatly increases its domestic price stability; surpluses are often "dumped" abroad. Products so affected include electrical goods, aluminum utensils, and various kinds of machinery. On the other hand, if sizable proportions of total sales of a good are imported, prices are often unstable. Significant import commodities include rubber, coffee, tea, and silk.

It appears, therefore, that open-price or listing agreements, such as are found in many codes, may well tend to aggravate rather than alleviate the price inequalities which are often held to be responsible for economic growing pains. Open prices will produce little stabilization, unless accompanied either by collusion or production and inventory control. Usually an excessive stock breaks a price and a shortage causes a violent increase.

Consequently, stable prices that are economically justifiable can be achieved only through a rational process of inventory and production control designed to eliminate the alternate feasts and famines caused by uninformed buying and selling. But any satisfactory approach to this problem involves an integration of the production process with the rate of purchase by the users of the product and until a degree of industrial co-ordination is perfected which makes this possible by a simple means, it is probable that open prices alone

will produce very little stability of price except through monopolistic collusions.

These conclusions, it should be needless to add, were based upon extensive studies conducted by the price unit of the Research and Planning Division. With regard to the degree of processing, we note that the percentages exhibited in Table XXXI of products in each of the three classes, (1) raw materials, (2) semi-finished goods, and (3) finished goods, show clearly that prices of finished goods are least flexible while prices of raw materials are most flexible. That price stability within an industry depends upon the degree of processing, Table XXXII unmistakably indicates.

TABLE XXXI
EFFECT OF DEGREE OF PROCESSING ON PRICE STABILITY
January, 1926 to October, 1933*

Source: Research and Planning Division, NRA

Frequency of Price Change	No. of Products	Percentage Distributions		
		Raw Materials	Semi-Finished Goods	Finished Goods
0	14	7.1	0	92.9
1 - 4	77	3.8	5.2	91.0
5 - 8	76	1.4	2.6	96.0
9 - 13	81	2.5	4.9	92.6
14 - 21	97	2.8	7.2	90.0
22 - 35	84	3.6	23.8	72.6
36 - 60	85	8.3	12.9	78.8
61 - 87	83	15.7	24.1	60.2
88 - 93	85	36.4	16.5	47.1
94	63	49.2	7.9	42.9
	745			

*The 745 commodities consisted of 722 reported by the Bureau of Labor Statistics, 8 subject to regulations of the Agricultural Adjustment Administration, and 15 imported in sizable quantities. Monthly price data are recorded so that the number of opportunities for changes is 94.

The second proposition, that monopoly tends to stabilize prices, has long been accepted by economists and need not be debated here. We merely add that probably equally important in recent years have been buying collusion and the phenomenon of mass buying, but these matters can best be discussed in the next section when quantity and cash discounts are considered.

Some measure of the importance of the third point, inter-commodity price competition, is exhibited by Chart XV, which pertains to the textile group — cotton, wool, rayon, and silk fibers. Here it is demonstrated that the consumption of each commodity was directly

proportional to the deviation of its price from the trend of the group; when the price of silk, for instance, rose above the average trend for the group, its relative consumption fell, and when its price dropped below the trend, its relative consumption rose. A similar study for the competing groups, lumber, steel, cement, and brick is portrayed in Chart XVI. The NRA recognized the need for maintaining proper balance of prices within such groups, and, on the basis of a projection of this study into 1933 and 1934, urged reductions in prices of lumber and cement. But, in general, statistical difficulties prevent the isolation of effects of competition within a group; in brief, prices in a group tend to move in much the same pattern.

TABLE XXXII

EFFECT OF DEGREE OF PROCESSING ON FREQUENCY OF PRICE CHANGE*

Source: Research and Planning Division, NRA

Industry	DEGREE OF PROCESSING					
	Raw Materials		Semi-Manufactured Goods		Finished Goods	
	Number of Products	Average Number of Price Changes	Number of Products	Average Number of Price Changes	Number of Products	Average Number of Price Changes
Cotton Textiles	3	94	10	87.4	27	40.1
Wool Textiles	10	67.8	3	63.3	17	22.7
Iron and Steel	....	.....	15	34.9	21	29.5
Leather	7	87.3	6	42.5	....	.....

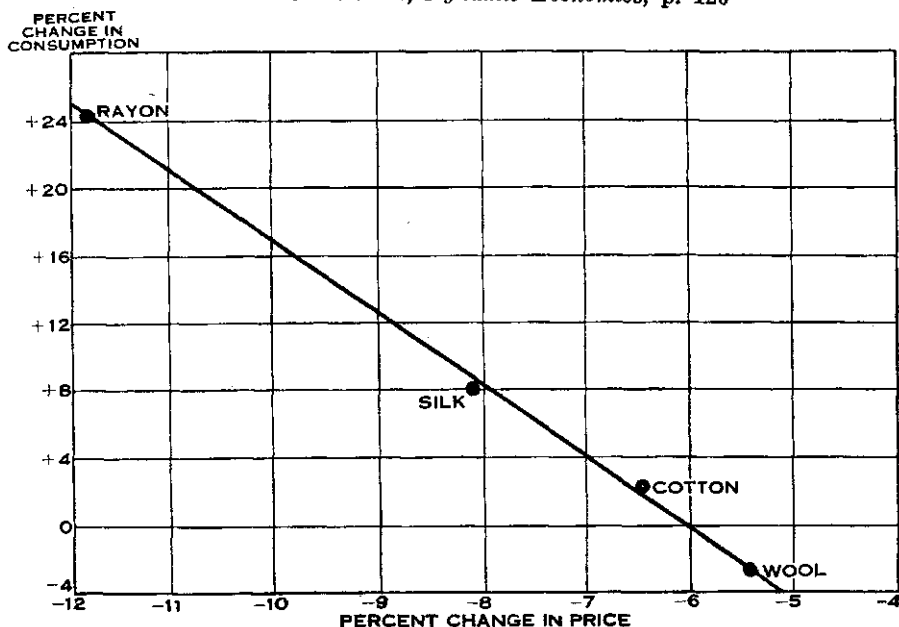
*Raw materials, semi-finished products, and finished goods include commodities so classified by the Bureau of Labor Statistics. The index of raw materials is an average of the wholesale prices of such unprocessed products as grains, fruits, livestock, textile fibers, iron ore, steel scrap, petroleum, rubber, and hides. The index for semi-finished goods is a composite of wholesale prices of commodities such as iron, steel, non-ferrous metals, yarn, leather, wood pulp, drugs, naval stores, and the like. In the finished-goods index are included quotations at wholesale for such articles as automobiles, automobile tires, lumber, metal products, house furnishings, building materials, cloth, meats, groceries, shoes, paper, and refined oils.

With respect to the fourth proposition, we merely observe that information on causes for stability within a country of prices of export commodities, manufactured under semi-monopolistic conditions, and the instability of prices of import commodities unprotected by tariffs, is so readily available in standard works on dumping and the tariff that a discussion here would be superfluous.

The foregoing considerations, therefore, show that open prices tend to be uniform, sometimes because of agreements of sellers but often without such collusion. Moreover, stability of price under the NRA depended considerably upon (1) the degree of processing of the commodity, (2) selling and buying collusion, (3) degree of competi-

CHART XV

COMPETITIVE SHIFTS AMONG TEXTILE FIBERS DUE TO PRICE CHANGES

Source: C. F. Roos, *Dynamic Economics*, p. 126

Between 1919 and 1931 rayon prices declined on the average 11.8 per cent per year, silk prices 8.1, cotton 6.5, and wool 5.4. In the same period rayon consumption increased on the average 24.2 per cent per year, silk 8.0, and cotton 2.4, and wool consumption declined 3.0 per cent per year. The chart, in which the first set of figures is plotted horizontally against the second set vertically, shows that the average yearly percentage change in consumption among these competitive industries was proportional to the average yearly percentage change in price. Thus, when the NRA and AAA together raised prices in the cotton textile industry out of normal relation to the prices of competitive commodities, they necessarily diverted activity from the cotton textile industry.

This chart was prepared from a study by Stanley B. Hunt, *Textile World*, Sept. 26, 1931, pp. 90-92.

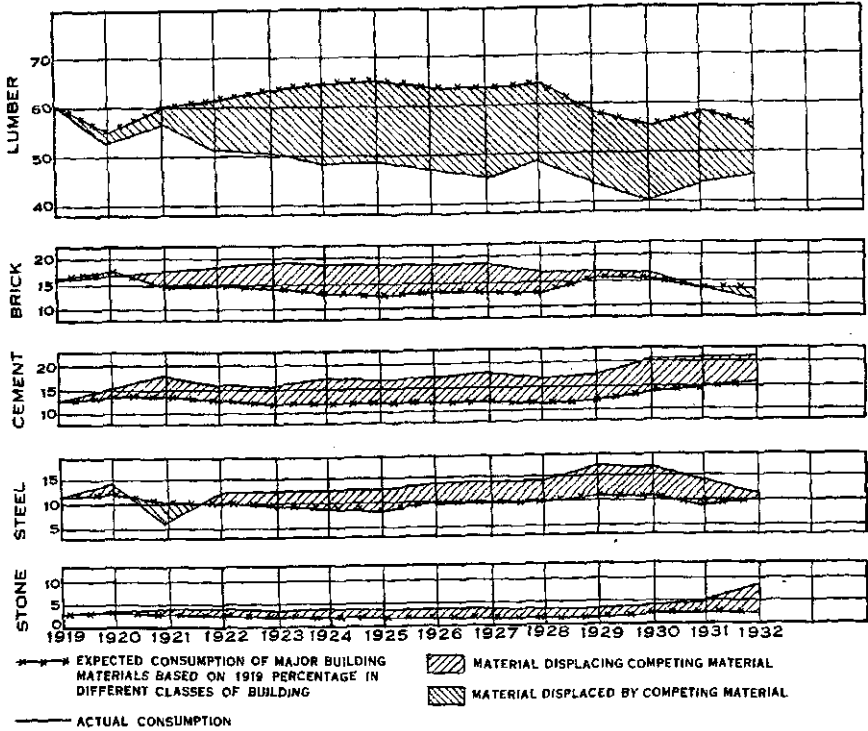
tion of substitute commodities, and (4) the percentages of total production or consumption of the commodities exported or imported.

4. Elimination of Indirect Price Cuts by Fixing Cash and Quantity Discounts

A movement to limit indirect price cuts naturally arose as a corollary to the NRA's efforts to establish open prices, for obviously knowledge of prices is useless without information on all other terms of sales. Thus something had to be done about two of the most important ways of changing net prices without affecting quotations—the grant-

CHART XVI

SHIFTS IN RELATIVE CONSUMPTION OF MAJOR BUILDING MATERIALS

Source: C. F. Roos, *Dynamic Economics*, p. 21

If there had been no commodity substitutions among the building material industries — lumber, brick, cement, steel, and stone — the proportions of the various materials used would have been determined solely by the relative volumes of different types of building construction. In the chart shown here, the crossed lines represent the consumption of major building materials based on 1919 percentages in different classes of building. The plain lines represent the actual consumption, and the space between, the commodity displacement, which, in some measure at least, resulted from changes in relative prices.

The NRA caused prices to be raised very much in all these industries and by a fortuitous circumstance only slight disparities were introduced.

ing of different cash and quantity discounts. These price concessions had grown to such importance that some merchandising organizations actually measured the worth of purchasing agents by their ability to secure large concessions, both cash and quantity. On occasions, prices at which quotations were made had first been raised by manufacturers so that larger discounts could be offered to a buyer who had to "make a showing," and frequently the time limit for the cash discount had been stretched far beyond any reasonable bounds. Indeed,

the term "cash discount" was often merely another name for a price cut.

With regard to the size of the cash discount, we note that Table XXXIII, based on National Retail Dry Goods Association data, shows that it had ranged from two to eleven per cent. Other statistics reveal that by 1933 the special quantity discounts allowed purchasers of large quantities had become as large as twenty per cent of the manufacturer's price for usual quantities; in fact, demands for discounts, accompanied by threats of withholding important contracts, often resembled racketeering. It was not uncommon, for instance,

TABLE XXXIII

PRE-CODE AND CODE CASH DISCOUNTS

Source: 1932 *Departmental Merchandising and Operating Results of Department Stores and Special Stores*,
Source: National Retail Dry Goods Association

Name of Coded Industry	Per Cent Discounts Allowed		
	Average	Pre-Code Maximum Reported	Code Maximum
Underwear and Allied Products	7.5	11	2
Women's Dresses	10.0	10	8
Handkerchiefs	5.4	8	2
Small Leather Gds.	7.0	8	3
Draperies	4.5	5	2
Lace Curtains	4.5	5	2
Toys and Playthings	4.0	5	2
Average (unweighted)	6.1		3

for a mass distributor to contract for a large part of the total output of a plant for two years and then, at the end of this time, when the manufacturer's sales force had been allowed to disintegrate somewhat, demand lower prices by threatening to take the business to a competitor. The result was that the manufacturer, rather than endanger relations with his other customers by discriminatory lowering of his prices to this large buyer, frequently offered him a quantity discount.¹⁸

¹⁸These discounts were often forced by powerful buyers to such extremes that manufacturers produced at unprofitable levels, sometimes only slightly above direct costs. Seldom if ever did these individual buyers, or monopsonists, as Joan Robinson terms them (*Economics of Imperfect Competition*, London, 1934, p. 215), allow a manufacturer a margin sufficient to set up depreciation and obsolescence reserves.

The quantity-discount racket was further aggravated by the growth of buying associations which have demanded special concessions for their members with-

The NRA's first solution to the problem of cash discounts was a simple code provision defining maximum allowable amounts for different time intervals. For example, divisions of the cotton textile code specified the following simple terms: for the corset, brassiere, and allied trade fabrics, two per cent ten days or three per cent cash on delivery; and for curtain and drapery fabrics, three per cent ten days or at the option of the manufacturer, two per cent ten days with an extra charge after sixty days. Similar provisions were used extensively, but some codes set much higher cash discounts, the terms for the men's garter, suspender, and belt code, for example, being eight per cent ten days, net sixty days to corset departments purchasing belts.¹⁹ As a variation, the wallpaper industry set values which

out placing bona fide orders. Some producers, unable to obtain sufficient orders to keep their plants in full operation, have granted discounts to these organizations in the desperate hope that they would make badly needed sales to their members. But often this new business did not materialize and, in addition, regular customers, learning of an offer to an association, demanded even more favorable terms.

Again, merchants frequently placed orders for large quantities and after acceptance specified that parts should be delivered at several dates. Governmental units, such as cities, counties, and states, were particularly prone to act in this way. At times these buyers even informed competitors of the manufacturer in such a way as to create the impression that the low prices had been granted on small lots.

Sometimes quantity discounts were quite elaborate. For example, in the machine tool and forging industry one manufacturer granted what he called annual discounts. These were calculated on a sliding scale. If, during a year, a customer's purchases attained a certain value, he was given a rebate of, say five per cent on all purchases made during the year. If they reached a higher value, the rebate was six per cent and so on.

¹⁹Several other codes permitted "cash" discounts higher than two per cent ten days, net thirty days. The boot and shoe code (Number 44), for instance, set five per cent for payment in thirty days with a fifteen-day tolerance for shipments west of the Rocky Mountains. Such codes as dress manufacturing (Number 64), blouse and skirt (Number 194), robe and allied products (Number 211), and knitted outerwear (Number 164), sanctioned concessions as high as eight per cent ten days. The silk textile code allowed a variety of maximum cash discounts, such as ten per cent ten days on hat bands, eight per cent ten days on special fabrics, seven per cent ten days on ribbons, and six per cent ten days on tie fabrics.

High discounts sanctioned by some codes were, of course, not simply interest rates; they were used to classify credit risks and to facilitate the collection of accounts. Nevertheless, a retail firm having six turnovers of merchandise per year and credit standing at banks adequate to allow it to take advantage of discounts at ten per cent on all its purchases could earn the ridiculously high rate of 41.8 per cent per year on that part of its working capital which represented inventory.

Codes granting high cash discounts have a special interest because as will be shown in Chapter XIII, Section 2, the working capital of small firms was much more depleted by the depression than that of large corporations which were especially favored by the prevailing high discounts. Indeed it was often stated in hearings that limitation of discounts leading to a narrowing of price differentials was necessary for the survival of small business.

differed with the months, the object being to smooth out seasonal demand. Thus, by offering cash concessions of four per cent in September, three per cent in October, two per cent in November, and one per cent in December, the industry encouraged buyers who had been accustomed to make their heaviest purchases in November and December to place some part of their orders as early as September and October.

Although industry usually assumed the complete solution of the problem of cash discounts to lie merely in writing into codes the maximum allowable amounts for various time intervals, complications arose. For instance, ingenious manufacturers, desirous of granting allowances for periods longer than those specified in the code, simply postdated invoices. It should be realized, however, that some of the later codes, such as valve and fittings, attempted to deal with this problem, by forbidding the postdating of invoices, and despite evasions, the evidence indicates that codes actually reduced the average size of cash discounts.²⁰

²⁰A brief filed on October 24, 1933 by the National Retail Dry Goods Association, in which objection was made to the lowering of cash discounts by the NRA and certain instances in which reductions occurred, read in part:

"1. Existing terms of 'cash' discounts were established through joint agreements between seller and buyer and to standardize them in manufacturers' codes, by collective agreements between manufacturers alone, will result in an arbitrary interference with established trade practices by *only one of the parties at interest.*

.

"5. The substantial lowering of existing terms such as 8 to 2 per cent as in the approved Handkerchief Code; 8 to 3 per cent as proposed in the Small Leather Goods Code, or from an average of 8 per cent to 2 per cent as in the approved Knit Underwear Code, if prices are not lowered, will necessitate adjusting some selling prices above the levels at which merchandise moves freely and these increases may develop consumer resistance and *retard distribution.*

"6. The lowering of existing 'cash' discounts may represent *hidden price increases.*

"7. The lowering of existing terms or 'cash' discounts will provide *less incentive* for the *prompt payment* of bills which in turn in turn will tend to increase losses from bad accounts. Such losses will ultimately form a burden on those retailers who continue to pay promptly.

"8. The lowering of terms or 'cash' discounts will disrupt the *existing accounting procedure* of retailers since this will mean the adjustment and computing of markups on hundreds of thousands of items. This will necessitate training large numbers of store buyers and accounting employees and will result in serious losses to retailers.

"9. Existing terms or cash discounts should not be lowered because, since they are figured in the manufacturer's cost, he loses nothing by maintaining them at present levels and to change them now is an arbitrary interference with *established trade practices.*

"10. Existing terms or 'cash' discounts should not be lowered because this will subject the retailer to the risk of unfair criticism for *profiteering* since his markups per cent must ultimately be increased to compensate for the lowered discount.

The problem of quantity discounts was of course much more difficult. Here answers had to be formed to such questions as: How large should a customer's order be in order to entitle him to a discount? Should the delivery be required at one time, and if not, over what interval of time? These difficulties and others were clearly recognized in the earliest proposed codes, and, to meet them, bold attempts were made to classify customers and to define the maximum discounts to be granted each group. But the NRA frowned on these proposals because of their obvious price-fixing implications and, as a result, few such schemes were approved. Nevertheless, despite precautions, some such plans did find their way into approved codes.

The NRA plan which seemed to be most harmless was that of the motor-fire-apparatus manufacturing code — a mere listing of the classes of buyers; but the industry may have hoped that this procedure would lead to the quoting of different terms to each class or that agreements not mentioned in the code would be reached. On the other hand, such codes as that of the sanitary and waterproof specialties manufacturing industry, actually listed classes of customers and required members of the industry to publish schedules of prices quoted to each class.²¹ Also some cost formulas directly stated in codes were occasionally used to discriminate among customers on quantity discounts; by defining cost so that it depended upon the quantity sold, customers were automatically classified according to size. In other instances the actual determination of such cost formula was left to the code authority.²²

"In view of the foregoing, if manufacturers are to be permitted to include discount provisions in codes, it is strongly recommended that they be fixed at the maximum percentage as has been provided in the approved code for the Corset and Brassiere Industry."

²¹Article VII of this code read:

"Customers shall be classified as follows: (a) wholesale merchants; (b) retail merchants purchasing direct from the manufacturer; (c) chain stores; (d) mail order houses; (e) manufacturers' sales agents. The code authority may from time to time modify, amplify and/or define the foregoing customer classifications subject to the right of approval by the Administrator."

"Each member of the industry shall publish a schedule of its prices and terms of sale on all standard products manufactured and sold by it to each of the classes of customers as enumerated in Section I."

²²The code of the furniture division of the business furniture, storage equipment, and filing supply industry, which was typical, read:

"The pricing and/or selling of any item of industry products below member's cost to the ultimate consumer as determined by the cost-accounting methods set up by the code committee and subject to approval by the Administrator, in the quantities, under the conditions, and at the points of delivery involved, is an unfair method of competition.

"The code committee, on the basis of the direct cost thereof (direct cost as

It is thus seen that the NRA had to be constantly alert to discover subtle methods of classifying customers and fixing quantity discounts. Almost as soon as one type was clearly recognized, industry was ready with another proposal, the ultimate effect of which was about the same. Nor did this attitude arise alone from a desire to make prices open; another aim was to check the development of new forms of distribution threatening the less efficient organizations already established. In fact, the pressure from manufacturers so to limit quantity concessions and otherwise restrict customer retail practices had grown to such an extent that on October 24, 1933 the National Retail Dry Goods Association, representing 4,000 retailers, filed a protest with Deputy Administrator A. D. Whiteside charging manufacturers with attempting to squeeze them.²³ Moreover, so insistent were manufacturers on such control that chain stores actually threatened to incorporate their wholesaling function separately.

Under the guise of correcting obvious trade abuses or making public net prices, manufacturers often wrote or attempted to write trade-practice provisions which unduly penalized the consumer

used in this article being defined as the cost of labor, material, selling, and distribution, plus 10 per cent) may establish the minimum additions to and maximum deductions from the base prices of the various lines of industry products, which maximum deductions and minimum additions members shall use in determining the list prices of variations from the base products."

This provision clearly enabled the code authority to fix price differentials among various types of customers. In addition, since the provision was rather vaguely worded, the power given by the code perhaps even exceeded what may have been intended.

²³This brief stated the views of members of the association on quantity discounts as:

"1. Quantity discounts and volume allowances have been an *established fair trade practice* in trading arrangements for years and appear in the wholesale price schedules of many industries.

"2. They are a distinct advantage in certain industries by providing an *incentive to buyers* to make earlier commitments and thus tend to regularize production and employment.

"3. Quantity discounts provide an incentive to the retailer to promote aggressively products of certain manufacturers and they tend to lower the cost of distribution and lower the price to the consumer."

Some views of the Retail Dry Goods Association on cash discounts were given in footnote 20; other points made follow:

"1. Joint action by manufacturers to lower discounts by means of a code constitutes an element of *monopolistic practice* designed to raise prices.

"2. The standardization of terms or 'cash' discounts in manufacturers' codes is a step toward *price fixing* which is contrary to existing law. This Association is definitely opposed to price fixing.

"3. It is impossible for manufacturers through collective agreements to standardize discounts at a level that will not work hardships on the class of retailers receiving more than the standardized terms since with few exceptions all cases of standardization appearing in codes have provided for lower than existing terms or 'cash' discounts."

industry through hidden price increments. More generally, whenever competition seriously threatened a group, its members hastened to establish code barriers which would protect them. Thus, as will be shown more clearly in the next chapter, many code demands were made by groups seeking the aid of government in preserving themselves and their inefficiencies.

5. Fixing Other Terms of Sale

Another discount quite similar to the cash and quantity concessions just considered, which it was also necessary to define before open prices became definitive and useful, concerned advertising allowances. For a long time, such concessions have been granted by manufacturers for the purpose of co-operatively developing consumers' interest in new items of merchandise. In this way they have served the useful purpose of accelerating the distribution of merchandise by adequate, although at times excessive, advertising. In particular, the granting of such allowances has permitted the manufacturer to take advantage of the quantity space rates offered by newspapers and local periodicals to large retail advertisers and thus to secure an economical advertising rate. However, after a while, excessively large concessions were made, sometimes without any expectation that retailers would use them for advertising; they had become almost entirely secret price rebates, and as such under the NRA regime they had to be defined or eliminated. We need merely add here that, in consonance with other NRA reforms, codes attempting to combat them more often than not dodged the problems of regulation and simply prohibited their use.²⁴

Similarly, manufacturers frequently had sent their own demonstrators into stores or allowed retailers sufficient sums to hire such people. These specialists at first served the important function of giving the consumer an accurate description of new merchandise, but abuses of this practice also arose. At times, manufacturers supplied a favorite retailer with several "demonstrators" who sold, not only the new article, but also others in the store. Thus, the manufacturer, by sharing the expense of retail distribution, was able to accomplish a large price reduction. To meet the problem, some codes entirely

²⁴If an industry had merely been interested in determining effects of such advertising allowances on prices it need only to have insisted upon and enforced a provision requiring any retailer granted an advertising allowance to file with the manufacturer's code authority an affidavit to the effect that the entire concession had been spent, or was to be spent, on advertising.

eliminated demonstrating allowances; but in a few cases they were defined minutely and their use carefully prescribed.

Another indirect means of changing prices has been through the medium of interest rates. Thus, a manufacturer desiring to lower prices secretly to a distributor has carried the latter's note for several months at a low rate of interest. Then, again, he has often paid an unusually high rate of interest on deposits for future orders, commonly known as anticipations. To prevent such hidden price reductions, various codes specified either minimum interest rates allowable on customers' indebtedness or maximum rates on anticipations, or both.²⁵

There was, moreover, a very closely related problem: such abuses of interest rates were frequently associated with low initial payments on capital or durable goods. To combat this last situation, such codes as (1) rock crusher, (2) shovel, dragline, and crane, and (3) construction, fixed the interest rate at six per cent per annum and the down payment at not less than twenty-five per cent of the purchase price.²⁶

* * * * *

It appears from these facts, therefore, that industries desiring to prohibit sales below cost were forced to require open prices. Also,

²⁵For the most part, provisions setting the maximum interest rates appeared in codes for industries manufacturing machinery or articles frequently sold on installment plans. Thus, codes such as (1) jewelry, (2) cast iron pressure pipe, (3) valve and fittings manufacturing, (4) rock crusher, (5) printing equipment, (6) road machinery, and (7) scientific equipment, specified that interest at six per cent per annum should be charged on all past due accounts. However, judging from code provisions, the pre-NRA misuses of interest rates were not confined entirely to these industries; the all-cotton clothing-linings division of the cotton textile code, for instance, required that interest at six per cent should be charged on all past due accounts; the leather code provision was less inclusive in that it specified that this rate should be charged only after thirty days.

Desire to fix interest rates on anticipations seems to have been confined chiefly to the textile and clothing manufacturing industries. Such codes as (1) silk textiles, (2) upholstery and drapery textiles, (3) Nottingham curtain lace, (4) dress manufacturing, (5) blouse and skirt, (6) light sewing except garments, (7) robes and allied products, and (8) athletic goods and fishing tackle, limited rates on anticipation to either six per cent per annum or the nearly equivalent one-half per cent per month. On the other hand, the medium- and low-priced jewelry manufacturing code prohibited all anticipations.

²⁶The textile machinery code named the same percentage of down payment but an interest rate of only five per cent. The commercial refrigerator code contained a more elaborate provision which required that at least twenty-five per cent be paid prior to delivery and the balance in not more than two years, the carrying charges for payments extending over a longer period than three months not to be more liberal than rates to be established by the code authority. The motor-fire-apparatus manufacturing industry, which sold primarily to tax-supported bodies, specified that the down payment should not be less than 33 1/3 cent and that the deferred payments should not extend beyond two years.

some industries established open prices in the vain hope that they would be less subject to fluctuation. Despite business men's widespread faith in this proposition, such prices are not of themselves more stable than secret prices. The degree of price stability depends upon (1) the relative state of processing of goods — raw material prices being least stable — (2) freedom of competition in the industry, and (3) the extent to which the commodity is exported or imported. Yet open prices do make coercion easy within an industry and as a result lead to monopolistic control of prices; and such control is facilitated by waiting periods which were apparently introduced into NRA codes chiefly for this reason.

Open prices under the NRA were frequently ruinous to small business; at the same price, customers preferred the goods of the larger and better known houses, and these refused to be undersold once prices were posted. Only in cases where small businesses possessed cost advantages and were in positions to expand activities did open prices react to their benefit.

The filing of prices, in turn, compelled the outlawing or restricting of various secret rebates, such as cash and quantity discounts, demonstration and advertising allowances, interest rates on accounts and anticipations, and down payments. Thus, in order to make prohibitions of sales below cost effective, the NRA had to extend its regulatory efforts into some of the minutest details of American business practices; and in some instances it chose to eliminate entirely rather than regulate long existing trade customs.

The NRA's choice was, obviously, between competition under secret prices, including devious and ingenious rebates, and competition under open prices, openly determined. The former was in vogue and profits had vanished. To attain the latter, various economic frictions had to be removed, new byways closed, and the whole policed to prevent monopolistic interference. Yet classical static economic theory assumes perfect knowledge of price and other economic factors; and adjustments occur only when competitive conditions are known.

Classical economic theory, of course, cannot explain business cycles, for it is only when we have imperfect knowledge upon which to base our forecasts that the alternate feasts and famines can arise.²⁷

²⁷For instance, C. O. Hardy, discussing our economic state, has written:

"In our organization, the principal devices for securing a balanced output are prices and advance orders. A falling off of orders or a lowering of market quotations gives warning to the manager that the rate of production should be slackened, and vice versa, an increase of orders or a rise in prices is a call from society for an increase of output. The price index is available to producers in nearly all lines, while advance orders are available to relatively few.

In general, when information about prices, inventories, and sales has become available to an industry, it has regularized its production, adjusted its prices to meet market conditions, and prospered. It is true that at times prices in such an industry have appeared to be high in relation to other prices which were abnormally low at the particular time when the comparison was made, but about as frequently its prices have failed to join a parade of rapidly advancing prices caused by shortage of supply. In the cement industry, for example, prices in the twenties showed only very slight fluctuation about a downward-sloping trend. New plants were constantly being added to the industry's capacity,

"While this system works fairly well in most respects it has one serious defect. Prices and orders give information concerning the prospective state of demand compared with the known facts of present and future supply, but they give no clue to the changes in supply which they are themselves likely to cause. What a business man needs to know in order to plan production scientifically is not merely how many units of his product would be bought at a given price, but also how many other producers are reaching the same conclusion that he is reaching, from the same facts, and are making plans similar to his own.

"One result of this situation is a tendency to alterations of over and under-production. Let us assume that at a given time there is evidence of demand in a given line sufficient to justify an increase in the rate of production. The first managers who adapt their plans to this situation are probably rewarded by increased profits. Under competition, however, the tendency is for an increasing number of persons to try to take advantage of the situation, each more or less in ignorance of the others' plans, and no force intervenes to check the continued increase of production till it reflects itself in declining orders and falling prices. By that time, however, investments have been made, contracts let, and operations started which will result in further augmentation of the supply. Time is required to check this increase in the volume of production, and during this time production outruns consumption unless consumption is stimulated by unprofitably low prices. Moreover, just as was the case on the upswing, the indications that production is being overdone result in curtailment of operations by independent producers in ignorance of each other's intentions, and this tendency continues till output is decreased to a rate below that which is economically justified.

"A second cause of the cycle, very similar to the first but quite independent of it, is the effect of uncertainty on the decisions of speculative buyers with regard to the accumulation and decrease of stocks. Throughout the industrial order, a large part of the transferable wealth, including raw materials, half-finished products, and goods ready for consumption, is in the hands of individuals who can, to a greater or less extent, adjust the size of their holdings to changing conditions, and who do as a matter of fact adjust them chiefly in accordance with their judgment of the probable course of prices.

"This would be of no consequence, so far as the cyclical tendency is concerned, if all these judgments of the trend of price were formed independently, for some would overbuy when others were underbuying. The net result would be a fairly steady rate of buying if the number of buyers was large, or an unpredictable irregularity if the number was small. But the judgments are not formed independently. They are all formed, in large part, on the basis of the same evidence, and of that evidence the most influential part is the trend of prices in the recent past. Whatever prices have been doing is accepted by a great many as the most likely thing for them to continue to do, so that the higher they go the more the tendency to use up stocks and buy from hand to mouth."

C.O. Hardy, *Risk and Risk Bearing*, 1923, pp. 72-74. See also references to Beveridge, Spiethoff, Huff, and Robertson in Wesley Mitchell, *Business Cycles*.

and, as shown by Chart XVI, its product steadily replaced other building materials. In other industries in which prices were not open we usually find the cycle: (1) greatly depressed prices, (2) high mortality of enterprise, (3) restricted supply, (4) rising prices, (5) new productive capacity, (6) excessive supply, (7) falling prices, and so on again. On the other hand, knowledge of conditions tends to smooth out these violent cycles of under- and overproduction. Consequently, in view of these considerations, we believe that the most important reform undertaken by the NRA was its attempt to establish open prices: for, although stocks, advance orders, and other factors are important, they are all reflected to a considerable extent in prices.

CHAPTER XI

SOME PRICE EXPERIMENTS OF THE NRA

1. Relation of Cost to Price

We have seen how, despite various accounting problems which made the definition of cost extremely difficult, business men insisted upon a price floor based upon cost. It is only natural, therefore, to raise the question: In what way and to what extent is cost related to price? One would expect to find the answer in traditional economic cost theory, but actually such theory is of little, if any, help except to show where business men got their impractical notions, which is, of course, important. In tracing this development we recall first that, in the older economic theories, the factors of production are defined as the services of (1) persons, (2) land, and (3) capital. By assuming (1) that entrepreneurs suppose their market price to be fixed and (2) that they choose production rates which maximize their profits, the equation "price equals marginal unit cost" can be obtained. This cost is roughly the expense of producing the last unit. From this proposition then follows the theorem that production will be carried to the point at which the cost of making one additional unit is just equal to the price received. We observe next that, although this equation is the basis of classical static cost theory, it is, nevertheless, true merely because of the curious way in which the cost of capital services of the entrepreneur has been defined — the margin after deducting all expenses for (1) services of persons, (2) services of land, and (3) services of capital in antecedent phases of production. Thus, if an entrepreneur guesses his price badly, the equation is still satisfied (but not the entrepreneur) for one needs merely to re-value the service of his capital, if need be making its price negative.

Before proceeding further we digress to emphasize here that these theorems are based upon the additional implicit assumptions of stable monetary units and mature industries, and, therefore, that they do not represent American conditions as we have known them. For instance, in an expanding industry, which has been the rule in the United States, price is usually so well above costs, as a result of the scarcity of the products, that producers are sometimes careless regarding expenses involving capital and labor. Moreover, the assump-

tion that producers choose prices maximizing their profits is open to serious question; it seems more reasonable to suppose that producers operating at full capacity exact less than monopoly prices in order to capture new markets and not to make the industry appear a bonanza for idle capital. In fact, even patent monopolies dare not, in general, set prices at levels maximizing their profits over even relatively short periods of time lest they thereby encourage the search for substitutes. Thus, even a partially accurate theory of competition and pricing must consider the possibility that new productive units will be introduced in the same or competing industries.¹

As regards the assumption of stable money implicit (occasionally explicit) in classical cost theory, it may be noted that in countries such as the United States, every manufacturer is constantly faced with the risk of changing price levels. For example, raw materials purchased at \$1.00 per unit may, on some occasions, increase to \$1.50 or fall to 75 cents while a product is being processed and sold; and, obviously, in such situations price of the finished product may show no marked correlation with manufacturing expense. Indeed, accountants determine in different ways cost for inventory purposes and cost as a guide to selling price, when quotations of raw materials are undergoing rapid changes. Clearly, even when prices of raw materials are changing only slowly, the degree to which the price of a finished good can depend upon its cost must necessarily vary with the length of time required to manufacture and sell it.

Even in an economy with stable money and static prices of raw materials and wages, an industry may become so highly mechanized that any determination of cost requires the placing of arbitrary values on machinery. As a matter of fact, the cost theorem, when stated more exactly, reads: *price is equal to marginal labor cost*. Over the long run, weighted marginal costs of all factors must be equal; that is, marginal cost equals price. But in the United States, over the short run, this theorem obviously should not be expected to hold in the many industries having labor costs, say, less than one-fourth the value added by manufacture. To avoid long argument here, but without compromising our point, let us assume that manufacturing expense

¹For a dynamical theory see C. F. Roos, "A Dynamical Theory of Economics," *Journal of Political Economy*, Vol. 35, 1927, pp. 632-656, and C. F. Roos, "A Dynamical Theory of Economic Equilibrium," *Proceedings of the National Academy of Sciences*, Vol. 13, 1927, pp. 280-285, and *Dynamic Economics*. For special theories relating to the location of markets, see Pierro Sraffa, "The Laws of Returns under Competitive Conditions," *Economic Journal*, Vol. 36, 1926, pp. 535-550; Harold Hotelling, "Stability in Competition," *ibid.*, Vol. 41, 1929, pp. 41-57.

can be completely defined either in terms of labor cost or otherwise.

Even granting this point new difficulties arise. For instance, it is evidently net profit after deduction of selling expenses which a business man desires to maximize; and, as demonstrated in the preceding chapter, a producer frequently does not know what his selling costs are until after a sale is made. Obviously, if he then discovers that he failed to make a profit on the deal, he cannot go back to his customer and demand a higher price. Moreover in *estimating* selling costs a business man must take into consideration the fact that a gain in volume will reduce the unit manufacturing expense. Thus, he may think it desirable to sell for less than estimated selling cost in order to increase his volume of production.² And, of course, no certainty exists that profits will persist or even appear just because owners have expectations; their analysis, however careful, if based on inadequate knowledge, as is very often the case, may lead to a result no better than that obtainable by tossing coins or throwing dice. As a matter of fact, estimates of potential demand for a new product, selling expenses, and so forth, although at times somewhat intelligent, are essentially guesses.³ It follows, therefore, that prices in such industries may bear little relation to marginal cost or any other reasonable cost. They will be correlated, but the degree of correlation will be slight.

Briefly, we believe that an established entrepreneur usually makes or has made an estimate of prime cost and the available market and must try to sell his product sufficiently above this figure (1) to keep his personnel together and his plant busy without

²The typical complete curve for total selling costs seems to rise sharply for low volume, level off as volume increases, and then rise sharply again, approaching a vertical tangent at the maximum amount which can be sold regardless of selling effort. In general, however, a firm operates only over a segment of the curve and for this limited portion selling costs may be approximately proportional to output.

For a growing concern unit selling expense usually decreases as volume increases until a certain value is reached and then rises as each additional unit is sold. Factory unit cost, on the other hand, is usually a minimum and factory profit a maximum when production is at capacity.

³Some firms budget their expenses in accordance with a production figure 10 to 20 per cent lower than what they actually expect. If the business anticipated materializes, they thereby gain large profits; if it does not, their losses are lessened.

Since chance plays an important part in determining return on capital, especially in new industries, it follows that high stakes, that is, large expected profits, may have to be offered to tempt owners of capital. And such have prevailed under capitalism. On the other hand, if the industry has long been established and various cost records are available, much of the chance element can be eliminated; in such industries a low profit incentive, which is in the nature of a sure bet, may be sufficient to call forth adequate capital.

suffering operative losses, (2) to pay his taxes, (3) to pay interest on the plant's indebtedness if such exists, and (4) to obtain a "satisfactory" profit, the exact definition of this last depending upon the individual. Failing to obtain (4) he attempts reorganization or begins an advertising campaign to increase sales, and, if still unsuccessful, relinquishes ownership. If he finds that he can secure more than enough profitable orders to keep his plant operating at the optimum capacity, which is usually at full load, he will weigh the advantage of possible increases in his price against that of inviting others to enter the business. When a point is reached at which he can just obtain sufficient profitable orders to keep his entire plant at work, he may conceivably find it more profitable to raise the price slightly; that is, he may increase it further above cost and run his factory somewhat below capacity. On the other hand, when business is poor, it may be most profitable to take a loss on a few sales for the purpose of keeping skilled mechanics and other personnel available for the time when an expected, but uncertain, order materializes.

The stricter long-run theory, *price equals marginal labor cost*, is valid in the short run only when labor takes a large part of value added by manufacture. In the United States it applies to very few industries other than those producing agricultural commodities — wheat, cotton, corn, oats, and barley — and even here it is not valid over short periods of time. In any particular year, rainfall, heat, cold, and other climatic factors, introduce important risk factors which may increase crops so much that the supply greatly exceeds the demand at marginal cost and, as a result, price drops. On the other hand, these natural forces may decrease supplies so that price rises far above average marginal cost.⁴

In brief, notwithstanding classical economic "laws" and the insistent urgings of business men who have embraced such dogmas in order to lend justification to their demands, price, in a highly mechanized dynamic economy, need bear very little relation to cost, even when the latter can be reasonably determined. Price may well be either above or below almost any reasonable expense which can be defined: when business is good, prices are, in general, above costs; and otherwise, below. Costs, including some return on capital, are essentially estimates above which a business man does well to keep his price, but below which he must not hesitate to go if threatened with

⁴As an example, it may be noted that in 1933 potatoes sold at wholesale for about \$1.18 per bushel in New York, whereas in 1934 they brought \$0.58 per bushel.

serious loss of volume. In other words, they are useful guides for the conduct of a business, if revised constantly and if not taken too seriously.

2. *Price Changes under the NRA*

As a background for the understanding of some price changes under the NRA, it must be recalled that immediately following the opening of the banks by the present Administration, gold began to dribble out of the country. Although part of this flight was caused by fear of inflation resulting from the contemplated \$3,300,000,000 public-works appropriation of the President's recovery program, a contributing cause was the knowledge in financial circles that a program of raising wage costs, expected to affect adversely American exchange rates, was under consideration. As early as the first of April, 1933, advisers of the Administration discussed with the author the possibility that, as a result of contemplated legislation, the United States would be forced to abandon gold within the month.

Thus a chain of events led the Administration to suspend gold payments, and, immediately after that memorable day of April 20, 1933, bank deposits ceased shrinking; there was no particular reason for hoarding paper currency in preference to bank credit, for goods had become preferable to the remaining money. Then, shortly afterward, the President announced publicly that the country needed higher wages and higher prices to regain prosperity, and the press began to mention the 1926 level as a goal. As a result of these developments prices of raw materials which could be easily stored increased rapidly; and those of finished goods rose less sharply but none the less surely.

Strange as it may seem, when the NRA asked some business men how they had arrived at prices against which complaints had been made, they replied that they had simply looked up and adopted their 1926 quotations! Others maintained stoutly that prices always rose with an increase in the price of gold, but could give no reason.⁵ Still others quite frankly expected the Government to pay in support of its own program of public works. Thus, a member of a code authority of a building material industry, who had insisted that his industry was helping the recovery program by raising prices, readily admitted that there was no appreciable demand for his product other than that

⁵To support their position some even quoted passages from the book *Prices*, by George F. Warren and Frank A. Pearson.

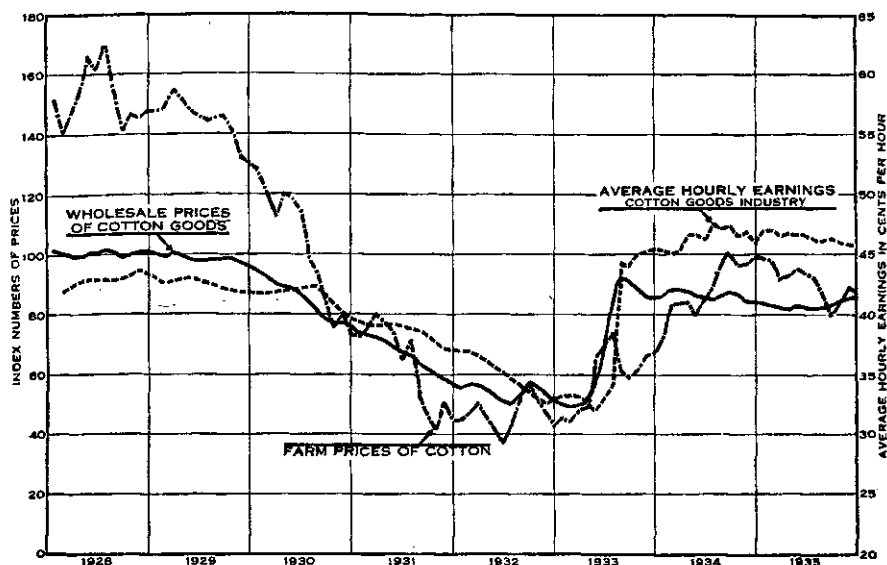
arising from public-works projects. When questioned on the ethics of boosting prices of goods to be used for public construction specifically designed to create jobs, he boldly replied that his industry had suffered losses for four years and that this was the only opportunity offered for recouping them! Something of the same logic was expressed by a manufacturer of shovels who, when asked to justify price increases of his product, answered that demand had been increased considerably by expenditures of the Civil Works Administration. Without hesitation he explained that this justified raising prices sufficiently to replace some machinery which had become obsolete during the lean years of the depression.

There was an even more interesting case of price determination. A report of the capital-goods unit of the Research and Planning Division recommended to the PWA that a loan of \$200,000,000 be made to the railroads for the purchase of steel rails. In discussion of what constituted a fair price, the document stated that available data did not make a reliable estimate possible but that the price should not be much less than \$35.00 per ton and not more than \$40.00. It recommended \$37.75 per ton (a figure slightly above the mean of these two estimates) as a satisfactory compromise. In the course of government routine a copy went to the Federal Co-ordinator of Transportation, who approved the proposal and circularized the railroads to ascertain whether they were willing to buy rails. Then, on October 4, 1933, the Co-ordinator sent to executives of four large steel companies a list of forty-seven railroads which had signified their desire to take advantage of the plan. As might be expected from his acceptance of the NRA report, he indicated that the base price should be under \$35.00 per ton, the low figure mentioned, and following out a suggestion of the report proposed that, if this value was below cost, the steel companies should permit government accountants to examine their books so that an agreement upon a proper price could be reached. The steel companies which, according to one of the men who had prepared the NRA report, had been presented a copy by an NRA official, countered with a proposal to supply rails at the high estimate, that is, \$40.00 per ton. At the same time they pointed out that this quotation was \$3.00 under the price of \$43.00 which had prevailed for the *ten years* prior to the fall of 1932, a fact also brought out by the report. And by October 24, 1933, the Government and the four steel companies had agreed upon \$37.75 per ton, the price suggested in the report as a fair compromise!

In the cotton textile industry, which experienced the greatest in-

CHART XVII

EFFECTS OF COST ON PRICE IN THE COTTON TEXTILE INDUSTRY



The wholesale price of cotton goods is evidently composed of labor costs, raw material costs (chiefly cotton), and overhead and profits. Some measure of the correlation, existing therefore among the first three, is exhibited here. The NRA, as shown by the chart, apparently raised the price of cotton goods from an index number of about 70 to 92 or approximately 30 per cent in a month's time.

crease in prices under the NRA, three factors were at work: (1) an advance in the price of raw cotton due to monetary policy, processing taxes, and government loans on cotton; (2) increases in labor costs under the codes amounting to about 35 per cent for the industry as a whole; and (3) machine-hour limitations which raised average overhead costs about 50 per cent.⁶ This mature industry readily reflected cost increases in its prices, as is shown graphically by Chart XVII.

Building material industries followed with the next largest increase in price as shown by Table XXXIV which presents a price index of twenty building materials and also price indexes for several representative building commodities. To illustrate price behavior in

⁶Prior to the NRA many cotton mills had low costs because they spread their overhead burden over three shifts instead of one or two. Owners of mills in small towns in which housing facilities were inadequate to accommodate three shifts called this unfair competition and successfully insisted that the NRA limit the hours of operation of machines to 80 per week. See Chapter XII, Section 4.

TABLE XXXIV
 PRICES AND PRODUCTION OF DURABLE GOODS
 (Index Numbers — 1929 Averages = 100)

Source: a, b, c, d—NRA Research and Planning Division—e and f—Standard Statistics

Year & Quarter	Pig Iron a		Plate Glass b		Cement c		Building Materials d		Lumber e		Brick f	
	Price	Production	Price	Production	Price	Production	Price	Production	Price	Production	Price	Production
1926—1	112	99	125	92	109	92			87	173	87	107
2	107	93	125	89	109	102			91	168	91	107
3	106	91	125	94	108	99			92	159	92	105
4	110	89	104	62	108	93			94	154	94	105
1927—1	105	100	104	84	105	103			96	148	96	103
2	102	87	104	66	105	103			95	158	95	102
3	99	80	104	77	105	103			92	159	92	102
4	95	78	100	62	105	108			87	153	87	101
1928—1	97	92	100	90	105	98			86	148	86	101
2	98	89	100	86	105	103			92	154	92	102
3	97	89	100	89	103	105			96	111	96	102
4	99	98	100	91	104	108			98	98	98	101
1929—1	101	108	100	103	104	102	104	104	89	98	89	101
2	101	110	100	108	104	100	101	102	103	110	103	100
3	99	101	100	116	94	100	100	102	101	101	101	99
4	99	81	100	73	98	98	98	82	97	91	97	100
1930—1	98	94	100	86	102	101	97	86	95	83	95	98
2	96	82	100	68	101	99	92	71	86	92	96	96
3	93	66	95	68	102	89	90	61	76	62	94	94
4	89	49	95	41	99	76	88	56	72	59	93	93
1931—1	88	59	95	85	89	82	87	60	68	54	91	91
2	86	46	95	60	85	82	84	52	60	62	89	89
3	85	33	95	38	83	83	83	38	54	49	88	88
4	82	28	95	50	82	55	82	39	56	38	86	86
1932—1	80	28	95	45	82	41	80	30	51	33	84	84
2	78	18	95	32	85	45	79	28	48	30	82	82
3	77	19	95	34	86	48	79	43	43	28	80	80
4	76	16	95	38	90	37	78	29	44	30	80	80
1933—1	78	16	95	42	91	35	77	22	46	31	80	80
2	84	43	95	102	93	49	80	49	59	44	80	80
3	94	39	96	56	101	32	84	50	84	54	86	86
4	94	39	96	59	101	34	85	45	94	38	90	90
1934—1	95	50	96	74	104	49	88	53	103	37	92	92
2	94	40	94	62	103	52	89	59	90	39	97	97
3	99	26	98	58	102	44	87	36	88	38	97	97
4	99	24	99	59	102	31	86	35	77	32	97	97

such industries let us focus attention upon specific commodities. Between 1926 and 1930 cement prices showed only narrow fluctuation around a slightly declining trend; in 1931, a price war drove quotations down from an index value of 100 to a low of about 82; and, following a truce, prices rose slowly to 93 in June, 1933. But they recovered abruptly to 101 in July and August following an application for a code, and then remained almost constant until the end of the year, when they jumped to 104 approximately the same as the 1929 level. Prices of common brick declined steadily from an index number of 118.6 to 100 during the period, September, 1923 to the end of 1929, following which the rate of decrease was slightly accelerated. By December, 1932 the price index had dropped to about 80. The index then increased sharply, reaching a peak of 97 in September, 1934, or 7 per cent above the 1929 figure. Similarly by March, 1934, as a consequence of price fixing permitted under the lumber and timber products code, prices of Douglas fir and pine timbers had exceeded their June, 1929 values. Subsequently, however, they receded considerably.

Prices of building materials, it must be recognized, increased because markets were created by government purchases financed through Public Works Administration allotments; in setting prices few of these industries seemed to give any consideration whatever to demand for private building which might have been stimulated by low prices. In fact, they brushed aside suggestions of NRA advisers on this point. Since the effects of this development on recovery will be discussed in Chapter XIV, we merely point out here that Deputy Administrator Malcolm Muir and the Research and Planning Division code adviser for the building industries, Roy Wenzlick, in the hope of stimulating private building activity, vainly tried to secure agreements to reduce prices slightly and then raise them by small increments.⁷

⁷On October 13, 1933 the author, who had been working in co-operation with Wenzlick, addressed a memorandum to Sachs reading in part:

"We have made our preliminary statistical analysis and found that the important factors affecting new building are credit (as reflected by foreclosure rates), building costs, rents, taxes, and occupancy. . . .

"Lowered costs might help revive the construction industry but costs and credit are not independent and credit will be made easier only if rents and costs are expected to increase over the next two or three years. . . .

"This indicates forcibly the importance of holding down costs in our building codes. . . Present low costs in these industries will induce desire to build which will not reach its consummation for several years. Therefore, maximum gross income (wages, since building costs are chiefly wages) for the building industries can be obtained by keeping costs down for the present and then increasing them,

Simultaneously the Administration began experiments with the gold-purchase theory of George F. Warren of Cornell University, thereby greatly hampering officials of the NRA who had been trying to find means for stimulating the capital goods industries through overcoming the timidity of lenders. In an attempt to counteract the adverse effect of this monetary fright on demand for producers' goods, the author, on October 23, 1933, addressed the following memorandum to Sachs who, in turn, modified it slightly and transmitted it to General Johnson:

The President's monetary program is such that there will be little or no private financing for capital-goods expenditures in the next two or three years. It, therefore, becomes extremely important for the NRA to adopt a firm and consistent policy towards codes dealing with producers'-goods industries, so that maximum replacements will occur, a policy that will stimulate present capital outlays despite the present monetary program. The following is suggested:

for example, 10 per cent next year, and 10 per cent additional the following year. This, of course, assumes that something will be done to ease the credit situation.

"You will notice that in our analysis the aim has been to secure maximum yearly income for the building industries, not maximum wage income per hour for employed workers. The two conceptions are distinctly different.

"Statistically, it was very interesting to find that maximum gross income to the industries will result if costs are kept near the pre-code level. The exact level cannot be determined because we do not know how to predict the credit situation, but the right direction is unmistakably that indicated in the study."

A few very minor changes in phrasology have been made in the part of the memorandum which is given here. The study referred to has been published as Chapter VI of the author's book, *Dynamic Economics*.

Several months previously, on April 10, 1933, to be exact, Sachs had prepared an able report for the Administration in which he said:

"The realistic comparison we have made of weekly wages in the six major industries — steel, machinery, electrical equipment, automobile, textile, and building — shows that between 1929 and the end of last year the employed laborer in these industries suffered a loss in weekly wage of 53 per cent, while the corresponding German laborer only suffered a decrease of 33.7 per cent, and when adjusted for the decline in the cost of living the real weekly wages of our workers declined about 40 per cent while German labor declined less than 20 per cent. In view of this it is necessary to shift the emphasis from the hourly wage rate to the composite and balance of the rate and a relative adequacy of hours of employment. It is in the interest of labor itself as well as the whole national economy to avoid perpetuating that system of exploiting public works for maintaining an artificial wage level above the rest of labor, while private building operates on an effective far lower building-wage level through elaborate devices of rebates. A perpetuation of the artificial building-wage structure will not only mean an uneconomic and inefficient use of government funds, but will interfere with the resumption and stimulation of private building, which as shown above is necessary in order to give a velocity of turnover and multiplied spending of the government funds so as to revive and expand employment throughout the whole economy. This, then, is the national economic justification for an economic instead of diseconomic building weekly wage." *Impact of Public Works Program on the Construction Industry and on Employment*, revised May 17, 1933, pp. 17-18.

1. All codes for producers' goods should contain provisions that will keep down, if not actually decrease, present wages per hour and capital charges.

2. All codes for *producers'* goods should contain guarantees that wages (and, if possible, other elements of price such as raw material costs and profits) will be increased by, say, 10 per cent next year, and also the year following.

3. All new codes in these industries should contain provisions fixing *maximum* prices of goods. Perhaps the price could in some way be tied to the labor cost which should be kept down. It might even be possible to insist in some instances that the price not exceed, say, a certain per cent of the prime cost, but there would be difficulties due to varying degrees of mechanization. Of course, where joint costs are involved such a plan may not be feasible. And there are difficulties involving questions of constitutionality. But in all cases if co-operation cannot be secured, something can undoubtedly be accomplished through a gross-income tax.

I would personally like to see wages per hour, not per year, in producers'-goods industries lowered ten per cent at present and next year raised ten or fifteen per cent above present rates so that a net increase of at least twenty per cent could be attained between 1933 and 1934. However, present rates cannot be lowered too much (10 per cent ought not be too much) without affecting adversely present equities and perhaps doing more harm than good.

Furthermore, if present costs and prices of producers' goods are not lowered, threats of future increased prices will not be taken seriously. There is a general impression among consumers that prices of producers' goods, especially machinery and building materials, are now very much too high. Therefore, if present quotations are maintained, there will prevail a feeling among investors that these will later have to be reduced because of market conditions, and the threats of increases will be meaningless. Actual reductions will indicate that the NRA means business.

The important thing to remember is that in producers'-goods industries manufacturing cost and credit are intimately related and should be viewed together. The implication with respect to planning is, of course, that we should decide where greatest replacements are needed and adjust costs in the producers'-goods industries supplying needed equipment so that these replacements will be made.

Lowered present prices for some producers' goods with guarantees of future increases should act as powerful incentives to scrap obsolete machinery and buildings and replace them while prices are down. This would undoubtedly result in increased productivity of labor in some industries and consequent needs for further reduction in man-hours, but I,

personally, believe that increased employment in producers' goods industries would much more than offset this. Furthermore, since yearly increment in capital is very small compared with total capital, increased productivity should not bother us greatly.

Under present plans of the Administration it seems to me that we are moving towards an economy in which dollar income is to be greatly increased and real (commodity) income perhaps drastically reduced. Unless an obvious penalizing of productive effort occurs, as it apparently has in cotton textiles, there will, after a time (inflation will prevent it for a while), be bankruptcies and closing down of inefficient producers. Capital will not be forthcoming for new plant and equipment for several years and during that time we will retrogress in our standards of living as measured by durable goods and perhaps also by less permanent products. I should hate to see this take place when it is not necessary.

My previous memorandum to you in regard to the building industry was written when monetary stabilization seemed possible. The present one, of course, supersedes it, since the rules of the game have been changed.⁸

This memorandum was quite favorably received by various economic advisers of the Administration and, as already noted, the NRA actually urged such a plan for the construction industries. But the rich public-works contracts were too tempting for either industry or labor to forgo for the sake of an untried experiment in reviving private building. Moreover, the President himself had called for

⁸A few very minor changes in phraseology of the version of the document reproduced here have been made.

For many years the tendency in the building industries has been to keep prices as rigid as possible. This is, in part, due to the fact that the value of each product used in a construction project forms only a small fraction of the total, and hence demand is, in general, highly inelastic. As a rule, price changes merely induce substitutes of materials, bricks or tile for lumber, concrete for steel, and so forth. (See Roos, *Dynamic Economics*, Chapter VII.) Lowering of the price of any one commodity has very little effect on the cost of a project: it is only when prices of many building materials decline that a stimulation in construction demand develops. The only flexible building-material prices are those goods for which there is large demand independent of new construction, such as plumbing and heating fixtures and supplies. Prior to the NRA other prices only occasionally dropped when a particularly large private or public contract was offered.

It would seem that no field of industry offers a more alluring opportunity for an organizing genius to weld together in a profitable combination producers and sellers of all commodities necessary to carry out construction projects. An organization of this type, by adjusting whatever prices were necessary to sustain demand, could undoubtedly do much to stabilize building operations and, incidentally, to decrease the intensities of booms and depressions. Such a vertical monopoly (or several vertical competitors), even if completely dominated by selfish motives, could hardly avoid operating in such a way as to be of great public benefit.

higher wages throughout all industry, and even when the negotiations were going on in the NRA he had launched the extravagant Civil Works Administration. And with this agency paying wages well above prevailing rates, it was obviously impossible to convince labor⁹ in the building industries that some wage cuts were desirable.

In brief, our investigation up to this point shows that, with few exceptions, industries raised prices by considerably more than the increases in wages initiated by NRA. Moreover, increases in prices of finished and semi-finished goods were often considerably greater than what would have been warranted by both wage increases and higher prices of raw materials resulting from dollar devaluation. Various industries expecting benefit from the federal public-works program readily increased wages and unhesitatingly shifted these added costs to the Federal Government, along with substantial unrelated price increments. Finally, such industries were especially prone to argue that the President had asked for higher prices and that, since their prices always had followed the value of gold, they would do everything possible to help the cause.¹⁰

3. *Public Purchasing*

To understand more fully the ease with which some industries were able to raise prices to the Federal Government, an examination of policy on public purchasing is required here. To begin, we find President Roosevelt on August 10, 1933 directing that every contract entered into within the limits of the United States by the United States or any of its agencies should provide for and require compliance of the contractor with all provisions of the approved code of fair competition for the trade or industry or subdivision thereof concerned or, if no such approved code existed, with the President's Re-employment Agreement. In the case of products not mined, produced, or manufactured in the United States, the contractor was compelled to agree to observe the code applying to that portion of the contract executed in the United States. If he failed to adhere, the Government could, under the terms of the President's order, by written notice, terminate the agreement and purchase in the open market the undelivered portion of the supplies covered by the agreement, the contractor and his bondsmen to be liable for any excess cost occasioned thereby.

⁹See also Chapter XIV, Sections 1 and 2.

¹⁰Economists interpreting effects of inflation or devaluation would do well to bear in mind this psychological effect of the program.

Thus having the lucrative federal market guaranteed, provided codes were observed, furnishers of supplies to governments determined to use the NRA to their best advantage. Often they acted under the assumption that all anti-trust laws were in abeyance, at times actually participating in round-table discussions of the projects on which bids were to be made. Some even went so far as to agree on what their quotations should be to states, municipalities, and to public corporations not covered by the order. As a result, in December, 1933, and January and February, 1934, several state, county, and municipal purchasing agents, reporting that they were getting unusually large numbers of identical quotations on construction projects and for supplies, complained bitterly that they could no longer award contracts: their laws required letting to the lowest bidder and now all bids were alike. But, at that time, the Administration did not consider the situation serious.

By March, 1934 something was urgently needed to encourage industry to observe code provisions; business support for the NRA had decreased materially and serious compliance difficulties had arisen. Restriction to code compliers of the rich public-works contracts of all states, municipalities, and individuals, who borrowed from the Federal Government, seemed to offer an effective solution; and therefore, to accomplish this additional boycott of non-compliers, on March 14, 1934 President Roosevelt issued Executive Order 6646, which required that all invitations to bidders thereafter to be promulgated by or in behalf of any executive department or independent establishment or other agency or instrumentality of the United States, including government-owned and also government-controlled corporations, should stipulate NRA compliance as a condition of acceptance. No bid would be considered unless it included or was accompanied by a certificate duly executed by the bidder stating explicitly that he was complying with, and would continue to comply with, each approved code of fair competition to which he was subject. If the bidder was engaged in any trade or industry for which there was no approved code of fair competition, he had to state that he was complying with, and would continue to comply with, an agreement with the President under Section 4a of the National Industrial Recovery Act. With respect to projects which were not wholly federal, the foregoing provisions likewise applied "to all contracts and purchase orders authorized by any State, municipal corporation, local subdivision, person, or corporation in connection with projects carried out or to be carried out, wholly or in part, with funds loaned or granted by any agency of

the United States." But mindful of his publicly expressed desire to stimulate foreign trade, the President declared further that this paragraph should "not be construed as requiring the restriction of the use of materials to those produced within the United States nor to require price differential in favor of such materials."

Thus, by the President's order all recipients of grants from the Public Works Administration had to buy only from firms complying with NRA codes. Industrialists hailed the new order as a great help in eliminating the "chisellers" and began to fix prices. As a result, almost immediately, the NRA was flooded with new complaints of government purchasing agents that bids were identical, the situation becoming so bad that on June 12, 1934 General Johnson felt compelled to issue an administrative order (X-48) effecting a restoration of competition. Section A of this extraordinary order¹¹ was designed to prevent discriminatory classification of governmental agencies as retail customers. This and other sections permitted the granting to governments of the full discounts to which they were entitled on the basis of quantity purchased, credit standing, and favorable delivery terms.

But Johnson's order X-48 went much further in that it enabled a small municipality to buy at a price quoted to wholesalers in industries in which a wholesale discount is granted to such a dealer on small purchases as well as on large. Since the argument for granting such a discount to a wholesaler has been that he serves a continuing function in developing and satisfying the demand for a product, and there is not a corresponding argument in the case of the municipality,

¹¹In brief, this order set aside code provisions so that members of an industry seeking government orders could (a) quote prices and terms of sale to these governmental agencies as favorable as those permitted to be quoted to any commercial buyer for like quantities; (b) quote definite prices or terms of sale (not subject to adjustment resulting in increased costs during the life of the contract) for definite quantities and for definite periods not to exceed three months (unless a longer period was then permitted by any such code); (c) quote definite prices or terms of sale (not subject to adjustment resulting in increased costs during the life of the contract) for indefinite quantities and for definite periods not to exceed six months (unless a longer period was then permitted by any such code); (d) quote prices and terms to apply on contracts to become effective not more than sixty days from the date of the opening of bids; and (e) quote prices F.O.B. point of origin and/or F.O.B. destination.

Johnson's order closed with the provisos that the exemption granted should be limited to and operative only in connection with quotations made by such members to governmental agencies; that nothing in the order contained should operate to permit deviation from or abandonment of open-price and cost-protection provisions then or afterward contained in any such code; and that nothing contained in the order would relieve any such member at any time from the duty of complying with all other provisions of such codes.

the order definitely put governments in a favored position with respect to large retailers or large industrial consumers.

Some administration advisers, it should next be noted, were not particularly pleased with the order since they felt that insufficient price reductions would result from its observance. Leon Henderson and Blackwell Smith, in particular, became intrigued with a notion that competition could be set up within limits and that in this way wide price variations tending to demoralize an industry could be prevented. They were soon able to convince Treasury officials in charge of the letting of public contracts that, if code members were permitted to shade their filed prices by a percentage, there would be competition between this lower limit and the filed price.¹² Then, as a result of their efforts, on June 29, 1934 President Roosevelt modified his previous Order 6646 of March 14, 1934 by Executive Order 6767 which began as follows:

By virtue of and pursuant to the authority vested in me under Title 1 of the National Industrial Recovery Act of June 16, 1933 (ch. 90, 48 Stat. 195), and in order to effectuate the purposes of said title, it is hereby ordered as follows:

1. Any person submitting a bid to any agency or instrumentality of the United States, or any state, municipal, or other public authority, to furnish goods or services at prices which, in accordance with the requirements of one or more approved codes of fair competition, must have been filed, prior to their quotation, with the Code Authority, or other designated agency, shall be held to have complied adequately with the requirements of such code of fair competition: (a) if said bidder shall quote a price or prices not more than fifteen per cent below his price or prices filed in accordance with the requirements of such code or codes; and (b) if, after the bids are opened, each bidder quoting a price or prices below his filed price or prices shall immediately file a copy of his bid with the Code Authority or other appropriate agency with which he is required to file prices.

2. If upon complaint made to the Administrator for Industrial Recovery, he shall find, after due investigation, that the tolerance of fifteen per cent provided in this Order is resulting in destructive price cutting in a particular trade or industry, he is hereby authorized to issue an administrative order reducing said tolerance of fifteen per cent for such trade or industry to the extent he shall find necessary to prevent such destructive price cutting, but in no event to a tolerance of less than five per cent.

¹²Some codes forbade members of their industry to quote prices less than those previously filed. See Chapter X, Section 1.

By August 11, 1934 the NRA had received complaints against these orders from nine distributing, and five manufacturing industries, the chief objection being that they encouraged tendencies to eliminate the middleman: manufacturers could now cut prices to governments whereas they could not allow the same reductions to the middlemen who had been supplying governments. This development quite naturally brought the NRA face to face with the three perplexing choices: (1) to write codes in such a way as to maintain existing channels of distribution, (2) to employ codes to permit distributing industries to regain ground previously lost through a trend toward direct selling by manufacturers or any other short cuts in the methods by which products reach the consumer, or (3) to use codes to put competitive methods of selling products to consumers on an equal basis so that the relative merits of each from the standpoint of price economics would determine the trend. If course (3), which seemed most desirable, were chosen, the further problem of devising criteria to determine the "trend" would arise. For instance, what reason, if any, was there to assume that a trend under ordinary competitive conditions would have a constant slope? And if not such a trend, then what?

Many complainants insisted, moreover, that both the President's and General Johnson's order gave governments favored positions and that, consequently, (1) all government business would be concentrated in the hands of the lowest-cost producers in each industry and (2) there would be a general reduction of prices to all purchasers through pressure of private firms demanding the same prices as governments. Also in a tentative report of August 11, 1934 Harry F. Kantor, who had charge of a study authorized by the President's order,¹³ declared that a general price decline could be expected as the indirect result, in the first instance as well as the second: this would be accomplished through the gradual expansion of the business handled by low-cost producers in consequence of their acquiring additional volume by sales to governments. He then suggested that, if the National Recovery Administration favored a reduction of prices, it might be desirable to bring this about more directly, and proposed that manufacturers be permitted to grant discounts of as much as 15 per cent on materials sold to contractors or other middlemen for use on gov-

¹³Section (3) of the President's Order read:

"3. The Administrator for Industrial Recovery is directed to cause a study to be made of the effects of this Order upon the maintenance of standards of fair competition in sales to public and private customers and to report to the President thereon within six (6) months of the date of this Order."

TABLE XXXV
 FREQUENCY OF OCCURRENCE OF TIE BIDS
 Source: NRA Report, *Effects of Open Prices on Bids*

Percentage of Items on which Tie Bids Occurred	Procurement Division, U. S. Treasury						Bureau of Supply and Accounts, U. S. Navy					
	Pre-code Period		Code Period		Post-Order Period		Pre-code Period		Code Period		Post-Order Period	
	Open Prices (0)	Non-Open Prices (1)	Open Prices (2)	Non-Open Prices (3)	Open Prices (4)	Non-Open Prices (5)	Open Prices (6)	Non-Open Prices (7)	Open Prices (8)	Non-Open Prices (9)	Open Prices (10)	Non-Open Prices (11)
0-10	3	2	0	1	3	1	0	1	2	2	2	0
10-20	4	4	2	5	1	1	5	4	2	2	5	3
20-30	3	1	0	1	2	2	5	2	2	2	4	2
30-40	0	0	1	0	2	3	7	1	4	1	0	0
40-50	1	0	1	1	1	0	2	0	4	0	3	1
50-60	1	1	4	0	2	0	4	0	3	3	6	0
60-70	1	1	2	0	0	1	2	0	5	1	5	0
70-80	0	0	1	1	0	0	1	0	2	0	0	1
80-90	1	0	2	1	0	0	5	0	7	0	1	0
90-100	1	2	2	1	4	3	2	0	2	0	7	1
Totals	15	11	15	11	15	11	33	8	33	8	33	8

ernmental jobs: this would put direct selling and middleman selling on an even competitive basis, thus allowing the method possessing the economic advantage to develop. Then, in December, 1934, Kantor rendered his final report. The data presented in Table XXXV taken from the document¹⁴ show that, in general, for codes which made the filing of prices mandatory (see especially Chapter X, Section 1), frequencies of identical bids appear to have increased materially after the beginning of the NRA, whereas no significant changes occurred for the other codes. More important, the distributions for the code period seem to have been unaffected by the President's Executive Order. Consequently we must conclude that issuance of the executive order was not sufficient to restore competition; it was simply based upon another theory which did not work out in practice.

In summary, then, attempts of the Administration to secure compliance with codes through restriction of government contracts to compliers led to (1) high wages and prices in the building industries and others supplying our governments and (2) extensive collusion of bidders in raising prices to governments — federal, state, county, and city. In attempts to restore competition and secure fair prices on public orders, the Administration modified codes so as to permit fifteen per cent discounts from filed prices on quotations to governments. This, of course, had the effect of favoring governments at the expense of contractors and other middlemen, and brought the NRA face to face with the problem of deciding what the channels of distribution should be. Thus, an effort originally designed to secure compliance quickly led into broad-scale economic planning and, as we shall see in Chapter XIV, Section 1, left in its wake the destruction through high prices of an incipient building boom, and wastage of federal funds.

4. The Basing-Point System of Open Prices

One of the most interesting price experiments of the NRA concerned the multiple-basing-point system in use today in several industries and, in particular, in steel. This may be defined as a marketing plan whereby prices are posted for commodities at specific points, usually but not necessarily producing centers, and the goods billed to

¹⁴In this study the pre-code period included all openings of bids made from January 1, 1933 to the effective date of the code for the product; the code period ended on July 1, the first day of business following the President's Executive Order of June 29, 1934; the post-order period ended in December, 1935 when the data were published by the Research and Planning Division.

TABLE XXXVI

DISTRIBUTION OF CAPACITY WITH RESPECT TO BASING POINTS

Source: NRA Report, *Operation of the Basing-Point System in the Iron and Steel Industry*

PRODUCT	At Basing Point		Not at but within 50 miles of Basing Pt.		Not within 50 Miles of Basing Pt.		Total Tons
	Tons	%	Tons	%	Tons	%	
Pig Iron	12,884,700	40.85	14,949,255	47.58	3,637,600	11.57	31,421,555
Blooms, Billets & Slabs	12,080,200	25.2	22,964,020	47.9	12,874,300	26.9	47,918,520
Mer. & Conc. Bars	4,092,200	29.1	5,776,400	41.0	4,209,325	29.9	14,077,925
Sheet & Tin Plate Bars	3,119,600	33.5	5,113,300	55.0	1,067,020	11.5	9,299,920
Structural Shapes	1,407,500	26.1	3,534,800	65.6	453,000	8.3	5,395,300
Plates	1,521,350	24.7	3,080,300	49.9	1,566,200	25.4	6,167,850
Sheets	512,100	6.3	3,075,200	37.6	4,581,500	56.1	8,168,800
HR Strip	586,000	11.8	1,707,500	34.3	2,688,000	53.9	4,981,500
CR Strip	225,900	21.8	382,500	36.9	427,200	41.3	1,035,600
Tin M. Black	276,500	10.3	1,565,400	58.1	849,900	31.6	2,691,800
Tin Plate (1)	306,380	10.6	1,797,550	61.9	799,450	27.5	2,903,380
Skelp	1,133,000	27.1	2,444,200	58.7	594,000	14.2	4,171,200
Pipe, etc.	1,327,600	15.5	3,742,600	43.7	3,488,200	40.8	8,558,400
Wire Rods	780,000	18.1	2,255,000	52.4	1,269,000	29.5	4,304,000
Wire Nails & Staples: Barbed Wire & Fencing	306,650	9.5	1,817,700	56.6	1,087,850	33.9	3,212,200
Wire Drawn	762,500	19.1	1,606,400	40.2	1,631,900	40.7	4,000,800
Total	41,272,180		75,812,125		41,224,445		158,308,750
Per Cent	26.1%		47.9%		26.0%		100%

(1) Includes small quantity of terne plate.

include freight from these places to points where they are taken by purchasers. That the basing point is generally a production center, at least in the steel industry, is shown by Table XXXVI which exhibits a distribution of total capacity for principal steel products with respect to such points, based on 211 cities or towns in which rolling mills are located and 77 where pig iron is produced for sale. With the exception of strip, sheets, wire, fencing, and pipe, at least 70 per

TABLE XXXVII
 COMPARISON OF IRON AND STEEL PRICES WITH SELECTED GROUPS OF COMMODITIES
 March, 1933 = 100
 Source: NRA Report

	Composite		Bureau of Labor Statistics Price Groups ^b			
	Finished Steels	Pig Iron ^a	Combined Index ^c	Farm Products ^d	Food ^e	All others ^f
Annual Averages						
1913	86.5	108.3	115.9	167.1	117.6	106.4
1923	144.3	194.0	167.1	230.4	169.8	158.5
1926	125.3	150.6	166.1	233.6	183.2	152.0
1929	119.4	135.3	158.3	245.1	183.0	139.2
Monthly Averages						
1933—Mar.	100.0 ^g	100.0 ^m	100.0	100.0	100.0	100.0
Dec.	104.4	124.6	117.6	129.7	114.5	117.3
1934—Jan.	104.4	124.6	119.9	137.1	117.8	119.0
Feb.	104.4	124.6	122.3	143.2	122.2	119.6
Mar.	104.4	124.6	122.4	143.2	123.3	119.3
Apr.	106.9	125.9	121.8	139.3	121.2	119.5
May	114.4	132.0	122.4	139.3	122.9	119.9
June	114.4	132.0	123.9	147.9	127.8	118.8
July	111.3	132.0	124.3	150.7	129.3	119.1
Aug.	110.5	132.0	126.9	163.1	135.3	119.0
Sept.	110.5	132.0	128.9	171.5	139.4	119.0
Oct.	110.5	132.0	127.1	165.0	137.0	118.5
Nov.	110.5	132.0	127.1	165.4	137.5	118.5
Dec.	110.5	132.0	127.2	168.2	137.9	118.3

^aIron Age
^bSurvey of Current Business
^c784 commodities
^d67 commodities
^e122 commodities
^f595 commodities
^gPrice 1.923 cents per pound
^mPrice \$13.56 per gross ton

TABLE XXXVIII
 PERCENTAGE PRODUCTION OF PIG IRON AND FINISHED STEEL BY STATES
 Source: Annual Statistical Reports of Iron and Steel Institute

States	1914		1924		1929		1932		1938	
	Pig	Finished	Pig	Finished	Pig	Finished	Pig	Finished	Pig	Finished
Maine, Massachusetts, Rhode Island, Connecticut, and New York	6.7	4.5	6.4	4.7	6.7	5.1	7.3	5.5	5.1	4.9
Pennsylvania	8.4	11.2	6.9	9.7	5.5	8.4	4.2	6.4	3.6	5.2
Eastern	33.3	38.1	28.3	29.8	28.1	27.8	20.4	24.8	25.0	25.0
Western										
Alabama	7.8	2.2	8.8	3.6	6.5	3.0	7.6	3.5	6.9	3.4
Ohio	10.2	7.7	9.4	10.0	9.9	9.1	8.1	7.5	10.7	8.3
Mahoning Valley	12.4	11.3	14.2	13.0	13.3	12.3	19.8	14.6	19.4	15.4
All Others										
Illinois	7.9	7.9	8.3	7.1	10.4	7.9	10.7	7.1	7.8	6.9
Indiana, Michigan, Wisconsin, Minnesota	6.7	8.9	8.7	12.7	12.2	14.6	12.1	15.2	11.3	15.9
New Jersey, Delaware, Maryland, Virginia, West Virginia, Kentucky, Tennessee, Georgia, Texas, Missouri, Oklahoma, Colorado, Utah, Washington, California, Iowa	6.6	8.2	9.0	9.4	7.4	11.8	9.8	15.4	10.2	15.0
Total Production in Millions of Tons	23.33	18.37	31.41	28.09	41.78	41.07	8.55	10.45	13.00	16.74

cent of mill capacity was located in or within fifty miles of a basing point.

Such use of basing points in pricing pig iron has persisted as long as the product has been sold in substantial quantity in the United States.¹⁵ The explanation is fairly simple: when mills were isolated, each enjoyed a local monopoly, but had to compete in the large cities, and it was only in the population centers that demand was sufficiently strong to determine a competitive market price. Consequently, mills sold their product f.o.b. the population centers or bases and thus the price paid in adjacent territory by a fabricator was the base price plus transportation from the market to his mill even when he was nearer to the producer than was the basing point.

As a general proposition it may be said that changes in the prices of pig iron and finished steel products under the basing-point system have approximated (1) price movements of such other commodities as farm products and foods and (2) the general wholesale commodity index of the Bureau of Labor Statistics; but magnitudes of changes have been different. For instance, as shown by Table XXXVII, farm prices dropped from an index number of 245.1 in 1929 to 100 in March, 1933 and then increased from 100 to 167.1 in November, 1934; whereas pig iron declined from 135.3 in 1929 to 100 in March, 1933 and then increased to 132 in November, 1934. Thus, the basing-point prices have followed the general price trend but have been somewhat more stable.

It should be clearly understood, however, that rigidity of these quoted prices does not mean that mills have enjoyed stable net delivered prices. To illustrate this point: if the sales of a steel mill, say, in Buffalo, New York, began to fall off, the plant, rather than reduce its base prices to secure volume, would invade some other regions such as the Chicago market; and for products sold in Chicago at a base price of, say, \$1.85 per cwt., the Buffalo mill, paying 32 cents

¹⁵The following quotation appears in Acrelius' *History of New Sweden*, printed in 1759 but covering the period 1750-1756:

"Bar-iron at the forge brings 20 pounds per ton or 20 shillings per 100 pounds . . . in Philadelphia [a basing point] . . . bar-iron, in large quantities, from 14 pounds to 16 pounds per ton. It certainly seems remarkable that the price is diminished after the transportation to the city; but in this people find their profit.

"The iron works of Pennsylvania lie mostly within 40 miles of Philadelphia. The carriage for such a distance does not exceed 20 shillings sterling per ton. As a set-off to this is reckoned the return-freight upon goods serviceable for the storehouse of the works."

Mimeographed report of the National Recovery Administration, *Operation of the Basing-Point System in the Iron and Steel Industry*, November 30, 1934, p.18.

freight plus a 3 cents switching charge, would net \$1.50 as compared with a net base price of perhaps \$1.90 in Buffalo. In other words, an isolated steel producer enjoying a limited monopoly finds it to his profit to charge his nearby customers the freight which his closest competitor has to pay instead of the freight which he himself has to pay. Briefly, he usually¹⁶ asks his neighboring customers a higher net price than he does more distant ones. If only one producer indulges in this practice, the quoted base prices change little, if at all. But if, at the same time, Buffalo and Pittsburgh mills¹⁷ sold in the Chicago market, producers there would face loss of orders; and motivated by reasons similar to those influencing action of the other mills, they would sell in Buffalo and Pittsburgh markets. That the costs of such wasteful crosshauls of materials might be large has often been charged, yet conclusive facts on the matter are not available.¹⁸

The preceding discussion indicates that a change in price at one basing point will usually be accompanied or shortly followed by changes at other centers. Table XXXIX, showing previous low prices at various basing points, new filed prices, dates of filing, and effective dates, proves this proposition. It appears that prices sometimes move almost simultaneously at widely separated basing points; but, in some

¹⁶On the other hand an isolated producer by adding the full freight to the basing-point price sometimes places his customers under the handicap of having to pay two freights, (1) on the raw material and (2) on the finished product, whereas their rivals located at a basing point pay only the freight on the finished product.

Consequently in order that fabricators in such a producer's territory may prosper and be able to continue to order from him, he may be forced to quote prices lower than those of the nearest basing point. If he is sufficiently strong he may, thereby, establish his mill as a basing point. Then, again, a strong producer wishing to secure a tight grip on his local market sometimes deliberately creates an area in which he quotes lower prices than those founded on the nearest basing point. In either situation he effectively sets up his mill as a basing point or else he establishes a zone of equal prices in which he entirely disregards freight charges.

¹⁷For comparative purposes it may be noted that a Pittsburgh mill entering the Chicago market would pay 34 cents freight and switching charges, thus netting \$1.46 as compared with a Pittsburgh price of, say \$1.80.

¹⁸A mimeographed report of the NRA on the basing point states:

"The outstanding characteristic of the basing-point system is the fact that it puts rival producers on a footing of price equality with each other in all the consuming points over a wide area, instead of merely at the boundary lines of their respective market areas, as under the unqualified mill-base system. It thus increases the number of producers the purchaser has to choose from and who are competing for his business, and widens the areas over which direct competition acts. This fact is hardly open to question. The question which remains is: does it do this in a way which results in lower prices to the consumer or merely in increased freight absorptions and greater wastes of crosshauling; and possibly also of selling expense?"

Data are lacking on the extent of crosshauling, but in 1935 the steel industry was assembling them.

instances, as shown by Table XL, almost a month may elapse before all producers selling at a particular basing point meet a price cut. And according to Table XLI, it is possible for at least three months to pass before all competitors accept a price advance. Regarding these adjustments in prices an NRA report on basing points in the iron and steel industry states:

In one case we have been informed that an increase in the price was contrary to the judgment of a number of large producers, but that, when the increase was made, they felt it incumbent on them to fall in line, though one producer declined to do so. This represents a non-competitive standard

TABLE XXXIX
COMPETITIVE PRICE FILINGS ON STEEL PLATES
BY INDIVIDUAL COMPANIES UNDER NRA CODES
Source: NRA Report, *Operation of the Basing-Point System
in the Iron and Steel Industry*

Company	Basing Point	Previous Low Price (Dollars)	New Price (Dollars)	Filing Date	Effective Date
Jones and Laughlin	Pittsburgh	1.85	1.80	6/30/34 T	7/10/34
Illinois Steel	Chicago	1.90	1.85	6/30/34 T	7/10/34
	Gary	1.90	1.85	6/30/34 T	7/10/34
Lukens Steel	Coatesville	1.95	1.90	7/ 2/34	7/12/34
	Pacific Coast Ports	2.40	2.35	7/ 2/34	7/12/34
Tenn. Coal, Iron and Railroad	Gulf Ports	2.25	2.20	6/30/34 T	7/12/34
	Birmingham	2.00	1.95	6/30/34 T	7/12/34
Gulf States Steel	Birmingham	2.00	1.95	6/30/34 T	7/12/34
Bethlehem Steel	Sparrows Point	1.95	1.90	7/ 2/34	7/12/34

T—Telegraphic filing.

of behavior which nevertheless operates within pretty narrow limits in its power to control prices. There seems to be no invariable rule as to what companies take the lead. Cases systematically canvassed show too few prices changed to afford an adequate basis for generalization, but general observation indicates that certain producers more or less habitually take the lead in certain products and other producers in other products. There is no consistent price leader for the entire industry.¹⁹

In view of this uniformity of base prices, service on orders has always been an important competitive factor in the iron and steel in-

¹⁹*ibid.*, p. 193.

dustry; and such competition has been intense during depressions when fabricators tend to keep stocks low. Outstanding elements of sellers' service have been: (1) quick shipment, (2) shipping according to specification, (3) carrying a full line in the particular class of product, (4) proximity to plant, and (5) advice of trained salesmen who know their products and can assist buyers in selecting material best adapted to particular needs. Since the prices of the many standardized products of the industry were usually identical, the open-price system established under the code placed a premium chiefly on service

TABLE XL

TIME LAG OF PRODUCERS NOT IMMEDIATELY MEETING
PRICE CUTS ON PIG IRON
Neville Island Basing Point

Source: NRA Report, *Operation of the Basing-Point System in the Iron and Steel Industry*

Company	Previous Price (Dollars)	New Price (Dollars)	Effective Date	Time Lag (Days)
X	17.50	17.00	2/25/34	....
Wheeling Steel	17.50	17.00	3/ 1/34	3
Carnegie Steel	17.50	17.00	3/10/34	13
Pittsburgh Crucible Steel	17.50	17.00	3/18/34	21
Davison Coke & Iron	17.50	17.00	3/25/34	28
Pittsburgh Steel	17.50	17.00	3/25/34	28

and salesmanship; only in the specialties group was quality a decisive competitive factor.²⁰

The NRA steel code, together with a list of basing points,²¹ was

²⁰In discussing this phase of the steel code the NRA report said:

"Generally speaking, excepting cases of pronounced quality advantage, a large disadvantage in price for a short time, or a small price disadvantage over a longer period, cannot exist without materially affecting the relative sales of the producer having such prices. To obtain one's share of the going business, it is generally necessary to meet the current prices and to compete in quality and service. Nevertheless, in a weak market some producers are frequently unwilling to meet lower prices for varying periods, perhaps because they are unwilling to lose money or because they wish to avoid reducing the price of higher-priced contracts or because they believe the lower prices will soon advance.

"There are some few cases in this industry where producers consider a price differential necessitated by a quality or service disadvantage."

ibid., p. 32.

²¹Article VII of the iron and steel industry code provided that none of the members should make any sale of any product at a price or on terms and conditions more favorable to the purchaser than the price, terms, or conditions established by such member in accordance with the provisions of Schedule E which was annexed. Schedule E required that each member should maintain with the

originally approved for a trial period of ninety days, but then was extended by the President to a little over nine months. The story of amendment and recommendations for amendment is essentially the history of the code. First the basing-point system was revised on May 30, 1934, by adding, in recognition of outstanding complaints, new

TABLE XLI

FIRST AND LAST PRODUCERS TO FILE HIGHER PRICES UNDER CODES

Source: NRA Report, *Operation of the Basing-Point System in the Iron and Steel Industry*

Company	Basing Point	Product	Old Price (Dollars)	New Price (Dollars)	Effective Date	Time lag (Days)
Carnegie Steel	Pittsburgh	Sheet Bars	26.00	30.00	4/10/34	0
Crucible Steel	Pittsburgh	Sheet Bars	26.00	30.00	6/ 1/34	52
Carnegie Steel	Youngstown	Sheet Bars	26.00	30.00	4/10/34	0
Sharon Steel Hoops	Youngstown	Sheet Bars	26.00	30.00	5/ 3/34	50
Reeves Mfg. Co.	Pittsburgh	Sheets *	2.25	2.65	4/12/34	0
Eastern Rolling Mill	Pittsburgh	Sheets *	2.25	2.65	4/12/34	0
Henry Disston and Sons	Pittsburgh	Sheets *	2.25	2.65	5/ 7/34	25
American Sheet and Tin Plate	Gary	Sheets *	2.35	2.75	4/15/34	0
Inland Steel	Gary	Sheets *	2.35	2.75	4/15/34	0
Newton Steel	Gary	Sheets *	2.35	2.75	4/15/34	0
Great Lakes Steel	Gary	Sheets *	2.35	2.75	4/27/34	12
Columbia Steel	Pacific Coast Ports	Wire Drawn	2.55	2.65	12/ 4/33	0
Republic Steel	Pacific Coast Ports	Wire Drawn	2.55	2.65	12/ 4/33	0
Pittsburgh Steel	Pacific Coast Ports	Wire Drawn	2.55	2.65	3/ 5/34	91

*Sheets not rolled -- 24 gauge.

basing points such as Worcester, Massachusetts; Duluth, Minnesota; Corpus Christi, Texas; and Stockton, California. Moreover, at this

secretary a list showing the base prices of all its products and the dates on which they should become effective. It specified further that no price should become effective until 10 days after it had been filed with the secretary. Delivered prices could not be less than the effective base price plus the all-rail published tariff freight charges from the basing point to the place of delivery to the purchaser, except that when cheaper transportation was used the seller could allow the purchaser a reduction at such rate as had been previously determined by the code authority.

time all members of the industry were given the privilege of filing new prices effective at the same date as previously filed lower prices not yet effective; and each producer was allowed to quote as his price the lowest base price posted by any competitor at a point where he himself did not ordinarily file. Finally, the code authority was directed to determine such reductions in all-rail transportation charges as were "equitable and necessary in order that competitive opportunity to producers and consumers" should be maintained.

The following statement by Walter S. Tower, executive secretary of the American Iron and Steel Institute, sums up the industry's views regarding changes introduced by the NRA code:

The only difference between the present system and that which existed prior to the Code is that the basing-point system of quoting prices was used, but that the base price at the basing point was an unknown quantity . . .

The only difference between the basing points commonly recognized prior to the effective date of the Code and those specified in Schedule F of the Code is that the number of the basing points under the Steel Code has been increased by the addition of several places which were not always used as basing points prior to the effective date of the code.

It is generally understood that the larger number of basing points was included in the list in Schedule F in order that there should be less possibility under the Steel Code of creating any inequalities of competitive opportunity.²²

On November 30, 1934, J. Maurice Clark, M. P. Sharp, R. W. Shannon, and Burr T. Ansell, officials of the NRA, submitted a report expressing this organization's opinion of the steel code and recommending:

(1) That the principle of the group mill-base be embodied in any revised code of fair competition for the industry which may be approved by the President; together with provisions for the application of the principle as rapidly as is consistent with a due regard for the interests affected.

(2) With a view both to limiting the wastes of competitive crosshauling and to reinforcing the effect of the group mill-base system and as a means of strengthening the effect of competition on prices . . . that in any revised code a provision be embodied limiting freight absorptions.²³

²²Letter to NRA, 1934. (Source copy without exact date).

²³To accomplish this limitation of freight absorption, the report recommended (p. 174) that the provision of the amended code, which allowed quotations at base points for which prices had not been filed, be amended by the addition of the clause "provided the delivered price to the destination in question, based on such other basing point, is not less than the delivered price at which such member

(3) If, prior to the adoption of such revised code, evidence should come to light indicating that it would be impossible to secure the acceptance of such a program under the code, and to make reasonably rapid progress toward it, consideration should be given to the alternative possibility of abandoning the price features of the code entirely.

From a study of all available information we conclude:

(1) The choice of basing points has some influence upon the location of factories; but this is not a valid excuse for condemning the scheme.

(2) Data are not available to enable an appraisal of the contention that the basing-point system of pricing forces the public to pay higher prices. For our part we do not believe this to be true in the long run.

(3) The basing-point system of pricing is not *per se* bad; and it seems to have an important place in the pricing of products which have a national market.

5. Price Emergencies

A more radical type of NRA price experiment was tried in various so-called price emergencies. The definition of these situations, unfortunately, is not yet clear. Nevertheless, we can trace the development of policy.

When Leverett S. Lyon, the chairman of the Fair Trade Practice Board of the NRA set up in 1934, submitted to General Johnson policy outlined in the first parts of Office Order 228 (prepared by the board) the latter promptly added a paragraph which granted industry the right to fix minimum prices in "emergencies"²⁴ and made the Re-

could sell to such destination from the base for which such member files and based on the price which he has there filed, by more than 25 cents per hundred pounds or \$5.00 per ton."

²⁴Smith, Richberg, Henderson, and Lyon unsuccessfully pleaded with Johnson not to sanction price fixing under any conditions. When they saw they could not dissuade him from permitting it in "emergencies," all offered their resignations, but Johnson refused to accept them. Richberg then went to President Roosevelt with a complaint against General Johnson for permitting price fixing, and almost every government department also entered protests with the President. These objections, however, were largely unavailing at the time for President Roosevelt evaded pleas by complimenting Johnson's administration.

Richberg, it should be observed, seems to have had some change of mind, for in 1933 in hearings on the bill creating the NRA he had declared: "It has been the desire of the trade associations to be permitted to get together and make agreements . . . for the purpose of eliminating unfair practices, and also, let us say, for the purpose of establishing price levels on which the industry felt it could survive." *Hearings on H. R. 4664 before the House Committee on Ways and Means*, pp. 68 and 69.

search and Planning Division responsible for examining all available evidence to determine whether an emergency existed. But General Johnson did not clearly define the situation that he was attempting to meet. When he and his assistants were unable to state definitely the conditions under which the presumption of an emergency obtained, the problem was always referred to the Research and Planning Division. Yet no one in this Division, with the possible exception of one code adviser in a natural resource industry, favored price fixing. For this reason the details of the Division's decisions, particularly the story of how it co-operated with the Administrator without sacrificing its own views, is enlightening.²⁵

Immediately upon receipt of this assignment to report on "emergencies," Leon Henderson requested the author to choose a group to discuss the issues. This was quickly accomplished and then, on July 2 and 3, members submitted their views to the group chairman.²⁶ The chief of the price unit, Simon N. Whitney, began by recalling that Office Memorandum 228, which initiated the concept of price emergency, specified three conditions under which emergencies might be declared: (a) impairment of employment or wages, (b) high mortality of enterprises, and (c) panic in an industry or other special conditions. He concluded therefore that the whole problem confronting the committee was the determination of what constituted "other special conditions." He then expressed the view that for an emergency to exist there must be a price war, saying, "an emergency should be declared only when (1) one large company or a small group of large companies is (2) selling below individual cost (3) for the purpose of driving competitors out of business." He went on to say that, if the Administration was committed to a policy of outlawing the loss leader, its extensive use should also constitute an emergency. Gustav Seidler, Jr., a specialist on cartels, presented a similar analysis but went more deeply into the problem of changing costs and their effects on prices, questioning even the three conditions enumerated by Johnson. James

²⁵The authors of the Brookings volume on the NRA have commented on the lack of public record regarding decisions on price emergencies. The reasons for some decisions are bared here in order to show the enormous complexity of the problem of price fixing and to give the philosophy of various NRA officials.

²⁶At the first meeting, held about June 28, 1934, C. A. Pearce, a code adviser, was designated as chairman and, as such, was made responsible for assembling, classifying, and clarifying views. Others present were Orton W. Boyd, assistant cost accountant, Dahlberg, John Hamm, a young assistant of Henderson, Hughes, Gustav Seidler, Jr., Taggart, Whitney, and the author. Following the selection of a chairman the committee sat silent for some time, no one knowing just where to begin, and then, after getting nowhere in particular, adjourned to give further thought to the situation.

A. Hughes, chief of the code administration section, declared that conditions warranting an emergency in one industry might not in another and suggested that it was not advisable to draw up definite rules. "Unless price is the real focus of infection for the emergency condition," he wrote, "some other treatment than that of price fixing may be desirable. If the real cause cannot be readily eliminated, it may be found that the treatment of the symptom is temporarily advisable." Pearce's memorandum treated at greater length these problems and additional ones involving national income; but his conclusions were essentially the same as presented above. Shortly afterward the committee, essentially in agreement, rendered a report that synthesized the above views, and Henderson then gave Whitney the assignment of judging the existence of emergencies.

The first to ask for a hearing under the new policy was the automobile tire industry. Here, production had been maintained at such a high level during 1933 and 1934 that by June of the latter year the industry held sufficiently large inventories to supply the market for six months. Moreover, manufacturers were beginning to cut prices to move these goods into the hands of consumers and price demoralization seemed imminent. The industry pleaded for permission to fix prices for sixty days in an effort to prevent destructive price wars.

Regarding the NRA's decision in granting the application, it should be appreciated that the tire industry offered a particularly advantageous opportunity to try price fixing in an emergency: there were in all only about a dozen manufacturing firms and these, for the most part, wanted to abide by a minimum-price agreement. Advised of these conditions and told that the industry might be considered to come under Johnson's classification of panic in the price-policy memorandum, Henderson called a conference of all tire manufacturers, and proposed a truce pending determination of the lowest reasonable cost. After a short investigation, he experienced little difficulty in obtaining the industry's assent to a schedule of minimum prices for each size and grade of tire, all members readily signing an agreement giving this price list in detail and containing a stipulation that no new grades should be introduced during the period of the experiment and that charges of violations should be telegraphed to the NRA. Five days passed without any complaints. Then, a mail-order house advised that certain dealers were selling below the code prices, and asked what it should do. To meet this problem, Henderson immediately warned the violators and apprised the supplying manufacturer of the situation. As a result of pressure from the NRA and the manu-

facturer, these particular violations ceased. Daily thereafter Henderson received at least one telegram, concerning chiefly dealers in remote places; in general, the minimum prices were rigidly observed.

During the "emergency" the mail-order houses usually set their prices at the minima, but other dealers, whenever it seemed feasible, attempted to secure more. To illustrate: the size and grade of tires for which the minimum was \$6.90 was priced in twenty different establishments in West Virginia, Kentucky, and Tennessee, and quotations received ranging from 50 cents below the minimum to \$2.00 above. Two prices were quoted below, about a dozen at, and the rest above, the lowest permitted price. And 298 of 300 advertisements examined by the NRA during the "emergency" named minimum prices, the other two being slightly lower. Advertisements nearly always quoted the prices as effective during a two or three day's sale; and as long as a dealer advertised the minimum price for so short a period, his competitors seldom attempted to reduce their prices.²⁷

The next request for such price fixing came from the bottled soft drink industry, which was having difficulty meeting the competition of beer manufacturers. But Whitney, who was judge of conditions constituting emergencies, decided this to be a case of legitimate competition between substitute products and denied the request.

About this time, the mayonnaise industry petitioned for an emergency, the conditions prompting the action arising from the introduction of a salad dressing which sold at \$1.10 per quart and was able to cut deeply into the sales of mayonnaise, for which the price had been \$1.50 a quart. Since the salad dressing was composed of about 20 per cent egg and oil and 80 per cent cereal and water, as against 60 per cent egg and oil in mayonnaise, the former's cost was less, but, in the short run, buyers did not notice quality differences. The NRA, guided by Whitney's analysis of the situation, denied the petition; there was no justification for hindering the public in its purchases of a plainly marked salad dressing simply to protect the profits of manufacturers of mayonnaise; in other words, no attempt should be made to check inter-industry competition.

Shortly after this episode, emergencies were declared in the retail tobacco, the lumber and timber products, and the cast iron soil pipe industries. In all, emergencies were granted in nine industries (see

²⁷To complete the record: when the emergency period expired in September 1934, the industry asked that an extension be granted, but the NRA declined the request. Shortly afterwards, the Rubber Institute announced that all manufacturers contemplated an advance in tire prices, the emergency apparently having ended.

Table XLII). The first was allowed to prevent the use of the loss leader, and need not be discussed here (see Chapter X, Section 4). The very important case which involved the lumber and timber products industry is particularly interesting because after the plea was granted (July 16, 1934) vigorous and tenacious opposition of an important consumer developed. Since points made by this opposition describe the problems of the industry and the operation of price fixing in its effect on the consumer, they will be given here in some de-

TABLE XLII
PRICE EMERGENCIES GRANTED BY THE NRA
Source: NRA Report

Industry	Effective Date	Termination Date	Renewal Date	Termination of Renewal Date
Automobile Tires	May 14, 1934	Oct. 1, 1934		
Cast Iron Soil Pipe	July 16, 1934	Oct. 13, 1934		
Lumber and Timber Prod.	July 16, 1934	Dec. 22, 1934		
Retail Tobacco Trade	July 16, 1934	Oct. 13, 1934	Oct. 13, 1934	Jan. 11, 1935
Ice (San Antonio, Tex.)	July 26, 1934	Oct. 24, 1934		
Ice (New Orleans, La.)	Aug. 8, 1934	Nov. 6, 1934	Nov. 6, 1934	Feb. 4, 1935
Waste Paper	Aug. 21, 1934	Nov. 16, 1934	Nov. 16, 1934	Jan. 7, 1935
Ice (New York City)	Sept. 27, 1934	Dec. 26, 1934	Dec. 26, 1934	Jan. 10, 1935
Agricultural Insecticides and Fungicides	Nov. 11, 1934	Feb. 9, 1935		
Retail Solid Fuel	Approximately 150 emergencies declared. Lowest reasonable cost was still in effect in May, 1935.			

tail. First we observe that early in August, 1934, Walter Mitchell, Jr., secretary of the furniture code authority,²⁸ sent to Deputy Administrator A. C. Dixon, who was in charge of the lumber and timber products code, a memorandum, self-explanatory here and reading as follows:

In accordance with the notices giving opportunity to file objection, we hereby wish to record the unanimous opinion of the Code Authority that the price fixing permitted in the Lumber Code and tried during the last nine months has failed to obtain its objective of stabilizing prices. We further believe that the proposed renewal of this effort will likewise fail with bad effects upon the lumber industry itself, as well as upon many users of lumber.

As we understand it, the Administration desires to assist the lumber industry in regulating the march of lumber prices, and in keeping them free from sudden panic and oth-

²⁸Mitchell left the price unit of the Research and Planning Division in March, 1934 to become secretary of the furniture code authority.

er false influences. Contrary to this spirit, the Lumber Code Authority took advantage of the situation to boost prices to a point where many members of the lumber industry protested and have demonstrated to their customers that they could sell well below the code price, cover all possible costs, and still make a handsome profit. Then the discovery that violation of the prices could not legally be prosecuted under the Code caused a rapid collapse of the price schedule, and, in the absence of reliable information, this bootlegging of lumber was constantly rumored to be more prevalent and at lower prices than was actually the case. Thus, the collapse of the price-fixing experiment became a rout.

The figures quoted below are from a study of lumber purchases in this industry covering about 30,000,000 feet. It compares the first five months of 1934 with the same periods in 1933.

	1933	1934	Increase or Decrease 1934 over 1933
January	\$20.24	\$39.53	95.3% increase
February	18.73	35.56	89.8% increase
March	26.14	32.20	23.2% increase
April	24.67	27.91	13.6% increase
May	26.71	22.91	14.2% decrease

The study indicates that lumber was being purchased by furniture makers at about code prices during January of this year. While code prices remained the same, the average of net purchase prices declined rapidly until the May prices were below last year's figures. It should be remarked that purchases during May, and to some extent during April, record a larger proportion of the lower grades of lumber than is represented by the other averages. There is no way of knowing how much of this change in grade purchased results from the "sweetening" of grades of lumber by mills evading the code prices. Even discounting this possibility, this trend is sufficiently evident to demonstrate the collapse of the lumber price schedule. (The average prices mean little in themselves, since they are not the price of any specific grade or variety.)

Both the unwarranted boosting of lumber prices and the collapse of those prices worked injury on the furniture industry; and we believe upon many other users of lumber and upon the lumber industry itself. The sudden rise in lumber prices curtailed public demand for that furniture which was forced to follow those prices upward. Evidence of the effect in our records may be seen by comparing the history of upholstered goods—in spite of the sharp rise in textile prices—with the history of case-goods output. Moreover, the makers

of metal bedroom furniture and modernistic metal furniture of all sorts very properly saw an opportunity to expand the public acceptance for their goods as they never before have been able to do. These makers of metal furniture are members in good standing of this industry, but it is not unfair to protest on behalf of the makers of wood furniture that the acceptance of competitive materials by the public has been unnaturally fostered by the Lumber Code Authority's price experiment.

When the collapse of the code prices began, the furniture industry was injured, and the lumber industry as a supplier suffered with it. Also, widespread and sometimes exaggerated rumors quickly undermined the confidence in future prices among buyers for retail furniture and department stores. The result was a greatly curtailed volume in the spring showing; and in the summer market just closed it was hard to get orders at prices which are commonly figured to be 15% or more below the January market price.

This industry [furniture manufacturing] would welcome a true and permanent stabilization of the movement of lumber prices, but we view with well-founded fear any further experiment with freezing prices. In order that this communication may not appear wholly destructive of the great effort which has been put into the study of the problem by your office and other departments of the NRA, may I offer a concrete suggestion. It appears to some of our manufacturers who have examined the new proposed schedule published July 20 by the Lumber Code Authority, that some of the prices probably can be enforced because they will meet with the approval of a considerable majority of the producers of those grades of lumber. Other items are, in our opinion, too high. A number of them have been reduced very little from the previous schedule and a few have been advanced.

Fearing that his objection would be ignored, Mitchell, on August 16, 1934, requested that a public hearing be granted the furniture industry to permit discussion of the broad phases of price fixing. Finally, after additional pressure had been brought to bear on NRA, he was granted a hearing for September 19, 1934, at which, however, only the effects of specific price increases on the furniture industry were to be discussed. Dissatisfied with the outcome of the hearing, the Furniture Code Authority, the National Association of Furniture Manufacturers, and the Southern Furniture Manufacturers' Association, on October 12, 1934, complained to Deputy Administrator Dixon and submitted a brief attacking specific price schedules. The following paragraphs are taken from this brief:

Prices on Cuban Mahogany which is not produced under a code were raised to excessive levels, apparently in order to maintain or improve the competitive position of other woods. Manufacturers in this industry report practically no purchases at code prices.

Examples of price increases which we believe to be excessive in relation to the increased labor cost are as follows:

	April, 1933	Code
Birch 4 x 4 common and select	\$19.00	\$39.00
Tupelo 4 x 4	28.00	49.50
Gum 4 x 4	26.00	44.50
1/20 Cross-banding veneer	2.45	5.35
Plywood—5-ply striped mahogany face . . . . .	.135	.22

A typical example of evasion of the code by delivery of greater quantity is cited below from the questionnaires of two manufacturers.

Mill billed 18,000 feet	delivered 20,000 feet
Mill billed 15,000 feet	delivered 18,000 feet

Several of these furniture manufacturers who have for many years bought plywood now take the position that they cannot compete with the furniture manufacturers who operate a veneer and plywood department in their factory and that unless the protective code prices in the plywood manufacturers' code are adjusted . . . they have a choice of doing one of two things, that is, install a plywood plant as a part of their factory or quit business.

As a result of points made in this brief and similar opposition from other quarters, in December, 1934 the NRA issued a sixty-day stay on lumber prices, expecting that competition would develop in this period and make it impossible for the industry to maintain prices at the heights of 1934. But in reality, up to October, 1935, six months after the voiding of the NIRA, lumber quotations, as a group, had not yet declined; in fact, some prices were higher than at the time of the stay and others had decreased only slightly. The explanation is that awards of rich contracts were still being made by the Government at prices monopolistically determined by lumbermen.

The other emergencies were declared either after the author had left the NRA (September 11, 1934) or so near this time that accurate information on their operation has not been available. Their story must therefore be left to others; but it may be added that emergencies in the retail solid fuel industry were no different from the conditions

which had previously led to NRA sanction of price fixing in the industry — overcapacity in the face of competition from other industries, high taxation, bizarre freight rates, and inadequate cost systems. Such, of course, must constitute a continuing emergency of widespread proportion, a view substantiated by the granting of 150 “emergencies” in the space of one year.

Another important price experiment, related to the emergency schemes, occurred in the early days of the NRA. The cleaning and dyeing industry, faced with low prices and urged by the NRA to shorten hours of labor and raise wages, insisted in October, 1933 that it be allowed to fix prices; and although the Advisory Committee of the Research and Planning Division opposed the plan submitted, General Johnson accepted it.²⁹ As approved, the code authorized the governing authority to make a survey of costs and then fix prices; and on the basis of only *three* returns of a questionnaire the code authority published a scale of minimum prices. When the announced minimum price of \$1.00 for cleaning and pressing a suit, determined in this way, aroused a storm of protest from consumers (and even from many members of the industry), the price was lowered to 75 cents and then to 60 cents. Then early in 1934 the NRA jailed a New Jersey tailor for pressing a suit at 5 cents less than the code price of 50 cents and a torrent of public criticism against the organization was unloosed. Widespread and flagrant violations of prices set by the code authority naturally followed. In fact, so many complaints were received by the NRA by the spring of 1934 that General Johnson was convinced that the code was unenforceable³⁰ and suspended it.

In every instance, the minimum price announced under an emergency, which incidentally was low except in the cases of the retail solid fuel, and lumber and timber products industries, quickly became the prevailing price. As a result, industry, with the exception

²⁹In fairness to General Johnson, it can be said that he signed the cleaning and dyeing code in the belief that it was acceptable to the Research and Planning Division. The facts are that the adviser for the Division approved the code with its price-fixing or minimum-cost provision, but the Division Advisory Committee of which he was a member by a vote of nine to one disagreed with his report. When the code was sent to General Johnson, the paper recommending approval was on top of various accompanying documents, where the General saw it, but the dissenting report of the Division was buried. Reading only the adviser's favorable recommendations and believing that the Division had approved the code, General Johnson signed it. Not until several weeks later did he discover the error.

³⁰It is of some interest to note that fifteen per cent of all NRA compliance work in January, February, and March, 1934 related to the cleaning and dyeing code; yet it was only one of the 300 or more codes approved during the first eight months of NRA.

of the retail solid fuel dealers who were prosperous under their exorbitant code prices, soon lost interest in declaring emergencies.

* * * * *

In summary, causes for price changes under the NRA were numerous. Increased hourly wages were, in almost all cases, passed on to the consumer either as a result of threatening inflation or some governmental grant of monopoly power. Important industries insisted that prices should change inversely with the value of the dollar and that the President had urged a return to the 1926 price level. Indeed, some industries, especially those manufacturing building materials, used dollar devaluation as a ready excuse for raising prices on supplies for the public works undertaken under the recovery program.

In an attempt to secure compliance with the NRA, the President insisted that public contracts be restricted to code observers. Thus forced to comply with codes, industry acted as though all anti-trust laws had been repealed — (1) fixing the amounts of bids on federal, state, county, and city projects, even to making all bids identical and (2) seeking authority from the NRA itself to fix prices and allocate production. Subsequent efforts of the NRA and the President to restore competition by permitting bids at 15 per cent less than previously filed prices seemed to place governments in favored positions and endanger middlemen. But expected price declines did not develop.

Despite the many difficulties which arose under early price-fixing plans, General Johnson insisted that the NRA sanction price fixing in "emergencies." This seemed to work with some measure of success for the industry in the case of rubber tire manufacturing where only a few producers operated; at least a threatened price war was averted. In certain other cases there were declarations of emergencies which could not be justified so easily on the ground of preventing alternate famines and feasts in an industry. In fact, some industries even dared to ask for emergency price fixing to curb competition of other industries. To the credit of the NRA, it may be said that all such requests were denied.

An emergency minimum price usually became the prevailing price; and since the NRA usually insisted on low minimum prices, enthusiasm of industry for emergency price fixing soon began to wane. Finally, with this failure of price fixing went much of the interest of business in the NRA, and this, plus the failure of other monopolistic schemes, which will be considered in the next chapter, presaged the end of the NRA.

CHAPTER XII

FAIR TRADE PRACTICES AND MONOPOLY

1. *Fairness in Business*

We have seen how industries exchanged shorter hours of work and higher wages for various types of price control—either the direct forms of price fixing or prohibitions of sales below cost, or the indirect restrictions of terms of sale. As we shall now see, some industries, fearing the outcome of price schemes, preferred production or inventory control, either directly through rationing processes or indirectly through such devices as the limitation of machine hours. Although underlying this sordid barter there were the genuine well-meaning desires of some groups to correct business abuses or “unfair trade practices,” the reform or liberal group, as is too frequently the case, merely opposed existing practices. The few alternatives offered were usually ill-conceived ideas composed chiefly of high-sounding phrases. Amid such vagueness it was all too easy for profit-bent groups to dress their pet schemes in the shiny raiment of reform and have them christened “provisions for the elimination of unfair trade practices.”¹

As regards true business reform we recall first that by 1933 it was generally agreed by business and such governmental agencies as the Federal Trade Commission that the practices of (1) threatening court action merely to intimidate weak competitors, (2) circulating untrue and disparaging statements about competitors, (3) commercial

¹Since the early days of history there have been records of attempts of societies to establish fair trade practices or business codes of morals. The law of Moses, for instance, is explicit about several matters such as the keeping of promises, the payment of obligations, the remission of debt, and the right of a laborer to his hire. Much more elaborate rules governed trade in Great Britain in the Middle Ages. Indeed, as the social conscience of people has developed, the body of law relating to fairness in business has grown in all countries.

As we have indicated in Chapter I, impatience of the people of the United States with the business methods of the railroads, the oil trusts, and other combinations of the nineteenth century led to the passage of the Sherman Act and other anti-trust legislation of the eighteen-nineties. Somewhat later, during the first administration of President Woodrow Wilson, Congress created the Federal Trade Commission to pass on matters pertaining to fairness in business. Then in 1919 the Commission began to formulate codes of fair competition, and, in 1926, after liberalization of its membership, greatly extended this work.

bribery, (4) false or misleading advertising,² (5) breach of contract, and (6) certain forms of secret rebates, were unfair methods of conducting business. In fact, usually so regarded was any trade practice associated with fraud or deception.

Under the NRA, however, the term "fair trade practice" took on a different connotation. In fact, a rule of "fair trade practice" was primarily a device for limiting losses or insuring profits of groups making codes: it was an implement expected to enable industry to pay the higher code wage rates and make profits. An exceptionally concise portrayal of the difference between the generally accepted meaning of fair competition and that held by the NRA can be found in the following taken from the Supreme Court's opinion rendered at the time it invalidated the NIRA:

The act does not define "fair competition." "Unfair competition," as known to the common law, is a limited concept. Primarily, and strictly, it relates to the palming off of one's goods as those of a rival trader (*Goodyear Manufacturing Co. v. Goodyear Rubber Co.* (128 U. S. 598, 604); *Howe Scale Co. v. Wyckoff, Seamans and Benedict* (198 U. S. 118, 140); *Hanover Milling Co. v. Metcalf* (240 U. S. 403, 413). In recent years its scope has been extended. It has been held to apply to misappropriation as well as misrepresentation, to the selling of another's goods as one's own—to misappropriation of what equitably belongs to a competitor (*International News Service v. Associated Press* (248 U. S., 215, 241, 242). Unfairness in competition has been predicated of acts which lie outside the ordinary course of business and are tainted by fraud, or coercion, or conduct otherwise prohibited by law (*ibid.*, p. 258). But it is evident that in its widest range, "unfair competition," as it has been understood in the law, does not reach the objectives of the codes which are authorized by the National Industrial Recovery Act. The codes may, indeed, cover conduct which existing law condemns, but they are not limited to conduct of that sort. The Government does not contend that the act contemplates such a limitation. It would be opposed both to the declared purposes of the act and to its administrative construction.

Unfair Methods of Competition

The Federal Trade Commission Act (sec. 5) introduced the expression "unfair methods of competition," which were declared to be unlawful. That was an expression new in law. Debate apparently convinced the sponsors of the legislation

²Much advertising is misleading. It is very difficult to make a sharp demarcation between "good" and "bad" but extreme cases can be judged.

that the words "unfair competition," in the light of their meaning at common law, were too narrow. We have said that the substituted phrase has a broader meaning, that it does not admit of precise definition, its scope being left to judicial determination as controversies arise (*Federal Trade Commission v. Raladam Co.* (283 U. S. 643, 648, 649); *Federal Trade Commission v. Keppel* (291 U. S. 304, 310-312). What are "unfair methods of competition" are thus to be determined in particular instances, upon evidence, in the light of particular competitive conditions and of what is found to be a specific and substantial public interest (*Federal Trade Commission v. Beech-Nut Co.* (257 U. S. 441, 453); *Federal Trade Commission v. Klesner* (280 U. S. 19, 27, 28); *Federal Trade Commission v. Raladam Co.*, *supra*; *Federal Trade Commission v. Algoma Co.* (291 U. S. 67, 73). To make this possible, Congress set up a special procedure. A commission, a quasi-judicial body, was created. Provision was made for formal complaint, for notice and hearing, for appropriate finding of fact supported by adequate evidence, and for judicial review to give assurance that the action of the commission is taken within its statutory authority (*Federal Trade Commission v. Raladam Co.*, *supra*; *Federal Trade Commission v. Klesner*, *supra*).

In providing for codes, the National Industrial Recovery Act dispenses with this administrative procedure and with any procedure of an analogous character. But the difference between the code plan of the Recovery Act and the scheme of the Federal Trade Commission Act lies not only in procedure but in subject matter. We cannot regard the "fair competition" of the codes as antithetical to the "unfair methods of competition" of the Federal Trade Commission Act. The "fair competition" of the codes has a much broader range and a new significance . . . We think the conclusion is inescapable that the authority sought to be conferred by Section 3 was not merely to deal with "unfair competitive practices" which offend against existing law, and could be the subject of judicial condemnation without further legislation, or to create administrative machinery for the application of established principles of law to particular instances of violation. Rather, the purpose is clearly disclosed to authorize new and controlling prohibitions through codes of law which would embrace what the formulators would propose, and what the President would approve, or prescribe, as wise and beneficent measures for the government of trade and industries in order to bring about their rehabilitation, correction, and development, according to the general declaration of policy in Section 1. Codes of law of this sort are styled "codes of fair competition." (For the complete text see Appendix VIII.)

In brief, aside from the mandatory provisions (Section 7a), any rule accepted by industry and approved by the Government was a "fair" trade practice. Such might concern (1) cost-accounting systems, (2) special pricing schemes, (3) the establishment of discounts and terms of sale, (4) the outlawing of commercial bribery, (5) restrictions on consignment selling, (6) the setting of time limits in which merchandise could be returned, (7) the outlawing of design piracy, (8) the establishment of production or inventory control, (9) the allocation of production, (10) the limitation of machine-hours, (11) the restrictions of manufacturers' sales to "natural" market areas, or (12) the limitation of new investment. Of these the first three have been discussed in the preceding chapters; the next four have some claim to being fair trade practices in the ordinary sense; and, as we shall demonstrate, the remaining five were chiefly monopolistic devices.

2. *Attempts to Eliminate Competitive Abuses*

It will be recalled (Chapter I, Section 3) that the codes of the Federal Trade Commission frequently listed as an unfair trade practice the giving to purchasing agents, as inducements to buy, of money, personal gifts, premiums, or other gratuities. Judging from the number of times the NRA was asked to prohibit such bribery, it was in common use—particularly in industries supplying governments, but also in others. In fact, as shown by NRA codes, this connivance beset industries supplying wants ranging from the cradle (toy and playthings) to the grave (funeral supply).

This commercial bribery the NRA attempted to outlaw through a variety of provisions. Codes such as toy and playthings simply prohibited gifts or prizes in connection with the sale of products or as an inducement thereto by any scheme involving lottery, misrepresentation, or fraud.³ Others went much further, industrial supplies and distributing, for instance, barring "the payment or allowance of secret rebates . . . or other special considerations or allowances, including donations, gifts or premiums of any nature whatsoever, to any firm or individual." And some industries, wishing to discourage commercial bribery but at the same time desiring to retain the advantages of premium advertising, used the interpreting clause: "commercial bribery provisions shall not be construed to prohibit free and general

³Similar provisions are found in codes numbered 99, 103, 112, 126, 139, 140, 146, 150, 157, 159, 161, 181, 215, 222, and 234.

distribution of articles commonly used for advertising, except in so far as such articles are actually used for commercial bribery as hereinabove defined."⁴

Through making exceptions of this type, that is, by allowing the use of premiums as open rewards for special efforts, the NRA was drawn away from its original reform ideal and whirled into the maelstrom of arbitrarily prescribing minute terms of sale. Thenceforth it was faced with the questions: under what conditions can gifts or premiums be allowed as open rewards for special efforts? If permitted at all, is it likely that they will be used discriminately to revive commercial bribery? In an attempt to answer the first, the robe and allied products industry, through its code, prohibited the use of premiums, "*excepting window cards, monograms, jobbers' selling kits, newspaper cuts, and mats,*" and to meet the second, the hosiery industry declared that "the giving of premiums, when not extended to all purchasers under like terms and conditions," was an unfair trade practice. Both were arbitrary and like similar solutions, entirely unenforceable, yet "something had to be tried."

All premiums, it should be realized, like cash and quantity discounts, were essentially price concessions, having been frequently employed in place of them because discontinuance later was more convenient than an increase in nominal prices. Thus, they have had both legitimate and illegitimate functions and there has been no plain line of demarcation. In view of the further fact that an industry writing a code always tried to place this line in the position most advantageous to itself, it is not surprising, therefore, that the National Retail Dry Goods Association should charge manufacturers with prohibiting their use for the sole purpose of taking advantage of the consumer through hidden price increments.⁵ While not strictly correct, this charge was not without foundation.

Another NRA attempt to eliminate abuses growing out of a legitimate merchandising operation centered on consignment selling.

⁴Such provisions are to be found in codes for brass and bronze, plumbing fixtures, medium price jewelry, paper distributing, photo-engraving, retail food and grocery, and blouse and shirt, and those numbered 94, 143, 168, 170, 171, 175, 177, 178, 179, 181, 183, 184, 185, 186, 188, 191, 193, 195, 196, 199, 200, 201, 205, 209, 212, 215, 216, 217, 218, 220, 221, 222, 224, 227, 229, 230, 234, 236, 237, 238, 239, 240, 246, 248, 249, 250.

The provision of the vitrified clay sewer pipe code was a gem. It banned "the offering or giving of prizes, premiums or gifts in connection with the sale of products, or as an inducement thereto, by any scheme which involves lottery, misrepresentation, or fraud, unless [*sic*] prices published make clear that such prizes, premiums, or gifts will be given."

⁵Memorandum to the NRA, September, 1933. See also Chapter X, Section 5.

As originated, this type of merchandising was designed (1) to sell goods in which the manufacturer had more confidence than the retailer, (2) to display expensive articles such as oriental rugs and fine jewelry which some retailers would accept on consignment to be sold soon after displayed or not at all, (3) to introduce new or unusual merchandise, and (4) to dispose of manufacturers' surplus stocks. But after a time serious abuses surrounded the custom; retailers, for example, successfully withheld bona fide orders and demanded that well-known goods be sold on consignment, their object being to reduce working capital needs. In other instances, such goods were taken on consignment, merely for advertising purposes—to give the store a high caste—and sales of substitutes were pushed. Since such abuses were, of course, quite annoying and costly to manufacturers, reform seemed to be indicated. But here, as in the case of commercial bribery, the reformers failed utterly to appreciate the complexity of their problem; such manufacturing codes as precious jewelry, carpet and rug, cooking and heating appliances, and toy and playthings, entirely prohibited consignment selling; and yet it was in industries of just this type that the practice had a legitimate function. Consequently we are forced to suspect that the "reforms" must have reflected, in part at least, manufacturers' efforts to squeeze the retailers.

Then, there was the problem of returns of merchandise involving (1) the legitimate refusal of goods not meeting the standards of a contract, (2) unjustified returns of goods damaged in the retailer's own warehouse or by the ultimate consumer, (3) secret rebates through the refunding of the purchase price of allegedly, but not actually, defective merchandise forming only parts of large orders on which discounts had been allowed, and (4) rebates through the making good of allegedly but not actually short orders. Here, as in other instances, the complexity of the general problem was seldom recognized by the reformer.⁶ Early codes often did no more than set time limits for the return of goods,⁷ and, in at least one instance (macaroni) no provision was made for the difference in time required for shipment to stores unequally distant from the source of supply.

⁶But, of course, in some cases only particular abuses beset an industry.

⁷The type of provision found in the luggage and fancy goods industry, which follows, was a favorite:

"It is unfair competition for a manufacturer to accept articles for credit or exchange, the manufacture of which is subject to the provisions of this code, except when such returns are made within seven days after the receipt of shipment by the customer; provided that this section shall not apply to credit on account of defects of manufacture and/or materials, or delay in shipment."

A more satisfactory treatment of the general problem was, however, accomplished either by (1) prohibiting members from extending guarantees or warranties other than a standard one, or (2) stating in a general way that no member of the industry should "make any allowance to a customer for allegedly but not actually defective merchandise, allegedly but not actually short, or for adjusting alleged but unfounded complaints of any kind."⁸ The chief motive in such instances, as contrasted with some NRA reforms, was the prevention of unjust returns and of secret or discriminatory rebates, but even here, as in other cases of "reform," profit-bent groups displayed evidence of activity. Thus, to choose one example, only the determined opposition of retailers prevented sharp limitation of the time interval by some industries prepacking their merchandise in containers to be delivered unopened to the final consumer.

Another interesting reform of much greater complexity concerned design protection. Some manufacturers, in asking the NRA to declare design piracy an unfair trade practice, went so far as to say that, unless the request were granted, they could no longer encourage creative work. Moreover, they stated that, if it were established, their artists would fashion models, especially shoes and ladies' clothing, which would cause the buying public to discard out-moded apparel and buy the new, thus putting additional persons to work through activation of sluggish purchasing power. Another argument was that industry and labor would be benefited through resulting stabilization of seasonal production: if protection were granted, orders would be placed earlier by the stores catering to style, since they would be relieved of the threat of competition from cheaper stores with copies made of inferior material;⁹ and, without design protection, factories were paralyzed by the fear that a model which appeared early would be imitated by sweatshops before it had been sold. Finally, the NRA was warned that, unless it eliminated this piracy, there would be no major increase in volume of production and employment in businesses in which the problem was important, since under conditions then existing investment in unprotected design was too hazardous.

NRA officials listened sympathetically to such proposals, but were doubtful of ability to remedy the evil. In particular, some were mindful of previous testimony in Congress to the effect that, although design protection might be just as desirable as patents, it would be

⁸The text is from the code of the motor fire apparatus manufacturing industry.

⁹The argument is that of Miss Mary E. Bendelari, a shoe designer, *NRA Transcript of Public Hearings*, Vol. 1, pp. 47-50, Feb. 27, 1934.

almost impossible to enforce enabling laws: it would be difficult, if not impossible, to show that a particular model had not been made with only slight differences at some time in the past. For example, since various types of sandals have been worn by many primitive peoples, a government bureau granting a patent on a particular model would be constantly subject to valid criticism. Nevertheless, some NRA officials believed in experimentation, and consequently several devices for achieving design protection were inserted in a few codes. It is doubtful, however, that serious enforcement attempts were made before the Supreme Court declared the Act invalid, and consequently effects of each provision on trade must have been slight, if not entirely absent.

A variant unfair trade practice concerned the building of new plants for the express purpose of creating nuisance values. Thus, in the ice industry, a New York entrepreneur, who had erected a 200-ton plant in the spring of 1933 and sold out at double the cost of construction after operating a few months, attempted to start all over again in the winter of 1935.¹⁰ The reason is to be found in the monopolistic practices of established ice producers: with few exceptions, in metropolitan areas they have agreed to schedules of prices, divided up the market, and purchased out every newcomer, thus maintaining high rates of income even in the face of excess capacity. Despite such a record the ice industry gained the sympathy of the NRA planners by using the argument that it was economic waste to add more productive capacity to a declining industry with overcapacity and thereby to force the scrapping of old but useful equipment. Moreover, the consumer was told that the cost of making ice decreased rapidly as production increased and, through the insertion of a provision in the proposed code, led to believe that he would benefit by preventing the erection of additional excess capacity. The result was that the industry legalized its pre-code monopolistic practices and also forbade increase in productive capacity except in cases where public necessity and convenience demanded.¹¹ Then, despite its golden promise to the

¹⁰Robert K. Straus, "Capacity Control and the Ice Code," *Harvard Business Review*, Vol. XIV, No. 1, 1935, p. 91 n. Reference is also made to footnote 12 of this Chapter.

¹¹The first sentence of Article XI of the ice code, which authorized control of new capacity, read as follows:

"If at any time an individual, firm, corporation, or partnership, or other form of enterprise, desires to establish additional ice production, storage, or tonnage in any given territory, said party must first establish to the satisfaction of the Administrator that public necessity and convenience require such additional ice-making capacity, storage, or production."

consumer, the industry promptly decreased the pre-code rate of reduction in price, or actually increased prices.¹²

Admitting that it has been wasteful of labor to construct new plants when overcapacity has existed, it is still difficult to see how the kind of planning attempted under the ice code was in the public interest: it merely represented a continuation of a monopolistic diversion of income from consumers to vested interests while protecting the latter from shakedowns by speculative promoters.¹³ The real source of infection—monopolistic practices—was only aggravated thereby.¹⁴

In brief, then, the NRA attempted to correct several competitive abuses which had arisen, (1) commercial bribery, (2) misuses of consignment selling, (3) unjustifiable returns of merchandise, (4) design piracy, and (5) speculative increase in capacity in industries having excess capacity. In all instances, oversimplified solutions led to difficulty of enforcement and produced hardships on innocent members of the industry or on customers. Worst of all, however, under the disguise of reform paraded various profit-making devices which introduced hidden price increments; and in most instances they could scarcely be distinguished from the reform measures.

From our study of the NRA experience we reach the conclusion that such rules of business ethics as will become generally accepted can readily be established by law; because such rules are regarded as morally correct, public opinion will enforce them. But we are compelled to the conclusion that, to eliminate or restrict greatly many generally recognized unfair trade practices by law, of necessity implies detailed regulation of business and requires a constant watch for evasions.

3. *Production Control and Allocation*

During the early formative period of the NRA — June and July, 1933 — various proposed codes contained almost every conceivable plan for rationing or controlling production. Pressure for production control had become so terrific by August 2, 1933 that a high official in the organization pleaded for policy decisions and urged that the NRA should immediately state publicly that no rationing of production

¹²See also the article by Benjamin M. Parker, "Control of production under the Ice Code," *Harvard Business Review*, Vol. 13, No. 4, 1935, pp. 438-492.

¹³No discussion of control of productive capacities in other industries is given here since the issues were essentially the same as those of the ice industry.

¹⁴See also the discussion of copper in the next section.

would be permitted until a special committee to be appointed for the purpose had submitted an analysis of the whole problem. But his plea, like an earlier one of Sachs,¹⁵ went unheeded. Then, on August 19, 1933 mandatory control of production by the code authority appeared as Article VIII of the important lumber and timber products code. Following this monopolistic grant the industry made production allotments chiefly on the basis of amount of standing timber owned, but gave some consideration to such other factors as (1) past production, (2) past shipments, (3) number of employees, (4) taxes, (5) investment, and (6) efficiency of operation. Bearing out the vital importance of several neglected aspects was the statement of Landon Bell of the lumber code authority, at a conference of code authorities, on March 5, 1934, to the effect that production and consumption in the industry were still far from being in balance: quotas had been allotted in excess of estimated consumption and stocks were piling up. Furthermore, by the end of the month, the NRA had become concerned because exports of lumber had decreased, and had recommended that lumber produced for export be excluded from quotas.

The difficulty which the lumber industry experienced in fixing prices and balancing production and consumption is not surprising, for production balances with consumption only at a price. It is true, of course, in the lumber industry, as in every other, that some part of the consumption is relatively inelastic with respect to price; for instance, if, for any reason, production in the automobile industry suddenly increases twenty per cent, sales of lumber to that industry rise by twenty per cent even though the price is raised by twenty or thirty per cent. But in the long run product substitution takes place. Then also we must reckon with the relation between price and purchasing power; sales of lumber to railroads, for instance, can increase in the face of higher prices, provided the Federal Government supplies loans at low interest rates making these purchases possible. But it is incorrect to assume that even the short-run demand for the entire product is inelastic: other factors remaining constant, when the price is increased, consumption is decreased and vice versa. That the lumber industry failed to recognize clearly this principle is attested by the action of the market: despite increased purchases by railroads and automobile manufacturers, during the second quarter of 1934 shipments and new orders were ten per cent and nine per cent, re-

¹⁵Before the Act was passed Alexander Sachs had warned General Johnson that industry would attempt to cartelize American business, and that this would eventually operate against economic recovery; the latter, however, took no decisive public stand on the issues involved.

spectively, under production for the same period of 1933,¹⁶ and orders during the three months ended June 30, 1934 were thirty per cent below those of the corresponding period of 1933.¹⁷

The petroleum code, the next to be approved, also embraced mandatory allocation of production. In this case, however, quotas were to be determined by a governmental agency on bases which were left completely undefined. There was not even so much as a statement that the quotas should be equitable. Yet such implicit faith in a government bureau was not misplaced: as a result of control of production obtained through co-operation of states with the Federal Government, and increased consumption of gasoline and other oil products in the van of rising purchasing power, profits of the oil companies were considerably higher in 1934 than in any year since 1929.

The glass container industry code, the thirty-sixth approved, was the next to adopt production quotas,¹⁸ the provision to become operative only after approval of the NRA Administrator. These quotas, subject to review also by the Administrator, were to be determined by the code authority, on the bases of past performance, productive capacity, and *sharing the business*, and were to be "equitable." Strangely enough, such extraordinary powers were granted despite the fact that the glass container industry had been constituted, through control of patents, as one of the most absolute monopolies in the United States¹⁹ and had just been presented with the new and

¹⁶*Lumber Consumption, Lumber Stocks, and Anticipated Consumption for the Third Quarter of 1934*, report of the Special Lumber Survey Committee of the Timber Conservation Board, August 1, 1934.

¹⁷For this decrease in consumption of lumber, there is, of course, an obvious explanation. New residential construction (including recorded modernization and repair projects as measured in floor space) which is sensitive to price changes, was, during the second quarter of 1934, seventeen per cent below that of the corresponding period in 1933; and lumber exports, which are even more sensitive to price, showed a severe drop during the first half of 1934, particularly in the second quarter.

¹⁸The iron and steel code, approved immediately after the petroleum code, also provided for production quotas, but required the approval of the Administrator before becoming operative. Since this approval was not given, and, therefore, the provision was not invoked, to discuss it would be fruitless.

¹⁹An unpublished NRA report contains the following information on the glass container industry:

Prior to the NRA a large company had taken out and purchased innumerable patents on feeding devices, which are essential for successful operation of modern glass bottle factories, and in this way had gained control of production of all available types of feeders. Through later purchase of competitors' properties, this company and two others had become the exclusive patent holders and manufacturers of automatic bottle machinery. That these three companies had an understanding was shown by a circular letter sent out by one of them to its licensees.

lucrative field of whiskey and beer bottle manufacturing.²⁰ Then, realizing the Administration's leanings to the "economic" theory that prosperity can be created by inducing scarcity, the industry, not yet content, cleverly proposed that, as an aid to enforcement of the revenue laws, whiskey bottles should be numbered at the factory and destroyed when emptied; if this were approved, the industry would cooperate with the Administration to the extent of supplying only licensed distillers with bottles. The proposal was eagerly accepted by the U. S. Treasury Department, which was faced with a desperate enforcement problem, and thus the dealer in second-hand bottles, one of the last sources of competition for the industry, was checked. What more could be wanted than a guaranteed market at monopoly prices and the right to divide the spoils through product allocation?²¹

Another interesting plan of production control was made effective in the copper industry. And because of the importance of this industry from the point of view of national defense, size, and widespread contact with other industries, some detailed consideration seems to be indicated.

In the nineteen-twenties the United States exported much copper, the business becoming so promising that many sub-marginal mines in the West were brought into profitable production. Then, the threat of a huge deposit of easily accessible ore developed in Africa. Because the African mines needed less labor per ton to produce their metal than America's marginal mines, they were able to "chisel" the price and in this way gain an increasing share of the world market. Under competition, free or even somewhat limited, the inevitable closing of the marginal and sub-marginal mines in Montana and Michigan and

Various charges had been made that these three, allied on the basis of cross-licenses and close working agreements, had prevented outsiders from entering the glass container industry; thus, it was alleged that they had restricted their customers with respect to the lines of glassware to be produced on the licensed machines. Moreover, it was charged that, through this method of licensing, production of milk bottles had been divided among three licensees, one of which had exclusive rights in the East, another controlled the Middle West, and the third supplied the South. A number of smaller manufacturers, who had been producing milk bottles for some time, it was claimed, had been restricted to sales within limited geographical areas.

²⁰Following repeal of the Eighteenth Amendment to the Federal Constitution.

²¹In justice to the NRA it is, however, worthy of note that the organization realized the vulnerable position in which it had placed itself and so did not approve the plan of allocation submitted by the industry. Thus, the provision never really became effective except in so far as it gave the appearance of legalizing practices which had grown up in the industry.

It is of some interest to note in this connection that the metal and paper container industries have made wide inroads into the bottle manufacturing trade.

of the least productive mines in other places, would, though perhaps only after an interval of several years, eliminate excess capacity.

The copper industry, as was to be expected, sought the capital protection naturally afforded cartels — permission to fix prices in the domestic market and allocate production. In support of its plea it contended that the marginal mines would otherwise be forced to suspend operations and that, once having closed and become filled with water, their supplies of ore would be permanently lost. It also advanced the familiar argument that, if the United States ever became involved in a war, this copper would be needed and yet be unobtainable once the mines were abandoned. Since there was some small point to the entire argument, the NRA did not immediately refuse the request.²² Therefore, shortly after submission of the copper industry's code, its problems were referred for study and recommendation to the Subcommittee on Mineral Raw Materials²³ of the Committee on Price Policy Provisions in Codes. Further delay was inevitable when this committee's report, dated October 31, 1933, condemned the proposed regulation of output by means of outlawing sales below a weighted average cost, on the ground that this combination provided an effective device for monopoly control over price, patterned after the German cartel system. The committee's argument, in effect, was that this represented a repetition and a perpetuation of policies which had led the industry into the difficulties then requiring alleviation; moreover the industry's proposed prohibition of sales below cost under a quota plan would enable high-cost producers to continue to operate, whereas under competition low-cost producers would supply most of the product; on the other hand, to retain competition would have the advantage of giving the public the benefit of a lower price, which would be impossible if the mistakes and inefficiencies of the past were perpetuated through quotas and price fixing. Nevertheless, since the committee felt that production control would contribute in large measure to the stabilization of the copper industry and could guarantee its customers fair prices for the raw material, it proposed a substitute code provision combining inventory and production control.²⁴ The report,

²²It is of some interest to note that an NRA adviser proposed a far less expensive solution calling for the purchase of the marginal mines by the Government and the immediate removal of their ore by relief workers for storage in convenient places.

²³This subcommittee was composed of O. E. Kiessling, Chairman; George W. Stocking, Secretary; Isador Lubin, Arthur Notman, and E. B. Swanson.

²⁴As a substitute for the industry's allocation plan the committee offered the following:

"Sales of copper by Class A producers up to 20 per cent of capacity as specified in paragraph 2, Section A, Title III, of the basic code of fair competi-

in defense of the counterproposal, said that (1) it would lead to a gradual reduction of excessive inventories which had weighed so heavily on the industry in the past and that (2) it would make impossible such an accumulation of stocks as had taken place between 1928 and 1932, occasioned in part by a restrictive price policy not dissimilar to the industry's proposal to the NRA. Nevertheless the industry and various NRA advisers raised objections. Although most of these were trivial, they, nevertheless, resulted in delaying approval of a code.

Then by the spring of 1934 General Johnson became impatient over the length of time required to codify some important industries, such as copper, and ordered his deputy administrators to hurry pending codes to completion. In the face of this order the copper industry was adamant in its demand for production control and price fixing, and, therefore, the deputy administrator in charge approved a code containing most of the special privileges which the industry had sought.²⁵

According to the code, producers of custom and by-product copper, who were to be allotted 9,500 tons monthly, were expected to apply to the code authority for sales quotas, but pending such applications were given allocations equal to fifty per cent of their current production. Regarding these allotments, the *New York Journal of Commerce* of May 16, 1934 carried the following news item, the last sentence of which is particularly interesting because it shows the

tion as submitted by the primary producers, shall be met from current production. Sales by Class B producers, shall be met from current production. Sales by Class C producers up to 35 per cent of capacity shall be met from current production. Sales by any company in excess of these specified minima shall be met from stock until or unless stocks of said company have been reduced to not more than ninety days' supply as judged by its total sales during the previous ninety days. Thereafter stocks in excess of ninety days' supply shall be accumulated."

²⁵Some changes were induced by the report of the Subcommittee on Minerals, and as a result of public criticism of the NRA by the Darrow Board (see Chapter XIII, Section 6) important concessions were made to small producers. In the approved code was a provision which authorized the code authority to set up monthly sales quotas, established on the basis of a percentage of annual capacity, these percentages being fixed by Johnson so that they favored the smaller companies. Thus, the large Kennecott Copper Corporation was given a monthly sales quota of 6121 tons or 1.67 per cent of its annual capacity, whereas the small Copper Range Company was allotted 525 tons monthly or 3 per cent of its annual capacity. Other monthly allocations made and percentage of annual capacity were: Anaconda Copper Mining Co., 3758 tons (1.67 per cent); Phelps Dodge Corp., 2806 tons (1.67 per cent); United Verde Copper Co., 1,292 tons (1.90 per cent), Calumet and Hecla Consolidated Copper Co., 1,192 tons (2.20 per cent); Miami Copper Co., 625 tons (2.50 per cent); United Verde Extension Mining Co., 600 tons (2.50 per cent); and Consolidated Copper Mines, 567 tons (2.70 per cent).

high degree of co-operation expected from members of the industry:

The quotas total 9,500 tons, as the code specifies. The American Metal Co., Ltd., has received 3,280 tons of this, the Nichols Copper Co., Phelps Dodge Corp. division, has received 3,062 tons, the American Smelting and Refining Co., 2,408 tons, and the Lewin Metals Co., 750 tons. The Anaconda Copper Mining Co. was allotted no quota, it being expected that the four producers named will cede part of their quotas to that concern, which only entered the scrap copper market a year ago.

About a week after the quotas were announced the code authority sent a letter to all known holders of copper, stating that as soon as 30,000 tons of copper had been sold for any current month and the two following months by the primary and secondary producers from current production, further sales in the current month would be apportioned to stocks. An exception to the plan was that prior to a general allocation to stocks, there should first be set aside 50 per cent of all sales then to be assigned to copper stocks, which 50 per cent should be divided so that (1) two-fifths would go to secondary producers in proportion to their respective holdings of secondary copper accumulated since Oct. 1, 1933, but strictly limited to such accumulations, and (2) three-fifths to by-product and other primary stocks; and the remaining 50 per cent of such sales (or whatever larger amount might be available) were then to be allocated to copper stocks generally rather than to sales quotas. Signification of intentions as to participation in the plan was also requested of holders of copper and the following statement was made:

Inasmuch as no definite allocation of sales from stocks can be made without the formal notification from all holders of stocks, you are requested to notify the Sales Clearing Agent of your desire to participate in such sales. Otherwise, no sales allocations will be made to you.

To clarify the status with respect to use on government contracts²⁶ of copper stocks existing prior to the effective date of the code, the code authority on May 24, 1934 issued a ruling which declared that all copper sold by members of the industry prior to May 22, 1934, for delivery subsequent thereto, would qualify as Blue Eagle metal (and as such be eligible for use on government contracts) on condition that the purchaser were complying with the copper code. At the time of sale, the seller was ordered to certify to the buyer that

²⁶See Chapter XI, Section 3.

the product was Blue Eagle copper, but only in case the purchaser was in possession of a certificate from the code authority entitling him to such metal; and in the event that a purchaser failed to comply with the code provisions, the copper lost its Blue Eagle status. Then, on July 19, Harry O. King, the newly appointed executive director of the copper code authority,²⁷ announced that consumers of more than ninety-five per cent of copper remelted in the United States had signed temporary buying agreements.

Such ready agreement by consumers to pay increased prices under a monopolistic plan yielding profits to the producers demands explanation. Important, of course, were the President's executive orders requiring observance of codes by firms supplying governments, which in effect elevated Blue Eagle copper to a premium position. In view of these orders, some attention must be given to critics who quickly charged that an element of coercion—threats of producers not to supply those who did not sign the agreement—influenced consumers of copper to agree to purchase the metal under a production control plan which was almost certain to increase prices. On the other hand it should be clearly recognized that these consumers, who were chiefly fabricators, hoped to derive benefit from a stabilization of prices: they expected that, once the price ceased to decline violently because of excessive stocks, they would be relieved of the important competitive business risk of a decrease in inventory values. Thus, realizing that a moderate general increase in price of the raw material would have very little, if any, measurable effect on the sales of their finished goods, they readily agreed to participate in a plan promising to remove an important business hazard. Such, in general, was the attitude of consumer industries.

As a result of the high degree of co-operation exhibited by members of the copper industry the combination of price fixing and control of production almost entirely disposed of excessive stocks within the one year of code operation. In fact, so complete was this liquidation that the industry was placed in a position to reap profits from rising demand and prices attributable to revival of private building

²⁷Mr. King had formerly been Deputy Administrator of NRA in charge of negotiations for the copper code. The announcement by the NRA of his appointment to the code authority read:

"There is a specific NRA regulation which absolutely forbids any man who, having acted as a Deputy in the formation of a code, has resigned and gone to work for that Code Authority, from appearing before NRA or having any contact therewith by correspondence or otherwise in connection with such code.

"It is a necessary rule and Mr. King's appointment is in flat violation of it, but it is necessary because of real emergency, the great distress among copper miners."

activity following the invalidation of the NRA,²⁸ and from rearmament.

Similarly, the petroleum industry operated successfully a combination of price fixing and production and inventory control. Here again demand greatly increased with business recovery and, while this was occurring, operations of the control plan reduced stocks from 599,600,000 barrels in June, 1933 to 568,100,000 barrels in June, 1935, prices remaining profitable throughout.

Another less drastic type of production regulation, known as inventory control, was adopted by a few industries. Under this form of control a manufacturer was not hampered, so long as he could sell what he produced; but he was not permitted to accumulate excessive inventories. This plan was essentially a substitute for price fixing through prohibition of sales below an average specified cost, because excessive stocks have usually been responsible for price demoralizations; and yet only four industries adopted it. Two of these—carbon black and carpet and rug—made inventory control mandatory, but a third—cement—made it effective only if initiated by the code authority.²⁹ The plan, however, was not entirely satisfactory in manufacturing industry, especially when there were many highly competitive units. The reason has been given by the cotton textile industry which rejected the plan because its weakness

lay in the invitation it presented to a mill to keep itself sold ahead irrespective of price in order to avoid the accumulation of unsold stocks. In view of the excess capacity for production in the industry, notwithstanding the machine-hour limitation in the code, the urge to push goods on the market at seasons of restricted demand in order to avoid curtailment or suspension would, it was feared, induce a return to the ruinous competition of the past when only the strongest could avoid bankruptcy.³⁰

Nevertheless, we believe that more rational control of inventories is essential to prevent the alternate feasts and famines which at

²⁸It is, of course, not implied that the Supreme Court decision caused the slight revival of building activity. The revival merely began at this point; for causes see the author's study on building in *Dynamic Economics*.

²⁹The carpet and rug industry used prior sales as a basis of limitation of inventory and the carbon black industry based its control on stocks in storage, but the petroleum and cement industries left the determination of bases to the code authority. In the case of cement, administrative approval was required.

³⁰George A. Sloan, "The Cotton Textile Industry under the NRA," in George B. Galloway and Associates, *Industrial Planning under Codes*, New York, 1935, p. 124. See Section 4 of the present Chapter for a discussion of machine-hour limitations.

present so badly plague industries. Notwithstanding such objections, the plans that found their way into NRA codes should be thoroughly tried out. If necessary, they should of course be modified to meet objections. But the important point is that industry should begin to devise means for avoiding fluctuations in production and employment that now arise because of ignorance of market conditions.

In summary, several industries—all permanently or temporarily declining—received the NRA's permission to regulate production, directly through allocation of sales or indirectly through inventory control. In such instances as lumber and timber products, glass container manufacturing, and copper producing, difficulties requiring correction—excess capacity or surplus stocks—had their origin in pre-code price-fixing activities of the groups concerned. And the code provisions did not constitute cures for these unhealthy conditions: they were essentially umbrellas to protect profit margins in industries already possessing excess capacity.³¹ In many instances the excuse for approval was to protect natural resources; in some cases—copper and petroleum—the argument of national defense was added; and in the glass container industry monopoly grants were tightened beyond those in the code as a reward for aid offered to the Government in the enforcement of liquor revenue laws, the compensation being a regulation requiring used bottles to be broken.

In brief, planners, hungrily seeking new fields to conquer, seized upon any plausible reason for extending their domain; and to them must go the "credit" for these industrial production controls leading frequently to continued scarcity, but in some instances to the removal of burdensome surpluses accumulated under a regime of ignorance regarding market conditions.

4. *Machine-Hour Limitations*

The code of the cotton textile industry, which was drafted even before Congress passed the NIRA, proposed that hours of machine operation in the industry be limited to eighty per week. The plan, it should be realized here, grew out of the belief that excessive over-

³¹For most readers it need hardly be added that capital is attracted to industries showing high profit margins whether these arise from growing demand or monopolistic practices. Any plan to divert profits to an industry having excess capacity constitutes merely a subsidy to the owners; the public is asked to pay for mistakes of the entrepreneurs. Thus, once an industry has attained excess capacity at reasonable prices there is no social reason for it to receive profits, that is, earnings above the pure rate of interest, however low that may be.

capacity had led to continuous operation for the purpose of reducing unit overhead charges. The situation was explained by the industry as follows: A particular mill, situated in a town able to furnish labor for twenty-four-hour operation, began to run continuously, its salesmen being instructed to "keep the mill sold up" even if they had to lower prices. In a short time prices dropped below the cost of production of the one-shift or two-shift mills, which were then forced to lower costs, usually by cutting wages but also by increasing their production.³²

Despite social argument on wage cuts, it is quite clear that the cotton textile industry was primarily interested in creating profits: it desired to restrict production through machine-hour limitation to the *point at which sales were profitable*, a speaker at an NRA conference on the code saying:

I submit that a proposal that seeks to permit potential expansion to this extent must be supported by incontrovertible statistical evidence that the resulting product can find profitable markets. To the extent that dependable statistics indicate that profitable markets can be found for a considerable additional production, to that extent existing machinery limitations should be progressively lifted in the interest of greatest possible production and employment.³³

Obviously, therefore, the purpose of machine-hour limitation was to cause a change from a buyers' to a sellers' market. By penalizing the low-cost mills (those with low unit overhead resulting from three-shift operations³⁴) the textile manufacturers hoped to limit output of these plants and by these means make production profitable for the others.

An effect of machine-hour limitation on costs is shown by Table XLIII which also identifies the plants able to produce at profits under one, two, and three shifts. With reference to these data let us assume (1) that all mills were operating one shift, (2) that no sales were made at less than cost, (3) that all goods were standard, (4) that the

³²*Transcript of Hearings on the Amendment to Cotton Textile Code*, pp. 42, 43, 46, 53, 67, and 82.

³³Then also George A. Sloan, a member of the code authority, has written: "The Cotton Textile Code Authority approached the problem before it from the standpoint that it was in the public interest for business to make a reasonable profit. If profits were not a requisite, the delicate adjustments contemplated in all planning efforts could be avoided and the thin increment of profit that absolutely must be superimposed upon the fixed charges for labor, material, and overhead could be ignored."

³⁴It is plausible to assume that some mills employing three shifts also had other costs which were low.

product was selling for 37.5 cents per pound, and (5) that a 25 per cent decrease in demand occurred at this price as a result of some factor such as decrease in national income or previous overstocking by dealers.

Faced with curtailment in demand, mills A to H might then cut prices to, say, 36.0 cents per pound and if at this lower price demand increased from 75 to 80 per cent of total capacity, they would secure capacity orders. In these circumstances, the high-cost mills, I, J, and K would be superfluous. But, suppose further (1) that one of these, say I, possessed an abundant labor supply and was, therefore, able to reduce its overhead by operating two shifts, and (2) that

TABLE XLIII
TEXTILE COSTS IN CENTS PER POUND—OPERATION WITH
ONE, TWO, OR THREE SHIFTS

Source: Hypothetical figures based on fragmentary data

Mill	Labor (1)	Other Direct Costs (2)	De- pre- ciation Costs (3)	Other Over head (4)	Total Costs (5)	Cumu- lative Capacity (Per Cent)	Lowest Selling Price*	
							Two Shifts	Three Shifts
A	9.0	17.1	3.4	3.0	32.5	10	30.1	29.4
B	9.2	17.2	3.3	3.3	33.0	20	30.4	29.6
C	9.4	17.3	3.2	3.6	33.5	30	30.9	30.0
D	9.6	17.4	3.1	3.9	34.0	40	31.3	30.4
E	9.8	17.5	3.0	4.2	34.5	50	31.6	30.7
F	10.0	17.7	2.8	4.5	35.0	60	32.0	31.1
G	10.2	17.8	2.7	4.8	35.5	70	32.3	31.2
H	10.4	17.8	2.7	5.1	36.0	80	32.7	31.6
I	10.6	17.9	2.6	5.4	36.5	90	33.1	32.0
J	10.8	18.1	2.4	5.7	37.0	95	33.5	32.4
K	11.0	18.1	2.4	6.0	37.5	100	33.9	32.7

(1) Does not measure wage rates. Often a low wage plant has a high unit labor cost.

(2) Includes machine repairs, cost of raw material, direct power, etc.

*Column (5) gives the lowest selling price under one shift. Here depreciation and other overhead for two shifts have been taken to be $(3)/2 + (3)/4 + (4)/2$, and for three shifts $(3)/2 + (3)/6 + (4)/3$. This assumes that half the depreciation charge is represented by a factor which depends on obsolescence. Various other cost hypotheses can, of course, be made; they will lead to results only slightly different.

none of the other mills could employ more than one shift. Then, according to our table, the cost of Mill I would become 33.1 cents. Since this is under the market price, the mill would thus be able to compete with A to H, which, according to the table, have sufficient capacity to supply all customers at 36.0 cents. In the struggle for business the price would probably drop below 36.0 cents, perhaps to 35.3 cents; and the decline from 37.5 to 35.3 cents per pound would slightly in-

crease sales. As a result, a market of, say, 85 per cent of one-shift capacity would develop and mills A to F operating one shift, mill I two shifts, and mill G operating only its lowest-cost units, would be able to supply it. Finding business profitable at this price, mill I, with adequate labor supply, might even decide to run three shifts. Then, in order to get sufficient business to keep its three shifts busy, it would have to undercut the market quotation. Other mills would accordingly be forced to reduce their prices to maintain their production; the price would decline, say, to 34.8 cents per pound and total sales would increase to perhaps 87 per cent of one-shift capacity for the industry. At this price mill G would close and mill F operate part time, perhaps at 70 per cent of capacity. Although total production would then be at 87 per cent of one-shift capacity, over one-third of the mills would have been closed and profits of the remainder drastically reduced. In fact, conditions might actually be worse than described, since (1) several of the high-cost mills would undoubtedly sell at less than cost for a time hoping that prices would later stiffen and production eventually become profitable, and (2) more than one mill would be in a position to operate two or more shifts. Thus, in real situations, the price might easily decline to 33.0 cents per pound, at which level A would be the sole one-shift mill able to show profits.

The textile industry, in its attempt to meet this problem, apparently realized that the demand for cotton goods is quite inelastic and that profits might be greatly increased by raising prices. Producers as a group felt strongly that the principal effect of decreasing capacity through limiting machine-hours would be to increase prices to, or above, the average cost of operation of a two-shift mill, with very little reduction in total volume for the industry. Obviously, therefore, those mills which had been running at one-shift or two-shift capacity without making profits and those operating only part time eagerly embraced a proposition calculated to give them profits.⁸⁵ Nor was the provision expected to benefit only the one-shift and two-shift mills at the expense of those operating continuously; the latter were convinced that their profits would also be greater under machine-hour limita-

⁸⁵On page 640 of the *National Recovery Administration*, Brookings Institution, 1935, it is stated that "there are strong reasons to suppose that the shift will be away from lower-cost plants and to higher-cost plants." But cost differences, to an important degree, were attributable to variations in unit overhead charges due to number of shifts operated. In several instances three-shift mills had "low costs" merely because workers of the mill, or of other neighborhood industries, or speculators unconnected with the mill, had built sufficient housing to meet the needs of three shifts of workers.

tions resulting in higher prices and lowered production.³⁶ In such circumstances they were quite willing to permit approximately one-third of their pre-code output to be spread among mills employing fewer shifts. The support of labor for this program was won by a proposed agreement to increase wages and spread work.³⁷

When the textile industry first proposed machine-hour limitation, the Research and Planning Division, after a brief but careful analysis of conditions, reported a lack of profits, low selling prices, unemployment, and very low wages. This report, it should be recognized, merely analyzed the proposal in the light of available evidence without recommending either its approval or disapproval. Yet, because the conclusion was announced that an amount of cloth sufficient to meet 1929 or normal peak demand could be turned out by the industry in eighty hours of operation proposed by the code,³⁸ and because the industry claimed that it could not employ additional men and raise wages unless such protection to prices was given, the NRA approved the plan.

As to the effects of the plan we record first that, after the limitation had been in effect for several months, a manufacturer of surgical dressings urged an amendment which would have permitted mills to operate longer than eighty hours, provided wages were increased. At these hearings several alleged social benefits to be derived from machine-hour limitation then in force were advanced by the industry, presumably in an endeavor to gain public support for the code provision. Thus, textile spokesmen argued that machine-hour limitation would (1) regularize employment and production by smoothing out seasonal peaks, (2) eliminate the "graveyard" or night shift, (3)

³⁶Machine-hour limitation undoubtedly enabled the cotton textile industry to make profits in the early days of the NRA. Indeed, a study of fifty-five cotton-textile corporations made by the National City Bank of New York showed that these companies reported a *net loss* (after allowing for depreciation, interest, taxes, and other charges and reserves) of 4.2 per cent of net worth (book value of outstanding preferred and common stocks and surplus account at the beginning of year) in 1932 and a *net profit* of 4.1 per cent in 1933.

See "Economic Conditions, Government Finance, United States Securities," *National City Bank Bulletin*, 1933.

³⁷This plan, as shown by a study of the Research and Planning Division, resulted in raising labor cost of manufacturing from an average of 5.3 cents per pound in June, 1933 to 12.9 cents per pound in December, 1933.

³⁸A letter from the Cotton Textile Institute to the author on December 5, 1935 corroborates this position. Here its secretary, Paul B. Halstead, stated that in 1932 the industry had 23,250,757 active spindles as against 32,326,526 in place and 5,054,588 idle throughout the year; in 1933 the respective figures were 24,873,270 against 31,422,174 and 4,547,314; and in 1934 they were 25,119,435 against 30,938,340 and 3,195,878. In 1934, assuming fifty-one hours per week of operation, there was an aggregate of 4,080 hours allowed each spindle, whereas the average active spindle operated only 3,014 hours.

stimulate demand for capital goods by compelling the industry to purchase machines for balancing operations, (4) make possible the high wages of the code, and (5) spread the available business among the various mills. In view of the broadness of these claims and their far-reaching effects, if true, some examination of them must be made.

First, as is generally recognized, many workers in industries having sharp seasonal activity find difficulty in maintaining decent standards of living during the slack periods. Therefore, it must be admitted that regularity of employment is highly desirable from a social point of view; it is so worthwhile that society might well afford its accomplishment at the cost of somewhat higher prices. But, although the cotton textile industry stressed the great social gains to be derived here, for the long period 1921-1931 the industry's seasonal employment held the narrow range between 92 per cent of normal in July and August and 105 per cent in February.³⁹ Furthermore, seasonal amplitudes in output of cotton goods show no sharp variation among different types; the highest seasonal difference occurs in artificial leather and the lowest in hosiery. A cause is that demand for the former is dependent upon the highly seasonal automobile production, whereas hosiery is subject to rather continuous use and purchase by final buyers.⁴⁰ Thus, according to Kuznets the variation in output for cotton goods "is imposed by the seasonality in demand by final consumers, the divergencies in pattern arising from the diverse uses to which the various commodities are put."⁴¹

It follows, therefore, that elimination of seasonal variation in the textile manufacturing industry would require either the compelling of its consumers to regularize their purchases or the producing by manufacturers for stock when orders decline. Since the NRA did not propose to regularize the buying habits of consumers, the first condition need not be discussed; and the effect of machine-hour limitation on production for stock must of necessity have been small. In fact, with further regard to the second proposition, we observe that since less than 5 per cent of cotton textile mills operated three shifts prior to the code⁴² and there was excess capacity in the industry, it is difficult to see how any great effect on seasonal operations could have

³⁹Simon Kuznets, *Seasonal Variations in Industry and Trade*, National Bureau of Economic Research, New York, 1933, p. 414.

⁴⁰*ibid.*, p. 109.

⁴¹*ibid.*, p. 113.

⁴²In a letter to the author, December 5, 1935, Paul B. Halstead, secretary of the Cotton Textile Institute, estimated that 800,000 spindles were operated on a third shift in 1933. This is about 3.2 per cent of the 24,873,270 spindles active in that year.

been accomplished by spreading work through machine-hour limitation; for, obviously, a substantial part of third-shift business would be directed to other mills which, prior to the code, were not operating at capacity.

There is also some question regarding the desirability of regularizing employment in the cotton textile industry. Some mills, when moving from New England to the South, gave as a reason the possibility of using cotton pickers idle during the winter peak season of the textile industry; and, therefore, if employment in the textile industry were regularized, workers engaged in the highly seasonal operation of cotton picking would suffer. Thus, the elimination of seasonal unemployment in the cotton textile industry might easily lead to even greater instability of southern employment than existed before the adoption of the code.⁴³

The second social objective, elimination of the graveyard shift, would very probably be accomplished by machine-hour limitation because of workers' aversion to this socially undesirable condition. Yet, there is the very important question of whether a social benefit⁴⁴ of this nature is worth penalizing over 125,000,000 consumers by raising prices sufficiently to make an industry with overcapacity show profits.

Consider now the third argument, the increased demand for machines arising from machine-hour limitation. Such installation would, at first glance, appear to be sheer waste in an industry having overcapacity. Nevertheless, when there are many unemployed who are drawing compensation for performing useless labor, now popularly called boondoggling, there is undoubtedly some net benefit from constructing new machines to replace or force the retirement of the thirty-year-old equipment of the textile industry. Ordinarily, however, there is very little, if any, social gain in providing an industry possessing overcapacity with profits sufficient to encourage it to instal new machinery.

As to the fourth argument, we feel that the protection against wage cuts offered by machine-hour limitation of necessity must have been largely psychological, and as such of short duration. In particular, the restriction could have operated to confuse buyers so that they would pay high prices, or to educate producers to charge

⁴³The reader is warned, however, that this is a matter which requires careful investigation, and that our study merely aims to call attention to the various sides of controversial questions.

⁴⁴Less than 10,000 workers were affected. The increase in price attributable to machine-hour limitation could not have exceeded 3 cents per pound of cloth as shown in Table XLIV.

more than the cost of production, but it is difficult to believe that any other important price-supporting effect could have resulted. The facts, as shown in Table XLIV, are that between February, 1933 and February, 1934 gross overhead per pound, including salaries, increased only 2.7 cents, whereas raw materials advanced 6.2 cents, wages 4.0 cents, and the processing tax 4.2 cents. Since, under these conditions of violently changing prime costs, the industry made profits, it appears that the psychological effect did occur: the confused consumer paid the bill. But, as we shall see, this situation did not last.

TABLE XLIV
COST OF COTTON MANUFACTURE
(Cents per Pound)

Source: Research and Planning Division, NRA, Unpublished Study

	1929	Feb., 1933	Feb., 1934
Raw Materials, etc. - - -	25.5	9.9	16.1
Wages - - - - -	9.6	6.1	10.1
Gross Overhead* - - - -	7.4	5.1	7.8
Processing Tax - - - - -	----	----	4.2
Total Cost - - - - -	42.5	21.1	38.2

*Includes Salaries

With respect to the fifth and final argument, we note that all speakers at the hearings on the amendment reported forced discharging of employees by continuous operators in order to observe the two-shift regulation. Although there is no proof of compensating re-employment in other mills, it is probable that this occurred; many cotton textiles are standardized goods manufactured by several mills, and customers denied access to one mill would presumably make purchases from others.

Hence the facts regarding the effects of the five arguments offered in favor of machine-hour limitation seem to be: (1) the provision must have had negligible effect on seasonal operations; (2) elimination of the graveyard shift might have occurred, the main question remaining being whether there were less expensive ways; (3) demand for machinery was probably increased but much of such resulting replacement would ordinarily represent waste—only the large unemployment existing in 1933 and 1934 made it at all desirable; (4) any effect on wages must have been largely psychological; and (5)

available business must have been spread among the various mills.

The last has a much broader aspect that requires careful further consideration. First, records of spindle activity represented in Table XLV show that the code definitely moved business geographically; it gave the North a larger percentage of production. Whether (1) active spindle-hours per spindle in place or (2) active spindle-hours per active spindle is used, a definite movement of activity from the South to the North is shown by the table, about thirty per cent of southern production being transferred to northern mills. And since many of the mills which had been running three shifts were located in the South, machine-hour limitation undoubtedly had something to do with

TABLE XLV
ACTIVITY IN THE COTTON SPINNING INDUSTRY

Source: NRA Report

Period	Active Spindle-Hours Per Spindle in Place			Active Spindle-Hours Per Active Spindle		
	Cotton-Growing States (1)	New England States (2)	Ratio (2)/(1)	Cotton-Growing States (3)	New England States (4)	Ratio (4)/(3)
1921	242	176	.73	251	196	.78
1925	274	148	.54	286	191	.67
1929	304	180	.53	318	208	.66
1931	251	124	.50	283	194	.69
1933						
Jan.	281	118	.42	319	207	.65
Feb.	259	112	.43	295	196	.66
Mar.	291	126	.43	334	225	.67
Apr.	270	120	.44	309	215	.70
May	342	152	.44	380	246	.65
5 Mos. Average	289	126	.43	325	218	.67
* June	369	192	.52	400	285	.71
July	318	175	.55	342	247	.72
Aug.	307	178	.58	330	256	.78
Sept.	275	153	.56	296	217	.73
Oct.	279	163	.58	302	232	.77
Nov.	262	151	.58	288	220	.77
5 Mos. Average	288	164	.57	312	234	.75

*June omitted from comparisons because of obvious abnormalities.

this penalizing of the South for the benefit of the North; but, of course, the South also experienced inequitable increases in wages which must have accounted for some part of the displacement indicated here.

Effects of the cotton textile code upon the competitive position of the industry also were important. Table XLIV shows that total costs per pound rose from 21.1 cents in February, 1933 to 38.2 cents in February, 1934, an increase of 80.5 per cent. Hence, it is not surprising that cotton mills should experience loss of sales to rayon manufacturers and then should urge Congress to penalize the latter by a tax. Nor is it unexpected that manufacturers of mercerized cotton yarn should complain about losing business to producers of rayon yarn: a price rise of the former from 51 cents per pound in March, 1933 to 73 cents in March, 1934, while the latter increased only from 60 to 65 cents in the same period made this inevitable. In short, as a result of (1) higher prices of raw materials, (2) processing taxes, (3) increased pay rolls due to higher wage rates, and (4) machine-hour limitations, cotton textile prices had advanced so far in relation to other prices and to consumer income, that demand had been checked by loss of business to competitive fibers, loss of export markets, and consumers' strikes. Clearly such a condition had to lead to eventual collapse and perhaps complete rout; and so, in March, 1935, we find the National Industrial Recovery Board stating:

From several causes demand has been abnormally restricted. The doubling of the price of raw cotton and the adding of the cotton processing tax has thrown cotton out of its usual price relationship to other textiles. Exports have been steadily increasing for several years, while in the last few months an unprecedented increase in imports has made buyers so fearful of a price collapse that they have minimized their purchases. This has contributed to the accumulation in mills' hands of inventories for which no reasonable market is available, throwing an added burden on the price level. For many months mills have been offering certain lines far below the lowest possible cost of production, presenting a crisis which, unless it is regulated, will inevitably bring about chaos in production and employment.

It appears, therefore, that the capital-rescue scheme of the cotton textile industry, that is, machine-hour limitation, plus uneconomic higher wages and shorter hours offered to gain the political support of labor for the restrictive device,⁴⁵ had finally turned out to be a boomerang to the industry, profits lasting only for a few months and, as shown by Chart II, both production and employment declining. This planning added to that of the Agricultural Adjustment Administration which, through contrived scarcity and exorbitantly high crop

⁴⁵See also Chapter XV, Section 3.

loans, had greatly increased the price of cotton, promised to wreck an industry normally employing several hundred thousand men.

5. *Restriction of Manufacturers' Sales to Natural Market Areas*

Another of the NRA's outstanding monopolistic devices concerned the limitation of competition among manufacturers in different geographical areas. In hearings on such provisions, it was made clear that a manufacturer with mounting inventory preferred to "dump" his products in the markets of competitors to cutting prices in his own natural market. Usually this dumping was accomplished by the absorption of transportation costs; and it was by no means confined to a few producers. As it was carried on, each manufacturer was stripped of the natural monopolistic advantages arising from his location and was thus forced to meet competitive prices which were always lower. To regain monopolistic advantages, each producer sought to restrict the operation of the others in his "own" territory.

An interesting attempt to prevent manufacturers from extending their "natural" markets by absorbing freight charges was made by the code for the toy and playthings industry. Here the proposal was not to prevent sales at prices equal to or only slightly greater than direct costs plus transportation charges, but rather to outlaw sales below a somewhat higher cost, the price in a "natural" market plus transportation and other related charges. In addition, this code prohibited the making of allowances in any form for freight, except in cases where members of particular divisions of the industry favored such allowances and had obtained the approval of the code authority. It is, therefore, quite certain that the kind of "dumping" which the toy and playthings industry desired to prevent was that which took place at prices too low to be *profitable*. Such *unprofitable* dumping was restricted even more openly in the funeral supply code by Article IX which forbade the selling of goods in a competitor's "normal market" at cut prices and prohibited as unfair competition

. . . selling the products of this industry or offering the same for sale in a market or trade area other than that in which the seller is usually and normally engaged, at prices lower than the price at which such products are customarily sold or offered for sale in the seller's normal market.

Some codes went so far in setting up geographical monopolies as actually to establish marketing areas. Article 4a of the salt producing industry, for instance, declared:

Each field of production has its own natural marketing territory, the extent of which is limited by transportation costs, in which its major salt distribution is concentrated. The fields of production so recognized at this time are:

New York	West Virginia	Texas
Ohio	Utah	Louisiana
Michigan	Oklahoma	
Kansas	California	

The minimum prices published in any marketing field by any producer in that field shall be the lowest prices at which any producer may sell in that field.

The corrugated and solid fibre shipping container industry was much more vague in its treatment of this problem. Here the terms "normal territories" and "general market" were used without definition, presumably because the industry wished to discourage competitive sallies without actually prohibiting them.⁴⁶ Several of the building material industries also developed devices for restricting competition between geographical areas, Article VII of the asphalt and mastic tile industry specifying that:

. each manufacturer shall publish and file with the code authority his current prices, discounts, and other conditions of sale which shall be uniform throughout the United States.

The intent of this provision is obvious: a manufacturer, forced to post a uniform price for the whole country, would naturally quote the monopolistic or semi-monopolistic price of his own territory, thus contributing to an increase in prices throughout the industry. Similar limitation of competition was attempted by such industries as lumber, cement, steel, tile, lime, and reinforcing materials fabricating. The first set prices by regions; the others mentioned established basing points in attempts to induce higher prices.⁴⁷

In appraising the economic effects of such monopolistic code provisions it must be realized that only a relatively small number of codes contained them; the threat offered by the approval of several such provisions was much more important than the amount of commerce

⁴⁶Article X of this code read in part:

"The practice of certain manufacturers and sellers of shipping quantities of merchandise into territories outside their normal territories, and of selling such merchandise below the general market prevailing in such other territories into which shipments are made, seriously tends to demoralize the market within the territories into which shipments are made, disrupts normal competitive conditions throughout the entire industry and is condemned as an unfair trade practice."

⁴⁷For a discussion of the basing point, see Chapter XI, Section 4.

affected. In general, the industries which sought such privileges were those having inelastic demand, as salt or funeral supplies, or such guaranteed markets as might arise under a large public-works program.

* * * * *

In summary, under the NRA, the term "fair trade practice" meant anything from a rule for eliminating fraud or dishonesty in business to a device involving some grant of monopoly power for profit making. In the former category were rules concerning commercial bribery, secret rebates through unjustifiable return of merchandise, design protection, and similar matters. Usually provisions for accomplishing reforms were ill-conceived and, therefore, frequently caused unexpected difficulties. Some provisions prohibiting commercial bribery, for instance, were so worded as to cause genuine hardship upon firms using premiums openly in advertising and without any suspicion of fraud. Frequently the second kind of "fair trade practice" was dressed up to resemble reforms arising from a genuine desire to make competition more honest, or at least less wolfish, and therefore readily received the approval of the indiscriminating planners who appeared to be determined to extend their domain at every excuse. Thus, we find the NRA giving its blessings to the price fixing and other monopolistic practices of the ice manufacturing industry "in order not to waste labor in the production of new machinery for an industry already possessing overcapacity."

In many instances, the chief or only moral argument in favor of a particular "fair trade practice" was that it would prevent a wage cut or guarantee both wages and employment. Such arguments usually bore striking similarity to those offered by high-tariff advocates. In fact, at times industrial spokesmen naïvely claimed that if "dumping" between states were allowed to continue, large corporations would force the bankruptcy of small firms throughout the country and sweatshops would abound. To halt this alleged trend to monopoly and low wages they demanded and often received provisions which guaranteed profits to both large and small units of an industry, even in instances where inefficiencies abounded. In one instance, the Government penalized the South for the benefit of the North by the limitation of machine hours, the effect of which was to modify costs unequally; in other cases it established natural market areas. Control of production as sanctioned by the NRA in the lumber industry resulted in the diversion of business from the southern pine region to the western and northern producing areas. Moreover, in all indus-

tries where practiced, control of production meant that low-cost mills had to share their business with higher-cost plants, the price being raised to compensate. And through such processes the Government at least temporarily deprived the country of whatever benefits occur from free trade over a wide area.⁴⁸

Finally, since so many of the industries which would naturally benefit from the Administration's huge public-works program secured approval of code provisions enabling them to obtain monopolistic or semi-monopolistic prices, the NRA is clearly open to the charge that it sanctioned and encouraged (through wage increases in these industries resulting in demands for at least one *quid pro quo*) the raiding of the public treasury by interested groups. Furthermore, it did not do this in ignorance, for on various occasions the author, among others, apprised officials of the situation and urged action which was not forthcoming.

⁴⁸Long enjoyment of this advantage has often been cited by economists and some business men as a cause of the relatively great prosperity of the United States when compared to conditions in other countries.

Some expert observers have actively opposed federal control of interstate commerce on the ground that once this was fastened upon business the equivalent of state tariff barriers would soon be erected. Such has, for example, long been the attitude of the industrialist, James W. Hook.

CHAPTER XIII

PROBLEMS OF THE SMALL BUSINESS MAN

1. The Origin of Complaints

Considering the extensive wage and hour changes and the great variety of "fair" trade practices, which in essence deflected operating income from one group of producers to another, irrespective of size, it is not at all surprising that the charge of oppression should be leveled against the NRA by certain classes of business. For the obvious reason that the small producers vastly outnumbered the large, it was inevitable that at least one of these income-shifting devices should injure some groups of small entrepreneurs sufficiently to create an important political issue. Furthermore, the sponsorship of the NIRA by the United States Chamber of Commerce and other conditions under which the NRA was born seem inevitably to have branded the organization from its inception as an ally of big business.

With respect to the facts in the case, we observe first that prior to the enactment of NIRA, several economists and business leaders had claimed a serious depletion of working capital of industry during the business depression and had proposed federal loans to replace it. In particular, Harold G. Moulton, president of the Brookings Institution, had recognized this situation and had urged Congress to appropriate money for such loans. The failure of Congress to adopt such a program, we cannot emphasize too strongly, doomed small business to suffer under the NRA; that is, since, as shown by Table XLVI, the small firms had suffered the greatest depletion of working capital, it was inevitable that they should experience the greatest hardships under a program demanding a larger fund for the payment of increased wages. Furthermore, almost simultaneously with the enactment of the NIRA, Congress passed the Glass-Steagall Banking Act of 1933, which placed a new obstacle in the path of business men seeking working-capital loans. More specifically, by divorcing investment and deposit banking, this law¹ closed an important lending source without

¹The Glass-Steagall Banking Act of 1933 reads, in part:

"Section 21(a) — After the passage of one year after the enactment of this Act it shall be unlawful —

"(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or

opening any new ones. Consequently, if federal help was indicated before the Recovery Act was passed, it was needed even more afterwards.

There was also another set of circumstances leading to charges of oppression of small enterprise. When the President's Recovery bill was introduced in Congress, several leaders, such as Senator Borah of Idaho, immediately opposed it on the ground that the proposed organization could sanction monopolistic practices long held to be inimical to small business. At this time Borah, it will be recalled,

TABLE XLVI
WORKING CAPITAL OF AMERICAN MANUFACTURING INDUSTRY
(Millions of Dollars)

Sources: *Statistics of Income* and Standard Statistics

Year	All Companies	413 Identical Large Companies	Other Companies
1927	18,543	8,403	9,908
1928	22,538	9,242	13,064
1929	22,624	9,777	12,660
1930	19,445	9,459	9,820
1931	15,750	8,558	7,087
1932	12,529	7,507	4,961
1933		7,495	
1934		7,640	

forcefully argued that the bill as submitted would greatly favor large business interests; in fact, he even persuaded the Senate to adopt an amendment forbidding the Administration to approve codes tending to encourage monopoly through price fixing or other trade practices. But, as we have also seen, Borah's amendment was greatly weakened because of opposition in the House which strongly favored the Administration's bill. Then, within a few weeks after the passage of the NIRA, Senator Borah and Senator Gerald P. Nye of North Dakota, who had supported Borah in his Senate fight, received steadily increasing mail from correspondents scattered throughout the United States charging the NRA with oppression of small business. By Distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of depositor."

cember, 1933 approximately 15,000 such complaints had been sent to Nye alone.

Also, when the NRA recalled from the White House the retail code, which, as previously approved, had contained a markup feature erroneously calculated to protect the small merchant from the chain and department stores by eliminating loss-leader selling (see Chapter IX, Section 4) retailers charged, however mistakenly, that the NRA was an ally of the big department and chain stores.

Criticism thrived in various quarters and by January 18, 1934 the persistent attacks of Borah, Nye, and others had so annoyed Johnson that he turned on his critics and challenged them to offer constructive suggestions for remedying alleged defects. Nye and Borah, even though Johnson did not mention them by name,² met the challenge, at least from a political standpoint. Then, because of their attacks and of the opposition which they represented, President Roosevelt signed an executive order on January 20, 1934, providing that any complainant of monopolistic practices, dissatisfied with the way in which his case had been handled by any government agency to which he had appealed, could press it before the Federal Trade Commission or request the assistance of the Department of Justice. And, on the same date, Donald Richberg issued a supplementary statement which said that the provisions of the anti-trust laws were still in effect and that the NRA would not tolerate monopolistic practices. Then, four days later, after a talk with President Roosevelt and Senators Borah and Nye, General Johnson announced that he planned a special board of prominent persons to hear complaints. To silence criticism, he even offered to allow his critics to select the personnel of the proposed board.

But presidential action in creating this agency was delayed, and the public hearings on the codes, which began February 27, 1934, brought out various new charges of monopoly and oppression of small enterprises and minorities. For instance, Sam M. Jones, speaking on behalf of the Incandescent Lamp Manufacturers' Association, accused the NRA of looking on complacently while a large electric corpora-

²The following quotations from *Associated Press* dispatches indicate how political the problem had become:

"'Nero may rant and roar,' Senator Nye said, 'but all the browbeating he may resort to will not destroy, though it may delay, knowledge of what NRA policy is doing. . . All to the end that the plunderbund may enjoy a larger monopoly and maintain profits on fictitious capitalization.'

"Senator Borah reiterated that monopolies were taking millions 'unjustly' from the people. 'Nothing,' he said, 'can dispose of the fact that many small firms are being driven out of business through the practices of combines and trusts. When those things are remedied, I will cease my efforts, and not until then.'"

tion finished the destruction of competition that it had so efficiently and profitably carried out for several years. In additional criticism, Crosby Field of Brooklyn, New York, enumerated the obstacles encountered by the small plant as: (1) personnel of code authorities, which often represented the large interests, (2) open-price plans, (3) elimination of advantages of the small man by standardization of products, and (4) the extension of code authority power to prevent the introduction of new products and the development of new industries. In a different attack Charles H. Baber, a rubber manufacturer of Wisconsin, protested that NRA formulas brought costs so close to market quotations as not to allow competition in prices. Other business men supported these attacks and brought out some additional points. Also, at the same public hearings Senator Nye declared that a great many small business men, who had genuine protests to make, were not present because they had been assured that the President would establish a board of outstanding men to hear their complaints. He then warned that, unless immediate steps were taken to remedy the small-firm situation, the NRA would destroy itself.

As a result of these criticisms President Roosevelt, at the close of the hearings, issued an executive order creating the National Recovery Review Board, with Clarence S. Darrow, noted criminal lawyer, as chairman. This new board began investigations almost immediately and by May 20, 1934 had submitted its first report. Instantly its findings became subject to suspicion because of the simultaneous publication of a minority opinion by one of its members, John F. Sinclair, who declared that the board had not approached the investigation from the viewpoint of careful research and analysis, and that consequently its conclusions "must necessarily be inconclusive, incomplete, and at times misleading and unreliable." Then, large sections of the press did not take kindly to a special supplement signed by Darrow and William O. Thompson, another Board member, in which it was asserted:

The hope for the American people, including the small business man, not to be overwhelmed by their own abundance, lies in the planned use of America's resources following socialization.

Richberg, who had prepared NRA's reply in the seventeen-day interim during which the Administration was in possession of the report before making it public, naturally assailed the "socialistic" proposal, and, following the lead set by Sinclair's minority opinion, attacked the board's method of conducting its study. As a parting

shot, Richberg declared that the board had, by its slipshod methods of investigation,

made itself an agency to furnish ammunition for the malicious sniping of political partisans, for the covert scheming of monopolists and for the mean attacks of chiselers who seek private profit out of continuing that "savage, wolfish" competition which the Review Board would perpetuate in its contempt or pessimistic despair of the processes of civilization.

Darrow met the NRA counterattack by announcing to the press that, in pursuit of its purposes, the board had conducted its investigations fairly and had reached the conclusions that (1) in certain industries monopolistic practices existed, and (2) in certain industries small enterprises were oppressed. At the same time, in complaining about the delay of the President in publishing the board's report, he said:

Seventeen days later its report is made public, together with the excited ejaculations of General Johnson and Mr. Richberg, who, apparently under the impression that the NRA is their personal property, break into shrieks of rage at the suggestion that operations are not perfect or are susceptible of improvement. . . .

So far as these "replies" that reply to nothing are concerned, the world is still unenlightened, and until some competent authority is willing to question the conclusions of the Board on these points the personal resentments of General Johnson and Mr. Richberg are not important.

On the same day Senator Borah expressed the opinion that the Board's report had revealed the need for restoration and enforcement of the anti-trust laws, and Senator Nye declared that he believed the report had sustained charges of monopoly under the NRA. General Johnson, on the other hand, in replying to Darrow's rebuttal, maintained that the Board had merely made "findings" of generalities which it might easily have done without holding hearings of any kind. He then defended the NRA on the basis of labor reform undertaken by saying:

As I have further said, some people who want to make profits by paying less than subsistence wages, or to live off the labor by children, have suffered some loss of ancient extortionate privilege.

He added that such loss accounted for something like ninety per cent of the complaints of oppression of small enterprise. At this time he,

nevertheless, admitted that there were a few oppressive codes, covering "a fraction of one per cent of all employers affected," where the legitimate business of a small business man had been hurt, and said that he had hoped the Review Board would call these to his attention so that remedies could be applied. The White House, also greatly displeased with the reports of the Review Board, announced on May 21 that the agency would cease to exist after June 1, 1934. To this turn of events, Darrow offered little objection, but promised before the dissolution of the board a second report which would go more into details.

With so many charges and countercharges being hurled we must be careful in reaching any conclusion. We believe that a completely dispassionate examination of the reports and rebuttals of the Recovery Review Board and of the NRA on the subject of oppression of small enterprises compels the conclusion that they were mainly political, and as such should be discounted in evaluating the actual conditions. In fact, as will be indicated, some very important supplementary considerations require a reappraisal of the published governmental reports and documents referring to difficulties of small industry under NRA, especially a questioning of their freedom from propaganda. It is fortunate, therefore, that there are some data which make it possible to reach conclusions regarding effects of the NRA on business according to size. In addition, we can present arguments which require only general knowledge for substantiation.

2. The Financial Condition of American Industry, 1929-1934

Successful firms in general have had current assets of twice the value of current liabilities; that is, their current ratios have been greater than two to one. Table XLVII shows how such ratios have varied by size of firm and by industries for several years. A decrease appeared between 1929 and 1931 with few exceptions, notably the large corporations and the food and leather industries. In fact, an adverse working-capital position even existed in several industries before the depression. More illuminating in portraying the decline in working capital of American companies during the depression is Table XLVI. In particular, these data show a contraction of over \$10 billion between 1929 and 1933, of which loss nearly \$8 billion were suffered by firms other than the 413 large companies listed from 1927 to 1934 by the Standard Statistics Corporation. Whereas in 1929 these smaller companies owned over 53 per cent of the

working capital of the country, by 1932 they owned less than 40 per cent.³

Some part of the difference in the working-capital position of large and small companies can perhaps be explained by accounting peculiarities. For instance, it is possible that at the onset of the depression some of the large companies began to increase their

TABLE XLVII

CURRENT RATIOS FOR THE VARIOUS GROUPS OF MANUFACTURING

Source: Unpublished Report, Research and Planning Division, NRA

	1928	1929	1930	1931
ALL MANUFACTURING	2.38	2.31	2.28	2.08
Printing	1.33	1.26	1.13	1.30
Lumber	1.72	1.82	1.75	1.67
Miscellaneous	2.41	2.19	2.38	1.83
Stone	2.35	2.41	2.45	1.90
Chemicals	2.04	2.01	1.85	1.90
Paper	1.72	1.78	2.05	1.91
Rubber	1.90	2.54	2.70	2.19
Metal	3.37	2.91	2.89	2.27
Textiles	2.23	2.35	2.33	2.31
Food	2.11	2.14	2.22	2.33
Leather	2.88	2.86	3.10	3.40
NON MANUFACTURING				
Agriculture	0.91	0.96	0.91	0.79
Mining	0.96	1.12	0.62	0.85
Construction	1.12	1.10	1.14	1.17
Trade	2.03	1.94	2.04	1.95
Service	0.69	0.86	0.84	0.75
Unclassified	1.11	1.30	0.70	1.13

rates of depreciation on equipment, thus making their earnings appear low, while at the same time their current assets failed to shrink materially. Then also, according to United States Treasury figures, dividends decreased in the first half of 1933. On the other hand, small concerns possessing inferior accounting systems probably continued in general to charge inadequate depreciation, and were subjected to the usual owners' withdrawals. In addition, the larger companies,

³Since a considerable number of fairly large companies is included in the total called "smaller companies," and the 413 large companies had a relatively better showing than these, it is very probably true that all American businesses, exclusive of the 1500 largest ones, suffered a decline in working capital aggregating about eighty per cent.

TABLE XLVIII
 FAILURES IN MANUFACTURING AND TRADING COMPARED WITH WHOLESALE PRICES
 Sources: Dun and Bradstreet and B.L.S.

Period	Number of Concerns (Thousands)	Number of Failures (Thousands)	Aggregate Assets (Thousands Dollars)	Average Dollar Liability	Failures per 100 establishments per month			B.L.S. Wholesale Price Index
					Liabilities of \$100,000 and over	Liabilities under \$100,000	Ratio Small/Large	
1913	1,617	16.0	174,688	\$17,003	.0016	.078	48.0	69.8
1914	1,655	16.3	265,293	19,579	.0017	.086	48.6	68.1
1915	1,675	22.2	183,454	13,644	.0013	.103	76.2	69.5
1916	1,708	17.0	113,599	11,547	.0008	.078	93.8	85.5
1917	1,733	13.9	103,465	13,168	.0010	.062	64.6	117.5
1918	1,708	10.0	101,638	16,331	.0009	.044	51.0	131.3
1919	1,711	6.5	67,038	17,561	.0007	.028	41.6	138.6
1920	1,821	8.9	195,504	33,230	.0017	.036	21.1	154.4
1921	1,927	18.7	409,023	21,925	.0038	.078	23.6	97.5
1922	1,983	28.7	413,365	26,361	.0030	.082	31.0	96.7
1923	1,996	18.7	388,382	28,816	.0028	.073	26.0	100.6
1924	2,047	20.6	387,945	26,351	.0023	.078	32.9	98.1
1925	2,113	21.2	248,067	20,918	.0020	.078	38.2	103.5
1926	2,158	21.8	202,345	18,795	.0021	.078	37.1	100.0
1927	2,172	23.1	256,740	22,471	.0022	.082	36.4	95.4
1928	2,199	23.8	255,478	20,533	.0021	.083	38.9	96.7
1929	2,213	22.9	226,028	21,094	.0023	.079	34.1	95.3
1930	2,183	26.4	442,800	25,357	.0029	.092	31.4	86.4
1931	2,125	26.3	434,939	26,032	.0036	.101	28.0	73.0
1932	2,077	31.8	509,135	29,172	.0053	.115	21.4	64.8
1933					.0059	.143	24.2	61.0
January					.0052	.116	22.5	59.8
February					.0047	.095	19.9	60.2
March					.0060	.092	15.4	60.4
April					.0058	.082	15.8	62.7
May					.0041	.080	19.6	65.0
June					.0081	.069	22.7	68.9
July					.0042	.071	16.7	69.5
August					.0021	.055	25.6	70.8
September					.0036	.068	15.9	71.2
October					.0027	.060	22.3	71.1
November					.0025	.055	22.1	70.8
December								
1933	1,961	20.3	270,730	24,761				

TABLE XLIX
FAILURE BY LIABILITY GROUPS
Source: Dun and Bradstreet

Month	Total Failures	Total Liabilities	Liabilities of \$5000 and Under		Liabilities of \$6001-\$25,000		Liabilities of \$25,001-\$100,000		Liabilities of \$100,001 and Over	
			Per Cent of Total Failures	Per Cent of Total Liabilities	Per Cent of Total Failures	Per Cent of Total Liabilities	Per Cent of Total Failures	Per Cent of Total Liabilities	Per Cent of Total Failures	Per Cent of Total Liabilities
1932 May	2,788	83,763,521	35	3	47	19	13	22	5	56
Five Months	14,745	450,352,836	34	8	45	19	15	23	5	55
June	2,688	76,981,452	35	5	45	18	14	24	5	53
July	2,596	87,189,689	34	5	45	16	15	20	5	62
August	2,796	77,091,212	36	5	44	20	16	28	4	47
September	2,182	56,127,634	36	4	43	20	16	29	5	47
October	2,273	52,869,974	36	4	45	20	14	25	5	51
November	2,073	53,621,127	37	5	44	20	14	25	5	50
Six Months	14,608	403,771,038	36	4	44	19	15	25	5	52
December	2,469	64,182,643	36	4	44	21	15	27	5	48
1933 January	2,919	79,100,612	35	4	45	20	15	26	4	4
February	2,378	65,822,702	35	4	45	19	15	27	5	50
March	1,948	48,470,212	35	4	44	21	16	29	5	46
April	1,921	51,097,384	37	4	43	19	14	25	5	52
May	1,909	47,971,573	34	4	45	20	14	26	5	50
Six Months	13,544	355,651,126	35	4	45	20	15	27	5	49
June	1,648	35,344,909	34	4	46	23	15	33	5	40
July	1,421	27,481,103	36	5	47	27	13	30	4	29
August	1,472	42,776,049	38	4	42	16	14	22	6	58
September	1,116	21,846,906	39	5	42	24	15	34	4	37
October	1,205	30,581,970	37	4	43	19	14	26	6	51
November	1,237	25,353,376	37	4	44	24	15	34	4	38
Six Months	8,100	183,384,313	37	4	44	22	14	29	5	45
December	1,132	27,200,432	39	4	44	19	13	24	4	63
1934 January	1,354	92,905,428	40	5	41	18	13	24	4	53
February	1,049	19,444,768	36	5	47	27	14	34	3	34
March	1,102	27,227,511	36	3	46	21	14	25	5	51
April	1,052	25,786,975	41	4	42	19	12	24	5	53
Five Months	5,699	132,565,054	38	4	44	20	13	26	5	50

as contrasted with the smaller ones, tended to place their funds in the stronger banks and to invest surpluses in sound, liquid securities. It is, therefore, not surprising that in 1933 the large companies had working-capital positions so much more favorable than the smaller ones.

During the depression the mortality of firms, both large and small, increased considerably. Table XLVIII shows that failures of \$100,000 liability and over rose from .23 per 10,000 firms of all sizes per month in 1929 to .53 in 1932, and those of less than \$100,000 liability from 7.9 per 10,000 firms in 1929 to 11.5 in 1932. Since only a very small part of the unfavorable increase in the rate of failure for the large-liability group can be explained on the basis of higher average liability (see Table XLIX), it follows that, despite greater relative decrease in working capital, small firms were sufficiently more flexible in their operations to avoid a larger relative increase in the rate of failure. Part of this favorable flexibility of small firms, as will be shown in a later section, was probably due to a greater facility for cutting wages and trimming overhead expenses.⁴

Clearly such rate of failure in business and loss of working capital are directly related to inventory values. As values of inventories shrink, current assets shrink with them, while current liabilities remain relatively fixed. Part of such loss in inventory values can, of course, be absorbed since less working capital is needed when prices of material purchased are lowered, but, in general, profit margins are also reduced when prices decrease. Consequently, low rates of failures are to be expected in periods of rising prices and vice versa.

At this point it should perhaps be emphasized that economic advisers of the NRA were well aware of difficulties experienced by industries from loss of working capital. For instance, on August 28, 1933, the author called the situation to the attention of Sachs in the following memorandum, in which remedies were also discussed:

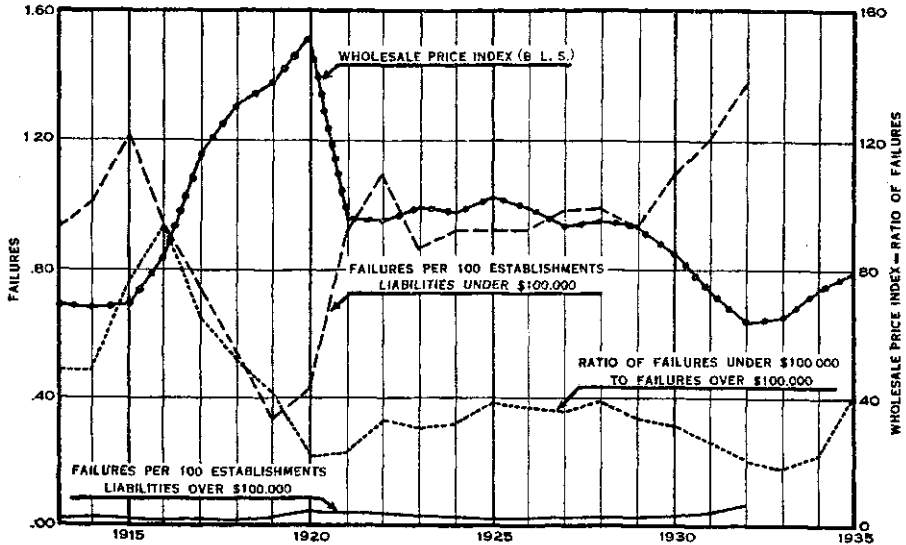
It occurs to me that there may be a great many firms throughout the country which have practically exhausted their credit under present conditions, but which would be in a fairly secure position if the expected increased business of the next three months materializes. At present, these firms may be forced to cease operations if they sign codes (if they do not sign they are faced with virtual boycott) and produce more disturbance, psychological and otherwise, than can be offset by gains in employment through spread-

⁴There is also the possibility that small firms do not report failures as readily as large ones.

CHART XVIII

RELATION OF THE RATE OF BUSINESS FAILURE TO THE PRICE LEVEL

Sources: Failures from Dun and Bradstreet and Prices from the Bureau of Labor Statistics



The number of failures of small firms seems to vary inversely with the change in the price level: when prices start upward, business failures almost simultaneously start downward and vice versa. A similar relation holds also for large firms, but sometimes more and sometimes less. In fact, the ratio of failures of small firms to failures of large ones increased in the early twenties, as prices fell, but decreased in the thirties.

ing work by the codes. Furthermore, there are grave social possibilities which should be considered carefully.

When an individual fails because of some mistake that he has made, he usually takes his failure philosophically and starts over, but when he fails because he cannot meet a governmental regulation, the story is usually different. If, furthermore, the individual who is dispossessed sees his creditor operate his property successfully three or four months later, and if this success can be attributed primarily to a program which he, himself, wanted to support but could not because this same creditor (or some one in a similar position) prevented him by denying additional credits, the dispossessed will undoubtedly become dangerous socially. Some remedies are discussed below:

1. *Issuance of scrip for a limited period to employees to take care of extra pay roll:* In this way the old pay roll might be kept up and the additional wages met by promises to pay. Thus, if the increase in pay roll amounted to 10% of

the old, each old employee and each new one could receive approximately 91% in cash and 9% in scrip. There are, however, several disadvantages other than the ones commonly enumerated for scrip. Most important, perhaps, issuance of scrip would be an acknowledgment of weakness which might put the firm in an unfavorable position for making sales. Thus, buyers and competitors, knowing it was in financial difficulty, could try to force its prices down, the latter in an attempt to produce bankruptcy. In the second place, issuance of scrip would probably be a signal to creditors to foreclose.

2. *Stock sales to employees*: Presumably stock could be sold to employees by using various methods of persuasion. Issuance of stock has the advantage that it could not be taken as an indication of competitive weakness, since such an act might indicate an intention to expand. Presumably its issuance would not affect creditors, since stock represents an equity in what is left after all contractual obligations are met. The severe sections of the Securities Act might, however, defeat this plan.

3. *Governmental loans*: There is, of course, much objection to having the Government make loans which individuals think are unsafe. In addition, there would be legal difficulties and lost time. Furthermore, if the loans were announced, the difficulties pointed out under (1) would be met.

4. *Encouragement of banks to make necessary loans*: This is difficult under our loose banking system, but presumably the Federal Reserve Banks can assume important leadership. Thus, surveys of the R.F.C. with private intimation of intention to organize rival banks in towns where the banks persist in deflating might be effective. In my opinion, however, the encouragement of banks must be done quietly. Public discussion of the question might do a great deal to undermine public confidence and thereby destroy an incipient boom.

Of course, we do not want to force banks to make loans to firms which apparently have no prospect of profits even with increased business. An immediate write-down of salary and overhead charges and capital values for such firms is desirable.

A few hours after Sachs had received this memorandum,⁵ he

⁵Sachs, it should be noted, was aware of shortage of working capital before he held the position of Director of the Research and Planning Division. Furthermore, on July 31, 1933, Arthur Dahlberg had addressed a memorandum to him beginning: "To me there seems to be an oversight in the present administration plans for lifting the mass purchasing power by means of shortening hours and raising wages — an oversight which may endanger the success of the plan itself." He then went on to say that, although the President's Re-employment Agreement provided means for putting public pressure upon the business man to

telephoned the President, who was on vacation at his home in Hyde Park, New York, urging that the problem be given serious consideration. The latter appreciated the gravity of the situation, and without delay called a conference of Jesse H. Jones, chairman of the Reconstruction Finance Corporation, Eugene R. Black, Governor of the Federal Reserve Board, and a representative of the office of the Comptroller of the Currency. A few hours later a dispatch from Hyde Park quoted the President as favoring the financing by the Government of the increased wage costs under the NRA.

Almost immediately Jones, Black, and others began assembling in Washington to formulate plans for aiding industry. The next development was on August 30, 1933, when Jones stated (1) that banks possessed adequate credit to finance business loans and (2) that the Reconstruction Finance Corporation would do everything possible to help the NRA program. At this time he also announced that a study was being made of the R.F.C. Act to determine what powers the corporation possessed to aid industry. Then on September 16, 1933 he issued the following statement:

For the purpose of assisting business and industry directly in co-operation with the NRA program, the Reconstruction Finance Corporation will make loans to banks and trust companies at 3 per cent interest, for any part of six months, which will re-lend,

- (a) For the purchase of materials for manufacture,
- (b) To cover the actual cost of labor in manufacture and processing of material,
- (c) To assist merchants especially affected by the NRA.

Jones also offered a proposal for the organization of local mortgage companies to supplement bank lending where loans were of a sound character but slow; industries were to be permitted to join in a co-operative local movement to seek loans from the Reconstruction Finance Corporation on collateral on which banks had been hesitant to extend credit; and in particular, the local mortgage companies were to be permitted to accept mortgages on plant equipment. Thus,

do his part, it furnished no method for exerting pressure upon the banker to extend credit necessary to tide the former over the period which would have to elapse before increased wages paid out came back as increased sales. He felt that large corporations would be able to arrange to meet the higher pay rolls, but that small firms had exhausted their working capital and would undoubtedly experience difficulty in borrowing.

Sachs was unable to secure action on Dahlberg's memorandum because it contained no plan for meeting the situation. Similar memoranda were written in August by such advisers as Stephen M. DuBrul and Albert J. Hettinger.

TABLE L
 NUMBER OF ESTABLISHMENTS REPORTING CREDIT DIFFICULTY IN RE-
 LATION TO TOTAL ESTABLISHMENTS CUSTOMARILY BORROWING,
 CLASSIFIED BY SIZE AND BY INDUSTRY GROUPS — 1933

Source: U. S. Census Bureau

Industry Group (Arranged according to the extent of credit difficulty)	Total borrow- ing	Experiencing Difficulty							
		Number					Per cent		
		Total	Number Employees			Total	Number Employees		
			Less than 50	50 to 100	100 to 250		Less than 50	50 to 100	100 to 250
Total for all indus- tries	4,387	1,964	694	749	521	44.8	15.8	17.1	11.9
Chemical and allied products	123	30	8	12	10	24.4	6.5	9.8	8.1
Products of petroleum and coal	12	3	1	.....	2	25.0	8.3	.....	16.7
Paper & allied products	184	69	22	26	21	37.5	12.0	14.1	11.4
Leather and its manu- factures	239	93	29	36	28	38.9	12.1	15.1	11.7
Printing, publishing & allied industries	93	39	17	15	7	41.9	18.3	16.1	7.5
Textiles and their products	1,189	517	186	177	154	43.5	15.6	14.9	13.0
Iron & steel & their products, not in- cluding machinery	329	144	37	57	50	43.8	11.3	17.3	15.2
Miscellaneous industries	287	128	53	51	24	44.6	18.5	17.8	8.3
Machinery, not includ- ing transportation equipment	546	245	86	94	65	44.9	15.8	17.2	11.9
Non-ferrous metals and their products	199	90	34	38	18	45.2	17.1	19.1	9.0
Food and kindred products	481	218	79	85	54	45.3	16.4	17.7	11.2
Stone, clay & glass products	151	79	24	34	21	52.3	15.9	22.5	13.9
Rubber products	38	20	3	8	9	52.6	7.9	21.0	23.7
Transportation equipment, air, land, & water	91	49	23	12	14	53.8	25.3	13.2	15.3
Forest products	425	240	92	104	44	56.5	21.6	24.5	10.4

at this point the Government took a definite emergency step to provide American industry with much-needed working capital through loans at low interest rates. Nevertheless, as we shall see, despite this gesture by the Administration, some firms, especially small concerns which usually had been financed locally, had great difficulty in secur-

ing adequate credit for financing production and thereby were prevented from increasing employment.

3. The Inadequacy of Credit for Small Manufacturers

So far we have merely demonstrated that working capital of American business had been seriously depleted during the depression. We now show the extent to which business men experienced difficulty in securing credit to finance the NRA program. For this purpose a survey conducted in the summer of 1934 by the U.S. Census Bureau for the Business Advisory and Planning Council⁶ is illuminating.

Even allowing for bias arising from the fact that firms experiencing hardship in securing loans would be most likely to reply to the Bureau's questionnaire, Table L shows large percentages of the small and medium-size plants in all industries experiencing credit difficulties; furthermore, in almost all the industries listed greater percentages of small than of large firms had trouble. Apparently a real credit problem existed, despite efforts of the Reconstruction Finance Corporation. Indeed, in one section of the report of the survey it is stated that criticisms of those replying to the questionnaires were "principally leveled against the sudden changes in bank policy, the attitude of bank examiners, and the utter collapse of the Reconstruction Finance Corporation as a means of direct aid to industry."

Surprising as it may seem, many small business men reported to the Bureau unfilled orders on hand for which necessary working capital loans could not be obtained. Indeed, in many cases the need for immediate credit was so very great that firms having large unfilled orders faced complete shutdown. That the problem of credit was a national one is shown clearly by Table LI. In every Federal Reserve District there were comparable percentages of firms suffering financing difficulties, the greatest trouble being experienced in the Atlanta and Richmond districts which, incidentally, suffered most from increased code wages (see Chapter VII, Section 7). Moreover, Table LII shows that the percentages experiencing credit difficulty varied inversely with the size of the firm. Of the 1,364 firms employing between 21 and 50 wage earners, 50.9 per cent reported credit difficulty, yet strangely enough, 23.3 per cent of the 210 firms of this size which

⁶On July 31, 1934 the Census Bureau mailed a questionnaire to 16,500 manufacturing establishments estimated to employ no less than 30 and no more than 190 wage earners. Then, in order to increase the available sample, on August 22 a follow-up was sent to approximately 12,000 of these firms, and as a result of the two efforts 7,669 returns were received.

RELATIVE IMPORTANCE OF MANUFACTURING ESTABLISHMENTS REPORTING CREDIT DIFFICULTY BY FEDERAL RESERVE DISTRICTS — 1933
(All values expressed in thousands of dollars)
Source: U. S. Census Bureau

Federal Reserve District	Group totals										Firms reporting difficulty				
	Number of establishments	Value of manufactured products	Average number of Em-ployees	Annual Pay roll	Expendi-tures for repairs & replace-ments	Per Cent of estab-lish-ments	Per Cent of manu-factured products	Average Per Cent of Em-ployees	Per Cent Annual Pay roll	Per Cent Expendi-tures for repairs & replace-ments					
Total	6,158	\$1,849,947	528,929	\$473,179	\$27,475	31.9	25.3	30.5	27.4	28.0					
A—Total establishments included in Survey															
1. Boston	746	198,798	62,543	56,583	3,156	29.2	21.6	27.4	23.3	19.8					
2. New York	1,364	431,306	113,347	117,245	5,672	30.4	24.7	28.8	26.5	31.5					
3. Philadelphia	752	199,669	65,252	55,194	3,163	32.8	27.8	33.2	30.4	27.7					
4. Cleveland	683	207,924	60,329	54,795	3,584	31.2	24.8	29.3	26.0	32.5					
5. Richmond	329	84,919	31,070	20,384	1,516	34.7	27.7	32.5	30.8	30.3					
6. Atlanta	279	68,852	24,876	13,652	1,168	37.6	28.4	36.6	33.3	31.3					
7. Chicago	1,116	353,022	97,054	88,984	4,694	33.7	25.5	31.2	28.6	28.2					
8. St. Louis	289	94,669	26,800	22,237	1,192	31.8	24.5	31.4	26.1	19.9					
9. Minneapolis	99	38,921	8,115	7,271	391	33.3	28.6	35.0	31.4	27.1					
10. Kansas City	107	39,782	8,298	7,330	657	26.2	23.2	25.5	22.6	28.8					
11. Dallas	92	31,845	8,152	5,486	491	28.3	24.5	29.1	27.4	26.5					
12. San Francisco	302	100,240	23,098	24,068	1,791	32.1	26.7	30.5	29.2	23.6					
B—Total establishments included in Survey reporting to be borrowers															
Total	4,387	\$1,307,068	379,892	\$328,764	\$19,602	44.8	35.8	42.5	39.5	39.2					
1. Boston	489	125,444	40,621	35,235	2,113	44.6	34.6	42.1	37.4	29.6					
2. New York	938	297,180	78,221	79,612	3,747	44.2	35.8	41.8	39.0	47.7					
3. Philadelphia	528	136,918	46,742	38,351	2,095	46.8	40.6	46.4	43.8	41.9					
4. Cleveland	456	136,808	39,922	34,622	2,463	46.7	37.8	44.2	41.1	47.3					
5. Richmond	246	64,936	23,773	15,067	1,203	46.3	36.3	42.5	41.7	38.2					
6. Atlanta	226	54,073	20,532	11,014	957	46.5	36.2	44.4	41.3	38.1					
7. Chicago	826	251,708	71,908	64,184	3,433	45.5	35.7	42.1	39.7	38.5					
8. St. Louis	208	69,966	19,853	15,996	840	44.2	33.1	42.3	36.2	28.2					
9. Minneapolis	84	32,736	6,779	5,841	323	39.3	34.0	41.9	39.1	32.8					
10. Kansas City	87	32,280	6,873	5,939	477	32.2	28.5	30.8	27.8	39.6					
11. Dallas	77	28,488	7,021	4,685	438	33.8	27.3	33.8	32.1	29.7					
12. San Francisco	222	76,531	17,647	18,218	1,513	43.7	34.9	39.9	38.5	27.9					

TABLE LII
BORROWING ESTABLISHMENTS CLASSIFIED BY SIZE AND ACCORDING TO RATIO, SHOWING THE PERCENT-
AGES THAT REPORTED CREDIT DIFFICULTY IN EACH SIZE-GROUP, 1933

Source: U. S. Census Bureau

Number of Employees	Total	Current Ratio					
		Under 1.0	1.0 to 1.4	1.5 to 1.9	2.0 to 2.4	2.5 to 2.9	3.0 and over
21 — 50	1,364	210	177	194	152	98	533
	50.9	76.7	67.2	66.0	52.0	49.0	29.8
51 — 100	1,715	231	208	188	168	115	805
	43.7	76.6	68.3	56.9	51.8	47.0	22.6
101 — 250	1,308	149	166	160	147	94	592
	39.8	79.9	62.0	56.3	45.6	35.1	18.4
Total	4,387	590	551	542	467	307	1,980
	44.8	77.5	66.1	60.0	49.9	44.0	23.3

	Total	Net Worth to Debt Ratio					
		Under 1.0	1.0 to 1.4	1.5 to 1.9	2.0 to 2.4	2.5 to 2.9	3.0 and over
21 — 50	1,364	259	147	137	106	86	629
	50.9	68.3	68.0	63.5	56.6	52.3	35.8
51 — 100	1,715	274	159	141	114	109	918
	43.7	69.0	67.9	57.4	55.3	62.4	26.1
101 — 250	1,308	180	122	106	96	87	717
	39.8	61.1	63.1	59.4	64.6	34.8	25.0
Total	4,387	713	428	384	316	282	2,264
	44.8	66.8	66.6	60.2	58.5	50.7	28.4

had low current ratios (under 1.0) experienced no trouble. At the other extreme, nearly one-third of all establishments having the excellent ratios of 3.0 or better were unable to secure requisite financial aid. Most significant, although obviously to be expected, was the fact that much smaller percentages in each of the groups of the larger firms found it hard to obtain credit.

The most startling discovery of the entire survey was that 22.9 per cent of the establishments reporting credit difficulties fell within the very select group having current ratios of 3.0, and more than nine-tenths of these establishments also had net-worth-to-debt ratios of 3.0

TABLE LIII
NET-WORTH-TO-DEBT RATIOS AND CURRENT RATIOS OF FIRMS
EXPERIENCING DIFFICULTY IN OBTAINING CREDIT
(4387 Establishment in all industries)

Source: U. S. Census Bureau

Net Worth to Debt Ratio	Current Ratio									
	Total		Under 1.0		1.0 — 1.9		2.0 — 2.9		3.0 and over	
	Diff.	NoDiff.	Diff.	NoDiff.	Diff.	NoDiff.	Diff.	NoDiff.	Diff.	NoDiff.
Under 1.0	24.2	9.8	12.5	3.2	10.2	5.2	1.0	0.9	0.7	0.5
1.0 — 1.9	26.3	12.2	5.9	1.0	13.1	4.7	5.5	5.0	1.9	1.5
2.0 — 2.9	16.7	11.1	2.9	0.5	5.7	2.9	5.2	4.3	2.9	3.5
3.0 and over	32.8	66.9	2.0	0.7	6.2	3.9	7.1	6.7	17.5	55.6
Total	100.0	100.0	23.3	5.5	35.0	16.7	18.8	16.7	22.9	61.1

and over. Only slightly less surprising, 18.8 per cent of the establishments reporting trouble in negotiating loans had current ratios between 2.0 and 2.9, and two-thirds of these had ratios of net worth to debt of 2.0 and over. The existing conditions with respect to these ratios are exhibited more fully in Table LIII.

In appraising the situation we believe that the 17.5 per cent of establishments having both current and net-worth-to-debt ratios of 3.0 or better should have been granted financial assistance in any economic order containing a sound banking system. It is possible that some of these concerns were regarded as poor moral risks,⁷ but it is much more likely that credit stringency was due to the closing of the banks, the Securities Act, and the divorcement of investment and

⁷A test was made of 260 firms reporting a current ratio and net-worth-to-debt ratio of 2.0 or better by examining credit ratings in Dun and Bradstreet. Although the firms were essentially small, 38.1 per cent were rated high and 25.5 per cent more rated good.

commercial banking. In fact, in considering the problem of management, the writers of the report of the survey observed:

GRANTED that many of these concerns experiencing difficulty suffered from poor or only fair management, the proportion could not be as great as that statistically pictured here without many of these establishments having gone into bankruptcy long before four years of depression had eaten into their capital.

Derived from this same survey were criticisms of the inadequacy of sources of credit from all classes of manufacturers, regardless of whether they had trouble in borrowing or not, the complainants, in general, charging that the mania of banks for liquidity, incited by bank examiners, had resulted in the restriction of loans, and had curtailed production and employment. Some few urged that the Securities Act should be amended so as to facilitate security flotation by small manufacturers, but, as appears from Table LIV, the effect of this act on small business men was negligible; most manufacturers of the size canvassed had been accustomed to obtaining working-capital loans directly from their banks rather than from the general security markets. Therefore, it is not surprising that complaints⁸ re-

⁸Some typical criticisms follow:

"Under the present system, credit is available at the banks. However, to be eligible you must prove that credit is not needed."

"The loan market, manifestly, is a borrowers' market for those in a position to borrow. Many small concerns, however, are unable to borrow upon the basis upon which the banks are willing to lend.

"All attempts to secure normal credit accommodations from our banks during peak seasons have been invariably denied. This curtailment of credit facilities has unquestionably worked to our disadvantage, as we are unable to avail ourselves of the full productive capacity of our excellently equipped plant."

"We believe a large part of the present industrial credit stringency is due to the policy of the National Bank Examiners who have during the past year been discouraging in every possible way the granting of loans to industries which are not backed by collateral with a ready liquidating value much in excess of the amount of the loans required. Those concerns that have collateral of this kind are not in need of loans."

"On the execution of a real estate mortgage of this plant the Federal Reserve Bank will loan us \$25,000, and upon receipt of an up-to-date appraisal, they will loan us, in the event the appraisal comes better than \$318,000, \$32,000 more. (This is an additional expense that we did not think was necessary, but for your information, our plant will appraise better than \$400,000).

"Experiences at both the R.F.C. and the Federal Reserve to date have been anything but satisfactory. A direct refusal upon the submission of papers we could understand, but to string along raising new conditions which are met from time to time and creating the impression that a loan is just around the corner creates the suspicion that you are being kidded."

"During the past ten months, the writer has reviewed or assisted free of charge approximately 1,000 corporations seeking loans at the R.F.C. This service has been performed for a mortgage loan company set up for the specific purpose

volved around banks and the R.F.C. which, as we saw in Section 2 of this chapter, had entered the field of industrial lending to help business men handicapped by the NRA plan of higher wage costs.

From the facts so far assembled, we must conclude that at the inception of the NRA and for at least one year afterward business in general had suffered great depletion of working capital and the needs of small firms, in particular, were great. The latter, moreover, had experienced much difficulty in obtaining bank loans even when

TABLE LIV
SOURCES FROM WHICH MANUFACTURERS OBTAINED CAPITAL FUNDS
PRIOR TO 1934

Source: U. S. Census Bureau

Nature of Source	Establishment Reporting			
	Credit Difficulty		No Credit Difficulty	
	Working-Capital Loans	Long-Term Loans	Working-Capital Loans	Long-Term Loans
Banks	1,534	196	1,980	144
Current Operations	146	17	127	24
Personal and Private Loans	115	88	67	44
Stocks	58	96	38	77
Merchandise Creditors	35	6	18	3
Factors	36	5	20	0
Finance Companies	25	9	5	3
Trust Companies	8	0	22	7
Parent Companies	5	4	15	6
Bonds	1	100	1	47
Mortgage Companies	0	102	0	56
Machinery Manufacturing	0	6	0	6
Miscellaneous	73	32	29	27

offering collateral previously regarded as ample. Furthermore, the R.F.C. failed them in their hour of need. Also, as we shall presently see, small retailers frequently discovered that manufacturers' codes had seriously restricted previous sources of credit on which they had relied for working-capital needs.

of lending and borrowing under Circular No. 11 issued by the R.F.C. So far, not one loan has been consummated.

"We applied for an R. F. C. loan which was approved, but conditions under which loans could be secured were so hide-bound as to cramp credit relations with market sources of raw materials and did not afford desired relief because of restrictions as to use of the funds. We preferred to limit our operations according to our own ability to finance."

"It took us 8 months to secure our R.F.C. loan at our expense of approximately 3 per cent of the loan. Our loan will cost us approximately 9 per cent."

TABLE LV
EFFECTS OF NRA CODES ON NUMBER EMPLOYED, PAY ROLLS, AND INCOME PER WORKER FOR ESTABLISHMENTS
CLASSIFIED ACCORDING TO SIZE

Source: Special Questionnaire, U. S. Census Bureau

Size of Establishment by Number of Employees, June, 1933	Number of Establishments October, 1933	Per Cent Distribution of Establishments	Number of Employees, June	Per Cent Distribution of Employees, June	Per Cent Increase in Number Employed, October, 1933	Weekly Pay rolls, June, 1933	Per Cent Increase in Pay rolls, October, 1933	Weekly Income Per Worker, June, 1937	Per Cent Increase in Weekly Income Per Worker, October, 1933
North Carolina									
0	133	3.4	5,862	3.7	30.1	\$ 103,209	33.9	\$17.60	3.0
1-5	2,212	56.3	9,083	5.7	23.7	142,154	27.3	15.65	2.9
6-20	881	22.5	7,864	4.9	11.6	93,012	28.5	11.83	15.1
21-50	246	6.3	10,011	6.3	11.8	105,001	35.1	10.49	20.8
51-100	139	3.5	55,168	34.7	7.1	566,874	35.8	10.23	26.8
101-500	260	6.6	24,739	15.6	8.1	255,638	30.0	10.33	20.2
501-1000	36	0.9	25,118	15.8	11.9	294,130	23.9	11.71	15.3
1001-2500	17	0.4	21,242	13.3	16.1	303,426	22.2	14.28	5.3
2501 and over	3	0.1							
Massachusetts									
0	514	3.1	24,297	6.6	18.5	\$ 532,324	25.1	\$21.91	5.6
1-5	10,302	61.7	37,345	10.2	14.9	837,226	17.1	22.42	1.9
6-20	3,655	21.9	36,060	9.9	11.6	740,220	14.8	20.53	1.7
21-50	1,161	7.0	33,176	9.0	11.7	656,800	13.6	19.80	1.6
51-100	470	2.8	98,656	26.9	11.2	1,942,244	14.9	19.69	3.4
101-500	469	2.8	49,122	13.4	10.1	939,211	10.6	19.12	0.5
501-1000	73	0.4	51,667	14.1	11.9	1,073,063	17.3	20.77	-0.1
1001-2500	34	0.2	36,061	9.9	19.5	703,260	27.0	19.50	6.3
2501 and over	10	0.1							
Ohio									
0	923	4.1	35,234	7.6	21.7	\$ 641,303	27.2	\$18.20	4.6
1-5	14,762	64.9	45,826	10.0	15.4	871,233	20.8	19.01	4.7
6-20	4,513	19.8	41,157	8.9	16.4	746,140	21.3	18.13	4.2
21-50	1,283	5.6	43,525	9.4	12.3	826,560	18.0	18.99	5.1
51-100	604	2.7	114,516	24.9	15.0	2,277,156	20.8	19.83	5.0
101-500	548	2.4	48,599	10.6	14.2	1,017,760	15.3	20.94	1.0
501-1000	70	0.31	50,106	10.9	20.8	1,128,303	21.2	22.53	0.4
1001-2500	32	0.14	81,571	17.7	23.0	1,875,342	16.8	23.09	-5.1
2501 and over	12	0.05							

4. *The Incidence of the NRA According to Size of Establishments*

With industry suffering from shortage of working capital, Congress, if given ample time for debate of the NIRA, should have recognized that a program of higher wages would have added additional burdens. It is reasonable to suppose, for instance, that many of the producers and distributors, who had experienced shortages of working capital, had been forced to cut wages after banks denied them loans.

As a matter of fact, data collected by the U. S. Census Bureau⁹ seem to indicate, in some measure at least, that the heaviest burdens of NRA wage increases, in general, fell upon the small industrialist. In more detail, from Table LV it appears that the largest percentage increases in the number of workers occurred in the two groups: (1) those which, in June, 1933, employed 1-20 workers, and (2) those which in the same month had over 2500 employees. On the other hand, the smallest percentage increase in employment oc-

⁹In the fall of 1933, the Bureau of the Census sent out a questionnaire on the operation of the President's Re-employment Agreement asking for information on employment and pay rolls for the weeks including the 15th of June and the 15th of October. Later in the year the NRA requested that these data for Ohio, North Carolina, and Massachusetts, be tabulated separately by size of establishment.

There has been some criticism of the accuracy of this PRA material. In particular, the returns showed nearly a million more employed during the June to October code period than did samples of the Bureau of Labor Statistics. Then again, it has been charged that those receiving questionnaires frequently falsified returns in order to make good re-employment and pay-roll showings. On the other hand, an examination of the material affords some reason for placing at least slight confidence in it despite its method of collection. For instance, in discussing the reliability of PRA data which were used in an NRA report, Spurgeon Bell of Ohio State University declared: "A consistent story in the case of the three states analyzed suggests that the information is not a random set of meaningless data. For example, it would be expected that the plants employing 6 to 20 persons would be more important in the large cities than in the town and country areas, and the data so show. It is quite probable that some of the chain stores may have reported their stores as one concern but the higher percentage of small concerns in the figures as they stand indicates that these errors were probably not so large in the mass as to destroy the usefulness of the data. There is no important evidence that the large groups reported as small establishments were not in fact small establishments. If some of the small ones have by mistake been classified as large establishments, this error would apparently tend to make the relatively large increase in employment and pay rolls appearing in the data for the small concerns less striking than it would have been if all of the small concerns had reported as small. . .

"The reader's attention is also called to the similarity of the relationship between the several classes of firms as to number of employees, total pay-roll percentage increase, distribution of total employment increases, etc. The consistency of the relationships can hardly grow out of random data. To prove that the mass data have no significance, it would be necessary to explain this consistency on the basis of some consistent bias which would account for it."

TABLE LVI
ANALYSIS OF CHANGES ACCORDING TO INCREASE AND DECREASE IN NET WORTH AND BY FOUR CAPITAL GROUPINGS OF 6,496 CONCERNS DIVIDED INTO BROAD INDUSTRIAL AND COMMERCIAL CLASSIFICATIONS

Source: Dun and Bradstreet

ANALYSIS OF CONCERNS WHICH SHOW INCREASE IN NET WORTH				ANALYSIS OF CONCERNS WHICH SHOW DECREASE IN NET WORTH				ANALYSIS OF ALL CONCERNS				
CAPITAL GROUPING	No. of Concerns	Net Worth Dec. 31, 1933	Increase in Net Worth During 1933	%	No. of Concerns	Net Worth Dec. 31, 1933	Decrease in Net Worth During 1933	%	No. of Concerns	Total Net Worth	Final Increase or Decrease During 1933	%
CAPITAL GROUPING												
\$ 10,000 to \$ 50,000	235	\$ 6,137,998	\$ 766,125	14.0	202	\$ 6,124,865	\$ 948,619*	15.6*	487	\$ 11,262,873	\$ 192,494*	1.7*
50,000 to 200,000	188	17,761,318	1,499,380	9.2	156	15,331,636	1,524,989*	9.0*	344	33,092,854	25,659*	0.1*
200,000 to 500,000	55	17,562,872	1,025,980	6.2	37	11,730,324	1,448,746*	11.0*	92	29,293,196	422,756*	1.4*
Above 500,000	35	35,951,131	2,282,480	6.8	28	30,203,515	1,751,091*	5.5*	63	66,154,646	531,389	0.8
Total	513	\$77,413,229	\$5,563,895	7.7	423	\$62,890,340	\$5,673,415*	7.3*	936	\$139,808,569	\$109,520*	0.1*
CAPITAL GROUPING												
\$ 10,000 to \$ 50,000	465	\$ 11,678,011	\$1,589,178	15.2	275	\$ 6,869,323	\$ 905,375*	11.7*	740	\$ 18,547,334	\$ 635,303	3.3
50,000 to 200,000	245	22,146,871	1,876,766	9.3	124	11,492,439	1,300,015*	10.2*	369	33,639,010	576,741	1.7
200,000 to 500,000	53	14,804,030	1,588,997	12.0	33	10,855,483	569,504*	5.0*	86	25,559,513	1,019,493	4.1
Above 500,000	39	54,372,356	3,342,101	6.5	23	31,383,414	2,123,066*	6.3*	62	86,255,800	1,219,035	1.5
Total	802	\$103,500,998	\$8,347,032	8.8	455	\$60,600,659	\$4,898,460*	7.5*	1257	\$164,101,657	\$9,448,572	2.1
CAPITAL GROUPING												
\$ 10,000 to \$ 50,000	118	\$ 3,432,155	\$ 398,668	13.1	130	\$ 3,679,958	\$ 705,383*	16.1*	248	\$ 7,112,113	\$ 306,736*	4.1*
50,000 to 200,000	146	14,661,152	1,161,295	8.6	154	15,780,133	1,769,614*	10.1*	300	30,441,285	608,310*	2.0*
200,000 to 500,000	30	9,225,313	664,172	7.8	52	15,663,236	1,701,783*	9.8*	82	24,888,549	1,037,611*	4.0*
Above 500,000	18	15,364,948	512,595	3.5	25	29,961,236	2,548,140*	7.8*	43	45,326,184	2,035,545*	4.3*
Total	312	\$42,683,563	\$2,736,720	6.9	361	\$63,084,563	\$6,724,930*	9.4*	673	\$107,768,131	\$3,985,210*	3.6*
CAPITAL GROUPING												
\$ 10,000 to \$ 50,000	27	\$ 717,317	\$ 107,818	17.7	14	\$ 410,864	\$ 46,297*	10.1*	41	\$ 1,126,181	\$ 61,521	6.8
50,000 to 200,000	19	1,769,473	139,609	8.6	14	1,371,639	64,470*	4.5*	38	3,141,112	75,139	2.5
200,000 to 500,000	10	3,165,290	267,396	9.2	1	215,500	98*	0.0*	11	3,380,790	267,289	8.6
Above 500,000	10	16,708,084	1,004,351	6.4	9	8,292,922	407,171*	4.7*	19	25,001,006	597,180	2.4
Total	66	\$22,360,164	\$1,519,174	7.3	38	\$10,290,325	\$ 618,036*	4.8*	104	\$ 32,651,089	\$1,001,138	3.2

*Decrease

TABLE LVI (Continued)

CAPITAL GROUPING	ANALYSIS OF CONCERNS WHICH SHOW INCREASE IN NET WORTH				ANALYSIS OF CONCERNS WHICH SHOW DECREASE IN NET WORTH				ANALYSIS OF ALL CONCERNS			
	No. of Concerns	Net Worth Dec. 31, 1933	Increase in Net Worth During 1933	%	No. of Concerns	Net Worth Dec. 31, 1933	Decrease in Net Worth During 1933	%	No. of Concerns	Total Net Worth	Final Increase or Decrease During 1933	%
STONE, CLAY, GLASS & THEIR PRODUCTS												
\$10,000 to \$ 50,000	103	2,428,744	295,991	13.8	72	1,821,058	205,356*	12.4*	175	4,249,797	89,735	4.2
50,000 to 200,000	49	5,250,525	450,871	9.4	23	2,015,483	184,134*	8.8*	72	7,266,013	256,237	3.7
200,000 to 500,000	10	2,853,496	223,230	8.5	6	1,433,562	90,956*	6.0*	16	4,287,058	132,274	3.2
Above 500,000	6	5,610,706	219,806	4.1	5	3,886,398	236,310*	5.7*	11	9,507,104	17,004*	0.2*
Total	168	16,143,471	1,187,998	7.9	106	9,166,501	726,756*	7.3*	274	25,309,972	461,242	1.9
IRON, STEEL & THEIR PRODUCTS												
\$10,000 to \$ 50,000	20	526,316	57,158	12.2	28	739,576	96,607*	11.6*	48	1,265,892	39,449*	3.0*
50,000 to 200,000	21	2,173,245	213,714	10.9	35	3,192,828	416,271*	11.5*	56	5,386,073	202,557*	3.6*
200,000 to 500,000	9	2,833,826	368,461	14.9	9	2,866,095	392,721*	12.1*	18	5,699,921	24,260*	0.4*
Above 500,000	11	14,255,556	390,903	2.8	9	11,369,723	275,856*	2.4*	20	25,625,279	115,047	0.5
Total	61	19,788,943	1,030,236	5.5	81	18,168,222	1,181,453*	6.1*	142	37,957,165	151,219*	0.4*
NON-FERROUS METALS												
\$10,000 to \$ 50,000	142	3,668,799	408,532	12.5	174	4,300,205	622,037*	12.7*	316	7,969,004	214,505*	2.6*
50,000 to 200,000	99	9,389,801	774,367	9.0	88	8,412,646	783,931*	8.9*	187	17,802,447	9,514*	0.1*
200,000 to 500,000	24	7,339,995	508,678	7.4	30	8,682,270	499,438*	5.4*	54	16,032,265	9,240	0.1
Above 500,000	17	19,104,256	1,370,684	7.7	32	62,252,445	3,203,233*	5.3*	49	71,356,701	1,832,549*	2.5*
Total	282	39,502,851	3,062,261	7.7	324	73,657,565	5,109,639*	6.5*	606	113,160,417	2,047,423*	1.8*
NON-FERROUS METALS												
\$10,000 to \$ 50,000	36	872,815	140,505	19.2	58	1,300,329	210,038*	13.9*	89	2,173,144	69,533*	3.1*
50,000 to 200,000	16	1,845,361	218,692	16.3	26	2,554,131	215,364*	7.8*	42	4,499,462	8,328	0.1
200,000 to 500,000	2	597,357	15,179	2.3	3	1,009,011	330,234*	24.1*	5	1,606,368	304,055*	15.9*
Above 500,000	9	28,584,939	1,337,854	4.9	5	6,031,458	487,922*	7.0*	14	34,576,857	879,932	2.6
Total	63	31,699,332	1,713,230	5.7	87	10,954,929	1,293,558*	9.3*	150	42,554,581	509,672	1.2

*Decrease

TABLE LVI (Continued)
ANALYSIS OF CHANGES ACCORDING TO INCREASE AND DECREASE IN NET WORTH AND BY FOUR CAPITAL GROUPINGS OF 6,496 CONCERNS DIVIDED INTO BROAD INDUSTRIAL AND COMMERCIAL CLASSIFICATIONS

		ANALYSIS OF CONCERNS WHICH SHOW INCREASE IN NET WORTH				ANALYSIS OF CONCERNS WHICH SHOW DECREASE IN NET WORTH				ANALYSIS OF ALL CONCERNS			
		No. of Concerns	Net Worth Dec. 31, 1933	Increase in Net Worth During 1933	%	No. of Concerns	Net Worth Dec. 31, 1933	Decrease in Net Worth During 1933	%	No. of Concerns	Total Net Worth	Final Increase or Decrease During 1933	%
CAPITAL GROUPING													
CAPITAL GROUPING													
10,000 to \$ 50,000	40	940,160	152,183	19.3	50	1,216,915	217,578*	18.2*	90	2,166,175	65,396*	2.9*	
50,000 to 200,000	20	1,929,988	200,678	11.6	30	3,119,171	468,818*	13.1*	50	5,049,159	268,140*	5.0*	
200,000 to 500,000	6	1,846,172	148,788	8.3	6	1,719,824	161,186*	3.6*	12	3,565,497	12,448*	0.3*	
Above 500,000	2	4,653,105	181,293	3.4	4	5,474,895	209,671*	3.7*	6	10,138,000	58,378*	0.6*	
Total	68	9,379,425	652,892	7.5	90	11,529,405	1,057,253*	8.4*	158	20,908,831	404,361*	1.9*	
CAPITAL GROUPING													
DRUGS, CHEMICALS & PAINTS													
10,000 to \$ 50,000	60	1,374,935	195,856	16.6	67	1,567,194	231,758*	12.9*	127	2,942,132	35,892*	1.2*	
50,000 to 200,000	25	2,700,225	199,673	8.0	31	3,021,259	392,615*	11.5*	56	5,721,484	192,942*	3.3*	
200,000 to 500,000	9	2,530,309	149,810	6.3	14	4,632,491	202,185*	4.2*	23	7,162,800	52,375*	0.7*	
Above 500,000	11	16,835,041	1,103,021	7.0	6	5,574,770	664,976*	10.7*	17	22,409,811	488,045	2.0	
Total	105	23,440,513	1,648,370	7.6	118	14,795,714	1,491,534*	9.2*	223	38,235,227	156,836	0.4	
CAPITAL GROUPING													
PETROLEUM, COAL & THEIR PRODUCTS													
10,000 to \$ 50,000	34	853,867	101,742	13.5	44	1,125,111	182,656*	14.0*	78	1,978,978	80,914*	3.9*	
50,000 to 200,000	31	3,147,693	252,932	8.7	23	2,273,515	181,375*	7.4*	54	5,421,208	71,557	3.0	
200,000 to 500,000	7	2,849,709	265,178	12.7	3	820,161	68,919*	7.8*	10	3,169,870	195,259	6.6	
Above 500,000	3	2,234,308	79,385	3.7	5	3,383,014	197,389*	2.3*	8	10,617,322	118,004*	1.1*	
Total	75	8,555,577	699,287	8.9	75	12,601,801	630,339*	4.8*	150	21,197,378	68,898	0.3	
CAPITAL GROUPING													
RUBBER & RUBBER PRODUCTS													
10,000 to \$ 50,000	12	263,833	43,124	19.5	7	149,086	12,863*	7.9*	19	412,818	30,261	7.9	
50,000 to 200,000	2	121,522	16,579	15.8	2	200,079	28,146*	12.3*	4	321,601	11,567*	3.5*	
200,000 to 500,000	3	908,669	23,007	3.2	-	-	-	-	3	908,569	28,007	3.2	
Above 500,000	1	1,054,716	31,468	3.1	1	544,077	4,415*	0.8*	2	1,598,793	27,053	1.7	
Total	18	2,348,640	119,178	5.3	10	893,241	45,424*	4.8*	28	3,241,881	73,754	2.3	

*Decrease

TABLE LVI (Continued)

ANALYSIS OF CONCERNS WHICH SHOW INCREASE IN NET WORTH				ANALYSIS OF CONCERNS WHICH SHOW DECREASE IN NET WORTH				ANALYSIS OF ALL CONCERNS				
CAPITAL GROUPING	No. of Concerns	Net Worth Dec. 31, 1933	Increase in Net Worth During 1933 %	No. of Concerns	Net Worth Dec. 31, 1933	Decrease in Net Worth During 1933 %	No. of Concerns	Total Net Worth	No. of Concerns	Total Net Worth	Final Increase or Decrease During 1933 %	
												MACHINERY & ELECTRICAL EQUIPMENT
CAPITAL GROUPING												
10,000 to \$ 50,000	67	1,639,119	176,235	12.0	61	1,720,908	316,057*	16.5*	128	3,360,027	139,822*	4.0*
50,000 to 200,000	49	4,854,261	393,847	8.8	53	4,835,065	531,652*	9.9*	102	9,699,326	187,805*	1.4*
200,000 to 500,000	12	3,386,284	244,641	7.8	22	7,310,881	552,479*	7.0*	34	10,697,165	307,838*	2.8*
Above 500,000	8	16,523,414	755,582	4.8	25	53,709,459	2,753,409*	4.9*	33	70,332,873	1,397,527*	2.8*
Total	136	26,503,078	1,570,305	6.3	161	67,576,813	4,153,587*	5.8*	297	94,079,391	2,553,292*	2.7*
CAPITAL GROUPING												
10,000 to \$ 50,000	150	4,209,481	559,801	15.3	125	3,143,177	496,117*	13.6*	275	7,352,658	63,684	0.9
50,000 to 200,000	65	5,963,454	567,101	10.5	77	7,025,316	1,061,743*	13.1*	142	12,988,769	494,542*	3.7*
200,000 to 500,000	10	2,763,706	252,312	10.0	14	3,972,235	794,150*	16.7*	24	6,785,941	541,838*	7.4*
Above 500,000	1	894,192	128,047	16.7	8	22,036,129	1,502,094*	6.4*	9	22,930,321	1,374,047*	5.7*
Total	226	18,830,833	1,507,261	12.2	224	36,176,856	3,854,104*	9.6*	450	50,007,689	2,346,843*	4.5*
CAPITAL GROUPING												
10,000 to \$ 50,000	193	4,897,621	608,912	14.2	215	5,506,985	886,227*	13.9*	408	10,404,606	277,315*	2.6*
50,000 to 200,000	112	10,727,911	803,918	8.1	133	12,408,902	1,277,785*	9.8*	245	23,136,813	473,867*	2.0*
200,000 to 500,000	20	5,937,942	358,032	6.4	39	11,419,175	732,314*	6.6*	59	17,357,117	374,282*	2.1*
Above 500,000	7	4,713,357	92,535	2.0	10	15,116,398	1,038,590*	6.5*	17	19,839,765	966,055*	4.6*
Total	332	26,276,831	1,863,397	7.6	397	44,451,460	3,954,916*	8.2*	729	70,738,291	2,091,519*	2.9*
CAPITAL GROUPING												
10,000 to \$ 50,000	91	2,196,571	364,440	19.9	85	2,245,597	457,924*	16.3*	176	4,442,168	73,484*	1.6*
50,000 to 200,000	48	4,809,576	318,526	7.4	49	4,817,646	462,203*	8.3*	97	9,427,222	143,677*	1.5*
200,000 to 500,000	13	8,942,953	117,907	3.1	9	2,896,425	648,668*	18.3*	22	6,839,378	530,756*	7.2*
Above 500,000	12	16,532,649	416,875	2.6	12	98,106,115	2,029,555*	5.1*	24	54,637,764	1,613,680*	2.9*
Total	164	27,281,749	1,216,748	4.7	155	48,064,788	3,578,345*	6.9*	319	75,346,532	2,261,597*	3.0*
Grand Totals	8391	490,739,802	34,437,934	7.5	3105	546,498,279	44,807,811*	7.6*	6496	1,037,143,081	10,363,877*	1.0*

*Decrease

TABLE LVII

COMPOSITE SUMMARY OF CHANGES ACCORDING TO INCREASE AND DECREASE IN NET WORTH IN 1933 OF 6,496 CONCERNS ACCORDING TO FOUR CAPITAL GROUPINGS, TWELVE FEDERAL RESERVE DISTRICTS, AND ALL BROAD DIVISIONS OF BUSINESS ACTIVITY

	ANALYSIS OF CONCERNS WHICH SHOW INCREASE IN NET WORTH				ANALYSIS OF CONCERNS WHICH SHOW DECREASE IN NET WORTH				ANALYSIS OF ALL CONCERNS			
	No. of Concerns	Net Worth Dec. 31, 1933	Increase in Net Worth During 1933	%	No. of Concerns	Net Worth Dec. 31, 1933	Decrease in Net Worth During 1933	%	No. of Concerns	Total Net Worth	Final Increase or Decrease During 1933	%
CAPITAL GROUPINGS												
\$ 10,000 to 50,000	1793	\$ 45,337,655	\$ 5,905,368	14.8	1802	\$ 40,920,345	\$ 6,522,400*	13.7*	3395	\$ 86,758,000	\$ 617,034*	0.7*
50,000 to 200,000	1135	108,852,076	9,087,388	9.1	1018	87,651,792	10,673,176*	9.3*	2153	206,703,868	1,686,787*	0.8*
200,000 to 500,000	273	82,047,823	6,227,698	8.2	278	86,236,174	8,185,346*	8.6*	551	167,283,997	1,955,648*	1.2*
Above 500,000	190	254,002,248	13,217,480	5.5	207	322,394,968	19,422,368*	5.7*	387	576,397,216	6,205,408*	1.1*
Total	3391	\$490,739,802	\$34,437,934	7.5	3105	\$546,403,279	\$44,801,811*	7.6*	6496	\$1,037,143,081	\$10,363,877*	1.0*
COMPOSITE SUMMARY OF CHANGES IN NET WORTH BY FEDERAL RESERVE DISTRICTS OF 6,496 CONCERNS IN 1933												
FEDERAL RESERVE DISTRICT												
No. 1	333	\$ 79,197,027	\$ 4,636,341	6.2	280	\$ 70,119,424	\$ 5,649,597*	7.5*	513	\$ 149,316,451	\$ 1,013,256*	0.7*
No. 2	350	47,995,295	3,458,983	7.3	373	76,126,767	5,316,730*	6.5*	723	124,122,062	1,857,747*	1.5*
No. 3	94	31,212,396	1,413,511	4.7	103	26,168,530	2,060,250*	7.3*	197	57,380,926	646,739*	1.1*
No. 4	298	30,119,397	2,532,332	9.2	325	42,639,960	3,866,517*	8.3*	621	72,758,357	1,334,165*	1.8*
No. 5	292	38,511,472	2,650,287	7.4	242	35,293,441	3,470,908*	9.0*	534	73,804,913	820,621*	1.1*
No. 6	281	34,190,237	2,948,722	9.4	171	31,300,548	1,997,239*	6.0*	452	65,490,785	951,433	1.5
No. 7	316	71,480,039	5,455,577	8.3	331	100,884,983	7,068,321*	6.5*	647	172,365,022	1,612,744*	0.9*
No. 8	333	43,539,800	3,905,804	9.8	200	27,316,948	2,121,560*	7.2*	533	70,816,748	1,734,244	2.6
No. 9	157	17,001,844	701,779	4.3	156	26,736,487	1,436,068*	5.1*	313	43,738,331	734,239*	1.7*
No. 10	306	36,211,033	2,669,518	8.0	313	38,269,501	3,453,271*	8.3*	619	74,470,534	783,753*	1.0*
No. 11	124	9,256,521	810,829	9.6	92	15,694,445	1,165,773*	6.9*	218	24,550,966	344,944*	1.4*
No. 12	509	51,964,741	3,254,231	6.7	519	55,863,245	7,205,527*	11.4*	1023	107,827,888	3,951,296*	3.5*
Total	3391	\$490,739,802	\$34,437,934	7.6	3105	\$546,403,279	\$44,801,811*	7.6*	6496	\$1,037,143,081	\$10,363,877*	1.0*

decrease

TABLE LVIII
COMPOSITE SUMMARY OF CHANGES IN NET WORTH BY BROAD INDUSTRIAL AND COMMERCIAL CLASSIFICATIONS OF 6,496 CONCERNS IN 1933

LINE OF BUSINESS	ANALYSIS OF CONCERNS WHICH SHOW INCREASE IN NET WORTH				ANALYSIS OF CONCERNS WHICH SHOW DECREASE IN NET WORTH				ANALYSIS OF ALL CONCERNS			
	No. of Concerns	Net Worth Dec. 31, 1933	Increase in Net Worth During 1933	%	No. of Concerns	Net Worth Dec. 31, 1933	Decrease in Net Worth During 1933	%	No. of Concerns	Total Net Worth	Final Increase or Decrease During 1933	%
LINE OF BUSINESS												
Food and Food Products	513	77,413,229	5,563,895	7.7	423	62,390,340	5,673,415*	7.3*	936	139,803,569	109,520*	0.1*
Textiles	802	163,500,998	8,347,032	8.8	455	60,600,669	4,898,460*	7.5*	1,257	164,101,657	3,448,572	2.1
Wood and Forest Products	312	42,689,568	2,736,720	6.9	361	65,084,563	6,724,930*	9.4*	673	107,768,131	3,988,210*	3.6*
Paper & Allied Products	66	23,360,164	1,519,174	7.3	33	10,290,925	518,036*	4.3*	104	32,651,089	1,001,138	3.2
Printing & Publishing	68	9,379,425	652,692	7.5	90	11,529,406	1,057,263*	8.4*	158	20,908,831	404,361*	1.9*
Drugs, Chemicals, Paints	105	23,440,513	1,648,370	7.6	118	14,795,714	1,491,534*	9.2*	223	38,236,227	156,836	0.4
Petroleum, Coal & Their Products	75	8,585,577	699,237	8.9	75	12,601,801	650,339*	4.8*	150	21,187,378	63,898	0.3
Rubber, & Rubber Products	18	2,348,640	119,178	5.3	10	893,241	45,424*	4.3*	28	3,241,881	73,754	2.3
Leather, Leather Products												
Shoes & Furs	168	16,143,471	1,187,998	7.9	106	9,166,501	726,755*	7.3*	274	25,309,972	461,242	1.9
Stone, Clay, Glass & Prod.	61	19,789,943	1,030,236	5.5	81	18,168,222	1,181,455*	6.1*	142	37,957,165	151,219*	0.4*
Iron, Steel & Products	282	39,502,851	3,062,261	7.7	324	73,657,566	5,109,639*	6.5*	606	113,160,417	2,047,423*	1.8*
Non-ferrous Metals	63	31,699,932	1,713,230	5.7	87	10,954,929	1,203,558*	9.9*	150	42,854,861	509,672	1.2
Machy. & Elec. Equip.	136	26,503,078	1,570,305	6.3	161	67,576,313	4,153,597*	5.3*	297	94,079,391	2,685,292*	2.7*
Transportation Equip.	226	18,580,833	1,507,261	12.2	224	36,176,866	3,854,104*	9.3*	450	50,007,639	2,346,848*	4.5*
Miscellaneous (Indust.)	332	26,276,831	1,863,397	7.6	397	44,451,450	3,954,916*	8.2*	729	70,728,291	2,091,519*	2.9*
Miscellaneous (Commer.)	164	27,281,749	1,216,748	4.7	155	48,064,733	3,578,345*	6.3*	319	75,346,532	2,361,597*	3.0*
Total	3391	490,739,802	34,437,934	7.5	3105	546,403,279	44,801,811*	7.5*	6496	1,037,143,051	10,363,877*	1.0*

*Decrease

curred in the medium-sized establishments.¹⁰ This table indicates also that, as a rule, the largest percentage increase in pay rolls in October as compared with June took place in (1) the firms employing from one to five persons or (2) the firms employing over 1000 persons, except in North Carolina where there was a very low pre-code income per week per person in the medium-sized firms (101-500 employees). In this state, according to the data, the medium-sized establishments had the greatest percentage increase in pay rolls notwithstanding the fact that they showed the smallest proportional increase in number employed; they were responsible for a larger percentage of the total increase in pay rolls in October as compared with June than were any other tabulated group. Moreover, in North Carolina the largest increases in weekly income per worker seem to have occurred in the 51-100, 101-500, and 501-1000 groups, which, together with the other facts just cited, suggests that additional pay rolls in these groups were attributable to minimum-wage provisions of codes.

The relatively larger increase in employment in the small firms, if it took place as indicated, may be ascribed to (1) longer pre-code hours of work which had to be adjusted or (2) the revival of business activity in the summer of 1933, to which small firms responded more readily. That the small firms actually experienced difficulty in adjusting to the shorter hours was shown clearly by interviews; in particular, small retail stores often found it necessary to take on two workers in the place of one in situations in which larger units would have hired only one new worker for three or four already employed. For example, when the more specialized worker such as a cashier, who had been working twelve hours, was limited to eight hours per day, it was usually necessary to hire two cashiers who would work six and a half or seven hours each, the extra time being required to count receipts and make reports. Such persons formed a much smaller percentage of total employees in large concerns and the work of the others could be more easily spread without increasing costs.¹¹

¹⁰Since in June the medium-sized firms contained a much larger proportion of total employees than other groups, the largest percentage of the total increase in employment occurred among such firms.

To what extent large firms had reduced operations and thereby qualified as small or medium-sized firms in June, 1933, is, unfortunately, not known. The figures are not corrected for this condition and therefore must not be used to draw hairline conclusions.

¹¹Because of General Johnson's publicly expressed sympathy for the little man, his attitude on wage and hour provisions is especially interesting. In a hearing on the NIRA in April, 1934, he told the Senate Finance Committee:

"Up to the time I left NRA, I had yet to hear of a little-fellow complaint that did not resolve itself into a statement of inability to pay code wages for code

Although a number of code provisions were specifically designed to favor small business men,¹² a study of changes in financial position by size of concern indicates that small industry as a whole did not benefit from these devices. An analysis made by Dun and Bradstreet of changes in net worth by size of concerns revealed that (1) of those concerns which experienced a decrease in net worth, the greatest percentage decrease was suffered by those in the smallest capital grouping, and (2) of those firms which had increases in net worth in 1933, the greatest percentage increase was enjoyed by those in the smallest capital grouping. Table LVI, showing a part of these data by industries according to capital groupings, indicates that this striking situation was not a chance effect attributable to the special nature of the industries included in the study: the condition prevailed in all the sixteen industries examined, except the four: (1) stone, clay, glass, and their products, (2) non-ferrous metals, (3) transportation and equipment, and (4) rubber and rubber products; and in these the samples were very small.

With respect to causes we observe first that in a period of rising prices, those small firms still possessing adequate working capital or not experiencing credit difficulties and in addition being only slightly inconvenienced by wage and hour agreements might be more aggressive in securing profitable orders than large concerns. For the other part, the small establishments with depleted working capital, which prior to the NRA had been forced to reduce wages, found the wage and hour provisions grievously burdensome. These explanations are, it should be realized, supported to some extent by our PRA data.

hours. I earnestly believe that a careful study of the cases presented to your Committee will disclose that this is the real complaint in all but a negligible few and that even as to these few nearly every one could be cured by proper and alert administration and without substantial change in the law, for if any one thing is clear it is that, if a little fellow can pay code wages for code hours, and still sell at a lower price than a larger competitor on the terms of well recognized commercial equity — then any code provision that prevents his doing so is a bad provision and any administration that permits that to continue is bad administration.

"Of course, if it is the policy of Congress to abandon hours and wages provisions and return to what John Lewis called competition based on a test to see how little a worker can eat, that is the business and responsibility of Congress.

"It has been suggested that the exemptions of hours and wages as to small towns and employers of more than two or three be extended. You can't do it without abandoning a large part of the benefit to labor. After all why should you do it? Less than \$12 or \$13 a week for 40 hours a week for human labor whether the employer is large or small is sweatshop stuff."

Statement of General Hugh S. Johnson before the United States Senate Committee on Finance, April 18, 1935, pp. 49-51.

¹²See Section 5 of this chapter.

In short, all firms can be divided into two groups characterized by the condition that both the percentage increase in net worth and the percentage decrease in net worth in nearly all industries varied directly with the size of the concern. It is, therefore, reasonable to conclude that some broad policy, such as (1) higher prices requiring additional working capital which only some possessed or (2) wage and hour provisions, led to this condition. Moreover, since, as shown by Table LVII, the gains in net worth just about offset the losses—industry as a whole suffering a decrease of \$10,363,871 for 6,496 concerns picked at random¹³—an important effect of the NRA was to redistribute industrial income. Therefore, after all, the NRA was not a great boon to all industry; essentially it benefited some at the expense of others.

5. *Effects of Some Special Code Provisions on Small Businesses*

We turn now to a consideration of the effects of special code provisions and because the motion picture code represented the NRA's outstanding effort¹⁴ to protect the small operator, we review reasons for its adoption and its operation in some detail.

Sometime before the beginning of the NRA a United States Circuit Court of Appeals had refused to enjoin certain of the industry's practices against which the Federal Trade Commission had issued a cease-and-desist order. In this particular case, a motion picture com-

¹³Roy A. Foulke of Dun and Bradstreet, who made the investigation discussed here, points out that it should not be confused with a study of profits and losses since no dividend disbursements or withdrawals were considered. It appears, however, that this should not wholly invalidate the broad conclusions.

The Standard Statistics Index of Dividends shows that dividends were less in each of the last six months of 1933 than in the corresponding months of both 1932 and 1931, and dividends in the first three months of 1934 were only very slightly above those in the corresponding months of 1933 and 1932. Dividends seem to be about horizontal from the middle of 1932 to the middle of 1934. Of course, it should be recalled that there is a lag of perhaps one year between earnings and dividends.

¹⁴In speaking of the motion picture code General Johnson told the Senate Finance Committee:

"I call this code one of our great voluntary codes and I believe that in its operation it constitutes a real experiment in industrial self-government. . . . The code probably requires some revision and I understand that NRA, based upon its experience on the code, is prepared to go forward with such revision. But when a Code Authority composed of such divergent elements as this one, with the interests of affiliated and independent, big and small producers, distributors, and exhibitors, buyers and sellers, can cast approximately 94 per cent of its votes on divergent subjects *unanimously*, I should say that the code had worked pretty well."

Statement of General Hugh S. Johnson before the United States Senate Finance Committee, April 18, 1934, p. 43.

pany won the right to continue its system of block booking despite the fact that the practice forced exhibitors to take inferior films which they did not wish to show. With this background of dispute distributors and exhibitors proposed a single code, and after patient negotiation the NRA secured for the latter a clause permitting cancellation of ten per cent of films. Thus, here the small man triumphed with the aid of the NRA.

The NRA code also attempted to change another situation in this industry — the restraining of any exhibitor from hampering competitors unduly through the purchase of exclusive rights to an excessively large number of films. In fact, one of the first cases considered by the Motion Picture Code Authority involved an independent exhibitor in Madison, Wisconsin, who charged a chain of theatres with forcing him to show second-class pictures by buying up the exhibition rights of all the best ones. The Milwaukee Grievance Board, which first heard the case, judged the chain to be in violation of the code and ordered that it surrender to the complainant a number of first-class films deemed sufficient to permit competition on an equitable basis. When the defendant appealed to the code authority, the latter unanimously (with the exception of the member who was a representative of the chain and who was, therefore, ineligible to pass on the case and did not vote) upheld the Grievance Board. Thereupon, the large company, in accordance with the code provision which had been the basis of the Board's decision, delivered several first-class pictures to the small complainant.

Several other types of devices especially designed to protect or promote the interests of the small business man were frequently employed by the NRA. And several of these schemes undoubtedly aided small business, the principal ones being (1) the outlawing of expensive unjustified lawsuits, (2) the placing of restrictions on the use of company scrip, (3) the reduction of quantity discounts, and (4) the making accessible of hitherto unavailable information. These devices we now treat in the order named.

(1) As we saw in Chapter XII, Section 2, a few of the larger corporations, prior to the NRA, had restricted competition of weaker companies by threatening lawsuits which they had no intention of carrying out or which they knew they could not win in the long run. We add here a story told to the NRA about a relatively small firm which had spent over \$35,000 in the courts defending its right to use a device on which patents had already expired. The defendant won each suit in the lower courts but the large concern always appealed, and

before the litigation had reached the Supreme Court, the small harassed organization had become almost bankrupt. To correct inequities of this type, several codes sought to declare such intimidation an unfair trade practice and a code violation.¹⁵

(2) Some large companies, especially those engaged in coal mining or lumbering, have long paid their employees in scrip redeemable only at company stores or at certain other stores under contracts. This quasi-monopolistic practice obviously placed small competing concerns at a disadvantage since it enabled the issuing company to obtain wage rebates either as profits of its own store or as contractual payments from independent stores. In addition, competing stores which did not possess such company contracts were obviously handicapped. As a remedy for this situation certain codes required wages to be paid in money instead of scrip.

(3) Another type of aid for small business operated to reduce quantity discounts for large orders in many of the manufacturing codes. This clearly restricted the advantage of the large retailing firm over the small one, for, if a large retailer purchased 100,000 pieces of goods at seventy cents each and a small merchant had to pay ninety cents for these same articles in lots of 100, the latter obviously operated under a handicap: he could sell for the same price as his large competitors only by more efficiently managing his business, by paying lower wages, or by obtaining a more rapid turnover of working capital.

(4) Some code provisions were introduced which had the effect of providing the small man with information previously enjoyed only by his large competitors who could afford to maintain research staffs. In particular, such material related to market conditions of prices and costs, inventories, and contemplated new capacity. Unfortunately, however, methods used for collecting this useful information frequently placed the small business at a disadvantage. Large firms, by having representatives on the code authorities which collected the data, at times came into possession of knowledge which they could use to crush their small competitors. In fact, the NRA received so many complaints of such racketeering that officials seriously consid-

¹⁵To what extent these code provisions were effective in curbing such unfairness is not known. The provisions affected only a very few concerns in each industry, and it might even be argued that these firms should have been protected by state laws. For example, if a small firm won, say, two successive decisions a state might well afford to have its attorney-general carry the case further. The mere existence of such a plan would discourage a large proportion of these unfair practices.

ered plans calling for the issuance by the President of an executive order requiring all statistics to be filed with impartial agencies.

Certain other provisions designed to help the small business man were either of doubtful value or were actually injurious. These included (a) prohibiting the sale of goods below cost as loss leaders, (b) other prohibitions of sales below cost, and (c) the filing of prices, all of which have previously been discussed at length and, therefore, require but brief notice here.

(a) In the general retail, retail drug, and booksellers codes, efforts were made to protect small merchants by prohibiting the selling of goods below cost as loss leaders but, as pointed out in Chapter IX, Section 4, this device did not greatly help the small man: competitors who wished to draw trade by the practice of selling well-known or leader goods at bargain prices simply offered greater numbers of these at cost or at cost plus a slight markup, whichever was permitted by the code. Another difficulty arose because, just prior to the effective operation of the NRA, many large firms had purchased great quantities of goods at bargain prices, and, therefore, notwithstanding all code provisions, experienced little, if any, difficulty in setting prices satisfactory to themselves. Nevertheless, it is probably true that the retail codes did check the loss-leader practice, for the wide publicity given to the situation inspired some buyers to be more discriminating. For instance, in 1934 the author was told by various people that under the NRA they had made a practice of purchasing only the goods locally advertised as bargains, buying sugar at one store, flour at a second, certain canned goods at a third, and so on.

(b) Several manufacturing codes, with a definite view toward favoring the small business man, prohibited sales below cost. Before the NRA powerful corporations had, as we have observed, sometimes gone into new territory and sold at less than cost to drive the existing concerns out of business. In such situations, the small establishment with limited working capital was obviously at the mercy of the large firm which could recoup its losses by profits made in territory previously conquered. So widespread was this practice among the industries that it seems to have provided the base for a great deal of the agitation for prohibition of sales below cost.

But the outlawing of sales below cost did not always work to the advantage of the small concern. A large firm which happened to be represented on the code authority could always accuse its weak competitors of selling below cost and demand that they submit to audits. And once in possession of cost information of a small rival who hap-

pened to have a higher cost, powerful interests could easily drive him out of business; it was merely necessary to quote prices slightly under his cost. Moreover, such protective codes were usually implemented by provisions requiring the setting up of expensive accounting systems; and since many of the small firms had previously operated without such luxuries, they undoubtedly were penalized by this additional expense.

(c) Finally, a code provision requiring the filing of prices might either help or hurt a small business man, the effect depending upon whether his costs were below or above those of competitors. In one instance called to the attention of the NRA, two small firms with low costs drove the large members of an industry to petition for removal of this type of provision. On the other hand, small manufacturers of rubber footwear testified before the Federal Trade Commission that the mere filing of prices threatened their existence. Consequently, it is quite clear that the effects of price filing depended upon cost conditions in the industry adopting it.¹⁶ If monopolistic conditions had existed before codes became effective, they usually continued afterwards whether prices were openly filed or not.

There was another kind of code provision which helped the small businesses in an industry writing a code but hurt such concerns in the consumer industry. For example, limiting credit terms in a manufacturing industry greatly benefited the small producer who usually had limited funds available for extending credit to his purchasers, but definitely hurt the small man in the customer industry who frequently needed the extension of this credit as a working-capital loan. Provisions limiting the absorption of freight charges had somewhat similar effects.

It thus appears that the NRA made many earnest special efforts to assist small enterprise through special code provisions. Some of these definitely fulfilled their purpose; others proved to be of uncertain value; and still others actually hurt one group of small businesses while benefiting another.

¹⁶On April 18, 1935, General Johnson seemingly appreciative of only the first case cited above, told the United States Senate Committee on Finances:

"Generally speaking, it is the big and not the little merchant who objects to open-price provisions. This is natural. He is the one who wants his rebates, special prices and purchase control provisions which are his principal weapons against his small competitors. In most cases, the smaller manufacturer would be glad of an opportunity to be able to refuse to give these special rebates. Of course, he does not dare come out in an open public hearing and protest against these practices lest, the following day, he receive cancellations of orders which he can't afford to have cancelled." *Statement of General Hugh S. Johnson before the United States Senate Committee on Finance, April 18, 1935, p. 32.*

6. *The National Recovery Review Board*

Shortly after the National Recovery Review Board was created¹⁷ it began to take testimony of complainants against monopolistic tendencies. Unfortunately the board made little or no attempt to investigate the justness of charges, failing to call rebuttal witnesses and not even troubling itself to ask deputies for transcripts of hearings on the codes. Moreover, in its first report, rendered May 20th, 1934, it condemned open prices, but it made no effort to examine material gathered by the Research and Planning Division in an extensive study of the problem.¹⁸ Nor did the Board ask for available information on other important issues, such as basing points, quantity discounts, cost formulas, and monopolistic code provisions. Nevertheless, it prepared a lengthy report devoting particular attention to the operation of the basing point of the steel code as applied to a small producer in Duluth, Minnesota, and to the personnel of the code authority, a majority of which the board charged represented only two companies. Although the NRA had a section of over fifty people studying the operation of the coal agreements, the board condemned the retail solid fuel code without even making contact. Despite the fact that an internationally recognized specialist on cartels had spent considerable time studying monopolistic code provisions, the board alleged widespread monopoly without attempting to examine his material. In view of these considerations it is difficult to avoid the conclusion that the board consisted largely of men with preconceived opinions about NRA code operation, determined to make these public at any cost.

¹⁷The board was created on March 3, 1934, by Executive Order with duties and functions described as:

"(1) To ascertain and report to the President whether any code or codes of fair competition approved under the authority of Title I of the National Recovery Act are designed to promote monopolies or to eliminate or oppress small enterprises or operate to discriminate against them or will permit monopolies or monopolistic practices, and, if it finds in the affirmative, to specify in its report wherein such results follow from the adoption and operation of any such code or codes.

"(2) To recommend to the President such changes in any approved code or codes as in the opinion of the board will rectify or eliminate such results."

In general, those appearing before the board represented small business. Yet, as indicated by credit ratings, some hardly came under this classification — several complainants had credit ratings over \$1,000,000 and a larger number over \$250,000.

¹⁸Later the board attempted to justify its condemnation of open prices by pointing to the fact that the NRA had remedied some of the defects which the board had uncovered. As a matter of record, the NRA had been considering such changes in policy for several weeks prior to the appointment of the board. For instance, the changes recommended by Whitney's report on open prices would have been put into effect if the board had never existed.

After the board had finished its first report, it was warned that the Research and Planning Division had spent months studying the problems of the small business man and that, to protect itself, it should examine these studies. Consequently, in the seventeen-day period during which Richberg prepared a reply, inquiries regarding this material were made by Lowell Mason of the Review Board and Frank B. Fetter of Princeton University, who had joined its staff after the first report had been written. The author, to whom they were referred, explained briefly that several studies had been inaugurated, the first in August, 1933, and that some were nearing completion. He then volunteered the information that the most monopolistic codes were not the ones mentioned in the Board's report,¹⁹ but declined to specify offenders without the permission of the Administrator.

Following this interview, a meeting for the next day was arranged of Mason and Fetter of the board and Simon N. Whitney, Y. S. Leong, Henry H. Pixley, Gustav Seidler, Jr., Harry F. Kantor, Walter F. Keim, and Arthur O. Dahlberg, of the research section. Here, the writer briefly outlined the nature of the various studies undertaken by the section without giving conclusions. At this point, Mason and Fetter asked to see copies of all reports, and were told that the material could not be released, until discussed with Henderson. Next, Leong, who was directly in charge of a general study of small firms, asked Mason if the board had classified the letters of protest from small business men received by Senator Nye and turned over to the board, and was given a negative reply. He then offered to analyze this material. Both representatives of the board answered that such an arrangement was possible provided the board received a copy of the analysis. The group then discussed matters unrelated to the NRA, and shortly afterward adjourned.

Immediately following adjournment the author reported the details to Leon Henderson, and the latter, in turn, described the incident to General Johnson. So outraged was Johnson because the board had waited until such a late date to search for available facts that he issued an administrative order forbidding any NRA employee to furnish it information. Later, however, he granted Leong permission to secure Senator Nye's letters for analysis. But each time Leong made a visit to the board he was promised the letters; then delays always

¹⁹The board made attacks on the following industries: steel, electrical manufacturing, rubber manufacturing, motion pictures, retail solid fuel, ice, and cleaning and dyeing.

TABLE LIX
COMPLAINTS OF NRA OPPRESSION OF SMALL FIRMS, 1934
Source: Unpublished NRA Compilation

INDUSTRY	Number of Complaints			
	January	February	March	April
*Iron and Steel	2	6	28	30
*Lumber and Timber Products	14	47	85	28
*Electrical Manufacturing	1	4	4	....
*Rubber Manufacturing	....	9	3	....
*Bituminous Coal	3	4	8	2
*Cleaning and Dyeing	2	19	7	3
*Motion Pictures	....	2	6	1
*Ice	....	4	6	2
Coffee	....	....	74	1
Grocery and Food Manufacturing	....	2	698	5
Retail Food and Grocery	....	3	10	26
Retail Drug	2	14	14	....
Retail Tobacco	2	210	....	1
Retail Lumber	50	....	16	2
Retail Tire	4	81	2	1
Radio Wholesale	....	54	....	....
Printing	1	1	18	2
Investment Banking	....	4	43	....
Shipping	....	1	....	18
Textbook Publishing	....	8	....	6
Boot and Shoe	....	....	1	9
Photographic	2	....	....	7
Petroleum	1	45	9	5
Stockyards	....	....	22	....
Hatchery	....	4	6	....
Laundry	....	7	1	1
Miscellaneous (less than 5 in any month)	31	276	308	69
Total	115	805	1369	219

*Attacked by Review Board.

In this table complaints of associations are counted as one. Since there were only four of these altogether and they were scattered, the picture would be unchanged by their omission.

developed, and the documents were never obtained. The last excuse was that the board would soon dissolve.²⁰

²⁰After the board's dissolution in June, 1934 the NRA made no attempt to obtain the Nye letters from the President because, in the meantime, an examination of several thousand similar letters addressed to the NRA seemed to suffice.

The record of complaints received by the NRA for industries in which five or more occurred in any month and also for the industries attacked by the Review Board are shown in Table LIX. These data show clearly that there were two principal kinds of complaints, (1) persistent protest for several months against a code such as lumber and timber products and iron and steel, and (2) sporadic complaints about a particular condition which, when corrected, silenced criticism, as in grocery and food manufacturing, retail tobacco, wholesale radio, coffee, and investment banking industries. The table, furthermore, offers considerable justification for three of the eight attacks of the Review Board, namely, those on the iron and steel, lumber and timber products, and cleaning and dyeing codes. In the case of the last-named, price fixing demanded by the small man as his salvation reacted against him: the large plant had greater advertising appeal and offered special services and, therefore, thrived under uniform prices. Because the trade-practice provisions of the code were too difficult to enforce, they were abandoned in May, 1934. Trouble in the lumber and timber products industry also centered on price fixing and its concomitant, the assignment of production quotas;²¹ and these persisted until the NRA had been declared unconstitutional and the codes had ceased to be operative.

Deserving of special attention here is the iron and steel code. The working-capital position of the industry from 1926 to date for thirteen large integrated, seven small integrated, three large non-integrated, three small non-integrated, and two pig-iron companies, exhibited in Table LX, indicates unmistakably that both the integrated and non-integrated large companies fared better than their small competitors in the recovery period. These differences in recovery may have been due to (1) difficulties experienced by small establishments under codes or (2) unfavorable working-capital positions of small firms, especially of the three non-integrated companies.²² That the latter was

²¹For a discussion of how price fixing handicaps the small business man, see Chapter X, Section 3.

²²The attention of students of business-cycle theory is called to the great decline of security holdings, other current assets, and current liabilities shown by Table LX. Corporations, it seems, liquidated their securities in order to secure necessary working capital, restricted their credit to their customer corporations and, in turn, had their credit restricted by corporations from which they purchased. It appears, therefore, that (1) the price level of the security markets can have an important effect on corporation working capital and (2) important credit deflation can take place outside of the banks through corporation credit policies.

On April 24, 1933, before the passage of the NIRA, Alexander Sachs addressed a memorandum to General Johnson which read in part:

"In support of my general contention that the extension of credit by busi-

TABLE LX
WORKING CAPITAL POSITION OF THE IRON AND STEEL INDUSTRY

(Thousands of Dollars)
Source: Standard Statistics Company Records and Moody's *Manuals of Investment*, Compilations by the Research and Planning Division, NRA. See also Table LXI

Year	13 Large Integrated Companies				7 Small Integrated Companies				3 Large Non-Integrated Companies				3 Small Non-Integrated Companies			
	Cash	Securities	Inventories	Other Cur. Assets	Cash	Securities	Inventories	Other Cur. Assets	Cash	Securities	Inventories	Other Cur. Assets	Cash	Securities	Inventories	Other Cur. Assets
1927	\$172,788	\$139,993	\$2,376	\$1,068	\$2,078	\$1,068	\$4,088	\$3,470	\$5,123	\$2,193	\$1,758	\$5,123	\$5,123	\$2,193	\$1,758	\$5,123
1928	230,626	149,633	2,699	1,336	2,699	1,336	6,179	5,182	4,451	4,075	2,255	4,451	4,451	4,075	2,255	4,451
1929	220,256	214,405	1,755	1,290	1,755	1,290	5,991	4,848	10,648	3,816	1,700	5,991	5,991	3,816	1,700	5,991
1930	181,488	144,882	2,966	1,016	2,966	1,016	7,217	5,204	4,205	1,420	1,651	7,217	7,217	1,420	1,651	7,217
1931	134,030	124,439	2,365	1,433	2,365	1,433	5,463	6,658	1,978	951	899	5,463	5,463	951	899	5,463
1932	117,318	86,350	1,722	1,515	1,722	1,515	9,551	2,552	1,255	899	667	9,551	9,551	1,255	899	9,551
1933	102,222	88,738	1,713	405	1,713	405	6,841	2,343	660	347	687	6,841	6,841	347	687	6,841
	Inventories	Other Cur. Assets	Inventories	Other Cur. Assets	Inventories	Other Cur. Assets	Inventories	Other Cur. Assets	Inventories	Other Cur. Assets	Inventories	Other Cur. Assets	Inventories	Other Cur. Assets	Inventories	Other Cur. Assets
1927	\$43,298	\$167,086	\$ 8,778	\$3,107	\$ 8,778	\$3,107	\$9,817	\$ 8,074	\$4,735	\$1,758	\$4,735	\$1,758	\$4,735	\$1,758	\$4,735	\$1,758
1928	457,333	198,876	11,266	4,320	457,333	198,876	8,471	10,239	4,069	2,255	4,069	2,255	4,069	2,255	4,069	2,255
1929	516,632	183,624	13,158	4,403	516,632	183,624	8,697	10,179	4,504	1,700	4,504	1,700	4,504	1,700	4,504	1,700
1930	565,898	182,783	10,484	3,590	565,898	182,783	8,056	5,901	3,740	1,651	3,740	1,651	3,740	1,651	3,740	1,651
1931	515,902	98,270	8,901	2,722	515,902	98,270	7,125	4,575	3,521	915	3,521	915	3,521	915	3,521	915
1932	433,086	60,619	6,533	1,867	433,086	60,619	5,214	3,737	2,761	669	2,761	669	2,761	669	2,761	669
1933	423,111	95,034	7,396	1,565	423,111	95,034	7,583	5,490	3,044	687	3,044	687	3,044	687	3,044	687
	Cur. Assets	Cur. Liabilities	Current Assets	Cur. Liabilities	Cur. Assets	Cur. Liabilities	Current Assets	Cur. Liabilities	Cur. Assets	Cur. Liabilities	Current Assets	Cur. Liabilities	Cur. Assets	Cur. Liabilities	Current Assets	Cur. Liabilities
1927	\$ 992,070	\$156,842	\$16,320	\$2,778	\$ 992,070	\$156,842	\$25,449	\$3,413	\$13,807	\$1,292	\$25,449	\$3,413	\$13,807	\$1,292	\$25,449	\$3,413
1928	1,064,155	202,011	19,621	3,493	1,064,155	202,011	30,071	5,645	14,850	1,468	30,071	5,645	14,850	1,468	30,071	5,645
1929	1,163,671	237,450	20,611	3,798	1,163,671	237,450	29,715	5,195	20,668	2,563	29,715	5,195	20,668	2,563	29,715	5,195
1930	1,035,987	196,833	18,060	1,810	1,035,987	196,833	26,378	4,439	11,016	1,819	26,378	4,439	11,016	1,819	26,378	4,439
1931	897,792	125,083	15,422	1,616	897,792	125,083	23,623	2,215	7,365	522	23,623	2,215	7,365	522	23,623	2,215
1932	723,278	88,467	11,575	1,545	723,278	88,467	21,054	1,717	5,574	314	21,054	1,717	5,574	314	21,054	1,717
1933	738,128	113,665	12,071	2,780	738,128	113,665	22,257	2,503	4,688	699	22,257	2,503	4,688	699	22,257	2,503
	Working Capital	Surplus	Working Capital	Surplus	Working Capital	Surplus	Working Capital	Surplus	Working Capital	Surplus	Working Capital	Surplus	Working Capital	Surplus	Working Capital	Surplus
1927	\$305,228	\$ 942,088	\$12,542	\$12,340	\$305,228	\$ 942,088	\$22,036	\$14,499	\$12,515	\$8,062	\$22,036	\$14,499	\$12,515	\$8,062	\$22,036	\$14,499
1928	862,144	1,014,336	16,128	14,271	862,144	1,014,336	24,426	16,461	13,382	8,640	24,426	16,461	13,382	8,640	24,426	16,461
1929	926,221	1,106,997	16,813	15,073	926,221	1,106,997	24,520	15,901	18,202	15,202	24,520	15,901	18,202	15,202	24,520	15,901
1930	852,054	1,144,635	13,250	12,399	852,054	1,144,635	21,939	15,244	15,403	15,403	21,939	15,244	15,403	15,403	21,939	15,244
1931	772,709	1,044,991	13,805	9,015	772,709	1,044,991	21,608	14,265	12,598	12,598	21,608	14,265	12,598	12,598	21,608	14,265
1932	634,791	879,431	10,030	7,859	634,791	879,431	19,337	11,533	10,337	10,337	19,337	11,533	10,337	10,337	19,337	11,533
1933	624,463	804,920	9,291	5,500	624,463	804,920	19,754	10,776	8,989	9,033	19,754	10,776	8,989	9,033	19,754	10,776
	Interest Paid	Net Earnings	Interest Paid	Net Earnings	Interest Paid	Net Earnings	Interest Paid	Net Earnings	Interest Paid	Net Earnings	Interest Paid	Net Earnings	Interest Paid	Net Earnings	Interest Paid	Net Earnings
1927	\$45,048	\$144,931	\$399	\$3,152	\$45,048	\$144,931	\$85	\$5,074	\$164	\$1,462	\$45,048	\$144,931	\$85	\$5,074	\$164	\$1,462
1928	45,826	189,844	801	4,950	45,826	189,844	81	5,573	116	2,307	45,826	189,844	81	5,573	116	2,307
1929	36,426	322,878	808	6,187	36,426	322,878	77	7,137	150	2,609	36,426	322,878	77	7,137	150	2,609
1930	23,806	167,004	884	194	23,806	167,004	76	6,012	128	454	23,806	167,004	76	6,012	128	454
1931	26,671	7,304 d	626	2,386 d	26,671	7,304 d	74	1,942	119	833 d	26,671	7,304 d	74	1,942	119	833 d
1932	24,194	129,486 d	612	3,529 d	24,194	129,486 d	85	716 d	78	2,010 d	24,194	129,486 d	85	716 d	78	2,010 d
1933	24,665	62,225 d	598	1,278 d	24,665	62,225 d	90	645	76	1,577 d	24,665	62,225 d	90	645	76	1,577 d

TABLE LXI

VOTING STRENGTH IN THE IRON AND STEEL INDUSTRY

Source: NRA report, *Operation of the Basing-Point System in the Iron and Steel Industry*

Company	Votes in Code Authority	Company	Votes in Code Authority
U. S. Steel ^a	511	Interlake Iron ^{e 1}	7
Bethlehem Steel ^a	160	Follansbee Bros. ^c	6
Republic Steel ^{a 1}	86	Ludlum Steel ^c	6
National Steel ^{a 1}	81	Superior Steel ^d	6
Jones and Laughlin ^a	79	Bliss and Laughlin ^{d 1}	6
Youngstown Sheet & Tube ^a	74	Laclede Steel ^c	5
Wheeling Steel ^a	73	Appollo Steel ^{d 1}	5
American Rolling Mill ^{a 2}	69	Atlantic Steel ^c	4
Inland Steel ^a	51	Central Iron and Steel ^{c 3}	4
Crucible Steel ^a	38	A. M. Byers Company ^d	4
McKeesport Tin Plate ^b	27	Sloss-Sheffield ^{e 1}	4
Allegheny Steel	21	Woodward Iron ^{e 1}	3
Spang-Chalfant ^{b 1}	17	Firth-Sterling ^{c 3}	2
Sharon Steel Hoop ^a	16	Davison Coke and Iron ^{e 1}	2
Continental Steel ^{a 3}	16	Soullin Steel ^c	1
Acme Steel ¹	9	Harrisburg Pipe ^{c 1}	1
Granite City Steel ^{a 1}	8	Eastern Rolling Mill ^d	1
Babcock and Wilcox ^b	8	Michigan Steel Tube ^{d 1}	1
Alan Wood ^{c 1}	7	Milton Manufacturing Company ^{d 1}	1
Washburn Wire	7	Cranberry Furnace ^{e 1}	1

^a Large integrated companies

^b Large non-integrated company

^c Small integrated company

^d Small non-integrated company

^e Pig-iron Company

¹ Not included in study in Table LX

² Not in breakdown of current assets in Table LX

³ Not in interest and earnings in Table LX

of great importance is shown from the facts that current assets of the three small non-integrated companies had shrunk from \$20,668,000 in 1929 to \$4,688,000 in 1933, while current liabilities had decreased only from \$2,563,000 in 1929 to \$699,000 in 1933; whereas in the case of the thirteen large companies current assets had only declined

ness to business is larger than the commercial credit extended by the banks to business, I am enclosing a tabulation made up for banking and income tax purposes. The table illustrates that the corporation credit supply is 2½ times as large as credit supplied by the banks."

from \$1,163,671,000 in 1929 to \$738,128,000 in 1933, while current liabilities had decreased from \$237,450,000 in 1929 to \$113,665,000 in 1933. Such change in relative position would surely have given the large companies an advantage over the small ones without NRA codes. On the other hand, the record of complaints of small firms against the steel code is an impressive one and cannot be ignored. Furthermore, the charge of the Review Board that there was difficulty for small firms arising from the basing-point system (see Chapter XI, Section 4) is sustained in a measure by the code authority's action in adding other such points, and by the recommendation of the Research and Planning Division in 1935 that the number be further increased.

It appears also that, as charged by the Review Board, the two biggest steel companies did possess a very large share of the voting strength in the code authority. As shown by Table LXI, the United States Steel Corporation, and the Bethlehem Steel Corporation had 511 and 160 votes, respectively, whereas other companies each had only one to eighty-six depending upon size. Although it can be argued that the largest companies were entitled to so many votes because of the amount of capital invested, the annual sales, or the number employed, it is true, nevertheless, that a code authority, constituted as was that of the steel industry, held the power to destroy weak competitors. Even granting that the authority may never have used this power, the mere fact of its existence created a menace for smaller members of the industry.

* * * * *

From the foregoing considerations we are impelled to the following conclusions:

(1) During the depression the small companies had suffered a disproportionate decrease in working capital and had, therefore, been forced to reduce wages as a condition of continuing in business. Moreover, as a result of banks' mania for liquidity following the crisis of March, 1933, these same firms experienced great difficulty in securing loans to meet the increased pay rolls demanded by the NRA. Consequently, unless it had been the intent of Congress (which had been amply warned) to destroy small business, the NIRA should never have been enacted without arrangements having first been made for working-capital subsidies, either in the form of outright gifts or loans at low rates of interest.

(2) Efforts of the Reconstruction Finance Corporation to remedy the plight of small business arising from such negligence were largely ineffective: too rigid requirements were made for loans and

entirely too much time was taken to complete them. Since the Administration had been warned that such delay and red tape would be inevitable, the R.F.C. must have been injected into the scene chiefly as a sedative to business discontent.

(3) Of those concerns experiencing decrease in net worth under the NRA, by far the greatest percentage decrease was suffered by those capitalized at less than \$10,000. Moreover, the percentage decrease in net worth in almost all industries varied directly with the size of the firm as measured by capitalization.

(4) The NRA plan definitely favored the highly mechanized units of industry at the expense of those employing larger proportions of hand labor, and such efficient firms were probably to be found in greatest proportion in that half of the small concerns which showed increase in net worth under the NRA; that is, in the smallest capital groupings.

(5) Industry, as a whole, experienced a decrease in net worth during the first year of the NRA, the burden being widely distributed among the industries in the various capital groupings; but this decrease was less than for the preceding year of depression.

(6) The NRA attempted various general code provisions especially favoring small business. These included (a) the outlawing of expensive unjustifiable lawsuits, (b) the placing of restrictions on the use of company scrip, (c) the reduction of cash and quantity discounts, and (d) the making accessible of information on prices and costs, inventories, and contemplated new capacity. Also, certain special efforts were made, an instance being the code provision enabling motion picture exhibitors to cancel any ten per cent of films secured under the block-booking system in vogue.

(7) Certain other code provisions designed to help the small business man, such as (a) prohibition of sales below cost in both retail and manufacturing codes and (b) the filing of prices, were of dubious value or actually injurious. As an instance of the latter we recall that, once prices were filed, large concerns refused to allow small firms the necessary price advantages which they had enjoyed under secret competition.

(8) Certain codes were extremely monopolistic, at least in appearance. In the steel industry, for example, over half the voting strength of the code authority resided in the two largest companies. Also in such other industries as lumber and timber products, petroleum, and cleaning and dyeing, many complaints were received against monopolistic practices.

CHAPTER XIV

PLANNING FOR INCREASED PURCHASING POWER

With the United States facing an unemployment total of 14,000,000 in the spring of 1933, a forty per cent decline in wholesale prices since 1929, and a fifty per cent decrease in the national income (current dollars) in the same period, it was not surprising that various bold suggestions for creating purchasing power should have been brought to public attention. Three such daring plans were outstanding because they were adopted by the Administration and, of course, had widespread effects. One of these proposals was that the Federal Government undertake public works and encourage other such work through the financing of state and local governments, interest and amortization to be delayed until the taxing power should increase with business recovery. Another, urged by organized labor and certain individuals later identified with the NRA, and by the President himself, was based upon the theory that purchasing power can be created by raising wages. The third assumed that an increase in farm income, however achieved, would result in higher industrial production and income; in brief, if farmers received more income as a result of higher prices, they would buy industrial products. We consider the three schemes in the order in which they have been named.

1. Federal Spending for Public Works

That resumption of federal and local governmental spending (which in 1927 and 1928 amounted to nearly $3\frac{1}{2}$ billions dollars annually¹) would induce emergence from the depression was urged by various economists, and labor, business, and political leaders. In particular, Alexander Sachs and John M. Keynes' assistant, R. F. Kahn, together made careful computations of the effects of American governmental expenditures on employment conditions and concluded that each dollar spent by the Federal Government would indirectly lead to a total expenditure for goods and services of \$2.57. It is important to notice that, in arriving at this interesting result, Kahn and Sachs

¹See *The Planning of Public Works*, National Bureau of Economic Research, 1930.

assumed², (1) rapid spending by the Government, (2) an average wage of \$20 per week, or about \$4 per day on a five-day week,³ and (3) a ratio of wages to capital charges of three to one in the primary expenditure. Yet as regards the program actually placed in effect, it must be observed that all three fundamental premises were ignored: only a fraction of the NIRA appropriations for public work were allotted by the end of 1933;⁴ the prevailing wages mentioned in the Act were interpreted to mean the nominal union wages of \$1.00 to \$1.20 per hour for skilled labor and 40 to 50 cents per hour for unskilled labor; and the NRA granted various monopolistic privileges designed to increase the profit margins of recipients of the initial spending. It is not surprising, therefore, that the quick business revival expected by Sachs and Kahn did not materialize. But the fact that a second even larger program, based on lower wage rates and inaugurated with reasonable promptness, has failed to produce the results expected requires explanation. This is not simple: there are at least five fundamental concepts which must be thoroughly understood. These are: (1) the method of financing the program, (2) contractionary uses of purchasing power or leakages, (3) respending

²Alexander Sachs, *Impact of Public Works Program on the Construction Industry and on Employment*, report to the Administration, May 17, 1933; also by the same author, *Social Planning of Recovery*, March 10, 1933, and April 10, 1933.

In the report of May 17, 1933, there appears an analysis of the recommendation of the Construction Council that the Federal Government spent \$2,515 millions, of which \$2,300 millions would go for public works and public buildings, \$105 millions for topographical mapping, and \$110 millions for slum clearance and housing. This council later became known as the National Committee for Trade Recovery.

³*Impact of Public Works*, etc. On p. 17 Sachs said:

"It is necessary to emphasize here that the public-works program must be carried out on a realistic instead of an artificial wage level. Otherwise its economic effectiveness will be defeated at the very start.

"In the course of this depression American labor has suffered more than labor in other countries as a result of the misguided effort early in the depression at artificial wage-rate maintenance comparable to the artificial price maintenance. The attempt to hold the nominal wage rate rigid led to an excessive pressure and contraction in the time worked, so that the weekly pay roll of the worker employed went down more than that of the worker in other industrial countries."

⁴Before October, 1933 only a negligible amount was spent on public works. Beginning about the first of October the PWA was able to spend the comparatively trifling sum of four million dollars weekly and by December, 1933 only six million weekly. In January, 1934 it was using fourteen millions weekly, but in February the amount dropped to six millions. After 18 months the PWA was disbursing twenty-eight millions per week or about one and a half billions a year. Thus, at the end of one and a half years the PWA was able to spend at only one-half of the average rate which its progenitors had expected it to attain in the first six months.

effects, (4) the length of time required for a general regenerative effect to take place, and (5) reactions of the whole program on private spending for investment. The first three have been considered at length by Keynes, Kahn, and other writers; the next has been recognized but inadequately discussed; and the last, which is extremely important, has been almost entirely neglected. We consider them now in the order presented.

(1) *The method of financing the program.* As a preliminary thesis we may assume that in times of depression the savings of the middle income groups tend to accumulate to some extent as private hoards in the form of currency or gold, but chiefly as inactive bank deposits. As banks, which in the United States have normally required ten to fifteen per cent cash to satisfy the checking requirements of depositors, experience increased demand for cash to meet runs or begin to anticipate future runs they are forced to reduce the volume of their loans and thereby to contract purchasing power. Even if they meet the early demands by selling securities rather than by calling loans, this also reduces either potential purchasing power by the lowering of security values or actual purchasing power by inducing new withdrawals to cover margins. In these circumstances, when deflation has run for some time, confidence in the security of bank deposits is lacking. The first step, then, is to offer a temporary guarantee of bank deposits as was suggested in 1932 by S. M. DuBrul. Then a government with sound credit can perhaps successfully offer its own liquid securities to the bankers, spend the proceeds, say, on public works, and in this way probably promote the circulation of purchasing power.

Another way to finance public works, especially applicable when excessive bank reserves exist in an economy, is to create additional bank credit, that is, new purchasing power. As an illustration of how this might be accomplished, suppose that a bank with one million dollars in deposits had loans and investments valued at \$800,000 and a reserve of \$200,000 in cash. The excess of cash over requirements to service deposits would here be about \$100,000. Then, if the bank subscribed to \$100,000 worth of government bonds, its first step would merely be to credit the Government with a deposit of \$100,000 in exchange for bonds; it would still possess its cash, and, in addition, its total deposits would increase to \$1,100,000. Suppose that the Government then issued checks for \$100,000 and spent this amount in the region serviced by the bank. In such instance, within a few days, most of this sum would find its way back into the bank as de-

posits of local merchants, manufacturers, or others, but, of course, some part would be placed in banks of other territories. Thus, public borrowing would have the effect of increasing total bank deposits by the amount of the borrowings and these deposits would be secured by government bonds. If all the money that the bank had loaned to the Government were redeposited, excess cash reserves would still be about \$90,000 which could be invested in more government bonds, and a second cycle would ensue.

On the other hand, both new or created purchasing power and savings might be utilized as in the financing of the World War. Here banks subscribed for federal bonds and then created loans enabling customers to buy the securities on the instalment plan out of current savings.

If more bonds are purchased by a bank than the amount of public money spent in its territory, then the bank would, of course, either have to sell its bonds or other securities (1) to other banks, in which case the same ultimate effect of total credit inflation would occur, or (2) to individuals who would exchange their accounts, chiefly in other banks, for bonds. In the latter case no increase in bank money would result from government borrowing: the Government would merely activate private savings or decrease the hoarding of bank credit.

It is important to recognize here that through the planned creation of new bank deposits, which have in a short time been transferred to corporation and personal balances, most of the American recovery program has so far been financed. Most important is the fact that, if the new money transformed into deposits of merchants and others, who benefited from the federal spending, failed to circulate further, the reviving effects of the credit inflation would have been finished. But, if business men in the meantime had gained sufficient confidence in the future favorable course of prices and profits, the mere existence of such additions to their accounts could easily lead to additional deposit expansion through the creation of bank loans to corporations and individuals. As is well known, a merchant might place an order sufficiently large to take care of his needs for, say, three months and accept a draft drawn by the manufacturer, agreeing to payment in perhaps two months. A corporation, if it should have excess working capital, could, in effect, act as a bank in extending such intercorporation credit. Or the manufacturer, if his credit standing were good, could immediately discount the draft at a bank and so increase his deposits. As he drew checks against this

new deposit, they would be transferred by the recipients to their accounts in the same or other banks. Thus there would be a net increase of deposits in the whole banking system equivalent to the discounted value of the draft, provided the system had sufficient reserves to support the expansion.

It is thus seen that confidence in the future course of business is absolutely essential in any successful attempt to "prime the pump by governmental expenditures," for otherwise the cycle of spending is broken. The weakness of the American program up to the end of 1935 was the complete failure of the Administration to inspire such confidence. Extension of intercorporation credit was almost entirely lacking and there was little demand upon the part of industry for loans from the banks.

2. *Leakages.* Contractionary uses of public-works funds received by individuals and corporations include (1) the cancellation of bank money by offsetting against a deposit or cash, (2) the payment of local taxes, and (3) other transactions not involving new goods. The effect of the first should be obvious from the preceding discussion. The second is classified as contractionary because taxing bodies frequently meet their pay rolls by borrowing from banks and usually liquidate these loans when taxes are collected. The third involves many factors — purchases of securities or real property, individual debts, and the like. How large each has been we do not know; but, as we shall presently see, estimates of the gross effects of these combined with other factors have been made.

3. *Respending effects.* Another important factor is the rate of respending by business men: What proportion of the new income are they forced to respend for wages and new stock and for what do they use the remainder? Here again we do not have exact information, but, assuming that only forced expenditures take place, Sachs and Kahn have calculated that for the United States 37.5 per cent of each respending represents leakages of all kinds. In reaching this figure they assumed that (1) if wages constituted 75 per cent of the primary expenditure and profit 25 per cent, the total respending would be 60 per cent of \$.75 plus 70 per cent of \$.25 or 62.5 per cent of the original expenditure, and (2) that six repercussions of spending would be of importance within a year. Consequently, the cumulative spending would be $1 + .625 + (.625)^2 + (.625)^3 + (.625)^4 + (.625)^5 + (.625)^6 = 2.567$. Thus, according to these calculations \$1.00 of new money spent by the Government should have repercussive effects on production and prices of \$1.57.

But obviously any such calculation is based upon arbitrary assumptions and is therefore tenuous. It involves at least two fundamental assumptions upon which no evidence is available, (1) the time element required for the responding to take place, and (2) the reaction of business men to the whole program — their creation or destruction of bank credit and their influence on its circulation may transcend that of the Government.

4. *The time element.* If the effects of public spending are to be measured over a year's time, debts between individuals can be ignored, since money spent to liquidate such obligations will probably be respent within this time. However, it is conceivable that, for several months, some money may be used for no other purpose than to pay such debts and thus, during this short time, have no influence in stimulating production and employment. Sachs simply assumed that the average time factor between respondings is two months and consequently that there are six complete cycles of spending per year for goods and services.

5. *Private business expansion.* If a public program is successful in stimulating business to the point of profitability, an expansion in private investment should also take place. But whether or not such expansion actually develops depends upon many factors, chief of which are (1) the net yield in prospect, (2) the probabilities for changes in taxes, (3) the outlook for monetary stability, (4) comparative investment opportunities throughout the world, and (5) the general attitude of the Government towards private enterprise.

The first obviously rests upon the three factors, (a) the rate of return on existing securities at current market prices, (b) the rate of taxation on income or profits especially with reference to the method allowed for distributing initial losses, and (c) the cost of new plant.

In order that the government borrowing may not merely siphon funds from private expansive activities, its securities must bear net lower interest rates than industrial securities. When all publicly recognized risks are taken into consideration, the federal rate must be lower than the private. And this last involving more than the question of average yields is intimately associated with (b), the rate of taxation.

Under the present federal income-tax laws an individual receiving three per cent per year on \$2,000,000 worth of federal bonds (which, for the sake of putting the Government in the most favorable light, we will suppose not to be tax exempt) fares far better than if

he had lost five per cent of his \$2,000,000 in a new enterprise the first year and gained eleven per cent the following year. In the first instance he has a net income for two years after deducting taxes of \$98,000, whereas in the second he has only \$28,000, a difference of \$70,000, or one and three-quarters per cent a year. Obviously in such a situation private investment will not be undertaken. Then, there is the Securities and Exchange Commission which at least has caused the public to be skeptical of new ventures.⁵

The factor (c), cost of new plant, has been discussed considerably elsewhere, all unprejudiced accounts agreeing that increases in prices of capital goods have delayed recovery. We merely emphasize here that under our federal public-works program all interested groups, organized labor, suppliers of materials, and manufacturers, at least gave the appearance of rushing to divide the spoils. Even after the Supreme Court invalidated the NIRA these groups, hoping to have their federal indirect subsidies continued, urged the Administration to exert pressure on Congress to enact the Walsh bill which was designed to force compliance with conditions-of-employment and fair-trade-practice rules prescribed by a federal bureau.⁶

More specifically, the contention that the public-works program of 1933-1935 has delayed recovery of private building by inducing considerably higher prices in the construction material industries is supported by the author's study⁷ of factors influencing residential

⁵See also Section 2, especially footnote 21.

⁶It was only after a difficult fight with organized labor that the Administration in its works bill of 1935 was able to secure congressional approval of a relief wage on government projects, as originally recommended by such men as Sachs and his associates. Immediately thereafter, labor leaders fomented trouble by urging workers to demand the high wages paid to union craftsmen, and in New York City alone over 15,000 federal employees participated in a strike. This dispute was quickly settled, however, by the President's ultimatum that they could work for the security wage or sit hungry at home. Such a stand was all the more noteworthy because the President took it in the face of William Green's announced sympathy for the strikers and his warnings that further disputes could be expected elsewhere.

The President later receded somewhat from this position by raising hourly wages and keeping the weekly wage low through short hours. But this was even worse, as regards recovery, than the earlier program.

⁷Undertaken in August, 1933 for the NRA.

As a measure of the reliability of the study mentioned it may be noted that the author has made four accurate forecasts based on it. The actual number of units built in 1933 was predicted within one per cent. At this time also a forecast of less building in 1934 than in 1933 was made and turned out to be correct within three per cent. Late in 1934 building for 1935 was estimated to be between two and two and a half times the negligible figure for 1934 (building in 1929 was more than 100 times than of 1934), whereas only slightly less than twice the 1934 volume occurred. This estimate is particularly noteworthy since adjustments to allow for effects of the Federal Housing Administration had to

building. Here it is shown that the important determinants of the number of residential units constructed are, (1) building costs, (2) rents, (3) occupancy, (4) taxes, (5) credit conditions, and (6) building need as determined from the number of families and units.⁸ This study, based on data for St. Louis, indicated the beginning of a building boom in 1933, which was nipped in the bud by increases in building costs chiefly attributable to inflation following devaluation and to the public-works program.⁹ Since 1933 vacancies have shrunk from fifteen per cent to less than five, rents are preparing to rise rapidly,¹⁰ and yet, despite the success as shown by Chart XIX, of the Federal Housing Administration in lowering financing charges and making credit somewhat easier, private building in 1935 was near to the zero point. With this failure of private building to revive, business in 1934 and 1935 had become more conscious than ever that some part of the extra business of the first two years of the Roosevelt Administration had sprung from government spending. In fact, some

be made. Finally, late in 1935, an estimate was made for 1936 of twice the 1935 volume, and this also was essentially correct.

For published forecasts for 1933 and 1934 see C. F. Roos, *Dynamic Economics*, Principia Press, Bloomington, Indiana, 1934.

⁸Also the first five can be combined into (a) an incentive factor defined as $(\text{rent} \times \text{occupancy} - \text{taxes})$ (function of foreclosures)/cost, and (b) a credit factor taken to be the reciprocal of the foreclosure rate, which two factors when combined additively and the sum multiplied by (6) above account for about 95 per cent of residential building.

The numerator in (a) is proportional to the value of existing property. Foreclosures are used here because they affect markedly the supply of property on the market and values.

Value may be defined as $A \times B$ where $A = \text{Rent} \times \text{Occupancy} - \text{Taxes}$ and $B = \text{function of foreclosures}$. The first factor is essentially the net yield which owners use in times of normal foreclosures to determine values, few owners of houses giving any heed to depreciation and upkeep. When foreclosures are higher than normal, this "value" is lowered because of the dumping on the market of distress properties; and when foreclosures are lower than normal, this "value" rises. The function B, essentially the reciprocal of foreclosures, represents this situation.

That foreclosures today also measure the availability of credit in the future, i.e., that (b) above is a legitimate assumption, is clearly indicated by Chart XIX. Here foreclosures lead new mortgage financing by approximately two years on the average. The chart shows also that credit conditions were definitely changed, but slightly, by the entrance into the mortgage market of the Federal Housing Administration.

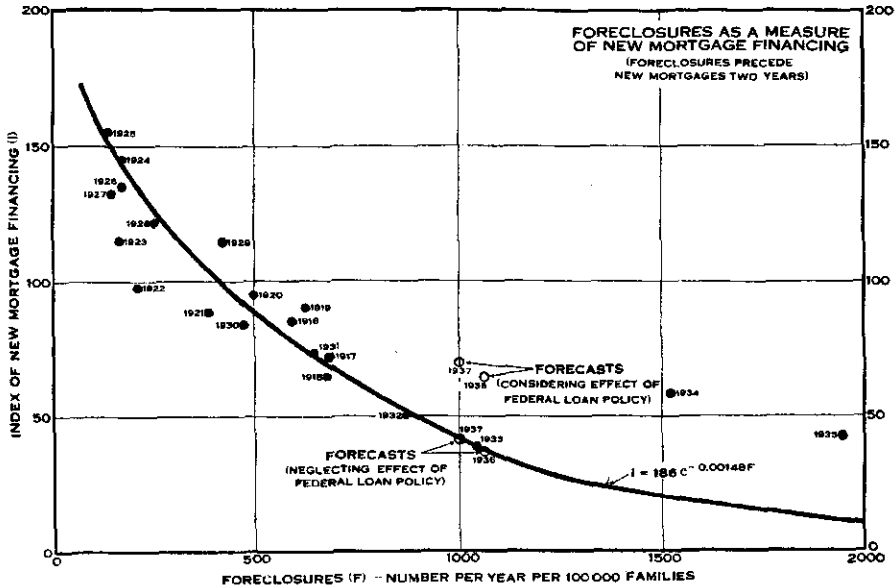
⁹For the NRA's part see Chapter XI, Sections 2 and 3.

¹⁰Rent increases, as I have shown in *Dynamic Economics*, precede new building by two years. They must catch up with present high building costs before values increase sufficiently to justify new building. Since in the face of this inactivity an actual shortage of housing exists, it is not unreasonable to expect rents in 1939 to be twice as high as in 1933. The increase in rents, although not necessarily a corresponding increase in values, will be accelerated by public ventures in subsidized housing construction, for such competition seems to discourage more construction by private individuals than is created by the Government.

CHART XIX

EFFECTS OF THE FEDERAL HOUSING ADMINISTRATION ON MORTGAGE FINANCING

Sources: Foreclosures from the *Real Estate Analyst* and New Mortgage Financing from the Federal Home Owners' Loan Board



A high non-linear correlation exists between foreclosures at any time and the volume of new mortgage financing two years later. All reasonable forecasts for 1934 and 1935 based on the regression for previous years would have indicated volumes of new mortgage financing considerably below those attained. One must conclude, therefore, that either the federal housing loan policy must have had an important effect on loans or else that some other institutional change occurred in mortgage financing, for instance, a general acceptance by large lenders of such forecasting advice as that of the *Real Estate Analyst*, which has consistently urged that values are increasing.

Forecasts are presented here for 1936 and 1937, both considering and neglecting effects of federal policy. Another forecast may also be ventured, namely, that as foreclosures decrease the effects of federal activities will become relatively much less important until in, say, 1933 they will be almost entirely negligible.

political leaders repeatedly argued that most of the recovery had had such origin, and that, as a consequence, entrepreneurs had postponed expansions which appeared to be needed. But after profits had continued through 1936, with sharp increases in some instances, business timidity began to disappear. By the end of 1936 expansion in private activity seemed really to have begun.

But in our appraisal we should not forget that the pump priming has required considerable time to take hold and has been quite costly. As an offset to a deficit of approximately 3.6 billion dollars, the Roosevelt Administration could show in October, 1935 increases in employment in the nondurable-goods industries of only 200,000 above the same month in 1933 when spending really began; in durable-goods industries less than 250,000; and in all other industries not in excess of 300,000.¹¹ Yet monthly expenditures of federal funds for materials were forty-one million dollars greater in October, 1935 and this should employ at least 300,000 men in the fabrication of durable goods. Up to the end of 1935, by which time the Supreme Court had removed many fetters of business activity, "the mountain was in labor and lo a mouse came forth!"

We must conclude from these figures that public spending and other policies up to 1935 had not very greatly promoted business recovery. Figures on employment in the production of durable goods, exclusive of automobiles, show that in 1934 and the early days of 1935 private employment still was essentially at depression lows; business men paralyzed with fear had refused to make even needed repairs and plant expansions, the utilities alone decreasing their annual expenditures for new plants from \$549,500,000 in 1932 to \$145,700,000 in 1934.¹²

In contrast with this program of the Administration was the original proposal of economic advisers of the drafters of the NIRA that public-works contracts be used in conjunction with the NRA codes to induce desirable price adjustments. How this would have worked may best be illustrated by an application to the steel industry where overhead charges are large and volume is needed to reduce prices. To treat this problem under the advisers' plan a suggestion to manufacturers would have been made by NRA officials that the prime need of the industry was to reduce prices and increase volume.

¹¹ U. S. Census data indicate roughly 10,000,000 persons in manufacturing in 1930, 12,000,000 in agriculture, 10,000,000 in trade and transportation, 10,000,000 in clerical and professional occupations and public service other than federal, 4,500,000 in domestic service, and 2,000,000 in all other occupations.

Chart VI, p. 148, which is based on figures released by the United States Bureau of Labor Statistics, shows December, 1935 total federal employment of 4,177,000 as against only 6,613,000 employed in all manufacturing.

¹²It should be noted, moreover, that in 1935 after several victories over the Government in the lower courts, new security offerings of the utilities rose to \$1,173,800,000 which was about half the average for the period 1926-1930.

Late in 1935 the first signs of important expansive activity in industry began to show themselves. If the developments now taking place continue, emergence from the depression will be rapid. Our only criticism then will be that they were not encouraged in greater measure in 1933, 1934, and 1935.

If the industry had demurred, it would have been advised that the Government was prepared to let contracts for, say, \$300,000,000 worth of steel, if and when the price to all customers was reduced by something like 20 per cent. If unreasonable objection were still encountered, the NRA would have said, "Very well, we must conserve public funds and, therefore, we shall be compelled to use our appropriations in other directions." In such circumstances the industry surely would have yielded. Again, low-wage, inelastic-demand industries, such as textiles, which agreed to use earnings to modernize plants, might have been given government orders for goods to be distributed to relief recipients.

Under the first plan the stifling of private recovery as a result of high prices induced by governmental spending would not have occurred; indeed private recovery would have been stimulated by the price adjustments. Since plans of this general nature had been worked out for several industries, and there is every reason to believe that their initiation would have corrected economic maladjustments that were delaying recovery, our conclusion is that, when the President, contrary to General Johnson's advice, divorced the administration of public works from that of the remainder of the NRA, he shackled the latter and prolonged the depression.

2. Effects of Forced Pay-Roll Increases on Purchasing Power

The Administration also embraced a theory of purchasing power requiring the redistribution of income through wage and price changes. The NRA, in particular, was the incarnation of various plans for diverting a larger share of the national income to workers; it was in large measure an agency created (1) to increase the bargaining power¹³ of labor through encouraging unionization and decreasing hours of work, and (2) to raise directly hourly wage rates. The NRA thus began with a double-edged weapon for redistributing national income, and, as time elapsed, it developed others, chiefly monopolistic devices. That such action would cause higher prices and thus compel a redistribution of income affecting all classes was fully recognized, the author, among others, and especially Arthur Dahlberg, having written various memoranda on the subject. Somewhat later Donald

¹³As a means for preventing a severe depression, Arthur O. Dahlberg, later an NRA adviser, urged in 1930 an increase in labor's share of the national income. See Arthur O. Dahlberg, *Jobs, Machines and Capitalism*, New York, 1930. Dahlberg himself recognized the inadequacy of this plan to meet the severer conditions of 1933.

R. Richberg explained the NRA theory in the October, 1934 number of *Fortune* as follows:

It should not be forgotten that with an increased wage and some increased prices the worker always gains purchasing power over those fixed charges that cannot be increased.

Naturally part of the increased labor costs would be met by increasing prices, which in the spring of 1933 were generally at distress levels. But if volume of output increased, as it should with the re-employment of several million persons, it would not be necessary to increase prices to a corresponding amount; and thereby actual mass purchasing power would be increased.

TABLE LXII
MAJOR ITEMS OF SAVINGS IN THE UNITED STATES, 1925-1933

Source: National Industrial Conference Board

Year	Accumulated Savings (Billions of Dollars)				Net Annual Savings or Withdrawals (Billions of Dollars)			
	Banks (Savings Deposits)	Life In- surance Cos.	Building and Loan Asso'n.	Total	Banks (Savings Deposits)	Life In- surance Cos.	Building and Loan Asso'n.	Total
1925	23.13	11.54	5.51	40.18	1.31	2.38	0.50	4.19
1926	24.70	12.94	6.33	43.97	0.87	2.62	0.55	4.04
1927	26.09	14.39	7.16	47.64	0.65	2.87	0.51	4.03
1928	28.41	15.96	8.02	52.39	1.54	3.15	0.50	5.19
1929	28.22	17.48	8.70	54.40	-1.05	3.35	0.28	2.58
1930	28.48	18.88	8.82	56.18	-0.59	3.52	-0.31	2.62
1931	28.22	20.16	8.41	56.79	-1.11	3.66	-0.85	1.70
1932	24.28	20.75	7.75	52.78	-4.78	3.50	-1.09	-2.37
1933	21.13	20.90	6.97	49.00	-3.88	3.32	-1.16	-1.72

"Accumulated savings" represent in the case of banks the aggregate amount of saving deposits standing to the credit of their depositors in all classes of banks; in the case of life insurance companies, the total assets of the companies excluding a very small proportion of items not admitted in asset valuations; and for building and loan associations, the total assets of such organizations.

Net annual savings of banks are the increase in the total savings deposits from one year to the next, less an estimated interest increment on the amount standing to the credit of depositors at the beginning of each year; for building and loan associations, the increase in assets from one year to the next, less estimated interest increment on the assets at the beginning of each year; for life insurance companies the total premiums paid each year.

As stated, this theory is of course too simple to merit much consideration, but rather than dismiss it lightly let us surround it with more complex assumptions. Let us suppose, for instance, that there were stagnant pools of purchasing power and that these could have

been enlivened by distribution to the working class. More specifically, let us investigate the assumptions (1) that corporations with large cash reserves and individuals with substantial bank balances had immobilized purchasing power under their control¹⁴ and (2) that these sums could have been activated by turning them over to workers.

The facts, as shown by Table LXII, are that all current savings, with the exception of life insurance premiums, had become withdrawals during the depression; but, of course, this may have meant

TABLE LXIII

INCOME DISTRIBUTION BY INCOME CLASSES, 1929*

Source: *Econometrica*, Vol. II, Apr., 1934, p. 216, V. S. von Szeliski

Income Class	Number in Each Class	Cumulative	Per Cent	Income in Millions	Cumulative	Per Cent
Under \$1,000	15,472,560	48,500,000	100.0	\$ 9,567	\$90,500	100.0
\$1,000- 2,000	20,117,510	33,027,440	68.1	29,487	89,933	89.4
2,000- 3,000	8,962,940	12,909,930	26.6	21,462	51,446	56.8
3,000- 4,000	1,994,920	3,946,990	8.13	6,773	29,984	33.1
4,000- 5,000	720,210	1,952,070	4.02	3,216	23,211	25.6
5,000- 10,000	770,909	1,231,860	2.54	5,339	19,995	22.1
10,000- 25,000	339,871	460,951	.950	5,032	14,656	16.2
25,000- 50,000	77,039	121,080	.250	2,623	9,624	10.6
50,000- 100,000	28,021	44,041	.091	1,908	7,001	7.73
100,000- 250,000	11,648	16,020	.033	1,749	5,093	5.63
250,000- 500,000	2,842	4,372	.009	911	3,334	3.70
500,000-1,000,000	973	1,530	.003	663	2,433	2.68
1,000,000 and over	557	557	.001	1,770	1,770	1.96

*Estimates for later years are not available. In general, it may be assumed that the distribution was somewhat similar with more or less proportional shifts towards the lower income groups. In fact, all classes suffered large losses during the depression.

only that capital losses caused by the deflation were greater than savings. That there were some individual savings in the form of inactive or liquid bank deposits or currency hoards cannot be gainsaid. As for working capital of corporations, we have seen that the total of this item had decreased from over twenty-two billion to twelve billion dollars in the business decline. Less working capital was, of course, needed under depression conditions of lower prices and wages, but the small firms which would have been most likely to deposit their cash surpluses in banks were undergoing deficits¹⁵ and the large cor-

¹⁴The reason for such immobilization, if it occurred, is unnecessary for the argument. A possible excuse would have been apprehension over the future course of business.

¹⁵The 413 largest companies had a working-capital decline of only about two billion dollars or 25 per cent, whereas other firms lost nearly eight billion dollars or over 60 per cent. See also Chapter XIII, Sections 1 and 2.

porations were investing their funds in securities, chiefly governments, rather than maintain excess deposits in a tottering banking system. The stagnant pools, if they existed, must therefore have been almost wholly controlled by individuals as inactive bank deposits or as currency hoards.

The depressing effects of the hoarding of currency upon purchasing power and business are well known: a hoarder, fearful of the safety of his bank deposit, withdraws currency or gold and places it in a safety-deposit box or hides it. To meet such a drain on its currency reserves and to avoid showing a loss on depreciated bonds, the

TABLE LXIV
ANNUAL SAVINGS OF NON-FARM FAMILIES

Source: Brookings Institution, *America's Capacity to Consume*, p. 261

Income Class	Number of Families (in thousands)	Savings (in millions)
Less than \$2,000	11,528	79
2,000-2,500	2,811	514
2,500-3,000	1,767	500
3,000-3,500	1,312	529
3,500-4,000	898	456
Above 4,000	3,312	13,160

bank usually sells its best securities. These are purchased by holders of other bank accounts, especially the large corporations and wealthy individuals, who in effect exchange their accounts for the best of the securing collateral. As the drain on currency continues, other securities of a less sound character are sold in what has become a buyers' market, losses materialize, banks become insolvent, and bank-deposit purchasing power disappears in a general deflation.

As far as effects on purchasing power of the NRA plan are concerned, pertinent questions are: (1) Can the forcing of business to pay higher wages induce hoarders to return their funds to circulation? and (2) Will any gain resulting from such accomplishment be accelerated or offset by other developments involving purchasing power? With respect to the first question, it need only be noted here that any threat of higher prices usually is sufficient to discourage hoarding and that there have been, as a matter of record, several such threats: the suspension of gold payments had been accomplished just

a few weeks before the Recovery bill was introduced in Congress and the President had repeatedly endorsed the principle of higher prices. Furthermore, anticipation of increased costs and prices under the NRA must surely have led to some of the speculative buying which boosted production so greatly in May, June, July, and August, 1933, and also in April and May, 1934, when the NRA again threatened shorter hours. Such speculative buying would, of course, have been financed through an increase in amount and in velocity of bank credit. Thus, since prices of both normal and excessive inventories should increase under a program threatening higher prices, the financing of pre-code production through bank loans would have been profitable.

With these considerations in mind one easily understands why manufacturers and merchants, who in 1933 negotiated bank loans to finance inventories or who used idle working capital for such purpose, usually found no difficulty in meeting their obligations and in making profits to add to their reserves.¹⁶ Here the familiar lag of wages behind prices operated to produce business profits. Also there was forced borrowing to meet additional NRA pay rolls. Indeed, firms possessing insufficient working capital were compelled to borrow, or restrict or suspend operations, and whenever able, usually chose the first course. At the same time, concerns having excessive working capital, largely in the form of government securities, pledged these against bank loans or sold them outright to investors with idle funds. Such forced creation of bank loans, when it occurred, undoubtedly increased slightly total dollar purchasing power, since the money which the borrowing firms paid out as pay-roll increments eventually returned to the banks and not always merely to liquidate other loans. Briefly, a mild credit inflation, similar to that arising under the federal financing previously described, must have developed.

With further respect to the question of stagnant pools of consumers' purchasing power it may be noted that the only ones tapped in appreciable degree by the NRA belonged to families receiving less than \$3000 per year (see Table LXIII for income distributions) and, as we shall see later, this group had already been subject to appreciable taxes for subsidizing farmers. In more detail, wage earners in

¹⁶But entrepreneurs who through ignorance or deliberate choice did not engage in such speculation, or who were unable to obtain bank loans because of depleted working capital, could have been in worse positions after the wage and price increases: they would have needed increased working capital and pressure of lower-cost inventories on prices would have made competition even more difficult than previously. For them the NRA often used special protective devices which diverted to them income from the consumer—cost-plus formulas, loss-leader provisions, price fixing, production control, and the like.

families receiving \$1,000 or slightly less per year, if employed, received little, if any, increase in income as a result of the NRA. Consequently, unless they had savings, they were compelled to buy fewer goods at the higher prices. Similarly those in the pre-NRA income class of \$1,000 to \$1,500 also had to forgo some consumption of certain goods and services, but, as indicated by Table LXIV, they had small savings which could have been used. On the other hand, those with incomes between \$1,500 and \$4,000, who as a group possessed the greatest proportion of the national income (see Table LXIII), generally were able to purchase their customary amount of goods and pay higher prices for them: this class suffered loss of savings which were distributed primarily to the unemployed, but also to a few of the lower income groups who received wage increases, and to stockholders among whom some of the erstwhile victims were included.¹⁷

To determine the effects of these new wages and of wage increases on purchasing power we must answer several additional questions: (1) To what extent would newly employed workers attempt to build up idle bank accounts? (2) Would an appreciable amount of their income be used to pay debts? (3) How much of the new purchasing power would they use to purchase goods or services produced before the NRA or by industries not subject to the codes? (4) What would happen to the purchasing power after being used once? The importance of the leakages implied here was, of course, well recognized by the NRA: there were, for example, Sachs' calculations on similar situations arising under public spending, which were considered in the previous section, and the types were summarized in various memoranda of the author and others.

As regards the first question, it may be observed that savings of re-employed workers are not large, especially if the new workers have been suffering from acute unemployment. The answer to the second is that nearly all the "surplus" income would be used to pay accumulated debts, especially grocery bills and rent. As for the third question, about one-fourth of the income would be required to pay rent, and ten per cent more would be used for transportation and the like; and there might be numerous but small professional fees. The impor-

¹⁷In addition, those in this middle income group and also those in lower income groups who were not farmers assumed most of the burden created by the Agricultural Adjustment Administration. Note also that persons in the high income groups and corporations will be expected to bear the interest costs and amortization charges arising from the financing of public works through bond issues. At the present writing it seems, however, that the major portion of the recovery cost is being shifted to the worker through the Social Security taxes. (See Chapter XV, footnote 30).

tant problem then is to answer question (4) regarding the utilization of income by the entrepreneurial, professional, and investing classes which sooner or later must become money paid out as wages.

In attempting an answer to this question we observe first that the rate of saving of the 3,312,000 families receiving annual incomes of \$4,000 and over obviously could not be reduced materially by increasing prices of consumers' goods; and increasing prices of new investment goods and simultaneously granting monopolistic privilege to industries made their holdings of old investment goods more valuable and in addition clearly discouraged new investment leading to greater real income for workers. As far as the NRA plan itself was concerned, its effect, then, was to increase at least temporarily the relative welfare of the wealthy.

The benefits to business and individuals of course had to vary widely; the method of code writing through bargaining insured as much, and, in addition, some groups were not coded at all. Such conditions were summarized on June 15, 1934, in a memorandum of the author to Leon Henderson reading in part:

If prices of all consumers' goods were raised slowly by amounts related to NRA wage increases, the effect should be to deflate fixed charges, such as interest, rent, administrative costs, transportation and the like, so that these would be less burdensome. However, I doubt whether any important advantage would actually accrue since there would also be adverse developments, such as business uncertainty regarding labor costs, which would cause manufacturers to hesitate to make commitments.

At present I hold the following theory regarding the effects of NRA price increases on purchasing power: in general, when prices are slowly rising, reserve purchasing power of the middle class becomes active and increased purchases presumably follow. If this occurred under the NRA, higher wages and higher prices without decrease in production could be supported. In the early stages this should mean the opening of many new distributing establishments, theaters, etc., as shown by the records to have actually occurred under the NRA. Part of this recovery in distribution and other service activity might be credited to emergency spending, but this was very slight compared with the revival which has taken place.

One of the earliest effects of spreading work without decrease in individual weekly money wages should be an absorption of vacant housing. Recent surveys show that an unprecedented decline in housing vacancies has already occurred. In a short time rents should steady and then in two

or three years climb steeply, perhaps to twice the level of 1933.

Another early effect of increased wages should be the liquidation of consumer debts and back rents. The Bureau of Foreign and Domestic Commerce has recently announced a survey which shows that this has happened. Early in August, 1933, in a report on the economic effects of the NRA, I pointed out that this would occur and that it would be several months before a large part of the increased wage income worked its way back to factories and that still another part would not become available until it was invested in durable goods.¹⁸

We add that such industries as cotton textiles paid out large wage increments and shortly afterwards began to receive insufficient operating income: both production and employment declined and widespread ruin threatened.¹⁹ On the other hand, farmers, owners of unoccupied houses, and, to a lesser extent, other landlords benefited considerably, yet contributed almost nothing. Others receiving immediate disproportionate profits under the NRA included (1) radio

¹⁸The memorandum was in part a discussion of G. B. Galloway's note to the effect that critics of the NRA were charging it with lowering standards of living. In the partial text given here, several minor changes in phraseology have been made, such as using synonyms where repetition occurred. Other changes include the recasting of the last sentence of paragraph two to make it clearer and the addition of several clarifying phrases. As explained in the foreword we justify such changes on the ground that personal discussion always followed the submission of fundamental memoranda and here views were amplified and ideas were clarified.

The memorandum went on to say that the average consumer who possessed any income had been particularly well off during the depression and that too much sympathy need not be wasted on him. In fact the belief was expressed that conflicts between consumer organizations and code authorities retarded recovery, since the attendant publicity prompted consumers to delay their purchases in the expectation of lowered prices: this caused immediate slackening of business activity and aggravated unemployment. Finally, the memorandum stated that consumers should continue to protest unreasonable price advances, but that in the interest of recovery complaints should first be made privately to a federal agency which in turn should negotiate the matter with the defendant, and only bring it to public attention after industries had refused to yield to pressure without publicity.

¹⁹The index of cotton consumption of the Standard Statistics Company, based on the average of 1926 as 100 and corrected for seasonal variation, stood at 106.9 in May, 1933; 124.2 in July, 1933 when the code was signed; 71.0 in July, 1934; 70.2 in July, 1935; and 112.5 (the index was revised, so that for purposes of comparison this figure should be reduced to about 107) in July, 1936.

The B.L.S. index of employment, based on the average for 1923-1925 as 100 and uncorrected for seasonal variation, was 77.9 in May, 1933; 99.5 in July, 1933; 92.2 in July, 1934; 82.3 in July, 1935; and 93.4 in July, 1936.

The B.L.S. index of pay rolls, based on the average for 1923-1925 as 100 and uncorrected for seasonal variation, was 49.2 in May, 1933; 69.0 in July, 1933; 66.1 in July, 1934; 64.2 in July, 1935; and 80.7 in July, 1936.

shops, (2) dealers in used cars, (3) those engaged in the small loan business, (4) retail stores through payments to their credit departments, and (5) tax-collecting bodies such as municipalities, counties, and states. Increased wages used in the last four ways, of course, had to be respent before effecting an increase of production of goods. And, of course, some industries collected from the consumer just about enough to meet the extra wage costs.

Obviously, the chief immediate effect of such a program was that some producers and distributors were enabled to replenish badly depleted working capital at the expense of the consumer, including other business enterprise and governments, the extent of benefit varying from industry to industry. If, in the process, sufficient confidence in the future could have been generated, a credit expansion to increase production or even new investments adding to productive capacity and greater general well-being could have followed. The facts, as shown by Table IV, pp. 114-115, are that in no recent time have new investment loans, which are used chiefly to create additional plant capacity, even approached the low levels of 1933 and 1934.²⁰ As a result, the gains in employment in capital-goods industries are not even as large as might have been expected from the federal public-works program alone with all due allowance for increases in prices of capital goods resulting from such expenditures.²¹

²⁰This condition of stagnation has been attributed by some critics to federal regulation of corporation security issues, but this factor has probably been overstressed. For instance, beginning in 1921, following the post-war deflation, the large corporations, which normally offer the securities listed on the exchanges, built up working capital reserves so that they would not need to seek capital during periods of depression. These large companies, possessing adequate funds and plant to carry on present business operations, have refrained from making replacements which would be indicated under more certain conditions of federal policy; and the small firms have been unable to obtain even working-capital loans, to say nothing of their difficulty in borrowing for expansion. See also Chapter XIII, Section 3.

It is true, nevertheless, that the Securities and Exchange Commission has practically stopped the sale of fraudulent securities, which, however undesirable, did have some effect in creating credit and in activating certain savings, used at least by promoters in high living or in the purchase of consumers' goods. But more important from the viewpoint of velocity of money—in this instance rate of investment—and recovery from depression, the commission has undoubtedly retarded or prevented the issuance of securities to finance such speculative ventures as previously had required some deception for ready salability.

²¹It is probably true also that some part of the business revival in the United States would have taken place without large federal expenditures. At any rate, thirteen countries which have not had such programs seem to have had more recovery than the United States since these expenditures began. But of course such nations as Germany, Italy, and England have spent large sums on rearmament, and one must be exceedingly careful in his appraisal of what constitutes economic recovery.

Moreover, it appears that, when the retarding effects of business uncertainty are taken into consideration, the net effect of the NRA's effort to augment purchasing power must have been zero or perhaps negative. Thus, although increasing wages and then raising prices sufficiently to compensate probably did deflate such fixed charges as interest and transportation with respect to wages and prices, the method used was stifling to business and employment. In general, the families with high incomes and corporations, which benefited most, experienced little or no net inconvenience under the recovery program.

We add that NRA's plan was equivalent to a consumers' levy of much the same nature as a pay-roll or sales tax:²² through shorter hours involving lower weekly dollar wages and also through price increases, workers were taxed part of their wages in order that purchasing power might be given to the unemployed and to the high income groups.

The foregoing considerations naturally prompt the following speculations. If the capital dams, which have been preventing increases in employment, should continue to hold, further proposals will be made to confiscate a large part of individual and corporation savings through inflationary measures or through higher taxes, to be distributed to the unemployed, or to shorten hours more drastically in the consumers' goods industries than was attempted by the NRA. If the latter solution should be chosen, it will result, at least while in effect, in decreases in general standards of living greater than those following the imposition of sales taxes for relief purposes²³ and the problem of reinvesting profits will remain. Indeed, the original condition will be greatly aggravated. Confiscation of income probably could not be accomplished politically in a democracy, and, if initiated by a dictator, however benevolent but in any event lacking omniscience, might easily mean the serious retrogression or downfall of American civilization.

The key to the future is to be found, we believe, in the happenings of the year 1937. First, the outlook is for about \$800,000,000 net deficit spending after deducting about \$600,000,000 collected in pay-roll taxes—deflationary because they are to be “saved”—as compared

²²The Guffey Coal Act passed after the NIRA had been declared unconstitutional relied upon a direct pay-roll tax. The Act would have benefited coal miners, chiefly at the expense of other workers. It was declared unconstitutional in 1936.

²³The author first likened the NRA plan to a pay-roll tax at a meeting of the Advisory Committee of the Research and Planning Division in November, 1933.

²³See also Chapter VI, Section 4.

with about \$4,000,000,000 in 1936. This will mean a tapering off of the 1936 revival unless industry goes forward to fill the gap. Signs that industry will lift the load began to be manifest in the summer of 1936; private loans and investments of banks, which finance increased production and new employment, showed the first significant increase since 1933; new security offerings which finance new plants and equipment rose; and industry, to minimize payments of the tax on surplus, began to spend earnings for replacing obsolete equipment the book value of which less scrap value could be deducted from income. An encouragement of this tendency should mean rapid emergence from the depression and preservation of the American system of enterprise with a minimum amount of regulation. On the other hand enactment of another NRA plan of wage and hour regulation will promote uncertainty, and this will mean decrease in production, decrease in new investments, decrease in business, and decrease in employment. It may lead to a complete change in American institutions, increased government competition with business, and ultimately a much lower standard of living. It may mean, as it has apparently in other countries, the encouragement of laziness, a desire to legislate against competition and initiative, the production of vastly inferior products, and the decadence of American civilization.

3. *Farm Purchasing Power*

While the NRA was the focus of the President's recovery program, any complete appraisal of its efforts must include some consideration of such closely related measures as the agricultural adjustment plan. This latter scheme, in essence, proposed the organization of farmers into monopolistic groups by the Government so that a greater share of the national income could be directed to them;²⁴ and

²⁴For the long history of agitation for farm subsidies the reader is referred to such works as J. D. Black, *The Agricultural Problem*, New York, 1929.

The following quotations from prominent agricultural leaders indicate in a meager way the origin of problems:

(1) "The farmers were not the cause but the victims of land speculation which carried land values in some regions up to impossible heights in 1919 and 1920." Statement of the Secretary of Agriculture in 1924.

(2) "The farmer tilling his \$75 or \$200 an acre land, producing an average of about 14 bushels to the acre, sells his wheat, produced at high cost, in Liverpool in competition with the Canadian wheat growers, growing their wheat on their new farms, rich in production, and selling at \$5 to \$10 an acre, at times producing as high as 40 to 60 bushels to the acre." Statement of Senator Smith W. Brookhart in 1924.

(3) "In the past few years the Government has given this subject more attention than any other and has held more consultations in relation to it than on

as an encouragement to such organization the Government freely offered subsidies derived from processing taxes to all who would agree to restrict the acreage planted. In fact, every farm-relief plan so far presented has embodied precisely the same principle — the creation of farmers' monopolies enabling the diversion of income to themselves. The excuse has always been that tariffs protected manufacturers, while the farmers were the only group engaged in free competition. It has been argued moreover that this diversion would redound to the advantage of those who paid the subsidies: farmers with income would purchase industrial products; and this would make jobs, profits, and general well-being.

To consider adequately the claim of increased general well-being we would need statistics on incomes and other distributions in 1933 and other recent years, and, unfortunately, they are lacking. However, we can gain some insight into the problems by a consideration of Table LXV prepared by the Brookings Institution to represent these data in 1924-1930. We note first that, for a given income, farm families saved far greater proportions than did non-farm families, savings of those in the \$1,500-\$2,000 income farm group being approximately the same as those in the \$3,000-\$3,500 income non-farm group. We must add also that even allowing for decreases in prices of food, clothing, home, and other living expenses the majority of non-farm families, because of the large unemployment existing in 1933, were accomplishing no current savings. From other information — insurance, instalment buying, home mortgages, and the like — we know that many of the others who could accomplish savings found them largely pledged; life insurance premiums had to be kept up, payments had to be made for articles bought on the instalment plan, and monthly payments on a home had to be made.

Under such prevailing conditions the Farm Relief Act instituted sales taxes on food and clothing to obtain funds for subsidizing all farmers without regard to need — the larger the income of a farmer

any other subject." Statement of President Calvin Coolidge, December, 1926. At this time he convinced business and labor leaders that national prosperity depended upon increasing farm purchasing power and so gained support for various plans to this end. In 1926, for instance, we find William Green, president of the American Federation of Labor saying: "The plight of the farmer is a menace to the prosperity of the entire country. . . . As a consequence (of low farm purchasing power) mills, mines and factories are idle part of the time and our greatest and most remunerative market, the home market, is impaired." *Public Affairs*, November, 1926.

One of the earliest remedial proposals was that the Government establish co-operatives to buy up domestic "surpluses" and dump them in foreign markets.

TABLE LXV
EXPENDITURES AND SAVINGS OF FARM AND NON-FARM
FAMILIES BY INCOME GROUPS, 1924-1930

Source: Brookings Institution, *America's Capacity to Consume*, p. 257

Income Class	Families		Average Expenditures				Savings	
	Number	Per-centage	Food	Home	Attire	Other Living	Average	Total
Farm								
0- 500	1,522,000	26.24	250	75	40	35	-80	-121.76
500- 1,000	1,712,000	29.52	400	150	100	100	-20	- 34.24
1,000- 1,500	1,005,000	17.33	490	260	180	200	100	100.50
1,500- 2,000	607,000	10.47	550	340	210	260	370	224.59
2,000- 2,500	393,000	6.78	600	410	250	310	660	259.38
2,500- 3,000	221,000	3.81	630	480	280	360	980	216.58
3,000- 3,500	135,000	2.33	660	550	310	410	1,300	177.50
3,500- 4,000	95,000	1.64	680	600	340	450	1,660	157.70
4,000- 4,500	62,000	1.07	700	630	360	490	2,050	127.10
4,500- 5,000	40,000	.69	720	650	370	540	2,450	98.00
5,000- 6,000	40,000	.69	730	670	380	600	3,050	122.00
6,000- 7,000	19,000	.33	740	690	390	670	3,950	75.05
7,000- 8,000	9,000	.16	750	720	400	730	4,840	43.56
8,000- 9,000	4,000	.07	750	740	410	800	5,750	23.00
9,000-10,000	2,000	.03	750	760	420	870	6,650	13.30
	5,866,000							
Non-Farm								
0- 1,000	2,735,000	12.62	360	250	110	110	-60	-164.10
1,000- 1,500	4,749,000	21.91	490	360	180	210	-10	- 47.49
1,500- 2,000	4,094,000	18.89	610	470	250	310	100	409.40
2,000- 2,500	2,811,000	12.97	700	580	300	470	180	505.98
2,500- 3,000	1,767,000	8.15	770	690	350	640	280	494.76
3,000- 3,500	1,312,000	6.05	820	820	390	800	400	524.80
3,500- 4,000	898,000	4.14	860	960	450	960	510	457.98
4,000- 4,500	656,000	3.03	900	1,110	490	1,120	620	406.72
4,500- 5,000	474,000	2.19	920	1,250	530	1,260	780	369.72
5,000- 6,000	626,000	2.89	940	1,460	590	1,480	990	619.74
6,000- 7,000	388,000	1.79	970	1,720	680	1,770	1,320	512.16
7,000- 8,000	243,000	1.12	1,000	1,930	760	2,050	1,720	417.96
8,000- 9,000	168,000	.78	1,030	2,100	820	2,280	2,240	376.32
9,000-10,000	126,000	.58	1,060	2,290	900	2,500	2,720	342.72
10,000-15,000	301,000	1.39	1,150	2,620	1,040	2,980	4,270	1,285.27
15,000-20,000	107,000	.49	1,300	3,600	1,400	4,300	6,600	706.20
Over 20,000	219,000	1.01	1,600	4,200	1,800	4,800		
	21,674,000							

In using this table it should be remembered that a farm cash income of \$1,000 is effectively greater than a non-farm income of \$1,000, since the farmer enjoys many hidden income items not available to others, such as vegetables, fruits, and housing.

the greater his subsidy.²⁵ As for the non-farm individual, if he was fortunate enough to possess unpledged savings, all or some parts were taken for a distribution to the farmers; if he had no unpledged savings or deficits, the tax still had to be paid — the taxpayer could even lose his home,²⁶ forfeit his life insurance, forgo food, or get on "relief." The farm group was well organized and threateningly demanded subsidies.

That such diversion of income should induce general prosperity is obviously a debatable claim. We believe that at best there should be increased orders for agricultural machinery,²⁷ automobiles, radios, and similar luxury or semi-luxury goods; and these must arise at the expense of decreased consumption of food and clothing in urban centers. That the Government recognized possibilities of decreased production is, of course, clear: the Act itself specified that the administrative agency should enter into contracts with farmers to induce them to refrain from planting acreage. It is, of course, well known that such restriction was followed, the plan being defended by an Administration spokesman in the following words:

The economist, with his knowledge of the broad outlines of the course of economic progress through the centuries, has observed that it goes hand in hand with the increase in the production of economic goods. . . . From this standpoint, any diminution in the application of effort and resources to production appears to be a step in the direction of national poverty. . . . I would like to suggest that the doctrine which identifies increased wealth with increased production . . . means increase in general or total production and not necessarily increase in the production of any particular article. . . . Production to mean prosperity must be

²⁵In fact, the lowest income groups of farmers even received proportionately less than others: they were share-croppers—unfortunate Whites, Negroes, or Mexicans—and could go on "relief."

²⁶The Federal Government did provide loans to individuals to prevent such losses, but, nevertheless, foreclosures in 1933 were far higher than at any other time in American history; also in 1934 and 1935 they were as high as in 1932 and much higher than at any other time in American history, excepting in 1933.

²⁷With respect to machinery purchases the following comment by Frank Bohn, *Forum*, February, 1925, is worthy of consideration:

"One of the most pitiful sights in the world today is a row of gang-plows, harrows, binders, and a threshing machine or two standing out in the rain and snow on a farm in the northwest. The machinery cost to the average wheat farmer of the northwest is at least three times as much as it should be. This alone is enough to keep him in debt. Ignorance and carelessness in the use of farm machinery is one of the weakest links in our entire American economic system."

An obvious way to combat such a situation is to educate the farmer in the use and care of machinery.

production of articles for which there is an effective demand. . . . In the last few years there has been a very large increase in the production of wheat. In spite of the fact that the price has greatly declined, there has been no great increase in consumption. . . . Meanwhile, where a curtailment of effective demand for the article exists, for whatever reason, good or bad, it remains economic waste to go on producing the article in undiminished quantities.²⁸

One obvious trouble with such reasoning is that "effective demand" is left undefined. And such a term to political administrations has meant the demand under existing national income at a price sufficiently high to yield profits to a majority of an industry even though losses occur in other industries. For instance, although Texas can produce some cotton profitably at seven and eight cents per pound, the "effective demand" has been taken as that existing at a price of eleven cents, which was more nearly the 1934 cost of production in Georgia and Alabama. Thus, the role of profit in inducing expansion in an industry and loss in forcing abandonment of inefficient units has been entirely neglected.

From the point of view of the NRA, more important than the transfer of workers' incomes to farmers through the Administration's processing taxes and higher farm prices, were the effects of Secretary of Agriculture Wallace's restrictive philosophy on industry. Time and again industrial groups pointed to the agricultural program of contrived scarcity and demanded that the NRA sanction similar plans. They argued that if the Federal Government could slaughter 6,000,000 little pigs, some of which were to be dumped into pits and buried,²⁹ why could not the NRA prevent the production of goods at less than cost? So insistently was this point made that NRA advisers were often led to wonder whether Americans, unable to govern an economy of abundance, were determined to stop all activity, or as some expressed it: "If the head aches, chop it off."

The purpose of planning scarcities is simply to insure higher in-

²⁸Address of John Dickinson before the Southern Economic Association, November 9, 1934.

²⁹It may be of some political interest to note that following this "planning" a drought ensued and the price of bacon rose from fifteen cents per pound to forty-five cents in two years' time. Consumers then began to protest the agricultural program. At this point, the Secretary of Agriculture attempted to avoid responsibility by advancing the argument that these pigs, if not killed in 1933, would have already gone to market. But one following his argument to its logical end reaches the absurd conclusion that the killing of nearly all pigs in 1933 would have had no effect on the price of pork in 1935; and yet if only the 600,000 farrow sows slaughtered had been permitted to live, these would have produced over 5,000,000 hogs in 1934.

come to groups unable to function competitively because of past mistakes. At times this may be desirable, but one of the chief difficulties involved in past attempts centers on the lack of assurance that this diverted income will be put to better use than otherwise. The farm program, for instance, definitely encouraged the same kind of land inflation which led to the agricultural collapse in the early twenties: farmers provided with current savings through subsidies, bid for foreclosed farms of insurance companies, banks, and urban investors, and for each other's land. Indeed, as is well recognized in some quarters, saving often means to the farmer purchasing another forty acres. It is not surprising therefore that, after two years of farm subsidies, some land which had been deflated to \$3 per acre sold for \$25 and carried a mortgage of \$10. A new era of inflated land values and their attendant high mortgages (requiring large interest payments) and high assessed values (resulting in burdensome taxation) had been inaugurated.³⁰ We predict that in the end this must lead to new farm difficulties and demands for new subsidies. Then, here, as in every other country where similar agricultural programs have been attempted, a thoroughly aroused consuming body will finally put an end to such forays in economic planning.³¹

In brief, there is reason to believe that the farm program, rather than having created new purchasing power as intended under the Farm Relief Act, has actually destroyed, sterilized, or misdirected it: purchasing power of several rapid-spending groups has been transferred to a more frugal farm population. Low-income non-farm groups, who have contributed to the support of this program through sales or processing taxes, have been compelled to forgo certain foods and clothing or supplement their income by "relief." At the same

³⁰A much sounder plan of farm relief would call for shifting from property taxes to income taxes on all classes, with a higher rate applicable to farmers to prevent inequalities arising from their non-cash income, and perhaps also call for special grants to reduce the debt burden. But if subsidies were allowed, the Government should insist that they be used to repay farm loans and should institute means for deflating land values so that even cheaper farm products could be expected in the future; the farmer, being relieved of present burdensome fixed charges, would then have a greater portion of his income available for spending on industrial products.

By shifting taxes from property to income, only those able to pay would be taxed, so that here again there should be a net social gain. Insurance companies and others making loans on farm property would probably have to find new borrowing sources but, after all, there is no excuse for making a mature or declining industry the base of insurance expectations.

³¹Some farm leaders and politicians would do well to read the history of the corn laws in England and in particular to study their end in 1846. Also it would be instructive for them to examine similar experiments in ancient Rome—inflation, farm subsidies, price fixing, and control of production.

time, as a result of reduction in crop acreage, share-croppers and tenant farmers have been forced out of employment and also on to the relief rolls. Urban dwellers, who would have purchased automobiles, radios, and the like, on instalment payments of as much as \$25 per month, have watched their expenses for food and clothing increase steadily so that their farmer friends might enjoy these goods. Other increased farm income has been directed to the inflation of land values through competitive speculative buying and to the purchase of agricultural machinery, both leading to higher overhead costs and intensification of the real farm difficulty. And with it all American farmers have lost, at least temporarily and perhaps permanently, certain important foreign markets.

4. Theory and Accomplishments

The Administration, pledged by President Roosevelt to aid the "forgotten man," had at least three important schemes for fulfilling this promise through redistributing income. The public-works program, the most expensive to the taxpayer of the three, provided only a relatively small amount of employment; and certain projects, directly competing with private industry, have undoubtedly dampened the enthusiasm of private business expansion and thereby promoted unemployment. At the same time, as a means for increasing workers' income, wages paid on public projects exceeded rates on private work with the result that private employment was delayed and total workers' income not increased or actually reduced. Likewise, the NRA plan for diverting income from entrepreneurs and the middle class to workers through higher wages and shorter hours of work has produced unexpected results. Wage raising in the industries producing construction materials coupled with the high wages on public works so raised costs that revival of private building activity was postponed probably two years. Such delay, of course, meant that workers' income was diverted to the "unforgotten" landlords through the channel of higher rents; and this, in turn, was followed by a rise in value of the real estate held by all classes but in particular by the bourgeoisie.³² Also, higher wage costs in the consumers'-goods industries have made some mechanization imperative if profitable operation was to continue, and yet this escape was practically shut off by the NRA through

³²Such diversion continues—higher rents and higher real estate values—until it becomes cheaper to build new housing than to buy existing property at the inflated prices. At this stage revival assumes significant proportions; once more modern housing is erected, and the standards of all housing raised.

price and wage increases in the machinery industries. In consequence, if codes had been enforced, many mills would have been compelled to suspend operations despite reviving world trade. Despite this lack of enforcement in every industry the better-than-average-mechanized larger corporations raced on to increased earnings or decreased deficits at the expense of some small competitors.³³ As a corollary, wealthy individuals, who were the chief holders of common stock of these favored large corporations, experienced a doubling or trebling of their capital.³⁴

While the dollar value of capital equipment was increasing in this way, weekly dollar earnings of industrial workers only rose from an index number of 70 in June, 1933 to 80 in June, 1935, whereas the cost of living increased from 96 to 107.5 in the same period. Consequently, real wages improved the insignificant amount represented by the difference between 72.9 and 74.3. Therefore, considering that federal borrowing prior to the middle of 1935, when the Act was voided, increased bank deposits by over 25 per cent and assuming that some part of this inflationary purchasing power should have gone to employed workmen, we must conclude that these failed to hold their own under the NRA plan for redistributing income.

Similarly, the agricultural device for increasing mass purchasing power seems to have missed its lofty goal. Through a program of restricted production, share-croppers and agricultural workmen have been forced upon the relief rolls, while benefits of higher prices and federal subsidies have gone in considerable measure to landowners and wealthy producers. Worst of all, new savings of these groups have been used for speculative farm land purchases — to buy the vested rights arising from farm bonuses and to secure allotments — with the result that land values have been inflated and the fundamental farm problem perhaps made even more difficult of permanent solution. The chief redeeming feature is that burdensome surpluses in certain lines have been exhausted by the help of an unexpected drouth and rearmament in Europe.

We are, therefore, forced to conclude that the Roosevelt plans of

³³See also Chapter XIII, Sections 3 and 4.

³⁴The Dow-Jones index of industrial common stock prices increased from 58 in March, 1933 to 156 in March, 1936. The Standard Statistics Corporation's index, which is generally regarded as more scientific, rose from 42 to 124 in the same period. Important parts of this increase in stock prices are also attributable to the inflow of foreign gold following deflation and the creation of new bank deposits through federal deficit financing. While it would be extremely interesting and instructive to know the effects of each, it seems to be impossible to isolate them. By December, 1936 the Dow-Jones index had reached 180.

attack to aid the "forgotten" man, have failed to achieve their objective or carried far in the opposite direction. In fact, sales taxes, either the direct kind in the form of processing levies or the indirect through job-sharing, fell with full force on the lower income groups. Simultaneously, capital holdings of the upper middle and wealthy classes have increased at least two-fold. Thus the chief beneficiaries of the President's recovery plan have been the recipients of relief and the owners of property.

CHAPTER XV

FURTHER EVALUATIONS

1. *Labor Reform under the NRA*

Whatever were the NRA's shortcomings, no other governmental agency ever aspired to such comprehensive reform—the fixing of minimum wages and the shortening of hours of work to abolish the sweatshop, the encouragement of unionization for collective bargaining, the codification of fair trade practices, the outlawing of child labor, and a host of others. Each reform in itself was a major operation on the economic and social organism. Collectively, they were daring beyond imagination.

One of these movements, the fixing of minimum wages, was so important in the NRA program that we must here consider some reform aspects not so far treated in our study.¹ First, it should be recognized that the industries characterized by low wages and chiefly affected by the NRA were those producing staple commodities, demand for which varied little with change in price. We believe that in these industries there is always more productive capacity than is needed to supply the nation's requirements at a price sufficient to enable producers to pay high or even average wages and still cover operating costs. Communities in which their plants are located usually become poorer and poorer as workers accept progressively lower wages relative to those paid in other industries. As a result, employees' children are soon forced to supplement the low earnings of their parents, and thereby an already too large supply of labor is further increased. Minors who are not driven to factory employment probably attend schools, but since these schools are usually markedly inferior, the majority grow up handicapped. Eventually many must work at the same unprofitable tasks as their parents. Although they may prefer to change their trades, their economic condition prevents adequate training or apprenticeship.

To correct such conditions it has often been proposed to establish minimum wages and, as a corollary, maximum hours of work. Yet, as we shall now attempt to demonstrate, this is really no solu-

¹For economic and statistical appraisals see Chapters VII and VIII.

tion. The establishment of a legal minimum wage, we believe, causes a reduction in employment accomplished by such means as (1) curtailment of production and increase in prices to the new most profitable levels, (2) speed-up of workers so that fewer are needed, and (3) the installation of laborsaving devices. In this readjustment the least productive workers are usually laid off and the remaining ones required to perform additional tasks.² Therefore, whenever a minimum wage is imposed, the workers remaining employed have larger incomes made possible through a combination of increased productivity and higher prices to the consuming public, while those who are discharged have nothing; and unless something is done to retrain such unemployed workers, a more or less permanent class of near-paupers is created.

So far, we have assumed that the industry affected is a domestic one. Usually however, the low-wage industries produce goods which are also manufactured under somewhat similar sweatshop conditions throughout the world, and international factors have to be considered. For instance, if the United States should impose a high minimum wage in the cotton textile industry under a regime of free trade, a considerable part of the industry would be forced to suspend operations;³ and to establish protective tariffs clearly is to subsidize an

²There are, of course, a great many ways of evading minimum-wage laws. For example, various gold mines in Colorado circumvented payment of NRA minimum wages by contracting with miners to share the proceeds of operations. See also Chapters VII and VIII.

In fact, enforcement is almost impossible.

³Professor Frank W. Taussig of Harvard University has made the following observation on the development of the American textile industries:

"In the textile industries an analogous development took place, but here not so much in the way of greater exports as of less imports; not so much the attainment of a clear comparative advantage as the elimination, in part or in whole, of a lack of superiority. The shift for the purposes of international trade was negative rather than positive. Those textile industries which could use unskilled labor for tending semi-automatic machinery for mass production found a plentiful and cheap supply at their command. Those for which still other conditions also were favorable, notably those manufacturing the cheap and medium grades of cotton fabrics, grew apace. Their position of indifference to foreign competition, almost if not quite attained even under the earlier conditions, was strengthened and consolidated by the cheapness of the routine labor. Textile industries of a different type, such as the silk and worsted manufacturers, were enabled to attain a half-way position. For them the general conditions were less favorable; in order to hold their own against foreign competition, they needed a tariff prop much more than did the leading branches of the cotton manufacture. But the utilization of cheap common labor enabled them, not indeed to hold their own without protective duties, but to get on with a less barrier than would otherwise have been called for. The effect was the same in kind as that on the cotton industry, but not so marked in degree." F. W. Taussig, *International Trade*, New York, 1933, pp. 59-60.

For a time exchange manipulation might enable the American textile indus-

industry which is unable to pay the high wages customary in the highly mechanized American plants of other industries. To chose among the possibilities, (1) minimum wages without tariffs and ultimate abandonment of a large section of an industry, (2) minimum wages, high tariffs, and decreased consumption and production, and (3) continued low wages and free trade, involves many fundamental issues both economic and sociological. What, for instance, are the alternative opportunities for the displaced labor? Should high-wage labor divide its income with the low-wage group and if so, to what extent? What sections of the country would be depopulated under a minimum-wage regime and would this development be good or bad for the nation as a whole? Clearly, to answer adequately such questions would require extended treatment; we can but raise the issues here. There is, however, a specific complication that can be considered — the interrelation of minimum wages and hours of work.

The setting of minimum weekly wages without the fixing of maximum hours of labor would probably result in excessive working schedules: employers could take advantage of abundant labor supply and work their employees sufficient hours to make the hourly rate of pay no higher than before. Such a development would naturally aggravate the unemployment problem, at least for several years while adjustments were being made, and create even greater problems of retraining and relief. Yet, to impose high minimum weekly wages and maximum hours of work comparable to those in thriving industries would compel the closing of plants and of itself create unemployment. The NRA experience, depicted by Chart II, pp. 125-130, shows that in 21 out of 24 industries for which data are available decrease in hours under the NRA, instead of creating jobs, actually led to unemployment and greatly reduced levels of production;⁴ and factors outside of the NRA caused increases in the exceptional industries. But, despite these data, some social gain probably followed from the NRA's program of shorter hours; for instance, employers who had been working their employees as long as sixty hours were publicly

try to pay higher wages. Thus, lowering the value of the dollar from \$4.00 to the pound sterling to \$5.00 to the pound, for instance, roughly has the effect of reducing American prices with respect to British prices by 20 per cent. But such manipulations cannot be carried on indefinitely, and in addition they seriously disturb the balance of internal economic factors.

⁴Sometimes these decreases in production resulted from inability of plants to secure skilled labor, but more often from the refusal of consumers to pay the higher prices required for profitable operation. For a theoretical discussion of some effects of raising wage costs, see J. R. Hicks, *Theory of Wages*, second edition, 1935, pp. 179-216.

served notice that much shorter shifts were customary and desirable, and, even with the voiding of the NIRA, it is likely that standard hours of work will be permanently lowered.⁵ Moreover, quantity of goods alone does not measure social well-being. Of considerable importance is leisure for the attainment of spiritual, mental, and physical improvement.

A closer study of the effects of compulsory minimum wages discloses ramifying influences of incalculable extent. To their use some trace in the various other countries adopting them great labor unrest, lack of initiative and laziness, vastly inferior products, and a standard of living years behind our own. For a country having such diversified costs as the United States, their adoption must lead to profound changes of doubtful helpfulness. Their establishment in a single important industry may change the direction of the nation's life. When these possibilities are considered together with difficulties of policing and enforcing, we are forced to the conclusion that the United States would be foolish indeed to attempt them.

What improvements in labor conditions, especially as regards the sweatshop, it is pertinent to ask, then, might have been achieved without resort to minimum wages? There are several possibilities. For instance, it seems that much more permanent and satisfying adjustments might have been accomplished, through careful direction of a public-works program of NIRA magnitude. Thus, we believe that, after having determined through a survey what plants in the low-wage industries were least efficient, the Government might have sent a group of industrial engineers to study them and recommend alternate uses, especially in the manufacture of scarcity products. Upon securing the consent of an owner of a distressed plant to transform it as recommended, the Public Works Administration or the Reconstruction Finance Corporation, if necessary,⁶ could have granted a loan to be used for the purpose. During the period of such transformation, public works could have been initiated in the area to insure

⁵Drastic reduction in hours of work occurred in only a few instances and, with the abandonment of compulsory codes, industries which made excessive labor concessions in exchange for cartelistic devices will probably return to more normal competitive conditions. In the first few years some increase in hours of work will probably occur in certain industries, but this should not be taken as indicative of general collapse; the NRA created inequalities whose correction should lead to quicker business revival and greater total product.

It is of some interest to record that this note was written on May 26, 1935, the day after the Supreme Court had voided the NIRA. See also the *Associated Press* dispatches of this date for an elaboration of the author's views.

⁶In these circumstances private capital would probably also have been available and a federal loan made unnecessary.

that no one should suffer even temporary unemployment; or better, workers and youths of the region could have been trained for the new tasks which they would be expected to perform upon the opening of the altered plant. Indeed, it seems that if the Government is at all justified in attempting to revive business by economic planning, it could well afford to undertake the kind discussed here. Even in industries in which low wages have abounded, only a few workers would need to be retrained annually,⁷ and the transformation of inefficient plants would enable those which remained to operate at higher production levels, make profits, and raise wage standards. This is planning for increased production and higher standards of living and is not to be confused with the planning of scarcity.

As for sweatshop conditions in undistressed industries, we believe that these might have been corrected through initiating public works paying wages slightly below the average for the industry. Such a policy would have forced profiteering sweatshop owners to increase wages and others to close. Although the adversely affected persons undoubtedly would have protested such competition for labor, they would have been unable to enlist strong public sympathy unless the Government had paid a wage, say, as high as the average of the industry, thus causing appreciable increases in prices and noticeable unemployment.⁸ But, of course, there is the important question of ethics: Should the Government use taxpayers' money to force taxpayers to increase their expenditures for wages? Again we merely raise the issue.

Another important phase of the NRA's efforts to increase workers' income concerned the encouragement of unionization for purposes of collective bargaining. This would, it was claimed, counteract the effects of mergers and combinations of industry which had resulted in fewer opportunities for obtaining fair-bargaining wage rates. Moreover, it would, according to its proponents, enable workmen to cope with managements which attempted to take advantage of em-

⁷The reduction in employment in the industry losing the inefficient plant would be less than the former employment of this unit because part of the business would be transferred to other producers.

Such planning as that indicated here might, of course, mean abandonment of large sections of certain tariff-protected industries, or, contrariwise, the establishment of higher tariffs. But the same outcome can be expected under minimum wages.

⁸The plan of the Civil Works Administration was somewhat similar to that outlined here. But this organization incurred strong popular disapproval because, contrary to the advice of experts both within and without the NRA, it paid wages well above the prevailing level, and undertook trifling projects. See also Chapter VII, Section 6 and especially footnote 20.

ployees' dependence upon work for sustenance. As a result of this and other agitation Congress, without distinguishing between good and bad managements, instructed the NRA to promote collective bargaining in all plants. Friend and foe of labor were to be accorded the same treatment: on the basis of certain known injustices the labor relations of all industry were condemned.

From the point of view of organized labor this phase of the NRA was highly successful: membership in the American Federation of Labor, which reached a low of slightly over 2,100,000 in June, 1933, turned very sharply upward and rose to over 2,700,000 by the end of 1934; and membership in company unions also greatly increased. Even labor leaders admitted that a considerable portion of their gain could not have been accomplished without Section 7a of the NIRA which, we have seen, required endorsement of collective bargaining by all industries writing codes.

Yet admitting success in the attainment of this goal, we may still question the wisdom of pursuing the objective chosen. The important issue is not whether labor is receiving a "fair" wage in a system in which the very definition of "fair" must be obscure, but whether monopolies and ultimate dictatorships shall replace the American system of competition with slight regulation. In fact, there seem to be only two possible choices: (1) to encourage the establishment of monopolies in both industry and labor or (2) to discourage present tendencies and break up anti-social organizations in both. The first course obviously requires strict governmental regulation and there is ample reason afforded by the NRA experiment to believe that it would not be successful under a form of government in which the administrators are elected by majorities: it thrives only under dictatorships of the most extreme European types. The other course might be more suited to the American temperament, at least if not carried to the point of atomizing industry.

We believe that unbiased study will show that the present tendency is to vacillate between the two: the present Government, while proposing to break up large industrial units through progressive taxation according to size of either earnings or surpluses, aids and abets, consciously or not, farmer, labor, and industrial monopolies. In fact, the NRA's cost-raising program, at least to the extent of its enforcement, fell heaviest upon the group suffering from the greatest depletion of working capital—the small firms. The divorcement of commercial and investment banking fell heaviest upon the group accustomed to obtaining working capital from banks—the small firms.

The taxation of corporation surpluses may fall heaviest upon the group requiring funds for expansion and least able to obtain them — the small firms. Similarly, the pay-roll taxes of the social-security program will fall heaviest upon the group having the highest ratio of pay rolls to value added — the small firms.⁹

With respect to attitudes towards labor combines, we note first that the NRA, while attempting in some industries to regulate or prohibit certain unfair monopolistic trade practices, granted powerful privileges to various groups provided they yielded to the demands of organized labor. To secure approval of a monopolistic "fair-trade-practice rule," industry needed do little more than offer "generous" hour and wage provisions. Even worse for the preservation of the American form of government, the President, influenced by a labor union, urged Congress to pass the Guffey Bituminous Coal bill despite doubts of constitutionality, however reasonable.¹⁰ Somewhat later the President has yielded to the demands of another labor organization and asked the Congress to pass a bill requiring contractors on governmental projects to pay the wages and accept the schedules of working hours, set by the Department of Labor. If experience is indicative, labor unions will dictate these conditions. Thus, from one point of view, the Administration has, in effect, proposed to tax large industrial units and use the revenue for subsidizing semi-monopolies of labor.

But it should be clearly understood that labor unions, as well as large units in certain industries, can conduct themselves so as to promote the social welfare in a complex economy like that of the United States. Neither combination is of itself bad and to be destroyed at the earliest possible moment. Three kinds of labor unions seem to be desirable: (1) craft unions of the type of members of the American Federation of Labor (a) to reach general agreements as to basic wages for each type of work for each price level, (b) to promote the training of apprentices, and (c) to guard zealously the quality of work of their journeymen and their character while on the job; (2) unions of workers in particular companies whose representatives would meet with the management to determine upon (a) conditions of work within the plant, (b) bonus plans and other special incentives to greater efficiency, and (c) the relations of

⁹For a further discussion of taxation, see the end of this Chapter.

¹⁰This is exactly the kind of mob rule which certain sections of the Constitution were specifically designed to prevent. The Supreme Court declared the Guffey Act unconstitutional in its entirety on May 18, 1936.

supervisors to workmen; (3) industrial federations for each industry which would (a) collect and analyze for unions of the types (1) and (2) information on working conditions within the industry and relative to other industries, (b) encourage the United States Department of Labor and other agencies to collect and publish fuller information regarding labor conditions, (c) advise unions of type (2) regarding the relation of conditions within their company to conditions in other companies, (d) devise plans for regularizing employment in the industry, sometimes through co-operation with other industries, and (e) meet with trade association executives for the purpose of understanding problems of the industry and promoting retirement policies, accident compensation, and other plans for helping the industry to meet its obligations to the worker.

On the other hand, we are compelled to insist here that there is no place in our economy for the industrial union which, without regard to interest of consumers, without regard to the rights of socially-minded employers, with entirely selfish aims of a strictly monopolistic nature, calls a nation-wide strike. Congress, if it is conscious of the welfare of the nation, should not permit the existence of any such pure labor monopoly; such an organization is anti-social, a hindrance to re-employment, and a menace to economic and social well-being.

2. *Child Labor Under the NRA*

The most dramatic and widely acclaimed NRA reform was the attempted abolition of industrial child labor through a new method of code agreements.¹¹ The cotton textile code, the first to be approved, prohibited the employment of all children under sixteen years of age. Less than a month later the President's Re-employment Agreement offered all industry an opportunity for co-operation in abolishing child labor. One provision of this blanket code specified that signers were not to hire anyone under sixteen years of age, with the exception that persons between fourteen and sixteen might be employed (but not in manufacturing or mechanical industries) for periods not to exceed three hours per day, between 7 A.M. and 7 P.M. only, and outside the sessions of day school.

¹¹In 1917 the Federal Congress enacted its first child-labor law but two years later the Supreme Court declared the act unconstitutional. Another federal law applying only to factories and mines was then passed, which closed the channels of interstate commerce to goods produced contrary to its standards and taxed heavily the profits on such goods. A constitutional amendment has also been proposed by Congress but has so far failed of ratification.

Acceptance by a large part of American industry of the President's Re-employment Agreement simplified the NRA's efforts to abolish child labor through later code agreements. Of the first 455 approved codes, 420 codes and three supplements set a minimum age limit of sixteen years for the industry in general, but fifteen of these permitted minors under this age to work under certain conditions. Four of the remaining thirty-two stipulated a seventeen-year minimum, and twenty-eight an eighteen-year minimum. As might have been expected, the fifteen codes which permitted employers to hire workers under sixteen years of age covered industries in which most minors had been employed prior to the NRA, although many of these fifteen agreements¹² allowed such children to hold jobs only under certain stated conditions not considered to be particularly harmful. Such industries as newspapers¹³ and such occupations as messengers, which in pre-NRA days had employed many children, successfully negotiated code provisions permitting employment of minors from fourteen to sixteen years of age. We must add that since similar conditions had existed in many states, and since many other codes provided for the hiring of office boys and girls at wages of 80 per cent of the minimum, this represented but a meager triumph of the NRA.

To ascertain the actual extent of NRA's reform consider, first, Table LXVI which exhibits the status of child labor by classes of industry for 1930. For appraising the situation in 1933 reliable information is not available, but a recently completed study of the United States Children's Bureau¹⁴ based on statistics of the number of minors obtaining first employment certificates, has revealed that the number of children fourteen and fifteen years of age obtaining such certificates per 10,000 children of these ages decreased from 619 in 1930 to 336 in 1932 and to 210 in 1933, or by 64 per cent over the entire interval. Therefore, even allowing for sampling errors arising from evasions and the failure of some states to require such certificates, it seems that the total number of minors employed must have

¹²The 15 codes were: legitimate theatre, motion picture, radio broadcasting, retail farm equipment, retail jewelry, retail trade, paper distribution, daily newspapers, photographic and photo finishing, graphic arts, retail food and grocery, savings, building and loans, iron and steel, bituminous coal, and reinforcing materials.

¹³It has been suggested in some quarters that newspaper hysteria over the freedom of the press which developed in 1933 and 1934, was not unrelated to a determination to preserve child labor in the industry.

¹⁴*Monthly Labor Review*, U. S. Dept. of Labor, Vol. 39, No. 6 Dec., 1934, pp. 1320-1331.

decreased at least 50 per cent between 1930 and 1933. By applying to Table LXVI, giving the percentages in 1930 of working children of various ages, such corrections and making allowances for exemptions, we conclude that the NRA removed from labor in trade and industry about 35,000 children under sixteen years of age.¹⁵ In other words,

TABLE LXVI
NUMBER OF CHILDREN EMPLOYED IN 1930
Source: U. S. Census Bureau of 1930

Industry	Number of Workers			
	10-13 yrs.	14 yrs.	15 yrs.	All Ages
Trade	14,746	11,879	22,990	6,081,467
Manufacturing & Chemical	4,761	14,384	49,121	14,100,652
Transportation & Commerce*	563	1,831	6,303	3,843,147
Extraction of Minerals	137	198	849	984,323
Clerical*	703	2,856	13,244	4,025,324
Forestry and Fishing	222	408	932	250,469
All NRA Industries	21,132	31,566	93,439	29,285,382
Agriculture	205,563	113,694	150,240	10,471,998
Domestic and Per. Service	7,501	11,175	27,469	4,952,451
Professional	969	1,147	2,728	3,253,884
Public Service	143	88	254	856,205
All Occupations	235,308	157,660	274,130	48,819,920

* Not all workers in this industry were covered by NRA codes. The estimate of employees affected by NRA is, perhaps, 10 per cent too high.

the NRA eliminated about half the child labor of the industries subject to its codes.

That the NRA was actually able to discourage the employment

¹⁵If the total of child workers in early 1933 was 50 per cent less than in 1930 and proportionate decreases occurred in all ages, it follows from Table LXVI that in 1933 about 10,000 minors of the groups between 10-13 years of age were employed by industries affected by the PRA and NRA. The only children of these ages remaining in industrial employment after the NRA were those working for non-signers of codes or violators. If the same 50 per cent decrease in child labor is assumed in the fourteen-year-old group between 1930 and 1933, the NRA affected about 18,000 additional minors. Deducting from this figure evasions and exemptions of office boys and girls hired at 80 per cent of the minimum wage, one has left only about 15,000; and from this number a further subtraction of about 5,000 should be made, representing boys of fourteen allowed to sell newspapers. Consequently, the NRA can be credited with removing approximately 10,000 children of fourteen years of age from employment. Again, 35,000 is a liberal estimate of fifteen-year old minors employed in NRA industries and, as a result of exemptions, at least 20,000 remained at work. Therefore, at the most the NRA relieved 35,000 child workers under sixteen years of age from work in trade and industry.

of some children is definitely shown by a report of the United States Children's Bureau in which it is stated:

When the President's Re-employment Agreement went into effect in September, many children between fourteen and sixteen returned to school instead of seeking employment, and a very decided drop occurred in the number of employment certificates issued, particularly for work in factories. This decrease continued during the remainder of the year.¹⁶

The disheartening feature is that more was not accomplished. A substantial percentage of the 35,000 which the NRA affected directly merely transferred their labor from the factory to the home, where many continued to perform the same tasks on a piece-rate basis. Yet the NRA did accomplish important improvements in the cotton garment industries and in certain others notorious for their sweatshop and child-labor conditions; and, following the abandonment of the NRA, children's first employment certificates began to increase. For the NRA's sincere efforts and the results, however meager, we have only commendation.

Pursuing the matter somewhat further, one might naturally inquire whether there is some way in which child labor can be eliminated. In seeking the answer we must, of course, realize that there are constitutional limitations on federal powers and that an amendment has remained unratified for nearly twenty years, as a consequence of which

The golf links lie so near the mills
That almost every day
The laboring children at their work
Can see the men at play.
Sargent

Yet, despite constitutional limitations, there is a way. For instance, in all states enacting compulsory education laws applicable to minors sixteen years of age and under, the Federal Government might offer loans at low rates of interest to parents of such children who, in need of aid, would ordinarily seek industrial employment. This, unlike the NRA program, would attack the fundamental problem by promoting equality of opportunity, and whatever sums were used, including high administrative costs and losses arising from the failure of beneficiaries to repay loans, should earn handsome social

¹⁶*Monthly Labor Review*, U. S. Dept. of Labor, Vol. 39, No. 6, Dec., 1934, p. 1321.

profits — less abject misery and healthier and more contented citizens.¹⁷

3. *Other Social and Economic Reforms*

However ill-conceived and socially and economically mischievous were some of the NRA's reforms, its efforts to stamp out certain unfair trade practices deserve only commendation. In fact, American standards of ethics should long ago have branded as dishonest such acts forbidden by the codes as (1) commercial bribery, (2) defamation of the character of a competitor, (3) misrepresentation of a competitor's financial position, (4) threats of unjustifiable lawsuits, the expense of which could not be risked by a small company, (5) ruining a competitor's labor force or making it impossible for him to fill an important order by offering higher wages to his foremen and skilled mechanics when the intention is to hire them for only a month or so, (6) false or misleading advertising, (7) the substitution of inferior goods, (8) inaccurate grading-up of products, and (9) return of goods allegedly but not actually defective. Commendable as were attempts at such trade reforms, another, as we shall now see, far transcended them in importance.

Clearly, if competition is to function even fairly well as a regulator of the flow of goods, income, and investments, there must be accurate knowledge of conditions, particularly of prices and terms of sale. Indeed, economic theories, which we must use as guides to business conduct and to better conditions of living, implicitly assume that individuals act intelligently on the basis of full knowledge. Therefore, when the NRA codes, almost without exception, outlawed the use of *secret* discounts or rebates designed to make prices mean one thing to a customer and another to a competitor, a fundamental reform of revolutionary proportions was initiated. A continuation of this principle, which is not in disagreement with the Supreme Court ruling, and its application to still other lines should lead to much smoother operation of the economic system with a marked decrease in economic friction. In fact, it may even be argued that if we had more complete knowledge of economic conditions, including prices, much could be done to smooth out business fluctuations.

But before praising the NRA too lavishly for accomplishments in

¹⁷Such is being accomplished in a somewhat different way through direct grants — by the National Youth Administration, a somewhat muddled outgrowth of a proposal made early in 1933 by the author's wife, Mary M. Roos, who was, at the time, a member of the staff of the educational division of the F.E.R.A.

urging open prices, let us clearly understand that this decrease in economic friction was not allowed to develop. More specifically, when open prices deprived some uneconomic small plant of windfall profits previously secured under ignorant competition, the NRA hastened to devise such barriers as prohibitions of sales below "reasonable" cost, retail markups, and the fixing of terms of sale.

Moreover, almost anything alleged to help the small business man, however inefficient he might be, was at least given careful attention; never before has so much misdirected sentimentality been shown by governmental officials. Yet there is probably no more unsocial spectacle than the sight of a high governmental official pleading for subsidies to glorify the inefficiencies and enable continuation in business of a group which would otherwise be forced to bow to progress. Such small business men as can operate only because secret prices allow them to deceive the consuming public, we believe are neither socially nor economically desirable units.

4. *Experimenting with Price*

Admitting that some fair-trade-practice provisions of codes were highly commendable and that some others, although of somewhat less value, still had merit, we must condemn the NRA for all too frequently allowing certain *so-called* fair trade practices which were simply devices for guaranteeing income or profits to special classes. Of these, price fixing was probably the most fundamental but it may be argued that the continued adoption of this or of any of the others — (1) restriction or allocation of production, (2) prohibition or restriction of new investment, and (3) fixing terms of sale such as credit conditions — must ultimately compel the adoption of all and in the end lead to bureaucratic government.

Few, if any, governmental agencies ever learned firsthand more about the ramifications of price fixing than the NRA, and, fortunately for posterity, its experiences to January, 1934 were summarized by an official¹⁸ who stated then that the NRA had temporized (1) by admitting to approved codes unimplemented and undefined general prohibitions of selling below cost as statements of policy rather than as definite, enforceable prohibitions, and (2) by accepting provisions which authorized the code authority to make studies of price fixing or selling below cost for the purpose of setting up definite, enforceable

¹⁸S. M. DuBrul, *National Industrial Recovery Administration Policy on Price Fixing*, Memorandum, January 6, 1934.

plans of uniform cost accounting and/or price schedules for approval by the Administrator. As the glamour of NRA had worn off, he explained, pressure from industry for effective price or production regulation had increased and, in consequence, a tendency to insert provisions of the second type had developed. In conclusion this official, DuBrul, outlined the four policies then available as follows:

(1) *To permit price fixing along the lines suggested by the code authorities.* If the NRA adopted this course, it should, according to DuBrul, plan to control all economic activity—fixing prices, allocating production, determining what new plants should be constructed, and, in general, assuming the role of economic dictator. In this event he was sure that bootlegging would grow apace for, “whenever laws are imposed, which run counter to major economic interest and infringe upon the whole population and have no sanction in the accepted morals of the people, wholesale evasion is inevitable.”

With this type of control over the economic life of the nation, he felt certain that constitutional government would gradually decline and the United States eventually emerge as a socialist or fascist economy. Individual initiative would begin to languish, established portions of industry would resist the technological advances that threatened them, inefficiencies would be frozen, and the whole economic system would stagnate. Instead of pursuing such a course DuBrul believed it would be preferable,

(2) *To temporize further by sending code authorities back with a long list of additional points to be studied.* But this would be impracticable, he contended, because industry was already beginning to be dissatisfied with the NRA. He argued further that industry would interpret such a move as committing the Government to an ultimate acceptance of a plan of price fixing. A better plan would be,

(3) *To compel the rewriting of price regulations so that they would lose all force as profit guarantees and become simply abuse-preventives which would prohibit sales at levels obviously beneath any standard of good, profit-motivated management.* According to DuBrul, this offered the possibility “of a real answer to the price-control problems presented by the codes as they were written.” He added that while it was obviously unwise and impossible for the Government to attempt to co-operate in setting prices at a level which would provide a return on capital, just as it was impossible for the Government to ordain complete wage structures for an industry, “yet it should be feasible to set price limits which restrict the abuse of the pricing privilege by individual concerns activated by socially destruc-

tive motives." While proposing this plan DuBrul admitted that from a purely academic point of view it would be best,

(4) *To have the President exercise his powers of modification and remove all price-limiting provisions from the codes.* The difficulty here, DuBrul said, was that business had become so determined to have a *quid pro quo* for Section 7a that removal of all price-limiting provisions was hardly politically feasible. Moreover, to a great majority of industrial leaders, such action would appear to be an act of bad faith on the part of the Administration. Consequently, the Administration should adopt the third plan, realizing full well that there would be many difficulties in the road and perhaps eventual disaster.

Similar views were held by various NRA economists. For instance, in a report on *Price Fixing* which Arthur O. Dahlberg prepared in May, 1934 the following statement appears:

Price control is in the nature of a rationing and doling instrument by which income is handed out to preferred groups. Price control is consequently a problem in political "justice." In the aggregate, however, we should realize that (except in so far as price raising induces spending) we cannot increase the sum total of output by controlling or fixing prices. All we can do at best is to distribute income differently among our various income groups according to someone's notions of "justice" . . .

To weaken price competition beyond the low degrees of the 1920's through NRA efforts in a time of depression, because of a faulty analysis, and then to institutionalize that weakness, is to make capitalism potentially more inoperative.

We add that when various plans for price control, which had been adopted by the NRA, started to fail and the organization would not approve a more restrictive device to bolster them, industry, as predicted by DuBrul, began to lose interest in codes.¹⁹ Yet to have acceded to the price-fixing demands of industrial leaders and some economic planners who supported them, would have implied revolutionary change in our economic system. The Government inevitably would have been forced to enter every phase of economic life. First, it would have been compelled to determine quality standards and devise means for accurately describing the physical attributes of goods

¹⁹The break between General Johnson and Donald Richberg was in some measure due to differences of opinion on price policy. After leaving the NRA to Richberg and others who were opposed to price fixing, General Johnson is reported to have declared that the NRA was "as dead as a dodo," but he emphatically denied the statement in a public meeting.

and services. These in turn would have led to a multitude of accounting problems, and whatever system happened to be adopted would have required fundamental changes in industrial practices. To cite only one instance: the Mitchell-Whiteside report of the NRA price hearings stated that one coded industry's definitions of cost accounting had compelled the pricing of a second-grade competitive product so near the first-grade price as to force discontinuance of its manufacture.²⁰ Then, there are various services involved in the sale of every article, including, in some instances, advertising, the extension of credit, assurance of future supply, and even such detail as the manner of the salesman. Other obvious factors are the accessibility and reputation of the outlet. Each variable has its own influence directly on demand and indirectly on price. Also, a price can be quoted in a variety of ways—directly and absolutely on a cash and carry basis or as a base subject to cash and quantity discounts, advertising allowances, interest on unpaid balances or anticipations at different rates, freight and handling charges, and a host of others. In fact it should never be forgotten that each time a term of trade was fixed by the NRA, ingenious entrepreneurs produced substitutes permitting evasions; indeed, the avenues of evasion were legion.

But to some Administration economic planners it mattered little that new difficulties constantly arose; each could be met as it appeared. Plans could always be improvised to meet emergencies. To such planners we can do no better than say with Alexander Sachs:

If there is one thing that the post-war political and economic history — from Allied reparations policy to our own foreign-trade policy — teaches, it is that half-planning and opportunistic improvising tend to subvert and defeat their original object, and that such so-called solutions, like Alice's flamingo, twist themselves around and present themselves as aggravations of the original problems.

We may also add that, since those price rigidities which already are present in the economic system tend to intensify booms and depres-

²⁰With regard to the general problems the following pertinent questions were raised:

“(a) Do the processes in the industry normally yield a constant proportion of second-class products under such conditions and would the effort to produce only first-grade products cause excessive expense or waste?”

“(b) Is there a valid and extensive use for a second grade because of some such factor as loss, theft, or inevitable breakage which makes durability or finish a minor objective?”

“(c) Can quality standardization and marking be enforced, so that the customer recognizes the grade purchased? If satisfied with seconds, at a lower price, what reasonable objection can be made to supplying subgrades?”

sions, general price fixing at profitable levels might very well lead to widespread collapse; and the fixing of some prices at socially desirable but unprofitable levels has not yet been feasible to any appreciable degree in a democracy.

5. *Observations on Economic Planning*

Broadly speaking there are two schools of economic planners, (1) a group which would willingly "fix" almost everything — production, prices, wages, hours of work, amusements, or anything else and (2) those who would establish general controls of a few central factors. The first group, without business experience of any kind and not appreciating its need, were often quite willing to assume direction of any type of project—the building of a huge dam, the direction of a billion-dollar industry, or the moving of an entire population. Industrial units were merely toy blocks to be assembled according to their whims. In all seriousness they proposed to interdepartmental committees that the way back to prosperity was for every plant to produce at its 1929 rate, the Government to guarantee purchase of the surplus products at predetermined prices. A few hours later they were contradictorily urging the restriction of production of certain products and decrying the folly of foreign loans.²¹ Discussions with them in Washington's inner council chambers have convinced me that they have no appreciation whatever of the implications of their proposals.

To illustrate in small measure the immensity of the task which confronts the "fixing" type of planners, consider the fundamental problem of determining the optimum rate of investment in a particular industry. Clearly, if low rates of depreciation or obsolescence are used, profits are unduly large, and book values, although high, seem to the investor to be relatively low; whereas, if high rates of depreciation are employed, profits are too small, and low book values seem to be relatively high. Having decided upon a "fair" rate of depreciation, we must answer the following questions: What will happen to taxes? Will wages rise or fall? Will power costs increase or decrease? Is there available skilled labor adequate to operate the machines? Will profits tend to disappear even with machine installations and, if so, how easily can working capital be obtained? Should assets be kept liquid to avoid shortages of working capital? Each of these questions may have a different answer from year to year, and yet on them

²¹In 1929 foreign loans both short- and long-time, alone furnished something like two billions of dollars in purchasing power for American products shipped abroad.

hinges the solution to the problem of determining the optimum rate of investment.²² In the long run an approximately correct value may be reached but of what use is it in economic planning under a system in which profits and income are taxed and state subsidies are not always forthcoming when profits disappear?

In brief, then, such a planning problem as that of estimating the proportion of obsolete or worn-out machinery in each industry is enormous; it depends upon such factors as the future trend of wage rates, the supply of skilled labor, and the degree of competition. Yet, as we shall see, some general situations, perhaps indicating subsidies or taxes on owners' withdrawals, can be recognized. The textile industry, for instance, is definitely known to be operating many worn-out looms and spindles made thirty to forty years ago;²³ in some instances, owners have been able to continue these machines in production only by forgoing withdrawals and by reducing wages below subsistence levels. Also in other industries, machinery purchases of the last ten years have been insufficient to replace existing equipment at the end of its period of efficient operation. For example, Table LXVII shows that the rate of purchase of locomotives declined from an average of over 1600 per year during 1920-1924 to only 4 in 1933. It is significant that at the rate prevailing in the 1925-29 prosperity period, it would require sixty-seven years to replace the average total

²²It may be of some interest to historians to note that this was the second problem assigned to the mathematicians of the author's research section at the NRA. Little time was wasted, since research workers quickly recognized that sufficient data to solve the problem did not exist.

Business men, of course, do not reach accurate solutions: they merely insist arbitrarily that a machine pay for itself in cost savings in periods of time varying in length with the business cycle. If they guess incorrectly, they show losses or unexpected profits. To illustrate, in 1928 a manufacturer replaced 200 machines for \$481,000 and thereby saved \$168,859 annually in labor costs and repairs. Encouraged by this development, three years later he replaced 169 more units and in the first year saved \$139,001. Thereafter wages fell and his savings in cost became negligible. By 1933 he was refusing to replace a machine unless the estimated savings were large enough to pay for it in one year. Then, after the NRA started its program of raising wages, this same manufacturer began to purchase on a two-year amortization plan.

With further regard to the problem of determining the optimum time of replacement we observe that there is no particularly close relation between the rate of earnings in a modern mass-production industry and the need for new equipment. Several industries have persistently shown earnings of twenty per cent or more when interest rates were four or five per cent or even less, and yet new capital was not attracted because vast sums were needed to build up distributive systems or goodwill. When the cost of the entire undertaking was taken into consideration, profits were not tempting and so the established industry continued to enjoy its monopolistic position.

²³A partial survey of the cotton textile industry in 1933 indicated that 35 per cent of its looms and spindles were over 33 years old.

inventory of locomotives which existed in that interval. This is, of course, an absurd situation, unless the industry is to be regarded as a declining one which should be eventually displaced.²⁴ In short, in 1933 and 1934 there were large numbers of obsolete machines in the textile and railroad industries and by inference in others, and yet, under the prevailing economic system, funds were not offered for replacements. Profits on new equipment under the then existing economic conditions would have been small or non-existent, and consequently new investment remained at a standstill.

TABLE LXVII
NUMBER OF LOCOMOTIVES PURCHASED BY AMERICAN RAILWAYS
 Source: NRA Unpublished Report

Years	Average Number Purchased Annually
1905-1909	3,991
1910-1914	3,259
1915-1919	2,178
1920-1924	1,670
1925-1929	892
1933	4

It is only natural, therefore, to inquire what planned economy has to offer. To answer such a question involves a real difficulty: planners, themselves, are not agreed upon solutions — it is the nature of economic planners to be opportunistic — and anyone offering a

²⁴Joseph B. Eastman, the federal Co-ordinator of Transportation, found some curious accounting practices in regard to depreciation rates of railway equipment. He discovered, for instance, that depreciation rates for locomotives used by various roads suggested expected lives of 1,111 years, 286 years, 167 years, 100 years, and on down to 22 years.

In discussing this condition he said:

“There may be good reason for such a wide spread in the life expectancy: for example, as between the 2-10-0 type with 23 years and the 4-4-0 type with 54 years. There may be a satisfactory explanation for the fact that southern railroads base their calculations upon a life of 99 years for the same type of locomotive that is expected to reach its limit at 47 and 45 years in the eastern and western districts. Such reasons and explanations are not likely to be developed, however, without a more scientific study of locomotive efficiency and obsolescence than heretofore has been devoted to the subject. . . . As I have previously pointed out, there is little temporary and no permanent advantage in understating depreciation and, to the extent that the practice is continued, it affects the solvency of the concern. . . .In the light of the progress made in recent years in locomotive design and in the use of mechanical power in transportation, the fact that more than half of the steam locomotives now in service are over twenty years old is worthy of serious consideration.”

Part of such discrepancies, it should be observed, are attributable to the Interstate Commerce Commission's method of basing rates on present valuation. As long as this continues, there is important advantage to the railroads in charging inadequate depreciation.

solution in their name runs an imminent risk of repudiation. But there is one guiding principle which seems to run through all planning schemes whether they apply to the railroads, the utilities, or the farmers in the United States. This is, that prices must be sufficiently high to make operation profitable. The end seems to be the same, but the means differ widely; some urge state subsidies; some merely "create new purchasing power" by monetary devaluation or expansion of bank credit; some willingly reach higher prices by destroying the means of production as in the case of 6,000,000 little pigs; some, deploring wanton waste, urge restriction of production; and some, who in one breath permit restriction of production through agreement, decry monopoly in the next. In these circumstances, any proposal to encourage replacement of machinery, say, in the textile industry, is bound to displease some planners. Nevertheless, since we are primarily interested in following through the ramification of a particular concrete situation which will presently be outlined and a typical proposal to remedy it, we need not concern ourselves with securing unanimity among the planners.

Judging from the Roosevelt Administration's experiments, some planners, at least, would prescribe for the textile industry an increase in prices either through grants of monopoly power or by direct subsidies, and entertain the hope that, once profits appeared, replacements of obsolete equipment would occur. The trouble with such a proposal is that there have been profits in some units, and yet replacements have not occurred to any appreciable degree. Therefore, if a subsidy, direct or indirect, is to be granted, a guarantee should first be obtained that the bad situation will be remedied immediately; for instance, the guarantee might be exacted by a high tax on earnings not invested in new machinery. Possibly also a confiscatory tax on salaries above some reasonable amount would be required. In other words, extreme care should be taken to insure the use of increased revenue solely for correcting difficulties. Moreover, when such subsidies are granted it should be definitely understood that the aid would be removed after a stated period and under no condition restored within, say, a decade; otherwise overinvestments from new sources would be encouraged.

Or, for industries plagued with violent inventory fluctuations, as has been cotton textile manufacturing, the grant of monopoly power or what seems to be the same thing — rationalization — might be restricted to the enabling of some form of inventory control. Excessively large inventories break the market price, throw large numbers

of producers into bankruptcy and ultimately lead to inefficient production and high supply prices. Consequently, there should be no objection to discontinuing the alternate feasts and famines attributable to lack of such control. But in situations in which inventory control is instituted, care should be taken to insure that supplies are adequate under all possible conditions.²⁵ For example, if an industry has a natural seasonal variation, such as occurs in soap manufacturing, it should build up a relatively large inventory in the slack months. But the costs of storage must be weighed against the evils of layoffs following temporary employment during the period of peak sales, and against the cost of extra equipment required in this interval.

The adoption of a plan of subsidies through supervised monopoly or direct grants would, of course, ultimately mean the socialization of industrial losses. In brief, a portion of national income, derived from capital earnings, wages, or windfalls, would be taken through taxation, either directly, or indirectly by higher prices, and be used to offset losses. Such a plan would surely lead to a considerable narrowing of the range of profits with perhaps a consequent decrease in the efficiency of production and higher prices. Whether adoption of these schemes at any particular time would lead to greater or lesser prosperity as measured by the total of goods and services would depend upon at least such then existing factors as (1) the degree of unemployment, (2) the magnitude of federal payments for doles or public works of doubtful utility, (3) the rate of interest, and (4) the effect upon prices and efficiency in production. Obviously, if (1) and (2) were high, there would be a gain in economic well-being by replacing worn-out or obsolete machines. More difficult to decide are questions involving (3); for instance, although the subsidy should vary directly with the interest rate, in times of rapid economic change, the long-time interest rate may fluctuate considerably.²⁶ Therefore, since it would be impracticable to change the general subsidy at frequent intervals, unplanned inequalities must originate. The answer to (4) obviously can not be determined in advance.

So far, only a few of the ramifications of direct-control economic planning have been considered. Another important problem is that

²⁵The record of the Agricultural Adjustment Administration, for example, shows clearly that inadequate allowances were made for drought, competition of foreign nations, and possibilities of product substitution.

²⁶Bond yields varied from 4 per cent to over 6½ per cent between July, 1932 and December, 1935, values being 6.7 per cent in July, 1932, 5.7 per cent in September, 1932, 6.3 per cent in April, 1933, 5.1 per cent June, 1933, 5.7 per cent in September, 1933, and 4.0 per cent in December, 1935.

of assembling and analyzing statistical information. It might easily be argued that only a dictator with an adequate police force and a large number of expert accountants and engineers could assemble for the United States information sufficient to carry on intelligently the economic planning attempted by the NRA. In a democracy such data are often regarded as confidential, especially if their revelation will affect profits. For this reason the NRA exhibited extraordinary coolness towards a proposal of officials of the Research and Planning Division that consumers be protected by requiring all industries subject to codes containing price-fixing or other monopolistic provisions to furnish accurate information on costs and prices; consumer gouging by such industries was apparent, but the Administration made no effort to obtain facts which would have revealed its extent.²⁷

As long as such large gaps in statistical information exist, economic planning, even of a mild "fixing" type, must remain impracticable. General efforts to apply such planning must mean, as in the case of the NRA, little more than the swapping of bargaining positions—monopolistic advantages for labor concessions — with the choicest gains going to the groups exhibiting the greatest political power. Competition, with all its imperfections, we believe, is greatly to be preferred. To entrust the economic order to such "planners" would be rash indeed; there would be a greater chance that they would reduce it to chaos than that a baby handed a watch and a hammer would smash the watch. And since such planning prevailed under the

²⁷Illustrative of this same difficulty in securing data is the fact that in the summer of 1933 the Research and Planning Division of NRA urged the importance of taking an unemployment census but received no immediate support from the Administration. Then, in the spring of 1934, the Central Statistical Board took up the matter and secured the endorsement of several departments. As a result, a bill was introduced in Congress in April, 1934 to appropriate funds for such an undertaking. Republican members of Congress were quick to note that the dates set for taking the census immediately preceded the general elections of 1934, and, therefore, opposed the bill on the ground that it was an attempt to win the election by paying Democrats to make canvasses.

There was also another interesting aspect to the opposition. On May 2, 1934, the writer, representing the NRA, appeared before the House Committee on the Census to urge the importance of the measure. During the course of the testimony he mentioned that the proposed survey would make possible an appraisal of the effects of codes on the number employed in various occupations and on population movements and would enable the Administration to secure valuable information on the influence of the codes in centralizing or decentralizing population. But this last seems to have lost rather than gained support, for a member of the Committee on the Census shortly afterwards advised the author that the bill would not pass; many of the representatives, he said, did not wish to secure information on decentralization.

It is of further interest to note that both major political parties included in their 1936 platforms planks promising an unemployment census.

NRA, we must commend the Supreme Court for invalidating the Act. Recovery in substantial measure could not set in until this was done. That it did begin after this decision is shown by such indexes as employment, pay rolls, production, profits, security prices, and government revenues.

The other type of planning — the establishment of central factors of controlling importance — for which we have considerable hope of success, is exemplified by the Federal Reserve Act's creation of the gold settlement fund, which facilitated bank clearings, increased the tempo of business, and very likely ultimately resulted in higher general standards of living. In more detail, the useless and wasteful old method of shipping gold or currency around the United States to settle interbank balances was replaced by a central gold account and balances reached by simple methods of bookkeeping. More recently another outstanding example has emerged: the Federal Reserve Board has been given anti-pyramiding powers in the security markets through control over the margin requirements for stocks purchased on the registered security exchanges.²⁸

Another means for accomplishing economic planning is through taxation. So far this has seldom been tried in the United States, noteworthy among the few examples being the AAA processing taxes and the Guffey Coal Act, which statute, through a system of tax rebates to code compliers, was so drawn as to perpetuate the "fixing" planning of the NRA and its fallacies, and was likewise declared unconstitutional. With few exceptions, taxes have been levied, (1) to obtain revenue in a politically feasible manner, (2) to aid a particular group by penalizing another, or (3) to check or destroy some practice regarded as socially undesirable. The economic effects of the first, although often far-reaching, have been unintentional and, therefore, can not properly be called economic planning. The tariffs, on

²⁸Another far-reaching plan of this central-control type has developed as an outgrowth of the NRA. Late in 1934 automobile manufacturers reached an agreement to introduce the 1935 new models in October instead of December so as to separate the new-model and spring demand and make possible steadier operation. Simple as the plan is, its effects should be tremendous—regularization of employment in the automobile industry and to a lesser extent in steel, lumber, and allied industries, and, as may readily be verified by existing statistics, intensification of seasonal demand for transportation. Moreover, without any additional capital outlay, productive capacities of the automobile and steel industries will be increased, demand for housing in Detroit, Flint, and other automobile-manufacturing towns will be regularized, and bank deposits throughout the country be changed seasonally. Also, farm workers, who have been accustomed to finding winter employment in the automobile industry, will have to look elsewhere. But despite all these economic changes the net effect on the national economy should be beneficial.

the other hand, are, in a special sense, representative of general economic planning.²⁹ They are the most important examples of the second. Excise taxes on alcoholic beverages and tobacco, which are important examples of the third group, are fairly well understood and require no further consideration in this study.

With the advent of the Roosevelt Administration we have seen in rapid succession (1) the processing taxes of the Agricultural Adjustment Administration, (2) graduated taxes on corporation income to favor the small producer, (3) the rebate taxes of the Guffey Coal Act, and (4) the social-security measure which taxes pay rolls of employers throughout the country and authorizes subsidies to states complying with national government ideas on employment insurance, old-age pensions, child welfare, and maternity care. The first three we have already considered except in their obvious phases. The last, we merely prophesy, will produce effects far beyond the expectations of its sponsors.³⁰

²⁹No discussion of tariffs is given here because there is already voluminous literature on the subject. The reader is referred to the excellent works of F. W. Taussig, Alfred Marshall, and others. For a discussion of the relation of economic planning to the tariff, see James G. Smith, *Economic Planning and the Tariff*, Princeton, 1934.

It is of some contemporary interest to recall that of recent years there has been much loose talk, even among some economists, regarding the merits of free trade as against tariffs. On this matter we merely observe here that (1) if the world should adopt a gold standard at reasonable price levels allowing free movements of monetary metal in and out of currencies, (2) if universal peace were assured, (3) if there were equal distributions of income among individuals in each country, and (4) if there were no important attempts at economic planning, free trade would undoubtedly be best for every country. But none of these conditions are satisfied at present and pending their adjustments, tariffs are probably inescapable. In other words, once we begin tinkering with economic forces, we can quickly become deeply involved.

³⁰Most fundamental, the tax base itself will be constantly undermined; the pay-roll tax of 9 per cent by 1949 will definitely exert steady pressure on those plants having high ratios of wages to value added and will, therefore, compel the reduction of their pay rolls by mechanization. It will definitely favor the large companies, which are highly mechanized, over their intermediate-sized competitors, plants employing less than eight workers being exempt from payment of all taxes except the old-age pension levies of 3 per cent by 1940 as well as educational, professional, and religious organizations. This situation should cause advances in prices of listed stocks (the large companies) and, in particular, stocks of machinery companies, which should experience greatly increased business. This plan, nevertheless deflationary in its complete aspects, will compel savings comparable with or even in excess of the undivided earnings of large corporations and these will come from all consumers whether or not they participate in benefits; prices in general will increase in proportion to the tax burdens; but in some instances there will be wage cuts. More exactly, if the present rising price level continues for four or five years, wage cuts as such will not materialize in any appreciable way; the tendency will be to postpone wage increases.

Also, the Act requires that all taxes collected under it be invested in federal securities. This implies that the total national debt by 1960 will approximate the

The President advanced another tax plan in 1936 only slightly less important in its effects. Here it was proposed to tax undivided corporation earnings for the primary purpose of forcing the payment of dividends and thus increasing the taxes of recipients of large incomes. That this was also visualized as a plan to increase mass pur-

sixty billion dollars of savings then to be in the fund. And investment of the entire fund in government securities will so lower interest rates as to endanger the solvency of our banks and make it virtually impossible for them to preserve the necessary liquidity when all government bonds are withdrawn.

We have heard some intimations that federal bond values are endangered by federal spending. This is not true. With a revenue of \$3,000,000,000 a year collected from pay-roll taxes on workers and their employers being mandatorily invested in government securities, prices of these securities must remain high and their yields low. As long as the Administration continues this Act, which is, when stripped of sentimentalities, a means for making workers pay for the pump priming we have experienced, government credit is in no danger.

In more detail the Act directs the Secretary of the Treasury to invest the proceeds from the pay-roll taxes in federal bonds bearing not less than 3 per cent interest. Drafters failed to realize that, if the Federal Government withdrew all, or nearly all, its bonds, so that it could invest the workers' money in them, it could float loans at 1 per cent or less. In fact, it is probable that, in purchasing all United States bonds, the Treasury will have to pay a price so high that the yield will be something less than 1 per cent per year. Such a large forced saving of workers' funds as will be induced by the plan should of necessity result in lower interest rates on all types of loans. This will eventually endanger all now-existing life insurance policies then in effect as well as the so-called social security benefits. As pay-roll taxes are invested in federal obligations, present holders will seek other channels of investment, thus bidding up prices of existing bonds and stocks. That such widespread changes will have important effects on the monetary and banking structure of the country seems to be incontestable. Moreover, the tax will force geographical realignments of industry and will definitely favor the large highly-mechanized units of industry. Indeed, it is already recognized by experts that much of the recent demand for iron and steel has arisen because owners unable to meet the pay-roll taxes are replacing pay rolls by machinery.

If a future Congress decides that the pay-roll taxes need not be invested in federal bonds, then they will have to be invested in private enterprise. This will necessarily mean competition with private industry on a vast scale and, it seems, eventually state capitalism like that of Soviet Russia. There seems to be no other way to analyze the outlook under the present act.

In the long run, pensions will be provided by dividing up the goods and services produced by the United States. Old-age pensions should be paid out of current revenues. Only a small reserve is needed to take care of changing pension demands due to differences in age of population. Every time a large reserve has been attempted, the entire fund has been wiped out either by war inflations or reckless spending of governments encouraged by vast collections from workers. Finally, with such an instrument in the hands of a political group, so untrained to govern as is the case in the United States, the further prediction may be advanced that the entire fund will probably be wiped out by an inflation.

To finance security we should have a small income tax widely distributed. For those engaged in manufacturing and distribution, to prevent favoring highly-mechanized plants, the tax should be placed on value added by manufacture or processing, a quantity which could be defined as sales minus cost of all materials and power. For the rest a small direct income tax is indicated. If incomes fluctuate, the cost of living usually fluctuates proportionally, and hence dollar benefits under any insurance plan that is sound should also fluctuate.

chasing power is indicated by the President's message transmitting it to Congress; but just how this should be accomplished was not evident. Perhaps it was thought that the distribution of earnings would increase the velocity of circulation of money; dividend recipients would spend their purchasing power quickly while corporations would hoard their funds. But such contention is open to serious question and there are no data to make possible an appraisal. Nevertheless, it may be said that, to the extent that resulting new taxes enable the Government to strengthen its credit and thereby continue or extend its borrowing spree, chiefly by creating new bank credit, mass purchasing power will be increased. Another development having an important effect on purchasing power, will be an increase in the proportion of national income used for purchases of consumers' goods and services; recipients of dividends will spend some part on travel, new automobiles, radios, furniture, and the like, whereas corporations would expand their plants or purchase securities and thus directly or indirectly allow others to expand their plants.³¹ At the same time some part of these dividends will be used to buy existing securities, thus raising their prices, and in lesser degree to purchase new securities. Since small firms have always been at a great disadvantage in the markets for new securities, the Act will definitely favor their large competitors despite graduation in the tax on surplus.

Still another and more important effect of the tax may be an intensification of booms and depressions. For instance, corporations in obtaining additional funds may prefer to float new securities at costs varying around 5 per cent to retaining even such parts of their earnings as would be taxed at the lowest rate mentioned in the tax measure.³² Since there will be a cost in securing capital, corporations can be expected to fail to provide surpluses adequate to carry them through profitless periods and therefore will be compelled to cut wages at the onset of periods of depression.

A warning is, therefore, given to planners, first to consider fully themselves the ramifications of their proposals and, second, to en-

³¹Reinvested earnings have in the past been reflected in the upward trend of stock prices. These have usually been regarded as capital gains and investors through custom have refrained from spending them on purchases of consumers' goods. Also the 100-share trading unit has had some effects; if 3 per cent earnings were reinvested by the company the investors would hesitate to sell three shares of stock.

³²Late in 1936 evidence began to be manifest that corporations would scrap obsolete equipment so that earnings on which taxes had to be paid could be reduced. Those with large earnings figured that they could afford such replacements, since by so doing they secured a subsidy from the Federal Government. Railroads, in particular, might find such a policy quite to their advantage.

courage the widest possible debate on the issues involved, lest the "cure" itself transcend in pain the disease. It is the failure of the Roosevelt Administration to recognize this principle, from the far-reaching but contradictory NIRA, rushed through Congress almost without debate, to the President's cry against the Supreme Court when its inevitable decisions destroyed the monstrosity, that during 1934 and 1935 had kept business in a churn, prevented re-employment, and consequently retarded American development.

* * * * *

Finally, we must conclude that the NRA in practically all its phases — from the enabling Act to the final argument before the Supreme Court — was characterized by a lack of definite policy and of proper understanding of objectives. In the Act and its administration, such opposites as production restriction and increased use of productive facilities, price fixing and freedom of competition, vastly shorter hours of work and higher standards of living, drastic economic reform and recovery, public works to stimulate the heavy-goods industries and restriction of new private investment, and various economic panaceas equally or more contradictory, were borrowed from long agitated movements, both good and bad, and hastily thrown together into an ensemble of contradictions. To such, the NRA added a haphazard method of code writing involving the bargaining of two groups — industry and labor — whose strength varied from industry to industry, for the purse of a third — the consumer. Confusion was the inevitable consequence of such undirected bargaining — for a plant under two or more codes, different hours of work, unequal minimum wages, contradictory fair trade practices, different cost systems, multiple code assessments, and demands for statistics from all quarters. As a result, despite laudable reform efforts to abolish child labor, to eliminate intolerable unfair trade practices, to make competition function more smoothly through open prices, and, most important, to promote discussion of economic issues, the NRA must, as a whole, be regarded as a sincere but ineffective effort to alleviate depression.

Yet the whole experiment should not be without great value to people throughout the world. Here, in unprecedented fashion, opportunity was provided to observe in practice some forms of economic planning and to measure, at least in a meager way, the resultant effects. We have discovered that we possess inadequate statistics to enable us to find out very much about our economic system. Yet we have learned some ramifications of price fixing and regulation of

specific trade practices; we have seen how the control of one price factor quickly and surely demands the control of others—discounts, interest on unpaid balances and anticipations, numerous other terms of sale, sellers' services, production, and even the use of private property. We have observed the great difficulties to be encountered under minimum wages in a country as diversified as the United States—forced geographical realignment of industry or the equivalent of tariff barriers between the states, hardships for the young, the old, and the handicapped workers, recognition of inequalities among the races and between the sexes, and, consequently, bureaucratic regulation of exemptions. We have weighed the effects of compulsory shorter work periods and reached the conclusion that the disadvantages outweigh the advantages; we have experimented with public works and found them disappointingly costly, and, unless carefully administered so as to induce price reductions or at least to prevent increases, liable to retard activity in the vastly more important field of private investment. Finally, we should now appreciate that only those laws or rules of conduct that find general acceptance in the social conscience of the people are enforceable. In short, under the NRA were posted warnings that should profoundly affect the political and economic thought of generations yet unborn.

APPENDICES

APPENDIX I

THE PRESIDENT'S INDUSTRIAL RECOVERY BILL AND THE NATIONAL INDUSTRIAL RECOVERY ACT

1. *The President's Bill*

TITLE I INDUSTRIAL RECOVERY

Declaration of Policy

Sec. 1 A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate commerce, affects the public welfare and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate commerce which tend to diminish the amount thereof, and to promote the organization of industry for the purpose of co-operative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

2. *The Act as Passed*

TITLE I INDUSTRIAL RECOVERY

Declaration of Policy

Sec. 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of co-operative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor and otherwise to rehabilitate industry and to conserve natural resources.

Administrative (Practices)

Sec. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies to accept and utilize such voluntary and uncompensated-for services, to appoint, without regard to the provisions of the civil service laws, such officers and employes and to utilize such Federal officers and employes and, with the consent of the State, such State and local officers and employes as he may find necessary, to prescribe their authorities, duties, responsibilities and tenure, and without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employes so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents and employes as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants if the President finds (1) that such associations or groups impose no inequitable restrictions on membership therein and are truly

Administrative Agencies

Sec. 2 (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and

representative of such trades or industries or subdivisions thereof and (2) that such code or codes are not designed to promote monopolies, or to eliminate or oppress small enterprises, and will not operate to discriminate against them, and will tend to effectuate the policy of this title. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employes and others and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof; any violation of such standards in any transaction in or affecting interstate commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended. A violation of any provision of such code shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than \$500 for each offense.

(c) The several district courts of the United States are hereby invest-

are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided, further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested

ed with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has heretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice

and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which lead to the imposition of such condition or limitation upon entry no longer exists.

[Compare (b) above]

(f) When a code of fair competition has been approved or prescribed by the President under this title,

Agreements and Licenses

Sec. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among persons engaged in a trade or industry, labor organizations, and trade and industrial organizations, associations or groups, relating to any trade or industry, if, in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

(b) Whenever the President after such public notice and hearings as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title and shall publicly so announce, no person, after a date fixed in such announcement, shall engage in or carry on any business, in or affecting interstate commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with the law. If any person, who with-

any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than \$500 for each offense, and each day such violation continues shall be deemed a separate offense.

Agreements and Licenses

Sec. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hear-

out such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than \$500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense.

Sec. 5 — While this title is in effect and for sixty days thereafter, any code, agreement or license approved, prescribed or issued and in effect under this title and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the anti-trust laws of the United States.

Limitations upon Application of Title

Sec. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the ac-

ing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than \$500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2 (c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Sec. 5. While this title is in effect (or in the case of a license, while section 4(a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the anti-trust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

Limitations upon Application of Title

Sec. 6 (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the ac-

tivities of the association or groups as the President shall by regulation prescribe.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the commission shall have all the powers vested in it with respect to investigations under the Federal Trade Commission Act, as amended.

Sec. 7. (a) Every code of fair competition, agreement and license approved, prescribed or issued under this title shall contain the following conditions: (1) that employes shall have the right to organize and bargain collectively through representatives of their own choosing; (2) that no employe and no one seeking employment shall be required as a condition of employment to join any (organization) or to refrain from joining a labor organization of his own choosing, and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay and other working conditions approved or prescribed by the President.

tivities of the association or group as the President shall by regulation prescribe.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect to investigations under the Federal Trade Commission Act, as amended.

Sec. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of

(b) The President shall so far as practicable afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses 1 and 2 of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay and such other working conditions as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements when approved by the President shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and working conditions, in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition, fixing such maximum hours of labor, minimum rates of pay and other working conditions in the trade, industry or subdivision thereof, as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might

employment, approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work in-

tend to set a maximum as well as a minimum wage.

(d) As used in this title the term "person" includes any partnership association, trust or corporation.

*Application of Agricultural
Adjustment Act*

Sec. 8. This title shall not be construed to repeal or modify any of the provisions of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks and for other purposes." Approved May 12, 1933.

involved which might tend to set a maximum as well as a minimum wage.

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

*Application of Agricultural
Adjustment Act*

Sec. 8. (a) This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes," approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultur-

al Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

Oil Regulation

Sec. 9. (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed \$1,000, or imprisonment for not to exceed six months, or both.

Rules and Regulations

Sec. 9 (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses, and for filing of codes of fair competition, and any violation of any such rule or regulation shall be punishable by fine not to exceed \$500 or imprisonment not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule or regulation issued under this title; each agreement, code of fair competition or license approved, prescribed or issued under this title shall contain an expressed provision to that effect.

TITLE II
PUBLIC WORKS AND CON-
STRUCTION PROJECTS

Construction Projects

Sec. 201 (a) To effectuate the purposes of this title the President is hereby authorized to create a Federal Emergency Administration of Public Works (hereafter referred to as the "Administration"), all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the "Administrator"), and to establish such agencies, to accept and utilize such voluntary and uncompensated services; to appoint without regard to the civil service laws such officers and employes and to utilize such Federal officers and employes and, with the consent of the State, such State and local officers and employes as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and without regard to the Classification Act

Rules and Regulations

Sec. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed \$500 or imprisonment for not to exceed six months or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

TITLE II
PUBLIC WORKS AND CON-
STRUCTION PROJECTS

Federal Emergency Administration of Public Works.

Section 201. (a) To effectuate the purposes of this title, the President is hereby authorized to create a Federal Emergency Administration of Public Works, all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the "Administrator"), and to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint without regard to the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the com-

of 1923 as amended, to fix the compensation of any officers and employes so appointed. The President may delegate any of his functions and powers under this title to such officers, agents and employes as he may designate or appoint.

(b) The Administrator may, without regard to the civil service laws of the Classification Act of 1923 appoint and fix the compensation of such experts and such other officers and employes as are necessary to carry out the provisions of this title; and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing and binding) as are necessary to carry out the provisions of this title.

(c) All such compensation expenses and allowances shall be paid out of funds made available for this Act.

(d) After the expiration of two years after the date of the enactment of this Act, or sooner if the President shall by proclamation declare that the emergency recognized by section 1 has ended, the President shall not make any further loans or grants or enter upon any new construction under this title, and any agencies established hereunder shall cease to exist and any of their remaining functions shall be transferred to such departments of the Government as the President shall designate; *Provided*, that he may issue funds to a borrower under this title prior to January 23, 1939, under the terms of any agreement entered into with such borrower prior to the date of termination, under this section of the power of the President to make loans.

compensation of any officers and employes so appointed. The President may delegate any of his functions and powers under this title to such officers, agents, and employes as he may designate or appoint.

(b) The Administrator may, without regard to the civil service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of such experts and such other officers and employes as are necessary to carry out the provisions of this title; and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing and binding) as are necessary to carry out the provisions of this title.

(c) All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

(d) After the expiration of two years after date of the enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended, the President shall not make any further loans or grants or enter upon any new construction under this title, and any agencies established hereunder shall cease to exist and any of their remaining functions shall be transferred to such departments of the Government as the President shall designate: *Provided*, That he may issue funds to a borrower under this title prior to January 23, 1939, under the terms of any agreement, or any commitment to bid upon or purchase bonds, entered into with such borrower prior to the date of termination, under this section, of the power of the President to make

Sec. 202. The Administration under the direction of the President shall prepare a comprehensive programme of public works, which shall include among other things the following:

(a) Construction, repair and improvement of public highways and parkways, public buildings and publicly owned instrumentalities and facilities;

(b) Conservation and development of natural resources, including control, utilization and purification of waters, prevention of soil erosion, development of water power, transmission of electrical energy and construction of river and harbor improvements;

(c) Any projects of the character heretofore constructed or carried on either directly or by public authority or with public aid to serve the interests of the general public;

(d) Construction under public regulation or control of low cost housing and slum-clearing projects;

(e) Any project (other than those included in the foregoing classes) of

loans.

Sec. 202. The Administrator under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following:

(a) Construction, repair, and improvement of public highways and parkways, public buildings, and any publicly owned instrumentalities and facilities;

(b) Conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, and construction of river and harbor improvements and flood control, and also the construction of any river or drainage improvement required to perform or satisfy any obligation incurred by the United States through a treaty with a foreign government heretofore ratified and to restore or develop for the use of any State or its citizens water taken from or denied to them by performance on the part of the United States of treaty obligations heretofore assumed: *Provided*, That no river or harbor improvements shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief Engineers of the United States Army;

(c) Any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public;

(d) Construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects;

(e) Any project (other than those included in the foregoing classes) of

a character heretofore eligible for loans under Subsection (a) of Section 201 of the Emergency Relief and Construction Act of 1932, as amended; and if in the opinion of the President it seems desirable, the construction of naval vessels within the terms and/or limits established by the London naval treaty of 1930 and of airplanes required therefor, and construction of such army housing projects as the President may approve, and provision of original equipment for the mechanization or motorization of such army tactical units as he may designate; *Provided*, however, that in the event of an international agreement for the further limitations of armament, to which the United States is signatory, the President is hereby authorized and empowered to suspend in whole or in part any such naval construction or mechanization and motorization of army units.

Sec. 203. (a) With a view to increasing employment quickly while reasonably securing any loans made by the United States, the President is authorized and empowered, through the (Administration) or through such other agencies as he may designate or create, (1) to construct, finance or aid in the construction or financing

any character heretofore eligible for loans under subsection (a) section 201 of the Emergency Relief and Construction Act of 1932, as amended, and paragraph (3) of such subsection (a) shall for such purposes be held to include loans for the construction or completion of hospitals the operation of which is partly financed from public funds, and of reservoirs and pumping plants and for the construction of dry docks, and if in the opinion of the President it seems desirable, the construction of naval vessels within the terms and/or limits established by the London Naval Treaty of 1930 and of aircraft required therefor and construction of heavier-than-air aircraft and technical construction for the Army Air Corps and such Army housing projects as the President may approve, and provision of original equipment for the mechanization or motorization of such Army tactical units as he may designate: *Provided, however*, That in the event of an international agreement for the further limitation of armament, to which the United States is signatory, the President is hereby authorized and empowered to suspend, in whole or in part, any such naval or military construction or mechanization and motorization of Army units: *Provided further*, That this title shall not be applicable to public works under the jurisdiction or control of the Architect of the Capitol for which such Architect is the contracting and/or executive officer.

Sec. 203. (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of

of any public-works project included in the program prepared pursuant to Sec. 202; (2) upon such terms as the President shall prescribe, to make grants to States, municipalities or other public bodies for the construction, repairs or improvements of any such project, but no such grant shall be in excess of 30 per cent of the cost of labor and materials employed upon such project; (3) to acquire by purchase or by the exercise of the power of eminent domain, any real or personal property in connection with the construction of such project, to sell any security acquired or any property so constructed or acquired or to lease any such property, with or without the privilege of purchase; *Provided* that all moneys received from any such sale or lease or the repayment of any loan shall be used to retire obligations issued pursuant to sec. 207 of this Act, in addition to any other moneys required to be used for such purpose; (4) to aid in the financing of such railroad maintenance and equipment as may be approved by the Interstate Commerce Commission as desirable for the improvement of transportation facilities; provided that, in deciding to extend any aid or grant hereunder to any State, county or municipality the President may consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. The provisions of this section shall extend to public works, in the several States, Hawaii, Alaska, the District of Columbia, Puerto Rico, and the Virgin Islands.

any public-works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection with the construction of any such project, and to sell any security acquired or any property so constructed or acquired or to lease any such property with or without the privilege of purchase; *Provided*, That all moneys received from any such sale or lease or the repayment of any loan shall be used to retire obligations issued pursuant to section 210 of this Act, in addition to any other moneys required to be used for such purpose; (4) to aid in the financing of such railroad maintenance and equipment as may be approved by the Interstate Commerce Commission as desirable for the improvement of transportation facilities; and (5) to advance, upon request of the Commission having jurisdiction of the project, the unappropriated balance of the sum authorized for carrying out the provisions of the Act entitled "An Act to provide for the construction and equipment of an annex to the Library of Congress," approved June 13, 1930 (46 Stat. 583); such advance to be expended under the direction of such Commission and in accordance with such Act: *Provided*, That in deciding to extend any aid or grant hereunder to any State, county, or municipality the President may consider whether action is in process or in good faith assured therein rea-

sonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. The provisions of this section and section 202 shall extend to public works in the several States, Hawaii, Alaska, the District of Columbia, Puerto Rico, the Canal Zone, and the Virgin Islands.

(b) All expenditures for authorized travel by officers and employes, including subsistence, required on account of any Federal public works project shall be charged to the amounts allocated to such projects notwithstanding any other provisions of law; and there is authorized to be employed such personal services in the District of Columbia and elsewhere as may be required to be engaged upon such work and to be in addition to employes otherwise provided for, the compensation for such additional personal services to be charged against the funds made available for such construction work.

(c) In the acquisition of any land or site for the purposes of Federal public buildings and in the construction of such buildings provided for in this title the provisions contained in sections 305 and 306 of the Emergency Relief and Construction Act of 1932, as amended, shall apply.

Sec. 204. (a) For the purpose of providing for emergency construction of public highways and related projects, the President is authorized to make grants to the several States

(b) All expenditures for authorized travel by officers and employees, including subsistence, required on account of any Federal public-works projects, shall be charged to the amounts allocated to such projects, notwithstanding any other provisions of law; and there is authorized to be employed such personal services in the District of Columbia and elsewhere as may be required to be engaged upon such work and to be in addition to employees otherwise provided for, the compensation of such additional personal services to be a charge against the funds made available for such construction work.

(c) In the acquisition of any land or site for the purposes of Federal public buildings and in the construction of such buildings provided for in this title, the provisions contained in sections 305 and 306 of the Emergency Relief and Construction Act of 1932, as amended, shall apply.

(d) The President, in his discretion, and under such terms as he may prescribe, may extend any of the benefits of this title to any State, county, or municipality notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county, or municipality to borrow money or incur indebtedness.

Sec. 204. (a) For the purpose of providing for emergency construction of public highways and related projects, the President is authorized to make grants to the highway depart-

(not to exceed \$400,000,000 in aggregate amount) as follows:

(1) For expenditure in emergency construction of the Federal-aid highway system and extensions thereof into and through municipalities. The amount apportioned to any state under this paragraph may be used to pay all or any part of the cost of highway construction, including the elimination of hazards to highway traffic, such as the separation of grades at crossings, the reconstruction of existing railroad grade crossing structures, the relocation of highways to eliminate railroad crossings, the widening of narrow bridges and roadways, the building of footpaths, the replacement of unsafe bridges, the construction of routes to avoid congested areas, the construction of facilities to improve accessibility and the free flow of traffic and the cost of any other construction that will provide safer traffic facilities or definitely eliminate existing hazards to pedestrian and vehicular traffic. In carrying out the improvements to eliminate traffic hazards in connection with railroad crossings at grade the State highway department shall constitute an agency of the Federal Government. No funds made available by this title shall be used for the acquisition of any land, right of way or easement in connection with any railroad grade elimination project.

(2) For expenditures in emergency construction on secondary or feeder roads to be agreed upon by the State highway departments and the Secretary of Agriculture: *Provided*, that

ments of the several States in an amount not less than \$400,000,000, to be expended by such departments in accordance with the provisions of the Federal Highway Act, approved November 9, 1921, as amended and supplemented, except as provided in this title, as follows:

(1) For expenditure in emergency construction on the Federal-aid highway system and extensions thereof into and through municipalities. The amount apportioned to any State under this paragraph may be used to pay all or any part of the cost of surveys, plans, and of highway and bridge construction including the elimination of hazards to highway traffic, such as the separation of grades at crossings, the reconstruction of existing railroad grade crossing structures, the relocation of highways to eliminate railroad crossings, the widening of narrow bridges and roadways, the building of footpaths, the replacement of unsafe bridges, the construction of routes to avoid congested areas, the construction of facilities to improve accessibility and the free flow of traffic, and the cost of any other construction that will provide safer traffic facilities or definitely eliminate existing hazards to pedestrian or vehicular traffic. No funds made available by this title shall be used for the acquisition of any land, right of way, or easement in connection with any railroad grade elimination project.

(2) For expenditure in emergency construction on secondary or feeder roads to be agreed upon by the State highway departments and the Secretary of Agriculture: *Provided*, That

the State or responsible political subdivisions shall provide for the proper maintenance of said roads. Such grants shall be available for payment of the full cost of the surveys, plans, improvements, and construction of secondary or feeder roads on which projects shall be submitted by the State highway department, approved by the Secretary of Agriculture.

(b) Any amounts allocated by the President for grants under subsection (a) of this section shall be apportioned among the several States, three-fourths in accordance with the provisions of section 21 of the Federal Highway Act, approved November 9, 1921, as amended and supplemented and one-fourth in the ratio which the population of each State bears to the total population of the United States, according to the latest decennial census, and shall be available on July 1, 1933, and shall remain until expended; but no part of the funds apportioned to any State need be matched by the State.

(c) All contracts involving the expenditure of such grants shall contain provisions establishing minimum rates of wages, to be predetermined by the State highway department, which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals for bids for the work.

(d) In the expenditure of such amounts, the limitations in the Federal Highway Act, approved November 9, 1921, as amended and supplemented, upon highway construction,

the State or responsible political subdivision shall provide for the proper maintenance of said roads. Such grants shall be available for payment of the full cost of surveys, plans, improvements, and construction of secondary or feeder roads, on which projects shall be submitted by the State highway department and approved by the Secretary of Agriculture.

(b) Any amounts allocated by the President for grants under subsection (a) of this section shall be apportioned among the several States, seven-eighths in accordance with the provisions of section 21 of the Federal Highway Act, approved November 9, 1921, as amended and supplemented (which Act is hereby further amended for the purposes of this title to include the District of Columbia), and one-eighth in the ratio which the population of each State bears to the total population of the United States, according to the latest decennial census, and shall be available on July 1, 1933, and shall remain available until expended; but no part of the funds apportioned to any State need be matched by the State, and such funds may also be used in lieu of State funds to match unobligated balances of previous apportionments of regular Federal-aid appropriations.

(c) All contracts involving the expenditure of such grants shall contain provisions establishing minimum rates of wages, to be predetermined by the State highway department, which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals for bids for the work.

(d) In the expenditure of such amounts, the limitations in the Federal Highway Act, approved November 9, 1921, as amended and supplemented, upon highway construction,

reconstruction and bridges within municipalities and upon payments per mile which may be made from Federal funds shall not apply.

(e) As used in this section the term "State" includes the territory of Hawaii. The term "highway", as defined in the Federal Highway Act, approved November 9, 1921, as amended and supplemented for the purposes of this section, shall be deemed to include such main parkways as may be designated by the State and approved by the Secretary of Agriculture as part of the Federal-aid highway system.

reconstruction, and bridges within municipalities and upon payments per mile which may be made from Federal funds, shall not apply.

(e) As used in this section the term "State" includes the Territory of Hawaii and the District of Columbia. The term "highway" as defined in the Federal Highway Act, approved November 9, 1921, as amended and supplemented, for the purposes of this section, shall be deemed to include such main parkways as may be designated by the State and approved by the Secretary of Agriculture as part of the Federal-aid highway system.

(f) When, in connection with the construction of any highway project under this section or section 202 of this Act, it is necessary to acquire rights of way over or through any property or tracts of land owned and controlled by the Government of the United States, it shall be the duty of the proper official of the Government of the United States having control of such property or tracts of land with the approval of the President and the Attorney General of the United States, and without any expense whatsoever to the United States, to perform any acts and execute any agreements necessary to grant the rights of way so required, but if at any time the land or the property the subject of the agreement shall cease to be used for the purposes of the highway, the title in and the jurisdiction over the land or property shall automatically revert to the Government of the United States and the agreement shall so provide.

(g) Hereafter in the administration of the Federal Highway Act, and Acts amendatory thereof or supplementary thereto, the first paragraph of section 9 of said Act shall not apply to publicly owned toll

bridges or approaches thereto, operated by the highway department of any State, subject, however, to the condition that all tolls received from the operation of any such bridge, less the actual cost of operation and maintenance, shall be applied to the repayment of the cost of its construction or acquisition, and when the cost of its construction or acquisition shall have been repaid in full, such bridge thereafter shall be maintained and operated as a free bridge.

Sec. 205 (a) Not less than \$50,000, 000 of the amount made available by this Act shall be allotted for (A) national forest highways, (B) national forest roads, trails, bridges, and related projects, (C) national park roads and trails in national parks owned or authorized, (D) roads on Indian reservations, and (E) roads through public lands, to be expended in the same manner as provided in paragraph (2) of section 301 of the Emergency Relief and Construction Act of 1932, in the case of appropriations allocated for such purposes, respectively, in such section 301, to remain available until expended.

(b) The President may also allot funds made available by this Act for the construction, repair, and improvement of public highways in Alaska, the Canal Zone, Puerto Rico, and the Virgin Islands.

Sec. 205. All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be (directly) employed on such project, (2) that (except in executive, administrative and supervisory positions) so far as practicable, no individual directly employed on any such project shall be permitted to work more than 30 hours in one

Sec. 206. (a) All contracts for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed on any such project; (2) that (except in executive, administrative, and supervisory positions), so far as practicable and feasible, no individual directly employed on any such project shall be permitted to work more than thirty

week; (3) that all employes shall be paid just and reasonable wages which shall be compensation sufficient to provide for the hours of labor as limited, a standard of living in decency and comfort, and (4) that in the employment of labor in connection with any such project preference shall be given, where they are qualified, to ex-service men with dependents.

hours in any one week; (3) that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort; (4) that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (A) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the political subdivision and/or county in which the work is to be performed, and (B) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or District in which the work is to be performed: *Provided*, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates; and (5) that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage.

Sec. 207. (a) For the purpose of expediting the actual construction of public works contemplated by this title and to provide a means of financial assistance to persons under contract with the United States to perform such construction, the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, to approve any assignment executed by any such contractor, with the written consent of the surety or sureties upon the penal bond executed in connection with his contract, to any national or State bank, or his claim against the United

States, or any part of such claim, under such contract; and any assignment so approved shall be valid for all purposes, notwithstanding the provisions of sections 3737 and 3477 of the Revised Statutes as amended.

(b) The funds received by a contractor under any advances made in consideration of any such assignment are hereby declared to be trust funds in the hands of such contractor to be first applied to the payment of claims of subcontractors, architects, engineers, surveyors, laborers, and material men in connection with the project, to the payment of premiums on the penal bond or bonds, and premiums accruing during the construction of such project on insurance policies taken in connection therewith. Any contractor and any officer, director, or agent of any such contractor, who applies, or consents to the application of, such funds for any other purpose and fails to pay any claim or premium hereinbefore mentioned, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(c) Nothing in this section shall be considered as imposing upon the assignee any obligation to see to the proper application of the funds advanced by the assignee in consideration of such assignment.

Subsistence Homesteads

Sec. 208. To provide for aiding the redistribution of the overbalance of population in industrial centers \$25,000,000 is hereby made available to the President, to be used by him through such agencies as he may establish and under such regulations as he may make, for making loans for and otherwise aiding in the purchase of subsistence homesteads. The mon-

Rules and Regulations

Sec. 206. The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and any violation of any such rule or regulation shall be punishable by fine of not to exceed \$500 or imprisonment of not to exceed 6 months, or both.

Issue of Securities and Sinking Fund

Sec. 207. (a) The Secretary of the Treasury is authorized to borrow from time to time, under authority of the Second Liberty Loan Act as amended, such amounts as may be necessary to meet the expenditures authorized under this Act, or to refund any obligations previously issued under this section, and to issue therefor bonds, notes, certificates of indebtedness, or Treasury bills of the United States (authorized by such act, as amended, in the manner and under the terms and conditions therein prescribed.)

(b) For each fiscal year beginning with the fiscal year 1934, there is hereby appropriated, in addition to, and as part of, the cumulative sinking fund provided by Section 6 of the Victory Loan Act, as amended, out of any money in the treasury not otherwise appropriated for the purpose of such fund, an amount equal to 2 1/2 per cent of the aggregate amount of the expenditure made out of appropriations made or authorized under this act as determined by the Secretary of the Treasury.

Re-employment and Relief Tax

(Taxation provisions to be inserted later as Sec. 208)

eys collected as repayment of said loans shall constitute a revolving fund to be administered as directed by the President for the purposes of this section.

Rules and Regulations

Sec. 209. The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and any violation of any such rule or regulation shall be punishable by fine of not to exceed \$500 or imprisonment not to exceed six months, or both.

Issue of Securities and Sinking Fund

Sec. 210. (a) The Secretary of the Treasury is authorized to borrow from time to time, under the Second Liberty Loan Act, as amended, such amounts as may be necessary to meet the expenditures authorized by this Act, or to refund any obligations previously issued under this section, and to issue therefor bonds, notes, certificates of indebtedness, or Treasury bills of the United States.

(b) For each fiscal year beginning with the fiscal year 1934 there is hereby appropriated, in addition to and as part of, the cumulative sinking fund provided by section 6 of the Victory Liberty Loan Act, as amended, out of any money in the Treasury not otherwise appropriated, for the purpose of such fund, an amount equal to 2 1/2 per centum of the aggregate amount of the expenditures made out of appropriations made or authorized under this Act as determined by the Secretary of the Treasury.

Re-employment and Relief Taxes

Sec. 211. (a) Effective as of the day following the date of the enact-

ment of this Act, section 617 (a) of the Revenue Act of 1932 is amended by striking out "1 cent" and inserting in lieu thereof "1½ cents."

(b) Effective as of the day following the date of the enactment of this Act, section 617 (c) (2) of such Act is amended by adding at the end thereof a new sentence to read as follows: "As used in this paragraph the term 'benzol' does not include benzol sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel."

Sec. 212. Titles IV and V of the Revenue Act of 1932 are amended by striking out "1934" wherever appearing therein and by inserting in lieu thereof "1935." Section 761 of the Revenue Act of 1932 is further amended by striking out "and on July 1, 1933" and inserting in lieu thereof "and on July 1, 1933, and on July 1, 1934."

Sec. 213. (a) There is hereby imposed upon the receipt of dividends (required to be included in the gross income of the recipient under the provisions of the Revenue Act of 1932) by any person other than a domestic corporation, an excise tax equal to 5 per centum of the amount thereof, such tax to be deducted and withheld from such dividends by the payor corporation. The tax imposed by this section shall not apply to dividends declared before the date of the enactment of this Act.

(b) Every corporation required to deduct and withhold any tax under this section shall, on or before the last day of the month following the payment of the dividend, make return thereof and pay the tax to the collector of the district in which its principal place of business is located, or, if it has no principal place of

business in the United States, to the collector at Baltimore, Maryland.

(c) Every such corporation is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payment made in accordance with the provisions of this section.

(d) The provisions of sections, 115, 771 to 774, inclusive, and 1111 of the Revenue Act of 1932 shall be applicable with respect to the tax imposed by this section.

(e) The taxes imposed by this section shall not apply to the dividends of any corporation enumerated in section 103 of the Revenue Act of 1932.

Sec. 214. Section 104 of the Revenue Act of 1932 is amended by striking out the words "the surtax" wherever occurring in such section and inserting in lieu thereof "any internal-revenue tax." The heading of such section is amended by striking out "surtaxes" and inserting in lieu thereof "internal-revenue taxes." Section 13(c) of such Act is amended by striking out "surtax" and inserting in lieu thereof "internal-revenue tax."

Sec. 215. (a) For each year ending June 30 there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1 for each \$1,000 of the adjusted declared value of its capital stock.

(b) For each year ending June 30 there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to \$1 for each \$1,000 of the adjusted declared value of capital employed in the transaction of its business in the

United States.

(c) The taxes imposed by this section shall not apply—

(1) To any corporation enumerated in section 103 of the Revenue Act of 1932;

(2) to any insurance company subject to the tax imposed by section 201 or 204 of such Act;

(3) to any domestic corporation in respect of the year ending June 30, 1933, if it did not carry on or do business during a part of the period from the date of the enactment of this Act to June 30, 1933, both dates inclusive; or

(4) to any foreign corporation in respect of the year ending June 30, 1933, if it did not carry on or do business in the United States during a part of the period from the date of the enactment of this Act to June 30, 1933, both dates inclusive.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid. All provisions of law (includ-

ing penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under title II of the Revenue Act of 1926.

(f) For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section (or as of the date of organization in the case of a corporation having no income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section). For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value plus (1) the cash and fair market value of property paid in for stock or shares, (2) paid-in surplus and contributions to capital, and (3) earnings and profits, and minus (A) the value of property distributed in li-

quidation to shareholders, (B) distributions of earnings and profits, and (C) deficits, whether operating or nonoperating; each adjustment being made for the period from the date as of which the original declared value was declared to the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section. For any subsequent year ending June 30, the adjusted declared value in the case of a foreign corporation shall be the original declared value adjusted, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, to reflect increases or decreases (for the period specified in the preceding sentence) in the capital employed in the transaction of its business in the United States.

(g) The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.

Sec. 216 (a) There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 215, an excess-profits tax equivalent to 5 per centum of such portion of its net income for such income-tax taxable year as is in excess of 12½ per centum of the adjusted declared value of its capital stock (or in the case of a foreign corporation the adjusted declared value of capital employed in the transaction of its business in the United States) as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year) determined as provided in section 215. The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.

(b) The tax imposed by this section shall be assessed, collected, and paid in the same manner, and shall be subject to the same provisions of law (including penalties), as the taxes imposed by title I of the Revenue Act of 1932.

Sec. 217. (a) The President shall proclaim the date of—

(1) the close of the first fiscal year ending June 30 of any year after the year 1933, during which the total receipts of the United States (excluding public-debt receipts) exceed its total expenditures (excluding public-debt expenditures other than those chargeable against such receipts), or

(2) the repeal of the eighteenth amendment to the Constitution, whichever is the earlier.

(b) Effective as of the 1st day of the calendar year following the date so proclaimed section 617(a) of the Revenue Act of 1932, as amended, is amended by striking out "1½ cents" and inserting in lieu thereof "1 cent."

(c) The tax on dividends imposed by section 213 shall not apply to any dividends declared on or after the 1st day of the calendar year following the date so proclaimed.

(d) The capital-stock tax imposed by section 215 shall not apply to any taxpayer in respect of any year beginning on or after the 1st day of July following the date so proclaimed.

(e) The excess-profits tax imposed by section 216 shall not apply to any taxpayer in respect of any taxable year after its taxable year during which the date so proclaimed occurs.

Sec. 218. (a) Effective as of January 1, 1933, sections 117, 23(i), 169, 187, and 205 of the Revenue Act of 1932 are repealed.

(b) Effective as of January 1, 1933, section 23(r)(2) of the Rev-

enue Act of 1932 is repealed.

(c) Effective as of January 1, 1933, section 23(r) (3) of the Revenue Act of 1932 is amended by striking out all after the word "Territory" and inserting a period.

(d) Effective as of January 1, 1933, section 182(a) of the Revenue Act of 1932 is amended by inserting at the end thereof a new sentence as follows: "No part of any loss disallowed to a partnership as a deduction by section 23 (r) shall be allowed as a deduction to a member of such partnership in computing net income."

(e) Effective as of January 1, 1933, section 141(c) of the Revenue Act of 1932 is amended by striking out "except that for the taxable years 1932 and 1933 there shall be added to the rate of tax prescribed by sections 13(a), 201(b), and 204(a), a rate of three fourths of 1 per centum" and inserting in lieu thereof the following: "except that for the taxable years 1932 and 1933 there shall be added to the rate of tax prescribed by sections 13(a), 201(b) and 204(a), a rate of three fourths of 1 per centum, and except that for the taxable years 1934 and 1935 there shall be added to the rate of tax prescribed by section 13(a), 210(b), and 204(a), a rate of 1 per centum."

(f) No interest shall be assessed or collected for any period prior to September 15, 1933, upon such portion of any amount determined as a deficiency in income taxes as is attributable solely to the amendments made to the Revenue Act of 1932 by this section.

(g) In cases where the effect of this section is to require for a taxable year ending prior to June 30, 1933, the making of an income-tax return not otherwise required by law, the time for making the return

and paying the tax shall be the same as if the return was for a fiscal year ending June 30, 1933.

(h) Section 55 of the Revenue Act of 1932 is amended by inserting before the period at the end thereof a semicolon and the following: and all returns made under this Act after the date of enactment of the National Industrial Recovery Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

Sec. 219. Section 500(a)(1) of the Revenue Act of 1926, as amended, is amended by striking out the period at the end of the second sentence thereof and inserting in lieu thereof a comma and the following: "except that no tax shall be imposed in the case of persons admitted free to any spoken play (not a mechanical reproduction), whether or not set to music or with musical parts or accompaniments, which is a consecutive narrative interpreted by a single set of characters, all necessary to the development of the plot, in two or more acts, the performance consuming more than 1 hour and 45 minutes of time."

Appropriation

Sec. 209. For the purpose of this Act, there is hereby authorized to be appropriated, out of any money in the Treasury, not otherwise appropriated, the sum of \$3,300,000,000.

Sec. 220. For the purposes of this Act, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$3,300,000,000. The President is authorized to allocate so much of said sum, not in excess of \$100,000,000 as he may determine to be necessary for expenditures in carrying out the Agricultural Adjustment Act and the purposes, powers, and functions heretofore and hereafter conferred upon the Farm Credit Administration.

Sec. 221. Section 7 of the Agricul-

tural Adjustment Act, approved May 12, 1933, is amended by striking out all of its present terms and provisions and substituting therefor the following:

"Sec. 7. The Secretary shall sell the cotton held by him at his discretion, but subject to the foregoing provisions: *Provided*, That he shall dispose of all cotton held by him by March 1, 1936: *Provided further*, That, notwithstanding the provisions of section 6, the Secretary shall have authority to enter into option contracts with producers of cotton to sell to the producers such cotton held by him, in such amounts and at such prices and upon such terms and conditions as the Secretary may deem advisable, in combination with rental or benefit payments provided for in part 2 of this title.

"Notwithstanding any provisions of existing law, the Secretary of Agriculture may in the administration of the Agricultural Adjustment Act make public such information as he deems necessary in order to effectuate the purposes of such Act."

TITLE III
AMENDMENTS TO EMERGENCY
RELIEF AND CONSTRUCTION
ACT AND MISCELLANEOUS
PROVISIONS

Sec. 301 — After the expiration of ten days after the date upon which the Administrator has qualified and taken office, (1) no application shall be approved by the Reconstruction Finance Corporation under the provisions of subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932 as amended, and (2) the (Administration) shall have access to all applications, files and records of the Reconstruction Finance Corporation, relating to loans

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and contracts, and the administration of funds under such subsections: *Provided*, That the Reconstruction Finance Corporation may issue funds to a borrower under such subsections (a) prior to January 23, 1939, under the terms of any agreement entered into with such borrower pursuant to an application approved prior to date of termination, under this section, of the power of the Reconstruction Finance Corporation to approve applications.

and contracts and the administration of funds under such subsection: *Provided*, That the Reconstruction Finance Corporation may issue funds to a borrower under such subsection (a) prior to January 23, 1939, under the terms of any agreement or any commitment to bid upon or purchase bonds entered into with such borrower pursuant to an application approved prior to the date of termination, under this section, of the power of the Reconstruction Finance Corporation to approve applications: *Provided, further, That in connection with any loan or contract or any commitment to make a loan entered into by the Reconstruction Finance Corporation prior to June 26, 1933, to aid in financing part or all of the construction cost of projects pursuant to section 201 (a) (1) of the Emergency Relief and Construction Act of 1932, as amended, the Corporation may make such further loans and contracts for the completion of any such project, or for improvements, additions, extensions, or equipment which are necessary or desirable for the proper functioning of any such project, or which will materially increase the assurance that the borrower will be able to repay the entire investment of the Corporation in such project, including such improvements, additions, extensions, or equipment; and the Corporation may disburse funds to the borrower thereunder, at any time prior to January 23, 1939, notwithstanding any provisions to the contrary contained in this section or in section 201 (h) of the Emergency Relief and Construction Act of 1932, as amended: Provided further, That any such further loans shall be made subject to all the terms and conditions set forth in the Emergency Relief and Construction Act of 1932, as amended, with respect to the*

Decrease of Borrowing Power of Reconstruction Finance Corporation

Sec. 302. The amount of notes, debentures, bonds or other obligations which the Reconstruction Finance Corporation is authorized and empowered under Sec. 9 of the Reconstruction Finance Corporation Act, as amended, to have outstanding at any one time is decreased by \$.....

Separability Clause

Sec. 303 — If any provision of this Act or the application thereof, to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

Short Title

Sec. 304 — This act may be cited as the National Industrial Recovery Act.

loans authorized by section 201 (a) (1) of said act. [As amended by Public No. 417, 73d Congress, approved June 19, 1934.]

Decrease of Borrowing Power of Reconstruction Finance Corporation

Sec. 302. The amount of notes, debentures, bonds, or other such obligations which the Reconstruction Finance Corporation is authorized and empowered under section 9 of the Reconstruction Finance Corporation Act, as amended, to have outstanding at any one time is decreased by \$400,000,000.

Separability Clause

Sec. 303. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Short Title

Sec. 304. This Act may be cited as the "National Industrial Recovery Act."

APPENDIX II

THE COTTON TEXTILE CODE

1. As Proposed, June 19, 1933

To effectuate the policy of Title I of the National Industrial Recovery Act, during the period of the emergency, by reducing and relieving unemployment, improving the standards of labor, eliminating competitive practices destructive of the interests of the public, employees and employers, relieving the disastrous effects of overcapacity and otherwise rehabilitating the cotton textile industry and by increasing the consumption of industrial and agricultural products by increasing purchasing power, and in other respects, the following provisions are established as a Code of fair competition for the cotton textile industry:

I. Definitions — The term "cotton textile industry," as used herein is defined to mean the manufacture of cotton yarns, and/or cotton woven fabrics, whether as a final process, or as a part of a larger or further process.

The term "employees" as used herein shall include all persons employed in the conduct of such operations.

The term "productive machinery" as used herein is defined to mean spinning spindles, and/or looms.

The term "effective date" as used herein is defined to be July 17, 1933, or, if this code shall not have been approved by the President two weeks prior thereto, then the second Monday after such approval.

The term "persons" shall include natural persons, partnerships, asso-

2. As Approved, July 17, 1933

To effectuate the policy of Title I of the National Industrial Recovery Act, during the period of the emergency, by reducing and relieving unemployment, improving the standards of labor, eliminating competitive practices destructive of the interests of the public, employees and employers, relieving the disastrous effects of overcapacity and otherwise rehabilitating the cotton textile industry and by increasing the consumption of industrial and agricultural products by increasing purchasing power, and in other respects, the following provisions are established as a Code of fair competition for the cotton textile industry:

I. Definitions — The term "cotton textile industry," as used herein is defined to mean the manufacture of cotton yarns, and/or cotton woven fabrics, whether as a final process, or as a part of a larger or further process.

The term "employees" as used herein shall include all persons employed in the conduct of such operations.

The term "productive machinery" as used herein is defined to mean spinning spindles, and/or looms.

The term "effective date" as used herein is defined to be July 17, 1933, or, if this code shall not have been approved by the President two weeks prior thereto, then the second Monday after such approval.

The term "persons" shall include natural persons, partnerships, asso-

ciations and corporations.

II. On and after the effective date, the minimum wage that shall be paid by employers in the cotton textile industry to any of their unskilled employees — except learners during a six weeks apprenticeship, cleaners and outside employees — shall be at the rate of \$10 per week when employed in the southern section of the industry, and at the rate of \$11 per week when employed in the northern section, for 40 hours of labor.

III. On and after the effective date, employees in the cotton textile industry shall not operate on a schedule of hours of labor for their employees except repair shop crews, engineers, electricians, firemen, office and supervisory staff, shipping, watching and outside crews, and cleaners — in excess of 40 hours per week, and they shall not operate productive machinery in the cotton textile industry for more than two shifts of 40 hours each per week.

IV. With a view to keeping the President informed as to the observance or non-observance of this Code of Fair Competition, and as to whether the cotton textile industry is taking appropriate steps to effectuate the declared policy of the National Industrial Recovery Act each person engaged in the cotton textile industry will furnish duly certified reports in substance as follows and in such form as may hereinafter be provided:

(a) *Wages and Hours of Labor* — Returns every four weeks showing actual hours worked by the various occupational groups of employees and the minimum weekly rates of wages.

(b) *Machinery Data* — In the case

ciations and corporations.

II. On and after the effective date, the minimum wage that shall be paid by employers in the cotton textile industry to any of their unskilled employees — except learners during a six weeks apprenticeship, cleaners and outside employees — shall be at the rate of \$12 per week when employed in the southern section of the industry, and at the rate of \$13 per week when employed in the northern section, for 40 hours of labor.

III. On and after the effective date, employees in the cotton textile industry shall not operate on a schedule of hours of labor for their employees except repair shop crews, engineers, electricians, firemen, office and supervisory staff, shipping, watching and outside crews, and cleaners — in excess of 40 hours per week, and they shall not operate productive machinery in the cotton textile industry for more than two shifts of 40 hours each per week.

IV. On and after the effective date, employers in the cotton textile industry shall not employ any minor under the age of 16 years.

V. With a view to keeping the President informed as to the observance or non-observance of this Code of Fair Competition, and as to whether the cotton textile industry is taking appropriate steps to effectuate the declared policy of the National Industrial Recovery Act each person engaged in the cotton textile industry will furnish duly certified reports in substance as follows and in such form as may hereinafter be provided:

(a) *Wages and Hours of Labor* — Returns every four weeks showing actual hours worked by the various occupational groups of employees and the minimum weekly rates of wages.

(b) *Machinery Data* — In the case

of mills having no looms, returns should be made every four weeks showing the number of spinning spindles in place, the number of spinning spindles actually operated each week, the number of shifts, and the total number of spindle-hours each week.

In the case of mills having no spinning spindles, returns every four weeks, showing the number of looms in place, the number of looms actually operated each week, the number of shifts, and the total number of loom-hours each week.

In the case of mills that have spinning spindles and looms, returns every four weeks showing the number of spinning spindles and looms in place, the number of spinning spindles and looms actually operated each week, the number of shifts, and the total number of spindle-hours and loom-hours each week.

(c) *Reports of Production, Sales, Stocks and Orders*—Weekly returns showing production in terms of the commonly used unit, i.e., linear yards or pounds or pieces; stocks on hand both sold—unsold stated in the same terms, and unfilled orders, stated also in the same terms. The returns are to be confined to staple construction and broad divisions of cotton textiles.

The Cotton Textile Institute, Inc., 320 Broadway, New York City, is constituted the agency to collect and receive such reports.

of mills having no looms, returns should be made every four weeks showing the number of spinning spindles in place, the number of spinning spindles actually operated each week, the number of shifts, and the total number of spindle-hours each week.

In the case of mills having no spinning spindles, returns every four weeks, showing the number of looms in place, the number of looms actually operated each week, the number of shifts, and the total number of loom-hours each week.

In the case of mills that have spinning spindles and looms, returns every four weeks showing the number of spinning spindles and looms in place, the number of spinning spindles and looms actually operated each week, the number of shifts, and the total number of spindle-hours and loom-hours each week.

(c) *Reports of Production, Sales, Stocks and Orders*—Weekly returns showing production in terms of the commonly used unit, i.e., linear yards or pounds or pieces; stocks on hand both sold and unsold stated in the same terms, and unfilled orders, stated also in the same terms. These returns are to be confined to staple constructions and broad divisions of cotton textiles.

The Cotton Textile Institute, Inc., 320 Broadway, New York City, is constituted the agency to collect and receive such reports.

VI. To further effectuate the policies of the Act, the Cotton Textile Industry Committee, the applicant herein, or such successor committee or committees as may hereafter be constituted by the action of the Cotton Textile Institute, the American Cotton Manufacturers' Association and the National Association of Cotton Manufacturers, is set up to cooperate with the Administrator as a

planning and fair practice agency for the cotton textile industry. Such agency may from time to time present to the Administrator recommendations based on conditions in the industry as they may develop from time to time which will tend to effectuate the operation of the provisions of this Code and the policy of the National Industrial Recovery Act, and in particular along the following lines:

1. Recommendations as to the requirement by the Administrator of such further reports from persons engaged in the cotton textile industry of statistical information and keeping of uniform accounts as may be required to secure the proper observance of the Code and promote the proper balancing of production and consumption and the stabilization of the industry and employment.

2. Recommendations for the setting up of a service bureau for engineering, accounting, credit, and other purposes to aid the smaller mills in meeting the conditions of the emergency and the requirements of this Code.

3. Recommendations (1) for the requirement by the Administrator of registration by persons engaged in the cotton textile industry of their productive machinery; (2) for the requirement by the Administrator that prior to the installation of additional productive machinery by persons engaged or engaging in the cotton textile industry, except for the replacement of a similar number of existing looms or spindles or to bring the operation of existing productive machinery into balance, such persons shall secure certificates that such installation will be consistent with effectuating the policy of the National Industrial Recovery Act during the period of emergency, and (3) for the granting or withholding by the Ad-

administrator of such certificates as so required by him.

4. Recommendations for changes in, or exemptions from the provisions of this Code as to the working hours of machinery which will tend to preserve a balance of productive activity with consumption requirements, so that the interests of the industry and the public may be properly served.

5. Recommendations for the making of requirements by the Administrator as to practices by persons engaged in the cotton textile industry as to methods and conditions of trading, the naming and reporting of prices which may be appropriate to avoid discrimination, to promote the stabilization of the industry, to prevent and eliminate unfair and destructive competitive prices and practices.

6. Recommendations for regulating the disposal of distress merchandise in a way to secure the protection of the owners and to promote sound and stable conditions in the industry.

7. Recommendations as to the making available to the suppliers of credit to those engaged in the industry of information regarding terms of, and actual functioning of any or all of the provisions of the Code, the conditions of the industry and regarding the operations of any and all of the members of the industry covered by such Code to the end that during the period of emergency available credit may be adapted to the needs of such industry considered as a whole and to the needs of the small as well as the large units.

8. Recommendations for dealing with any inequalities that may otherwise arise to endanger the stability of the industry and of production and employment.

Such recommendations, when ap-

proved by the Administrator, shall have the same force and effect as any other provisions of this Code.

Such agency is also set up to cooperate with the Administrator in making investigations as to the functioning and observance of any of the provisions of this Code, at its own instance or on complaint by any person affected, and to report the same to the Administrator.

Such agency is also set up for the purpose of investigating and informing the Administrator on behalf of the cotton textile industry as to the importation of competitive articles into the United States in substantial quantities or increasing ratio to domestic production on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of this Code, and as an agency for making complaint to the President on behalf of the cotton textile industry, under the provisions of the National Industrial Recovery Act, with respect thereto.

V. Where the costs of executing contracts entered into in the cotton textile industry prior to the presentation to Congress of the National Industrial Recovery Act are increased by the application of the provisions of the Act to the industry, it is equitable and promotive of the purposes of the Act that appropriate adjustments of such contracts to reflect such increased costs be arrived at by arbitral proceedings or otherwise, and the Cotton Textile Industry Committee is constituted an agency to assist in effecting such adjustments.

VI. As required by Sec. 7(a) of Title I of the National Industrial Recovery Act the following provisions are conditions of the code:

"1. That employees shall have the right to organize and bargain collec-

VII. Where the costs of executing contracts entered into in the cotton textile industry prior to the presentation to Congress of the National Industrial Recovery Act are increased by the application of the provisions of the Act to the industry, it is equitable and promotive of the purposes of the Act that appropriate adjustments of such contracts to reflect such increased costs be arrived at by arbitral proceedings or otherwise, and the Cotton Textile Industry Committee, the applicant for this Code, is constituted an agency to assist in effecting such adjustments.

VIII. Employers in the cotton textile industry shall comply with the requirements of the National Industrial Act as follows:

"1. That employees shall have the right to organize and bargain collec-

tively through representatives of their own choosing and shall be free from the interference, restraint or coercion of employers of labor or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection: (2) that no employee, and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing: and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President."

VII. The President may from time to time, cancel or modify any order, approval, license, rule or regulation issued under Title I of the National Recovery Act.

VIII. Such of the provisions of this Code as are not required to be included therein by the National Industrial Recovery Act may, with the approval of the President, be modified or eliminated, if it appears that the public needs are not being served thereby, and as changes in circumstances or experience may indicate.

They shall remain in effect unless and until so modified, or eliminated, or until the expiration of the Act.

It is contemplated that from time to time supplementary provisions to

tively through representatives of their own choosing and shall be free from the interference, restraint or coercion of employers of labor or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection: (2) that no employee, and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing: and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President."

IX. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provision of Clause 10(b) of the National Industrial Recovery Act, from time to time to cancel or modify any order, approval, license, rule, or regulation, issued under Title I of said Act, and specifically to the right of the President to cancel or modify his approval of this Code or any conditions imposed by him upon his approval thereof.

X. Such of the provisions of this Code as are not required to be included therein by the National Industrial Recovery Act may, with the approval of the President, be modified or eliminated, and as changes in circumstances or experience may indicate.

It is contemplated that from time to time supplementary provisions to

this Code or additional codes will be submitted for the approval of the President, to prevent unfair competition in price and other unfair and destructive competitive practices and to effectuate the other purposes and policies of Title I of the National Industrial Recovery Act and which shall not conflict with the provisions hereof.

IX. If any provision of this code is declared invalid or unenforceable the remaining provisions shall nevertheless continue in full force and effect, the same as if they had been separately presented for approval and approved by the President.

this Code or additional codes will be submitted for the approval of the President, to prevent unfair competition in price and other unfair and destructive competitive practices and to effectuate the other purposes and policies of Title I of the National Industrial Recovery Act consistent with the provisions hereof.

APPENDIX III

PRE-NRA MEMORANDA OF ALEXANDER SACHS REGARDING THE NATIONAL INDUSTRIAL RECOVERY ACT

1. *Memorandum to a new Cabinet Member in December, 1932,
and to General Johnson on April 10, 1933.*

SOCIAL PLANNING OF RECOVERY*

I. Introduction and Orientation

In connection with the special problems as with the more general problems of stimulating business recovery, it is necessary to pause for what to many others might be taken as a mere aside but to the present writer—in pursuance of an attitude adhered to consistently since the inception of this depression as the liquidation of the post-war world reconstruction—represents a series of basic and governing considerations for the solution of the main problems now confronting the nation. At this juncture we are quite past the stage of deflation of the post-war inflation and the false price and credit policies in the national and international spheres and we are now faced in the United States—as distinguished from the other industrial countries where economic shrinkage has been arrested in the past year—with the question of the solvency not of any part but of our whole system. The terrible fault has been that while it was still possible to remove individual and separate maladjustments within our national economy, the leading intellectual as well as business, banking, and political figures in our country persisted in denying that there were any problems that had to be solved and any inflation to deflate, and so they delayed corrective and defensive measures, and only resorted to their timid and half-hearted devices after the deterioration of conditions had rendered such devices all too inadequate. Similarly, the statesmen of the world continued to be overtaken by a sort of high-tension paralysis — like the trivial oscillations of the trench-war battle fronts up to America's entrance in the Great War—only to find that the imperious and menacing march of events swept aside their half-willed and half-thought schemes, and even attacked such important improvised defenses as the enlightened reparations settlement at Lausanne, because resorted to too late to save Germany for democracy. The outstanding feature of this great depression is that the economic order developed since the Reformation and the Great Society developed since the fall of the Roman Empire have come to be threatened, not by the destructive impact of external or natural forces, but by a spontaneous disintegration from within, because of an incipient failure of collective will and political wisdom, and because of lack of sound ideology on the part of the ruling classes and of the leaders. Now, the economic order in considerable

*The sentences and paragraphs marked with an introductory asterisk are inserts or additions made in April, 1933 to the late 1932 edition of the memorandum—A. S.

areas in the United States and in less developed countries is reverting to the feudalism and the barter which ensued upon the breakup of the Roman Empire, and our banking system has reverted to a condition like that of the treasure hoards of antiquity, while at the same time it remains subject to the impact of the most sensitive and modern of subversive forces incident to a highly developed credit economy.

*II. Measures of the Deterioration Towards a Barely
Endurable Subsistence Level of the Economy as a Whole*

Venturing now upon a bold and, of course, necessarily rough comprehensive summary of what's happened to the income account of the United States as a going industrial and consuming concern, our own national economy—owing in no small measure to policies which had the effect of sterilizing wealth and credit resources and to lack of flexibility and initiative on the part of large corporations and institutions, "sicklied o'er by the pale cast" of laissez-faire and liquidity complexes—has deteriorated far more than the national economies of Great Britain or Germany. Granting the height of the estate from which we have fallen, it is nonetheless terrifyingly significant that from the peak prior to the depression to the low of last year, which has been exceeded of late, the production of consumers' goods for the population we have declined 33.5% about 80% — in the production of heavy capital goods the decline has been 90%—against about 52% for Germany and 31% for Great Britain, and in the production of consumers goods for the population we have declined 33.5% against 18.2% for Germany and 11.2% for Great Britain. At the low level that obtained the last month and is obtaining currently, we are probably producing only 10% of the capital goods produced prior to the depression: this compares with maintenance requirements for industry as a whole in the pre-depression period amounting to 10% of the then output and depreciation requirements of an additional 5%. Put differently, current heavy-capital-goods activity as measured by steel production at the annual rate of 12 million tons works out to be about the same as the annual depreciation on all steel structures and buildings in the country. The combined and average influence of the declines in production and in consumption is found in the drop in railroad traffic: for the United States this mid-way drop has amounted to a 50% decline from the 1929 traffic and for Germany about one-third, while for the United Kingdom, because of the predominant role of foreign trade, the decline has been about 30% or equal to the reduction in capital-goods activity rather than to the much smaller reduction in consumption.

Taking the United States by itself and limiting ourselves to the main streams entering into the total values of American productive activity, we find that in the values of production and in mass income, there has been a decline of over half of the 1929 income, so that, making allowances for minor streams difficult to trace through, it would be reasonable to estimate that our income as a nation today is between the upper and lower limits of one-half and one-third of what it was in the normalcy and subsequently in the boom periods.

It thus appears that we are approaching the logical breaking limit of a capitalist society, no longer covering the depreciation and the obsolescence of its permanent or capital plant — doing far less residential building than we

did a generation ago with less than half of the present population and producing only one locomotive last year — and living, as we shall show presently, on a bare subsistence basis. In other words, economically as well as financially, we have reduced to absurdity the idea of liquidity. In life, such reductions to the absurd mean disaster, for our society has been a complex of permanencies and has presupposed the existence of individuals and institutions willing to assume, adjust for, and profit by the hazards of creating concrete values to endure over stretches of time. The competitive liquidity in business and banking has reversed and made us logically contemporary with primitive economies shading off to the economy of Bedouin tribes where a ton of steel is gross over-production for their Arabia from Hauran to the Yemen.

Looking at the matter from the side of the production and stimulation of mass income, namely, the profits of the employers—as represented by the earnings of industrial, trade, transportation, power and communication, banking and finance companies—it is apparent from the accompanying table¹ covering largest available aggregate corporate earnings that the decline since 1929 has been from \$5 1/6 billion to \$100 million in 1932 and exclusive of railroads, utilities and finance, the decline has been from \$3 1/2 billion to a deficit of \$100 million.

Turning to the purchasing power of the employed and unemployed masses, which for the most part determines both the price level and the volume of goods currently consumed, the aggregate mass purchasing power—after adjustment for respective costs of living and unemployment relief—has declined in the United States over 50% from 1929, as against about 30% for Germany and under 10% for Great Britain. Furthermore, even when this mass purchasing power is augmented by the income of the middle and upper or the rentier classes through all forms of interest and dividend payments and similarly adjusted for the cost of living, we find that the decimation of corporate earning power and moratoria and defaults on all sorts of debts have led to a situation where there has been a widening of the gap between the value of the nondurable goods produced and the total of consumer income. Up to 1932, the industrial structure was still accumulating some surplus over current operations and charges. Now the surplus as represented by profits has been wiped out. The past surplus has been heavily drawn upon, but there is still some surplus left in the industrial corporate structure. But owing to the cloud of uncertainties that has been thrown over the value and validity of contracts and the agitation over currency inflation, industry and banking are too scared to take risks that require money, now that risks have been focussed about the money: contrary to popular illusion, in the period of uncertainty about inflation, scattered flight into values is insufficient to offset the paralysis of initiative, for business initiative means making long-term commitments. For the consuming public as a whole, that is, the workers and the middle classes, the income data here, when co-ordinated with supplementary banking data as well as empirical studies like the one recently made of the Sunnyside Community, clearly suggest that the consuming public's income and reserves are "down to the nap" and that the fibre is ready to tear.

Moreover, not only is there a deficit in current mass income to take up the value of current consumers'-goods production, but there is also a deficit as be-

¹Table omitted — C. F. R.

tween the combined production of capital and consumers' goods at the present low level and the combined income available to absorb such total production, as represented by a combination of mass income and new financing; the correlation between the income stream and the value-of-total-production stream appears to be as close as between income and value of consumer production. The charts² show that in the last half year or more income has fallen short of current production and that the spurt in activity in the second half of 1932 was, as intuitively maintained at the time by the writer, bound to be short-lived because of the absence of a corresponding rise in mass income which depends upon employment and the turnover of goods and credit. Only during the late Spring of 1931, due to the bonus loan distributions, was there an industrial excess of income over the values of current production.

While the Government deficit financing has contributed to the maintenance of such current purchasing power as there was, and is included in the determination of income, it has merely served to cushion the drop. The operations of the Government deficit and of the Reconstruction Finance Corporation and the Federal Reserve reflation efforts failed to be positive stimuli. This is shown graphically on the accompanying chart³ and in a separate independent memorandum to follow covering the banking figures: the point of view embodied therein has been discussed from time to time with the Reserve authorities in support of the contention that there have to be introduced *economic stimuli* leading to increased activity and employment in order to detonate the *potential and dormant credit* resources. The futility of the Reserve open-market operations is shown by the graphic record of the continuous drop in the bank debits and loans and the turnover of deposits for the country as a whole, and the declining turnover of customers' balances after adjusting for the increase due to the Government deficit operations — all that despite the rise in consumers'-goods activity that took place in the Autumn, and despite the excess reserves that were being built up, which, coupled with the follies of Mills' short-term financing, made the banks lose control of their depositors.†

III. *The Imperative Need for Government Intervention to Stimulate Activity*

We have seen that our economy has been approaching the area where what has been deemed improbable to the point of impossible is, alas, becoming probable. This shrinkage in the income of masses and classes, this attrition of industrial profits below the vanishing point, this engulfing curtailment not only of profits but also of any surplus above operating expenses, with the majority of the railroads, on a projection of present tendencies, earning only little above operating expenses, this combined slump of volume and prices, by industry, and by agriculture chiefly as to price, to the point where production is not only not leaving any margins but not covering out-of-pocket expenses, and in many commodities giving zero returns to basic producers:—all this represents a destruction equivalent to economic nihilism and cannot be permitted to go on. We have

²Omitted — C. F. R.

³Omitted — C. F. R.

†It should be noted in this connection that Governor Meyer's commodity scheme served as a positive stimulus to the textile industry and did give a consumer's-goods rally in production which might have worked had it been co-ordinated with and followed up with a planned program for stimulating capital-goods activity, but the intention to aid such activity through the so-called self-liquidating legislation for the Reconstruction Finance Corporation was defeated by opposition of the Administration which was, of course, due to conscientious scruples.—A. S.

telescoped a price decline in basic commodities equal to the total decline spread over the generation from the end of the Civil War to the end of the great depression of the 90's. We have, through interferences with proper readjustments and misconceived and misguided inflation and reflation devices, produced a situation of such unsettlement, doubt, and paralysis as to have thrown economic life into a stage where the feudalism, barter, and scrip of ages gone by have become contemporary history, and the specter of economic dissolution and menace of inability to take care of the unemployed industrial urban masses have begun to display their dreadful countenance once again on the stage of history.

The probability that as an economic unity we are, so to speak, "down to the nap," and that the basic fabric threatens to tear should not be dismissed as mere alarmist talk on the part of one of those who have been dubbed "economic Jeremiahs," even when that one has for a year maintained that the economic deflation and depression have been completed and that we are suffering from a cultural deflation and depression due to the failure of a leadership and an ideology both in the economic and business as well as political spheres. *In dealing with this probability and concern, we have to avoid falling into the naïvety and the evasions illustrated only recently by the negativism and inaction of the leaders in respect to the important portent of the Michigan moratorium. The probability of a break in the economic order as a result of the deficit of the income account of our economy as a whole seems as clear as the probability of a collapse in the banking situation appeared to the writer months ago, as a result of the negative policies of the Reconstruction Finance Corporation towards the banks, while volume and values were shrinking and banks and corporations were pursuing individualist liquidity at the expense of the system, thus draining the interior, which already had an unfavorable balance of trade with the large metropolitan banks and areas. To be sure, subversive economic forces have a slower tempo and a lower power of cumulative acceleration than subversive financial forces. But, in Locke's phrase, in the greatest part of our concernment we have only been afforded the "twilight of probability," and we cannot "acquit ourselves of judging and acting amiss" if we fail to take betimes, which means at once, measures which will counteract the economic shrinkage by deliberate synthetic stimuli to economic activity. In the banking situation we had reached a point where we had to liquefy the system by methods other than continued anti-social liquidation. So, in the business and employment situation we have to throw into the breach government-fostered activities on a large scale. For private individuals and corporations are still under the influence of the liquidity complex and will not venture forth until business activity and purchasing power have begun to recover. The large bureaucratic corporations have in this great depression interposed rigidities and put up resistances to the very adjustments that laissez-faire capitalism requires, and so by not being capitalistic enough they have prolonged the depression and deflation. Now, they are so caught up in their system of rigidities and resistances, and universal *pursuit of liquidity* that they are failing or unable to release the divergent and diffused play of initiative that capitalists and business men in previous depressions always set going when the prior inflation appeared to have been deflated and prices gone down way below production costs, and accumulated surpluses had either been cut into or been overdiscounted in price deflation .

*At this juncture, then, *the first steps have to be taken on the initiative*

of the public authority. The prolongation of the depression has destroyed the credit position of most of the local and state governments, and so it is incumbent upon the Federal Government to undertake the financing of it under a plan which will take adjustment bonds from the states and municipalities for part of the expenditures on a basis which will delay interest and amortization until such time as the taxing power increases with business recovery, say 2 to 3 years hence. Now that the Federal Government has balanced its current budget, it can venture upon a large public-works program, with its ramifying repercussions in the way of additional employment and business activity and income-tax revenue whose magnitudes are shown in the subsequent study. Its restored creditor position permits such expenditures providing the interest and amortization on the capital expansion is covered out of taxation. The major capital-goods activities to be fostered by the Government as stimuli to business are, to summarize the result of the sequel to this memorandum, first, the \$2,750,000,000 public-works program as collated by the Construction Council and the Committee of Architects, secondly, the two-thirds of a billion dollar railroad re-maintenance and rehabilitation program comparable to the railroad rehabilitation which figured so significantly in the emergence from the 1921 depression, thirdly, building modernization and renovation with the aid of credit instrumentalities to be created by the Reconstruction Finance Corporation jointly with the mortgage holders of property, fourthly, clearance of slum areas on a cartel plan—which will avoid the dangers of the destruction of existing values involved in the provision of housing for the masses in new areas that will simply transfer tenants—and finally, the combination of endowment insurance and mortgages with the aid of the savings banks, the insurance companies, and the building and loan associations—which adaptation of the actuarial device developed in the past year by the National Mutual Life Assurance Society of London, presided over by Mr. Keynes, in connection with British housing, could serve to inaugurate a major home-owners' building movement under an insurance basis which would liquidate the mortgage over the life of the policy. In respect to industry, instead of the grandiose schemes of government control and subsidizing of specific industries, it is proposed in the sequel memorandum of specific recommendations, that the Government merely aid the extension of additional credit to the consumer purchases of durable consumers' goods, like automobiles, thus sharing with industry the additional losses above the previous established losses on consumer credit by the given industry and the companies within the industry.

With the exception of the direct public-works program, the other projects are in the nature of contingent limited liabilities undertaken by the Government in the interest of stimulating and fostering business activities which are to be carried out by the industries, and the enterprises and the individuals themselves. And so this plan would not involve that basic dislocation of economic life inherent in the proposals emanating from Washington in the direction of state capitalism, state socialism, or Fascist corporate state, which, regardless of the political issues raised by them, cannot be put into effect in time by the existing Government bureaucracy. For, in a country like ours, the personnel of the Government is dominated by people who have had but very limited experience in business, and the relation of the Government to business has been of a negative type of regulation, as by the tradition, habit, and training of this generation we have left the conduct of business to the play of competition and individual ini-

tiative within the framework of the legal system of private property. The drift of legislation recently introduced is in the opposite direction of a sort of Fascist corporate state: the farm bill vests power in the Department of Agriculture, albeit discretionary or permissive, to control the price and production structure of the whole of our agriculture, and, what is more, of the whole of our food and textile industries dependent upon agriculture; the 30-hour bill, which, when taken in conjunction with plans of the Kent or Rorty type, could lead to the control of the whole of industry by the Departments of Commerce and Labor; and the various omnibus banking and monetary schemes of reflation and inflation discussed could vest control of the whole banking and monetary structure of the country in some improvised new agency.

Having been throughout the depression a proponent of the urgency of the basic readjustment, and having criticized the ignorance in the improvised so-called solutions of the Reconstruction Finance Corporation and the Federal open-market operations of the underlying problems during this unparalleled depression, which on my own formula called for intra-national as well as international scaling down or *seisachtheia* of debts and removal of basic price and exchange disparities between debtor and creditor nations and classes, so as to liberate the productive energies of our nation and the world, it may not be amiss for this writer to warn against following the will-of-the-wisp of omnibus inflation devices and wholesale so-called solutions by monetary tricks, that, far from making for adjustment, will only be the prelude to a new kind of depression, a type which the author of the "Forgotten Man" has called a state of "advancing paralysis of all enterprise." Choice is not between deflation and inflation, for only on account of the failure of a proper plan of recovery have we inflicted on ourselves another year of deflation while the rest of the world has been in a relatively stabilized condition; the choice today is between following another monetary mirage, and a comprehensive plan of revival and activity by the co-operation of Government and business, with the Government as the public authority taking the first step and facilitating the revival of capital-goods industries. The very prolongation of the depression and the super-imposition of a banking and monetary crisis at the end of the deflation and after a year of comparative stability in commodity prices and the drawing upon existing stocks of goods, have served to paralyze that initiative which in the production of consumers'-goods industries emerged last year only to be thrust back by the lack of any capital-goods follow-up, by the political uncertainties, the unsound credit position of the Government, and the international debt crisis—which, in turn, led to additional pressure on the commodity price level — and the continuance of the unsound banking situation and the unresolved debt structures because the Reconstruction Finance Corporation had merely been lending time to the banks, the railroads, and agriculture without requiring any basic readjustment.

‡We have therefore maintained that the Government must step in and break the all-persuasive vicious ellipse, or more specifically the pair of ellipses, with

‡This is transposed from the original memorandum of November 7, 1932 on "Kaleidoscope of the Crisis: Final Phase," dealing with the recommended reorganization of the banks and reconstruction of the RFC. Its essential provisions resubmitted March 7, 1933 conform to those in the subsequently enacted reorganization, including government support consisting primarily of taking of a preferred or equity position instead of senior creditor position secured on most liquid assets, and secondarily of liberalized Lombard loans, as the twin devices for strengthening the capital structure and liquefying the assets of the banks—A. S.

two foci rather than one center, dependent upon the different settings:—the vicious ellipses of lower purchasing power and lower volume; lower volume, lower prices; lower prices, lower values; lower values, lower credit-worthiness — while each and all of the ellipses have been borne down by the overload which cannot be remedied by a mere monetary and price manipulation but requires revival of activity to make it tolerable for debtor and creditor alike. Government intervention of this order is feasible, and for the reasons adduced in this memorandum cannot be escaped now because in the short run pressingly and poignantly, and in the long run inevitably, the Federal credit and the Federal taxing power is a function of the current activity and the current solvency of the economy of the country, far more than it is of the accumulated wealth which, because of low present volume, is undergoing progressive deterioration. That solvency on current as well as long-term account can now and must be re-created by mobilizing the collective will of the nation functioning through the Government and with the Government credit for the constructive purposes of life and peace.

(Signed) Alexander Sachs

2. Memorandum to General Johnson, April 27, 1933

Dear General Johnson:

I. *Bearing on point that artificial price advance at rate faster than business and purchasing-power improvement is not only dangerous but contrary to all historic records of emergence from depressions.* In support of the observation contained in my telegram as to the greater and faster resiliency of business volume and derivatively of purchasing power, than of commodity prices, during emergence from major depressions, I am enclosing a memorandum which sums up the conclusions to which my thought and studies have led. The significant points in this memorandum embodying my views are as follows:

(1) Echo of my earlier conclusions that emergence from depression requires either stable or rising prices. This differs from the two extreme theories, on the one hand the popular view that prices must first rise sharply in order to get business men to make commitments, and on the other hand, the academic theory made fashionable by economists and economic services, that prices keep on declining while business is recovering based on the experience of the 1921-1922 period when the all-commodity index made its low in January, 1922 in contrast with the initiation of business improvement in the late summer of 1921. The first, or popular theory, is contrary to the actual facts of observation noted on the enclosed table, and the second is due to half-thinking and a certain lack of business sense which has been responsible for focusing attention on the all-commodity index instead of on the sensitive commodities which are the fulcrums of important lines of business; thus in the 1921 depression the sensitive commodities and the whole composite of raw-material prices had made their low in June, or prior to the low on the A.T.T. curve of business.

(2) Having differentiated between major and minor depressions, it is noted in the memorandum that the only suggestive comparisons for the present are such emergences as were preceded by major price swings of the nature of commodity slumps. For such periods we find the special type of relationship which technically is called ratio co-variation, in that the corresponding changes between prices and business in the same upward direction vary from stage to

stage within the cycles according to a pattern that holds true, even though its specific numerical ratio changes with the cycle like a musical theme which is pitched in different keys. Specifically it has been borne in upon me that in the first phase of improvement in business sensitive prices are resilient, then hold; in the second stage, up to attainment of normal or 100 on the indices of business, the greater acceleration of business as against prices is no longer as much as it was in the first phase; in the third stage, crossing normal, the price level goes up faster than business. The converse behavior of business and prices after business has stopped and begun to decline, we need not go into now.

(3) The rest of the memorandum and the table are a detailed description and supporting exhibit of the foregoing thesis based upon the actual records for major prices and business depressions in our history since the Civil War, with one exception. That exception is the depression of the 90's which is dealt with in a supplementary memorandum. That period, like the present, was checkered by abortive rallies and reactions in the price level due to fears about the currency which dampened the rate of business improvement so that, as noted in my telegram, the business rate was in the first phase a small multiple of the price improvement giving the appearance from the middle of 1896 to the middle of 1897 of a sort of business trough, with prices a sort of spread out "A" without the inner line, or like a Greek lambda. From the middle of 1897 to the middle of 1898, the two move together at about the same pace with an upper edge on business. Then from the late autumn of 1898 through the first quarter of 1900, during which period business crossed normal into an expansion phase, prices made their sensational advance of 50% to a peak which was not duplicated until 1903 and which was not very much exceeded in the subsequent peaks of 1907, 1910, and the long plateau at around that level from 1912 to 1915. (It is, by the way, noteworthy that this upper plateau at no time equaled the intermediate plateau of the early 80's which was itself a resting place in the prolonged commodity slump which for the United States was from the end of the Civil War to the middle of the 90's and for Europe, the end of the Franco-Prussian war to the middle of the 90's. The moral of that for the unrealists who talk about getting back immediately to the artificial stabilized level of pre-war that obtained in the middle of the 20's seems to me quite obvious).

II. *Conflicting economic tendencies in the proposed legislation.* By way of supplement to the enclosed tabular evaluation of the probable economic significance of the various measures under discussion, I should like to call your particular attention to the economic import of the Black Bill.

The Black Bill is more difficult to work out because it is undergoing such rapid-fire and erratic changes. My own view of it is that it is the most deflationary thing that has yet been suggested. For at a time when business is on the whole making no profits, or put differently just about covering expenses, a compulsory reduction of hours would interfere with efficient operations of business. That, in the given context, means a greater and more widely spread deficit on current operations that would lead to more shutdowns. Once operating at a deficit it will have to discharge labor, and if the administration of the Black Bill will so interfere with their labor costs of operations as to force such a deficit, then they will shut down. In a word, then, from the point of view of management and capital the Black Bill will lead to self-defensive acts which will be deflationary on purchasing power.

Now if you will look at the influence exerted by labor income on keeping other businesses and labor running, the adverse effect of the Black Bill is even more grievous. Supposing the bill really succeeds in increasing by a sizable percentage the number of people employed and even avoids the shutdowns indicated above, as more than possible. Alternatively, let us assume an optimistic vein and social sense on the part of the corporations eager not to add fuel to the slumbering social unrest. (Instances of this social sense on the part of corporations and eagerness to avoid high-handed treatment of employees come frequently to my attention nowadays). Accordingly, let us assume it will then spread around existing mass purchasing power over a larger number and carry forward the idea of share-the-work movement. Now I maintain that that is bound to lead to a shutdown of some plants and production making semi-luxury articles for the masses. For there will be an even smaller margin than at present, above bare necessities, available for a larger number of workers employed on a wage which, in accordance with the data and charts in my Social Planning memorandum, would approach a level of income not much higher than the British dole. Now in economics, as in modern physical theories, there are discontinuous or quantum changes, that is, if a family's income falls from \$2,500 to \$2,000 a year it could still afford a car, then in the next step it might afford a second-hand car, but there is a threshold below which a decrease in income instead of being reflected in a corresponding percentage drop in the value of the car afforded, is reflected in a complete elimination of buying power for any kind of a car. I happen to have used this quantum method of mine for forecasting automobile production by relating my frequency-distribution sets of family incomes to automobile production and for the year 1932 obtained an estimate of 1 1/3 million cars against Mr. Hayford's, of General Motors, estimate of 2 million cars. Similar studies could be made of a whole range of industries with a view to determining, necessarily very roughly, the threshold zones of the buying powers of the residual mass income necessary to buy their products. On the basis of my correlations of mass income with the value of the production of consumers' goods, now that our economy has been reduced to a mere consumption and subsistence level, I am driven to the conclusion that a whole range of consumers' industries are in the neighborhood of these thresholds or quantum changes. In sum, the Black Bill, with or without a minimum wage, will have repercussions on the one hand in the direction of making current operations of business unprofitable and so leading to partial shutdowns, and on the other hand, in the direction of narrowing the margins of mass income that can be spent for articles other than bare necessities, so causing a discontinuous or slumping drop in the demand for the articles produced by a great many of the larger employers of labor for the making of semi-luxury or intermediate goods, from biscuits and articles of new apparel with every change in fashion to automobiles.

Having thus enlarged the enclosed tabular analysis of the inflationary and deflationary aspects of the various bills, I can proceed to a summary. The striking fact is that although a number of measures are being put through to enable the Government to raise funds, scarcely any money has been appropriated for the actual creation of purchasing power for goods and services. In short, if Congress were to adjourn after passing the Farm Bill with the inflation rider, providing for a policy which our group has persistently maintained can

have only a reverse effect as far as mass purchasing power is concerned—the Muscle Shoals Bill, the railroad bill, the tariff and reciprocal trade agreements—we would be running into a period of sharp deflation. The Farm Bill, while allowing for the spending of money, merely re-channels existing purchasing power from the workers to agriculture, and at present, paradoxically enough, with agriculture having a virtual moratorium on debt payments, an increase in its income would be partially diverted to paying off current agricultural debts to banks, farm implement companies, mortgage holders, etc. In the face, then, of the deflationary forces already set going and the uncertainties created by the threat of unspecified inflation and devaluation leading to a contraction of business credit and initiative from even present low levels, prospects are pretty dim for an improvement in the autumn. With this in mind, I would like you to turn again to my Social Planning memorandum, particularly to the conclusion in which I sketched forth the major avenues for work creation in order that positive stimuli for increasing employment and business activity may be injected before the summer is over so as to assure a larger volume of activity by autumn. Parallel with your work in translating into concrete terms the bearing of each bill on business and purchasing power there should be inaugurated a mental clearing house for the various plans on positive work creation. In that connection I would call your attention and that of our friends to the schemes that are sketched in the conclusion to my Social Planning of Recovery, which if desired and requested by them, I should be glad to elaborate.

Yours sincerely,

(Signed) Alexander Sachs.

3. Memorandum to General Johnson, May 20, 1933

Dear Hugh:

The Bill just introduced on May 17th, bearing the name National Recovery, differs so markedly from the plans that I as a workaday economist have sought to evolve as suited to and evoked by the crisis that I feel it necessary as a matter of intellectual integrity to utter at the start my misgivings and concern about the economic and juridical validity of the Bill as drafted and as being rushed into enactment. I'm afraid the diversity of authorship — ranging from Dickinson, Richberg, Wagner, Podell to yourself, from such divergently motivated bodies as the Chamber of Commerce, the A.F.L., to social-welfare agencies — has produced instead of a synthesis, a conglomeration of purposes, an obfuscation of ends and a stultification of methods.

In the past month I have discussed with you my opposition to some current panaceas venturing on what I called monistic planning akin to state capitalism or state socialism and my advocacy of pluralistic planning for recovery suited to a political and economic democracy. Thus the attempt in the Black Bill to dragoon American business into the uniform of a 30-hour week will, as I urged in my letter of April 27th, contract work and activity when we need liberation and expansion of both. Similarly, I have opposed the Wagner-La Follette kind of public works as too inadequate for our need and as apt, unless carefully planned, to deflect attention from and insert obstacles to the inevitably greater and more far-reaching private works which alone can provide re-

employment and recovery in an economy like ours. While I have no doctrinaire objection to public works I have urged that the few billions which it would take so long to set in motion can be articulated with specific bills and delegated to appropriate bodies with definite and delimited administrative mandates.

Instead of that the multifarious authorship has produced an omnibus enabling Act that roams and dominates over economic and legal empires and must of necessity function as a legislative vicegerent for Congress and the sum total of private managements in each industry. Knowing what I do about the rigidifying maladjustments and autocratic monopolies that have developed from the German cartels and how they contributed to and aggravated the European depression, I shudder to think what will follow if we heedlessly embark on the same treacherous waters without proper navigating instruments. I have stressed this so much in our conversation that the reference must serve as an index to the exhibits and demonstrations that have been supplied at least orally.

Finally, as one who though a layman once studied jurisprudence and administrative law at Harvard, and continued since to be interested in American and European administrative law in relation to economic organization, may I express with due humility but deep sincerity my conviction that such wholesale undefined and indeterminate social legislation is incompatible with what I understand to be the logic of our Constitution and Federal Government. From that standpoint I consider it a sad commentary on certain former classmates of mine who are now floating in Washington, that at this critical turn they should lightly brush aside the plain import and logic of constitutional provisions that are obvious to the layman. Thus, I find it difficult to understand how they and Mr. Richberg feel warranted in so expanding the concept of interstate as to leave nothing to intrastate business: making the remote consequences from the expected codified hours, wages and trade practices a sort of Tennysonian flower in the crannied wall from which all the political and economic problems are to be deduced and resolved. In such snatches of conversation as I have had with them in recent hectic visits to Washington I have searchingly inquired whether they had ever read *The Federalist* or any other original American source book, or whether, in their all-embracing mental fog, words and concepts have lost all shape and definition. The terms and concepts, "commerce with foreign nations and among the several states," have their roots in a unique type of federalism that the United States established. The word "among" itself implies the separateness and the integrity of the units through which the flow of commerce takes place; the word "among" cannot be the equivalent of the word "within" or the word "through." In logical terminology "among" assumes an externality of connection for the traffic flow, not an internality and interpenetrability, so that the flow within the states cannot be assimilated on account of indirect results with the flow between the several states.

The American Manufacturers' Association's contention that the law now being discussed in Congress would be declared unconstitutional seems to me well taken. On sheer logic you cannot stretch words to mean the opposite of what the founders were so anxious to keep clear — the preservation of the distinction between intra- and interstate commerce and the preservation of the principle of specific and definite delegation instead of unspecified, endlessly discretionary delegation of power by Congress to the Executive, who will in turn have to function through a hierarchy of administrators and agents, each of

whom could not be responsible for the undefined discretionary delegations of power to his successor in the hierarchy. Speaking bluntly, so-called liberals have gotten off on the wrong foot from the start in trying to make of the United States a centralized government like France, and to attempt to legislate by omnivorous acts whose only validity would rest upon the vague welfare clause of the Preamble to the Constitution. Had they been better informed and more genuinely liberal they would have emulated the British liberalism in working out detailed and specific legislation for specific economic problems upon specific record and study.

I must pass by the correlative fundamental objection that the omnibus bill can only be administered by a bureaucracy operating by fiat and such bureaucracy would be far more akin to an incipient Fascist or Nazi state than to a liberal republic. Not only is this type of legislation impractical and unwise but it tends to negative the very fundamentals of our political and economic order. Precisely because our Congress, political system and constitution are so interlinked with the Federalist System of states, it seems to me all the more necessary, from a constitutional as well as economic point of view, to have proceeded on a clarified pluralist instead of confused monistic planning of objectives and administrative instrumentalities.

I would separate out the specific recovery devices into separate acts—(1) public works and (2) private-works facilitation and financing as previously indicated. Then I would separate out the labor or social legislation from the industrial legislation. The code machinery that has so vaporously emerged from the multitude of legal counsel should be replaced by something more embodied and realistic: the kind of Federal Trade Commission that both Theodore Roosevelt and Woodrow Wilson wanted to fashion. In the pre-war period the anti-trust psychosis prevented them from creating such a positive agency, for rationalizing competitive practices. Now is the opportunity to do it. Such a reorganized and revitalized Commission could hold hearings—similar to those held by the Royal Commission in England—on what such major sick industries, as coal, oil and textiles, require for rationalization and then submit majority and minority reports on the best methods of treating such problems in the light of thought and experience, and so arrange for economically grounded legislation by Congress. That would be the way to work out rational codes.

I submit that it is not too late to re-think for the first time what is really needed and how it can practically be secured. I fear, and fear profoundly, that the present device that has emerged from the many authors who have not reached a common basis is too intellectually muddled to produce codes that would work in practice or stand up in the courts when challenged. The danger is that the codes that will be rushed through will be like economic nebulæ or even chaos. The post-war record of the failures of political-economic planning from the Versailles Treaty to the Young Plan is a record of the recoil and retribution upon the world in the form of the results from opportunistic or mis-conceived thinking. There is no substitute for hard thought and co-ordinated competence, for rigorous determination of objectives and critical construction; without these wholesale planning is worse than no planning.

Having uttered my protest I am still ready to try to get you to re-write the Bill, and if not re-written, to aid you in putting definite and rational content in implementing what I am afraid will turn out to be a confused and du-

bious experiment, except for the psychological stimulus initially given.

Yours,

(Signed) Alexander Sachs.

4. Memorandum to General Johnson, June 10, 1933

Dear Hugh:

The purpose of this memorandum is to utilize the immediate task of drawing up of an organization chart for presenting some considerations as to the underlying purposes, functioning and methods of administering the Act. The order and the scheme of the organization as given by the charts already drawn up will serve as pegs for hanging this series of suggestions.

At the outset it seems to me advisable to distinguish clearly between the relationship that the administration of the Act is to bear to the group including certain cabinet officers and the relationship towards advisory groups of industrialists and labor specialists and representatives. As a result of previous discussion and criticisms, there has already developed a partial realization of the fundamental difference in the relationship of the Administration towards the cabinet group, and along with that a toning down of a tendency on the part of some to underestimate the vital importance of the policies involved in making the codes. At the very threshold of our task we are called upon to make basic decisions which will go to the very roots of national-economic policy and which, in my opinion, must be made with the knowledge and approval of the Government and therefore cannot be delegated to mere agents of the administrative machinery to be set up.

In view of the importance of this issue it is worth pausing to point out some of the implications of the proposal that each code should contain a provision against selling below cost including full depreciation on existing plants. (Those who consider depreciation as a constituent of manufacturing cost a simple and easy matter to determine may be referred to the annual report of the Ruhr Coal Commission for 1927 which devotes twenty pages to a discussion of depreciation allowances against a paragraph to wages.) Though strongly in favor of including and developing, in connection with the codes, what I would call "open trading associations." I am convinced that if we yield to the importunate clamor of the price fixers we will be committing American business to a system of cartelization of the Germany type.

It has now become accepted by a considerable body of eminent opinion in Europe that these cartels contributed to the speculative inflation prior to the depression and by their price rigidities interfered with the process of readjustment to such an extent as to have prolonged and aggravated the depression. §

§Thus Professor M. J. Bonn, a distinguished German liberal economist placed a heavy responsibility on the cartels as one of the major factors in the economic crisis, as is evident from the following paraphrase from his Richard Cobden Lecture two years ago:

"When producers are able to maintain fixed prices they do not do their planning as the old-fashioned business men used to do who took their cues from the possible maximum demand of the consumer but they base their plans on the productivity capacity of their plants, regardless of the consumer's wants By increasing the technical capacity of the members of the combine so that they can put in a claim for a greater quota and by buying up the quota belonging to badly run works, costs are raised progressively, stocks are accumulated and carried with very expensive bank credits, prices are maintained and fictitious capital values are not allowed to deflate" This manipulation tends to increase the number of mistakes made, and if the economic dictator, however wise, does commit the one blunder in his life there will be a catas-

In our case to adopt the cartel proposals submitted by a few of the major industries would have the effect of congealing the inflated capital values of the speculative era prior to the depression and prevent the restoration of equilibrium between the agricultural and raw materials on the one hand and the finished products of one or two large-scale industrial combinations on the other hand. In the post-war period American economic development was given a false slant by the effort to perpetuate the residue of the war inflation of the price level through the theory of reproduction valuation. The dissenting opinion of Justice Brandeis in the Southwestern Bell Telephone case represented an unheeded warning against the consequences that would flow from the attempt to congeal the war and post-war inflation in capital values. It is now indisputably clear that the reproduction theory was exploited by the utilities to write up their plant values and increase their capacity and that this in turn made it highly profitable to indulge in competitive acquisition of properties at progressively inflated values, all of which led to the climactic distributive speculation in utility holding company equities in 1929 immediately prior to the crash. Similarly, the reproduction theory of valuation led to the competitive speculative acquisition by the railroads of one another's property for merger purposes and thus denuded them of the financial resources which they would have otherwise been able to use as a reserve for and during the depression. And now at the very entry into a recovery phase when a number of corporations have begun to deflate their inflated plant valuations, it is proposed that this Act be used to enable them to fix their selling prices upon a cost of production including depreciation which would make it advantageous to maintain the pre-depression inflated capital values. We would thus be preventing the removal of the disparities between prices and the healing of the unbalance between agricultural-raw-materials producers on the one hand who have borne the brunt of the depression, not in output but in prices, and, on the other hand, the technical-finished producers who have suffered predominantly in the contraction of output rather than prices and are now about to benefit or "cash in" most from an expansion of output made possible by the socially stimulated recovery on which we are embarked!

The foregoing summary sketch of what seems to me implicit in the prevailing demand for a specifically rigid kind of price fixing will serve to emphasize the need for careful consideration and development of basic policies by a Committee or Board which is to include in addition to the Administrator, certain cabinet members and also an economic adviser. The members of such a Policy Board to act with the Administrator should be the Secretaries of Labor, Commerce and the Secretary of the Interior — because of the traditional connection of the fuel industries with that Department — and the Secretary of Agriculture with respect to the intersecting and overlapping positions of the food and textile industries towards the Agricultural Relief Administration and the Industrial Recovery Administration. In addition, the Attorney General must be included

troupe for everybody concerned. . . . In the present economic situation of the world half of its price institutions were manipulated and held rigid by economic and political coercion but the other half, the agricultural, were subjected to free and unorganized competition. This conflict between the free play of economic forces and the manipulation by monopolies is the main cause of the long continuation of the crisis. If these questions are not faced courageously in the spirit of economic liberalism, manipulation is bound to increase, thus aggravating the underlying trouble which is with the mechanism of distribution. This manipulation and price fixing would produce a stationary economic world in which there is no elasticity and no widening scope for the creation of adequate employment and the distribution of ample leisure.—A. S.

in connection with the determinations of policies for and the drafting of all codes, and in view of the latest amendments to the Act the chairman or the representative of the Federal Trade Commission should also be included; these officers of the Government, entrusted with the enforcement of the anti-trust laws, are vitally concerned with this departure from the traditional attitude of our Government to combinations and their co-operation is needed creatively as well as to avoid subsequent suits against "consent" decree enforcement and "cease and desist" orders that might be issued by the anti-trust division of the Government against parties to agreements under the National Industrial Recovery Act. It seems of the utmost advisability and urgency that there should be continuous meeting of minds between the Administrator and the proposed cabinet group on the main lines of public and national policy especially in the first stages of implementing of the Act. Granting the need for quick action and the showing of early results, there can still be nothing so dangerous as half-thinking and half-planning when we are laying foundations. In major turns in political and national life that represent genuine partings of ways, the opposite of the so-called Jesuit maxim is true — the means justify the end — because once adopted they shape and determine the end. It is because economic history shows how difficult economic planning is and how half or opportunistic planning tends to subvert and defeat the original object — the present depression being an outstanding example of a half-consciously planned depression — that one may be pardoned for stressing at this time the urgency of a continuous co-operative and consultative relation between the Administrator and certain cabinet officers. Else we shall in short-shrift find ourselves in the troublesome position that Alice had with her flamingo: "Generally, just as she had got its neck nicely straightened out, and was going to give the hedgehog a blow on its head, it *would* twist itself around and look up in her face." With a view to facilitating the work of policy formation in this Board of the Administrator and the cabinet members, provision should be made for an economic adviser to aid in articulating the lines and alternatives of policy in the light of divergent or convergent economic experience and thought.

From this basic and all-important policy group we proceed to the advisory groups selected by and functioning under the Administrator. They, in turn, can supply part of the raw material for the formulation of policies by the primary group or Board defined and sketched forth above. This advisory group will, of course, cover industry and labor and let me add with emphasis also the general public. The Administrator is to select some five representatives of general industry and say a similar group for labor which should include, in addition to recognized labor representatives, certain labor experts who are qualified to present the needs and point of view of unorganized labor. The third advisory committee is to provide representation for the point of view of the general public. For, after all, in our political system the Government reflects and stands for the mass of consumers whose interest is considered paramount in the event of a conflict between capital and labor. Such a public group should include representative men and women active in civic and national life. In order to avoid the emergence of charges that the consumer is being sacrificed by price "fixing" and price "lifting" in the interest of labor and capital it is necessary, at least in the early stage of the working out of the codes, to call into consultation such an advisory public or consumer body which will serve to voice and

protect the general public and interpret the administration of the Act to the public at large, upon whose support, in the last analysis, the success of the Act depends.

(Signed) Alexander Sachs

APPENDIX IV

LIST OF APPROVED CODES AS OF APRIL 5, 1935

Code No.	Name of industry	Effective date of code
488	Abrasive Grain	June 11, 1934
299	Academic Costume	Feb. 26, 1934
521	Adhesive and Ink	Oct. 1, 1934
240	Advertising Display Installation Trade	Feb. 10, 1934
297	Advertising Distributing Trade	Feb. 27, 1934
84-Q	Advertising Metal Sign and Display Manufacturing (Supplement No. 17, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 30, 1934
65	Advertising Specialty Manufacturing	Nov. 13, 1933
275-A	Agricultural Insecticide and Fungicide (Supplement No. 1, Chemical Manufacturing)	May 11, 1934
347-F-1	Air Filter (Supplement No. 32, Machinery and Allied Products)	Aug. 1, 1934
111	Air Transport	Nov. 27, 1933
376	Air Valve	Apr. 9, 1934
LP-20	Alcoholic Beverages, Importing	July 30, 1934
LP-15	Alcoholic Beverages, Wholesale	May 28, 1934
112	All Metal Insect Screen	Nov. 27, 1933
237	Alloy Casting	Feb. 4, 1934
515	Alloys	Sept. 15, 1934
470	Aluminum	July 11, 1934
215	American Glassware	Jan. 31, 1934
195	American Match Industry	Jan. 8, 1934
85	American Petroleum Equipment Industry and Trade	Nov. 13, 1933
504	Animal Glue	Sept. 3, 1934
253	Animal Soft Hair	Feb. 12, 1934
138	Antifriction Bearing	Dec. 7, 1933
LP-7	Anti-Hog Cholera Serum and Hog-Cholera Virus	Mar. 9, 1934
84-C-2	Architectural, Ornamental & Miscellaneous Iron, Bronze Wire & Metal Specialties (Supplement No. 55, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Nov. 30, 1934
335	Art Needlework	Mar. 26, 1934
29	Artificial Flower and Feather	Sept. 25, 1933
514	Artificial Limb Manufacturing	Sept. 17, 1934
84-K-1	Artistic Lighting Equipment Manufacturing (Supplement No. 37, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	July 8, 1934
80	Asbestos	Nov. 13, 1933
150	Asphalt and Mastic Tile	Dec. 18, 1933
99	Asphalt, Shingle and Roofing	Nov. 20, 1933
510	Assembled Watch	Sept. 6, 1934
201-M	Athletic Goods Distributing Trade (Supplement No. 13, Wholesale or Distributing Trade)	July 27, 1934
254	Athletic Goods Manufacturing	Feb. 12, 1934
308-D	Atlantic Mackerel Fishing (Supplement No. 4, Fishery)	May 14, 1934
LP-19	Auction and Loose-Leaf Tobacco	July 9, 1934
544	Auto Rebuilding and Refinishing Trade	Feb. 4, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
10	Automatic Sprinkler	Oct. 19, 1935
105-A	Automobile Hot Water Heater Manufacturing (Supplement No. 1, Automotive Parts and Equipment Manufacturing)	
17	Automobile Manufacturing	July 5, 1934
522	Automotive Chemical Specialties Manufacturing	Sept. 5, 1933
105	Automotive Parts and Equipment Manufacturing	Oct. 7, 1934
105-G	Automotive Shop Equipment Manufacturing (Supplement No. 7, Automotive Parts and Equipment Manufacturing)	Nov. 18, 1933
347-C-1	Bakery Equipment Manufacturing (Supplement No. 29, Machinery and Allied Products)	Dec. 10, 1934
445	Baking Industry	July 24, 1934
539	Baking Industry in Puerto Rico	June 18, 1934
207	Ball Clay Production	Jan. 7, 1935
273	Band Instrument Manufacturing	Jan. 29, 1934
411	Bank and Security Vault Manufacturing	Feb. 21, 1934
47	Bankers	May 11, 1934
398	Barber Shop Trade	Oct. 16, 1933
417	Batting and Padding	Apr. 19, 1934
347-G	Beater and Jordan and Allied Equipment (Supplement No. 7, Machinery and Allied Products)	May 14, 1934
201-D	Beauty and Barber Equipment and Supplies Trade Supplement No. 4, Wholesaling or Distributing Trade)	May 25, 1934
286	Beauty and Barber Shop Mechanical Equipment Manufacturing	Apr. 14, 1934
219	Bedding Manufacturing	Feb. 26, 1934
LP-1	Beet Sugar	Jan. 29, 1934
334	Beverage Dispensing Equipment	Nov. 6, 1933
441	Bias Tape	Mar. 26, 1934
437	Bicycle Manufacturing	June 4, 1934
24	Bituminous Coal	May 31, 1934
530	Bituminous Road Material Distributing	Oct. 9, 1933
505	Blackboard and Blackboard Erasers Manufacturing	Nov. 25, 1934
403	Bleached Shellac Manufacturing	Sept. 3, 1934
194	Blouse and Skirt Manufacturing	Apr. 30, 1934
308-E	Blue Crab (Supplement No. 5, Fishery)	Jan. 1, 1934
537	Blue Print and Photo Print	May 14, 1934
406	Boat Building and Boat Repairing	Dec. 31, 1934
414	Bobbin and Spool	May 4, 1934
38	Boiler Manufacturing	May 13, 1934
523	Book Publishing	Oct. 16, 1933
60-A	Booksellers Trade (Supplement No. 1, Retail Trade)	Oct. 15, 1934
44	Boot and Shoe Manufacturing	Apr. 13, 1934
459	Bottled Soft Drink	Oct. 13, 1933
379	Bottling Machinery and Equipment Manufacturing	June 18, 1934
346	Bowling and Billiard Operating Trade	Apr. 15, 1934
84-P-1	Brass Forging (Supplement No. 42, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Mar. 19, 1934
535	Brattice Cloth Manufacturing	July 29, 1934
LP-10	Brewing Industry	Dec. 6, 1934
84-U	Bright Wire Goods Manufacturing (Supplement No. 21, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 2, 1934
		May 17, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
465	Broom Manufacturing	July 2, 1934
360	Brush Manufacturing	Apr. 4, 1934
96	Buff and Polishing Wheel	Nov. 4, 1933
97	Buffing and Polishing Composition	Nov. 4, 1933
37	Builders Supplies Trade	Oct. 13, 1933
244-R	Building Granite (Supplement No. 18, Construction)	Sept. 19, 1934
331	Bulk Drinking Straw, Wrapped Drinking Straw, Wrapped Toothpick and Wrapped Manicure Sticks	Mar. 26, 1934
348	Burlesque Theatrical	Apr. 2, 1934
88	Business Furniture, Storage Equipment, and Filing Supply	Nov. 14, 1933
201-O	Button Jobbers' or Wholesalers' Trade (Supplement No. 15, Wholesaling or Distributing Trade)	Aug. 5, 1934
308 C	California Sardine Processing (Supplement No. 3, Fishery)	May 7, 1934
72-A	Can Labeling and Can Casing Machinery Industry and Trade (Supplement No. 1, Packaging Machin- ery Industry and Trade)	May 16, 1934
152	Can Manufacturers	Dec. 30, 1933
302	Candle Manufacturing Industry and the Beeswax Bleachers and Refiners	Mar. 5, 1934
451	Candlewick Bedspread	June 11, 1934
463	Candy Manufacturing	June 25, 1934
429	Canned Salmon	May 28, 1934
446	Canning Industry	June 11, 1934
75	Canning and Packing Machinery	Nov. 11, 1933
333	Canvas Goods	Mar. 21, 1934
422	Canvas Stitched Belt Manufacturing	May 21, 1934
58	Cap and Closure	Oct. 31, 1933
457	Cap and Cloth Hat	June 18, 1934
84-S	Cap Screw Manufacturing (Supplement No. 19, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	May 13, 1934
532	Car Advertising Trade	Dec. 3, 1934
269	Carbon Black Manufacturing	Feb. 19, 1934
275-B	Carbon Dioxide (Supplement No. 2, Chemical Manu- facturing)	May 14, 1934
105-E	Carburetor Manufacturing (Supplement No. 5, Au- tomotive Parts and Equipment Manufacturing)	Nov. 3, 1934
222	Card Clothing	Jan. 28, 1934
202	Carpet and Rug Manufacturing	Jan. 14, 1934
258	Cast Iron Boiler and Cast Iron Radiator	Feb. 10, 1934
192	Cast Iron Pressure Pipe	Jan. 1, 1934
18	Cast Iron Soil Pipe	Sept. 11, 1933
347-Z	Caster and Floor Truck Manufacturing (Supplement No. 26, Machinery and Allied Products)	July 18, 1934
400	Celluloid Button, Buckle, and Novelty Manufactur- ing	Apr. 30, 1934
128	Cement	Dec. 7, 1933
244-D	Cement Gun Contractors (Supplement No. 4, Con- struction)	Apr. 4, 1934
347-R-1	Cereal Machinery (Supplement No. 44, Machinery and Allied Products)	Nov. 25, 1934
84-C	Chain Manufacturing (Supplement No. 3, Fabri-	

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

No. Code	Name of industry	Effective date of code
	cated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Feb. 10, 1934
201-S	Charcoal and Package Fuel Distributing Trade (Supplement No. 19, Wholesale or Distributing Trade)	Aug. 17, 1934
347-W	Chemical Engineering Equipment (Supplement No. 23, Machinery and Allied Products)	July 16, 1934
275	Chemical Manufacturing	Feb. 20, 1934
241	Chewing Gum Manufacturing	Feb. 9, 1934
292	Chilled Car Wheel	Feb. 26, 1934
520	China Clay Producing	Oct. 2, 1934
126	Chinaware and Porcelain Manufacturing	Dec. 7, 1933
536	Chlorine Control Apparatus Industry and Trade...	Dec. 28, 1934
135	Cigar Container	Dec. 11, 1933
467	Cigar Manufacturing	June 19, 1934
549	Cigarette, Snuff, Chewing and Smoking Tobacco Manufacturing	Feb. 18, 1935
364	Clay Drain Tile Manufacturing	Apr. 3, 1934
343	Clay Machinery	Apr. 2, 1934
389	Clay and Shale Roofing Tile	Apr. 16, 1934
101	Cleaning and Dyeing Trade	Nov. 20, 1933
83-C1	Cleanser (Consolidation No. 1, Soap and Glycerine)	Sept. 11, 1934
551	Clock Manufacturing	Mar. 18, 1935
289	Cloth Reel	Feb. 26, 1934
347-T-1	Coal Cutting Machine (Supplement No. 46, Machinery and Allied Products)	Jan. 15, 1935
337	Coal Dock	Mar. 26, 1934
347-S-1	Coal Mine Loading Machine (Supplement No. 45, Machinery and Allied Products)	Jan. 15, 1935
5	Coat and Suit	Aug. 7, 1933
189	Coated Abrasives	Jan. 8, 1934
464	Cocoa and Chocolate Manufacturing	June 18, 1934
265	Coffee	Feb. 16, 1934
228	Coin Operated Machine Manufacturing	Feb. 2, 1934
479	Cold Storage Door Manufacturing	July 23, 1934
345	Collapsible Tube	Apr. 2, 1934
513	Commercial Aviation	Sept. 10, 1934
LP-6	Commercial and Breeder Hatchery	Jan. 2, 1934
415	Commercial Fixture	May 14, 1934
181	Commercial Refrigerator	Jan. 1, 1934
201-C	Commercial Stationery and Office Outfitting Trade (Supplement No. 3, Wholesaling or Distributing Trade)	Mar. 26, 1934
486	Commercial Vehicle Body	July 30, 1934
84-L-1	Complete Wire and Iron Fence (Supplement No. 38, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	July 13, 1934
55	Compressed Air	Oct. 22, 1933
133	Concrete Masonry	Dec. 11, 1933
347-K-1	Concrete Mixer (Supplement No. 37, Machinery and Allied Products)	Aug. 12, 1934
185	Concrete Pipe Manufacturing	Jan. 14, 1934
244	Construction	Mar. 2, 1934
223	Construction Machinery Distributing Trade	Feb. 5, 1934
244-S	Construction News Service (Supplement No. 19, Construction)	Dec. 30, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
347-K	Contractor's Pump (Supplement No. 11, Machinery and Allied Products)	June 16, 1934
347-V	Conveyor and Material Preparation Equipment Manufacturing (Supplement No. 22, Machinery and Allied Products)	June 30, 1934
236	Cooking and Heating Appliance Manufacturing	Feb. 12, 1934
401	Copper	Apr. 26, 1934
201-U	Copper, Brass, Bronze, and Related Alloys Trade (Supplement No. 21, Wholesale or Distributing Trade)	Aug. 23, 1934
81	Copper and Brass Mill Products	Nov. 13, 1933
303	Cordage and Twine	Mar. 7, 1934
199	Cork	Jan. 22, 1934
498	Corn Cob Pipe	Aug. 20, 1934
511	Corrugated Rolled Metal Culvert Pipe	Sept. 7, 1934
245	Corrugated and Solid Fiber Shipping Container	Feb. 21, 1934
7	Corset and Brassière	Aug. 28, 1933
1-A	Cotton Converting (Supplement No. 1, Cotton Textile)	Feb. 5, 1934
118	Cotton Garment	Nov. 27, 1933
485	Cotton Ginning Machinery Manufacturing	July 23, 1934
187	Cotton Cloth Glove Manufacturing	Jan. 8, 1934
433	Cotton Pickery	May 28, 1934
1	Cotton Textile	July 17, 1933
418	Counter Type Ice Cream Freezer	May 14, 1934
LP-14	Country Grain Elevators	May 21, 1934
336	Covered Button	Mar. 26, 1934
77	Crown Manufacturing	Nov. 12, 1933
109	Crushed Stone, Sand and Gravel, and Slag	Nov. 20, 1933
427	Curled Hair Manufacturing and Horse Hair Dressing	May 28, 1934
84-N-1	Cut Tack, Wire Tack, and Small Staple Manufacturing (Supplement No. 40, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	July 16, 1934
84-J	Cutlery, Manicure Implement, and Painters and Paperhangers Tool Manufacturing and Assembling (Supplement No. 10, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 5, 1934
84-I-1	Cutting Die Manufacturing (Supplement No. 35, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	June 18, 1934
358	Cylinder Mould and Dandy Roll	Apr. 2, 1934
252	Cylindrical Liquid Tight Paper Container	Feb. 12, 1934
288	Daily Newspaper Publishing Business	Feb. 26, 1934
482	Dental Goods and Equipment Industry and Trade	July 16, 1934
217	Dental Laboratory	Feb. 1, 1934
347-I	Diamond Core Drill Manufacturing (Supplement No. 9, Machinery and Allied Products)	June 11, 1934
323	Die Casting Manufacturing	Mar. 18, 1934
347-N-1	Diesel Engine Manufacturing (Supplement No. 40, Machinery and Allied Products)	Aug. 12, 1934
LP-9	Distilled Spirits	Mar. 26, 1934
LP-13	Distilled Spirits Rectifying	May 7, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
450	Dog Food	June 11, 1934
162	Domestic Freight Forwarding	Dec. 28, 1933
383-A	Dowel (Supplement No. 1, Wood Turning and Shaping Industries)	Sept. 3, 1934
440	Dowel Pin Manufacturing	June 1, 1934
84-V	Drapery and Carpet Hardware Manufacturing (Supplement No. 22, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	May 19, 1934
212	Drapery and Upholstery Trimming	Jan. 26, 1934
64	Dress Manufacturing	Nov. 13, 1933
423	Drop Forging	May 21, 1934
159	Dry and Polishing Mop Manufacturing	Dec. 25, 1933
407	Dry Color	May 5, 1934
404	Dry Goods Cotton Batting	Apr. 30, 1934
322	Earthenware Manufacturing	Mar. 23, 1934
483	Electric Hoist and Monorail Manufacturing	July 24, 1934
84-D	Electric Industrial Truck Manufacturing (Supplement No. 4, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)....	Feb. 10, 1934
506	Electric Neon Sign	Sept. 3, 1934
40	Electric Storage and Wet Primary Battery	Oct. 16, 1933
244-F	Electrical Contracting (Supplement No. 6, Construction)	Apr. 30, 1934
4	Electrical Manufacturing	Aug. 15, 1933
201-T	Electrical Wholesale Trade (Supplement No. 20, Wholesale or Distributing Trade)	Aug. 23, 1934
84-T-1	Electro Plating, Metal Polishing and Finishing (Supplement No. 46, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Sept. 1, 1934
179	Electrotyping and Stereotyping	Jan. 1, 1934
244-C	Elevator Manufacturing (Supplement No. 3, Construction)	Mar. 31, 1934
186	End Grain Strip Wood Block	Jan. 8, 1934
220	Envelope	Feb. 5, 1934
347-E-1	Envelope Machinery Manufacturing (Supplement No. 31, Machinery and Allied Products)	July 31, 1934
146	Excelsior and Excelsior Products	Dec. 18, 1933
369	Expanding and Specialty Paper Products	Apr. 9, 1934
84	Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating	Nov. 12, 1933
238	Fan and Blower	Feb. 12, 1934
39	Farm Equipment	Oct. 23, 1933
LP-16	Feed Manufacturing	June 4, 1934
206	Feldspar	Jan. 29, 1934
67	Fertilizer	Nov. 10, 1933
326	Fiber Wallboard	Mar. 19, 1934
305	Fibre Can and Tube	Mar. 5, 1934
341	Fibre and Metal Work Clothing Button	Mar. 27, 1934
84-B-2	File Manufacturing (Supplement No. 54, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Oct. 19, 1934
88-B	Filing Supply (Supplement No. 2, Business Furniture, Storage Equipment and Filing Supply)	Aug. 9, 1934
98	Fire Extinguishing Appliance Manufacturing	Nov. 4, 1933

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
88-A	Fire Resistive Safe (Supplement No. 1, Business Furniture, Storage Equipment and Filing Supply)	Aug. 9, 1934
308	Fishery	Mar. 12, 1934
13	Fishing Tackle	Aug. 29, 1933
352	Flag Manufacturing	Apr. 4, 1934
541	Flat Glass Manufacturing	Dec. 31, 1934
516	Flavoring Products	Sept. 17, 1934
409	Flexible Insulation	May 14, 1934
84-G-1	Flexible Metal Hose and Tubing Manufacturing (Supplement No. 33, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	June 3, 1934
526	Floor Machinery	Oct. 27, 1934
92	Floor and Wall Clay Tile Manufacturing	Nov. 13, 1933
296	Fluted Cup, Pan Liner, and Lace Paper	Feb. 26, 1934
84	Fly Swatter Manufacturing (Appendix No. 1, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Sept. 17, 1934
193	Folding Paper Box	Jan. 8, 1934
247	Food Dish and Pulp and Paper Plate	Feb. 12, 1934
84-I	Forged Tool Manufacturing (Supplement No. 9, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 3, 1934
264	Foundry Equipment	Feb. 17, 1934
261	Foundry Supply	Feb. 20, 1934
308-A	Fresh Oyster (Supplement No. 1, Fishery)	Mar. 19, 1934
310	Fresh Water Pearl Button Manufacturing	Mar. 12, 1934
356	Fuller's Earth Producing and Marketing	Mar. 30, 1934
384	Funeral Service	Apr. 16, 1934
90	Funeral Supply	Nov. 14, 1933
17-A	Funeral Vehicle and Ambulance (Supplement No. 1, Automobile Manufacturing)	Nov. 18, 1933
381	Fur Dealing Trade	Apr. 16, 1934
161	Fur Dressing and Fur Dyeing	Dec. 28, 1933
436	Fur Manufacturing	May 28, 1934
160	Fur Trapping Contractors	Dec. 20, 1933
201-K	Fur Wholesaling and Distributing Trade (Supplement No. 11, Wholesaling or Distributing Trade)	June 19, 1934
224	Furniture and Floor Wax and Polish	Feb. 2, 1934
145	Furniture Manufacturing	Dec. 18, 1933
201-J	Furrier's Supplies Trade (Supplement No. 10, Wholesaling or Distributing Trade)	June 12, 1934
84-A-1	Galvanized Ware Manufacturing (Supplement No. 27, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	May 27, 1934
94	Garter, Suspender, and Belt Manufacturing	Nov. 19, 1933
134	Gas Appliances and Apparatus	Dec. 7, 1933
70	Gas Cock	Nov. 10, 1933
347-G-1	Gas-Powered Industrial Truck (Supplement No. 33, Machinery and Allied Products)	Aug. 1, 1934
105-J	Gasket Manufacturing (Supplement No. 9, Automotive Parts and Equipment Manufacturing)	Dec. 30, 1934
26	Gasoline Pump Manufacturing	Sept. 18, 1933
117	Gear Manufacturing	Nov. 25, 1933
244-A	General Contractors (Supplement No. 1, Construction)	Mar. 19, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
36	Glass Container	Oct. 13, 1933
248	Glazed and Fancy Paper	Feb. 12, 1934
LP-8	Grain Exchanges and Members Thereof	Mar. 30, 1934
287	Graphic Arts	Feb. 26, 1934
554	Graphic Arts Industry in the Territory of Hawaii....	Apr. 6, 1935
512	Grass and Fibre Rug Manufacturing	Sept. 10, 1934
277	Gray Iron Foundry	Feb. 26, 1934
170	Grinding Wheel	Jan. 8, 1934
294	Gummed Label and Embossed Seal	Feb. 26, 1934
293	Gumming	Feb. 26, 1934
420	Gypsum	May 21, 1934
84-H	Hack Saw Blade Manufacturing (Supplement No. 8, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Mar. 27, 1934
157	Hair Cloth Manufacturing	Dec. 25, 1933
73	Hair and Jute Felt	Nov. 13, 1933
84-S-1	Hand Bag Frame Manufacturing (Supplement No. 45, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Aug. 11, 1934
84-B	Hand Chain Hoist Manufacturing (Supplement No. 2, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Feb. 9, 1934
53	Handkerchief	Oct. 19, 1933
110	Hardwood Distillation	Nov. 13, 1933
259	Hat Manufacturing	Feb. 19, 1934
476	Hatters' Fur Cutting	July 16, 1934
56	Heat Exchange	Oct. 22, 1933
244-P	Heating, Piping, and Air Conditioning Contractors (Supplement No.16, Construction)	Aug. 9, 1934
320	Hide and Leather Working Machine	Mar. 19, 1934
84-F-1	Hog Ring and Ringer Manufacturing (Supplement No. 32, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	June 1, 1934
347-T	Hoist Builders (Supplement No. 20, Machinery and Allied Products)	June 23, 1934
347-S	Hoisting Engine Manufacturing (Supplement No. 45, Machinery and Allied Products)	June 23, 1934
534	Horse Hair Dressing	Dec. 4, 1934
325	Horseshoe and Allied Products	Mar. 18, 1934
16	Hoisery	Sept. 4, 1933
121	Hotel	Nov. 27, 1933
399	Household Goods Storage and Moving Trade	Apr. 30, 1934
183	Household Ice Refrigerator	Jan. 9, 1934
347-O-1	Hydraulic Machinery Manufacturing (Supplement No. 41, Machinery and Allied Products)	Aug. 3, 1934
43	Ice	Oct. 16, 1933
456	Ice Cream Cone	June 18, 1934
490	Imported Date Packing	July 31, 1934
491	Imported Green Olives	Aug. 6, 1934
487	Importing Trade Industry	July 30, 1934
275-C	Industrial Alcohol (Supplement No. 3, Chemical Code)	Aug. 27, 1934
357	Industrial Furnace Manufacturing	Apr. 3, 1934
493	Industrial Oil Burning Equipment Manufacturing....	Aug. 9, 1934
315	Industrial Safety Equipment Industry and Trade	Mar. 12, 1934
61	Industrial Supplies and Machinery Distributors	

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
	Trade	Nov. 2, 1933
496	Industry of Collective Manufacturing for Door-to-Door Distribution	Aug. 13, 1934
173	Industry Engaged in the Smelting and Refining of Secondary Metals into Brass and Bronze Alloys in Ingot Form	Dec. 31, 1933
508	Industry of Wholesaling Plumbing Products, Heating Products, and/or Distributing Pipe, Fittings, and Valves	Sept. 4, 1934
373	Infants' and Childrens' Wear	Apr. 9, 1934
266	Inland Water Carrier Trade in the Eastern Division of the United States	Feb. 16, 1934
391	Insecticide and Disinfectant Manufacturing	Apr. 16, 1934
353	Insulation Board	Apr. 2, 1934
244-L	Insulation Contractors (Supplement No. 12, Construction)	June 17, 1934
141	Investment Bankers	Dec. 11, 1933
11	Iron and Steel	Aug. 19, 1933
347-L-1	Jack Manufacturing (Supplement No. 38, Machinery and Allied Products)	Aug. 12, 1934
84-B-1	Job Galvanizing Metal Coating (Supplement No. 28, Fabricated Products Manufacturing and Metal Finishing and Metal Coating)	May 27, 1934
244-M	Kalamein (Supplement No. 13, Construction)	June 19, 1934
347-U	Kiln, Cooler and Dryer Manufacturing (Supplement No. 21, Machinery and Allied Products)	June 23, 1934
32	Knitting, Braiding, and Wire Covering Machine	Oct. 13, 1933
164	Knitted Outerwear	Jan. 1, 1934
6	Lace Manufacturing	Aug. 28, 1933
107	Ladder Manufacturing	Nov. 18, 1933
332	Ladies Handbag	Mar. 26, 1934
34	Laundry and Dry Cleaning Manufacturing	Oct. 14, 1933
281	Laundry Trade	Feb. 16, 1934
442	Lead	June 4, 1934
105-C	Leaf Spring Manufacturing (Supplement No. 3, Automotive Parts and Equipment Manufacturing)	July 28, 1934
21	Leather	Sept. 18, 1933
201-I	Leather and Shoe Findings (Supplement No. 9, Wholesaling or Distributing)	May 27, 1934
87	Leather and Woolen Knit Glove	Nov. 13, 1933
416	Leather Cloth and Lacquered Fabrics, Window Shade Cloth and Roller, and Book Cloth and Impregnated Fabrics	May 14, 1934
8	Legitimate Full Length Dramatic and Musical Theatrical	Aug. 26, 1933
453	Licorice	June 11, 1934
84-J-1	Lift Truck and Portable Elevator Manufacturing (Supplement No. 36, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	July 3, 1934
226	Light Sewing Industry (except Garments)	Feb. 2, 1934
394	Lightning Rod Manufacturing	Apr. 30, 1934
31	Lime	Oct. 13, 1933
113	Limestone	Nov. 24, 1933
487-B	Linen Importing Trade (Supplement No. 2, Importing Trade)	Dec. 2, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
30	Linoleum and Felt Base Manufacturing	Oct. 2, 1933
LP-11	Linseed Oil Manufacturing	Apr. 30, 1934
104	Liquefied Gas	Nov. 8, 1933
84-A-2	Liquid Fuel Appliance Manufacturing (Supplement No. 53, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Oct. 4, 1934
LP-12	Live Poultry in and about Metropolitan New York..	May 7, 1934
347-L	Locomotive Appliance (Supplement No. 12, Machinery and Allied Products)	June 16, 1934
347-C	Locomotive Manufacturing (Supplement No. 3, Machinery and Allied Products)	May 11, 1934
412	Loose Leaf and Blank Book	May 14, 1934
42	Luggage and Fancy Leather Goods	Oct. 13, 1933
9	Lumber and Timber Products	Aug. 29, 1933
300	Lye	Mar. 6, 1934
234	Macaroni	Feb. 8, 1934
327	Machine-Applied Staple and Stapling Machine	Mar. 19, 1934
263	Machine Knife and Allied Steel Products Manufacturing	Feb. 16, 1934
84-W	Machine Screw Manufacturing (Supplement No. 23, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	May 19, 1934
84-T	Machine Screw Nut Manufacturing (Supplement No. 20, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	May 15, 1934
139	Machine Tool and Equipment Distributing Trade	Dec. 8, 1933
103	Machine Tool and Forging Machinery	Nov. 19, 1933
149	Machined Waste Manufacturing	Dec. 17, 1933
347	Machinery and Allied Products	Mar. 28, 1934
132	Malleable Iron	Dec. 7, 1933
LP-22	Malt	Jan. 7, 1935
468	Malt Products	July 9, 1934
425	Manganese	May 21, 1934
82/C1	Manganese Steel Castings (Consolidation No. 1, Steel Castings)	Sept. 24, 1934
530	Manufacturing Industry in the Territory of Hawaii	Mar. 16, 1935
501	Manufacturing and Wholesale Surgical	Aug. 20, 1934
244-Q	Marble Contracting (Supplement No. 17, Construction)	Aug. 21, 1934
421	Marble Quarry and Finishing	May 21, 1934
242	Marine Auxiliary Machinery	Feb. 9, 1934
509	Marine Equipment Manufacturing	Sept. 6, 1934
59	Marking Devices	Oct. 30, 1933
244-G	Mason Contractors (Supplement No. 7, Construction)	Apr. 30, 1934
349	Mayonnaise	Mar. 31, 1934
347-J	Mechanical Lubricator (Supplement No. 10, Machinery and Allied Products)	June 15, 1934
428	Mechanical Packing	May 14, 1934
347-A-1	Mechanical Press Manufacturing (Supplement No. 27, Machinery and Allied Products)	July 20, 1934
175	Medium and Low-Priced Jewelry Manufacturing	Dec. 24, 1933
15	Men's Clothing	Sept. 11, 1933
363	Men's Neckwear	Apr. 2, 1934
232	Merchandise Warehouse Trade	Feb. 10, 1934
494	Merchant and Custom Tailoring	Aug. 10, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
455	Metal Etching	June 18, 1934
221	Metal Hat Die and Wood Hat Block	Jan. 29, 1934
527	Metal Hospital Furniture Manufacturing	Nov. 2, 1934
344	Metal Lath Manufacturing	Mar. 26, 1934
154	Metal Tank	Dec. 25, 1933
367	Metal Treating	Apr. 9, 1934
205	Metal Window	Jan. 22, 1934
84-A	Metallic Wall Structure (Supplement No. 1, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Jan. 15, 1934
306	Mica	Mar. 5, 1934
308-J	Middle Atlantic Preparing and Wholesaling or Wholesaling Industry (Supplement No. 10, Fishery)	Mar. 18, 1935
308-I	Midwest Fish and Shellfish Preparing or Wholesaling Industry (Supplement No. 9, Fishery)	Mar. 4, 1935
396	Milk Filtering Materials and the Dairy Products Cotton Wrappings	Apr. 30, 1934
84-D-1	Milk and Ice Cream Can (Supplement No. 30, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	May 27, 1934
151	Millinery	Dec. 25, 1933
69	Millinery and Dress Trimming Braid and Textile	Nov. 10, 1933
347-U-1	Mine Car Manufacturing (Supplement No. 47, Machinery and Allied Products)	Feb. 16, 1935
116	Mop Stick	Nov. 24, 1933
124	Motion Picture	Dec. 7, 1933
22	Motion Picture Laboratory	Sept. 17, 1933
66	Motor Bus	Nov. 13, 1933
340	Motorcycle Manufacturing	Mar. 27, 1934
108	Motor Fire Apparatus Manufacturing	Nov. 9, 1933
543	Motor Vehicle Maintenance	Jan. 21, 1935
147	Motor Vehicle Storage and Parking Trade	Dec. 11, 1933
46	Motor Vehicle Retailing Trade	Oct. 3, 1933
347-D-1	Multiple V-Belt Drive (Supplement No. 30, Machinery and Allied Products)	July 24, 1934
552	Music Publishing	Mar. 18, 1935
209	Musical Merchandise Manufacturing	Jan. 29, 1934
52	Mutual Savings Banks	Oct. 23, 1933
312	Narrow Fabrics	Mar. 12, 1934
519	Natural Cleft Stone	Sept. 21, 1934
545	Natural Organic Products	Feb. 4, 1935
474	Needlework Industry of Puerto Rico	July 19, 1934
308-G	New England Fish and Shellfish Preparing and Wholesaling (Supplement No. 7, Fishery)	Sept. 17, 1934
308-H	New England Sardine Canning (Supplement No. 8, Fishery)	Dec. 31, 1934
319	Newspaper Printing Press	Mar. 15, 1934
119	Newsprint	Nov. 27, 1933
443	Nickel and Nickel Alloys	June 3, 1934
84-N	Non-Ferrous Hot Water Tank Manufacturing (Supplement No. 14, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 14, 1934
165	Non-Ferrous Foundry	Dec. 25, 1933
271	Non-Ferrous and Steel Convector Manufacturing	

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
	(Concealed Radiator)	Feb. 19, 1934
78	Nottingham Lace Curtain	Nov. 13, 1933
79	Novelty Curtain, Draperies, Bedspreads, and Novelty Pillow	Nov. 11, 1933
89	Office Equipment Manufacturing	Nov. 13, 1933
25	Oil Burner	Sept. 23, 1933
347-I-1	Oil Field Pumping Engine Manufacturing (Supplement No. 35, Machinery and Allied Products)	Aug. 5, 1934
105-F	Oil Filter Manufacturing (Supplement No. 6, Automotive Parts and Equipment Manufacturing)	Nov. 5, 1934
370	Open Paper Drinking Cup and Round Nesting Paper Food Container	Apr. 9, 1934
84-O-1	Open Steel Flooring (Grating) Manufacturing (Supplement No. 41, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	July 21, 1934
49	Optical Manufacturing	Oct. 16, 1933
454	Optical Retail Trade	June 18, 1934
448	Optical Wholesale Industry and Trade	June 11, 1934
487-A	Oriental Rug Importing Trade (Supplement No. 1, Importing Trade)	Sept. 24, 1934
260	Ornamental Moulding, Carving, and Turning	Feb. 19, 1934
304	Outdoor Advertising Trade	Mar. 6, 1934
155	Oxy-Acetylene	Dec. 18, 1933
452	Oyster Shell Crushers	June 11, 1934
546	Pacific Coast Dried Fruit	Feb. 5, 1935
83-A	Pacific Coast Section of the Soap and Glycerine Manufacturing (Supplement No. 1, Soap and Glycerine Manufacturing)	July 9, 1934
430	Package Medicine	May 28, 1934
548	Package and Pasteurized Blended and Processed Cheese	Feb. 11, 1935
72	Packaging Machinery	Nov. 11, 1933
71	Paint, Varnish, and Lacquer Manufacturing	Nov. 15, 1933
244-B	Painting, Paperhanging, and Decorating Trade (Supplement No. 2, Construction)	Mar. 22, 1934
230	Paper Bag Manufacturing	Feb. 5, 1934
100	Paperboard Manufacturing	Nov. 20, 1933
72-B	Paper Box Machinery Industry and Trade (Supplement No. 2, Packaging Machinery)	June 1, 1934
246	Paper Disc Milk Bottle Cap	Feb. 12, 1934
176	Paper Distributing Trade (Supplement to Wholesale or Distributing Trade)	Jan. 1, 1934
144	Paper Making Machine Builders	Dec. 18, 1933
120	Paper and Pulp	Nov. 27, 1933
190	Paper Stationery and Tablet Manufacturing	Jan. 8, 1934
426	Papermakers' Felt	May 21, 1934
413	Pasted Shoe Stock	May 13, 1934
378	Peanut Butter	Apr. 14, 1934
528	Pecan Shelling	Oct. 29, 1934
84-V-1	Perforating Manufacturing (Supplement No. 48, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Sept. 10, 1934
361	Perfume, Cosmetics, and other Toilet Preparations..	Apr. 2, 1934
10	Petroleum	Sept. 2, 1933
529	Pharmaceutical and Biological	Nov. 5, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
180	Photo-Engraving	Jan. 1, 1934
12	Photographic Manufacturing	Aug. 29, 1933
290	Photographic Mount	Feb. 26, 1934
362	Photographic and Photofinishing	Apr. 2, 1934
91	Piano Manufacturing	Nov. 13, 1933
524	Pickle Packing	Oct. 5, 1934
208	Picture Moulding and Picture Frame	Jan. 29, 1934
131	Pipe Nipple Manufacturing	Dec. 11, 1933
210	Pipe Organ	Jan. 27, 1934
84-U-1	Pipe Tool Manufacturing (Supplement No. 47, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Sept. 2, 1934
244-N	Plastering and Lathing Contracting (Supplement No. 14, Construction)	June 27, 1934
276	Pleating, Stitching, and Bonnaz and Hand Embroidery	Feb. 19, 1934
63	Plumbago Crucible	Oct. 30, 1933
244-I	Plumbing Contracting (Supplement No. 9, Construction)	June 4, 1934
204	Plumbing Fixtures	Jan. 16, 1934
239	Porcelain Breakfast Furniture Assembling	Feb. 12, 1934
84-M	Porcelain Enameling Manufacturing (Supplement No. 13, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 9, 1934
4-B	Portable Electric Lamp and Shade (Supplement No. 2, Electrical Manufacturing)	July 8, 1934
284	Pottery Supplies and Blackwall and Radiant	Feb. 26, 1934
216	Powder Puff	Jan. 27, 1934
105-H	Powdered Metal Bearing Manufacturing (Supplement No. 8, Automotive Parts and Equipment Manufacturing)	Dec. 28, 1934
84-L	Power and Gang Lawn Mower Manufacturing (Supplement No. 12, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 5, 1934
347-Y	Power Transmission (Supplement No. 25, Machinery and Allied Products)	July 17, 1934
130	Precious Jewelry Producing	Nov. 30, 1933
359	Preformed Plastics Products	Apr. 2, 1934
460	Preserve, Maraschino Cherry and Glace Fruit	June 18, 1934
503	Pretzel	Aug. 27, 1934
368	Print Roller and Print Block	Apr. 9, 1934
106	Printers' Rollers	Nov. 18, 1933
257	Printing Equipment	Feb. 17, 1934
389	Printing Ink	Mar. 26, 1934
84-M-1	Prison Equipment Manufacturing (Supplement No. 39, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	July 15, 1934
447	Private Home Study Schools	June 11, 1934
500	Processed or Refined Fish Oil	Aug. 20, 1934
477	Public Seating	July 23, 1934
347-P-1	Pulp and Paper Machinery (Supplement No. 42, Machinery and Allied Products)	Aug. 22, 1934
84-R-1	Pulp and Paper Mill Wire Cloth Manufacturing (Supplement No. 44, Fabricated Metal Products Manufacturing and Metal Finishing and Metal	

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
	Coating)	Aug. 9, 1934
347-O	Pulverizing Machinery and Equipment (Supplement No. 15, Machinery and Allied Products)	June 20, 1934
57	Pump Manufacturing	Oct. 22, 1933
316	Punch Board Manufacturing	Mar. 9, 1934
148	Pyrotechnic Manufacturing	Dec. 11, 1933
351	Quicksilver	Mar. 31, 1934
105-J	Radiator Manufacturing (Supplement 10, Automotive Parts and Equipment Manufacturing)	Feb. 11, 1935
129	Radio Broadcasting	Dec. 11, 1933
201-G	Radio Wholesaling Trade (Supplement No. 7, Wholesaling and Distributing Trade)	May 1, 1934
385	Railroad Special Track Equipment Manufacturing	Apr. 6, 1934
347-M-1	Railway Appliance Manufacturing (Supplement No. 39, Machinery and Allied Products)	Aug. 12, 1934
84-E	Railway Car Appliances (Supplement No. 5, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Feb. 19, 1934
233	Railway Brass Car and Locomotive Journal Bearings and Castings Manufacturing	Feb. 12, 1934
285	Railway Car Building	Feb. 21, 1934
347-B	Railway and Industrial Spring (Supplement No. 2, Machinery and Allied Products)	May 4, 1934
198	Railway Safety Appliance	Jan. 29, 1934
203	Raw Peanut Milling	Jan. 17, 1934
172	Rayon and Silk Dyeing and Printing	Dec. 21, 1933
14	Rayon and Synthetic Yarn Producing	Sept. 9, 1933
283	Ready-Made Furniture Slip Covers	Feb. 26, 1934
311	Ready Mixed Concrete	Mar. 9, 1934
392	Real Estate Brokerage	Apr. 19, 1934
377	Reclaimed Rubber Manufacturing	Apr. 16, 1934
347-R	Reduction Machinery (Supplement No. 18, Machinery and Allied Products)	June 22, 1934
168	Refractories	Dec. 28, 1933
499	Refrigerated Warehouses	Aug. 20, 1934
347-J-1	Refrigerating Machinery (Supplement No. 36, Machinery and Allied Products)	Aug. 10, 1934
4-A	Refrigeration Industry (Supplement No. 1, Electrical Manufacturing)	June 20, 1934
84-Y-1	Refrigeration Valves and Fittings (Supplement No. 51, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Sept. 16, 1934
127	Reinforcing Materials Fabricating	Dec. 11, 1933
105-B	Replacement Axle Shaft Manufacturing (Supplement No. 2, Automotive Parts and Equipment Manufacturing)	July 13, 1934
244-J	Resilient Flooring Contracting (Supplement No. 10, Construction)	June 13, 1934
282	Restaurant	Feb. 26, 1934
553	Restaurant Trade in the Territory of Hawaii	Apr. 5, 1935
60-B	Retail Custom Fur Manufacturing Trade (Supplement No. 2, Retail Trade)	Oct. 5, 1934
60-C	Retail Custom Millinery Trade (Supplement No. 3, Retail Trade)	Feb. 4, 1935
60	Retail Drug Trade	Oct. 30, 1933
197	Retail Farm Equipment Trade	Jan. 22, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
182	Retail Food and Grocery Trade	Jan. 6, 1934
142	Retail Jewelry Trade	Dec. 11, 1933
540-A	Retail Kosher Meat Trade (Supplement to Retail Meat Trade)	Dec. 31, 1934
33	Retail Lumber, Lumber Products, Building Materials and Building Specialties	Oct. 13, 1933
540	Retail Meat Trade	Dec. 31, 1934
366	Retail Monument	Apr. 9, 1934
410	Retail Rubber Tire and Battery Trade	May 14, 1934
280	Retail Solid Fuel	Feb. 26, 1934
466	Retail Tobacco Trade	June 19, 1934
60	Retail Trade	Oct. 30, 1933
525	Retail Trade in the Territory of Hawaii	Oct. 29, 1934
517	Ring Traveler Manufacturing	Sept. 17, 1934
434	River and Harbor Improvement	June 17, 1934
68	Road Machinery Manufacturing	Nov. 20, 1933
211	Robe and Allied Products	Jan. 29, 1934
76	Rock Crusher Manufacturing	Nov. 1, 1933
347-Q	Rock and Ore Crusher (Supplement No. 17, Machinery and Allied Products)	June 22, 1934
321	Rock and Slag Wool Manufacturing	Mar. 19, 1934
347-X	Roller and Silent Chain (Supplement No. 24, Machinery and Allied Products)	July 16, 1934
347-N	Rolling Mill Machinery and Equipment (Supplement No. 14, Machinery and Allied Products)	June 18, 1934
171	Rolling Steel Door	Jan. 1, 1934
375	Roofing Granule Manufacturing and Distributing	Apr. 9, 1934
244-H	Roofing and Sheet Metal Contracting (Supplement No. 8, Construction)	May 25, 1934
156	Rubber Manufacturing	Dec. 25, 1933
174	Rubber Tire Manufacturing	Dec. 25, 1933
355	Rug Chemical Processing	Mar. 26, 1934
45	Saddlery Manufacturing	Oct. 13, 1933
489	Safety Razor and Safety Razor Blade Manufacturing	July 31, 1934
20	Salt producing	Sept. 17, 1933
301	Sample Card	Mar. 5, 1934
365	Sand, Lime, Brick	Apr. 5, 1934
388	Sandstone	Apr. 16, 1934
371	Sanitary Milk Bottle Closure	Apr. 9, 1934
200	Sanitary Napkin and Cleaning Tissue	Jan. 19, 1934
342	Sanitary and Waterproof Specialties Manufacturing	Mar. 26, 1934
169	Savings, Building and Loan Associations	Dec. 31, 1933
347-Q-1	Saw Mill Machinery (Supplement No. 43, Machinery and Allied Products)	Oct. 22, 1934
274	Saw and Steel Products Manufacturing	Feb. 20, 1934
256	Schiffli, The Hand Machine Embroidery, and the Embroidery Thread and Scallop Cutting Industry	Feb. 12, 1934
201-L	School Supplies and Equipment Trade (Supplement No. 12, Wholesaling or Distributing Trade)	July 15, 1934
114	Scientific Apparatus	Nov. 27, 1933
330	Scrap Iron, Non-Ferrous Scrap Metals and Waste Materials Trade	Mar. 26, 1934
84-R	Screw Machine Products Manufacturing (Supplement No. 18, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	May 8, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
268	Secondary Aluminum	Feb. 22, 1934
478	Secondary Steel Products Warehousing Trade	July 23, 1934
547	Seed Trade	Feb. 11, 1935
167	Set-up Paper Box Manufacturing	Jan. 1, 1934
402	Sewing Machine	Apr. 30, 1934
201-P	Sheet Metal Distributing Trade (Supplement No. 16, Wholesaling or Distributing Trade)	Aug. 6, 1934
2	Shipbuilding and Ship Repairing	Aug. 5, 1933
405	Shoe Last and Shoe Form	May 7, 1934
184	Shoe and Leather Finish, Polish, and Cement Manufacturing	Jan. 8, 1934
387	Shoe Machinery	Apr. 16, 1934
444	Shoe Pattern Manufacturing	June 5, 1934
372	Shoe Rebuilding Trade	Apr. 9, 1934
84-F	Shoe Shank Manufacturing and Trade (Supplement No. 6, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Mar. 3, 1934
262	Shoulder Pad Manufacturing	Feb. 15, 1934
102	Shovel, Dragline and Crane	Nov. 20, 1933
435	Shower Door	May 29, 1934
518	Shuttle Manufacturing	Sept. 17, 1934
48	Silk Textile	Oct. 16, 1933
177	Silverware Manufacturing	Dec. 25, 1933
218	Slate	Feb. 1, 1934
243	Slide Fastener	Feb. 12, 1934
214	Slit Fabric Manufacturing	Jan. 29, 1934
354	Small Arms and Ammunition	Apr. 2, 1934
347-D	Small Locomotive Manufacturing (Supplement No. 4, Machinery and Allied Products)	May 16, 1934
225	Smoking Pipe Manufacturing	Feb. 2, 1934
84-P	Snap Fastener Manufacturing	Apr. 16, 1934
83	Soap and Glycerine Manufacturing	Nov. 13, 1933
84-W-1	Socket Screw Products Manufacturing (Supplement No. 49, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Sept. 11, 1934
393	Soft Fibre Manufacturing	Apr. 19, 1934
419	Soft Lime Rock	May 17, 1934
309	Solid Braided Cord	Mar. 12, 1934
LP-5	Southern Rice Milling	Dec. 1, 1933
122	Special Tool Die and Machine Shop	Nov. 22, 1933
432	Specialty Accounting Supply Manufacturing	May 27, 1934
424	Spice Grinding	May 21, 1934
397	Spray Painting and Finishing Equipment	Apr. 29, 1934
347-H-1	Sprocket Chain (Supplement No. 34, Machinery and Allied Products)	Aug. 1, 1934
531	Stained and Leaded Glass	Nov. 12, 1934
84-Z	Standard Steel Barrel and Drum	May 26, 1934
307	Stay Manufacturing	Mar. 8, 1934
347-P	Steam Engine Manufacturing (Supplement No. 16, Machinery and Allied Products)	June 22, 1934
279	Steam Heating Equipment	Feb. 26, 1934
82	Steel Casting	Nov. 13, 1933
495	Steel Joist	Aug. 13, 1934
84-Y	Steel Package Manufacturing (Supplement No. 25, Fabricated Metal Products Manufacturing and	

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
	Metal Finishing and Metal Coating)	May 26, 1934
390	Steel Plate Fabricating	Apr. 16, 1934
347-A	Steel Tire Manufacturing (Supplement No. 1, Machinery and Allied Products)	May 4, 1934
62	Steel Tubular and Firebox Boiler	Nov. 6, 1933
313	Steel Wool	Mar. 10, 1934
492	Stereotype Dry Mat	Aug. 6, 1934
95	Stock Exchange Firms	Nov. 13, 1933
158	Stone Finishing Machinery and Equipment	Dec. 26, 1933
244-T	Stone Setting Contractors (Supplement No. 20, Construction)	Jan. 30, 1935
123	Structural Clay Products	Dec. 7, 1933
480	Structural Steel and Iron Fabricating	July 22, 1934
469	Sulphonated Oil Manufacturing	July 9, 1934
231	Surgical Dressings	Feb. 5, 1934
507	Surgical Distributors Trade	Sept. 3, 1934
255	Table Oil Cloth	Feb. 12, 1934
84-K	Tackle Block Manufacturing (Supplement No. 11, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 5, 1934
249	Tag	Feb. 12, 1934
350	Talc and Soapstone	Mar. 31, 1934
439	Tank Car Service, Field Building	June 4, 1934
374	Tanning Extract	Apr. 9, 1934
328	Tapioca Dry Products	Mar. 20, 1934
74	Terra Cotta	Nov. 13, 1933
244-O	Terrazzo and Mosaic Contracting (Supplement No. 15, Construction)	July 23, 1934
27	Textile Bag	Oct. 2, 1933
497	Textile Examining, Shrinking and Refinishing	Aug. 20, 1934
35	Textile Machinery Manufacturing	Oct. 16, 1933
324	Textile Print Roller Engraving	Mar. 18, 1934
235	Textile Processing	Feb. 5, 1934
54	Throwing	Oct. 13, 1933
244-E	Tile Contracting (Supplement No. 5, Construction)	Apr. 12, 1934
431	Toll Bridge	May 28, 1934
84-G	Tool and Implement (Supplement No. 7, Fabricated Products Manufacturing and Metal Finishing and Metal Coating)	Mar. 25, 1934
86	Toy and Playthings	Nov. 13, 1933
471	Trailer Manufacturing	July 11, 1934
28	Transit	Oct. 2, 1933
382	Transparent Materials Converters	Apr. 16, 1934
308-F	Trout Farming Industry, Eastern Section (Supplement No. 6, Fishery)	Aug. 6, 1934
278	Trucking	Feb. 25, 1934
84-Z-1	Tubular Split and Outside Pronged Rivet Manufacturing (Supplement No. 52, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Oct. 2, 1934
51	Umbrella	Oct. 16, 1933
386	Umbrella Frame and Umbrella Hardware	Apr. 9, 1934
408	Undergarment and Negligee	May 7, 1934
23	Underwear and Allied Products	Oct. 2, 1933
272	Unit Heater and/or Unit Ventilator Manufacturing	Feb. 19, 1934
201-A	Upholstery and Decorative Fabrics (Supplement	

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

No. Code	Name of industry	Effective date of code
	No. 1, Wholesaling or Distributing Trade)	Mar. 16, 1934
125	Upholstery and Drapery Textile	Dec. 11, 1933
329	Upholstery Spring and Accessories Manufacturing..	Mar. 15, 1934
502	Upward Acting Door	Aug. 20, 1934
542	Used Machinery and Equipment Distributing Trade	Jan. 21, 1935
267	Used Textile Bag	Feb. 18, 1934
380	Used Textile Machinery and Accessories Distributing Trade	Apr. 15, 1934
317	Vacuum Cleaner	Mar. 12, 1934
153	Valve and Fittings Manufacturing	Dec. 20, 1933
461	Vegetable Ivory Button Manufacturing	June 13, 1934
188	Velvet	Jan. 8, 1934
229	Venetian Blind	Feb. 5, 1934
84-X-1	Vise Manufacturing (Supplement No. 50, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Sept. 11, 1934
84-Q-1	Vitreous Enameled Ware Manufacturing (Supplement No. 43, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Aug. 1, 1934
136	Vitrified Clay Sewer Pipe Manufacturing	Dec. 11, 1933
395	Wadding	Apr. 30, 1934
19	Wall Paper Manufacturing	Sept. 18, 1933
84-E-1	Warm Air Furnace Pipe and Fittings Manufacturing (Supplement No. 31, Construction)	May 28, 1934
137	Warm Air Furnace Manufacturing	Dec. 11, 1933
472	Warm Air Register	July 9, 1934
93	Washing and Ironing Machine Manufacturing	Nov. 6, 1933
84-C-1	Washing Machine Parts Manufacturing (Supplement No. 29, Fabricated Metal Products, Manufacturing and Metal Finishing and Metal Coating)	May 27, 1934
330-A	Waste Paper Trade (Supplement No. 1, Scrap Iron, Non-Ferrous Scrap Metals and Waste Materials Trade)	July 12, 1934
178	Watch Case Manufacturing	Jan. 1, 1934
347-H	Water Meter Manufacturing (Supplement No. 8, Machinery and Allied Products)	May 27, 1934
347-M	Waterpower Equipment (Supplement No. 13, Machinery and Allied Products)	June 18, 1934
295	Waterproof Paper	Feb. 26, 1934
140	Waterproofing, Dampproofing, Caulking, Compounds and Concrete Floor Treatment Manufacturing	Dec. 4, 1933
347-B-1	Water Softener and Filter (Supplement No. 28, Machinery and Allied Products)	July 20, 1934
166	Waxed Paper	Jan. 1, 1934
488	Welt Manufacturing	July 30, 1934
227	Wet Mop Manufacturing	Feb. 2, 1934
LP-17	Wheat Flour Milling	June 13, 1934
105-D	Wheel & Rim Manufacturing (Supplement No. 4, Automotive Parts and Equipment)	Nov. 3, 1934
163	Wholesale Automotive Trade	Dec. 28, 1933
314	Wholesale Coal	Mar. 11, 1934
458	Wholesale Confectioners	June 11, 1934
201-H	Wholesale Dry Goods (Supplement No. 8, Wholesaling or Distributing Trade)	May 24, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
201-W	Wholesale Embroidery Trade (Supplement No. 23, Wholesaling or Distributing Trade)	Sept. 3, 1934
196	Wholesale Food and Grocery Trade	Jan. 11, 1934
LP-18	Wholesale Fresh Fruit and Vegetable Distributive..	July 16, 1934
201-Q	Wholesale Hardware Trade (Supplement No. 17, Wholesaling or Distributing Trade)	Aug. 9, 1934
201-V	Wholesale Jewelry Trade (Supplement No. 22, Wholesaling or Distributing Trade)	Aug. 31, 1934
308-B	Wholesale Lobster (Supplement No. 2, Fishery)	Apr. 23, 1934
201-E	Wholesale Millinery Trade (Supplement No. 5, Wholesaling or Distributing Trade)	Apr. 26, 1934
449	Wholesale Monumental Granite	June 11, 1934
484	Wholesale Monumental Marble	July 23, 1934
201-R	Wholesale Paint, Varnish Lacquer, Allied & Kindred Products Trade (Supplement No. 18, Wholesaling or Distributing Trade)	Aug. 14, 1934
201-F	Wholesale Stationery Trade (Supplement No. 6, Wholesaling or Distributing Trade)	May 1, 1934
462	Wholesale Tobacco Trade	June 9, 1934
201-B	Wholesale Wallpaper Trade (Supplement No. 2, Wholesaling or Distributing Trade)	Mar. 26, 1934
201	Wholesaling or Distributing Trade)	Jan. 22, 1934
533	Window Glass Manufacturing	Dec. 3, 1934
LP-21	Wine Industry	Sept. 3, 1934
298	Wiping Cloth	Feb. 26, 1934
347-E	Wire Machinery (Supplement No. 5, Machinery and Allied Products)	May 20, 1934
11/C1	Wire Reinforcement Industry (Consolidation No. 1, Iron and Steel)	Aug. 23, 1934
250	Wire, Rod and Tube Die	Feb. 11, 1934
84-H-1	Wire, Rope and Strand Manufacturing (Supplement No. 34, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	June 3, 1934
4-C	Wiring Device (Supplement No. 3, Electrical)	Jan. 26, 1935
251	Witch Hazel	Feb. 11, 1934
41	Women's Belt	Oct. 13, 1933
538	Women's Neckwear and Scarf Manufacturing	Jan. 7, 1935
291	Wood Cased Lead Pencil	Feb. 27, 1934
244-K	Wood Floor Contracting (Supplement No. 11, Construction)	June 28, 1934
270	Wood Heel	Feb. 12, 1934
115	Wood Plug	Nov. 24, 1933
481	Wood Preserving	July 30, 1934
84-X	Wood Screw Manufacturing (Supplement No. 24, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	May 20, 1934
383	Wood Turning and Shaping Industries	Apr. 16, 1934
338	Wooden Insulator Pin and Bracket	Mar. 26, 1934
347-F	Woodworking Machinery (Supplement No. 6, Machinery and Allied Products)	May 25, 1934
143	Wool Felt	Dec. 11, 1933
3	Wool Textile	Aug. 14, 1933
213	Wool Trade	Jan. 29, 1934
201-N	Woolens and Trimmings Distributing Trade (Supplement No. 14, Wholesaling or Distributing Trade)	Aug. 2, 1934

LIST OF APPROVED CODES AS OF APRIL 5, 1935 (Continued)

Code No.	Name of industry	Effective date of code
473	Woven Wool Fabric Shade	July 9, 1934
318	Wrecking and Salvage	Mar. 13, 1934
84-0	Wrench Manufacturing (Supplement No. 15, Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating)	Apr. 14, 1934
475	Yeast	July 16, 1934

APPENDIX V

TYPICAL CODE PROVISIONS FOR ADJUSTING WAGES ABOVE MINIMUM

1. *Wool Textile Industry.* As to wages of employees now receiving not less than the minimum wage established by this code, no employer shall, on or after the effective date, pay any such employee a wage rate which will yield a less wage for a work week of forty hours than such employee was receiving for the same class of work for the established longer week of forty-eight hours or more prevailing prior to the effective date.

2. *Electrical Industry.* Not later than ninety (90) days after the effective date the electrical manufacturing industry shall report to the Administrator through the Board of Governors of National Electrical Manufacturers' Association the action taken by all employers in adjusting the hourly wage rates for all employees receiving more than the minimum rates provided in paragraph (b) of this article.

3. *Lumber and Timber Products Industry.* The existing amounts by which minimum wages in the higher-paid classes, up to workers receiving \$130.00 per week, exceed minimum wages in the lowest-paid classes, shall be maintained.

Charges to employees for rent, board, medical attendance and other services shall be fair.

Subject to the foregoing provisions the minimum wages to be paid under this code are not to be less than 40 cents per hour, unless if in any Division or Subdivision the prevailing hourly rate for the same class of employees on July 15, 1929, as determined by the Administrator on statistical evidence, was less than 40 cents per hour, in which case the rate shall not be less than said prevailing hourly rate on July 15, 1929 so determined plus fifteen per cent if said hourly rate on July 15, 1929 was less than 30 cents per hour, provided, however, that for wages per hour between 20 cents and 29 cents, inclusive, on July 15, 1929, with wages of less than 20 cents per hour on that date being considered as 20 cents, the percentage of increase shall diminish one and one-half per cent for each cent that wages per hour exceed 20 cents, in accordance with the following schedule.

Wages per hour, July 15, 1929—20c, 21c, 22c, 23c, 24c, 25c, 26c, 27c, 28c, 29c, 30c.

Increase under proposed schedule — 15%, 13½%, 12%, 10½%, 9%, 7½%, 6%, 4½%, 3%, 1½%, 0%.

Wages per hour under proposed schedule — 23c, 24c, 24½c, 25½c, 26c, 27c, 27½c, 28c, 29c, 29½c, 30c.

4. *Automobile Manufacturing Industry.* Equitable adjustment in all pay schedules of factory employees above the minimums shall be made on or before September 15, 1933, by any employers who have not heretofore made such adjustments, and the first monthly reports of wages required to be filed under this Code shall contain all wage increases made since May 1, 1933.

5. *Leather Industry.* No employee earning less than thirty dollars per week

shall receive less for forty hours work than he was receiving as of April 1, 1933, for the established work week at that time.

6. *Boot and Shoe Manufacturing Industry.* Unskilled employees receiving in excess of the foregoing minimum rates of pay shall not be reduced; and equitable adjustments in all pay schedules of employees receiving more than the minimum rates shall be made not later than 30 days after approval of this Code by any employers in the Industry who have not heretofore made such adjustments under the President's Re-employment Agreement.

7. *Paper and Pulp Industry.* The wage rates of all employees receiving more than the minimum rates herein prescribed shall be reviewed and such adjustments, if any, made therein as are equitable in the light of the circumstances. Within 90 days after the effective date hereof, the Code Authority shall report to the Administrator the action taken by all members of the industry under this section.

8. *Canning Industry.* Whenever the minimum rates adopted by this Code result in decreasing differentials existing between different classes of employees on June 15, 1933, there shall be an equitable adjustment in order to maintain such differentials as of said date. In no case shall hourly wage rates be reduced.

APPENDIX VI

SUPPLEMENTARY NOTES ON THE DETERMINATION OF LOWEST REASONABLE COST

With regard to the determination of policy on lowest reasonable cost, it may be noted first that the committee, composed of H. F. Taggart, James A. Hughes, Simon Whitney, Blackwell Smith, and the author, agreed at once not to take into consideration the question of enforcement. On this point it reasoned that, if industries really wanted code provisions outlawing sales below cost, and were willing to observe the rules laid down, and if they would institute and use in good faith cost-accounting systems, such provisions would be successful; whereas, otherwise no rules prohibiting sales below cost would be enforceable. The group agreed further that those business men who had not previously installed accounting systems might be induced to do so and perhaps thereby be saved from bankruptcy arising from ignorance.

With this understanding of the problem the committee quickly concluded that firms should be urged to base their price policies upon a knowledge of cost, and that price might at times reasonably be above cost and at others below. Taggart, the chief cost accountant, in particular, wanted to set up accounting systems independent of provisions prohibiting sales below cost, maintaining that, if this were done, the NRA could readily allow industries to include whatever they wished in cost. At the same time he insisted that the NRA should approve all formulas leading to figures below which sales could not be made. Hughes, later chief of the administration section, objected to Smith's term "price cutting" (see Chapter IX, footnote 23) unless qualified by the word "predatory," and urged that exceptions be made to permit the disposal of "dropped lines" or "seconds." The author, still holding that lowest reasonable cost would become the prevailing price, but convinced that the Administration would insist on giving the new proposal a trial, earnestly tried to make it as workable as possible. To this end he proposed and the committee agreed that (a) to relieve the NRA from as much responsibility as possible, the initiative for determining the existence of an emergency should come from the code authority rather than from the Administrator; (b) that "lowest reasonable cost" should exclude all extraordinary or inflationary elements as well as all forms of return on investments; (c) that the phrase "but with no fixed minimums" should be added to the first sentence of the second paragraph of Smith's proposal; and (d) that proposed cost-accounting systems should be submitted to the Administrator "for review and possible *disapproval*."

After adjournment of the meeting to permit further consideration of the problems, Taggart and Whitney wrote out twenty-four criticisms of Smith's proposals, many of which, of course, were minor. Most significant of all was their stress on the importance of emphasizing that lowest reasonable cost was to be used only at times. To this end, they proposed that paragraph (b) precede paragraph (a), and reworded the document so as to make this possible. The next day the writer concurred in their criticisms and suggested that the approval

of Smith and Henderson be secured. The result was the following model code provision which is almost identical with Taggart's draft:

Section..... Destructive price cutting is declared an unfair method of competition and is forbidden.

(a) When no emergency exists and when no lowest reasonable cost is in effect, as hereinafter provided, for any given service/product, it is intended, in order to foster fair price competition, that pricing practices should give due consideration to sound cost-estimating methods but that during such times no minimum basis for prices shall be fixed. In order to facilitate the estimating of costs hereunder and to encourage the use of proper accounting methods for purposes of internal management, the Code Authority shall cause to be formulated an accounting system and methods of cost finding and/or estimating capable of use by all members of the trade/industry and shall submit such system and methods to the Administrator for review and possible disapproval. Full details and instructions concerning such methods shall be made available to all members of the trade/industry and to the Administrator and thereafter all such members should utilize the principles of such methods in determining and/or estimating costs. No member of the trade/industry shall be deemed to have engaged in destructive price cutting, at a time when the lowest reasonable cost for such service/product determined pursuant to subsection (b) of this section is not in effect, if an impartial agency designated or approved by the Administrator, shall find (1) that proper use has been made of and due consideration given to the cost-estimating methods above referred to, or (2) that the price at which sale or offer of sale has been made is justified by existing competition, evidence of which has been reported to the Code Authority, or (3) that such price is justified as a method of disposal of dropped lines or seconds (or for similar reasons adapted to the needs of specific trades/industries).

(b) When the Administrator determines that destructive price cutting has caused an emergency in the trade/industry such as to render ineffective or seriously to endanger the maintenance of the provisions of this Code, the Code Authority may cause an impartial agency to investigate costs in the trade/industry and to determine the lowest reasonable cost of the service(s)/product(s) affected by such destructive practice. Such determination shall exclude all forms of return on capital investment and any extraordinary or inflationary cost elements and shall be in all respects subject to such rules and regulations as may be issued by the Administrator and to his approval or modification after such notice and opportunity to be heard as he may prescribe. The Code Authority or the Administrator may, upon its or his own initiative or upon the request of any interested party, from time to time cause such determinations to be reviewed or reconsidered and appropriate action taken. During any such emergency, any sale below the lowest reasonable cost of the particular service/product as determined pursuant to this subsection shall be deemed destructive price cutting, unless justified by notification to the Code Authority as a necessary means of disposal of dropped lines or seconds (or for similar reasons adapted to the needs of specific trades/industries).

APPENDIX VII

SUMMARY TAKEN FROM THE MITCHELL-WHITESIDE REPORT ON THE PRICE-HEARING IN JANUARY, 1934

I. Conclusions

Price complaints so far analyzed have arisen from the following causes:

1. The uniformity in prices and excessive price increases which apparently have arisen from the operation of open-price agreements in several codes, particularly in those instances where a period of waiting has been prescribed between the filing date and effective date of price lists.

2. Excessive surcharges and uniform surcharges. In several industries this is largely a history of completed transactions in a situation not likely to recur immediately.

The surcharges under the gold-loss schedule might, however, continue to be a source of disagreement. Even in the event of practical stabilization of the dollar gold parity, it appears likely that this schedule would be used to crystallize permanent price increases.

3. Activities on the part of groups in trades or industries which are extraneous to the codes but which are apparently the result of collective understandings which have developed through the intimate relationship established between those operating within trades and industries.

4. Limitations on cash discounts and quantity discounts which may constitute a means of raising prices, and those provisions are inserted in the respective codes as part of the fair-practice definitions.

5. Limitations on the manufacture or distribution of second-quality goods.

6. Interpretations of cost as a level below which no sales shall be made, which have resulted in raising prices to a level unjustified in the interest of the customer or for the permanent welfare of the industry.

II. Recommendations

1. The so-called "waiting period" should probably be temporarily deleted from the majority of open-price provisions. Theoretically this provision has a legitimate purpose. In practical operation it may lead to intimidation and coercion and result in a uniformity of high prices. Opportunities for monopolistic practices are available.

In the industries manufacturing necessities and basic materials the waiting period will probably result in excessive prices. A possible substitute is a provision for quoting simultaneously to the customers and competitors and others with a justified interest, safeguarded by a provision that a price once quoted must apply for a given period to all customers of the same classes or to all single-delivery purchases of the same size class. This period might vary from the 24 hours now provided in a few codes to a month, as conditions in the industry may warrant.

This does not necessarily imply that this is the only criticism of the open-price clause, but it is the only point upon which a definite conclusion seems warranted at this time. As noted above, we believe other phases of this agreement and results of its operation should be subjected to study.

2. A reasonable cash discount, such as the percentage commonly used, is a long and widely acknowledged trade custom with sound justification. It seems doubtful whether the effort to eliminate the abuses of the cash discount, practiced in many trades, should extend to an abolition of even small discounts or a modification of liberal discounts.

3. The activities which have affected prices because of the intimacies established in code relationship are extremely varied, but their correction should present no great difficulty the moment abuses of this nature arise.

4. Provisions for customer classification, which serve to stiffen the quantity-discount provisions against universities and State or city governments and hospitals, apparently should be reconsidered carefully unless the same restrictions on wholesalers for orders or shipments of the same size are made. Many industries have been built up by the inducement of quantity discounts, which were amply justified by the economies of mass production. The code which ignores this fact to perpetuate existing channels of distribution is likely to be extremely difficult to enforce.

5. Provisions limiting the distribution of seconds or inferior grades, although aimed at an obvious and widespread abuse, should probably be examined in the light of at least three factors.

(a) Do the processes in the industry normally yield a constant proportion of second-class products under such conditions and would the effort to produce only first-grade products cause excessive expense or waste?

(b) Is there a valid and extensive use for a second grade because of some such factor as loss, theft, or inevitable breakage which makes durability or finish a minor objective?

(c) Can quality standardization and marking be enforced, so that the customer recognizes the grade purchased? If satisfied with seconds, at a lower price, what reasonable objection can be made to supplying subgrades?

6. It would seem desirable that considerable care be exercised to analyze the effect of proposed code provisions for defining cost as a "price floor." This provision appears likely in some instances to dictate a price level higher than the customers should pay in the short run, and higher than the industry can maintain in the long run. It was also stated in one instance that the cost-accounting definitions compelled the pricing of the competitive or second-grade product so near the first-grade price that its competitive advantage was lost, and the second-grade product was therefore discontinued.

APPENDIX VIII

UNANIMOUS DECISION OF THE SUPREME COURT INVALIDATING THE NIRA

Supreme Court of the United States. Nos. 854 and 864. October term, 1934. 854, *A. L. A. Schechter Poultry Corporation, Schechter Live Poultry Market, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, petitioners, v. The United States of America.* 864, *The United States of America, petitioner, v. A. L. A. Schechter Poultry Corporation, Martin Schechter, Alex Schechter, and Aaron Schechter.* On writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Mr. Chief Justice Hughes delivered the opinion of the Court which follows: Petitioners in no. 854 were convicted in the District Court of the United States for the Eastern District of New York on 18 counts of an indictment charging violations of what is known as the "Live Poultry Code,"¹ and on an additional count for conspiracy to commit such violations.² By demurrer to the indictment and appropriate motions on the trial the defendants contended (1) that the code had been adopted pursuant to an unconstitutional delegation by Congress of legislative power; (2) that it attempted to regulate intrastate transactions which lay outside the authority of Congress; and (3) that in certain provisions it was repugnant to the due process clause of the fifth amendment.

The circuit court of appeals sustained the conviction on the conspiracy count and on 16 counts for violation of the code, but reversed the conviction on 2 counts which charged violation of requirements as to minimum wages and maximum hours of labor, as these were not deemed to be within the congressional power of regulation. On the respective applications of the defendants (no. 854) and of the Government (no. 864) this court granted writs of certiorari April 15, 1935.

Codes of Fair Competition

New York City is the largest live-poultry market in the United States. Ninety-six per cent of the live poultry there marketed comes from other States. Three-fourths of this amount arrives by rail and is consigned to commission men or receivers. Most of these freight shipments (about 75 per cent) come in at the Manhattan Terminal of the New York Central Railroad, and the remainder at one of the four terminals in New Jersey serving New York City. The commission men transact by far the greater part of the business on a commission basis, representing the shippers as agents, and remitting to them the proceeds of sale, less commissions, freight, and handling charges. Otherwise, they buy for their own account. They sell to slaughterhouse operators, who are also called market men.

¹The full title of the code is Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and About the City of New York.

²The indictment contained 60 counts, of which 27 counts were dismissed by the trial court, and on 14 counts the defendants were acquitted.

The defendants are slaughterhouse operators of the latter class. A. L. A. Schechter Poultry Corporation and Schechter Live Poultry Market are corporations conducting wholesale poultry slaughterhouse markets in Brooklyn, New York City. Joseph Schechter operated the latter corporation and also guaranteed the credits of the former corporation, which was operated by Martin, Alex and Aaron Schechter. Defendants ordinarily purchase their live poultry from commission men at the West Washington Market in New York City or at the railroad terminals serving the City, but occasionally they purchase from commission men in Philadelphia. They buy the poultry for slaughter and resale. After the poultry is trucked to their slaughterhouse markets in Brooklyn, it is there sold, usually within 24 hours, to retail poultry dealers and butchers, who sell directly to consumers. The poultry purchased from defendants is immediately slaughtered, prior to delivery, by shochtim in defendants' employ. Defendants do not sell poultry in interstate commerce.

The Live Poultry Code was promulgated under section 3 of the National Industrial Recovery Act.³ That section—the pertinent provisions of which are set forth in the margin⁴—authorizes the President to approve “codes of fair competition.” Such a code may be approved for a trade or industry, upon application by one or more trade or industrial associations or groups, if the President finds (1) that such associations or groups “impose no inequitable restrictions on admission to membership therein and are truly representative,” and (2) that such codes are not designed “to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will

³Act of June 16, 1933, c. 90 (48 Stat. 195, 196; 15 U. S. C. 703).

⁴Codes of Fair Competition:

“Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided, further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

“(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such act, as amended.

“(c) The several District Courts of the United States are hereby invested with jurisdictions to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

“(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notices and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

“(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than \$500 for each offense, and each day such violation continues shall be deemed a separate offense.”

tend to effectuate the policy" of title I of the act. Such codes "shall not permit monopolies or monopolistic practices." As a condition of his approval, the President may "impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared." Where such a code has not been approved, the President may prescribe one, either on his own motion or on complaint. Violation of any provision of a code (so approved or prescribed) "in any transaction in or affecting interstate or foreign commerce" is made a misdemeanor punishable by a fine of not more than \$500 for each offense, and each day the violation continues is to be deemed a separate offense.

Live Poultry Code

The "Live Poultry Code" was approved by the President on April 13, 1934. Its divisions indicate its nature and scope. The code has eight articles entitled (1) purposes, (2) definitions, (3) hours, (4) wages, (5) general labor provisions, (6) administration, (7) trade-practice provisions, and (8) general.

The declared purpose is "to effect the policies of title I of the National Industrial Recovery Act." The code is established as "a code for fair competition for the live poultry industry of the metropolitan area in and about the city of New York." That area is described as embracing the five boroughs of New York City, the counties of Rockland, Westchester, Nassau, and Suffolk, in the State of New York, the counties of Hudson and Bergen in the State of New Jersey, and the county of Fairfield in the State of Connecticut.

The "industry" is defined as including "every person engaged in the business of selling, purchasing for resale, transporting, or handling and (or) slaughtering live poultry, from the time such poultry comes into the New York metropolitan area to the time it is first sold in slaughtered form," and such "related branches" as may from time to time be included by amendment. Employers are styled "members of the industry," and the term employee is defined to embrace "any and all persons engaged in the industry, however compensated," except "members."

The code fixes the number of hours for workdays. It provides that no employee, with certain exceptions, shall be permitted to work in excess of forty (40) hours in any one week, and that no employee, save as stated, "shall be paid in any pay period less than at the rate of fifty (50) cents per hour." The article containing "general labor provisions" prohibits the employment of any person under 16 years of age, and declares that employees shall have the right of "collective bargaining," and freedom of choice with respect to labor organizations, in the terms of section 7(a) of the act. The minimum number of employees, who shall be employed by slaughterhouse operators, is fixed, the number being graduated according to the average volume of weekly sales.

Provision is made for administration through an "industry advisory committee," to be selected by trade associations and members of the industry, and a "code supervisor" to be appointed, with the approval of the committee, by agreement between the Secretary of Agriculture and the Administrator for Industrial

Recovery. The expenses of administration are to be borne by the members of the industry proportionately upon the basis of volume of business, or such other factors as the advisory committee may deem equitable, "subject to the disapproval of the Secretary and (or) Administrator."

The seventh article, containing "trade practice provisions," prohibits various practices which are said to constitute "unfair methods of competition." The final article provides for verified reports, such as the Secretary or Administrator may require," (1) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and (2) for the determination by the Secretary or Administrator of the extent to which the declared policy of the act is being effectuated by this code." The members of the industry are also required to keep books and records which "will clearly reflect all financial transactions of their respective businesses and the financial conditions thereof," and to submit weekly reports "showing the range of daily prices and volume of sales" for each kind of produce.

President's Executive Order Approving Code

The President approved the code by an Executive order in which he found that the application for his approval had been duly made in accordance with the provisions of title I of the National Industrial Recovery Act, that there had been due notice and hearings, that the code constituted "a code of fair competition" as contemplated by the act and complied with its pertinent provisions, including clauses (1) and (2) of subsection (a) of section 3 of title I; and that the code would tend "to effectuate the policy of Congress as declared in section 1 of title I."⁵ The Executive order also recited that the Secretary of Agriculture and the Administrator of the National Industrial Recovery Act had rendered separate reports as to the provisions within their respective jurisdictions. The Secretary

The Executive order is as follows:

"EXECUTIVE ORDER

"Approval of Code of Fair Competition for the Live Poultry Industry of the metropolitan area in and about the city of New York.

"Whereas, the Secretary of Agriculture and the Administrator of the National Industrial Recovery Act having rendered their separate reports and recommendations and findings on the provisions of said code, coming within their respective jurisdictions, as set forth in the Executive Order No. 6182 of June 26, 1933, as supplemented by Executive Order No. 6207 of July 21, 1933, and Executive Order No. 6345 of Oct. 20, 1933, as amended by Executive Order No. 6551 of Jan. 8, 1934;

"Now, therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do hereby find that:

"1. An application has been duly made, pursuant to and in full compliance with the provisions of title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Live Poultry Industry in the metropolitan area in and about the city of New York; and

"2. Due notice and opportunity for hearings to interested parties have been given pursuant to the provisions of the act and regulations thereunder; and

"3. Hearings have been held upon said code, pursuant to such notice and pursuant to the pertinent provisions of the act and regulations thereunder; and

"4. Said code of fair competition constitutes a code of fair competition, as contemplated by the act and complies in all respects with the pertinent provisions of the act, including clauses (1) and (2) of subsection (a) of section 3 of title I of the act; and

"5. It appears, after due consideration, that said code of fair competition will tend to effectuate the policy of Congress as declared in section 1 of title I of this act.

"Now, therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do hereby approve said Code of Fair Competition for the Live Poultry Industry in the metropolitan area in and about the city of New York.

"FRANKLIN D. ROOSEVELT,

"President of the United States."

"The White House, April 13, 1934."

of Agriculture reported that the provisions of the code "establishing standards of fair competition (a) are regulations of transactions in or affecting the current of interstate and (or) foreign commerce and (b) are reasonable," and also that the code would tend to effectuate the policy declared in title I of the act, as set forth in section 1. The report of the Administrator for Industrial Recovery dealt with wages, hours of labor, and other labor provisions.⁶

Counts of Indictment

Of the 18 counts of the indictment upon which the defendants were convicted, aside from the count for conspiracy, 2 counts charged violation of the minimum-wage and maximum-hour provisions of the code and 10 counts were for violation of the requirement (found in the "trade-practice provisions") of "straight killing." This requirement was really one of "straight" selling. The term "straight killing" was defined in the code as "the practice of requiring persons purchasing poultry for resale to accept the run of any half coop, coop, or coops, as purchased by slaughterhouse operators, except for culls." The charges in the 10 counts, respectively, were that the defendants in selling to retail dealers and butchers had permitted "selections of individual chickens taken from particular coops and half coops."

Of the other 6 counts, 1 charged the sale to a butcher of an unfit chicken; 2 counts charged the making of sales without having the poultry inspected or approved in accordance with regulations or ordinances of the city of New York; 2 counts charged the making of false reports or the failure to make reports relating to the range of daily prices and volume of sales for certain periods; and the remaining count was for sales to slaughterers or dealers who were without licenses required by the ordinances and regulations of the city of New York.

First: Two preliminary points are stressed by the Government with respect to the appropriate approach to the important questions presented. We are told that the provision of the statute authorizing the adoption of codes must be viewed in the light of the grave national crisis with which Congress was confronted. Undoubtedly, the conditions to which power is addressed are always to be considered when the exercise of power is challenged. Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power.⁸ The

⁶The Administrator for Industrial Recovery stated in his report that the code had been sponsored by trade associations representing about 350 wholesale firms, 150 retail shops, and 21 commission agencies; that these associations represented about 90 per cent of the live poultry industry by numbers and volume of business and that the industry as defined in the code supplied the consuming public with practically all the live poultry coming into the metropolitan area from 41 States; and transacted an aggregate annual business of approximately \$90,000,000. He further said that about 1,510 employees were engaged in the industry; that it had suffered severely on account of the prevailing economic conditions and because of unfair methods of competition and the abuses that had developed as a result of the "uncontrolled methods of doing business"; and that these conditions had reduced the number of employees by approximately 40 per cent. He added that the report of the Research and Planning Division indicated that the code would bring about an increase in wages of about 20 per cent in this industry and an increase in employment of 19.2 per cent.

⁷The prohibition in the code (art. VII, sec. 14) was as follows: "Straight killing: The use, in the wholesale slaughtering of poultry, of any method of slaughtering other than 'straight killing' or killing on the basis of official grade. Purchasers may, however, make selection of a half coop, coop, or coops, but shall not have the right to make any selection of particular birds."

⁸See *Ex parte Milligan* (4 Wall. 2, 120, 121); *Home Building & Loan Association v. Blaisdell* (290 U. S. 398, 426).

Constitution established a National Government with powers to be adequate, as they have proved to be both in war and peace, but these powers of the National Government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extraconstitutional authority were anticipated and precluded by the explicit terms of the tenth amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

The further point is urged that the national crisis demanded a broad and intensive co-operative effort by those engaged in trade and industry, and that this necessary co-operation was sought to be fostered by permitting them to initiate the adoption of codes. But the statutory plan is not simply one for voluntary effort. It does not seek merely to endow voluntary trade or industrial associations or groups with privileges or immunities. It involves the coercive exercise of the law-making power. The codes of fair competition which the statute attempts to authorize are codes of laws. If valid, they place all persons within their reach under the obligation of positive law, binding equally those who assent and those who do not assent. Violations of the provisions of the codes are punishable as crimes.

Delegation of Legislative Power

Second: The question of the delegation of legislative power. We recently had occasion to review the pertinent decisions and the general principles which govern the determination of this question (*Panama Refining Co. v. Ryan* (293 U. S. 388)). The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives" (art. I, sec. 1). And the Congress is authorized "to make all laws which shall be necessary and proper for carrying into execution" its general powers (art. I, sec. 8, par. 18). The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national legislature cannot deal directly. We pointed out in the *Panama Co. case* that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained (*id.*, p. 421).

Accordingly, we look to the statute to see whether Congress has overstepped these limitations; whether Congress in authorizing "codes of fair competition" has itself established the standards of legal obligation, thus performing its

essential legislative functions, or, by the failure to enact such standards, has attempted to transfer that function to others.

The aspect in which the question is now presented is distinct from that which was before us in the case of the *Panama Co.* There the subject of the statutory prohibition was defined. (National Industrial Recovery Act, sec. 9 (c).) That subject was the transportation in interstate and foreign commerce of petroleum and petroleum products which are produced or withdrawn from storage in excess of the amount permitted by State authority. The question was with respect to the range of discretion given to the President in prohibiting that transportation (*id.*, pp. 414, 415, 430). As to the "codes of fair competition," under section 3 of the act, the question is more fundamental. It is whether there is any adequate definition of the subject to which the codes are to be addressed.

Fair Competition Not Defined Under Act

What is meant by "fair competition" as the term is used in the act? Does it refer to a category established in the law, and is the authority to make codes limited accordingly? Or is it used as a convenient designation for whatever set of laws the formulators of a code for a particular trade or industry may propose and the President may approve (subject to certain restrictions), or the President may himself prescribe, as being wise and beneficent provisions for the government of the trade or industry in order to accomplish the broad purposes of rehabilitation, correction, and expansion which are stated in the first section of title I?⁹

The act does not define "fair competition." "Unfair competition," as known to the common law, is a limited concept. Primarily, and strictly, it relates to the palming off of one's goods as those of a rival trader (*Goodyear Manufacturing Co. v. Goodyear Rubber Co.*, (128 U. S. 598, 604); *Howe Scale Co. v. Wyckoff, Seamans & Benedict* (198 U. S. 118, 140); *Hanover Milling Co. v. Metcalf* (240 U. S. 403, 413)). In recent years its scope has been extended. It has been held to apply to misappropriation as well as misrepresentation, to the selling of another's goods as one's own—to misappropriation of what equitably belongs to a competitor (*International News Service v. Associated Press* (248 U. S., 215, 241, 242)). Unfairness in competition has been predicated of acts which lie outside the ordinary course of business and are tainted by fraud, or coercion, or conduct otherwise prohibited by law¹⁰ (*id.*, p. 258). But it is evident that in its widest range, "unfair competition," as it has been understood in the law, does not reach the objectives of the codes which are authorized by the National Industrial Recovery Act. The codes may, indeed, cover conduct which existing law

⁹That section, under the heading "Declaration of Policy," is as follows:

"Section 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of co-operative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

¹⁰See cases collected in *Nims on Unfair Competition and Trade Marks*, ch. I, sec. 4, p. 19, and ch. XIX.

condemns, but they are not limited to conduct of that sort. The Government does not contend that the act contemplates such a limitation. It would be opposed both to the declared purposes of the act and to its administrative construction.

"Unfair Methods of Competition"

The Federal Trade Commission Act (sec. 5)¹¹ introduced the expression "unfair methods of competition," which were declared to be unlawful. That was an expression new in the law. Debate apparently convinced the sponsors of the legislation that the words "unfair competition," in the light of their meaning at common law, were too narrow. We have said that the substituted phrase has a broader meaning, that it does not admit of precise definition, its scope being left to judicial determination as controversies arise (*Federal Trade Commission v. Raladam Co.* (283, U. S. 643, 648, 649); *Federal Trade Commission v. Keppel* (291 U. S. 304, 310-312)). What are "unfair methods of competition" are thus to be determined in particular instances, upon evidence, in the light of particular competitive conditions and of what is found to be a specific and substantial public interest (*Federal Trade Commission v. Beech-Nut Co.* (257 U. S. 441, 453); *Federal Trade Commission v. Klesner* (280 U. S. 19, 27, 28); *Federal Trade Commission v. Raladam Co.*, *supra*; *Federal Trade Commission v. Keppel*, *supra*; *Federal Trade Commission v. Algoma Co.* (291 U. S. 67, 73)). To make this possible, Congress set up a special procedure. A commission, a quasi-judicial body, was created. Provision was made for formal complaint, for notice and hearing, for appropriate findings of fact supported by adequate evidence, and for judicial review to give assurance that the action of the commission is taken within its statutory authority (*Federal Trade Commission v. Raladam Co.*, *supra*; *Federal Trade Commission v. Klesner*, *supra*).¹²

In providing for codes, the National Industrial Recovery Act dispenses with this administrative procedure and with any administrative procedure of an analogous character. But the difference between the code plan of the Recovery Act and the scheme of the Federal Trade Commission Act lies not only in procedure but in subject matter. We cannot regard the "fair competition" of the codes as antithetical to the "unfair methods of competition" of the Federal Trade Commission Act. The "fair competition" of the codes has a much broader range and a new significance. The Recovery Act provides that it shall not be constructed to impair the powers of the Federal Trade Commission, but, when a code is approved, its provisions are to be the "standards of fair competition" for the trade or industry concerned, and any violation of such standards in any transaction in or affecting interstate or foreign commerce is to be deemed "an unfair method of competition" within the meaning of the Federal Trade Commission Act (sec. 3(b)).

For a statement of the authorized objectives and content of the "codes of

¹¹Act of September 26, 1914, c. 311, 35 Stat. 717, 719, 720.

¹²The Tariff Act of 1930 (sec. 337, 46 Stat. 703), like the Tariff Act of 1922 (sec. 316, 42 Stat. 943), employs the expressions "unfair methods of competition" and "unfair acts" in the importation of articles into the United States, and in their sale, "the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States." Provision is made for investigation and findings by the Tariff Commission, for appeals upon questions of law to the United States Court of Customs and Patent Appeals, and for ultimate action by the President when the existence of any "such unfair method or act" is established to his satisfaction.

fair competition" we are referred repeatedly to the "declaration of policy" in section 1 of title I of the Recovery Act. Thus, the approval of a code by the President is conditioned on his finding that it "will tend to effectuate the policy of this title" (sec. 3(a)). The President is authorized to impose such conditions "for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared" (*id.*). The "policy herein declared" is manifestly that set forth in section 1. That declaration embraces a broad range of objectives. Among them we find the elimination of "unfair competitive practices." But even if this clause were to be taken to relate to practices which fall under the ban of existing law, either common law or statute, it is still only one of the authorized aims described in section 1. It is there declared to be "the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of co-operative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."¹³

Under section 3, whatever "may tend to effectuate" these general purposes may be included in the "codes of fair competition." We think the conclusion is inescapable that the authority sought to be conferred by section 3 was not merely to deal with "unfair competitive practices" which offend against existing law, and could be the subject of judicial condemnation without further legislation, or to create administrative machinery for the application of established principles of law to particular instances of violation. Rather, the purpose is clearly disclosed to authorize new and controlling prohibitions through codes of laws which would embrace what the formulators would propose, and what the President would approve, or prescribe, as wise and beneficent measures for the government of trade and industries in order to bring about their rehabilitation, correction, and development, according to the general declaration of policy in section 1. Codes of laws of this sort are styled "codes of fair competition."

We find no real controversy upon this point, and we must determine the validity of the code in question in this aspect. As the Government candidly says in its brief: "The words 'policy of this title' clearly refer to the 'policy' which Congress declared in the section entitled 'declaration of policy'—section 1. All of the policies there set forth point toward a single goal—the rehabilitation of industry and the industrial recovery which unquestionably was the major policy of Congress in adopting the National Industrial Recovery Act." And that this is the controlling purpose of the code now before us appears both from its repeated declarations to that effect and from the scope of its requirements. It will be observed that its provisions as to the hours and wages of employees and its "general labor provisions" were placed in separate articles, and these were not

¹³See Note 9.

included in the article on "trade practice provisions" declaring what should be deemed to constitute "unfair methods of competition." The Secretary of Agriculture thus stated the objectives of the Live Poultry Code in his report to the President, which was recited in the Executive order of approval:

"That said code will tend to effectuate the declared policy of title I of the National Industrial Recovery Act as set forth in section 1 of said act in that the terms and provisions of such code tend to: (a) Remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purpose of co-operative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry and to conserve natural resources."

Delegation of Legislative Power Inconsistent with Constitutional Prerogatives of Congress

The Government urges that the codes will "consist of rules of competition deemed fair for each industry by representative members of that industry—by the persons most vitally concerned and most familiar with its problems." Instances are cited in which Congress has availed itself of such assistance; as, for example, in the exercise of its authority over the public domain, with respect to the recognition of local customs or rules of miners as to mining claims,¹⁴ or, in matters of a more or less technical nature, as in designating the standard height of drawbars.¹⁵ But would it be seriously contended that Congress could delegate its legislative authority to trade or industrial associations or groups so as to empower them to enact the laws they deem to be wise and beneficent for the rehabilitation and expansion of their trade or industries? Could trade or industrial associations or groups be constituted legislative bodies for that purpose because such associations or groups are familiar with the problems of their enterprises? And, could an effort of that sort be made valid by such a preface of generalities as to permissible aims as we find in section 1 of title 1? The answer is obvious. Such a delegation of legislative power is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress.

The question, then, turns upon the authority which section 3 of the Recovery act vests in the President to approve or prescribe. If the codes have standing as penal statutes, this must be due to the effect of the Executive action. But Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry. See *Panama Refining Co. v. Ryan*, *supra*, and cases there reviewed.

Breadth of President's Discretion

Accordingly we turn to the Recovery Act to ascertain what limits have been

¹⁴Act of July 26, 1866 (ch. 262, 14 Stat. 251); *Jackson v. Roby* (109 U. S. 440, 441); *Erhardt v. Board* (113 U. S. 527, 535); *Buite City Water Co. v. Baker* (196 U. S. 119, 126).

¹⁵Act of Mar. 2, 1893 (ch. 196, 27 Stat. 531); *St. Louis & Iron Mountain Railway Co. v. Taylor* (210 U. S. 281, 286).

set to the exercise of the President's discretion. First the President, as a condition of approval, is required to find that the trade or industrial associations or groups which propose a code, "impose no inequitable restrictions on admission to membership" and are "truly representative." That condition, however, relates only to the status of the initiators of the new laws and not to the permissible scope of such laws. Second, the President is required to find that the code is not "designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them." And to this is added a proviso that the code "shall not permit monopolies or monopolistic practices." But these restrictions leave virtually untouched the field of policy envisaged by section 1, and in that wide field of legislative possibilities the proponents of a code refraining from monopolistic designs may roam at will, and the President may approve or disapprove their proposals as he may see fit. That is the precise effect of the further finding that the President is to make—that the code "will tend to effectuate the policy of this title." While this is called a finding, it is really but a statement of an opinion as to the general effect upon the promotion of trade or industry of a scheme of laws. These are the only findings which Congress has made essential in order to put into operation a legislative code having the aims described in the Declaration of Policy.

Nor is the breadth of the President's discretion left to the necessary implications of this limited requirement as to his findings. As already noted, the President in approving a code may impose his own conditions, adding to or taking from what is proposed, as "in his discretion" he thinks necessary "to effectuate the policy" declared by the act. Of course, he has no less liberty when he prescribes a code on his own motion or on complaint and he is free to prescribe one if a code has not been approved. The act provides for the creation by the President of administrative agencies to assist him, but the action or reports of such agencies, or of his other assistants—their recommendations and findings in relation to the making of codes—have no sanction beyond the will of the President, who may accept, modify, or reject them as he pleases. Such recommendations or findings in no way limit the authority which section 3 undertakes to vest in the President with no other conditions than those there specified. And this authority relates to a host of different trades and industries, thus extending the President's discretion to all the varieties of laws which he may deem to be beneficial in dealing with the vast array of commercial and industrial activities throughout the country.

Code of Law Under Interstate Commerce Act.

Such a sweeping delegation of legislative power finds no support in the decisions upon which the Government especially relies. By the Interstate Commerce Act, Congress has itself provided a code of laws regulating the activities of the common carriers subject to the act, in order to assure the performance of their services upon just and reasonable terms, with adequate facilities and without unjust discrimination. Congress from time to time has elaborated its requirements, as needs have been disclosed. To facilitate the application of the standards prescribed by the act, Congress has provided an expert body. That administrative agency, in dealing with particular cases, is required to act upon notice and hearing, and its orders must be supported by findings of fact which in turn are sus-

tained by evidence (*Interstate Commerce Commission v. Louisville & Nashville Railroad Co.*, 227 U. S. 88; *Florida v. United States*, 282 U. S. 194; *United States v. Baltimore & Ohio Railroad Co.*, 293 U. S. 454). When the Commission is authorized to issue, for the construction, extension or abandonment of lines, a certificate of "public convenience and necessity," or to permit the acquisition by one carrier of the control of another, if that is found to be "in the public interest," we have pointed out that these provisions are not left without standards to guide determination. The authority conferred has direct relation to the standards prescribed for the service of common carriers and can be exercised only upon findings, based upon evidence, with respect to particular conditions of transportation (*New York Central Securities Co. v. United States*, 287 U. S. 12, 24, 25; *Texas & Pacific Railway Co. v. Gulf, Colorado & Santa Fe Railway Co.*, 270 U. S. 266, 273; *Chesapeake & Ohio Railway Co. v. United States*, 283, U. S. 35, 42).

Similarly, we have held that the Radio Act of 1927¹⁶ established standards to govern radio communications and, in view of the limited number of available broadcasting frequencies, Congress authorized allocation and licenses. The Federal Radio Commission was created as the licensing authority, in order to secure a reasonable equality of opportunity in radio transmission and reception. The authority of the Commission to grant licenses "as public convenience, interest, or necessity requires" was limited by the nature of radio communications, and by the scope, character, and quality of the services to be rendered and the relative advantages to be derived through distribution of facilities. These standards established by Congress were to be enforced upon hearing, and evidence, by an administrative body acting under statutory restrictions adapted to the particular activity (*Radio Commission v. Nelson Brothers Co.* (289 U. S. 266)).

In *Hampton & Co. v. United States* (276 U. S. 394) the question related to the "flexible tariff provision" of the Tariff Act of 1922.¹⁷ We held that Congress had described its plan "to secure by law the imposition of customs duties on articles of imported merchandise which should equal the difference between the cost of producing in a foreign country the articles in question and laying them down for sale in the United States, and the cost of producing and selling like or similar articles in the United States." As the differences in cost might vary from time to time, provision was made for the investigation and determination of these differences by the executive branch so as to make "the adjustments necessary to conform the duties to the standard underlying that policy and plan" (*id.*, pp. 404, 405). The Court found the same principle to be applicable in fixing customs duties as that which permitted Congress to exercise its rate-making power in interstate commerce "by declaring the rule which shall prevail in the legislative fixing of rates" and then remitting "the fixing of such rates" in accordance with its provisions to a rate-making body" (*id.* p. 409). The Court fully recognized the limitations upon the delegation of legislative power (*id.*, pp. 408-411).

Section 3 of Recovery Act Without Precedent

To summarize and conclude upon this point: Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry, or acti-

¹⁶Act of February 23, 1927, c. 169, 44 Stat. 1162, as amended by the act of March 28, 1928, c. 263, 45 Stat. 373.

¹⁷Act of September 21, 1922, c. 356, title III, sec. 315, 42 Stat. 858, 941.

vity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction, and expansion described in section one. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.

Application of Provisions of Code to Intrastate Transactions

Second. The question of the application of the provisions of the Live Poultry Code to intrastate transactions. Although the validity of the codes (apart from the question of delegation) rests upon the commerce clause of the Constitution, section 3 (a) is not in terms limited to interstate and foreign commerce. From the generality of its terms, and from the argument of the Government at the bar, it would appear that section 3 (a) was designed to authorize codes without that limitation. But under section 3 (f) penalties are confined to violations of a code provision "in any transaction in or affecting interstate or foreign commerce." This aspect of the case presents the question whether the particular provisions of the Live Poultry Code, which the defendants were convicted for violating and for having conspired to violate, were within the regulating power of Congress.

These provisions relate to the hours and wages of those employed by defendants in their slaughterhouses in Brooklyn and to the sales there made to retail dealers and butchers.

(1) Were these transactions "in" interstate commerce? Much is made of the fact that almost all the poultry coming to New York is sent there from other States. But the code provisions, as here applied, do not concern the transportation of the poultry from other States to New York, or the transactions of the commission men or others to whom it is consigned, or the sales made by such consignees to defendants. When defendants had made their purchases, whether at the West Washington Market in New York City or at the railroad terminals serving the city, or elsewhere, the poultry was trucked to their slaughterhouses in Brooklyn for local disposition.

Interstate Transactions

The interstate transactions in relation to that poultry then ended. Defendants held the poultry at their slaughterhouse markets for slaughter and local sale to retail dealers and butchers who in turn sold directly to consumers. Neither the slaughtering nor the sales by defendants were transactions in interstate commerce (*Brown v. Houston* (114 U. S. 622, 632, 633); *Public Utilities Commission v. Landon* (249 U. S. 236, 246); *Industrial Association v. United States* (268, U. S. 64, 78, 79); *Atlantic Coast Line v. Standard Oil Co.* (275 U. S. 257, 267)).

The undisputed facts thus afford no warrant for the argument that the poultry handled by defendants at their slaughterhouse markets was in a "current" or "flow" of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the State and is there held solely for local disposition and use. So far as the poultry here in question is concerned, the flow in interstate commerce had ceased. The poultry had come to a permanent rest within the State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce and was not destined to transportation to other States. Hence, decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here. See *Swift & Co. v. United States* (196 U. S. 375, 387, 388); *Lemke v. Farmers Grain Co.* (258 U. S. 50, 55); *Stafford v. Wallace* (258 U. S. 495, 519); *Chicago Board of Trade v. Olsen* (262 U. S. 1, 35); *Tagg Bros. & Moorehead v. United States* (280 U. S. 420, 439).

(2) Did the defendants' transactions directly "affect" interstate commerce so as to be subject to Federal regulation? The power of Congress extends not only to the regulation of transactions which are part of interstate commerce but to the protection of that commerce from injury. It matters not that the injury may be due to the conduct of those engaged in intrastate operations. Thus, Congress may protect the safety of those employed in interstate transportation "no matter what may be the source of the dangers which threaten it." (*Southern Railway Co. v. United States*, 222 U. S. 20, 27). We said in *Second Employers' Liability cases* (223 U. S. 1, 51), that it is the "effect upon interstate commerce," not "the source of the injury," which is "the criterion of congressional power." We have held that, in dealing with common carriers engaged in both interstate and intrastate commerce, the dominant authority of Congress necessarily embraces the right to control their intrastate operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to secure the freedom of that traffic from interference or unjust discrimination and to promote the efficiency of the interstate service (*the Shreveport case*, 234 U. S. 342, 351, 352; *Wisconsin Railroad Commission v. Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 588). And combinations and conspiracies to restrain interstate commerce, or to monopolize any part of it, are none the less within the reach of the Anti-trust Act because the conspirators seek to attain their end by means of intrastate activities (*Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310; *Bedford Co. v. Stonecutters Association*, 274 U. S. 37, 46).

We recently had occasion, in *Local 167 v. United States* (291 U. S. 293) to apply this principle in connection with the live-poultry industry. That was a suit to enjoin a conspiracy to restrain and monopolize interstate commerce in violation of the Anti-Trust Act. It was shown that market men, teamsters, and slaughterers (shochtim) had conspired to burden the free movement of live poultry into the metropolitan area in and about New York City. Market men had organized an association, had allocated retailers among themselves, and had agreed to increase prices. To accomplish their objects, large amounts of money

were raised by levies upon poultry sold, men were hired to obstruct the business of dealers who resisted, wholesalers and retailers were spied upon and by violence and other forms of intimidation were prevented from freely purchasing live poultry. Teamsters refused to handle poultry for recalcitrant market men and members of the shoctim union refused to slaughter. In view of the proof of that conspiracy we said that it was unnecessary to decide when interstate commerce ended and when intrastate commerce began. We found that the proved interference by the conspirators "with the unloading, the transportation, the sales by market men to retailers, the prices charged and the amount of profits exacted" operated "substantially and directly to restrain and burden the untrammelled shipment and movement of the poultry," while unquestionably it was in interstate commerce. The intrastate acts of the conspirators were included in the injunction because that was found to be necessary for the protection of interstate commerce against the attempted and illegal restraint (*id.*, pp. 297, 299, 300).

The instant case is not of that sort. This is not a prosecution for a conspiracy to restrain or monopolize interstate commerce in violation of the Anti-Trust Act. Defendants have been convicted, not upon direct charges of injury to interstate commerce or of interference with persons engaged in that commerce, but of violations of certain provisions of the Live Poultry Code and of conspiracy to commit these violations. Interstate commerce is brought in only upon the charge that violations of these provisions—as to hours and wages of employees and local sales—"affected" interstate commerce.

In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. Direct effects are illustrated by the railroad cases we have cited, as, e.g., the effect of failure to use prescribed safety appliances on railroads which are the highways of both interstate and intrastate commerce, injury to an employee engaged in interstate transportation by the negligence of an employee engaged in an intrastate movement, the fixing of rates for intrastate transportation which unjustly discriminate against interstate commerce. But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control. As we said in the *Minnesota Rate cases* (230 U. S. 352, 410): "In the intimacy of commercial relations, much that is done in the superintendence of local matters may have an indirect bearing upon interstate commerce. The development of local resources and the extension of local facilities may have a very important effect upon communities less favored and to an appreciable degree alter the course of trade. The freedom of local trade may stimulate interstate commerce, while restrictive measures within the police power of the State enacted exclusively with respect to internal business, as distinguished from in-

terstate traffic, may in their reflex or indirect influence diminish the latter and reduce the volume of articles transported into or out of the State." See also *Kidd v. Pearson* (128 U. S. 1, 21); *Heisler v. Thomas Colliery Co.* (260 U. S. 245, 259, 260).

The distinction between direct and indirect effects has been clearly recognized in the application of the Anti-Trust Act. Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear (*Coronado Coal Co. v. United Mine Workers*, 268 U.S. 295, 310). But where that intent is absent, and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the Federal statute, notwithstanding its broad provisions. This principle has frequently been applied in litigation growing out of labor disputes (*United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 410, 411; *United Leather Workers v. Herkert*, 265 U. S. 457, 464-467; *Industrial Association v. United States*, 268 U. S. 64, 82; *Levering & Garrigues Co. v. Morrin*, 289 U. S. 103, 107, 108). In the case last cited we quoted with approval the rule that had been stated and applied in *Industrial Association v. United States*, *supra*, after review of the decisions, as follows: "The alleged conspiracy and the acts here complained of spent their intended and direct force upon a local situation, for building is as essentially local as mining, manufacturing, or growing crops, and if, by resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act."

While these decisions related to the application of the Federal Statute, and not to its constitutional validity, the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the Federal power, and for all practical purposes we should have a completely centralized government. We must consider the provisions here in question in the light of this distinction.

Hours and Wages of Employees in Slaughterhouse Markets Have No Relation to Interstate Commerce

The question of chief importance relates to the provisions of the code as to the hours and wages of those employed in defendants' slaughterhouse markets. It is plain that these requirements are imposed in order to govern the details of defendants' management of their local business. The persons employed in slaughtering and selling in local trade are not employed in interstate commerce. Their hours and wages have no direct relation to interstate commerce. The question of how many hours these employees should work and what they should be paid differs in no essential respect from similar questions in other local businesses which handle commodities brought into a State and there dealt in as a part of its internal commerce. This appears from an examination of the considerations urged by the Government with respect to conditions in the poultry trade. Thus the Government argues that hours and wages affect prices; that slaughterhouse men sell at a small margin above operating costs; that labor

represents 50 to 60 per cent of these costs; that a slaughterhouse operator paying lower wages or reducing his cost by exacting long hours of work translates his saving into lower prices; that this results in demands for a cheaper grade of goods; and that the cutting of prices brings about a demoralization of the price structure. Similar conditions may be adduced in relation to other businesses. The argument of the Government proves too much. If the Federal Government may determine the wages and hours of employees in the internal commerce of a State because of their relation to cost and prices and their indirect effect upon interstate commerce, it would seem that a similar control might be exerted over other elements of cost, also affecting prices, such as the number of employees, rents, advertising, methods of doing business, &c. All the processes of production and distribution that enter into cost could likewise be controlled. If the cost of doing an intrastate business is in itself the permitted object of Federal control, the extent of the regulation of cost would be a question of discretion and not of power.

The Government also makes the point that efforts to enact State legislation establishing high labor standards have been impeded by the belief that unless similar action is taken generally commerce will be diverted from the States adopting such standards, and that this fear of diversion has led to demands for Federal legislation on the subject of wages and hours. The apparent implication is that the Federal authority under the commerce clause should be deemed to extend to the establishment of rules to govern wages and hours in intrastate trade and industry generally throughout the country, thus overriding the authority of the States to deal with domestic problems arising from labor conditions in their internal commerce.

It is not the province of the Court to consider the economic advantages or disadvantages of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it. Our growth and development have called for wide use of the commerce power of the Federal Government in its control over the expanded activities of interstate commerce and in protecting that commerce from burdens, interferences, and conspiracies to restrain and monopolize it. But the authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several States" and the internal concerns of a State. The same answer must be made to the contention that is based upon the serious economic situation which led to the passage of the Recovery Act — the fall in prices, the decline in wages and employment, and the curtailment of the market for commodities. Stress is laid upon the great importance of maintaining wage distributions which would provide the necessary stimulus in starting "the cumulative forces making for expanding commercial activity." Without in any way disparaging this motive, it is enough to say that the recuperative efforts of the Federal Government must be made in a manner consistent with the authority granted by the Constitution.

Attempt to Fix Hours and Wages Not a Valid Exercise of Federal Power

We are of the opinion that the attempt through the provisions of the code to fix the hours and wages of employees of defendants in their intrastate business was not a valid exercise of Federal power.

The other violations for which defendants were convicted related to the making of local sales. Ten counts, for violation of the provision as to "straight killing," were for permitting customers to make "selections of individual chickens taken from particular coops and half coops." Whether or not this practice is good or bad for the local trade, its effect, if any, upon interstate commerce was only indirect. The same may be said of violations of the code by intrastate transactions consisting of the sale "of an unfit chicken" and of sales which were not in accord with the ordinances of the city of New York. The requirement of reports as to prices and volumes of defendants' sales was incident to the effort to control their intrastate business.

In view of these conclusions, we find it unnecessary to discuss other questions which have been raised as to the validity of certain provisions of the code under the due-process clause of the fifth amendment.

On both the grounds we have discussed, the attempted delegation of legislative power, and the attempted regulation of intrastate transactions which affect interstate commerce only indirectly, we hold the code provisions here in question to be invalid and that the judgment of conviction must be reversed.

No. 854—reversed.

No. 864—affirmed.

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