

LEGAL AND LEGISLATIVE ASPECTS OF ECONOMIC MOBILIZATION

9 April 1954

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INDUSTRIAL COLLEGE OF THE ARMED FORCES

Washington, D. C.

Mr. Henry H. Fowler, formerly director of the Office of Defense Mobilization and administrator of the Defense Production Administration, was born in Roanoke, Virginia, 5 September 1908. He was graduated from Yale University Law School with an LL. B. degree in 1932 and received his J. S. D. degree the following year. He has served the United States in various posts during periods of national emergency through the past two decades. During World War II he served as assistant general counsel to the War Production Board and its predecessor agencies. In 1944 Mr. Fowler became economic adviser of the U. S. Mission for Economic Affairs in London and later served as special assistant to the United States member of Combined Production and Resources Board and special assistant to the Foreign Economic Administrator. In 1946 he entered private law practice in Washington, D. C., organizing the firm of Fowler, Leva, Hawes and Symington, specializing in corporate law. He continued in practice until September 1951, when he reentered Government service to serve as deputy administrator of the National Production Authority. He served in this capacity until named as administrator of the agency on 8 January 1952. On 1 June 1952 he was named as Defense Production Administrator. On 8 September 1952, Mr. Fowler was appointed to fill the directorship of the Office of Defense Mobilization by President Truman in addition to continuing as Defense Production administrator, serving in both capacities until 20 January 1953, when he resigned to reenter his old firm.

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COLONEL BARTLETT: It is obvious that the basis or foundation of any economic-mobilization plan is its legal and legislative authority. No system will work unless it will hold up in the Supreme Court.

In June 1947 today's speaker delivered his first lecture to the Industrial College on this subject. You will find it in our library, and it is still the best authority that you can find on the subject. Times have changed, of course, and we have factors in the problem today, in an atomic age, that did not exist then. We feel fortunate that we are able to have Mr. Fowler speak to us again today, revising his talk in the light of today's factors.

You are all familiar with Mr. Fowler's record, of his eminent service to the Government as assistant general counsel of WPB during the war, and on the U. S. Mission for Economic Affairs to London, and you know he was the head of Office of Defense Mobilization (ODM) during the last Administration. I don't know where we could have found a man who is better qualified by experience and who has been through the mill on this subject to talk to us about the legal and the legislative basis for economic mobilization.

Mr. Fowler, it is a privilege and an honor to introduce you to this class. Gentlemen, Mr. Henry H. Fowler.

MR. FOWLER: Thank you. Gentlemen: It is indeed a pleasure for me to return and see a group of new faces, realizing that the mill is still turning and, most important of all, that we are pursuing constantly the process of learning.

Now, this morning, to treat the subject of "Legal and Legislative Aspects of Economic Mobilization," I have tried in a rather general way to anticipate Unit XII, as I understand it, in the curriculum, which is a synthesis of the various phases of the course, an effort made to project the past experience in the light of new factors. The first item of business today is to stress as strongly as I can something that undoubtedly has been dinned over the weeks and months but cannot be too often repeated, namely, the importance of a new look at our subject.

Rather than review the now familiar legal and legislative aspects of past economic mobilizations, let us look to the future. Specifically, I shall attempt to assess in what must be, considering the time, a very superficial way, the impact of recent political, military, and technological changes on these legal and legislative aspects of economic mobilization. To use a term of recent popular coinage, let us take "a new look" at our subject, particularly in the light of the new look since World War II in our national security posture.

For just as a reliance upon weapons of the last war invites defeat in the next one, so will an unimaginative dependence upon the legal tools of previous economic mobilizations diminish the effectiveness of any total mobilization that the future may require.

Clausewitz, in his classic "On War" observed that the conduct of war is, of necessity, removed from the realm of exact theory and based upon the calculation of probabilities. Our planning and execution in the legal and legislative field of mobilization, as in all other fields, must be based upon a calculation of probabilities. What are the sources of our military strength and weakness which, under various circumstances, may bring victory or defeat and what changes in the situation create new probabilities which we must carefully calculate?

Our strength is the overwhelming industrial power of the United States with its accompaniment of sizable quantities of manpower capable in the factory and on the field of battle. In two tests in our time, this Nation has proved to be the most powerful military nation, when, and I underscore that "when," it had converted its vast resources to warmaking by effective economic mobilization.

But both of these tests have occurred under circumstances in which our weaknesses were minimized. One of your former Commandants, General A. W. Vanaman, has wisely remarked that "the Achilles heel of American military power is time," and that "in World War I and World War II the required time was bought by the blood and sacrifice of our allies." Those of us who have had any experience in past economic mobilizations can testify to the man that time and lead time are the principal obstacles to the mass production of the winning weapons and equipment in the bewilderingly complex technological world in which we live. Now our country must face the probability that in any future war requiring total economic mobilization, it may not have the preparation time provided by the blood and sacrifice of strong and effective allies.

For another phenomenon has been brought upon the face of the earth to require the recalculation of probabilities--the technological revolution affecting military science and national security in the field of atomic energy, electronics, chemicals, and jet propulsion.

Today, for the first time since 1776, it seems probable that an enemy can attack our country with little or no warning and lay the foundation for victory, unless the United States is prepared adequately to meet this new probability. With the full realization of the impact of the hydrogen bomb on the great urban and industrial complexes that characterize much of America's industrial strength, what was once the greatest single element of our strength may become an additional weakness--vulnerability of industrial concentrations to atomic attack.

So we must reappraise the theories and lessons of economic mobilization in our last two major wars in the light of the new probabilities of time and enemy damage to our industrial system. Let us carefully fix some of them in mind.

The United States may not be cushioned against the impact of any next war as it has been in the past two. They were fought far from our own shores, and we had ample time to build up our strength to add our weight to the common effort of allies in possession of a preponderance of the world's resources and population. Any next war, as we all know, may very well strike first on the North American continent. America can no longer depend upon powerful allies to bear the initial pressure until it is prepared. Survival may depend on how well the Nation is prepared to immediately withstand the onslaught of enemy forces. Starting from whatever level of peace or cold-war preparedness the United States is likely to have, it will take several years at least to overcome the inertia, to convert and gear up our economy to produce the intricate and complex equipment in the quantities necessary to win a modern total war. We must face the possibility that during that time if our industrial might has survived war damage, we may have lost to our enemy a considerable portion of the population, industries, and sources of raw material in Europe and Asia.

Confronted by this situation, the United States cannot afford to wait to begin its mobilization until after the bombs begin falling, after our allies may have been seized or occupied, and people and their industries have been swallowed up by an aggressor. Economic mobilization cannot just be planned for in advance. We must maintain a posture of partial mobilization and plan to effect a total one taking into account the new probabilities that did not exist in World War I and World War II.

So it is an essential part of the legal and legislative phase of economic mobilization that our Government have today the tools and procedures for building up and maintaining an adequate force in being. Our military establishment must be able to fight effectively in the opening phase with sufficient reserves to provide an initial striking and holding force behind which the Nation can begin to achieve total mobilization. In addition to supplying the finished weapons necessary for an adequate force in being, we must create now, and continue to maintain indefinitely, an adequate mobilization base--industrial capacity including all elements in the production process from raw materials, facilities, tools, organization, and manpower, and last, but far from least, technological and production engineering. This mobilization base must be triggered to transform our resources into the required numbers of the most modern and effective weapons our technology permits in the shortest possible time.

This industrial mobilization base, including all of the elements mentioned, must take on another new dimension--it must have built in a post-attack-survival value. For this is the probability that a continental air defense, no matter how intelligently conceived and faithfully executed, will not prevent the initial and perhaps periodic loss of substantial quantities of skilled labor and industrial plant as a result of thermonuclear bombing. Reasonable moves to decentralize human and industrial targets of atomic war and the devising in advance of policies, programs, and procedures to effect the highest degree of total mobilization possible under the circumstances that transpire is the task ahead.

Having suggested what I believe to be the most important focus of emphasis for your consideration of our topic, I, like you, am staggered at the prospect and the temptation is great to pause in awful contemplation. But we must try to sharpen with specifics this "new look" at the legal and legislative aspects of economic mobilization.

It is not the time nor the occasion for your speaker to analyze and evaluate the present laws on the books, including appropriation acts, and the various administrative regulations and procedures to determine their adequacy for the current and immediate task of maintaining an adequate partial mobilization. This, as I have said, is the indispensable keystone for total mobilization in the event of total war. In the event anyone is interested, I can only refer you to my last quarterly report to the President on 1 January 1953 as Director of Defense Mobilization, in which I tried to outline in a fairly concrete way "The Job Ahead for Defense Mobilization.

That report develops better than I could hope to develop, today, my firm conviction that if mobilization preparation is confined to planning for it, the preparation is ineffective and inexcusable. Under the present conditions there must be a sensible combination of current everyday mobilization action plus intelligent and detailed planning for future action, taking into adequate account the contingencies that are probable. While it is not sufficient standing alone, the planning for future action in the event total mobilization becomes necessary is a most important half of the loaf.

I should add that at the time I was director of Defense Mobilization, ODM was not charged with planning for full mobilization but with the conduct of the action or partial mobilization then under way. The planning for M-day was the responsibility of the National Resources Planning Board which subsequently, in the Reorganization Plan No. 3 of June 1954, was abolished and its functions transferred to the present ODM. I add this personal note to make clear my amateur status as a planner. My experience in mobilization has always been in the action or administration phase and I would not wish to pose as a former expert on planning.

I shall confine my remaining remarks to some aspects of the planning of legal and legislative activities so that the Nation would be prepared to carry on adequately and effectively that phase of economic mobilization, should it become necessary.

I believe that this new look or assessment of probabilities requires-- and this is the second point--standby mobilization legislation and a great deal of concrete legal planning in advance. I wish to develop the background of that personal conclusion very briefly.

In any advanced society capable of waging a modern war, the law and the legal process, using those terms in their broad meaning, play a vital role. They provide methods of giving order, organization, and efficiency to a collective national effort that is generally referred to as mobilization. Whether the law takes the form of statutes, administrative orders, or regulations, directives, manuals of procedure, administrative directions, or what not, we all start on the basic premise that economic mobilization, particularly, moves along on the crest of a wave of paper. Whether we like it or not, that happens to be the device and method by which we can make this great economic and industrial society rise to the challenge of mobilization. While the pen or mimeograph machine or typewriter is not mightier than the sword, together they assume alongside of it a position of great importance in a total war effort.

What I have said up to now is true of any modern war organization, whether it be in this country or in any other great industrial power. But in the United States, much more is involved in legal and legislative aspects of mobilization than merely giving order, organization, and efficiency to the effort, which would be true perhaps to some degree of a similar effort in the USSR or prewar Germany. That "much more" of concern with law and legislation is a derivative of our constitutional form of Government.

An important fact, so ably emphasized some years ago by President Eisenhower in his remarks to a graduating class at West Point, is that we, perhaps more than any other power, must wage a war on the basis of a free society which in the final analysis fights in order to preserve free institutions managed by free men under a so-called rule of law, rather than the dictate of a given individual or select group of individuals. Paradoxically, we fight in order to remain free from the kind of national discipline which victory usually requires. Hence each war effort must be conducted, not only with the objective of victory, but with the long-term objective of emerging from the conflict somewhat the same kind of people that we were when we went in. That deference to and concern with legislation, laws, and legal procedures of a higher order is the fundamental difference between the job of the American engaged in economic mobilization and his opposite number in almost any other nation's armed forces, except those of the English-speaking peoples whose constitutions and processes are quite similar to our own.

A leading commentator has summarized this fundamental fact by noting that the power of the United States Government to wage war

"obliterates neither those restraints on governmental action which result from the structure and constitutionally prescribed procedures of the national government, nor yet those which result from the safeguards that the Constitution throws about private rights."

As he notes further: "Constitutional liberty and the constitutional structure are mutually involved at every turn."

This does not mean that our constitutional form of Government acts as a handicap or obstacle to success. As former Chief Justice Hughes in one of his opinions in the Supreme Court has quite aptly said: "The war power of the Federal government . . . is a power to wage war successfully, and thus . . . permits the harnessing of the entire energies of the people in a supreme cooperative effort to preserve the nation."

Our system of constitutional Government does imply, however, that this huge and total power of self-preservation be exercised to a substantial degree in harmony with our legal institutions, forms of procedure, concepts of liberty, property, and fair play, in the natural desire to emerge again from that mobilization much the same kind of people as we were when we went in.

How do we use law to achieve the order, organization, and efficiency of collective action and preserve that system which we are fighting to preserve? We embark on three types of legal or legislative activity: (1) the enactment of proper and adequate statutory delegations of authority to the executive in accordance with the constitution; (2) the translation of general statutory enactments into administrative regulations, orders, and rules which constitute the framework of administrative law within and without the Government and serve as the management tools of mobilization; (3) day-to-day administration of these regulations, orders, and directives.

One important consideration to both of these objectives is the application of the separation-of-powers doctrine which is the keystone of our system of Government. That means in simple, concrete terms the effective coordination of the President in both his role as Chief Executive and his role as Commander in Chief, the executive agencies, and the Congress, and, to a lesser degree, the continued functioning of the courts.

Now, the war powers resident under the constitution and the Federal Government come into active play by virtue of the passage of a law by Congress and the issuance of an Executive order or other instrument by the President through which he delegates and directs the use of the power available to him in his capacity as Chief Executive or Commander in Chief. Without these instruments of delegated power--statutes and Executive orders--the whole, huge machinery does not begin to function.

Working together in harmony and cooperation, the Chief Executive and the Congress possess the total power which will reflect the will and desire of the people, subject at various points to a review of the exercise of that power by the courts. Past experience in wars calling for major and sustained mobilization on the economic front has demonstrated that the courts and the judicial process do not come into full play because their process is a slow and somewhat laborious one. But nonetheless they have an important role in preserving the respect for individual, personal, and property rights and fair play that are a part of our way of life in war as well as in peace.

But without the cooperation of the Chief Executive and the Congress and its concrete and practical expression in statutes delegating the necessary authority to the executive branch to take the types of action needed on terms and conditions in the interest of national defense, our economic mobilization cannot be as effective and enduring as it might be with that coordination. Certainly it will not be in keeping with our constitutional processes if it is based solely on the exercise of Executive power. This implies a persistent and well-ordered coordination in the legal phases of economic mobilization between the appropriate departments of the Executive and the various Committees of Congress in the interest of seeing that the necessary legislation is prepared and enacted or is prepared in such form that it is available for speedy enactment when and if necessary.

In addition to this regard for the separation of powers, economic mobilization in the United States must necessarily be concerned with some aspects of what is called due process of law. Without being too technical, we can say that all encroachments on private rights, be they in the form of allocation orders, requisitions of property, directions to persons to report for certain types of military or civilian service, or what not, should conform to certain standards of fairness and equity so as to afford the individual directly affected some of the benefits of "due process of law." Put it in its simplest terms--if you are going to do something to an American, whether he is in uniform or out, he likes to see the orders. He says, "Let me see the books. What is your authority for doing this? Where do you get it?"

The existence and availability of clearly drawn and adequate orders exercising the statutory power delegated to the Executive, whether directed by the Government to an individual person or group and/or community, give effectiveness and efficiency and are in keeping with our way of conduct.

I submit to you that the new probabilities outlined earlier, and our constitutional system and mores, confront those responsible for economic mobilization in Congress and the executive branch with seeing to it that the necessary instruments are prepared and enacted or are "on ice" for enactment and execution when and if it should become necessary, with much of the process of debate and modification to adjust to the national will behind us.

Now, why does the new look at economic mobilization with its emphasis on time and the probability of thermonuclear bombing of some of our

large industrial and urban communities suggest this flat conclusion that standby legislation be enacted?

I submit that these two new factors create a strong case for at least four important types of planning for economic mobilization now in advance of any total or full mobilization over and above those activities which are a part of any current defense production. These are: The preparation and enactment now of a portfolio of standby legislation that could be used immediately to initiate the buildup toward full mobilization in the early days and months of any total war. Second, the drafting and maintenance now of "on the shelf" administrative regulations, orders, and instructions that would be necessary to set in execution in the early weeks and months of a total war an effective economic mobilization, to the degree that it is practicable. Third, the maintenance of an adequate staff in peacetime or cold war such as characterizes the present which can provide a cadre of trained personnel for staff guidance in the early buildup of full economic mobilization. Fourth, the maintenance of adequate liaison and training programs for personnel in the Government outside the current mobilization agencies and outside the Government and Washington in the organizations of industry and labor and State and local governments.

Why do the new probabilities dictate this departure from the old theories of World Wars I and II? While it may be considered by some to be a bit fanciful, let us consider what might happen if an initial attack with thermonuclear weapons succeeded in devastating Washington and certain other large industrial areas, disorganizing the Federal establishment for a period of time and depriving us of the initial use of some of our important economic and human resources. While immediate retaliation by the United States Strategic Air Command could be assumed, there would inevitably ensue an intermittent struggle between the forces in being, accompanied by a frantic effort of both sides to recover and rebuild an effective economic mobilization to augment those existing forces and enable them to expand until adequate to achieve victory.

With the best of intention and all-round effort, everybody wanting to help to the utmost, there would necessarily ensue a loss of valuable weeks and months while the institutional mechanisms of Government and mobilization fashioned the laws on the books and translated those laws into the complicated tools that would be necessary to make our economic machine function in the fashion of effective mobilization. The major delays, headaches, and ineffectiveness which sometimes accompanied this process during World Wars I and II would be intolerable. Absence or inadequacy of the tools of mobilization in this period are a risk the Nation cannot

afford. Reliance completely in this phase on the war powers of the President is somewhat illusory. Even Executive orders must be spelled out by proper delegations and administrative regulations before they can become effective; they will be more effective if they reflect the collaboration of the Congress.

In my opinion, the very crux of the problem of achieving practical and effective economic mobilization at the legal and legislative level in the light of the new look is the enactment now of standby legislation in advance of the emergency to which it would be directed.

I shall not debate the pros and cons of this question except to observe that it would help to make possible and practicable the detailed planning of methods of operation under the legislation, save precious time, and help to better determine what the Nation must do now that cannot be put off until a fatal day.

In leaving this key proposition, I will quote one authority, namely, President Eisenhower, in his final report as General Eisenhower, Chief of Staff, when he said:

"We have the opportunity now to enact into law the measures that will assure the necessary mobilization of men, production plants, and materials that constitute total defense. Legislation on the books, ready for application in emergency, is the first essential in the political sphere of security."

"In this regard many Americans will object that legislation for total mobilization may invite peacetime regimentation. These fears are idle. Legislative danger to our way of life is most likely to appear in a wave of hysterical measures hastily improvised to meet a war crisis. But in the immediate future, deliberately in full and open debate, seeking information from all sources, the Congress can enact laws that will assure both the maximum conversion of the nation to defense in time of need and complete safeguards against damage to our democratic system."

Now, to turn to the last phase of my discussion, what does this new look mean in terms of particular substantive areas of legal and legislative action for economic mobilization?

Whether the Government prepares and enacts on a standby or "on the shelf" basis the necessary legislative and legal instruments for economic mobilization now, as a part of our planning, or whether it defers their preparation and enactment until they are needed, it may be profitable to anticipate in a general way some of the substantive areas for legal and legislative action in the light of the new look. Of course, there are hundreds of pieces of legislation and many thousands of regulations that would be enacted in the event of full economic mobilization.

But a few are outstandingly important or serve as examples of the updating process of legal or institutional planning for mobilization and I shall concentrate my remaining remarks on a few such examples.

1. Legislative authority in the President to redistribute functions among the departments and agencies of Government and create new agencies where required.

The creaking machinery of Government functions slowly at best. The laborious process which was marked in World War II by the passage of months, even years, in the evolution of Government organizations to the posture of a full mobilization organization in 1943 does not commend itself for the future. Neither would its excessive concentration in a single geographical area such as Washington, vulnerable to thermonuclear obliteration, advance legislation providing for the effective utilization of various departments and agencies, particularly the regional and local offices, adequate dispersal and yet coordination through adequate means of communication, and the fitting of new agencies and personnel into the structure of Government. All this must be contemplated and provided for intelligently.

2. Legislation permitting the prompt and efficient recruitment of the best available personnel to manage and administer economic mobilization with appropriate exemptions from normal civil-service restrictions.

It was determined even in the Korean emergency in the Defense Production Act of 1950 that the President should be given authority to recruit so-called "without compensation" personnel under certain terms and conditions apart from the usual standards and regulations of civil service. In any total economic mobilization, this power would have to be exercised on a broad basis to bring to the process the know-how and number of outside personnel. Moreover, it is hoped that the delays and frustrations that have characterized previous efforts to wheedle and persuade the necessary expert personnel to assume their posts of duty could be avoided.

Also, it would make for a much more efficient and effective effort if this personnel in addition to the industrial or economic background for the job had some specialized training and experience in the science and technique of economic mobilization in the particular sphere in which he or she would be placed.

These considerations suggest some preliminary selection of an adequate cadre of trained staff permanently on hand, and the conduct during the periods of peace or cold war of liaison and training programs for personnel outside the Government, which will make this process of absorption of new, especially trained and selected, mobilization personnel more speedy and less vulnerable to the paralysis of initial attack. Plans for the continuity of personnel management of economic mobilization involving the selection and equipping of alternate headquarters, the establishment of personnel succession lists, and similar preliminaries are indicated.

All these considerations suggest the creations of a civilian reserve corps composed of those who have served or would be capable of serving in a future economic mobilization. Such a reserve corps can be compared with the services' military reserves and will be an invaluable backlog in meeting any future emergency in terms of both the time problem and vulnerability to atomic attack. This reserve might consist of a roster of former Government executives who have returned to private life with a term of creditable service in a responsible capacity. The problem of how to train, preserve, and make such a civilian reserve corps available is one of real importance to the efficient creation and maintenance of an effective legal and institutional mobilization machinery.

3. Emergency contracting authority.

A general set-aside of limiting laws that impede the quick start-up and flow-down of initial procurement and an extension of some of the relief from limitations contained in the Armed Services Procurement Act to other agencies of Government who might have to perform procurement of an extraordinary sort during a future war are indicated. The longer term operation of desirable public policies of protecting the taxpayer, small business, labor surplus areas, and other desirable criteria for the most effective long-term mobilization should not retard prompt action in the early phase.

Legislative authority and administrative preparation for preplanned transfer and assignment of contracts in event of production interruptions

due to bombing is another example of adjusting emergency authority to the new look. If preplanned production transfers are limited to mere identification of emergency supply sources and the advance furnishing of production specifications, blueprints, and other essential information to alternate suppliers, that much is gained. If authority goes further and includes the advance placing of "orders to be produced" on a "when," "as," and "if" basis, by alternate suppliers, with advance financial support for key tools, jigs, fixtures, and long lead-time production equipment or even pilot runs, the margin of protection against sustained interruption of production may be broadened.

4. Priorities and allocation authority.

A fine example of the type of work to be commended in this area is the preservation and adaptation of the Defense Materials System for the current limited defense production in such a fashion as to make it possible to quickly restore a wartime equivalent to the Controlled Materials Plan without the long months of delay that would be necessary in reestablishing such a plan if the economy had to start from scratch.

This legal authority for priorities and allocations has been maintained on a fairly simple basis with considerable improvement in its form in the present Defense Production Act over the analogous title in the Second War Powers Act in World War II. The principal threat to an effective administration of this now relatively well-known and familiar legal authority is the great strain that would be put upon it in case atomic attack cut out for long periods substantial sources of supply of critical materials and facilities.

The adaptation to this situation would involve at least two facets. Arrangements for shifting orders accepted for delivery by the facility whose production was interrupted by the bomb damage would present a new problem for which there has been no counterpart except in the case of struck plants.

The other problem would be the administration of priorities and allocations in the damaged areas if that damage was as vast and devastating over large urban and industrial communities as present probabilities indicate. Public policy, national discipline, and firmness of administrative judgment would be put to their greatest test. The administration of the priorities and allocations power to divert our resources for reconstruction and rehabilitation at a time when many of those resources might be most

needed for the production of military goods would present a dilemma. The choice for victory would require reducing to a minimum the rehabilitation unless it over the longer term could contribute decisively to winning the victory.

Another facet would be that of administration of emergency controls within the damaged areas. Our limited experience during the Korean emergency with national disasters in the flood areas would suggest that they be sealed off from the main stream of administration, authority decentralized to the region or area of damage, and that the local administration of emergency controls in those areas be on a State, local, or regional basis, apart from the national administration of the war effort, except for the claim of those areas on that quantity of resource supply that was in the overall national interest.

5. Requisitioning or commandeering authority over property.

The previous discussion and a limited contemplation of the impact of thermonuclear bombing suggests an obvious new legal and legislative problem--namely, to delineate measures that might be utilized to effect either an emergency dispersal or a reconcentration of facilities and materials. It is likely that the national interest will require the cutting across of property rights and titles in a fairly novel fashion which would be retarded or do violence to our traditions unless it is carefully prepared and executed in the tradition of due process of law.

It presents no problem to the USSR to move industry in bulk from an old area of production to a new one. It is just the Government moving a plant of its own from one location to another, and perhaps the people in boxcars along with it. In accomplishing the same war-making result in this country, we would have to utilize new and efficient instrumentalities that would afford compensation to private persons and give them some assurance of fair play and that the moves were responsible to national necessities rather than administrative whims.

6. Adequate price, wage, and rent stabilization authority.

After the failure in the last session of Congress to achieve some fragment of standby authority in this field, in the face of damaging economic distortions that occurred in the six months following the outbreak in Korea, one can only observe that the prompt and almost instantaneous imposition of an adequate freeze or stabilization program, along the lines long

advocated by Bernard Baruch, is an indispensable element in effective economic mobilization. I submit that if we had to go six months without an effective price-and-wage-stabilization program after the outbreak of war initiated by a devastating atomic attack, it might so delay and imperil our struggle to recover and mount our most effective effort as to risk defeat.

7. Power to construct plants and facilities, the installation of equipment at privately owned plants and facilities at Government expense for the production and handling of war goods, where tax and other incentives to private industry are not adequate or efficient.

This power, utilized in past emergencies, may be much more important in any future mobilization where it may have to be more broadly exercised in the reorganization of industrial plant and its placement in speedy operation in face of or as a consequence of atomic attack. The next area of legislative authority is a natural complement to the one just discussed.

8. Authority for the creation of Government-owned corporations that can do business on a corporate basis where private institutions and corporations cannot perform the necessary tasks.

This power was used extensively in World War II with many corporations being created under section 5 (d) of the Reconstruction Finance Corporation Act. The authority is no longer in existence and was not used in the Korean buildup, except possibly if one considers the Small Defense Plants Corporation an example.

Given the efficiency and other advantages of utilizing existing institutions, whether they be private corporations, Government departments and agencies, or State and local institutions, it would be hoped that the policy would minimize the use of this authority. Nonetheless there is added to our experience in World War II the various operations that might have to be undertaken or even enlarged over that pattern because of atomic bombing. The need for authority granted but wisely employed is clear.

Here is an area where the existence of adequate standby legislation long in advance of the actual emergency would open the door for the maximum utilization of private institutions or State and local government institutions to perform various functions in preference to a resort to new Government corporations. For an isolated example, it might be possible to utilize our great insurance companies, through re-insurance of various

kinds to meet the special problems of war property damage or personal injury that must be faced. Wherever the eye turns in the sphere of economic mobilization, comparable examples come to mind.

9. Labor and manpower controls apart from selective service for military personnel.

This highly controversial area is one of the most important for advance attention. There was a substantial feeling of dissatisfaction in many quarters on this subject in World War II. Labor understandably resented the drafting and pressing of legislation from certain quarters in this field without consultation. Many others outside the ranks of labor felt that the resulting machinery left much to be desired. Perhaps it was fortunate that our bottlenecks for the most part remained in the field of materials and facilities and the Nation never reached that stage of a maximum or ideal mobilization when the overriding bottleneck was manpower.

Any future mobilization which would be confronted by initial or periodic loss or dislocation of large numbers of our most valuable workers would require methods somewhat different from those utilized in World War II. Mandatory employment ceilings on plants, the requirement of employment in shortage areas only through Government employment offices, limited and belated provision of housing, and other aids in extreme labor-shortage areas would not be likely to prove sufficient.

In our planning to meet this important legal and legislative problem, may it be noted that the success of British manpower mobilization for both military and civilian service in World War II was attributed by most of those close to it to the long and arduous planning which was done in the 1930's under the aegis of the Ministry of Labor, with the full cooperation and participation of the trade-unions, employers, and interested public agencies.

10. Special internal security authorities to protect industrial transportation, and other resources.

A recent bulletin by the FBI described the methods of detecting small atomic devices usable for sabotage. This is only one illustration of the extraordinarily high premium that must be placed upon adequate measures to protect those resources that are key to our mobilization from sabotage. The little-known but valuable work of the Resources Protection Board and other related agencies in World War II, as well as the coordination of the

FBI with industrial management and trade-union organizations, may call for legal machinery which was not envisaged in World War II when the threat of industrial sabotage seemed relatively limited.

This type of superficial analysis could be carried on in many other substantive areas, such as: (1) The authority to support private financing of Government contractors, (2) authority to seize and operate plants in the event of work stoppages for failure to fill mandatory orders, (3) authority for exemption for certain purposes or activities from the antitrust laws, (4) adequate export and import control authority, (5) adequate censorship authority, (6) special fiscal provisions such as the excess profits tax and renegotiation of contract legislation, (7) special tax amortization authority, (8) special labor disputes legislation, (9) authority and machinery for adequate coordination of our economic mobilization with that of our allies, (10) postattack production measures.

I shall devote my few remaining minutes to an outline of the plethora of legal and legislative planning and activity designed to give a postattack survival value to our great national economic organization. This is one of the key areas that demands most vigorous attention because of the new look.

The measures that may be employed fall into three basic groups: preventive measures, supply measures, and reconstruction measures.

First, there are "preventive measures" to reduce industrial attack and damage. Notable examples are: industrial dispersion both of entire facilities or unusually vulnerable key departments and other lesser measures of dispersion, deconcentration of essential production, and protective construction.

Second, there are "supply measures," some of which have been alluded to in connection with emergency contracting. They include four principal categories: (1) Preplanned production transfers from damaged to undamaged plants through advance arrangements with alternate suppliers; (2) the use of reserve stocks of end products, materials, and components, long lead-time production equipment, and essential engineering drawing specifications and the like; (3) emergency controls, attack-damage reporting systems, decision-making arrangements, and facility predeterminations; (4) individual company disaster plans.

Third, there are "reconstruction measures" which must be prepared far in advance. Despite measures to prevent damage and to offset non-preventable damage, some facilities whose production is vitally needed are

likely to be damaged or destroyed, and we must be prepared to shorten the time required for their reactivation. Measures of advance engineering planning, advance construction planning, and equipment planning, together with the early identification of the key equipment of a long lead-time character, should be provided.

To obtain a reasonably detailed picture of the possibilities of legal and legislative action in this area, I refer you to a public document entitled "Suggested Post-Attack Production Measures" issued by the ODM on 20 April 1953.

For a conclusion I should like to restate and reemphasize the basic theme of my remarks by recalling a quote from Arnold Toynbee's "A Study of History." He attributed the downfall of many great civilizations to their inability or unwillingness to keep up with the step-by-step advances in the techniques of war, which he likened to an ever-lengthening chain, saying:

"Each link has been a cycle of invention, triumph, lethargy, and disaster; and, on the precedents thus set by 3000 years of military history, from Goliath's encounter with David to the piercing of a Maginot Line and a West Wall by the thrust of mechanical cataracts and the pinpoint marksmanship of archers on winged steeds, we may expect fresh illustrations of our theme to be provided with monotonous consistency as long as mankind is so perverse as to go on cultivating the arts of war."

In two wars the United States has manifested a capacity for the invention of techniques of economic mobilization, legal and legislative, as well as technical. This inventiveness has contributed to our victory. Let us beware lest future progress in this sphere give way to lethargy. Such a course might lead to a disaster that would make our civilization but another example of Toynbee's cycle. That, in essence, is why our examination of legal and legislative aspects of economic mobilization must be in terms of a new look at the new probabilities of time and atomic attack.

Look not to the past, but to your own thinking for the future.

COLONEL BARTLETT: Mr. Fowler will now take the first question.

QUESTION: We have found in the past 15 years that we have many different shapes of emergencies. One of the barriers to the passage of standby emergency legislation has, I understand, been the reluctance of

Congress to trust the Executive to decide whether the emergency power should be in effect or not. How would you recommend that be covered in standby legislation?

MR. FOWLER: Well, my own preference would be to leave that judgment of emergency in the Executive, who, in my opinion, is in the best position to make that decision for the country at the time. However, if those who have a different view would insist that such an arrangement was unacceptable, it seems to me that one device for getting around that position would be to enact the legislation on a standby basis subject to the passage of a four-line joint resolution of the Congress declaring that an emergency existed as contemplated by the legislation; so that, instead of having the enactment of a large portfolio of detailed legislation, you would have it boiled down to the simple kind of order, a short, four-line joint resolution declaring that it was the opinion of Congress that the emergency existed. That would trigger the operation.

QUESTION: Mr. Fowler, it would seem to me that State or local legislation might take a very important part in this picture. Would you care to discuss State and local legislation and its position?

MR. FOWLER: I certainly agree with you, and I think that it is a very good point of emphasis to be added. I wish I had included it for emphasis in my remarks. Certainly, State and local legislation in the realm of civil-defense operations, in the realm of the maintenance of life and the restoration of damaged areas, all of that is the very key to what I referred to in my main remarks as an effort to seal off this process from the national mobilization machinery. Unless you had adequate State and local authority and administration, and some complementary planning in advance, it would be inevitable, in the event of a disaster, that the terrific flood of requests and prayers and petitions and what not would almost inundate the agencies of Government which have another mission to perform--and that is to bind all into together and go on with whatever is necessary to get the most effective mobilization afoot.

So, in order to prevent that from happening, some advance determination of the method and sphere of State and local administration of the devices of coordination of that administration with the Federal departments and agencies is, I think, not only the best way, the most efficient way of doing it in terms of those areas themselves that would be damaged, but also in keeping the road open for the main operation which the Federal Government would have to carry on.

I personally have not had sufficient experience in the field of, shall we say, civil-defense planning at the State and local level to be able to contribute very substantially to anything further in answer to your question.

COLONEL BARTLETT: Mr. Fowler, I see our usual closing time on the clock. I might tell you that we have always recommended to the students your original lecture to read, as we will your lecture of today, especially so when we get to the legal and legislative aspects. I certainly want to express our appreciation for the work you have done today in bringing us up to the new look on them. I am sure it is going to be just as valuable to coming classes and to this class as your original lecture was in its day. I express for the Commandant and the students our sincere appreciation for your efforts today.

MR. FOWLER: Thank you very much.

(17 May 1954--250)S/gw