

PRICE CONTROL

by

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1 Results of Price Control Efforts in the United States during the World War

There has been so much confusion of thought as to what were the gains and failures of price control efforts in the United States during the World War--there being on the one hand extravagant assertions as to the efficacy of methods and as to results attained, and on the other hand, extravagant assertions to the effect that, as a practical matter, no measurable influence upon prices was properly attributable to the work of the several Federal agencies--that it is pertinent to attempt to determine just where truth lies.

Some of the direct and indirect beneficial results of price control efforts in this period in this country may be thus summarized

a. Stabilizing of the industrial and economic life of the Nation so as to make possible the war effort put forth.

b. Stimulation of production of needed foods and other raw materials.

c. Economy in the use of supplies through the wide publicity given by the Government as to its needs and the needs of the Allies and the emphasis laid on the direct relation between conservation and victory.

d. Discouragement of hoarding for the purpose of increasing prices--accomplished through the force of public opinion and through Governmental action

e. Curtailment in the use of raw materials and labor energies in the production of non-essentials--accomplished through a variety of indirect methods.

The failures of Price Control agencies have been indicated in the two problems which we have had this year, and it is not necessary here to emphasize them again. It is needful only to indicate that such failures may be attributable, not so much to methods and principles and manner of administration, as to

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the fact that there was a general hesitancy to face the problem as a whole and to meet the whole issue in one comprehensive, all-inclusive program and to a fear that each new power granted might lodge itself permanently in our administrative structure

2. Legal Aspect of Price Control.

The story of attempts to control prices is as old as the story of organized governments. No individual or group of individuals who have seized, or who have been charged with, conduct of government have operated long without making some effort to control prices. In the United States the activities of state governments have been more conspicuous and more consistent than have those of the National Government and in consequence the legal powers of state governments in this respect have been more definitely determined. With our present economic and industrial structure, it is to be expected that the National Government will take a more and more significant part in efforts directed to the control of the essentials of human life. Because there seems to be so much uncertainty as to the legal powers of the Federal Government with respect to price control, certain principles and rules which apparently have been definitely determined may be indicated:

a. The Constitution, in almost the identical wording of the Twelve Tables of Rome promulgated 300 years before Christ, stipulates "that private property shall not be taken for public use, except after due process of law and with just compensation "

b. "Due process of law" has been uniformly interpreted in all civilized governments as referring to judicial determination, rather than legislative or administrative determination.

c. The taking of private property for public use and the use made of it are political functions exercised normally under our form of government by the legislative branch

d. Price fixing, if it operates upon property already owned and involves the owner in a loss, is the taking of private property for public use.

e. Congress may exercise its constitutional powers with reference to the taking or control of private property, or the fixing or control of prices directly, or through executive agencies.

f. The War Industries Board--either as a creature of the Council of National Defense, or as an arm of the President--had no power to fix prices.

g. An agreement forced by Governmental agencies upon individuals is not a voluntary agreement.

h. The penalty clause of Section 4 of the Lever Act is unconstitutional, because it did not set up an ascertainable offense and an ascertainable degree of guilt, but left to a jury the determination of whether an offense had been committed and what that offense had been, as well as leaving to it its normal functions of determining definite facts.

i. If Congress authorized a price fixing agency (as it did in the case of coal--the only authority it did give for fixing prices) and a coal dealer sells at a subsequently fixed price and at a loss, he cannot later call upon the Government for reimbursement. His remedy was to refuse to sell, thus compelling the Government to commandeer his property and to proceed upon definitely determined lines.

j. A continuing transaction cannot be affected by price fixing promulgated after the initial steps of the transaction have been taken.

k. Any penalty clause will be construed against the Government if it is vague or indefinite.

l. In all organized governments the right to take or use private property in emergency for public use, irrespective of legislative sanction when there is not time for appeal to the legislature for sanction, is recognized. Every public officer or citizen who exercises this right on behalf of the United States must understand that he may be later called to account in the courts and here required to justify the necessity for his act and defend himself against any charge that he proceeded in an arbitrary, or capricious, or malicious manner.

3. The Practical Aspect of Price Control

The legal aspect of price control is by no means as important as its practical aspect. It is more important to determine whether a government, given even the most arbitrary power, can successfully fix prices and how. So far as known no government has ever failed to attempt some control of prices. Every

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conceivable device and expedient has been tried and tried again. The story of price control efforts is accessible to every one interested and he who runs may read. Failure and disappointment--almost without exception--were the last words in each chapter of the story.

Efforts made in China as early as 1122 B.C. are of most interest to the student of price control, because these efforts are the only known efforts that were followed with some degree of success. For hundreds of years, and until political corruption infested administration, the Chinese Government met with marked success in its efforts to balance supply and demand and keep prices within reasonable bounds. The Chinese political theory took into account, as most price fixing theories have not, that there are two sets of interests to be considered--those of the producers and those of the consumers. They recognized the whole price question as a symptom and not the disease itself. They saw that nothing more markedly at once affects the interests of both sides than prices and that price is, therefore, the great problem for society as a whole. They conceived it to be the task of the superior man to adjust demand and supply so as to keep prices on a level in order to guarantee the cost of the producer and satisfy the wants of the consumer. The scheme worked out by them with respect to farm products is particularly interesting. In the good crop years the Government purchased a proportion of the surplus crops, thus maintaining the market price. In the poor crop years the Government sold to the consumers at the market price, thus preventing both speculation and famine. They believed that even if the Government lost money in its transactions, as a matter of fact it did not, the social benefit was greater than the public expense.

A quotation from "The economic principles of Confucius and his school" by Huan-Chang Chen, page 447, is of interest. "Prices are controlled by the government. All goods have a fixed price, and its difference is simply according to the quantity. In this way the buyers are encouraged to come in. There is the Master of Merchants in every twenty snops, to fix the price according to the cost. When there is any natural calamity, the merchants are not allowed to raise their price. By the raising and lowering of price, the government controls the supply. When a thing is not in existence, the government causes it to exist; when a thing is useful, it causes it to be abundant; when a thing is harmful, it causes it to be extinguished, when a thing is luxurious, it causes it to be lessened...There is the government bank to buy the goods which the people cannot sell, and to lend them out when the people need them. In this way the government adjusts the demand and supply, and prices are kept at a fixed level".

The Chinese view-point, coupled with a principle enunciated by Barbaroux during the time of the revolutionary governments in France, lead us to the methods and theories advanced by our own Food Administration during the World War-- which methods and theories seem best to point the way to some successful efforts in the future. The French revolutionary government tried practically every known expedient and with unvarying failure. At last Barbaroux set forth the idea that success could come only in some scheme that would enlist the aid and interest of both producer and consumer. His theory never was reduced to practice by the revolutionary governments.

The most conspicuous efforts to fix all prices, including raw materials, finished products and all manner of services, was that attempted by the Emperor Diocletian in Rome about 350 A.D. Maximum prices were set for every commodity and for every service and a penalty of death prescribed for violation. The historians tell us that the net result was failure and the law had to be repealed because of its impotence in correcting the condition of affairs. There was a general dearth of all the essentials of human life, people no longer brought provisions to markets since they could not get a reasonable price for them. Sixty years after the efforts of Diocletian, the Emperor Julian repeated the attempt in Antioch and with like results. Notice is given to these attempts because we are often assured that if a government controls wages as well as prices of commodities it can succeed.

Finally we note this quotation from an article on the subject of Price Control by Miss Mary G. Lacy of the Department of Agriculture, in the Scientific Monthly of June, 1923.

"The history of government limitation of price seems to teach one clear lesson, that in attempting to ease the burdens of the people in a time of high prices by artificially setting a limit to them, the people are not relieved but only exchange one set of ills for another which is greater. Among these ills are (1) the withholding of goods from the market, (2) the dividing of the community into two hostile camps, one only of which considers that the government acts in its interest, (3) the practical difficulties of enforcing such limitation in prices which in the very nature of the case requires the cooperation of both producer and consumer to make it effective "

During the World War Congress fixed the price of one article by legislation, i.e., wheat. The price fixed was a

minimum price and the object sought was a stimulation of production. There was argument in favor of including other items than wheat, but one now sees that to have increased the financial involvements and the administrative machinery to other commodities would have seriously interfered with governmental efficiency at a time when the Government was sufficiently implicated in governmental functions as opposed to business functions. Congress gave the President no powers to fix prices except in the case of coal. It did authorize him--an authority which was not invoked--to enter to some extent into the business of buying and selling, in addition to wheat, also flour, meal, beans and potatoes. The Lever Act, which is ordinarily referred to as a Price Control Act, was intended to free the channels of trade, so that commodities would move directly and speedily from producer to consumer. It provided penalties for hoarding, for destruction and for waste. It did set a penalty for the sale of an article at an unfair price. This feature of the bill was relatively unimportant, was invoked in but few instances, and has been declared to be unconstitutional.

The efforts of the War Industries Board in the realm of price fixing were directed solely to the securing of a reasonable price for the Government, it being generally recognized that as the predominant purchaser the Government should concern itself in the public interest in the prices it paid. The only concern the War Industries Board gave to prices in the general market was in so far as they affected prices which the Government would have to pay for its own uses.

The Food Administration had no authority to fix prices and made no attempt to fix prices. It worked through the highly stimulated force of public opinion and wide publicity. It maintained a comprehensive scheme of securing cost and price data. It published daily for particular markets and particular districts what were regarded as fair and reasonable prices. These determinations were put out as guides merely. The regulatory methods of enforcing fair and reasonable prices with respect to food were two-fold, first, the force of public opinion, and second, the licensing power which the Food Administration had and which enabled it to set up conditions which must be met by the licensees who wished to do business in any particular line. The Food Administration had certain axiomatic principles which must guide us in any plans which we make for any future price control. Mr. Hoover indicated that the standard of reasonableness should be determined as the profit which the dealer customarily enjoyed on the same commodity in the pre-war period on an even market under freely competitive conditions; and that the reasonable margin of profit

must be figured upon a cost basis, the fixing of maximum margins of profit, and the disregard of replacement value in fixing margins. The object of the licensing system, he indicated, to be to limit the price charged by every licensee to a reasonable amount over expenses, to forbid the acquisition of speculative profits from a rising market, to keep all food commodities moving in a direct line and with as little delay as practicable to the consumer, and to limit as far as practicable contracts for future delivery and dealings in future contracts.

4. Conclusion

No plans for industrial preparedness are adequate unless they take into account the question of control of essential commodities. The control of essential commodities involves the question of the control of prices. While there are certain legal difficulties and certain legal doubts, the situation has been sufficiently cleared to indicate that moving along certain lines and taking into account certain limitations, Congress has an unquestioned power either to exercise a price control directly or to exercise it through the executive branch of government. The important consideration, however, would seem to be not so much what power Congress or the President may have with respect to price control, but what methods can be employed successfully. Assuming as the purpose of price control, the assurance of an adequate supply of all commodities and services needed by the Government in time of war, the stimulation and maintenance of a high and spirited morale in the civilian population, the conserving of their uninterrupted efficiency so that they may produce what may be needed for the war effort and for their own consumption, the best methods to be employed are those which take into account both producers and consumers and depend for their enforcement upon voluntary support rather than upon governmental power. In this light then, some policy similar to that of the Food Administration operating in the whole field and freed of inadequacies and ineffective features, which experience has pointed out, would seem to be a profitable field for future study. Fortunately, success in price control efforts is more easily attainable in time of war than in time of peace.

Finally, this opinion of Doctor Simon Litman, author of *Prices and Price Control in Great Britain and the United States during the World War*--probably the standard book on the subject--may be here noted. "The experience with price regulation during the war has shown that prices can be controlled without giving rise to a great deal of evasion and without too much running counter to the competitive spirit which animates our industrial society when

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a great emergency like the recent war fires public imagination and inclines public opinion to favor any measures which are likely to advance the national cause. The best methods of control, however, are those which enlist the cooperation of the people whose interests are to be affected by price regulating measures "