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Food and Fuel Control

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FOOD AND FUEL CONTROL

IN THE present war, nationalization of industry and centralization of control have been found necessary to an extent never before attempted. The very vastness of the armies, and of the quantities of munitions and other supplies needed to keep the strength of the armies at its highest point required that the most efficient forms of industrial organization be sought out and utilized. In a nation with a single aim and a single will, that is, in a nation so organized as to wage successfully a modern war, the individual has had to sacrifice much for the good of the whole; and the individualistic competitive system has had to give way whenever found hostile to the best interests of the nation and of the "cause."

It is a trite saying that "an army fights on its stomach", but is that all? President Wilson has said that "we must all speak, act, and serve together"; and the President is unquestionably right. We have been,—each combatant nation has been,—a nation in arms. We have had to keep not only the army well fed, but the multitude of those "men behind the men behind the guns" upon whom an army depends. A soldier cannot fight well if he is emaciated; neither can an industrial worker do his best when he and his dependents face famine. Nor is it ourselves alone that we must look after. If so, we could divert from exportation a portion of those vast quantities of food which we send annually to Europe and so have plenty. The nations of Europe depend upon us. Not one neutral or belligerent nation of western Europe is self-supporting in matters of food in time of peace; and long since the farms of our allies have been deprived of multitudes of men. We have needed to send to them an increasing quantity of food. And to do this we have found that we must not only produce more than in peace times, but we must use less, must eliminate waste, and must bring into use the best and most equitable means of distribution. This is the problem that confronted our government from the very beginning of the war. How was it met?

We had before us the experiences of the other belligerents, more particularly of England and Germany. Their problems varied somewhat from ours for with them the danger had long since become acute. Germany was cut off from her usual supplies from outside; England was threatened with a ship shortage. But both England and Germany were slow in attacking this problem. Germany for the first year was in no danger of famine; England's commerce was

little impeded. And besides, the problem was of slower development, for in both countries extensive consumers' co-operative societies flourished, which restrained the greedy disciples of free competition.¹ It is estimated that England's centralized co-operative organization had three million members in 1914, and it had vast supplies on hand or ordered. It refused to take advantage of the popular necessity. In Germany, where co-operation embraced an even larger percentage of the population, a similar check on corporate and individual greediness was evident, without government interference. These means prevented panicky prices; but they did not necessarily decrease consumption. So, when the respective governments found the food supply running short they were forced to take official action, in order to limit the individual consumption. Germany by May, 1916, had a food dictator.² England assumed control at first by giving wide powers to the Board of Trade.³ Later, in December, 1916, she found a "dictator" necessary.⁴

They had delayed longer than was expedient the actual taking of control. The United States intended to profit by their experience. We had no consumers' co-operative societies on any scale.⁵ They had been tried at various times and because of insufficient capital, lack of interest, and at times ruthless underselling they had never become an important factor in our retail system. Thus we lacked even this one check on the application of the "supply and demand" theory. And the need of action was felt to be immediate. National control was advocated.

Then there was a fuel problem. Coal, next to food, is the most essential regular necessity of life. Shipping, railway traffic, industry, the home,—all must be supplied regularly and continually. Increased industry, increased shipping, vast encampments,—all necessitated more coal; and there were less producers.

When it became evident that war was inevitable, a propaganda for increased production was at once instituted. Congress aided, by increased appropriations for the Department of Agriculture for use in extending county farm agent work and for providing seeds, where need was evident.⁶ The propaganda was under the general direction of Mr. Herbert Hoover, who had attained world-wide

¹ Article in *Annals of American Academy*, Nov. 1917, by Peter Hamilton.

² *New York Times* May 28, 1916. 1; 11, 2.

³ *New York Times* Nov. 18, 1916. 3; 4, 8.

⁴ *New York Times* Dec. 5, 1916. 2; 2.

⁵ See 1.

⁶ Extra large item in special appropriation bill.

fame by his management of the distribution of supplies for the Belgian Relief Commission.

When Congress met in April, 1917, and declared war, it was of course necessary to provide at once for the raising, maintenance, and equipment of an army, and for a greater navy. The appropriate conscription, revenue, and other army legislation having been enacted, Congress very naturally proceeded to the very vital problem of food and fuel legislation.

There was already on the books one very useful law as far as production is concerned, for long before our own entrance into the War the Allied competition in our food markets had stirred the government to the enactment of a law calculated to increase production. This was the noted Federal Farm Loan Act of July 17, 1916.⁷ Its purpose was "to provide capital for agricultural development to equalize farm loans," and so forth. A Federal Farm Loan Board was authorized by the act for its enforcement. Twelve Federal Land Banks were to be established to do the banking for the board. Prospective borrowers were to form "National Farm Loan Associations." These associations were to endorse jointly farm mortgages for individual members, which mortgage would be accepted by the Farm Loan Banks as security for loans. In substance the law provides an elaborate organization for freeing the farmer,—especially the Western farmer,—from the tyranny of the Eastern money market. The success of this plan became evident at once; and in the summer of 1917, as the plan became familiar to the farmers, its adoption became widespread. In August, 1917, the Federal Farm Loan Board was able to report that eight hundred Farm Loan Associations had been chartered in two and one-half months, and that loans were being made at the rate of \$1,000,000 daily.⁸

This law together with the propaganda carried on under the direction of Mr. Hoover and of the Department of Agriculture was felt to sufficiently stimulate production. Only in the case of wheat was a real shortage feared, and this possible shortage was ascribable to the reluctance of the Western farmers to risk overproduction and consequent lower prices. To stimulate wheat production a guaranteed price was considered necessary, and to regulate distribution drastic laws were clearly indispensable.

The first law to regulate distribution was enacted under the power of Congress to regulate foreign commerce. This law, enacted June

⁷ Chap. 245, P. 346. United States Statutes 1916.

⁸ Official Bulletin Aug. 11, 1917.

15, 1917, made it a penal offense to export from the country any article which might be named by the President in any proclamation issued at his discretion, to any country named in the same proclamation in that connection, "except at such time, or times, and under such regulations and orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President, or by Congress."⁹ This was intended to preserve our own supplies of food and war materials (a) by cutting off completely supplies to Germany by way of her too-lenient neighbors, and (b) by limiting exports generally. The constitutionality of this law, based as it was upon precedents extending back almost to the foundation of the Union, has not been seriously questioned.

The first proclamation under authority of this act was issued July 9.¹⁰ "Whereas the public safety requires that succor shall be prevented from reaching the enemy," fuel, grain and grain products, fodder, and meats along with certain war materials were not to be exported except under regulations to be prescribed by the President. The rules laid down by the President are administered by the Secretary of Commerce. Thus it can be seen that while the powers granted by the act were practically complete in regard to all articles of commerce, the prime purpose of the act was the limitation of exports of food, fuel, and munitions.

By a further proclamation of August 27, 1917, all exportations of war materials, clothing materials, fuel, and foodstuffs to European neutrals were prohibited.¹¹ Moreover in substance the proclamation laid down the general rule that no article, useful in war, should be exported to any country except under regulations to be prescribed by the President, or by the Exports Administrative Board, which is empowered to administer the act. By a third proclamation the list of proscribed articles was still further increased.¹²

To complete the President's control over foreign commerce an act was passed on October 6, 1917, the essential paragraph of which, —in this connection,—is as follows:

"Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof, it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time

⁹ Chap. 30 Title VII, Sec. I, P. 225, United States Statutes 1917.

¹⁰ Page 39 Proclamations 1917.

¹¹ Page 47 Proclamations 1917.

¹² Page 50 Proclamations 1917.

or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress."¹²

Acting under authority of this law the President on November 28 issued a proclamation, naming an extensive list of war materials, foodstuffs, luxuries, ores, et cetera which were not to be imported except according to regulations issued by the President.¹⁴ The War Trade Board was to administer the regulations.

These however were minor laws, the relation of which to the problem at hand was more or less incidental. The main question of "Food Control" had to be dealt with expeditiously and squarely. The expediency of such an act was doubted by few other than those whose interests lay in the direction of unrestrained price-raising in accordance with the economic laws of free competition. Thus a Food Control law was demanded by the newspapers of the country, by platform speakers, and by innumerable petitions to Congress.¹⁵ It was seen by intelligent men that, at anywhere near normal prices, "for every important commodity the demand exceeds the supply. For coal the demand exceeds the capacity for delivery. For steel the demand is far beyond the capacity of all mills."¹⁶ This excess demand, averaging twenty per cent had increased prices in many instances since 1914, by one hundred to four hundred per cent. With labor decreasing, demand was increasing! All the great packing houses were earning multiples of their normal profits. Appeals to corporations on patriotic grounds were entirely without fruit. On June 19, 1917, Mr. Hoover declared before the Senate Committee on Agriculture that \$250,000,000 excess had been collected by middlemen and millers on flour alone in five months.¹⁷ For such reasons the belief predominated that government regulation of some kind was vitally necessary.

A food bill was introduced into the House on May 4, 1917, by Representative Lever, Chairman of the Committee on Agriculture.¹⁸ Owing to the stress of army and finance legislation, it was temporarily side-tracked but the Committee busied itself with the framing of a comprehensive bill. This was introduced into the House on

¹² Chap. 106; Sec. 11 P. 423 United States Statutes 1917

¹³ Proclamation No. 1411.

¹⁴ Note Editorials May 15 to Aug. 15.

¹⁵ Van Hise in Annals of American Academy, Nov. 1917.

¹⁶ All data from Van Hise in Annals of American Academy, Nov. 1917.

¹⁷ New York Times, May 5.

June 18, 1917, by Representative Lever. In introducing the bill he said among other things:—

“It is our duty to see that those for whom he (the farmer) toils shall not be gouged and robbed by heartless and unpatriotic intermediaries; it is our duty to see that the results of his patriotic efforts shall not be made the foot-ball of the gambler, the manipulator, the hoarder, the unconscionable food speculator and cormorant.—We intend to drive from the established agencies of distribution the market gambler—the Shylock of Commerce.”¹⁹

He further asserted that multitudes of honest men dealing in foods had asked for some such legislation as a protection so that they might not be compelled to resort to similar methods in order to keep up the fight.²⁰ Further evidence of this purpose appears in the remarks of Senators Nelson and Knox and Representative Caraway, who were among the most active advocates of the bill. Senator Nelson said:—

“[This legislation] has a two-fold purpose, Mr President. One purpose is to provide an ample supply of food and fuel for our own people and for our allies. The next is,—and that is perhaps the most difficult and most important problem—to prevent undue extortion among our own people.”²¹

Senator Knox said:—

“By a food-control law the American people are to be protected against the dissipation, in inadequacy of production, in wasteful methods of dealing and marketing, in thoughtless extravagant consumption, of those things which are the basic necessity in all we may do for the winning of the war, as well as for our national life itself, namely, food.”²²

Finally as said by Representative Caraway:—

“Some one must control these conditions in time of war, and I would infinitely rather that it should be [the President] * * * than some gambler on a board of trade. I would rather risk him who by my vote and yours is President of the

¹⁹ Congressional Record, Page 4105.

²⁰ Congressional Record, Page 4106.

²¹ Congressional Record, Page 4668.

²² Congressional Record, Page 4667.

greatest Republic beneath the sun than someone who seeks to coin into gold the tears of starving babes and the withered hands of unrequited toil."²³

The legislation as proposed made limited price-fixing possible; it made the control by the President of the distribution of food and fuel practically absolute; it provided for the fixing of a minimum price for wheat; and it provided generally for an administrative organ. Because of the hostility of special interests which, while claiming to favor the general principle of government control, still opposed its application to their particular cases, prolonged debate ensued. Especially did this debate center around the prohibition question. Innumerable petitions for prohibition as a war measure flowed into Washington, and the representatives of prohibition states made a strong effort to include provisos in that connection.²⁴ Thus the bill was delayed over a month, and when this point was settled, a movement was begun in the Senate to include an amendment providing for a joint committee of Congress to supervise war expenditures.²⁵ It took two more weeks to debate and discard this rider.

The attack on the bill was both partisan and personal. Republicans claimed to see in it an unconstitutional delegation of power to the President—and at that of a dangerously autocratic power; Democrats like Senator Reed found occasion to attack Mr. Hoover.²⁶

Still others asserted that price-fixing had everywhere failed; that government control would ruin business; that the classification of dealers was very arbitrary; and so forth. And a few actually opposed the proposed measures in their progress because they claimed that they did not go far enough. Finally on August 10th, the legislation was passed, and approved by the President in the form of two bills.

The first was an act for the purpose of "gathering authoritative information concerning the food supply, increasing production, preventing waste of food supply, regulating the distribution thereof," and so forth.²⁷ The important provisions of the act were:—

"The Secretary of Agriculture, with the approval of the President, is authorized to investigate and ascertain the demand for, the supply, consumption, costs, and prices of, and

²³ Congressional Record, Page 4239.

²⁴ Congressional Record—June 1-30—At the beginning of the record for the day in both House and Senate.

²⁵ Congressional Record, Page 5902.

²⁶ Congressional Record, Page 3893-ff.

²⁷ Chap. 52 Pp. 273 United States Statutes 1917.

the basic facts relating to the ownership, production, transportation, [etc. of foods,] feeds, seeds, fertilizers, agricultural implements and machinery, and any article required in connection with the production, distribution, or utilization of food. It shall be the duty of any person, when requested by the Secretary of Agriculture *** (or his agent) *** to answer correctly *** under oath or otherwise *** or to produce all papers ***"²³

A penalty is affixed. The Secretary may provide for the appropriate distribution of seeds.²⁹ Co-operation with state agencies and within the Federal Government is authorized.³⁰ As can readily be seen the essentials of this bill are concerned with the investigation of the food supply conditions of the country and the stimulation of production. It is in reality only an extension of the activities of the Department of Agriculture along familiar lines.

The second and principal law was "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel."³¹ The important parts of this act may be summarized as follows:—

"Sec. I. *** it is essential *** to secure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, fuel *** (etc.); to prevent, locally and generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supplies, distribution, and movement; and to establish and maintain governmental control of such necessities during the war."

"Sec. II. That in carrying out the purposes of this Act the President is authorized to enter into any voluntary arrangements or agreements, to create and use any agency or agencies (etc.)."

"Sec. IV. That it is hereby made unlawful for any person willfully to destroy, *** to commit waste or willfully to permit preventable deterioration, *** to hoard, *** to monopolize, *** to conspire, combine, agree, or arrange (to do any of the above things with) necessities; (etc.)."

²³ *Ibid.*

²⁹ *Ibid* Sec. 3.

³⁰ *Ibid* Secs. 4-6.

³¹ Chap. 53 Pp. 276 United States Statutes 1917.

"Sec. V. The President (may at pleasure) license the importation, storage, mining, or distribution of any necessaries, in order to carry into effect any of the purposes of this Act."

"Sec. XII. The President * * * is authorized to requisition and take over, for use or operation by the Government, any factory, packing house, oil pipe line, mine, or any part thereof * * * and to operate the same."

"Sec. XIV. (He shall fix a) guaranteed price for each of the official grain standards for wheat * * *."

"Sec. XXV. That the President * * * is hereby authorized to fix the price of coal and coke, wherever and whenever sold, either by producer or dealer, to establish rules for the regulation of and to regulate the method of production, sale, shipment, distribution apportionment, or storage thereof among dealers and consumers, domestic or foreign."

The rest of the act, freed from its verbiage, provides penalties for failure to observe the restricting clauses; for the purchase, distribution and sale of wheat, flour, beans and potatoes at the discretion of the President; for the regulation of Exchanges and boards of trade; for the limitation of the use of foodstuffs in the manufacture of distilled spirits; appropriations for carrying out the law; for an agency to control the production, sale, purchases, and so forth of coal; for the sale of all coal and coke to the United States and its resale by the government, if the President wishes; for the fixing of maximum prices for fuel.²²

The very stringency of these provisions arouses in one's mind a question as to their constitutionality. Fortunately we have the studies of several learned lawyers to rely upon. In the House, the Constitutionality of the law was so much doubted by some members that a resolution was actually introduced proposing an amendment to the Constitution "extending the power to regulate and control production, conservation, and distribution of food."²³ Representative Fess of Ohio, who is a well-read man in both our political and constitutional history expressed a belief that it was not only constitutional, but that it ought to be even stronger, and could be so constitutionally.²⁴ On the other hand Senator Reed held vehemently that the legislation was unconstitutional on general grounds

²² *Ibid.* Pp. 276-287.

²³ House Joint Resolution. 107 Congressional Record 4355.

²⁴ Congressional Record, Page 4325.

because it created a Dictator, something foreign to our Constitution and to our republican ideals.³⁵ He also protested specifically against Section five of the Act as contrary to the Fourth Amendment which guarantees the people against unwarrantable searches and seizures.³⁶ Representative Lenroot claimed that the law delegated to the President legislative power.³⁷ Others who found flaws were Senators Gore, Gallinger, and Penrose, and Representative Young.

In all six objections seem to have been offered:—³⁸

I. That there are sections contrary to the due process and just compensation clauses of the Fifth Amendment.³⁹

II. That self-incrimination is compelled contrary to the Fifth Amendment.⁴⁰

III. That the law authorizes unreasonable searches and seizures contrary to the Fourth Amendment.⁴¹

IV. That the law provides for the expenditure of public funds for private purposes.⁴²

V. That it delegates legislative power to the executive.⁴³

VI. That it infringes upon the police power of the States.⁴⁴

The defenders of the bill included not only those like Senators Knox and Nelson and Representatives Lever, Caraway, and Fess, who, as quoted above, thought the law vitally necessary and therefore constitutional; but others like Representatives Anderson and Overmyer who tried to produce proof in favor of each contested feature.⁴⁵ In support of their contentions they cited various Supreme Court decisions, and had printed in the Record briefs prepared by capable lawyers.⁴⁶ From authorities outside Congress we receive further evidence that the law is valid.⁴⁷ From these various sources we are able to get considerable data in refutation of the various objections.

Let us consider them in the reverse order.

³⁵ Congressional Record, Page 3893-4; 4096.

³⁶ Congressional Record, Page 3895.

³⁷ Congressional Record, Page 4260.

³⁸ Given in brief, Congressional Record, 4130.

³⁹ Arises under Secs. 7, 8, and 13.

⁴⁰ Arises under Sec. 6.

⁴¹ Arises under Sec. 6.

⁴² Arises under Secs. 9, 10, 12, and 21.

⁴³ Arises under Secs. 5-16 inclusive.

⁴⁴ This is based upon the character of the bill as a whole.

⁴⁵ Congressional Record Pp. 4113 ff; 4125 ff; 4239 ff.

⁴⁶ Congressional Record 4008 ff; 4127 ff.

⁴⁷ C. Thorne in Annals of American Academy, Nov. 1917; War Encyclopedia.

VI. In *McCulloch v. Maryland*, Chief Justice MARSHALL, said:—

“The sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consist with the letter and spirit of the Constitution, are constitutional.”⁴⁸

Is not the end of this law as expressed in its preamble—“the national security and defense,”—legitimate? Is it not a proper exercise of the war powers? “Is there such a relation between the conservation and regulation of the food supply and the conduct of the war as will make these purposes necessary or appropriate to the conduct of the war?”⁴⁹ This connection is obvious claimed Representative Anderson in answering the above question, when one investigates conditions and comes to realize⁵⁰ (1) that if the allies were wholly cut off from American food supplies for thirty days, peace would be almost inevitable;⁵¹ (2) unchecked access would mean a dangerous shortage in eight months; (3) abnormally high prices might check consumption but would also cause social upheavals which would hinder the prosecution of the war; (4) every European nation has had to take steps in that direction.⁵² Since this is the case the producers and distributors of food carry on a business which in time of war is very much “affected with a public interest.” The Supreme Court has said that “a business, by circumstances and its nature, may rise from private to be of public concern, and be subject, in consequence to governmental regulation.”⁵³ It would, then, seem that because of the necessity which gave birth to the law and in the light of the opinions of jurists and statesmen, the law, in so far as police power is concerned, is constitutional.

V. The issue as to the delegation of legislative power arises in two connections, both of which should offer little difficulty. The

⁴⁸ Cited by Caffey. Congressional Record 4128.

⁴⁹ Rep. Anderson Congressional Record 4114.

⁵⁰ *Ibid.*

⁵¹ Note the 1,100,000 tons of foodstuffs shipped during March. This is equivalent to one pound per day per person in Britain and France.

⁵² Congressional Record 4114-5; Thorne in *Annals of American Academy* Pp. 256-7.

⁵³ *Germ. Alliance Ins. Co. v. Lewis* 233 U. S. 389, 411. Also cited in *War Encyclopedia*.

President is empowered to raise the tariff duties on wheat in a certain contingency. He is empowered to issue licenses and prescribe regulations at his discretion. The first power is clearly constitutional in the light of many decisions of the courts in regard to "contingency" legislation. The Supreme Court, for example, has sustained an act authorizing the President upon a given contingency, to suspend the provisions of a tariff law relating to the free importation of certain articles.⁶⁴ The power to issue licenses falls into the same class. The rule which the President is to follow is laid down. "Congress does not authorize the President to create any crime nor to apply or withhold punishment for any crime. * * * The crime and the punishment therefor are to be determined by facts, circumstances, and conditions described in the bill as they, respectively, arise."⁶⁵

IV. The purpose of this act is, as has been shown, essentially and entirely public. Whatever expenditures are made, are made from funds appropriated by the Act, in furtherance of, and in ways designated in the Act. Whatever benefit may result to the wheat grower from the establishment of a minimum price is merely incidental to the furtherance of a purpose national in its scope and public in its nature.

III. By Section 7 of the Law in question, supplies hoarded contrary to this act may be seized and sold. The owner has an equitable right to the proceeds. Only the places of business of licensees are to be entered and searched. This certainly is not unwarranted since it is part of the agreement under which the license is given. The supplies seized as a result of such searches have been held contrary to a law which the owner has personally agreed to. Certainly, then, the seizure is not unwarranted.

II. It is held that the fact that the President can require licensees to submit reports under oath involves self-incrimination contrary to the Fifth Amendment. This contention cannot be taken seriously. It would be an anomalous situation to have the government issue licenses and then be unable to use such an appropriate means of seeing that the conditions of the grant of the license are observed. Anyhow "this constitutional guaranty applies only to natural persons. Corporations, and their officers as such, may be compelled to furnish any information relating to the corporate business, whether self-incriminatory or not, which is required by Congress."⁶⁶ "Any

⁶⁴ *Marshall Field & Co. v. Clark* 143 U. S. 649.

⁶⁵ Congressional Record, Page 4132.

⁶⁶ Congressional Record, Page 4137. Based upon *Wilson v. U. S.* 221 U. S. 361.

natural person, notwithstanding the constitutional provision may be compelled to give self-incriminating evidence, if there has been granted to him immunity from prosecution, on account of such evidence, as broad as the constitutional protection."⁵⁷ The rights which licensees exercise are similar to those enjoyed by corporations,—special legal rights, and as such can logically be treated in the same way.

I. The idea that there will be a taking of property without just compensation appears to be without sound basis. When hoarded necessities are seized, they are sold publicly on the market and the hoarder receives the net proceeds. Surely that is just compensation. When the President fixes rates and charges to which licensees must conform, he merely follows a principle which is invoked by every State in the Union in its treatment of businesses "affected with a public interest" and which is applied by the United States Government to interstate carriers. The slight resulting infringements to private rights are valid in view of the underlying public interest.

In all these cases where property, or punishment is involved, the person affected can appeal to the courts for the protection of his constitutional rights and can thus require that a law which we believe to be constitutional on its face be enforced constitutionally.

As we have noted the President is given power in the case of food to create any agency and to license dealers. These are in practice the essential features. No sooner had the President signed the bill than he carried out a decision already formed and appointed Mr. Hoover Food Administrator conferring upon him the bulk of the powers granted to the executive by the Act.⁵⁸ Mr. Hoover planned a thoroughly integrated administrative system. For each State a State Food Administrator was appointed by Mr. Hoover, with the approval of the President.⁵⁹ He is the chairman of a State Food Committee and is the executive representative of the Food Administration. This State committee selects for each county and large town a local committee, and a local administrator who is responsible to the State administrator. These local committees are of course also chosen subject to the approval of the President, but in practice the State Committee's choice is not even passed upon by him, unless some serious objections are in

⁵⁷ Congressional Record, 4131. Based upon *Counselman v. Hitchcock* 142 U. S. 547 and *Brown v. Walker* 161 U. S. 591.

⁵⁸ Official Bulletin 73; 1.

⁵⁹ See Official Bulletin 97; 2—Case cited.

rare instances brought to his attention.⁶⁰ It is through these local administrators, and through special agents that the work of the administration is carried on. They possess little discretionary power. The State Administrators possess some discretionary powers, but as a rule only ministerial powers. This is due to the fact that food control must be essentially centralized and there can logically be very little variation from general plans.⁶¹

The work of the Food Administration has been one largely of propaganda. Food pledge cards were widely circulated and signed.⁶² Bulletins were issued continually and distributed, or posted. "Four-minute speakers" acted under the general direction of the local administrators.⁶³ National associations of producers or manufacturers were called to meet with the Federal Food Administrator, and then were urged to voluntarily agree to some form of co-operation with the government.⁶⁴ Meatless and wheatless days were instituted, which in private homes depended for their effectiveness not upon any legal sanction but upon the patriotism of the individual.

But the Administrator did not confine himself to such a policy. What works with individuals does not apply to corporations, which are largely unaffected by patriotic appeals. Thus the power of licensing granted to the President was utilized. The Department of Agriculture, under the powers newly given to it, undertook a nationwide inventory, and upon the basis of their deductions, Mr. Hoover formulated his plans for conservation and for an equitable distribution throughout the coming year.⁶⁵ The first step was to license the handling of wheat and rye and the manufacture of products derived from wheat and rye. Exception was made of small millers, and of farmers and farmers' co-operative societies.⁶⁶ A proclamation to this effect was made on August 14, 1917, and all persons affected were thereby notified that on and after September 1, a failure to take out a license or to observe the regulations would be punished by the appropriate penalties prescribed in the Law. Later, importers, manufacturers, and refiners of sugar, sugar syrups, and molasses were similarly made to take out licenses.⁶⁷ By a third proclamation licenses were required for the importation, manufacture, storage, and distribution of specified necessities, except in

⁶⁰ See copies of *Literary Digest* for months of October 1917 to March 1918.

⁶¹ This point was much emphasized in Congress.

⁶² Official Bulletin 145; 1. 146;3.

⁶³ Official Bulletin 145; 8.

⁶⁴ See Sec. 2 Chap. 53 United States Statutes 1917.—Also Official Bulletin 105; 2. 105; 7. 113; 1. 120; 6. etc.

⁶⁵ Official Bulletin 88; 4. Plan outlined for inventory.

⁶⁶ Proclamation No. 1389.

⁶⁷ Proclamation of Sept. 7, 1917.

specified cases.⁶⁸ Under further proclamations bakers who used a certain amount of flour daily were licensed;⁶⁹ the arsenic industry was licensed;⁷⁰ the ammonia industry was licensed;⁷¹ the alcoholic content of malt liquor was limited to three per cent;⁷² businesses connected with certain specified feeds and foods were licensed;⁷³ licenses for all bakers of bread, hotels, and restaurants were required;⁷⁴ guaranteed prices for wheat delivered at different places throughout the country were established. The punishments for violation of the conditions of the license have so far been light. Restaurants have been required to close for from one to thirty days; storage houses were ordered to sell produce at once in some cases; in a few cases licenses have been refused or revoked. The regulations established are essentially of an emergency character and hence need not be discussed in detail. For example in February, dealers were forbidden temporarily to handle freshly killed poultry. The purpose was to prevent any further egg shortage.

In most of these cases it is the big dealer, the one whose business exceeds \$100,000 annually who is affected. But through him the small dealer is reached. If a small dealer charges exorbitant rates, or hoards, the wholesaler is simply ordered not to supply him unless he comes to time. The effectiveness of this legislation in producing the ends desired I shall describe later.

In regard to fuel the Law gave the President the power not only to create an agency for the enforcement of his proclamations and orders, but also the power to establish maximum prices for coal. Mr. Harry Garfield was appointed Administrator. He modelled his establishment after that of the Food Administrator, with State and local administrators similarly chosen. The powers of the local administrators are somewhat more discretionary than those of the food administrators. For instance they were given the power to divert coal to places where it was most needed. The State Administrators were to handle the coal problems in their respective States and were to supervise the enforcement of the various orders of the Federal Administrator by the local committees and administrators.⁷⁵ The fuel administrator had difficult problems to solve. Strikes throughout the central and south-western states had to be settled. Prices

⁶⁸ Proclamation of Oct. 8, 1917.

⁶⁹ Proclamation of Nov. 7, 1917.

⁷⁰ Proclamation of Nov. 15, 1917.

⁷¹ Proclamation of Jan. 3, 1918.

⁷² Proclamation of Dec. 8, 1917.

⁷³ Proclamation of Jan. 10, 1918.

⁷⁴ Proclamation of Jan. 30, 1918.

⁷⁵ Official Bulletin 123; 2.

had to be kept down and yet left high enough to keep most of the marginal mines running. Cars had to be supplied regularly at the mines. Shortages locally or generally required prompt attention. Railway congestion or severe weather caused complications. With all these factors in the problem confronting it, the fuel administration enjoyed for several months a rather stormy career. Priority orders on the railroads caused such terrible confusion and such shortages of coal in the centers of population, the railroads had to be taken over by the government in the latter part of December, 1917.⁷⁶ Electric lighting had to be curtailed to save coal for domestic use, and finally a drastic order was issued by Dr. Garfield establishing the famous heatless holidays. For five days straight in the latter part of January, 1918, no industries except specially named establishments were to use coal except to keep pipes and materials from freezing. But with all this, though considerable suffering was caused, this suffering was scattered throughout the various strata of society instead of being confined to the more improvident.

This experience taught the fuel administration a lesson. A scheme was worked out for a zonal distribution of coal during the present winter.⁷⁷ This scheme was very elaborate but in substance, the amount of coal needed for the coming year was estimated from a study of statistical reports; and arrangements were to be made for the distribution of this coal with the least possible transportation. Also, through coal dealers, the individual requirement was ascertained and satisfied in part during the summer, thus "getting a start on" winter deliveries.

The food administration was singularly free from conflicting state, or municipal action. With a few exceptions, as in New York where a law supplementing the Federal law was adopted,⁷⁸ the states have left it to the United States entirely.

The fuel administration has not been quite so fortunate. Local officials threatened at various times to seize coal to supply homes. In December, 1917, in the midst of a series of local coal shortages, Governor Cox of Ohio interfered, but stopped when requested by the Federal Fuel Administrator "that the State authority be not permitted to interfere with the action of the United States Fuel Administration."⁷⁹

⁷⁶ Proclamation of Dec. 26, 1917.—Done under authority of Sec. 1 Chap. 410. United States Statutes 1916. Page 645.

⁷⁷ Official Bulletin 265; 8-15.

⁷⁸ New York Times Aug. 25, 1918. 3; 1. Aug. 30, 10; 8.

⁷⁹ Official Bulletin 183; 2.

After considering the nature and extent of the control exercised, the question arises—"Has it proved successful?"

As for food control we are confident that it has. Little hostility to the operations of Mr. Hoover has developed, and editorial opinion voices generally the popular confidence. The purpose had been to meet the Allied food needs; to place the burden of conservation upon all; to keep manipulators from profiting at the expense of the consumer and producer because of the national calamity. A few dissenting opinions may still be heard. Senator Reed, for example, remains obdurate. He accuses the food administration of corruption and waste. The "dollar-a-year" men, he says, are there to serve their own interests.⁸⁰ Commission merchants also fail to see the value of "Hooverism." One of them testified that in March, 1918, the domestic meat demand had decreased thirty per cent and that unless feeders could be assured of an open market and unrestricted demand farmers and stock raisers would stop production.⁸¹ Certainly consumption was decreased, and prices were kept down so much that the food administration was able to abolish meatless days and to advocate a greater use of meat in place of wheat! Another commission merchant at the packers' investigation said he believed the people were losing confidence in Mr. Hoover.⁸² Where he drew his deductions from, except from his own dislike of "Hooverism", is a puzzle. The general attitude of the public toward Mr. Hoover at that time is expressed in the following words:—"He has succeeded in a surprising degree in the tremendously intricate task of controlling the distribution, retail price, and consumption of food products."⁸³

In the past six months no new legislation of importance touching food and fuel control has been enacted, and now with the war ended further "war" legislation along these lines is improbable. More than ever before the Food Administration is counted a success. Few persons have viewed with complacency the "fifty-fifty" order, requiring the purchase along with wheat of an equal quantity of substitutes and requiring bakers to use as much of substitutes as of wheat in their products. The restrictions placed upon the use of sugar found much disfavor,—seldom amounting to opposition or attempted evasion—yet the amount allowed was large enough to satisfy the ordinary requirements of most people. (In fact the chief objections were to the amount of red tape involved.) But these

⁸⁰ New York Tribune Mar. 13, 1918. 6; 6.

⁸¹ Ibid.

⁸² New York Times Mar. 5, 1918.

⁸³ World's Work Feb. 1918, P. 376.

have been the only orders affecting the consuming public. All other restrictions have been merely suggested or requested as patriotic acts on the part of the individual.

Various other restrictions have been placed at times upon the manufacturers and distributors of food and fuel products. Restaurants have been closed and penalized for profiteering; bakers have been fined for the benefit of the Red Cross. The manufacture of intoxicating liquors has gradually been restricted until, beginning Dec. 1st, 1918, it has been entirely forbidden. Thus as a side-product of Food-Control the cause of national prohibition has been materially advanced.

Of course prices have advanced. The power to regulate prices was not given in a direct form to the Food Administration, and even if it had been given, the great rise during the past year in the prices of other commodities, along with greatly increased wages, made it impossible to maintain a pre-war level in the price of food-stuffs. Profiteering however has been made more difficult for the dealers in foods than for almost any other class of traders. Pitiless publicity and a watchful, criticizing public have made the position of the profiteer unenviable.

With food control successfully conducted within the country so that vast supplies could be shipped to Europe, Mr. Hoover went to Europe in August to confer with the various food dictators of the Allied nations and so to formulate a plan for equitable distribution. By virtue of his control of our surplus when all other nations were experiencing a shortage, Mr. Hoover had become to all purposes the food controller of the world. Through enforced restrictions and an effective propaganda the United States had made available such a surplus of food that the needs of the peoples of the Allied nations were satisfied to that extent that hunger did not weaken their morale in the dark days of the past spring and summer, while increased rations were made possible in the fall. Moreover because waste has been so largely eliminated, consumption restricted, and production increased we as individual consumers now find ourselves confronted by no enforced restrictions, while Mr. Hoover is once more in Europe surveying the situation and working out a plan whereby food may be supplied to our small liberated allies, to the freed nationalities of Austria-Hungary, and even—, if found necessary in order to stay the spread of anarchy,—to the people of Germany. And an effort is to be made to relieve those ten millions of Russians who seem fore-doomed to starvation unless some means is found for distributing the surplus of the Ukraine and other Southern provinces throughout the once great empire.

The success of food control in war time now gives rise to the desirability of its continuation in times of peace. If the neutral nations of Europe found it not only desirable but necessary, it is not impossible that the United States may feel inclined to adopt a similar policy. The existence of such great agencies as the packing companies, constituting according to the best evidence submitted before Congressional Investigating committees a practical monopoly in control of vital necessities of life, gives occasion to a desire for greater governmental activity than was usual before the war. The Supreme Court has upheld State laws regulating charges for the use of grain elevators because of the connection between wheat and the public interest. It is most probable, in view of the tendency of the courts and of legal and political authorities generally to take the position that there is a National Police Power when the State Police Power is ineffective in practice, that United States laws giving the Federal Government greater control over food-producing and distributing agencies would be upheld by the Courts. It is not a great step from a "Pure Food Act" or from a "Bone Dry Law" to a permanent law designed to prevent profiteering. It is not Socialism to enforce fairness upon those who control the most vital of necessities and yet never allow scruples to interfere with their seizure of the last possible penny.

The success of fuel control was long in doubt, but now seems assured. State and local administrators used their discretionary authority to prevent excessive domestic suffering, though non-essential industries were often seriously affected. Excessive use of priority orders hindered transportation and a serious shortage of cars prevailed for months. It is probable that the first coal prices were too low to keep the marginal mines running and so production decreased but it is safe to say that with adequate transportation facilities, difficulties would not have developed. Added to this, the severest winter in a generation complicated matters. As a result we had the notorious "heatless holidays." The order establishing these was bitterly assailed in Congress and in the Press. It was a "Wild experiment of economic lunacy worthy of a Bolshevik Government. * * * The order itself is a confession of incompetency."⁸⁴ This is the *New York World's* opinion. The *New York Tribune* said that "Dr. Garfield is in a panic and acts in a headlong manner."⁸⁵ Almost every paper predicted an industrial disaster and universal suffering among laborers. Some dilated upon the comfort given to the

⁸⁴ Cited in *Literary Digest* Jan. 26, 1918. P. 6.

⁸⁵ *Ibid.*

enemy. Individuals said that it would do "infinite harm here and abroad";⁸⁶ that "this is the culminating atrocity in a series of crimes against the nation".⁸⁷ A conservative journal proclaimed that "We have had enough of price fixing. It has been a blunder from the start. Let cotton raisers, coal and fuel producers, * * * be stimulated to secure the greatest production at the highest prices."⁸⁸ The same paper says again, "How Germany must gloat over the coal panic in the United States, the culminating achievement of red tape!"⁸⁹ Not the mines nor the railroads are to be blamed! Then we hear Senator Knox asserting that "A million German soldiers turned loose in the United States could not work the havoc this fool order will create."⁹⁰ And Senator Sherman echoed him—"There was never a more flagrant lack of knowledge on the part of a government official than Mr. Garfield's order shows."⁹¹

Such hasty prophesies were soon seen to be unscound. Dr. Garfield had acted slowly as is shown by the fact that he waited so long before acting. President Wilson backed him up. Garfield's statement explaining the order is interesting:—

"This is war. Whatever the cost, we must pay it, so that in the face of the enemy there can never be the reproach that we held back from doing our full share. Those ships, laden with our supplies of food for men and food for guns must have coal and put to sea."⁹²

A writer has said "The world has got to be fed or it will soon tire of hearing the words, Liberty, Democracy, and Ideals."⁹³ These ships had lain long in New York Harbor. The needs of the allies were great; a crisis was by no means remote. The question is asked pertinently; what would have happened to us without it?⁹⁴ The railroads had to be cleared and the ships started. If this could be done, all would be well. And this in fact was done. The "heatless Monday" program was soon unnecessary. The effect on the nation was almost insignificant. And yet only two months after this order, the Allies found it necessary to utilize every resource in order to check the on-rushing foe. The United States had its part to play; and to

⁸⁶ Ibid. P. 7.—Ex-Attorney-Gen. Wickersham.

⁸⁷ Ibid. G. P. Gould.

⁸⁸ Leslie's Feb. 9, 1918. P. 186.

⁸⁹ Leslie's Feb. 2, 1918. P. 150.

⁹⁰ Ibid. Citation.

⁹¹ Ibid. Citation.

⁹² Cited in Literary Digest Jan. 26, 1918.

⁹³ Forum Sept. 1917. P. 323.

⁹⁴ Independent Jan. 26, 1918.

play that part every ton of shipping was required. The ships that were in New York harbor in January laden with food and munitions reached Europe none too soon and when the Germans attacked, those ships had returned or were returning for more supplies and for men. The Allies were playing for time and every shipment counted heavily.

Through its power of regulating prices the Fuel Administration has kept down prices during the war so far as the necessity of higher wages to the mineworkers has allowed. And this is one of the big points in government control,—it is fairly probable that if the Government had let the coal business alone, factories and office buildings would not have had to shut down; but it is also probable that prices would have been intolerable and that the sufferings of the poor would have been pitiable. The application of the zonal system has both aided the railroads in solving their traffic problem and has kept all districts sufficiently provided. The draft, the influenza, peace celebrations, et cetera have tended to curtail production; but the stimulus of bonuses and higher wages, and a decreased use of liquor in the mining areas have combined to offset this and keep production at an almost normal rate. With the demobilization of the men in the camps the labor problem at the mines will be solved and little further trouble need be expected. Fuel control does not have the international importance that appertains to food control and hence its continuance is not so vital. In fact the Fuel Administration is making all preparations for winding up its affairs.

Food and fuel control are only two of those phases of the larger problems of Government control of big business that concern all citizens. The war time problem of food-control affected both big and little business men—it affected producer, distributor and consumer. As a peace-time program it would involve mainly Government regulation. It would mean that the United States Government would assume the power of enacting and administering laws in regard to price-raising by agreement, to exact weights and measures, to purity, et cetera that are now administered by the states. In regard to fuel it might well result in government operation and even ownership if a growing scarcity should bring about a complete adoption of the conservation program of such progressives as Gifford Pinchot.

WM. B. MARVIN.

Stroudsburg, Pa.

* Saturday Evening Post Feb. 16, 1918. P. 20.

** Authorized by Chap. 53, United States Statutes 1917.