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FOREWORD

Among the sacrifices which war exacts is the impairment of those deliberative processes in government which are designed to stay the immediacy or the finality of executive action in order that the individual citizen may be heard and his interests duly considered. Where, as in this country, such processes have become embedded in the democratic tradition, they do not yield easily to wartime exigencies. Nevertheless, already we have seen wide and important areas of action withdrawn from the customary law-ways of the nation. It is all the more significant, therefore, that in the critical field of price control we still find the rule-making power subject to administrative and judicial review and the enforcement power channeled through the state and federal courts.

Perhaps this conservatism flows from a recognition of the market as the nerve center of even a wartime economy; perhaps, from a belief that price controls, more readily than others, can be operated through basically familiar mechanisms. Whatever the explanation, the fact remains that in few segments of the war administration has more room been left for legal representation of the private interest. Accordingly, the problems of price control today are not solely economic and administrative: they are legal problems as well, and he who would understand the operation of price control must achieve an understanding of its legal bases in the Emergency Price Control Act of 1942.

It was in recognition of this need that so many of the officials of the Office of Price Administration consented to add to their pressing daily responsibilities the burden of developing for this symposium their personal views concerning the provisions of the Act and the questions, legal and economic, which confront its administrators. Their analyses cannot pretend to full objectivity and definitiveness; the law has emerged too recently from the fire of controversy, and experience under it is still too limited. But the views of those who have been living a year and more with the problems of price control are of immediate importance and will not lose their pertinence with even so considerable change in policy as would be involved in the adoption, under the Act, of an over-all price ceiling.

The symposium opens with a prefatory note in the characteristic vein of the Price Administrator, cutting beneath questions of policy and procedure to fundamental considerations of public spirit. This note is succeeded by an article which places price control in its economic context and considers broadly the methods complementary to direct price control which may be utilized to combat inflation.

The succeeding five articles focus on the Emergency Price Control Act. The first of these deals with the provisions of the Act which confer authority upon the Price Administrator and prescribe sanctions for his orders. The second is devoted to a description and defense of the special procedures for the protest and judicial review of price orders, procedures which constitute an ingenious endeavor to adjust familiar forms to emergency uses. The constitutionality of the substantive powers conferred by the Act is the subject of the third article in this group. In the fourth article discussion is centered upon the economic considerations which must be weighed in the formulation of commodity price orders. The last of the articles on the Act is directed to the power to establish maximum rents and the economic occasion for its exercise.

Price control largely eliminates price as an automatic rationing agency and hence renders imperative the development of devices to assure the distribution of scarce goods equitably and to essential civilian uses. The devices developed—priorities, allocations, and rationing—their legal bases, the evolving procedures for their administration, and the consonance of these procedures with the requirements of due process, all are considered in an article by the Deputy Director of Civilian Supply.

The necessity for government interference in the workings of the market has not been accompanied by a withdrawal of the statutory prohibition against private interference, but the changing situation has necessitated adjustments which are described in an article discussing the role of the Sherman Act in the price emergency.

The concluding article surveys the price control experience of Great Britain, an experience more significant to us than that of the totalitarian nations since, like ours, Britain's controls must operate within the framework of a democratic state.

The symposium includes no articles dealing in detail with controls over wages, profits, and credit or with wartime taxation. Although, as is pointed out in some of the articles noted above, important interrelationships exist between these factors and direct price control, it was felt that their intensive treatment would require far more space than would be available in this symposium. Moreover, national wage policy and its legal implementation will be considered in the Summer, 1942, issue, and very possibly in subsequent issues other controls can be dealt with.

To the subscribers to this quarterly a word of explanation, if not apology, is due. This symposium, originally scheduled for Autumn publication and, as the Winter number, emerging tardily in the Spring, has been delayed in order that adequate treatment of the long-deferred Price Control Act might be provided. When the material which delay in publication has made available is duly weighed, the old saw may be revised to read: Better late than early.

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