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Wartime Federal Legislation

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THIS is a brief survey of such of the more important pieces of federal legislation passed during the war as will presumably interest lawyers returning from the service. The topics covered are as follows: Taxation, War Production, Price Control—Rent Control—Rationing, International Organizations and Agreements, Labor, Problems of Reconversion, and Miscellaneous.

I

TAXATION

Should a modern Rip Van Winkle return to this country, having left it at the outbreak of war in 1939, he could hardly avoid surprise at present day joy over the "1946 Tax Reduction Law", officially known as the Revenue Act of 1945.¹ A tax reduction measure which demands one-fourth of the income of one with a net of \$10,000, one-third of a \$20,000 salary, one-half of a \$50,000 income, two-thirds of \$100,000, and three-fourths of one's income if it reaches the \$200,000 bracket,² is patently misnamed if one is not familiar with federal wartime taxation. Returning servicemen, though vaguely aware of civilian "trials and tribulations" during recent years, will find reconciliation to 1946 taxes even at their reduced rates difficult. Returning lawyers will not be slow in concluding that these rates alone have made taxation an extremely important part of their law practice.

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¹ Approved by the President, Nov. 8, 1945, Pub. L. No. 214, 79th Cong. 1st Sess. (Nov. 8, 1945).

² I. R. C. §§ 11, 12(b), amended by Revenue Act of 1945 §§ 101(a), (b).

Nor will this be the entire picture from a legal standpoint. Of even greater importance to the lawyer veteran will be the discovery that Congress has not confined itself to "tinkering" with the rates during his absence. Far-reaching changes in the substantive law of federal taxation have been achieved by a steady succession of revenue acts.³ Whereas Congress was content in earlier years to enact such statutes biannually, it is more common today to find tax measures reaching the President's desk at a semiannual rate. One of these, the Revenue Act of 1942,⁴ is responsible for more fundamental changes in federal taxation, many of them improvements long overdue, than the acts for many other years combined.

EXCLUSIONS FROM GROSS INCOME

In that year the long-standing feud over the lessor's taxability for improvements made by a lessee⁵ was settled to the satisfaction of most landlords by excluding from gross income the value of such improvements.⁶ The tax, however, will merely be postponed until a later disposition of the property inasmuch as the lessor's basis will not be increased by this addition to his property.⁷

Prior to the 1942 Act there had been considerable confusion where bad debts and taxes were deducted in loss years but were later recovered.⁸ Again Congress provided for an exclusion from gross income of such recoveries to the extent that the prior deduction had not reduced income tax.⁹

³ The chief of these are: Revenue Act of 1940, June 25, 1940, 54 STAT. 516; Second Revenue Act of 1940, Oct. 8, 1940, *ibid.* 974; Revenue Act of 1941, Sept. 20, 1941, 55 STAT. 687; Revenue Act of 1942, Oct. 21, 1942, 56 STAT. 798; Current Tax Payment Act of 1943, June 9, 1943, 57 STAT. 126; Revenue Act of 1943, Feb. 25, 1944, 58 STAT. 21; Individual Income Tax Act of 1944, May 29, 1944, *ibid.* 231; Tax Adjustment Act of 1945, July 31, 1945, PUB. L. No. 172, 79th Cong. 1st Sess. (July 31, 1945); Revenue Act of 1945, Nov. 8, 1945, *supra* note 1. All amend the Internal Revenue Code, Feb. 10, 1939, 53 STAT. 1, Tit. 26 U.S.C.

⁴ 56 STAT. (1942) 798. See Rottschaefer, *The Revenue Act of 1942* (1943) 27 MINN. L. REV. 217.

⁵ Justice Roberts reviews the conflicting cases in *Helvering v. Bruun* (1940) 309 U.S. 461, disagreeing with the views of Judge Learned Hand in *Hewitt Realty Co. v. Comm.* (C.C.A. 2d, 1935) 76 F. (2d) 880.

⁶ I. R. C. § 22(b)(11), added by Revenue Act of 1942 § 115(a). Congress agreed with Judge Hand.

⁷ I. R. C. § 113(c), added by Revenue Act of 1942 § 115(b).

⁸ See 1 MERTENS, *LAW OF FEDERAL INCOME TAXATION* (1942) §§ 5.15, 5.16, and the now famous case of *Dobson v. Comm.* (1943) 320 U.S. 489, discussing the tax benefit theory.

⁹ I. R. C. § 22(b)(12), added by Revenue Act of 1942 § 116(a), establishes a formula for the "benefit theory". Plumb, *The Tax Benefit Rule Today* (1943) 57 HARV. L. REV.

The proper tax treatment of cancelled indebtedness has bothered the courts and Congress for some time.¹⁰ The 1942 Act excluded from gross income any benefit derived from the discharge of corporate bonds and debts at less than face value, and the earlier requirement of admitting that the corporation was in an unsound financial condition was removed.¹¹ It was further provided that railroad corporations would not be taxable on income attributable to the discharge of indebtedness for less than face under section 77 of the National Bankruptcy Act.¹²

Of importance to the returning lawyer himself in many cases is the exemption from taxation of disability pay for "personal injuries or sickness resulting from active service in the armed forces of any country."¹³

TRUST PROVISIONS

In 1942 Congress made it clear that distributions from an annuity trust are taxable to the beneficiary to the extent that they are actually made from income.¹⁴ Previous decisions of the Supreme Court had allowed such a beneficiary to escape tax if the trust provided that the recurrent payments were to be a charge against the corpus where the income was insufficient, and this despite the fact that it might be entirely unlikely that the corpus would ever have to be invaded.¹⁵ Section 162 of the Code was further amended to eliminate still other favorite tax avoidance devices whereby trust income was deemed accumulated and thus not taxable to the bene-

129; Plumb, *The Tax Benefit Rule Tomorrow* (1944) *ibid.* 675. Where unconstitutional federal taxes are recovered (e.g., A. A. A. taxes) these amounts may be excluded from gross income if the taxpayer consents to the adjustment of his tax liability for the year in which the unconstitutional tax was deducted. I. R. C. § 128, added by Revenue Act of 1942 § 157.

¹⁰ Cf. U.S. v. Kirby Lumber Co. (1931) 284 U.S. 1, and Bowers v. Kerbaugh-Empire Co. (1926) 271 U.S. 170. See Lynch, *Some Tax Effects of Cancellation of Indebtedness* (1944) 13 *FORDHAM L. REV.* 145.

¹¹ I. R. C. § 22(b)(9), amended by Revenue Act of 1942 § 114(a).

¹² I. R. C. § 22(b)(10), added by Revenue Act of 1942 § 114(b). The Revenue Act of 1945 has extended these provisions until January 1, 1947, and the Senate Finance Committee indicated that the whole problem of the tax treatment of income from cancellation of indebtedness will be studied this year. Revenue Act of 1945 § 152.

¹³ I. R. C. § 22(b)(5), amended by Revenue Act of 1942 § 113.

¹⁴ I. R. C. § 22(b)(3), amended by Revenue Act of 1942 § 111(a); *ibid.* § 162(b), amended by Revenue Act of 1942 § 111(b).

¹⁵ *Burnet v. Whitehouse* (1931) 283 U.S. 148; *Helvering v. Butterworth* (1933) 290 U.S. 365.

fiary.¹⁰ Generally speaking, such income must now be accumulated for periods longer than twelve months to escape tax upon the beneficiary, and any distributions during the first sixty-five days of the year are deemed to have been made as of the close of the preceding taxable year.¹⁷

Section 165 of the Code, dealing with employees' trusts, has undergone important revision during the war. If an employer's stock bonus, pension, or profit-sharing plan for his employees qualifies under that section,¹⁸ the trust will be exempt from taxation,¹⁹ contributions to it by the employer will be deductible,²⁰ and the employee-beneficiaries will be taxed only when distributions are actually made to them.²¹ A legal field of increasing importance is seen here, especially for attorneys representing large employers.

The Supreme Court decision in *Helvering v. Stuart*²² necessitated a clarification of section 167 of the Code dealing with income of a trust available for the benefit of the grantor. The Revenue Act of 1943, perhaps most famous for its enactment over an unprecedented presidential veto,²³ gave statutory approval to what had earlier been widely regarded as the proper rule.²⁴ Income of such a trust is not taxable to the grantor merely because it *may* be used for the support of one whom the grantor is legally obligated to support. Only the *amounts actually* so used will increase the grantor's tax liability.²⁵

MISCELLANEOUS CHANGES

Considerable hardship under prior law was found in section 42(a) of the Internal Revenue Code, which required the accrual of all income of a decedent in the taxable period preceding his death, even though the decedent was on a cash basis.²⁶ Now such income will gen-

¹⁰ Under prior law, *Comm. v. Dean* (C.C.A. 10th, 1939) 102 F. (2d) 699 (distributions made January 3, rather than December 31, were deemed accumulated).

¹⁷ I. R. C. § 162(d), added by Revenue Act of 1942 §111(c); amended by Revenue Act of 1943 § 133.

¹⁸ One important requirement is that the trust must not discriminate in favor of officers, shareholders, or key employees.

¹⁹ I. R. C. § 165, amended by Revenue Act of 1942 § 162(a).

²⁰ I. R. C. § 23(p), amended by Revenue Act of 1942 § 162(b).

²¹ I. R. C. § 22(b)(2)(B), added by Revenue Act of 1942 § 162(c).

²² (1942) 317 U. S. 154.

²³ In the veto message the measure was termed "a tax relief bill providing relief not for the needy but for the greedy". See (Feb. 23, 1944) 90 CONG. REC. 1973.

²⁴ Guterman, *The Federal Income Tax and Trusts for Support—The Stuart Case and its Aftermath* (1944) 57 HARV. L. REV. 479; Note (1943) 52 YALE L. J. 662.

²⁵ I. R. C. § 167(c), added by Revenue Act of 1943 § 134(a).

²⁶ *Helvering v. Estate of Enright* (1941) 312 U.S. 636 (requiring inclusion in the

erally be taxable to the person who actually receives it, and the recipient is given an income tax deduction equal to the increase in estate tax caused by including the right to such income in the decedent's estate.²⁷

The practical requirement of an annual return of income leads to hardship in many cases, not the least of which is the case of an individual who receives pay in one year for services rendered over a span of several. 1942 saw a further liberalization of relief in this regard. Section 107 of the Code now permits a spreading out of this income, so to speak, over the years in which it was earned, if not less than eighty per cent of the compensation for services rendered over a period of thirty-six months or more is received in one taxable period.²⁸ The Revenue Act of 1943 adds still another provision to Code section 107. If "back pay", defined as compensation received in the taxable year *under specified circumstances*, for prior years' services exceeds fifteen per cent of the taxpayer's gross income, he may allocate such amounts to the years when earned and pay his tax accordingly.²⁹ "Cash basis" must not always be taken literally, and it will be found that many recipients of retroactive wage and salary increases can benefit by this provision.

In 1942 Congress finally heeded the longstanding complaint of the alimony payer and shifted the tax burden in such cases from the husband to the divorced wife.³⁰

The 1944 Individual Income Tax Act, while enacted primarily to simplify and greatly reduce the number of tax returns and computations, at the same time relieved the many years' confusion over compensation paid for the services of a minor. Under prior law tax liability for such compensation depended upon local law, varying in the different states, governing the right of a parent to the earnings of his child.³¹ The new Act made for uniformity by requiring com-

decedent's gross income for the period ending with his death of his entire share of the profits of a law partnership earned but not received).

²⁷ I. R. C. §§ 42(a), 43, 22(1), 23(w), 126, amended and added by Revenue Act of 1942 § 134.

²⁸ Amended by Revenue Act of 1942 § 139.

²⁹ I. R. C. § 107(d), added by Revenue Act of 1943 § 119.

³⁰ I. R. C. §§ 22(k), 23(u), 171, added by Revenue Act of 1942 § 120. It should be noted that amounts paid for support of children, even though pursuant to a divorce decree, are not so deductible.

³¹ In most states parents are entitled to such earnings and were therefore taxable unless the child was "emancipated", a vague test at best. See 4 VERNIER, AMERICAN FAMILY LAW (1936) § 232.

pensation for these services to be included in the income of the child, whether actually received by the minor or not.³² The child is now deemed to be a separate taxpayer subject to all filing requirements and entitled to his own exemption and deductions.

CAPITAL GAINS AND LOSSES

The proper tax treatment of capital transactions has been the subject of controversy, much of it not academic, ever since the adoption of the income tax in this country.³³ The year 1942 added another chapter to this lengthening history, which, surprisingly enough, is still on the books. There are now but two classes of capital gains and losses: short-term, where an individual sells capital assets held not more than six months, and long-term, where the holding period is longer.³⁴ The full amount of a short-term gain or loss must be reported, while only fifty per cent of a long-term transaction is taken into account.³⁵ Furthermore, an alternative tax provision insures that long-term capital gains will pay a tax no higher than fifty per cent, representing an effective tax of only twenty-five per cent.³⁶ Corporations are permitted similar alternative tax relief although the percentage provisions do not apply to corporate sales. Capital losses may be deducted from ordinary income only to the extent of \$1,000 in the case of individuals and not at all where a corporation is concerned,³⁷ but a liberal five-year carry-over provision permits the use of any disallowed loss in subsequent years.³⁸ The feature most apt to engender surprise in anyone familiar with wartime rates is the continued favorable treatment, comparatively speaking, received by long-term capital gains. With rates on ordinary income continuing near ninety per cent in the top bracket,³⁹ a ceiling of twenty-five per cent on capital profits partakes of the nature of a governmental bounty. Of one thing we can be reasonably certain—more favorable treatment over the next few years is not to be hoped for. Whatever change is in store, and Congress' last word on the taxation of capital trans-

³² I. R. C. § 22(m), added by Individual Income Tax Act of 1944 § 7.

³³ See, for example, Kent, *The Case for Taxing Capital Gains* (1940) 7 LAW & CONTEMP. PROB. 194; Nelson, *The Case Against Taxing Capital Gains*, *ibid.* 208.

³⁴ I. R. C. § 117(a), amended by Revenue Act of 1942 § 150.

³⁵ I. R. C. § 117(b), amended by Revenue Act of 1942 § 150.

³⁶ I. R. C. § 117(c), amended by Revenue Act of 1942 § 150.

³⁷ I. R. C. § 117(d), amended by Revenue Act of 1942 § 150.

³⁸ I. R. C. § 117(e), amended by Revenue Act of 1942 § 150.

³⁹ I. R. C. § 12(b), amended by Revenue Act of 1945 § 101(b).

actions has not been written, will be in a direction less favorable to the purchaser of capital assets.

Under earlier law it was necessary to allocate gain or loss between land and building where improved business real estate was sold. Only the land would be a capital asset. Since the 1942 Act, neither land nor building comes within the definition of a capital asset,⁴⁰ but an even more favorable treatment is provided for. If held over six months, any excess of gains over losses from such sales will be treated as long-term capital gains while any net losses will be fully deductible as ordinary losses.⁴¹

Still another favorable amendment of the Code is found in section 115(c). The requirement that gain realized from a distribution in partial liquidation of a corporation be always treated as a short-term capital gain has been eliminated. Today any gain realized from a partial redemption of stock, for example, will be long or short-term, depending on the period held.⁴² The House Ways and Means Committee indicated that Code section 115(g), relating to distributions which are equivalent to taxable dividends, adequately prevents tax avoidance where dividends are disguised as partial liquidations to receive capital gain treatment.⁴³

DEDUCTIONS

The subject of tax deductions, although not productive of the legal complications inherent in the definition and treatment of taxable income, also came in for congressional scrutiny during the war, and in this field as well, it was the year 1942 that saw the greatest revision.

The decision of the Supreme Court in *Higgins v. Commissioner*,⁴⁴ where an extensive investor in bonds and stocks was denied any deduction for necessary salaries and other expenses incident to such activity, although subject to tax for any profits realized therefrom, impelled Congress to add a new category of deductible items, namely, nonbusiness expenses. The new allowance covers all ordinary and necessary expenses connected with the production or collection of income, including the care of income-producing property.⁴⁵

⁴⁰ I. R. C. § 117(a)(1), amended by Revenue Act of 1942 § 151(a).

⁴¹ I. R. C. § 117(j), added by Revenue Act of 1942 § 151(b).

⁴² I. R. C. § 115(c), amended by Revenue Act of 1942 § 147.

⁴³ H. R. REP. No. 2333, 77th Cong. 2d Sess. (1942) 93.

⁴⁴ (1941) 312 U.S. 212.

⁴⁵ I. R. C. § 23(a)(2), added by Revenue Act of 1942 § 121(a).

The Second Revenue Act of 1940 gave taxpayers the privilege of amortizing war facilities over a period of five years, in lieu of regular deductions for depreciation, and established even shorter periods, at the option of the taxpayer, where the five years have not elapsed at the time the President proclaims the ending of the emergency period.⁴⁶ The proclamation for this purpose was made as of September 29, 1945.⁴⁷ The Tax Adjustment Act of 1945 expedites considerably the refunding of taxes for prior years obtainable by electing such shorter periods of amortization.⁴⁸

No longer is it necessary in claiming deduction for a bad debt to *ascertain* it to be worthless and *charge it off* in the year in question.⁴⁹ Any debt which actually becomes worthless in the taxable year may be deducted.⁵⁰ A nonbusiness bad debt, however, must now be treated as a short-term capital loss, subject to all the limitations on capital losses.⁵¹

Deductions for taxes paid have been, on the one hand, restricted, and on the other, liberalized. Deduction is now allowed to the purchaser paying state or city sales taxes, even though not imposed by local law directly upon him,⁵² while deduction for federal excise, import, and stamp taxes is no longer permitted unless a business expense.⁵³

Expenses for medical care in excess of five per cent of one's adjusted gross income (including amounts paid for accident or health insurance) are now deductible,⁵⁴ and a special deduction of \$500 for blind persons was introduced by the 1943 Act.⁵⁵

To stop at this point is in noway to indicate that there were not other important and far-reaching changes made in federal income

⁴⁶ I. R. C. § 124, added by Second Revenue Act of 1940 § 302; amended by several subsequent acts.

⁴⁷ PROCLAMATION No. 2669, 10 FED. REG. (1945) 12475.

⁴⁸ I. R. C. § 124(j), (k), added by Tax Adjustment Act of 1945 § 7.

⁴⁹ These two requirements were the source of continual litigation. See 5 MERTENS, *op. cit. supra* note 8, §§ 30.16-30.69.

⁵⁰ I. R. C. § 23(k)(1), amended by Revenue Act of 1942 § 124(a). The Revenue Act of 1943, section 113, restored the requirement of charge-off with respect to the deductibility of partially worthless debts.

⁵¹ I. R. C. § 23(k)(4), added by Revenue Act of 1942 § 124(a).

⁵² I. R. C. § 23(c)(3), added by Revenue Act of 1942 § 122.

⁵³ I. R. C. § 23(c)(1)(F), added by Revenue Act of 1943 § 111.

⁵⁴ I. R. C. § 23(x), added by Revenue Act of 1942 § 127(a); amended by Individual Income Tax Act of 1944 § 8(c), and Revenue Act of 1945 § 102(b)(1).

⁵⁵ I. R. C. § 23(y), added by Revenue Act of 1943 § 115.

taxation during the war years. The subject of corporate reorganizations requires a treatise of its own.⁵⁶ The requirement of annual information returns from presently tax-exempt institutions, notably labor unions, implies important changes in this direction in the future.⁵⁷ The archaic practice of collecting taxes in one year upon earnings of the previous period has been largely replaced by a "pay-as-you-go" system, withholding of taxes by employers,⁵⁸ supplemented by current payments of estimated taxes.⁵⁹ Optional tax tables for incomes below \$5,000, with deductions arbitrarily arrived at,⁶⁰ and withholding receipts substituted for longer returns,⁶¹ have reduced by many millions the filing of complicated forms. The 1945 Act also brought about another long-hoped-for improvement: the virtual elimination of the normal tax, now present in name only as a sop to holders of partially tax-exempt interest.⁶² These and other income tax changes of less general interest found congressional approval during the past five years, the most tax-conscious period in American history.

WARTIME PROFITS

During that period not a small part of this attention was directed at yet another form of income tax, the memory of which and the litigation over which will last for years though it itself is no longer a part of the statute books. This description could fit only the Excess Profits Tax,⁶³ introduced by the Second Revenue Act of 1940⁶⁴ and repealed by the Revenue Act of 1945,⁶⁵ effective as of January 1, 1946. To attempt any kind of a description of this much amended, unbe-

⁵⁶ See Darrell, *Creditors' Reorganizations and the Federal Income Tax* (1944) 57 HARV. L. REV. 1009, discussing the changes of the last few years. Also Griswold, "Securities" and "Continuity of Interest" (1945) 58 HARV. L. REV. 705.

⁵⁷ I. R. C. § 54(f), added by Revenue Act of 1943 § 117.

⁵⁸ I. R. C. §§ 1621-1632, added by Current Tax Payment Act of 1943 § 2(a); amended by Individual Income Tax Act of 1944, § 22, and Revenue Act of 1945 § 104.

⁵⁹ I. R. C. §§ 58-60, added by Current Tax Payment Act of 1943 § 5; amended by Individual Income Tax Act of 1944 § 13.

⁶⁰ I. R. C. §§ 400-404, amended by Individual Income Tax Act of 1944 § 5(a), and Revenue Act of 1945 § 103(a).

⁶¹ I. R. C. § 51(f), added by Individual Income Tax Act of 1944 § 11(b).

⁶² The same credits are now allowed for the purpose of both normal tax and surtax computation, with the exception of interest on United States obligations or those of its instrumentalities. I. R. C. § 25, amended by Revenue Act of 1945 § 102.

⁶³ I. R. C. §§ 710-784. For a symposium on this wartime tax see Peterson, *Excess Profits Taxation* (1943) 10 LAW & CONTEMP. PROB. 1.

⁶⁴ Section 201. 54 STAT. (1940) 975.

⁶⁵ Section 122. PUB. L. NO. 214, 79th Cong. 1st Sess. (Nov. 8, 1945).

lievably complex measure would require a work far longer than the space of this article permits. Suffice it to say that Congress sought to prevent what is deemed "excessive" corporate profits during a period of unprecedented war-stimulated demands upon industry. Congress concluded that, generally speaking, profits in excess of those enjoyed during the peacetime years of 1936 to 1939⁶⁶ or, at the election of the taxpayer, profits in excess of eight per cent of invested capital (with smaller percentages on the portion of invested capital in excess of \$5,000,000),⁶⁷ were excessive. Obviously no such rule of thumb would work out fairly in every case and Congress saw the need for a relief provision. It is this provision, section 722 of the Internal Revenue Code,⁶⁸ under which billions of dollars in refunds have been claimed, that will loom large in the tax picture for many years to come. The taxpayer is told, in effect, to write his own tax bill where these general rules do not accurately portray his "excessive" profits, and then to bring the Commissioner around to his way of thinking. Thus the problem of taxing excess profits becomes for many corporations a matter of compromise, creating a tremendously important field for attorney-accountant collaboration.

Closely allied to this field is the Renegotiation Act,⁶⁹ another measure designed to control war-profiteering. Under normal conditions competitive bidding on government contracts adequately insures against unreasonable profits, but during wartime, speed is paramount and the slow process of public bidding must be abandoned.⁷⁰ In war contracts, however, there is almost never a yardstick to measure probable costs. Consequently, it was not long after Pearl Harbor that Congress provided for the renegotiation of government contracts,⁷¹ after the event, where the contractor receives amounts in excess of \$100,000 during the year, later changed to \$500,000.⁷²

⁶⁶ I. R. C. § 713, added by Second Revenue Act of 1940 § 201; amended by Excess Profits Tax Amendments of 1941 § 4. 55 STAT. (1941) 19.

⁶⁷ I. R. C. § 714, added by Second Revenue Act of 1940 § 201, amended by Revenue Act of 1941 § 201(b), Revenue Act of 1942 § 217, and Revenue Act of 1943 § 205.

⁶⁸ Added by Second Revenue Act of 1940 § 201; amended by Revenue Act of 1942 § 222(a). (Also subsequent minor amendments.) See Tarleau, *Section 722: Safety Valve of the Excess Profits Tax* (1943) 10 LAW & CONTEMP. PROB. 43.

⁶⁹ 56 STAT. (1942) 245, as amended, *ibid.* 982, 57 STAT. (1943) 348, *ibid.* 564, 58 STAT. (1944) 78, PUB. L. No. 104, 79th Cong. 1st Sess. (June 30, 1945). 50 U.S.C.A. App. § 1191. For a symposium on renegotiation see (1944) 11 U. CHI. L. REV. 191.

⁷⁰ Farrand, *Renegotiation Legislation* (1944) 44 COL. L. REV. 216.

⁷¹ April 28, 1942, 56 STAT. 245.

⁷² Revenue Act of 1943 § 701, 58 STAT. (1944) 78.

This Act, in effect, told industry to get on with the war and to argue later about "reasonable profits". The renegotiation law ended as of December 31, 1945,⁷³ and no proceeding to recapture excessive profits under this law can be begun more than one year after the close of the period in which the profits were realized.⁷⁴

ESTATE AND GIFT TAX CHANGES

No account of wartime taxes would be complete from the legal standpoint without mention of the important developments in estate and gift taxation, again primarily effected by the 1942 Act.⁷⁵

Under prior law only one-half of the value of community property was includible in the estate of the first to die.⁷⁶ This led to substantial tax advantages in those states having a community property system if the husband died first or if he died no later than five years after his wife.⁷⁷ Now Code section 811(e)(2) makes includible in a decedent's estate all community property other than the part actually contributed by the survivor from separate property or earned by the survivor's personal services.⁷⁸ In a similar fashion the former gift tax advantages have been eliminated.⁷⁹ Furthermore, the community property states are now put at a disadvantage by requiring inclusion in the decedent's estate of all property subject to his power of testamentary disposition, no matter who was responsible for its lifetime acquisition.⁸⁰ Loud and immediate cries came from the eight states⁸¹ formerly enjoying this tax advantage, but the Supreme Court on De-

⁷³ 50 U. S. C. A. App. § 1191(h).

⁷⁴ *Ibid.* § 1191(c)(3).

⁷⁵ Kauper, *The Revenue Act of 1942: Federal Estate and Gift Taxation* (1942) 41 MICH. L. REV. 369.

⁷⁶ 1 PAUL, FEDERAL ESTATE AND GIFT TAXATION (1942) §§ 1.09, 4.11.

⁷⁷ This fact was dramatically brought out in tables prepared by the House Ways and Means Committee. H. R. REP. No. 2333, 77th Cong. 2d Sess. (1942) 35. Where the income producer survived his spouse by more than five years community property was generally a disadvantage. See I. R. C. § 812(c), amended by Revenue Act of 1942 § 407.

⁷⁸ Added by Revenue Act of 1942 § 402(b).

⁷⁹ I. R. C. § 1000(d), added by Revenue Act of 1942 § 453.

⁸⁰ I. R. C. § 811(e)(2), (last sentence).

⁸¹ Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. See 3 VERNIER, *op. cit. supra* note 31, § 178. Oklahoma joined the group this past year [32 OKLA. STAT. (Supp. 1945) § 667] after its optional method was held ineffective for the reduction of federal income taxes in *Comm. v. Harmon* (1944) 323 U.S. 44. Oregon's optional method, just two years old, was killed outright after the *Harmon* decision. Ore. Laws 1945, c 270, p. 409.

ember 10, 1945,⁸² made it clear that no constitutional barrier exists to so taxing property held in community.

One big question remains. Will this decision act as a spur to a Congress which for many years has balked at depriving community property of its *income tax* advantages?⁸³ The other thirty-nine states are not too sure that they want action in this direction when such action will in all probability be a mandatory joint return requirement for spouses everywhere.⁸⁴

The lawyer released from service will return to practice finding still another favorite estate tax device no longer available. Under prior law broad powers of appointment could be given, the practical equivalent of outright gifts, yet there would be no tax when the donee of such a power disposed of the property. Only property *passing* under the *exercise* of a *general* power was includible in the gross estate.⁸⁵ Today all property subject to a power other than a fiduciary power, whether exercised or not, is taxed, unless the power is one to appoint to a restricted class of relatives or to charity.⁸⁶

Despite the seemingly simple language of Code section 811(g), the tax status of life insurance proceeds has been a see-saw affair for many years with both the Commissioner and the courts referring at one time to payment of premiums and at another, to retention of incidents of ownership as the true test of taxability.⁸⁷ In 1942 Congress settled the matter by taxing all insurance payable to named beneficiaries where the insured either paid premiums or retained incidents of ownership.⁸⁸

Again, these are only the highlights of a field where Congress worked overtime during the war years. With rates of all taxes at unprecedented and frequently confiscatory heights, it was realized that any unfairness in the basic tax structure would loom much larger than during a period when the fiscal pinch was lighter. Consequently valiant efforts were made to smooth out the rough edges of federal

⁸² *Fernandez v. Wiener* (Dec. 10, 1945) U.S., 66 S. Ct. 178.

⁸³ See dissent of Justice Douglas in *Comm. v. Harmon*, *supra* note 81, at 49.

⁸⁴ Latcham, *Invasions of the Community Property Income Tax Privileges* (1945) 20 WASH. L. REV. 44.

⁸⁵ See 1 PAUL, *op. cit. supra* note 76, §§ 9.06 *et seq.*

⁸⁶ I. R. C. § 811(f), amended by Revenue Act of 1942 § 403(a). See Eisenstein, *Powers of Appointment and Estate Taxes* (1943) 52 YALE L. J. 296 and 494.

⁸⁷ See 1 PAUL, *op. cit. supra* note 76, § 10.02 *et seq.* Also CCH Federal Inheritance, Estate and Gift Tax Service ¶ 3373.

⁸⁸ I. R. C. § 811(g), amended by Revenue Act of 1942 § 404(a).

taxation.⁸⁹ That an objective view was taken is evidenced by the fact that the taxpayer benefited as frequently as the government, and all this during a period when increased revenue was the crying need. It would be difficult for anyone to advance successfully the argument that the changes have not, by and large, been for the good. The lawyer veteran revisiting the Internal Revenue Code after several years absence, will be well advised to expect such changes in the basic tax law, changes, however, which will as frequently as not redound to the advantage of his client.

II

WAR PRODUCTION

The enormous volume of production for war purposes—over 7,000 airplanes a month, at the peak; 16,000 tanks and 100,000 guns in the first half of 1943; 19,000,000 tons of merchant ships a year, while a two-ocean Navy was being built⁹⁰—as well as the entire range of our production for the civilian needs of ourselves and some of our allies, had an important background in statute and in administrative control. The principal statutory source of authority was the allocation clause of the Priorities and Allocations Act of May 31, 1941, which amended the Priorities Statute of 1940.⁹¹ The allocation clause was broadened in terms and carried into the Second War Powers Act of March 27, 1942.⁹² It reads:

“Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.”

This undoubtedly is the most sweeping grant of power to the President in the history of the country. Under it, the activities of more than 250,000 manufacturers, wholesalers and retailers were regulated, and industrial production and distribution throughout the country drastically altered.⁹³

⁸⁹ See Kent, *The Revenue Act of 1942* (1943) 43 COL. L. REV. 1, 13.

⁹⁰ See O'Brian and Fleischmann, *War Production Board Policies and Procedure* (1944) 13 GEO. WASH. L. REV. 1, 3.

⁹¹ 54 STAT. (1940) 676, 50 U.S.C.A. App. § 1152(a)(2).

⁹² 56 STAT. (1942) 177, 50 U.S.C.A. App. § 633.

⁹³ O'Brian and Fleischmann, *op. cit. supra* note 90, at 5.

Under a provision for delegation contained in the Act,⁹⁴ parts of the allocation power were given to the War Food Administration,⁹⁵ the Petroleum Administration for War,⁹⁶ and the Office of Price Administration.⁹⁷ But war production, in the main, was placed under the War Production Board.⁹⁸ The powers of the Board were vested in the chairman, who was to act "with the advice and assistance of the other members of the Board." These were the Secretaries of War, Navy, and Agriculture, and nine other officers of the government.⁹⁹ Under the Second War Powers Act, the President was empowered to require the keeping of records and the making of reports and was given a right to inspect books, records, and premises, require attendance and testimony of witnesses under oath and the production of records, etc. An immunity clause protected persons testifying after claiming their privilege against self-incrimination. Violation of the Act or of any rule, regulation or order made under it was made a misdemeanor, punishable by a fine of \$10,000 or a year's imprisonment, or both. Such violations might also be enjoined in a civil action in the district courts of the United States, and broad provision for service of process in criminal and civil actions was made.¹⁰⁰ No person was to be liable in damages for default under a contract, where the default resulted from compliance with the Act on orders thereunder.

The WPB rapidly built up a large Washington staff, some thirteen regional offices and about one hundred district offices. It set up an extensive and complicated priorities system. Besides separate priority or "preference rating" certificates, several types of orders of general application were issued in large numbers, published in the Federal Register, and frequently amended. These included P orders, assigning blanket preference ratings to certain industries and businesses; M (Conservation) orders covering the distribution and use

⁹⁴ *Supra* note 92.

⁹⁵ EXEC. ORDER 9334, 8 FED. REG. (1943) 5423.

⁹⁶ EXEC. ORDER 9276, 7 FED. REG. (1942) 10,091.

⁹⁷ Directive No. 1, 7 FED. REG. (1942) 562 and EXEC. ORDER 9125, 7 FED. REG. (1942) 2719. Other delegations or subdelegations were made to the Office of Defense Transportation and the Solid Fuels Administration for War.

⁹⁸ Established January 16, 1942 by EXEC. ORDER 9024, 7 FED. REG. (1942) 329. It was preceded by the Supply Priorities and Allocations Board, EXEC. ORDER 8875, 6 FED. REG. (1941) 4483, and by the Office of Production Management, see EXEC. ORDER 8629, 6 FED. REG. (1941) 191 and EXEC. ORDER 9040, 7 FED. REG. (1942) 527, CCH War Law Serv., 1 Prior. & Alloc. ¶ 30,758.

⁹⁹ EXEC. ORDER 9024, 7 FED. REG. (1942) 329, and later amendments.

¹⁰⁰ *Supra* note 92.

of specified materials; and L (Limitation) orders, forbidding or restricting manufacture of many sorts of goods, construction of buildings, roads, etc.¹⁰¹

It was soon found necessary to make specific allocation of scarce materials to individual users, on the basis of their production schedules for the coming quarter or quarters and in some cases to control the fixing of such schedules. This was attempted first under the PRP or Production Requirements Plan, which was superseded late in 1943, by CMP, the Controlled Materials Plan, a complicated but successful scheme by which the supply of steel, copper, and aluminum was apportioned first among "claimant agencies", *i.e.*, the War and Navy Departments, Lend Lease Administration, Office of Civilian Supply, Maritime Commission, Board of Economic Warfare, and Aircraft Scheduling Unit. Controlled materials were then divided between prime contractors, and below these, between subcontractors.¹⁰² For the operation of CMP a series of some ten CMP Regulations was issued, with numerous directions and interpretations under each.¹⁰³ At the same time, the general priorities system was described and controlled by some thirty priorities regulations, many of them elaborate and detailed.¹⁰⁴ The various orders and regulations, numbering in excess of fifty-three hundred, with their amendments and accompanying directions, fill several volumes, and more than three million individual priority certificates were issued down to May 31, 1944.¹⁰⁵

One feature of the work of the WPB is of special interest to lawyers, namely, the setting up, without specific statutory authority, of a country-wide system of administrative enforcement of the orders and regulations of the Board. This was found necessary as an adjunct to the sanctions set out in the Second War Powers Act. Complaints of violations were investigated by the compliance division of the Board at the district and regional offices. If the case did not seem appropriate for criminal or injunctive proceedings, the violator (respondent) was informed in some detail of the charge against him and the matter was set down for hearing before a compliance commis-

¹⁰¹ O'Brian and Fleischmann, *op. cit. supra* note 90, at 28-32. See also CCH War Law Serv., 1 Prior. & Alloc. ¶¶ 30,423-30,485. For an important study of the early orders of WPB see Weiner, *Legal and Economic Problems of Civilian Supply* (1942) 9 LAW & CONTEMP. PROB. 122, 130-140.

¹⁰² CCH War Law Serv., 1 Prior. & Alloc. ¶¶ 33,021-33,025.

¹⁰³ *Ibid.* at ¶¶ 33,206-33,938.

¹⁰⁴ *Ibid.* at ¶¶ 30,901-30,985.

¹⁰⁵ O'Brian and Fleischmann, *op. cit. supra* note 90, at 28.

sioner. These commissioners were appointed directly by the chairman of the WPB and were responsible only to him, thus being made independent of the compliance and legal divisions of the Board. By September, 1944, there were some thirty-four such commissioners, most of whom were retired judges and professors of law.¹⁰⁶ Their function was to issue subpoenas, preside at hearings, and to make reports to the Board of their findings and recommendations as to the disposition of the case. At the hearing the respondent might appear with counsel, present his defense and cross-examine witnesses called by the regional attorney of the Board.

If the commissioner's recommendation was adverse to the respondent, *i.e.*, if a so-called "suspension order", depriving the respondent of priorities assistance, or reducing his quota of a scarce commodity, or in some other way restricting his business, was recommended, a copy of the report and recommendation was furnished to the respondent and he was entitled to appeal to a chief compliance commissioner in Washington.¹⁰⁷ Down to December 20, 1944, the decision of the Board, upon the recommendation of the chief compliance commissioner, was final, except as a court might enjoin an excess of jurisdiction or abuse of discretion under general equity powers.¹⁰⁸ By an amendment of December 20, 1944, to the Second War Powers Act,¹⁰⁹ the district courts of the United States were given exclusive jurisdiction to enjoin or set aside, in whole or in part, any order suspending any priority or allocation; and venue of such suit was provided in the district of the petitioner's principal place of business. Down to December 31, 1944, 1962 hearings before commissioners had been held¹¹⁰ and down to January 30, 1946, 919 suspension orders had been issued.¹¹¹

The authority for the issuance of suspension orders against in-

¹⁰⁶ Reliance here is on an unpublished letter from Chief Compliance Commissioner Walter H. Foster, dated September 23, 1944, to one of the authors.

¹⁰⁷ O'Brian and Fleischmann, *op. cit. supra* note 90, at 46-54.

¹⁰⁸ See, for instance, *B. Simon Hardware Co. v. Nelson* (D.D.C. 1943) 52 F. Supp. 474, *rev'd*, and ordered dismissed as moot (App. D.C. 1944) 145 F. (2d) 386.

¹⁰⁹ 58 STAT. (1944) 827, 50 U.S.C.A. App. (1945 pocket pt.) 45.

¹¹⁰ Unpublished report of Chief Compliance Commissioner Foster to Chairman J. A. Krug, dated February 7, 1945. From the same source it appears that as of December 31, 1944, about 450 cases had been referred to the Department of Justice, resulting in a total of 219 criminal penalties imposed and the issuance of 39 injunctions. Appeals from suspension orders to the Chief Compliance Commissioner had been taken in 135 cases of which 63 were modified or revoked.

¹¹¹ See S-919, Jan. 31, 1946, 11 FED. REG. (1946) 1149.

dividuals, as a result of the compliance hearing procedure, was the same single-sentence allocation clause of the Second War Powers Act upon which the entire far-flung system of economic control wielded by the WPB was built.¹¹² Viewed simply as penalties, the suspension orders issued upon findings of violations of the general orders and regulations of the WPB would have been invalid, since it is for Congress to prescribe the penalties for the laws which it enacts.¹¹³ But in 1944 the Supreme Court banished this objection to suspension orders by sustaining one issued by the OPA under the same allocation clause on the ground that the power to allocate scarce materials included the power to take such materials out of the hands of persons whose conduct imperilled the scheme of distribution necessitated by the war effort.¹¹⁴

The original termination date of the Second War Powers Act, December 31, 1944, was extended to December 31, 1945, by an amendment of December 20, 1944.¹¹⁵ It was again extended to June 30, 1946, by a recent act.¹¹⁶ In the meantime, under date of October 4, 1945, President Truman abolished the WPB as of November 3, 1945, and transferred its functions and powers to the Civilian Production Administration (CPA).¹¹⁷ Field offices were closed December 31, 1945, and administration concentrated in Washington. As of January 1, 1946, some seventeen priorities regulations were still in force. Of these, perhaps the most important are Priorities Regulation 32, restricting a person's inventory of certain scarce materials to "a practicable minimum working inventory reasonably necessary to meet his own deliveries or to supply his services on the basis of his current or

¹¹² This clause does not amount to an unconstitutional delegation of power to the President, *Gallagher's Steak House v. Bowles* (C.C.A. 2d, 1944) 142 F. (2d) 530; *U. S. v. Randall* (C.C.A. 2d, 1944) 140 F. (2d) 70.

¹¹³ *L. P. Steuart & Bro. v. Bowles* (1944) 322 U. S. 398, 404; *B. Simon Hardware Co. v. Nelson*, *supra* note 108; *Jacobson v. Bowles* (N.D. Tex. 1944) 53 F. Supp. 532, *rev'd*, (C.C.A. 5th, 1944) 145 F. (2d) 975.

¹¹⁴ *L. P. Steuart & Bro. v. Bowles*, *supra* note 113. "Certainly we could not say that the President would lack the power under this Act to take away from a wasteful factory and route to an efficient one a precious supply of material needed for the manufacture of articles of war." *Ibid.* at 405.

¹¹⁵ 58 STAT. (1944) 827, 50 U. S. C. A. App. (1945 pocket pt.) 45.

¹¹⁶ H. C. 4780, CCH Reconversion, Report No. 30, Dec. 27, 1945.

¹¹⁷ EXEC. ORDER 9638, 10 FED. REG. (1945) 12591. By letter of about August 15, addressed to Chairman Krug, President Truman asked the WPB to play an important role in reconversion by expanding production of materials in short supply, controlling inventories so as to avoid speculative hoarding, granting priority assistance to break bottlenecks, etc. See CCH War Law Serv., 2 Prior. & Alloc. Report No. 383, Aug. 16, 1945.

scheduled method and rate of operation,"¹¹⁸ and Priorities Regulation 33 entitled "Reconversion Housing Program", which establishes HH preference ratings and assigns them to builders who are willing to construct houses costing less than \$10,000 and renting for less than \$80 per month, and who will accord preference to veterans in selling and renting.¹¹⁹

The Controlled Materials Plan is gone,¹²⁰ but there remain a few L orders,¹²¹ limiting production and sale of certain articles, a considerable number of M, conservation orders, restricting use of scarce materials such as cadmium,¹²² penicillin,¹²³ rayon,¹²⁴ molasses,¹²⁵ and manila fiber and cordage,¹²⁶ and also a few R orders, restricting use of rubber and specifying types of tires, etc., for manufacture.¹²⁷

III

PRICE CONTROL—RENT CONTROL—RATIONING

A. PRICE CONTROL

Origin and General Authority of OPA.

By November 1941, the cost of living in the United States had risen some eleven per cent over 1940 levels and the upward trend was continuing at around one and one-half per cent per month.¹²⁸ When Congress got around to enacting the Emergency Price Control Act of 1942,¹²⁹ namely, January 30, 1942, living cost was up fifteen

¹¹⁸ Issued Nov. 23, 1945, 10 FED. REG. (1945) 14430.

¹¹⁹ As amended January 11, 1946, 11 FED. REG. (1946) 601. This regulation has now been supplemented by Veterans' Housing Program Order 1, issued March 26, 1946, 11 FED. REG. (1946) 3190 which forbids construction of houses over \$400, commercial buildings over \$1,000, and industrial buildings over \$15,000 without the approval of FHA or CPA.

¹²⁰ As of midnight, Sept. 30, 1945, by WPB order of Oct. 1, 1945, 10 FED. REG. (1945) 12384.

¹²¹ One of the most important, L-240, limiting newspapers in the use of newsprint, was revoked December 27, 1945 [10 FED. REG. (1945) 15415], but a special inventory limitation to a twenty-five day supply, or a forty-five day supply, depending on location was inserted as Direction 7 to Priorities Regulation 32 [10 FED. REG. (1945) 15415].

¹²² Conservation Order M-389, 11 FED. REG. (1946) 1092.

¹²³ General Allocation Order M-300, 11 FED. REG. (1946) 242.

¹²⁴ Conservation Order M-328B as amended Jan. 18, 1946, 11 FED. REG. (1946) 796.

¹²⁵ Conservation Order M-54, 11 FED. REG. (1946) 338.

¹²⁶ Conservation Order M-84, 11 FED. REG. (1946) 341.

¹²⁷ See Products & Priorities, Supp. 3, Dec. 1945, issued by Civilian Production Administration.

¹²⁸ Note (1942) 2 LAW. GUILD REV. (No. 6) 28.

¹²⁹ 56 STAT. (1942) 23, 50 U.S.C.A. App. § 901. This Act was not the beginning of efforts toward price control. After the fall of France, on May 29, 1940, President Roosevelt established an Advisory Commission to the Council for National Defense

per cent. This Act, which is the basic OPA statute, has been judicially described as a "breath-taking legislative departure from our peacetime economic policy."¹³⁰ It established an Office of Price Administration to be under the direction of a Price Administrator, appointed by the President.¹³¹ The Administrator, whenever he finds prices rising or threatening to rise in a way inconsistent with the declared purposes¹³² of the Act, "may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act."¹³³ So far as practicable, the Administrator is to ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941; every price regulation or order is to be accompanied by a statement of the considerations involved in its issuance; and before issuing any regulation or order the Administrator must, so far as practicable, advise and consult with representative members of the industry which will be affected.¹³⁴ Provision was made

and set up in the Advisory Commission a Price Stabilization Division, which studied supply and price trends and gave publicity to cases where rises were merely speculative in origin and not based on shortage. On April 11, 1941, Executive Order 8734 [6 FED. REG. (1941) 1917] established the Office of Price Administration and Civilian Supply with authority to take "all lawful steps" to prevent "price spiraling, rising costs of living, profiteering, and inflation" and to determine and publish such maximum prices, commissions, fees, etc., as the Administrator might from time to time deem fair and reasonable. See Ginsburg, *The Emergency Price Control of 1942: Basic Authority and Sanctions* (1942) 9 LAW & CONTEMP. PROB. 22-24. The authority of this pre-Pearl Harbor agency to fix prices was doubtful and its accomplishments in this direction were negligible, in the absence of enabling legislation. See *op. cit. supra* note 128.

Executive Order 9250, October 3, 1942, following the Stabilization Act of Oct. 2, 1942, 56 STAT. (1942) 765, 50 U. S. C. A. App. § 901 established the Office of Economic Stabilization with directions for formulating a comprehensive national economic policy and with authority to issue directives to the federal agencies involved. It directed the Price Administrator to fix price ceilings so as to prevent exorbitant profits, etc. Executive Order 9328, April 8, 1943, 50 U. S. C. A. App. § 901, was the famous "hold the line" order, directing that ceilings be placed on all commodities affecting the cost of living and that no further increases be permitted except to the minima required by law. See an able discussion of the OPA by the present Regional Director of the 8th Region, Duniway, *Legal Problems Relating to the OPA* (1944) 19 WASH. L. REV. 85.

¹³⁰ *Lincoln Savings Bank v. Brown* (Emer. Ct. App., 1943) 137 F. (2d) 228, 229.

¹³¹ 56 STAT. (1942) 29, 50 U. S. C. A. App. § 921.

¹³² 56 STAT. (1942) 23, 50 U. S. C. A. App. § 901. These purposes include prevention of speculative and unwarranted increases in prices and rents; prevention of profiteering; assurance that defense appropriations are not dissipated by excessive prices; and protection of wage-earners, consumers, and persons with fixed and limited incomes from undue impairment of their standard of living.

¹³³ 56 STAT. (1942) 24, 50 U. S. C. A. App. § 902.

¹³⁴ *Ibid.* No attempt is made here to trace the amendments of the original act. For these see Note (1944) 43 MICH. L. REV. 188 and Duniway, *loc. cit. supra* note 129.

for the appointment of industry advisory committees, either national or regional or both, with which the Administrator was required, at a committee's request, to advise and consult with respect to price regulations and orders.¹³⁵

Under the original Act, price control was to terminate, at the latest, June 30, 1943.¹³⁶ By successive extensions, each for a year,¹³⁷ the date of termination has now come to be fixed as June 30, 1946, or earlier if a presidential proclamation or a concurrent resolution of both houses of Congress shall declare that continuance is not necessary in the interest of national defense and security.¹³⁸

It will be noted that the maximum prices fixed by the Administrator need only be generally fair and equitable; they need not afford a particular producer or seller a chance to sell at a profit.¹³⁹ The Act also permits the Administrator to issue temporary price regulations without complying with the usual requirements,¹⁴⁰ *e.g.*, consideration of October 1941 prices; accompanying statement of considerations; consultation with industry representatives. Such temporary regulations may only set as a maximum the prices prevailing within five days prior to the issuance of the regulation and may be effective for not more than sixty days. Evasion of maximum prices, *e.g.*, through degradation of quality, can be prevented by the Administrator;¹⁴¹ but his powers must not be used to compel changes in business practices or in established means of distribution, unrelated to price control;¹⁴² and in a bitterly debated amendment,¹⁴³ the Administrator was in

¹³⁵ 56 STAT. (1942) 25, 50 U.S.C.A. App. § 902.

¹³⁶ Section 1(b). 56 STAT. (1942) 24.

¹³⁷ To June 30, 1944. Section 7(a), 56 STAT. (1942) 767. This was the famous Stabilization Act of October 2, 1942, also called the Second Price Control Act, 56 STAT. (1942) 765. It relates to prices, wages and salaries and directs the President to issue a general stabilization order based "so far as practicable" on the September 15, 1942 levels and authorizing adjustments where necessary for the effective prosecution of the war and for the correction of gross inequities. See Duniway, *op. cit. supra* note 129, at 86. The Stabilization Extension Act of June 30, 1944, section 101, 58 STAT. (1944) 632, 50 U.S.C.A. App. § 901, extended control to June 30, 1945. See *infra* note 138 for the final extension.

¹³⁸ Act of June 30, 1945, 59 STAT. (1945) 306, 50 U.S.C.A. App. (1945 pocket pt.) § 901.

¹³⁹ See Ginsburg, *op. cit. supra* note 129, at 27.

¹⁴⁰ *Ibid.* at 31; 56 STAT. (1942) 25, 50 U.S.C.A. App. § 902.

¹⁴¹ 56 STAT. (1942) 27, 29, 50 U.S.C.A. App. §§ 902(g), 921(d).

¹⁴² 56 STAT. (1942) 27, 50 U.S.C.A. App. § 902(h).

¹⁴³ 50 U.S.C.A. App. § 902(j), added by the Commodity Credit Corporation Extension Act of July 16, 1943, 57 STAT. (1943) 566. For the issues as to grade labeling, see Note (1943) 3 LAW. GUILD REV. (No. 5) 23.

effect forbidden to restrict the use of trade and brand names, or to require grade labeling, or to standardize any commodity unless no other practicable means of controlling the price of such commodity exists.

Although the district courts were not unanimous in upholding the EPCA,¹⁴⁴ its validity is now established as against contentions that it unlawfully delegated legislative power¹⁴⁵ (a contention based largely upon the *Schechter* case)¹⁴⁶ and that it denied due process.¹⁴⁷ That the war powers of Congress are broad enough to cover price control is reasonably obvious from decisions of the Supreme Court during and following World War I.¹⁴⁸

Agricultural and Fishery Products.

With approximately fifty million people living on farms, and an effective farm-organization lobby, it is not surprising that agricultural commodities came in for favored treatment under the Act.¹⁴⁹ The Administrator is forbidden to establish maximum prices for such commodities below the highest of four possible prices, as determined and published by the Secretary of Agriculture, of which possible prices the most commonly mentioned is "110 per centum of parity".¹⁵⁰

¹⁴⁴ The EPCA was held unconstitutional as a delegation of legislative power in *Roach v. Johnson* (N. D. Ind. 1943) 48 F. Supp. 833, judgment vacated and case ordered dismissed as collusive (1943) 319 U. S. 302; and in *Payne v. Griffin* (M. D. Ga. 1943) 51 F. Supp. 588 the rent-control provisions were held invalid on the same ground. But the great majority of lower court decisions held it constitutional. See Sprecher, *Price Control in the Courts* (1944) 44 COL. L. REV. 34 and Note (1945) 30 CORN. L. Q. 504.

¹⁴⁵ *Yakus v. U. S.* (1944) 321 U. S. 414.

¹⁴⁶ *Schechter Poultry Corp. v. U. S.* (1935) 295 U. S. 495. See dissenting opinion of Roberts, J. in the *Yakus* case, *supra* note 145, at 448.

¹⁴⁷ *Bowles v. Willingham* (1944) 321 U. S. 503.

¹⁴⁸ *E.g.*, upholding the power to take over and operate railroads, *Northern Pac. Ry. Co. v. North Dakota* (1919) 250 U. S. 135; to take over and operate telegraph and telephone systems, *Dakota Central Telephone Co. v. South Dakota* (1919) 250 U. S. 163; to draft manpower for the armed forces, *Selective Draft Law Cases* (1918) 245 U. S. 366; to prohibit the manufacture and sale of alcoholic beverages, *Jacob Ruppert v. Caffey* (1920) 251 U. S. 264; to regulate the prices of certain commodities, *Highland v. Russell Car Co.* (1929) 279 U. S. 253; and to control rents, *Block v. Hirsh* (1921) 256 U. S. 135. See Note (1944) 12 GEO. WASH. L. REV. 414, 417.

¹⁴⁹ See Ginsburg, *op. cit. supra* note 129, at 35.

¹⁵⁰ That is: (1) 110 per cent of the parity price for such commodity, adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials. 56 STAT. (1942) 27, 50 U. S. C. A. App. § 903. The other three props under the floor set for agricultural commodity prices were: (2) the market price of the commodity on October 1, 1941; (3) the market price on December 15, 1941; (4) the average price during the period July 1, 1919 to June 30, 1929.

These provisions were intentionally inflationary. The price of wheat on March 15, 1942 was \$1.05 per bushel; 110 per cent of parity on that date was \$1.44. Similarly, corn then was 78.4 cents per bushel; 110 per cent of parity was \$1.04 per bushel. Cotton was 18.064 cents per pound on that date; 110 per cent of parity was 20.19 cents. Another of the four minima below which the Administrator could not go, the average 1919-1929 price of the commodity, was in some cases even more inflationary, amounting to as much as 130 per cent of parity.¹⁵¹

To make certain that the Administrator did not use his power under the general terms of the Act to fix maximum prices of commodities processed or manufactured from agricultural products so as indirectly to depress agricultural prices below the stimulated minima, the Bankhead Amendment forbade the Administrator to set any maximum price for a processed or manufactured commodity below what would reflect to the producer of the agricultural product a price equal to the highest of the stipulated minima for such agricultural product.¹⁵² The greater confidence of the farm bloc in the Secretary of Agriculture as compared with the Price Administrator is reflected in a provision forbidding price fixing as to agricultural commodities—broadened in 1945 to include food and feed products processed or manufactured from agricultural commodities¹⁵³—without the prior approval of the Secretary of Agriculture, and in 1945 this approval was required to be in writing.¹⁵⁴

Fishery products came in for special protection under the Stabilization Extension Act of 1944.¹⁵⁵ No maximum price for such products is to be less than the 1942 average,¹⁵⁶ and maximum prices of fresh fruits and vegetables are to be adjusted from time to time in the light of hazards in production (and marketing) such as crop failures and increased cost of production.¹⁵⁷

One of the problems incapable of solution by mere fixing of maximum prices was the stimulation of production through bringing in

¹⁵¹ See Ginsburg, *op. cit. supra* note 129, at 37-38.

¹⁵² 56 STAT. (1942) 28, 50 U.S.C.A. App. § 903(c). For the history of this amendment, see Ginsburg, *op. cit. supra* note 129, at 39.

¹⁵³ 59 STAT. (1945) 307, 50 U.S.C.A. App. (1945 pocket pt.) § 903(e).

¹⁵⁴ *Ibid.*

¹⁵⁵ 58 STAT. (1944) 636, 50 U.S.C.A. App. § 902(i).

¹⁵⁶ The original Act had used the year 1941, 56 STAT. (1942) 27. But the Administrator, even under this provision, had aimed at 1942 prices. See Note (1944) 43 MICH. L. REV. 188, 193, n. 28.

¹⁵⁷ 58 STAT. (1944) 637, 50 U.S.C.A. App. § 903(g).

high-cost producers, without at the same time maintaining a price level so high as to yield excessive profits to low-cost producers.¹⁵⁸ To resolve this dilemma Congress gave the Administrator the power to buy and sell, store and use commodities upon such terms as necessary to obtain maximum needed production or otherwise to supply the demand therefor; and the much-debated power to make subsidy payments to domestic producers in order to obtain the maximum necessary production.¹⁵⁹ These powers are subject to two limitations, both of which are now express. (1) If the commodity has been defined as a strategic or critical material by the President under the Reconstruction Finance Corporation Act, the power to buy or sell, store or use, or to make subsidy payments is lodged solely in the RFC corporations.¹⁶⁰ (2) Obviously the power to buy and to pay producer subsidies depended from the start on congressional appropriation; and since June 30, 1945, no subsidy payment, or purchase for the purpose of sale at a loss, may be made except with money "appropriated by Congress for such purpose."¹⁶¹

So far as agriculture is concerned, its interests seem to have been well-safeguarded under the wartime legislation. A record total of \$15,500,000,000 was realized by agricultural producers in 1942. In 1943 the figure rose to about \$19,500,000,000, in 1944 to \$19,750,000,000, and in 1945 to \$20,500,000,000.¹⁶² In June 1943 consumers were paying \$1.40 for food which cost \$1.00 in the five-year period preceding the war.¹⁶³ Farm bloc opposition to the food-price roll-back program of OPA in 1943-44 (which contemplated a subsidy fund of \$325,000,000) was accompanied by scandalously inflationary proposals as to cotton and certain other products,¹⁶⁴ and only a presidential veto of the first Commodity Credit Corporation Bill of 1943 saved the roll-back of meat and butter prices.¹⁶⁵

¹⁵⁸ See Ginsburg, *op. cit. supra* note 129, at 43-44.

¹⁵⁹ 56 STAT. (1942) 26, 50 U. S. C. A. App. § 902(e).

¹⁶⁰ *Ibid.* As of January 27, 1945, 105 commodities had been designated as strategic or critical. See Ginsburg, *op. cit. supra* note 129, at 45, 96.

¹⁶¹ Stabilization Extension Act 1944, 58 STAT. (1944) 632, 50 U. S. C. A. App. § 903(e).

¹⁶² U. S. Dep't of Agriculture figures. They do not include government payments or value of products used on farms.

¹⁶³ See Note (1943) 3 LAW. GUILD REV. (No. 3) 47.

¹⁶⁴ *Ibid.* at 48.

¹⁶⁵ Note (1943) 3 LAW. GUILD REV. (No. 5) 23, 30. On the other hand, our record as to price control compares favorably with World War I and with the record of Great Britain in World War II. See Parker, *The Work of OPA* (1943) 18 TENN. L. REV. 6, 10.

Protest and Judicial Review.

Congress ignored proposals that the issuance of price regulations be preceded by formal hearings.¹⁶⁶ The lack of such preliminary hearings does not render the Act in that respect unconstitutional.¹⁶⁷ Congress did, however, provide in some detail for protest and court review. At any time after the effective date of a price schedule, any person subject thereto may file a protest setting forth objections and affidavits or other written evidence in support thereof.¹⁶⁸ Within thirty days of such filing, the Administrator must grant or deny the protest, notice it for hearing, or provide an opportunity to present further evidence. If he denies it he must inform the protestant of his grounds and of any economic data and other facts of which he has taken official notice.¹⁶⁹

By a 1944 amendment, a protestant may, by request filed prior to denial of his protest, require that it be considered by a board of review consisting of one or more officers or employees of the OPA designated by the Administrator.¹⁷⁰ Hearings by the board, or by a subcommittee thereof, with subpoena power, are provided for, and the Administrator is required to cause to be presented to such board evidence in support of the protested provision. The protestant is to be informed of the recommendations of the board, and if the Administrator rejects them, of his reasons.¹⁷¹

Any person whose protest is denied may within thirty days file a complaint with the Emergency Court of Appeals created by the Act.¹⁷² This court is to consist of three or more judges designated by the

¹⁶⁶ See Nathanson, *The Emergency Price Control Act of 1942: Administrative Procedure and Judicial Review* (1942) 9 LAW & CONTEMP. PROB. 60, 61; and Note (1944) 12 GEO. WASH. L. REV. 414, 456.

¹⁶⁷ *Bowles v. Willingham*, *supra* note 147 and see *Yakus v. U.S.*, *supra* note 145, at 436.

¹⁶⁸ 58 STAT. (1944) 638, 50 U.S.C.A. App. § 923(a).

¹⁶⁹ *Ibid.* The Administrator may take official notice of economic data and other facts, *ibid.* § 923(b). Under the original Act, the Administrator had an alternative period of ninety days after issuance of the regulation within which to act. 56 STAT. (1942) 31. For a detailed consideration of the protest procedure see Nathanson, *op. cit. supra* note 166, at 63-69.

¹⁷⁰ 58 STAT. (1944) 638, 50 U.S.C.A. App. § 923(c).

¹⁷¹ *Ibid.* By an amendment of 1944, if the Administrator fails to grant or deny a protest within a reasonable time, the protestant may petition the Emergency Court of Appeals, which may require the Administrator to dispose of the protest within such time as it shall fix, and if he fails to do so, the protest shall be deemed denied. 58 STAT. (1944) 639, 50 U.S.C.A. App. § 923(d).

¹⁷² 56 STAT. (1942) 31, 50 U.S.C.A. App. § 924(a).

Chief Justice of the United States from among the federal district and circuit judges, two of whom shall constitute a quorum of the court and of each division thereof, in case it sits in divisions.¹⁷³ The court may sit in such places as it may designate and has in fact held sessions in various parts of the country. In pursuance of statutory authorization, it has issued its own rules of procedure.¹⁷⁴ There are now five judges designated as the United States Emergency Court of Appeals.¹⁷⁵

Although in form the proceeding before the court is original, in substance it is a review of the action of the Administrator. The court acts upon the complaint and the transcript of the prior proceedings to be filed by the Administrator. If further evidence should be taken, the court must order it presented to the Administrator.¹⁷⁶ The court may enjoin or set aside, in whole or in part, any regulation, order or price schedule, but only if the complainant establishes to the satisfaction of the court that the provision in question is not in accordance with law or is arbitrary or capricious.¹⁷⁷ Under this provision the court has power to review all questions of law, including the question whether the Administrator's determination is supported by the evidence, and any question of the denial of due process or procedural error appropriately raised in the course of the proceedings.¹⁷⁸ If the restriction on review is intended to prevent the court from forming an independent judgment as to the weight of the evidence when a complainant raises a constitutional issue, such as denial of due process by the making of a confiscatory regulation, the restriction is not for this reason invalid, although older cases suggest a doubt.¹⁷⁹ Provision for petition for certiorari to the Supreme Court within thirty days is made and such cases are to be advanced and expedited by the Supreme Court. The Act has been held to afford an adequate means of judicial review of the Administrator's action.¹⁸⁰

¹⁷³ 56 STAT. (1942) 31, 50 U.S.C.A. App. (1944) § 924(c). The original Act required three judges for a quorum. 56 STAT. (1942) 31.

¹⁷⁴ 50 U.S.C.A. App. p. 387. Issued May 12, 1942, effective May 20, 1942.

¹⁷⁵ See (1945) 61 F. Supp. XIV. Chief Judge Albert B. Maris and Judges Calvert Magruder, Thomas F. McAllister, Walter C. Lindley and Bolitha J. Laws.

¹⁷⁶ 50 STAT. (1942) 31, 50 U.S.C.A. App. § 924(a).

¹⁷⁷ 56 STAT. (1942) 31, 50 U.S.C.A. App. § 924(b).

¹⁷⁸ *Yakus v. U.S.*, *supra* note 145, at 437.

¹⁷⁹ For the cases and argument, see Nathanson, *op. cit. supra* note 166, at 72.

¹⁸⁰ *Yakus v. U.S.*, *supra* note 145; *Bowles v. Willingham*, *supra* note 147; *Rottenberg v. U.S.* (C.C.A. 1st, 1943) 137 F. (2d) 850 (consolidated with the *Yakus* case

One of the most interesting features of the Act, from the lawyer's standpoint, is section 204(d)¹⁸¹ which gives the Emergency Court of Appeals, and the Supreme Court on review, exclusive jurisdiction to determine the validity of any regulation or order of the Administrator, and prohibits all other courts, federal, state, or territorial from considering such validity or restraining or setting aside in whole or in part any provision of the Act, or of any regulation, order or price schedule. This was held valid in so far as it withdraws from federal courts power to enjoin enforcement of OPA regulations in *Lockerty v. Phillips*.¹⁸² But when a person is prosecuted in a district court of the United States for violation of a maximum price regulation can he be prevented, constitutionally, from attacking the validity of the regulation? The Supreme Court, two justices dissenting, held that he could, and thus upheld section 204(d) in this important respect.¹⁸³ Two questions, however, were left open: (1) where the regulation is unconstitutional on its face, *e.g.*, for race discrimination; and (2) when the defendant is prosecuted while he is diligently presenting a protest.

The third important issue involved in section 204(d), whether Congress can withdraw from state courts authority to adjudge a regulation invalid, was passed upon affirmatively in *Bowles v. Willingham*.¹⁸⁴ Moreover, a federal district court may enjoin a suit in a state court in which the validity of the Emergency Price Control Act and of orders issued under it is assailed and restraint of such orders is sought.¹⁸⁵ The Supreme Court, one justice dissenting, held that Judicial Code section 265,¹⁸⁶ forbidding injunctions in courts of the United States to stay proceedings in state courts, was subject to an exception here, implied from the terms of the Emergency Price Control Act.

Although under the foregoing cases no court, state or federal, except the Emergency Court of Appeals, can entertain an action to enjoin enforcement of a regulation, based either on the invalidity of the regulation or of the Act, a state court may, nevertheless, consider

before the Supreme Court). For important comments on the protest procedure and judicial review, see Note (1944) 12 GEO. WASH. L. REV. 414, 423-441.

¹⁸¹ 56 STAT. (1942) 32, 50 U. S. C. A. App. § 924(d).

¹⁸² (1943) 319 U. S. 182.

¹⁸³ *Yakus v. U. S.*, *supra* note 145.

¹⁸⁴ *Supra* note 147.

¹⁸⁵ *Ibid.*

¹⁸⁶ 36 STAT. (1911) 1162, 28 U. S. C. (1940) § 379.

the validity of the Act in a suit brought by a consumer or tenant for treble damages, or by the OPA for enforcement of a regulation.¹⁸⁷

Nonstatutory Methods of Relief.

In addition to the formal, statutory protest procedure outlined above, the OPA has set up at least two modes of administrative relief. One method is by petition for adjustment of the price fixed under a regulation.¹⁸⁸ Such a petition may be filed in any district office of the OPA and if it is not acted upon favorably there, it may be reviewed by the regional office. If it is of a type which can only be acted upon by the regional office it will be forwarded to the regional office and the determination of the latter, if unfavorable, may be reviewed by the national office. The Administrator has provided for protest of his action upon petitions for adjustment, and this makes possible review in the Emergency Court of Appeals.¹⁸⁹

A second method of relief is by petition for amendment of a regulation. This is a somewhat more formal matter than a petition for adjustment and can be handled only by the national office.¹⁹⁰ The denial of such a petition is not subject to protest or review.¹⁹¹

Sanctions.

The Administrator is well-armed with means of securing compliance. (1) He may apply to any "appropriate court", which includes both the federal district courts and the courts of the states and territories,¹⁹² for a temporary or permanent injunction, without bond, when any person has engaged or is about to engage in any acts constituting violations of the EPCA.¹⁹³ Such injunctions issue only in the discretion of the court, not as of right;¹⁹⁴ and sweeping injunctions in general terms against violation of price regulations will not be granted.¹⁹⁵ (2) Any person who wilfully violates the Act or who

¹⁸⁷ *Miller v. Municipal Court* (1943) 22 Cal. (2d) 818, 142 P. (2d) 297. See also *Duniway, op. cit. supra* note 129, at 94. For a review of earlier decisions affecting OPA see *Sprecker, loc. cit. supra* note 144.

¹⁸⁸ See *Parker, op. cit. supra* note 165, at 8-9.

¹⁸⁹ See *Duniway, op. cit. supra* note 129, at 93.

¹⁹⁰ See *Parker, op. cit. supra* note 165, at 9.

¹⁹¹ *Bogart Packing Co. v. Brown* (Emerg. Ct. App. 1943) 138 F. (2d) 422. Here we follow Regional Attorney *Duniway, op. cit. supra* note 129, at 93 rather than the conflicting view of Regional Attorney *Parker, op. cit. supra* note 165, at 9.

¹⁹² See *Ginsburg, op. cit. supra* note 129, at 55.

¹⁹³ 56 STAT. (1942) 33, 50 U.S.C.A. App. § 925(a).

¹⁹⁴ *Hecht Co. v. Bowles* (1944) 321 U.S. 321.

¹⁹⁵ *Sprecher, op. cit. supra* note 144, at 56, 122.

makes false statements or false entries in documents or reports required under the Act is subject, upon conviction, to a fine of not more than \$5,000 or imprisonment for not more than one year or both.¹⁹⁶

(3) The Act provides for civil suits for damages following in general the examples of the Sherman Act, the Clayton Act, the laws protecting trade marks, and certain other statutes.¹⁹⁷ The original Act authorized treble damages, with a minimum of \$50, plus a reasonable attorney's fee and costs,¹⁹⁸ and it was held that once a violation was proved in such an action, the plaintiff was entitled to the full recovery, regardless of wilfulness or other mitigating circumstances.¹⁹⁹ As amended by the Extension Act of June 30, 1944, the provisions as to damages have been rendered less harsh. The minimum now recoverable is the actual overcharge or \$25 whichever is greater, and in the case of nonwilful violations the damages are limited to the minimum.²⁰⁰ If the person overcharged fails to sue within thirty days, or is not entitled to bring the action, it may be brought by the Administrator on behalf of the United States. Whichever party sues must do so within a year.²⁰¹

(4) The final means of enforcement provided in the EPCA is licensing and license suspension. Whenever he deems it necessary or proper to effectuate the purposes of the Act, the Administrator may require a license as a condition of selling any commodity subject to price control. Certain safeguards are provided, and no license may be required of farmers or fishermen, or in connection with the sales of newspapers, books or other printed material, or motion pictures or radio time.²⁰² Suspension of licenses for violation of orders and regulations is only by application of the Administrator to state, territorial or district courts—and not in the district courts unless the licensee is doing business in more than one state or has gross sales exceeding \$100,000 per annum. Such suspension may not exceed a period of twelve months.²⁰³ In 1944, some 191 license suspension ac-

¹⁹⁶ 56 STAT. (1942) 33, 50 U.S.C.A. App. § 925(b).

¹⁹⁷ See Ginsburg, *op. cit. supra* note 129, at 56, n. 139.

¹⁹⁸ 56 STAT. (1942) 34.

¹⁹⁹ *Bowles v. American Stores, Inc.* (App.D.C. 1943) 139 F. (2d) 377, *cert. den.*, (1944) 322 U.S. 730.

²⁰⁰ 58 STAT. (1944) 640, 50 U.S.C.A. App. § 925(e). See also Note (1944) 43 MICH. L. REV. 188, 201-202.

²⁰¹ 58 STAT. (1944) 640, 50 U.S.C.A. App. § 925(e).

²⁰² 56 STAT. (1942) 34, 50 U.S.C.A. App. § 925(f)(1).

²⁰³ 56 STAT. (1942) 35, 50 U.S.C.A. App. § 925(f)(2). See Ginsburg, *op. cit. supra* note 129, at 56-58.

tions were filed in court. By an amendment contained in the Extension Act of June 30, 1944, Congress blocked the Administrator from using suspension powers derived from the rationing authority (which will be discussed below) in order to prevent price violators from dealing in rationed commodities.²⁰⁴

Some idea of the magnitude of the OPA's enforcement work may be gathered from the fact that in 1944 some 4,814 criminal indictments were returned and informations filed; 16,650 injunction suits were filed; 22,706 treble damage actions by the OPA were settled,²⁰⁵ and 5,024 such suits were filed. Another important phase of enforcement, namely, through suspension orders, will be mentioned under the head of rationing, below.

B. RENT CONTROL

Although rent control on the national scale provided for in the EPCA had never before been attempted in this country, there were important legislative precedents. Thus the Ball Rent Law of 1919,²⁰⁶ upheld in the leading case of *Block v. Hirsh*,²⁰⁷ created a rent commission for the District of Columbia, with power to fix rents at a reasonable figure and evictions were forbidden except for specified causes. Massachusetts, New Jersey and New York passed statutes after World War I which gave tenants a defense, when sued for rent, that the charge was unreasonable and oppressive.²⁰⁸ On December 2, 1941, before Pearl Harbor, Congress passed the District of Columbia Emergency Rent Act, prescribing that the maximum rent for housing accommodations in the District was to be that to which the landlord was entitled on January 1, 1941.²⁰⁹

²⁰⁴ 56 STAT. (1944) 641, 50 U.S.C.A. App. § 925(f)(2), last sentence. See Note (1944) 43 MICH. L. REV. 188, 203.

²⁰⁵ The figure of 22,706 includes 11,489 cases brought by the Administrator when the purchaser of the commodity was not entitled to sue, e.g., because he bought in the course of his trade or business rather than for consumption, see 56 STAT. (1942) 34, 50 U.S.C.A. App. § 925(e); and 11,217 which were the Administrator's suits authorized by the amendment of June 30, 1944, 58 STAT. (1944) 640, 50 U.S.C.A. App. § 925(e) in cases where the purchaser might himself have sued but failed to do so within thirty days. All the statistics are unpublished figures furnished through the courtesy of OPA officers.

²⁰⁶ Act of Oct. 22, 1919, c. 80, tit. II, 41 STAT. (1919) 298.

²⁰⁷ (1921) 256 U.S. 135.

²⁰⁸ See Borders, *Emergency Rent Control* (1942) 9 LAW & CONTEMP. PROB. 107, 113-114. The New York legislation was upheld in *Levy Leasing Co. v. Siegel* (1922) 258 U.S. 242.

²⁰⁹ 55 STAT. (1941) 788. See Borders, *op. cit. supra* note 203, at 107.

Congress did not attempt in the EPCA to lay down a fixed rent basis, as in the District of Columbia Act, for each of America's sixteen million rent-paying families. Instead, Congress delegated to the Price Administrator the right to establish maximum rents in defense areas to be designated by him.²¹⁰ Such maximum rents are to be "generally fair and equitable" and such as will effectuate the purposes of the Act.²¹¹ So far as practicable, the Administrator is to give consideration to the rents prevailing on or about April 1, 1941, or if that date is not deemed a normal one by the Administrator, by reason of increases in rents resulting from defense activity, then some other date, not earlier than April 1, 1940, may be fixed as the standard for the defense area in question. In fact, the Administrator, down to July 1943, used five maximum-rent or "freeze" dates, *viz.*, January 1, April 1, July 1, and October 1, 1941, and March 1, 1942.²¹²

The Administrator is required to make adjustments for relevant factors of general applicability as to rents, including increases or decreases in property taxes and other costs in the defense-rental area. He is also to provide by regulation for the making of individual adjustments in those classes of cases where on the basic date, due to peculiar circumstances, the rent was substantially higher or lower than generally prevailing for comparable accommodations in the area and where substantial hardship has resulted since the maximum rent date from a substantial and unavoidable increase in property taxes or operating costs.²¹³ He may regulate or prohibit renting or leasing practices, including practices relating to recovery of possession,²¹⁴ which are equivalent to, or likely to result in, rent increases. Controls are to be removed when no longer needed in any defense-rental area

²¹⁰ 56 STAT. (1942) 25, 50 U. S. C. A. App. § 902(b).

²¹¹ See *supra* note 133.

²¹² See Symposium, *The Administration of Rent, Rationing and Price Control Legislation* (1943) 18 IND. L. J. 263, 265. Cities over fifty thousand in population showed a rent increase in per cent of the total rent bill of from three to twenty-five per cent between September 1939 and January 1942; and cities over fifty thousand an increase of from three to ninety-five per cent in the same period, see Borders, *op. cit. supra* note 208, at 111.

²¹³ The original Act contained a vague discretionary clause as to adjustments. 56 STAT. (1942) 26.

²¹⁴ Any effective rent control program must include regulation of evictions, for the threat of dispossession is the landlord's most potent weapon. The language of the EPCA in respect to evictions and rental practices is more general than in any preceding rent-control statutes. 56 STAT. (1942) 26. The Extension Act of June 30, 1944 made provision for adjustments mandatory and specified the grounds stated in the text. 58 STAT. (1944) 634, 50 U. S. C. A. App. § 902(e).

for eliminating abnormal increases in rents. Before establishing maximum rents in any defense area, a sixty-day notice must be given setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for the area.²¹⁵

At this writing, January 1946, most populous areas are subject to the control of residential rents. Some four hundred defense-rental areas have been designated, containing fifteen million housing-units and eighty million people.²¹⁶ Two principal regulations are in effect, one for houses and apartments,²¹⁷ the other for rooms in hotels and rooming houses.²¹⁸ These regulations are similar and each has four parts. One provision freezes the maximum rent as of a certain date.²¹⁹ Another freezes the equipment and services furnished with accommodations; certain minor decreases in equipment and services may be made without corresponding reductions in rents, *e.g.*, less cleaning and decorating in houses and apartments.²²⁰ A third provision restricts the eviction of tenants. Regardless of the termination of a lease, the right of eviction is limited to specified causes such as: non-payment of rent or continued violation of substantial covenants after written notice to cease such violation; commission of a nuisance; and proposed occupancy by the landlord himself, accompanied by permission to evict, granted on petition by the landlord. Upon sale of the rented property, a tenant in possession cannot be summarily evicted. A three-month period must elapse after the issuance of the certificate of eviction by the area rent director before the tenant can be forced to vacate. No such certificate will issue unless one-third of the purchase price has been paid, and borrowed money cannot be counted toward this one-third. A fourth provision requires the registration of all units with local rents offices of the OPA, the posting of rates in hotels and rooming houses, and the keeping of records.²²¹

It results that the rent-control provisions of EPCA affect two

²¹⁵ 58 STAT. (1942) 633, 50 U. S. C. A. App. § 902(b).

²¹⁶ See McCarthy, *Aspects of Federal Rent Control* (1945) 31 CORN. L. Q. 68, 69.

²¹⁷ Rent Reg. for Housing, 9 FED. REG. (1944) 11335.

²¹⁸ Rent Reg. for Hotels and Rooming Houses, 9 FED. REG. (1944) 11322.

²¹⁹ The dates vary. In Chicago it is March 1, 1942; in Detroit, April 1, 1941; in Cleveland, July 1, 1941.

²²⁰ See McCarthy, *op. cit. supra* note 216, at 70. Without a freezing of services, the landlord could largely defeat the freezing of rent. See Borders, *op. cit. supra* note 208, at 120.

²²¹ *Ibid.* at 70-71. See also, Symposium, *op. cit. supra* note 212, at 268-269. For detailed treatment of the maximum rent regulations as related to eviction of tenants in California, see Note (1943) 16 SO. CALIF. L. REV. 315.

vital clauses of the ordinary lease, namely: the rent-payment covenant (if the stipulated amount is in excess of the maximum for the defense area in question, the rent figure is automatically reduced to the maximum); and the vacating clause under which the tenant agrees to surrender his accommodations at the expiration of the lease. This clause is no longer in force.

Protest, Judicial Review, Sanctions.

The provisions of EPCA for criminal prosecution, treble-damage action, injunctive relief, protest to the Price Administrator and review in the Emergency Court of Appeals already discussed as to price control apply also to rent control.²²² It should be noted, however, that under the wording of section 203 of the Act,²²³ and of Procedural Regulation No. 3,²²⁴ only the landlord—not the tenant—has a right to protest a regulation or order of the area rent director and obtain a review in the Emergency Court of Appeals.

Constitutionality and Construction.

The right to control residential rents falls within the war powers of Congress, and the EPCA, in respect to the rent-control provisions involves no unconstitutional delegation of legislative power.²²⁵ These powers, it has been argued, do not end with the cessation of actual hostilities but permit Congress to remedy evils engendered by and outlasting the conflict.²²⁶ The constitutionality of the rent regulations requiring continuance of services furnished by the landlord appears established by *Marcus Brown Holding Co. v. Feldman*²²⁷ in which the Supreme Court rejected the contention that a similar provision of the New York Housing Laws of 1920 violated the Fourteenth Amendment.

The Emergency Court of Appeals has construed the "generally fair and equitable"²²⁸ requirement as to maximum rentals as meaning that the profits should be such as were normally enjoyed by landlords before the impact of defense activities.²²⁹ No individual adjust-

²²² McCarthy, *op. cit. supra* note 216, at 69, n. 5; Symposium, *op. cit. supra* note 212, at 270.

²²³ 58 STAT. (1944) 638, 50 U.S.C.A. App. § 923.

²²⁴ 8 FED. REG. (1943) 526.

²²⁵ Bowles v. Willingham, *supra* note 147.

²²⁶ See McCarthy, *op. cit. supra* note 216, at 71-72, citing Stewart v. Kahn (1870) 78 U.S. (11 Wall.) 493.

²²⁷ (1921) 256 U.S. 170.

²²⁸ 56 STAT. (1944) 25, 50 U.S.C.A. App. § 902(b).

²²⁹ Madison Park Corporation v. Bowles (Emer. Ct. App. 1943) 140 F. (2d) 316.

ment is allowable unless: (a) the rental on the basic date was not "a bargaining valuation of the property for rental purposes",²³⁰ i.e. a rent ascertained by the normal arms-length dealing between landlord and prospective tenant; or (b) unless substantial change in the accommodations furnished has taken place after the basic date, altering the rental value.²³¹

The basic date, it seems, must be fair and equitable not only to landlords in general in the area but also to each typical, distinguishable segment of housing accommodations, but not, however, to each individual landlord.²³²

C. RATIONING

Prior to December, 1941, consumer rationing had never been tried in this country. Although there were no domestic precedents, foreign experience was not much drawn upon,²³³ and Congress laid down no framework like that for price and rent control, upon which to build. The statutory basis of rationing differs entirely from that of price and rent control. Rationing rests upon the allocation clause of the Priorities and Allocation Act of May 31, 1941, and that clause as broadened and carried into the Second War Powers Act of March 27, 1942.²³⁴ The allocation clause, quoted above as the basis for most of the power of the WPB, does not mention rationing but authorizes the President to "allocate" materials and facilities when he is satisfied that fulfillment of requirements for the defense of the country will result in a shortage in the supply for defense or for private account or for export.

The allocation power under the Priorities and Allocations Act had first been delegated to OPM (Office of Production Management).²³⁵ It was apparent at once after Pearl Harbor that rubber

²³⁰ *Village Apartment Homes v. Bowles* (Emer. Ct. App. 1945) 149 F. (2d) 649, 652.

²³¹ *Ibid.* at 652-653.

²³² *McCarthy, op. cit. supra* note 216, at 74-75. For other construction points see Note (1944) 12 GEO. WASH. L. REV. 414, 444-450.

²³³ See Beuscher, *Law-Taught Attitudes and Consumer Rationing* (1945) WIS. L. REV. 63, 64.

²³⁴ *Supra* notes 91, 92. However, the EPCA seemed to confirm the rationing authority which the President and his delegates had already begun to exercise under the allocation clause by providing that he might transfer to OPA any of the powers and functions relating to priorities or rationing conferred by law upon any other agency. 56 STAT. (1942) 29, 50 U. S. C. A. App. § 921(b).

²³⁵ EXEC. ORDER 8875, 6 FED. REG. (1941) 4483. For the technical basis of rationing see the excellent summary in Duniway, *op. cit. supra* note 129, at 87-88, and in Fairchild, *The Legal Mechanism of Rationing* (1944) 28 MARQUETTE L. REV. 11.

would be short, and on December 10, 1941, OPM prohibited practically all sales and deliveries of new tires and tubes.²³⁶ On December 27, 1941, consumer rationing of tires was authorized, and terms were indicated, in another OPM order which delegated to OPA the enforcement, interpretation, and amendment of the order.²³⁷ OPA then (prior to EPCA of 1942) existed only by virtue of a presidential order of April 11, 1941.²³⁸ General rationing authority at the retail and consumer level was conferred upon OPA by an order of Donald Nelson as head of WPB (which had been created on January 16, 1942, succeeding to the powers of OPM),²³⁹ viz., Directive No. 1, concurred in by the President.²⁴⁰

After the passage of the Second War Powers Act, the President delegated allocation authority thereunder to WPB, with authority to subdelegate rationing to OPA, the latter to have the means of enforcement provided by the sanctions in the Second War Powers Act,²⁴¹ already noted.²⁴² In addition to the general rationing authority given OPA, there exists for each rationed commodity a specific order either from WPB or from another agency delegating rationing power to OPA. OPA is merely the administrative medium for rationing; other agencies determine the type of goods to be rationed and the quantity available, for which OPA may issue the evidences of authority to purchase.²⁴³ Three examples may be noted.

Food. The allocation authority over food was transferred to the Department of Agriculture on December 5, 1942.²⁴⁴ Rationing of food was later delegated by Agriculture to OPA, a food directive, e.g., for sugar, fats, meat, processed foods, issuing in the case of each item which Agriculture determined should be controlled.²⁴⁵

Rubber. The Rubber Director, whose office was created September 17, 1942, pursuant to authority given him, has directed OPA to carry out certain duties in his field.²⁴⁶

²³⁶ Supplementary Order M-15-b, 6 FED. REG. (1941) 6406.

²³⁷ Supplementary Order M-15-c, 6 FED. REG. (1941) 6792.

²³⁸ EXEC. ORDER 8734, 6 FED. REG. (1941) 1917.

²³⁹ EXEC. ORDER 9024, 7 FED. REG. (1942) 329.

²⁴⁰ 7 FED. REG. (1942) 562.

²⁴¹ EXEC. ORDER 9125, 7 FED. REG. (1942) 2719.

²⁴² See 56 STAT. (1942) 177, 50 U. S. C. A. App. § 633.

²⁴³ Fairchild, *op. cit. supra* note 235, at 11; Duniway, *op. cit. supra* note 129, at 89.

²⁴⁴ EXEC. ORDER 9280, 7 FED. REG. (1942) 10179.

²⁴⁵ See Duniway, *op. cit. supra* note 129, at 89.

²⁴⁶ *Ibid.*

Petroleum. Formal authority for rationing gasoline came to OPA from WPB. It also stemmed from the Petroleum Administration for War, created December 2, 1942, which fixes the quotas for OPA to ration.²⁴⁷

By far the largest number of directives for rationing specified goods have come to OPA from WPB, *e.g.*, tires, automobiles, bicycles, fuel oil, coal, shoes, typewriters, stoves, coffee, etc.²⁴⁸ As of January 3, 1944, OPA's rationing orders (R.O. 1-A to R.O. 17) covered twelve commodities.²⁴⁹ At this writing, only one ration order is left, namely No. 3, Sugar. It was issued, effective April 20, 1942, and has been amended well over one hundred times. Space does not permit a description of the interesting mechanism of rationing, but such a description can be found elsewhere.²⁵⁰ Three matters remain to be discussed.

Local War Price and Rationing Boards.

To these Boards is confided the all-important job of issuing ration evidence, *e.g.*, ration books, stamps, tokens, certificates, to the ultimate consumer. State councils for defense submitted the panels of names from which the first local boards, *i.e.*, tire rationing boards, some five thousand of them, were set up. Later the boards were appointed by OCD. These boards were answerable through the state OPA offices to OPA in Washington. The members were volunteers, inexperienced, hastily organized, given little equipment and, for a long time, insufficiently furnished with clerical help. In a thoughtful article, Professor Beuscher of the OPA legal staff has epitomized this vital cog in the rationing machinery as follows:

"This inexperienced and hastily organized, loose-jointed jumble of 'committees of neighbors' was to have prime responsibility for the administration of regulatory programs which interfered more directly with deep-seated American consumer habits and ways of doing things than anything that had ever come before."²⁵¹

The democratic tradition exemplified by the war price and rationing boards, their organization and procedure, and their success in

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.* at 88-89.

²⁴⁹ See Fairchild, *op. cit. supra* note 235, at 12-13.

²⁵⁰ *Ibid.* at 14-16.

²⁵¹ Beuscher, *op. cit. supra* note 233, at 64.

accomplishing a decentralization of the administrative structure and in handling a gigantic, day-by-day task during the war are described by Reuben Oppenheimer, Chief Attorney in the Baltimore District Office of the OPA, in an article published in March, 1943.²⁵² Although their chief function has been rationing, they have earned the term "Price" in their title through the additional duty of investigating local price violations, interviewing the alleged offender and, if the violation is admitted, arranging settlement of the case, usually on payment of some amount to the United States as damages and the giving of assurances of future compliance.²⁵³

Suspension Orders.

Just as WPB developed an administrative proceeding of a quasi judicial nature to supplement the sanctions of the Second War Powers Act, so has OPA, in aid of its rationing function. The first OPA suspension orders, beginning in March, 1942, were issued, without any regular or formal procedure, as a means of preventing violators of ration orders from dealing any further in critical materials.²⁵⁴ Authority to issue such orders had been expressly given to OPA by WPB.²⁵⁵ By Procedural Regulation No. 4, first issued June 5, 1942, and thereafter revised from time to time, a formalized procedure for administrative notice and hearing, very like that evolved by WPB, was provided. The conduct of such hearings was under an independent division of OPA known as the Office of Administrative Hearings, which maintained at the regional offices a staff of hearing commissioners, appointed by the hearing administrator.

Although under the allocation clause either WPB or OPA might have proceeded—and at the beginning did proceed—summarily to suspend the right of violators to deal in scarce commodities, those agencies, at the instance of their general counsel²⁵⁶ (men of conspicu-

²⁵² Oppenheimer, *The War Price and Rationing Boards* (1943) 43 COL. L. REV. 147.

²⁵³ The local boards in this role were representing the Price Administrator who has an action for treble damages if the buyer does not sue within thirty days, under the amendment of June 30, 1944, 58 STAT. (1944) 641, 50 U. S. C. A. App. § 925(g).

²⁵⁴ Suspension Order No. 1, 7 FED. REG. (1942) 2106. See Berueffy, *The Rationing Suspension Order and its Development as an Administrative Sanction* (1944) 17 ROCKY MOUNT. L. REV. 83, 87.

²⁵⁵ Directive No. 1, WPB, 7 FED. REG. (1942) 562.

²⁵⁶ John Lord O'Brien, General Counsel for OPM and WPB from 1941 to 1945, of Buffalo, N. Y., distinguished as a lawyer both in private practice and public service; David Ginsburg, General Counsel, Office of Price Administration and Civil Supply, and of OPA from 1941.

ous ability and fairness, who understood the force of the Anglo-American tradition of fair hearing before deprivation of rights of substance, even in wartime) succeeded by degrees in evolving a satisfactory administrative trial and appeal procedure preliminary to the issuance of suspension orders. To be sure, the Smith Committee in its report to Congress in 1943, made bitter comment on the suspension order regime,²⁵⁷ talk of "kangaroo courts" was occasionally heard over the air,²⁵⁸ and Dean Emeritus Roscoe Pound, relying largely on the report of a San Francisco Bar Association Committee, found in the work of the Office of Administrative Hearings little more than a revolting example of administrative absolutism.²⁵⁹ There is a lack of federal cases to sustain these strictures. One may surmise that if the suspension-order procedure of WPB and OPA were as unfair and arbitrary as the occasional critic would have one believe—bearing in mind that in 1944 OPA alone issued at least 12,714 suspension orders—congressional pressure would long since have wiped out this type of sanction. As noted earlier, the constitutionality of the OPA's suspension orders as an exercise of the allocation power, not as an extra-statutory penalty, has been established by the Supreme Court.²⁶⁰

Draftsmanship of Administrative Orders.

Of special interest to lawyers is the valuable lesson in draftsmanship afforded by the experience of war agencies such as OPA and WPB. These agencies were faced with the task of issuing for publication in the Federal Register an enormous amount of detailed legislation in the form of regulations and orders. These needed to be exact and at least reasonably concise. At the same time, they were intended for the scrutiny not only of lawyers and courts but of the public at large, from the great manufacturing corporation to the humblest user of a ration stamp. In the earlier part of the war the legal divisions to whom drafting was confided chose orthodox lawyers' language such as one finds in the internal revenue acts or in a corporate mortgage. The typical order began with a long series of definitions, some of them adopting the familiar usage of terms, some assigning a specialized or

²⁵⁷ See Berueffy, *op. cit. supra* note 254, at 84, n. 5.

²⁵⁸ Fulton Lewis, Jr., radio commentator, in particular.

²⁵⁹ Pound, *The Challenge of the Administrative Process* (1944) 30 A.B.A.J. 121. For a reply to this article see Field, *Rationing Suspension Orders: A Reply to Dean Pound* (1944) 30 A.B.A.J. 385.

²⁶⁰ *Stewart & Bro. v. Bowles*, *supra* note 113.

unusual meaning. Thereafter came the substance of the order, all carefully arranged, and yet expressed in such abstract fashion, qualified by so many provisos and exceptions, as to be obscure on first reading, even to a competent lawyer, and obscure to the "man in the street" after no-matter-how-much perusal. It became the custom to put out, along with the order itself, a comment thereon, telling in simple language what the order was intended to accomplish, and how. These comments, not the orders themselves, became the bible of the local boards and offices.

Eventually—beginning sometime in 1943 in the case of OPA, and rather later and more grudgingly in the case of WPB, which felt itself, in general, a little less concerned with the "great unwashed"—the legal staffs discovered that without loss of technical accuracy it was possible to phrase orders in simple, readily understandable style. Helpful section headings were introduced, provisos and exceptions avoided, the twenty-five-line sentence which began "Subject to the terms of paragraphs 6-15, no person, unless he is, etc.," disappeared. "Persons eligible to acquire New Passenger Automobiles by Transfers with Certificates" became "Who may get a ration certificate for a 1942 car?"²⁶¹ The draftsmen learned from experts in simple English to intersperse the text at proper points with questions which would pose the problem to which the matter immediately following related. This avoided the evil of firing at the reader in highly concentrated form a series of answers to problems of which he was not yet clearly aware. It also enabled him more readily to discover where in the order his own particular situation was taken up.²⁶²

It is to be hoped—and here we but echo the conclusion of Professor Beuscher in his splendid treatment of this whole matter—²⁶³ that the profession will not forget what the OPA and WPB lawyers, many of them young honor graduates of leading law schools, finally learned in the school of experience. Legislation, whether in the form of statute or of administrative order, need not be involved and obscure. With sufficient effort and skill it can be expressed in simple, comprehensible terms. If this lesson were taken to heart in drawing both private and public papers, the common opinion of the lawyer

²⁶¹ See Beuscher, *op. cit. supra* note 233, at 72.

²⁶² For an OPA example of simplification contrast Rationing Order No. 3, 7 FED. REG. (1942) 2966 with Ration Order No. 13, 8 FED. REG. (1943) 1840. As to WPB contrast the important Conservation Order, L-41, as it stood on February 19, 1943, 8 FED. REG. (1943) 2233, with its popularized form on May 29, 1945, 10 FED. REG. (1945) 6294.

²⁶³ Beuscher, *op. cit. supra* note 233, at 70-74.

as a person who makes even simple things difficult might gradually disappear—to the definite profit of the profession.

IV

INTERNATIONAL ORGANIZATIONS AND AGREEMENTS

UNITED NATIONS ORGANIZATION

On July 28, 1945, the United States Senate ratified the Charter of the United Nations. Traditionally the nemesis of this country's attempts at international cooperation, our highest legislative body gave almost unanimous approval to the agreements reached at San Francisco.²⁶⁴ Although recognizing that the United Nations Organization leaves much to be desired, a practical view was taken in the realization that it is at least a beginning toward the creation of a world league with real ability to enforce peace. No doubt the destruction of Hiroshima, following this ratification by only nine days, dramatically reinforced the belief that the new organization was only a beginning and that imperative now, as never before, was agreement among nations.

The framework of the Charter emanating from San Francisco is essentially the same as that proposed by the big powers at Dumbarton Oaks in the fall of 1944. The body entrusted with the keeping of world peace and with the duty to suppress acts of aggression in their early stages, is the eleven-man Security Council,²⁶⁵ where the "Big Five"²⁶⁶ will always be represented. The General Assembly, where each member country will have a voice, is primarily a world forum given only the power to discuss, debate, and recommend.²⁶⁷ The judicial branch, the International Court of Justice, with all members of the United Nations *ipso facto* parties to the court-statute,²⁶⁸

²⁶⁴ President Truman appeared before the Senate on July 2, 1945, to present officially the charter signed by fifty nations at San Francisco on June 26, 1945. (July 2, 1945) 91 CONG. REC. 7224. The final vote was eighty-nine to two. *Ibid.* at 8329.

²⁶⁵ Charter of the United Nations, arts 23-32.

²⁶⁶ The United States, Russia, Great Britain, France and China.

²⁶⁷ Charter of the United Nations, arts 9-22. The United Nations Participation Act of 1945, approved December 20, 1945, authorized the President, by and with the advice and consent of the Senate, to appoint our representatives in the Security Council and the General Assembly. PUB. L. No. 264, 79th Cong. 1st Sess. (Dec. 20, 1945). On December 19, 1945, the President nominated Edward R. Stettinius, Jr., as our representative in the Security Council, and Mr. Stettinius, Tom Connally, Arthur H. Vandenberg, and Mrs. Anna Eleanor Roosevelt, together with Secretary of State James F. Byrnes, as our first representatives in the General Assembly. All were confirmed by the Senate on December 20, 1945. 13 DEPT. OF STATE BULL. 1018 (Dec. 23, 1945).

²⁶⁸ Charter of the United Nations, arts 92-96.

is patterned after the previous World Court, which was probably man's most successful attempt at international cooperation.

The primary hope of those present at San Francisco, was that of free and open discussion of matters which might lead to disagreement. The United Nations Organization with its various councils will make this possible.²⁶⁹ But behind lies the Security Council, where the use of force on the part of the new organization must originate. This Council is to take action when any "threat to the peace, breach of the peace, or act of aggression"²⁷⁰ exists and is to have at its disposal, armed forces, as well as air units, previously agreed upon by the member nations.²⁷¹

In the case of Germany or Japan or smaller nations this ever-present threat of force should be an effective deterrent to future aggressions. But the real weakness of the new organization will be seen where a permanent member of the Security Council is involved. Any such country accused of aggression can effectively veto the use of the United Nations' forces against it; can act as judge on its own case.²⁷²

No one can strongly contend that the United Nations Organization is not a firm step in the direction of world cooperation and especially so in the case of the United States. But at the same time any realistic appraisal of the organization must lead to the conclusion that the big-power veto is an anachronism in an age of atomic power. Nations must be educated to the abandonment of this obstructive prerogative if the new organization is to become an effective force for world peace.

BRETTON WOODS

Equally important for a peaceful world, and many believe more so, is international cooperation on an economic level. Early in the

²⁶⁹ Important among these are the Economic and Social Council (Charter of the United Nations, arts 61-72) and the Trusteeship Council (*ibid.* arts 86-91). On July 31, 1945, the President was authorized to accept membership for this country in the Food and Agriculture Organization of the United Nations. PUB. L. No. 174, 79th Cong. 1st Sess. (July 31, 1945). Congress approved our participation in the United Nations Relief and Rehabilitation Administration in 1944. 58 STAT. (1944) 122, 50 U. S. C. A. App. §§ 1571-1578.

²⁷⁰ Charter of the United Nations, arts 39-42.

²⁷¹ *Ibid.* art. 43. The United Nations Participation Act of 1945 authorizes the President to negotiate special agreements on behalf of this country, specifying our contributions to such international forces, these agreements to be subject to the approval of Congress. Once, however, that this aid has been pledged, the President, through our representative, may make it available to the Security Council without further congressional approval. PUB. L. No. 264, 79th Cong. 1st Sess. (Dec. 20, 1945).

²⁷² Charter of the United Nations, art. 27.

war it was realized that nations would have to disarm economically as well as militarily if there was to be a chance of peace in the future. And just as no country can be secure with only bilateral political compacts, so the field of international finance can best be stabilized with a multilateral plan joined in by all nations.

With this in mind, President Roosevelt invited the United Nations to send delegates to a monetary and financial conference at Bretton Woods, New Hampshire, in July of 1944. Preliminary to this meeting was the work of several years on the part of technical experts representing the various countries. Conference delegates from forty-four nations there agreed that they should set up two agencies, one an International Monetary Fund,²⁷³ and the other, an International Bank for Reconstruction and Development,²⁷⁴ agencies not to cure all of the world's economic ills²⁷⁵ but to foster world trade by minimizing monetary and investment differences.

The Bank is to have an authorized capital of \$10,000,000,000,²⁷⁶ with this country subscribing \$3,175,000,000.²⁷⁷ Direct loans may be made but the Bank is designed primarily to facilitate private lending by guaranteeing loans to member governments and business enterprises located therein.²⁷⁸ Thus although American investors may make most international loans in the future, all such loans approved by and made through the Bank will be guaranteed, and the United States will assume less than one-third of the risk.

The Fund, totalling \$8,800,000,000, with this country contributing \$2,750,000,000,²⁷⁹ is aimed to hit directly at the monetary and trade practices²⁸⁰ which greatly restricted world trade in the period between the wars. Fluctuations in exchange rates are to be minimized, each country being required to fix the value of its currency in terms of gold.²⁸¹ Member countries encountering exchange difficul-

²⁷³ See Articles of Agreement of the International Monetary Fund, Dept. of State Public. 2187, Conf. Series 55, p. 28 (1944).

²⁷⁴ See Articles of Agreement of the International Bank for Reconstruction and Development, Dept. of State Public. 2187, Conf. Series 55, p. 68 (1944). For a general description of the Fund and the Bank, see O'Connell, *Bretton Woods* (1945) 5 LAW. GUILD REV. (No. 2) 60.

²⁷⁵ For other international agencies dealing with economic problems, see *supra* note 269.

²⁷⁶ Articles of Agreement of Bank, art. II, § 2(a).

²⁷⁷ *Ibid.*, schedule A. Original members' subscriptions total \$9,100,000,000.

²⁷⁸ *Ibid.*, art. I.

²⁷⁹ Articles of Agreement of Fund, schedule A.

²⁸⁰ *Ibid.*, art. I.

²⁸¹ *Ibid.*, art. IV.

ties can, within limits, secure gold and other currencies from the Fund.²⁸² In return, all members agree to eliminate restrictive monetary practices of the past such as exchange control, multiple currencies, and exchange depreciation and discrimination.²⁸³ In other words, economic warfare is recognized as a real menace to international peace even though operating more subtly than the better-known methods of waging war.

On July 31, 1945, the United States became the first of the participating nations to ratify the agreements reached at Bretton Woods.²⁸⁴ By an authorized appropriation of \$5,925,000,000,²⁸⁵ our previously determined contributions to both the Bank and the Fund were provided for. The President is authorized to appoint, by and with the advice and consent of the Senate, a governor and executive directors of both the Fund and the Bank, together with alternates.²⁸⁶ A National Advisory Council on International Monetary and Financial Problems, consisting of the Secretaries of State, Commerce, and Treasury, together with the Chairman of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Trustees of the Export-Import Bank, is also created.²⁸⁷ This council, under the general direction of the President, will act as advisor to our representatives on the Fund and the Bank, as well as to the President, and is to coordinate all governmental agencies concerned with foreign financial transactions. Congress, however, made it clear that it alone would have the power to revise our quota in the Fund, change par values, subscribe to additional shares in the Bank, consent to other fundamental changes, or loan to the Fund or Bank.²⁸⁸

Congress was also concerned about the authority of the Fund to use its resources for purposes of relief, reconstruction, or even armaments, or to afford assistance in the case of seasonal and emergency fluctuations in the balance of payments of any member for current transactions. If the authority of the Fund is construed to go that far, our governor is to propose an amendment to the Articles of Agree-

²⁸² *Ibid.*, art. V.

²⁸³ *Ibid.*, art. VIII.

²⁸⁴ Bretton Woods Agreements Act, Pub. L. No. 171, 79th Cong. 1st Sess. (July 31, 1945).

²⁸⁵ *Ibid.*, § 7.

²⁸⁶ *Ibid.*, § 3.

²⁸⁷ *Ibid.*, § 4.

²⁸⁸ *Ibid.*, § 5.

ment negating such interpretation.²⁸⁹ In other words, the International Monetary Fund as envisioned by Congress, is to use its resources only for current monetary stabilization operations. On the other hand, Congress expressed the hope that the Bank would be permitted to make or guarantee loans both for economic reconstruction and for the reconstruction of monetary systems.²⁹⁰

By this Act, then, the United States has let it be known that we stand ready and willing to undertake our allotted share of economic rehabilitation, just as our political cooperation has been promised by the ratification of the Charter of the United Nations.²⁹¹

LEND-LEASE

The Lend-Lease Act of 1941, officially known as "An Act to Promote the Defense of the United States",²⁹² introduced still another specialized type of agreement in our foreign policy. The President was there authorized "to sell, transfer title to, exchange, lease, or lend" goods and services to countries "whose defense was deemed vital to the defense of the United States."²⁹³ In 1945 Congress extended for still another year, until June 30, 1946, the President's power under this law.²⁹⁴ The Report of the House Committee on Foreign Affairs²⁹⁵ stated that total lend-lease aid provided by the United States amounted to over \$35,000,000,000 through December 31, 1944, ninety-eight per cent of which had gone to the Soviet Union, the British Commonwealth, China, and France. In listing \$4,000,000,000 worth of reverse lend-lease supplies and services, the Committee report emphasized that "lend-lease and reverse lend-lease are not two sides of a financial transaction" but that "the principal benefit that the United States receives from our allies is the speeding of victory over our common enemies with the help of the supplies and services we provide under lend-lease."

The 1945 Extension Act made it clear that the President did not have authority under lend-lease to enter into any foreign agreement

²⁸⁹ *Ibid.*, § 13.

²⁹⁰ *Ibid.*, § 12.

²⁹¹ On December 27, 1945, the Bretton Woods Fund and Bank Agreements were signed by the representatives of twenty-nine countries in the office of our Department of State, 13 DEPT. OF STATE BULL. 1058 (1945).

²⁹² 55 STAT. (1941) 31, as amended by 57 STAT. (1943) 20, 58 STAT. (1944) 222, 59 STAT. (1945) 52; 22 U. S. C. A. §§ 411-419.

²⁹³ 55 STAT. (1941) 31, 22 U. S. C. A. § 412.

²⁹⁴ 59 STAT. (1945) 52, 22 U. S. C. A. § 412.

²⁹⁵ H. R. REP. No. 259, 79th Cong. 1st Sess. (March 6, 1945).

solely for postwar relief, rehabilitation, or reconstruction.²⁹⁶ We had not set up an international WPA.

Sooner than many had expected, President Truman sent a letter to Congress on August 30, 1945, prior even to the official Japanese surrender, stating that lend-lease was ended and that all existing programs were being terminated as expeditiously as possible.²⁹⁷

TRADE AGREEMENTS EXTENSION

Another cornerstone in our recent foreign policy has been that of reciprocal trade agreements with individual countries. The Trade Agreements Act of 1934²⁹⁸ authorized the President to reduce or increase tariffs up to fifty per cent in this manner. Prior to entering into such agreements, the President was required to seek the advice of the Tariff Commission and the Departments of State, Agriculture, and Commerce,²⁹⁹ the primary purpose of the Act being to expand "foreign markets for the products of the United States."³⁰⁰

On July 5, 1945, President Truman signed Public Law No. 130,³⁰¹ extending for three more years³⁰² the above law and amending it to permit reductions or increases in duty up to fifty per cent of the rates prevailing on January 1, 1945, thus making possible much greater concessions. The 1945 Act also added the War and Navy Departments to the agencies which must be consulted in connection with the formulation of agreements, inasmuch as concessions on strategic and critical commodities had been proposed. The House Committee reported that under the 1934 Act, as extended, reciprocal trade agreements had been concluded with twenty-eight countries, including most of this country's best customers, and that export and import trade with these nations had increased to a much greater extent than trade with others.³⁰³

²⁹⁶ *Supra* note 294.

²⁹⁷ 13 DEPT. OF STATE BULL. 332 (1945).

²⁹⁸ 48 STAT. (1934) 943, 19 U.S.C. (1940) §§ 1351-1354, amending Tariff Act of June 17, 1930, c. 797, Tit. III, § 350.

²⁹⁹ 48 STAT. (1934) 945, 19 U.S.C. (1940) § 1354.

³⁰⁰ 48 STAT. (1934) 943, 19 U.S.C. (1940) § 1351(a).

³⁰¹ 59 STAT. (1945) 410, 19 U.S.C.A. §§ 1351-1354.

³⁰² Previous extensions of the 1934 act were: 50 STAT. (1937) 24, 54 STAT. (1940) 107, 57 STAT. (1943) 125.

³⁰³ H. R. REP. NO. 594, 79th Cong. 1st Sess. (May 18, 1945).

V

LABOR

WAR LABOR DISPUTES ACT

Congress was singularly quiet during the war in the field of employer-employee disputes. Only the War Labor Disputes Act,³⁰⁴ better known as the Smith-Connally Act, stands out as a striking exception to this statement, most striking, perhaps, for its apparent failure. No problem looms larger today on the national scene than that of the reconciliation of management and labor, and labor's wartime "no strike" pledge,³⁰⁵ quite generally lived up to, lulled no thinking person into the belief that the conflict would not in time come into the open. That time has now arrived and Congress finds itself armed with only its inept 1943 Act to solve the problem.

The Smith-Connally Act was passed in June of 1943 over a presidential veto.³⁰⁶ Congress was rightly concerned over threatened interruption of war production through labor disturbances and sought by this Act to reduce the possibility of such stoppages. President Roosevelt objected primarily to section 8 of the Act which required a notice of intention to strike, followed by a thirty-day "cooling off" period.³⁰⁷ At the end of such period the National Labor Relations Board was required to take a secret ballot of the employees on the question of striking. As feared by many, this section, when complied with, has served only to dramatize labor's favorite weapon and has, in effect, made the government a partner with labor in conducting strikes. The National Labor Relations Board has had little time for anything other than presiding over costly strike votes,³⁰⁸ which have proved only one thing, that the rank and file of labor are overwhelmingly behind their leaders and are not silently opposed as many congressional leaders had believed.

Section 9 of the Act was equally inefficacious. It sought, for the period of the war, to prohibit political contributions by labor organizations. Anyone familiar with recent history on the political scene,

³⁰⁴ 57 STAT. (1943) 163, 50 U. S. C. A. App. §§ 1501-1511.

³⁰⁵ See *infra* note 312.

³⁰⁶ See (1943) 89 CONG. REC. 6568.

³⁰⁷ In his veto message the President stated: "The 30 days allowed before the strike vote is taken under government auspices might well become a boiling period instead of a cooling period. The thought and energies of the workers would be diverted from war production to vote-getting."

³⁰⁸ See *Time*, Oct. 9, 1945, at 22.

especially that of 1944, will be in a position to judge the success of this provision.

Sections 3 to 6 were intended to give statutory authority to presidential seizures of war plants where production was threatened by labor disputes. Such seizures have, however, both prior to and since the passage of this Act, been ordered by the President under his constitutional powers as Commander-in-Chief.³⁰⁹

WAR LABOR BOARD

The War Labor Disputes Act did give previously missing statutory support to the National War Labor Board,³¹⁰ which had been established by executive order on January 12, 1942.³¹¹ Just ten days after Pearl Harbor, a conference of leaders of labor and industry met at the White House and agreed that there should be no strikes or lockouts, that all disputes should be settled by peaceful means, and that the President should set up a War Labor Board to hear these disputes.³¹² Twelve commissioners were to constitute the Board, four representing the public, four, industry, and four, labor, and its jurisdiction extended to all "labor disputes which might interrupt work which contributes to the effective prosecution of the war."³¹³

In October of the same year the Board was given an additional function, the administration of the national wage stabilization program.³¹⁴ This was again done by executive order,³¹⁵ following the Stabilization Act of 1942.³¹⁶ That act empowered the President to stabilize prices, wages, and salaries, generally at the level existing on September 15, 1942, and to make such adjustments as were necessary for the effective prosecution of the war or to correct gross inequities. Later regulations required War Labor Board approval for all adjustments in wages, and for all changes in salaries where the salary payments were not in excess of \$5,000 per year and the em-

³⁰⁹ See *The Smith-Connally Act* (1943) 3 LAW. GUILD REV. (No. 4) 46.

³¹⁰ Section 7. 57 STAT. (1943) 163, 50 U. S. C. A. App. §§ 1501-1511.

³¹¹ EXEC. ORDER 9017, 7 FED. REG. (1942) 237.

³¹² Rice, *The Law of the National War Labor Board* (1942) 9 LAW & CONTEMP. PROB. 470.

³¹³ *Supra* note 311.

³¹⁴ See Haber, *Aspects of Wage Stabilization by the National War Labor Board* (1945) 43 MICH. L. REV. 1007.

³¹⁵ EXEC. ORDER 9250, 7 FED. REG. (1942) 7871.

³¹⁶ 56 STAT. (1942) 765, 50 U. S. C. A. App. §§ 961-971.

ployee was represented by a labor organization and was not employed in an administrative, executive, or professional capacity.³¹⁷

Thus the Board, during its first year and a half of existence, was carrying out the orders of the President and was not operating under legislative sanction. Its authority stemmed solely from the war powers of the President. Section 7 of the War Labor Disputes Act merely reaffirmed this authority by basing it upon the broader war powers of the federal government. The Act did give a subpoena power to the Board and in other respects formalized its procedure but made no changes in composition and added little, if anything, to its substantive powers.³¹⁸

Under the Smith-Connally Act and in all executive orders, it was made clear that the activities of the War Labor Board were not to conflict with pre-war legislation in the field of employer-employee relations, the Railway Labor Act,³¹⁹ the National Labor Relations Act,³²⁰ and the Fair Labor Standards Act.³²¹ It is generally agreed that these other areas of labor differences were successfully skirted in most cases and that the National War Labor Board, with its regional boards and its commissions,³²² made a real contribution to wartime peace on the labor front. Tripartite settlement of labor disputes on a national scale became a reality and considerable success was attained in clamping the lid on eager-to-rise wages.³²³

Some had suggested³²⁴ that the Board be carried over to deal with the inevitable disputes of a peacetime economy. On the last day of 1945, however, President Truman brought it to an official end, transferring its remaining wage stabilization functions and a greatly reduced authority in dispute cases to a new agency, the National Wage Stabilization Board.³²⁵ This new Board was established within the

³¹⁷ Regulations, Office of Economic Stabilization, 7 FED. REG. (1942) 8748. Other groups were later removed from the jurisdiction of the Board. See Freidin and Ulman, *Arbitration and the War Labor Board* (1945) 58 HARV. L. REV. 309, 314, n. 13.

³¹⁸ *Supra* note 309.

³¹⁹ 44 STAT. (1926) 577, 48 STAT. (1934) 1185, 45 U.S.C. (1940) § 151.

³²⁰ 49 STAT. (1935) 449, 29 U.S.C. (1940) §§ 151 *et seq.*

³²¹ 52 STAT. (1938) 1060, 29 U.S.C. (1940) §§ 201 *et seq.*

³²² In 1943 the Board set up twelve regional boards and a number of commissions for specific industries, all tripartite in character. 8 FED. REG. (1943) 16, 676.

³²³ Boudin, *The Authority of the National War Labor Board over Labor Disputes* (1944) 43 MICH. L. REV. 329.

³²⁴ *Ibid.* at 380.

³²⁵ EXEC. ORDER 9672, 11 FED. REG. (1946) 221.

Department of Labor³²⁶ and, like its predecessor, calls for representatives from the public, from management, and from labor. The influence of the National War Labor Board will continue long after its official termination, and future congresses, plagued by the problems of labor, will often turn for guidance to the lessons learned during its four-year history.

VI

PROBLEMS OF RECONVERSION

Not long after entering upon all-out war on two fronts, Congress began to prepare for the orderly restoration of American business to a peacetime basis. It was early realized that government had become a customer of business to an unprecedented extent and that the termination of war production would, of necessity, be abrupt, not gradual, leaving in its wake billions of dollars of uncompleted contracts and even larger amounts of unused war property. Solution of such a problem logically proceeded along two lines. One led to the Contract Settlement Act of 1944,³²⁷ the other, to the Surplus Property Act of 1944.³²⁸

The Contract Settlement Act was approved July 1, 1944, preceded by many months of congressional hearings and investigations.³²⁹ Congress was assisted materially by the Baruch report,³³⁰ a study of the over-all post-war problem in the light of our experience following World War I. There was considerable fear that the settlement of terminated contracts would become a prolonged battle between accountants, to the detriment of both government and business. There was much to be said for the expeditious settlement of all such claims even if mathematical exactness had to be sacrificed.³³¹ Consequently, the Act had as its broad objective, the speedy payment to businessmen of the fair compensation due them for the termination of their war

³²⁶ The National War Labor Board had been transferred to the Department of Labor on September 19, 1945. EXEC. ORDER 9617, 10 FED. REG. (1945) 11929.

³²⁷ 58 STAT. (1944) 649, 41 U. S. C. A. §§ 101-125.

³²⁸ 58 STAT. (1944) 765, 50 U. S. C. A. App §§ 1611-1646.

³²⁹ Senator Murray referred to this law as one of the most thoroughly considered in congressional history. For its legislative background see Murray, *The Contract Settlement Act of 1944* (1944) 20 N. Y. U. L. Q. REV. 125, 143.

³³⁰ Bernard M. Baruch-John F. Hancock, Report on War and Post War Adjustment Policies, SEN. DOC. NO. 154, 78th Cong. 2d Sess. (Feb. 15, 1944).

³³¹ *Ibid.* at 8.

contracts,³³² while at the same time protecting the government against waste and fraud.³³³

The real responsibility for settling terminated contracts is placed upon the agencies that made the contracts in the first place, the agencies that are most familiar with the agreements involved.³³⁴ A Director of Contract Settlement is provided for with supervisory and policy-making authority over these agencies and charged with the duty of carrying out the broad objectives of the Act.³³⁵ Congress left for itself only an investigatory power, to be exercised through the General Accounting Office and the head of that office, the Comptroller General.³³⁶

Sections 6 and 7 of the Act set forth the methods for making final settlements. The initial procedure and the fundamental policy to be employed is that of settlement by mutual agreement. Only by settling almost all contracts in this manner will a rapid conversion to peacetime production be possible. The Act also recognizes the many different ways of preparing a claim to be used as the basis for negotiation,³³⁷ standardized forms being available as well.³³⁸

Only if the negotiations fail to result in an agreement will resort to the "determination"³³⁹ or unilateral method be had. Under this method, a formula will be applied by the governmental agency involved to ascertain the amount due the contractor, this formula consisting of the items of cost and profit for which the government must pay upon termination. Many of the factors to be considered are set forth in the Act³⁴⁰ and many others in the uniform termination article inserted in all fixed-price contracts after January 21, 1944.³⁴¹

³³² Section 6(a).

³³³ Section 16. See SEN. REP. NO. 836, 78th Cong. 2d Sess. (May 2, 1944).

³³⁴ Section 6(c). Contractors themselves are expected to do a good deal of the work of settlement in the case of their subcontractors and suppliers. See Feldman, *Compensation for Terminated Fixed-Price Supply War Contracts* (1945) 44 MICH. L. REV. 1.

³³⁵ Section 4. See Goldman, *Termination of War Contracts: The Contract Settlement Act of 1944* (1944) 43 MICH. L. REV. 279, 285.

³³⁶ Section 16(a). See Goldman, *op. cit. supra* note 335, at 288. For an account of the battle of legislative against executive control of settlements, see Murray, *op. cit. supra* note 329, at 131.

³³⁷ Section 6(b). For a discussion of the various methods, see Feldman, *op. cit. supra* note 334, at 10.

³³⁸ Joint Termination Regulation 522, C. C. H. War Law Service, 1 Govt. Contracts Section 10,522.

³³⁹ Section 6.

³⁴⁰ Section 6(d).

³⁴¹ Nemmers, *Termination of War Contracts* (1944) 44 COL. L. REV. 864; Goldman, *op. cit. supra* note 335, at 289; Feldman, *op. cit. supra* note 334, at 21.

Appeal is, of course, provided for,³⁴² and sections 8, 9 and 10, recognizing that even with the best of administration, delays will be inevitable, make provision for interim financing in the period between contract termination and final settlement.

The companion measure to the Contract Settlement Act is the Surplus Property Act of 1944.³⁴³ The Federal Constitution provides: "The Congress shall have Power to dispose of and make all needful rules and regulations respecting the Territory or other Property belonging to the United States."³⁴⁴ Never before in history has any government owned so much property requiring disposal, and the above provision has been construed broadly to include all forms of property, real or personal, tangible or intangible.³⁴⁵

But the grant of this power to dispose does not begin to answer the far more difficult question of how disposal should be accomplished. Hit and miss methods of distributing property worth many billions could disrupt irreparably our entire economy. In November of 1942, President Roosevelt asked Congress to begin consideration of this problem and much attention was devoted thereto during the next two years, culminating in the passage of the Surplus Property Act on October 3, 1944.³⁴⁶

A Surplus Property Board was established,³⁴⁷ consisting of three members, since replaced by a single Surplus Property Administrator.³⁴⁸ All functions of the board were transferred to this Administrator. The Baruch report³⁴⁹ had recommended such an office with full authority over surplus disposal and Congress followed still another suggestion by requiring the Administrator to name and utilize existing federal agencies for the actual disposal of specified types of property.³⁵⁰

Section 2 sets forth the twenty basic objectives of the Act. Stress is placed upon maintaining a system of free enterprise, giving preference to veterans, raising employment, fostering small businesses and farms, expanding commerce and transportation, discouraging monop-

³⁴² Section 13.

³⁴³ *Supra* note 328.

³⁴⁴ Article 4, Section 3.

³⁴⁵ Olverson, *Legal Aspects of Surplus War Property Disposal* (1945) 31 VA. L. REV. 550.

³⁴⁶ *Ibid.* at 559.

³⁴⁷ Section 5(a).

³⁴⁸ 50 U. S. C. A. App. § 1614.

³⁴⁹ *Supra* note 330.

³⁵⁰ Section 10. See Olverson, *op. cit. supra* note 345, at 562.

oly, and preventing profiteering. Finally, Congress expressed the desire to obtain for the government the fair value of all surplus property. Implementation of these objectives is left largely to those who administer the Act.

The Act makes it clear³⁵¹ that governmental agencies are to have priority in obtaining goods declared surplus by other agencies, with second choice going to states and their political subdivisions and instrumentalities and to tax-supported nonprofit institutions.³⁵² Veterans are to receive preferential treatment in their business and agricultural ventures.³⁵³ The needs of little business are expressly recognized and a study was directed, with the aid of the Smaller War Plants Corporation, to determine how this could best be accomplished.³⁵⁴ Section 19 covers a problem unique to big business, the disposal of war plants costing many billions. Here, review of most sales by Congress is required, it being realized that ill-conceived disposals could dislocate entire industries.³⁵⁵

It has been pointed out that in this country's surplus goods lie opportunities for the betterment of the entire world, while at the same time there exists the very real danger of business chaos if distribution is not well-conceived.³⁵⁶ The very dimensions and complications of the problems make on-the-scene action imperative in many instances and we can hope that wise administration of the program will fill in the many gaps intentionally left by Congress.

On October 3, 1944, Congress passed still another act to smooth out the transitional period, the War Mobilization and Reconversion Act of 1944.³⁵⁷ An Office of War Mobilization and Reconversion was created,³⁵⁸ taking the place of the Office of War Mobilization established by executive order on May 27, 1943.³⁵⁹ The director of the new agency was given supervision over three agencies placed within his office by the Act:³⁶⁰ Office of Contract Settlement, created by the Contract Settlement Act of 1944; Surplus Property Board, created by the Surplus Property Act of 1944; and the Retraining and Re-

³⁵¹ Section 12(a).

³⁵² Section 13.

³⁵³ Section 16.

³⁵⁴ Section 18.

³⁵⁵ Olverson, *op. cit. supra* note 345, at 576.

³⁵⁶ *Supra* note 330, at 30.

³⁵⁷ 58 STAT. (1944) 785, 50 U. S. C. A. App. §§ 1651-1678.

³⁵⁸ Section 101(a).

³⁵⁹ EXEC. ORDER 9347, 8 FED. REG. (1943) 7207.

³⁶⁰ Section 101(b).

employment Administration, set up by Title III of the new Act. The latter Administration is to coordinate most of the existing agencies dealing with the retraining, reemployment, and vocational education and rehabilitation of those released from war work.³⁶¹ Congress, having dealt with contract termination and surplus property disposal, thus established a third front in the battle of reconversion—direct consideration of the human element in the shift from war to peace. Along this same line the War Mobilization and Reconversion Act bolstered state unemployment funds³⁶² and offered encouragement to the states to institute programs of public works,³⁶³ in addition to laying down over-all demobilization and reconversion policies.³⁶⁴

VII

MISCELLANEOUS

This survey of congressional action during the war years is far from exhaustive. Much wartime federal legislation is today no more than historically important, but even by limiting further analysis to those laws with continuing force, sheer volume alone precludes more than a reference in passing.

Perhaps best known to the veterans are the several acts conferring special benefits and privileges upon them. Within one month after passing the Selective Training and Service Act of 1940,³⁶⁵ the first peacetime conscription law in the history of this country,³⁶⁶ Congress enacted the Soldiers' and Sailors' Civil Relief Act of 1940.³⁶⁷ This Act was designed primarily to suspend until a serviceman's return, actions which might affect his rights or those of his family.³⁶⁸ On March 24, 1943, Congress offered disabled veterans the oppor-

³⁶¹ Section 302.

³⁶² Section 401.

³⁶³ Section 501.

³⁶⁴ Sections 201-205.

³⁶⁵ 54 STAT. (1940) 885, as amended, 50 U. S. C. A. App. §§ 301-318. The last extension of this act was to May 15, 1946. 59 STAT. (1945) 166, 50 U. S. C. A. App. § 316.

³⁶⁶ On the constitutionality of peacetime conscription see Freeman, *The Constitutionality of Peacetime Conscription* (1944) 31 VA. L. REV. 40 (unconstitutional), and Montgomery, *The Relation of the Militia Clause to the Constitutionality of Peacetime Compulsory Universal Military Training* (1945) *ibid.* at 628 (constitutional).

³⁶⁷ 54 STAT. (1940) 1178, 50 U. S. C. A. App. §§ 501-590. Generally speaking, the Act is patterned after the Soldiers' and Sailors' Civil Relief Act of 1918, 40 STAT. (1918) 440, 50 U. S. C. A. §§ 101-165.

³⁶⁸ H. R. REP. NO. 3001, 76th Cong. 3d Sess. (1940). See Taintor and Butts, *Soldiers' and Sailors' Civil Relief Act of 1940* (1941) 13 MISS. L. J. 467.

tunity of taking training courses, not to exceed four years, for purposes of vocational rehabilitation.³⁶⁹ Similar educational privileges, in addition to many other benefits, including guaranteed loans, unemployment allowances, and assistance in obtaining employment, were extended to all those returning from service by the Servicemen's Readjustment Act of 1944, more popularly known as the "G. I. Bill of Rights."³⁷⁰ Increased pensions also received congressional approval.³⁷¹

President Truman was successful in obtaining from Congress authority to reorganize the executive branch of the government.³⁷² A long series of wartime executive orders,³⁷³ pursuant to Title I of the First War Powers Act,³⁷⁴ had made sweeping changes in executive agencies which could not have continued in effect more than six months after the official termination of the war, without this permanent legislation.³⁷⁵

The unexpected decision of the United States Supreme Court in *U.S. v. Southeastern Underwriters Ass'n*,³⁷⁶ declaring that insurance was commerce and therefore subject to the Sherman Anti-Trust Act,³⁷⁷ prompted additional legislation.³⁷⁸ It is now made clear that Congress wants state taxation and regulation in this field to continue, unfettered by the commerce clause. Even the Sherman Act and

³⁶⁹ 57 STAT. (1943) 42, as amended, 38 U.S.C.A. § 701(f), 38 U.S.C.A., c. 12, Vet. Reg. 1(a), Pt. VII.

³⁷⁰ 58 STAT. (1944) 284, 38 U.S.C.A. §§ 693-697. See Jonas, *Reemployment and Readjustment Rights of Veterans* (1945) 23 N. C. L. REV. 107. On December 28, 1945, subsistence allowances to veterans attending educational institutions were increased and other educational as well as loan provisions liberalized. PUB. L. No. 268, 79th Cong. 1st Sess. (Dec. 28, 1945).

³⁷¹ See, e.g., 58 STAT. (1944) 229, as amended by 58 STAT. (1944) 803, 38 U.S.C.A. §§ 471a, 504, 507b, amending various provisions of prior law. For an article summarizing federal legislation applicable to disabled veterans, see Monsman, *The Disabled Veteran—Federal Legislation* (1945) 239 ANNALS 38. Other veteran benefit laws: National Service Life Insurance Act of 1940, 54 STAT. (1940) 1008, as amended, 38 U.S.C.A. § 801; Mustering-Out Pay Act of 1944, 58 STAT. (1944) 8, 38 U.S.C.A. § 691; Veterans' Preference Act of 1944, 58 STAT. (1944) 387, 5 U.S.C.A. §§ 851-869.

³⁷² Reorganization Act of 1945, PUB. L. No. 263, 79th Cong. 1st Sess. (Dec. 20, 1945).

³⁷³ See Executive Orders following 50 U.S.C.A. App. § 601.

³⁷⁴ 55 STAT. (1941) 838, 50 U.S.C.A. App. § 601.

³⁷⁵ For a history of prior reorganization acts see H. R. REP. No. 971, 79th Cong. 1st Sess. (Sept. 20, 1945).

³⁷⁶ (1944) 322 U.S. 533.

³⁷⁷ 26 STAT. (1890) 209, as amended, 15 U.S.C.A. §§ 1-7.

³⁷⁸ PUB. L. No. 15, 79th Cong. 1st Sess. (March 9, 1945).

the Clayton Act³⁷⁹ are to be inapplicable in insurance cases prior to January 1, 1948.

More significant for the future, however, than many of the laws passed during recent years, are the measures which failed of enactment. The control of atomic energy comes first in any such category. Sound labor legislation is recognized by all as our number one internal problem. Congress must soon take a stand on a variety of labor problems, including strike control, continuation of the Fair Employment Practice Committee, raising of minimum wages, full employment measures, and changes in the social security laws. Important military legislation cannot much longer be delayed, notably the controversial proposals for universal training and for merger of the armed forces. Further extension of emergency legislation, primarily price and rent control, will loom large in the debates of 1946. In fact, Congress must, before long, determine which of hundreds of measures, geared only to the prosecution of the war, are to be continued, following the official termination of hostilities.

The problems of peace, especially a post-war peace, are more difficult than those of a country at war. A fight for survival unifies and invariably reduces internal dissension. With the defeat of the enemy, those internal differences are once more highlighted. As difficult as were the war years of Congress, no one can realistically predict that the sessions of the immediate future will be confronted with fewer problems or with problems of less importance.

³⁷⁹ 38 STAT. (1914) 730, as amended, 15 U. S. C. A. §§ 12-27.