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Bernard D. Reams, Jr., Federal Economic Regulation Through Wage and Price Control Programs: 1917–1980 A Selected Bibliography, 74 Law Libr. J. 1 (1981).

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Federal Economic Regulation Through Wage and Price Control Programs: 1917-1980 A Selected Bibliography

By BERNARD D. REAMS, JR.*

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SUMMARY: HISTORICAL BACKGROUND

Attempts at economic controls through statutory promulgations of wage and price regulations extend as far back as four thousand years ago to ancient Babylon. In the Code of Hammurabi, created in approximately 2150 B.C., there were many provisions and clauses governing wages and prices.¹ Some historians trace the beginning of economic regulation to directives regarding prices of commodities, food stuffs and other essentials including wages to 2830 B.C. in the fifth dynasty in Egypt under the Monarch Henku.² Scholars point to ancient Sumeria's King Urakagina of Langash who began his rule in approximately 2350 B.C. by ending the burdens of excessive government regulation over the economy, including controls on wages and prices.³ In China at about 552 B.C. in *The Official System of Chou*, a handbook of Mandarin regulations from the Chou dynasty, there are listed detailed regulations regarding control of prices and commerce.⁴ Indian philosopher and politician Kautilya also advocated economic regulation. In approximately 321 B.C. he proposed strict regulation of grain prices, suggested guides for fair wages for various

^{*} Professor of Law and Law Librarian, Washington University, St. Louis, Missouri.

¹ C. Edwards, The Hammurabi Code and the Sinaitic Legislation 67-73 (1904).

² M. LACY, FOOD CONTROL DURING FORTY-SIX CENTURIES: A CONTRIBUTION TO THE HISTORY OF PRICE-FIXING 2 (1933).

³ S. KRAMER, THE SUMERIANS 79 (1963).

⁴ HUANCHANG-CHEN, THE ECONOMIC PRINCIPLES OF CONFUCIUS AND HIS SCHOOL 448 (1911).

occupations and recommended that government appointed supervisors administer a wide variety of economic activities.⁵ Ancient Greece, likewise, had its regulatory periods. In Athens, a multitude of grain inspectors were appointed to enforce the price of grain at a level established by the government.⁶

The Roman Republic experienced similar periods of wage and price controls. In dealing with their economic problems the emperors Nero (A.D. 54-68) and Marcus Aurelius (A.D. 161-180) began devaluation of the currency. These currency manipulations have been attributed to the probable rise in Roman prices.⁷ Emperor Commodus in A.D. 180-192 continued use of controls and decreed a series of maximum prices on commodities. With the assumption of the throne by Emperor Diocletian in A.D. 284, economic problems existing prior to his reign were inherited and magnified. For a variety of economic and political reasons, prices of commodities and wages reached unprecedented levels. Consequently, Diocletian in A.D. 301 issued his "Edict" fixing maximum prices for practically all goods and services.⁸

Various control programs continued through Charlemagne's Empire and into the Middle Ages. In 1199, the government of London attempted to control both the wholesale and retail prices of wine. In thirteenth century England not only did the King attempt to regulate prices but guilds and municipal governments also had regulatory powers. In 1330, a new law was issued requiring merchants to sell goods at a reasonable price which was based upon importation cost and expenses.⁹

The fourteenth and fifteenth centuries saw Parliament permitting the regulation by local authorities of prices and location of sale. Municipal leaders frequently went beyond their stated powers and regulated prices on wood, coal, tallow and candles.¹⁰ This English heritage of regulating the economy was transferred to the Colonies. New England colonists and the Puritan legislators continued this tradition by attempting to mandate prosperity through the fixing of wage rates and prices. French and Spanish settlements also experienced similar regulations.¹¹

EARLY AMERICAN REGULATIONS: 1776-1900

The problem of securing economic stabilization through federal price and wage control programs has confronted this country almost in a cyclic manner reflecting various fluctuating economic and political conditions.¹² Historically, wholesale price levels and wages have jumped significantly when the United States became involved in a wartime situation. One of the first statutory directives concerned with price and wage ceilings was the law adopted during the Revolutionary War on December 31, 1776 by the General Assembly of the State of Rhode Island and Providence Plantations and was entitled: An Act to Prevent Monopolies and Oppresion, By Excessive and Unreasonable Prices for Many of the Necessities and Conven-

¹¹ See 1 W. Weeden, Economic and Social History of New England, 1620-1789 at 99 (1890); A. Bezanson, Prices and Inflation During the American Revolution 35 (1951).

¹² For a discussion of the Kondratyen wave theory that western business activity assumes a rhythmic wave pattern over long periods, see Malabre, Anniversary of Crash Sparks New Interest in a 50-Year Theory, WALL STREET JOURNAL, Oct. 12, 1979, at 1, col. 1.

³ KAUTILYA'S ARTHASASTRA (1923).

⁶ C. CARNEY, THE ECONOMICS OF AN ANTIQUITY (1973).

⁷ J. LEVY, THE ECONOMIC LIFE OF THE ANCIENT WORLD 72 (1967).

^{*} Kent, The Edict of Diocletian Fixing Maximum Prices, 69 U. PA. L. REV. 35 (1920).

⁹ J. ROGERS, SIX CENTURIES OF WORK AND WAGES: THE HISTORY OF ENGLISH LABOUR 387 (1949).

¹⁰ 1 W. Ashley, An Introduction to English Economic History and Theory 181 (1923).

iences of Life, and for Preventing Engrossers and for the Better Supply of our Troops in the Army with Such Necessities as May be Wanted.¹³ Within this statute is a brief report by a committee appointed by the states of Massachusetts Bay, New Hampshire, Rhode Island and Providence Plantations and Connecticut denouncing the avarice of price-boosters and warning that their action "dishartens [sic] and disaffects the soldiers who have nobly entered into service" and whose pay "is not sufficient to subsist them." Price ceilings on rum were put at four shillings six pence a gallon, on milk at eight pence a gallon, on tobacco at four pence a pound and on turkeys and dungbill fowles, eight pence a pound. The wages for house carpenters were fixed at five shillings a day, for barbers at three pence a shave and for tailors at three shillings a day. "Dinners at taverns for travelers (not soldiers) of boiled and roast meat, with other articles equivalent, exclusive of wine, is six pense." On the day that this measure was passed General George Washington was incamped with his continental army on the Delaware near Trenton, where four days before he had defeated the Hessians and had received as a reward supreme military command.

With the conclusion of hostilities and the return to peacetime pursuits these regulations were quickly repealed. The following resolution was adopted by the Continental Congress on June 4, 1778:

Whereas, it hath been found by Experience the Limitations upon the Prices of Commodities are not only ineffectual for the Purposes proposed, but likewise productive of very evil Consequences to the great Detriment of the public Service and greivous Oppression of Individuals;

Resolved, That it be recommended to the several States to repeal or suspend all Laws or Resolutions within the said States respectively limiting, regulating, or restraining the Price of any Article, Manufacture or Commodity.¹⁴

The acceleration of price changes and their effect upon the economy as the result of war emergencies have always been closely related. The War of 1812 sent the price level for wholesale prices up from an index base of about 94 to 155 in a very short period. The Mexican War had relatively little effect, due primarily to its short duration and to the great distance between the War's location and sources of manufacture. The Civil War sent prices up from a wholesale price base index of 61 in 1860 to 132 in 1865.¹⁵ During World War I prices moved from a wholesale price index of 85 to 154 in a period of three and one-half years.¹⁶ Each of these major American Wars brought significant price increases and each was followed by very extended periods of readjustment, most lasting more than a decade. By examining the historical materials available, it can be seen that most twentieth century price and wage legislation was enacted as the result of wartime conditions and parallels the various dates of hostility.¹⁷

^{13 1776} Rhode Island Acts 30.

¹⁴ 11 J. CONTINENTAL CONGRESS 1774-1789 at 569 (W.C. Ford ed. 1908).

¹³ J. Schwab, The Confederate States of America, 1861-1865: A Financial and Industrial History of the South During the Civil War 182 (1901).

¹⁶ Investigation of Concentration of Economic Power, Part 21, War and Prices: Hearing Pursuant to Public Resolution Number 113 Before the Temporary Nat'l Economic Comm., 75th Cong., 2d Sess. (1939).

[&]quot; Nelson & Joy, Prices and the War, 52 MONTHLY LAB. REV. 49 (1941).

TWENTIETH CENTURY CONTROLS

The twentieth century American experience with economic regulations through price and wage controls has its beginnings with the U.S. entry into World War I. There were three primary types of attempted profit limitations during this period: 1) the use of cost-plus contract, 2) price fixing and control and 3) excess-profits taxes.¹⁸ Several Congressional Committees investigated the matter of war profits during World War I and concluded that none of these methods accomplished effective limitation of profits or prices.¹⁹

Government agencies attempted to maintain controls over profits under various forms including cost-plus contracting. The General Munitions Board, and later the War Industries Board, approached the problem from the perspective of fixing prices on specific commodities. It is interesting to note that no statute authorizing overall fixing of prices was enacted during this war. The War Industries Board derived its authority to fix prices and to allocate priorities from the power granted to the President to place compulsory orders with any manufacturer.²⁰ The Food and Fuel Control Act of 1917²¹ gave to the President broad powers to control prices of food and fuel products and through those powers the Food and Fuel Administration exercised authority over prices with statutory backing.²² During the twenty-three year period between the armistice ending World War I and the outbreak of World War II, Congress considered approximately two hundred bills and resolutions dealing with some aspect of limitation of war profits and price controls.²³

The basic statutory authority for controls during World War II was the Emergency Price Controls Act of 1942.²⁴ This Act declared that in the interest of national defense and security and the effective prosecution of the war, Congress was determined to stabilize prices and to prevent speculative increases in prices and rents, to eliminate hoarding and other disruptive practices and to permit voluntary cooperation between the government and producers to accomplish these purposes. Title Two of this Act created the Office of Price Administration which was organized in functional units comprising subsections dealing with price, consumer, legal, ration and field operation divisions. The largest share of implementing the policy of stabilizing this nation's wages fell on the National War Labor Board assisted by twelve regional boards and several industry commissions which were to act as subsidiary agencies.

On the cessation of hostilities and with the advent of peace, inflation reoccurred and wartime controls appeared to break down completely. From August 1945 to November 1946 wholesale prices rose more than 32% and consumer prices rose almost 18.6%.²³ Most wartime wage and price controls did not expire until the middle of 1946 so there was some overlap with the peacetime economy. During this period the various controls were phased out by President Truman. The only continuing statutory authority for controls during this postwar period resulted from the

¹⁴ Hensel & McClung, *Profit Limitation Controls Prior to the Present War*, 10 LAW & CONTEMP. PROB. 192 (1944).

- ²⁰ National Defense Act of 1916, 39 Stat. 213 (1916).
- ²¹ Act of August 10, 1917, 40 Stat. 276 (1917).
- ²² Abels, Price Control in War and Emergency, 90 U. PA. L. REV. 675, 682 (1942).
- ²³ See Hensel & McClung, supra note 18, at 199.
- ²⁴ Chapter 26, 56 Stat. 23 (1942).
- ²⁵ See Current Labor Statistics, 65 MONTHLY LAB. Rev. 588, 609 (1947).

¹⁹ See Hearings Before the Committee on Military Affairs on H.R. 3 and 5293, 74th Cong., 1st Sess. (1935).

Stabilization Act of 1947²⁶ whose purpose was to assist—through voluntary agreements—in stabilizing the economy, to aid in curbing inflationary tendencies, to promote the orderly and equitable distribution of goods and facilities and to assist with stabilizing the cost of living and industrial production.

In June 1950 with the beginning of Korean hostilities, the Truman Administration implemented a price freeze program. The Defense Production Act of 1950²⁷ authorized the imposition of wage and price controls as part of a larger effort to boost the economy in support of the Korean War effort. The Defense Production Act included a Congressional mandate that there be simultaneous action in the introduction of wage and price controls. The President was authorized to administer such controls through a new independent agency created for this purpose — Economic Stabilization Agency, including a Director of Price Stabilization and a Wage Stabilization Board.²⁸ In January 1953 the Eisenhower Administration came into office and the President promptly announced that no renewal of legislative authority in the price and wage control area would be requested. He proposed to remove such controls promptly and wage ceilings were immediately withdrawn and an orderly program of price decontrol actions begun.

One notable difference between the end of direct controls in 1953 and the decontrol era of 1946 was that the economy experienced a mild recession in 1953 in contrast to the sharp inflation of 1946. Factors responsible were: military expenditures for the Korean Conflict did not produce huge deficits and less inflation resulted; consumer goods were not in short supply as in World War II and the decontrol of Korean era price and wage controls was less abrupt than in 1946.²⁹

Control issues did not reappear until the Kennedy Administration took office. In September 1961 President Kennedy wrote to the heads of the twelve largest steel companies urging them to resist the temptation to raise prices at the time of the wage increase scheduled to take effect in October. In January 1962 the Council of Economic Advisors presented "guideposts" which represented the Kennedy Administration's attempt to restrict the rate of wage increases to that of improvement in productivity. The principle underlying the "guideposts" was that the economy would work more efficiently if discretionary price and wage decisions were brought more in line with the results that would be expected in a competitive market.³⁰

Mandatory price and wage controls were again instituted on August 15, 1971, primarily as a result of the impact of post Vietnam War inflation on the economy. President Nixon announced on nationwide television and radio the implementation of these economic controls (Phases I and II).³¹ These announcements included a ninety-day freeze on wages, salaries, prices and rents but not on profits, the imposition of a surcharge on imports, certain proposals for tax relief and other economic stabilization measures. Legal authority was derived from the Economic Stabilization Act of 1970³² and the Economic Stabilization Act Amendments of 1971 and 1973³³

²⁶ Chapter 526, 61 Stat. 945 (1947).

²⁷ Chapter 932, 64 Stat. 798 (1950).

²⁸ Exec. Order No. 10161.

²⁹ B. HICKMAN, GROWTH AND STABILITY IN THE POSTWAR ECONOMY 380 (1960).

³⁰ See Economic Report of the President 185-190 (1962); J. SHEAHAN, THE WAGE-PRICE GUIDEPOST 14 (1967).

³¹ Outline of New Economic Policy for the U.S., 7 WEEKLY COMP. OF PRES. DOC. 1168 (Aug. 15, 1971).

³² Pub. L. No. 91-379, 84 Stat. 796 (1970).

³³ Pub. L. No. 92-210, 85 Stat. 743 (1971); Pub. L. No. 93-28, 87 Stat. 27 (1973).

which expired on April 30, 1974. The stated objectives of this legislation included stabilizing the economy, reducing inflation, minimizing unemployment, improving the competitive trade position of the U.S. and protecting the purchasing power of the dollar. The coverage of the legislation for Phase II was broad, giving the President power to control prices, wages, rents, salaries, interest rates, corporate dividends, and all similar transfers. The President was also given authority to set standards, to provide for such exceptions as might be required to foster orderly economic growth and to prevent gross inequity, hardships and serious market disruptions, as well as domestic shortages of raw materials, localized shortages of labor and windfall profits. The President was authorized to appoint boards and commissions which would represent sectors of the economy and the general public.

During the World War II control period, the Emergency Court of Appeals had jurisdiction over controls. Under the Nixon controls, exclusive jurisdiction was lodged in the federal district courts. Exclusive jurisdiction of appeals from district courts was lodged in a new Temporary Emergency Court of Appeals. Appeals from this court went directly to the United States Supreme Court.³⁴ The structure of the controls themselves was first established by a Cost of Living Council. The primary responsibility for implementation of Cost of Living Council policies was lodged in the Price Commission and the Pay Board.

On January 11, 1973 the Nixon Administration established Phase III of its economic control program.³⁵ This program substituted the mandatory controls of Phase II with the self-administered controls of Phase III. The Price Commission and the Pay Board were absorbed by the Cost of Living Council. A new Labor Management Advisory Committee was established to advise the chairman of the Cost of Living Council on collective bargaining and related wage increases. On June 13, 1973 President Nixon announced a second price freeze for sixty days.³⁶ Prices were confined to levels no higher than those charged during the first eight days of June. The only prices exempt from this freeze were rents and unprocessed agricultural products at the farm level. On July 1, 1973 President Nixon then announced Phase IV to move the economy out of the second freeze on a sector-by-sector basis.³⁷ On April 30, 1974 the Economic Stabilization Act expired and with it the post Vietnam War era experiment with economic controls.

For approximately the next three years the economy was fairly stable. However, with increasing inflation the Carter Administration began to support some system of control over rapidly increasing prices and wages. On October 24, 1978 President Carter, in a televised address, announced his new program of voluntary wage and price controls.³⁸ The President's aim was to hold inflation in the year ahead to a maximum of 5.75%. The administration's guidelines for wage increases were set at 7%. The limit on price increases was set at 9.5%, irrespective of the general rate of inflation.

" The Nation's Economy: Progress of the Price Freeze and Preparations for Phase IV of the Economic Stabilization Program, 9 WEEKLY COMP. OF PRES. DOC. 879 (July 1, 1973).

³⁴ Anti-Inflation Program, 14 WEEKLY COMP. OF PRES. DOC. 1839 (October 24, 1978).

³⁴ See 5A B. REAMS & C. HAWORTH, CONGRESS AND THE COURTS: A LEGISLATIVE HISTORY 1787-1977 at 18775 (1978); C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4105 (1978).

³³ Phase III of the Economic Stabilization Program, 9 WEEKLY COMP. OF PRES. DOC. 16 (January 11, 1973).

³⁶ The Nation's Economy: A Series of Actions Including a 60-Day Freeze on Prices, 9 WEEKLY COMP. OF PRES. DOC. 765 (June 13, 1973).

No mandatory control power was requested by the Executive Branch from Congress. Enforcement of this new voluntary program rested primarily in the government's powers of persuasion, its ability to influence large business and the awarding of government contracts to companies which adhered to the new guidelines. As with similar programs for economic stability, the various administrative agencies were created to implement the program.

The Council of Economic Advisors, first established in the Executive Office by the Employment Act of 1946, functions under that statute and the Reorganization Plan 9 of 1953. The Council consists of three members appointed by the President with the advice and consent of the Senate. The Council analyzes the national economy and its various segments, advises the President on economic development, appraises the economic programs and policies of the federal government, recommends to the President policies for economic growth and stability and assists in the preparation of economic reports of the President to the Congress.³⁹ The Council on Wage and Price Stability established on August 24, 1974⁴⁰ under the executive office of the President has the mission to monitor the economy as a whole with respect to such key indicators as wages, costs, productivity, profits, and prices. It also has the responsibility to review and appraise the various programs, policies and activities of the government to determine the extent to which these programs and activities contribute to inflation.⁴¹

The Price Advisory Committee advises the Council of Wage and Price Stability on developing policies that: 1) encourage anti-inflationary price behavior by private industry, 2) decelerate the rate of inflation and 3) provide for fair and equitable distribution of the burden of restraint. This Committee will recommend possible modifications to the price standard and new or revised interpretations of the price standard.⁴² The Pay Advisory Committee advises the Council on developing policies that: 1) encourage anti-inflationary pay behavior by private industry, employers and labor, 2) decelerate the rate of inflation and 3) provide for fair and equitable distribution of the burden of restraint. Recommendations for modifications to the pay standard, recommended changes—if any—to pay exception and compliance decisions and recommended new or revised interpretation of the pay standard will originate with this Committee.⁴³

The National Productivity Council is designed to combat the slow-down in productivity growth in the United States. This group will coordinate federal programs which support productivity improvement in public and private sectors to insure that maximum benefit is realized from these programs.⁴⁴ The Regulatory Council was established to help inform the public and the Congress about the cumulative impact of regulations on the economy.⁴⁵ This Council publishes a unified calendar of major regulations stating each regulation's goals and benefits, legal requirements and expected timetables along with available estimates of its economic impacts.

The Economic Policy Group was established to assure efficient coordination of economic policy making. It oversees the formulation, execution and presentation of

³⁹ U.S. GOV'T MANUAL 103 (1980).

⁴º Pub. L. No. 93-387, 88 Stat. 750 (1974).

⁴¹ Supra note 39, at 108.

^{42 [1980]} ECON, STANDARDS REP. (CCH) § 5525.

⁴³ WASH. INFORMATION DIRECTORY 284 (1980).

⁴⁴ Id. at 167.

⁴³ Id. at 61.

the administration's domestic and international economic policies. Through a "steering group" this organization has the responsibility for assuring that all presidential decision memoranda reflect sound economic analysis and accurately relate the options presented to the administration's overall economic program and priorities.⁴⁶

OVERVIEW

A significant portion of the law of the United States is currently embodied in, formed by or effectuated through the rules, regulations, programs and policies of governmental agencies.⁴⁷ Early legal decisions on economic stability issues were made by administrative bureaus, boards and commissions and many were rarely reviewed by courts, reported in newspapers or examined by scholars. Most administrators' decisions were made informally, undramatically, in the deep recesses of their bureaus. Many of their records rested unrecognized and poorly indexed in official government documents or in the National Archives. For researchers attempting to bring together the materials involved in legislating and implementing of rules governing federal price and wage controls, it is important to understand the elusive nature of early official sources. In the same instance there is a desire by legal researchers to rely on the experience of the past in formulating the direction of the future. Those responsible for law making and for analyzing the legal issues of economic controls must refer to past activities in the price and wage area in trying to determine which paths future controls should take.

It is not the purpose of this essay to assess the desirability of wage and price controls or their relative merits but to provide the researcher with an overview of the literature and laws involved in this regulatory aspect of our economy. No centralized checklist—other than this author's recent documentary history⁴⁸—has existed in this area prior to this compilation. The bibliographic history which follows represents selected sources which this compiler considers significant to research in this important area of our economic life. With the advent of the Reagan Administration, the future of economic controls appears limited. However, in light of high inflation rates and after a review of this area in its historical context, there appears strong support for the theory that some aspect of governmental wage and price control will again return to assume a paramount role in the laws of this nation.

I. Laws, Legislative History Materials, Selected Agency Publications and Miscellaneous Government Documents

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⁴⁶ Id. at 85.

⁴⁷ AMERICAN BAR FOUNDATION, THE LEGAL PROFESSION IN THE UNITED STATES 6 (2d ed. 1970).

⁴⁸ B. REAMS, FEDERAL PRICE AND WAGE CONTROL PROGRAMS, 1917-1979 (1980).

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^{*} Available only on microfilm. See LIBRARY OF CONGRESS, PRESIDENTIAL EXECUTIVE ORDERS JUNE 25, 1845-JUNE 25, 1936.

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