ELLIS W. HAWLEY

The New Deal and the Problem of Monopoly

A Study in Economic Ambivalence

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A STUDY IN ECONOMIC AMBIVALENCE

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To the Memory of

Howard K. Beale

PREFACE

ONE of the central problems of twentieth-century America has revolved about the difficulty of reconciling a modern industrial order, necessarily based upon a high degree of collective organization, with democratic postulates, competitive ideals, and liberal individualistic traditions inherited from the nineteenth century. This industrial order has created in America a vision of material abundance, a dream of abolishing poverty and achieving economic security for all; and the great majority of Americans have not been willing to destroy it lest that dream be lost. Yet at the same time it has involved, probably necessarily, a concentration of economic power, a development of monopolistic arrangements, and a loss of individual freedom and initiative, all of which run counter to inherited traditions and ideals. Americans, moreover, have never really decided what to do about this industrial order. Periodically they have debated the merits of "regulated competition" and "regulated monopoly," of trustbusting and economic planning; and periodically they have embarked upon reform programs that would remake the economic system. Yet the resulting reforms have been inconsistent and contradictory. Policies that would promote competition have been interspersed with those that would limit or destroy it. And American economists as a whole have never reached any real consensus in regard to the origins and nature of monopoly, its effects, or the methods of dealing with it.

During the period covered by this study, the six-year span from 1933 to 1939, this conflict over economic policy was particularly acute. The industrial machine, for all its productivity, was seemingly unable to fulfill the dream of abundance and security, and its failure to do so led to demands for political action. Yet there was little agreement on the course that this action should take. Did the situation call for centralized planning and detailed regulation? Did it call for a restoration of competition? Or did it call for government-sponsored cartels that could rationalize the competitive process and weather deflationary forces? In practice, there were a variety of pressures and forces pushing the government in all of these directions. The result was an amalgam of conflicting policies and programs, one that might make some sense to the politician, but little to a rational economist.

Historians, of course, have long been aware of these conflicting crosscurrents in the New Deal's business policies. Arthur M. Schlesinger, Jr., for example, has dealt extensively with the conflict between the economic planners and the neo-Brandeisians, and Eric Goldman, in his *Rendezvous with Destiny*, described the New Deal as an amalgam of the New Nationalism, the New Freedom, and the Associational Activities of the nineteen twenties. So far as I know, however, no one has yet focused upon this conflict as a central theme or attempted to trace out, describe, and analyze its implications in detail.

The present study makes an effort to fill this gap. It attempts, first of all, to trace the pattern of conflict and compromise between various schools of thought, between those which desired a type of rationalized, government-sponsored business commonwealth, those that hoped to restore and preserve a competitive system, and those that envisioned a form of democratic collectivism in which the monopoly power of businessmen would be transferred to the state or to other economic groups. Secondly, it attempts to relate these various schools of thought to the interplay of pressure groups and popular symbols, to trace the major shifts and innovations in policy, and to explain these policy changes. Throughout the study, in fact, the emphasis is on policy-making, on the men, beliefs, pressures, and symbols that resulted in policy decisions, not on the validity or economic merit of the policies involved. The study is also limited primarily to the field of business and does not attempt to deal in any detail with agricultural, labor, or financial policies.

My chief debt is to the late Howard K. Beale of the University of Wisconsin, under whose direction this study was originally undertaken. His suggestions, criticisms, and support were invaluable. In addition, I should like to express my gratitude to the following: Professor Robert A. Lively, whose stimulating teaching provided many insights and suggested the topic of research; Professor Paul F. Sharp, for his criticisms, suggestions, and encouragement on portions of the study; and Professor James C. Malin, who first aroused my interest in this general subject. I am also deeply indebted to a number of devoted and competent librarians and archivists, particularly to Meyer H. Fishbein and his assistants at the National Archives, to Herman Kahn and his staff at the Roosevelt Memorial Library, and to Gene M. Gressley and his staff at the University of Wyoming.

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PART IV · NEW DEAL POLICY AND THE RECESSION OF 1937

ABBREVIATIONS

In addition to standard abbreviations, the following are used throughout:

AAA–Agricultural Adjustment Administration
AC–Advisory Council (NRA)
AEA–American Economic Association
AER–American Economic Review
AHR–American Historical Review
Annals Am. Acad.–Annals of the American Academy of Political and Social Science
BAC–Business Advisory Council
BAPC–Business Advisory and Planning Council
CAB–Consumers' Advisory Board (NRA)
CAF–Consolidated Administrative File (NRA Records)
CCF–Central Correspondence File (NRPB Records)
CCH–Commerce Clearing House
CGF–Classified General File (NRA Records)
CHF–Code Histories File (NRA Records)
CIA–Committee of Industrial Analysis
CIC–Coordinator for Industrial Cooperation
CIP–Council for Industrial Progress
CTS–Consolidated Typescript Studies (NRA Records)
DIE–Division of Industrial Economics
FDR–Franklin D. Roosevelt
FPC–Federal Power Commission
FTC–Federal Trade Commission
GPO–Government Printing Office
IAB–Industrial Advisory Board (NRA)
ICC–Interstate Commerce Commission
LAB–Labor Advisory Board (NRA)
MR&D–Miscellaneous Records and Documents (NRA Records)
MVHR–Mississippi Valley Historical Review
NAM–National Association of Manufacturers
NBCC–National Bituminous Coal Commission

NEC–National Emergency Council
NIRA–National Industrial Recovery Act
NIRB–National Industrial Recovery Board
NPB–National Planning Board
NPPC–National Power Policy Committee
NRA–National Recovery Administration
NRB–National Resources Board
NRC–National Resources Committee
NRPB–National Resources Planning Board
NRRB–National Recovery Review Board
OF–Official File(s) (Roosevelt Papers)
PPF–President's Personal File(s) (Roosevelt Papers)
PR–Press Release
PSF–President's Secretary's File (Roosevelt Papers)
PWA–Public Works Administration
QJE–Quarterly Journal of Economics
R&P Div.–Research and Planning Division (NRA)
SEC–Securities and Exchange Commission
SIRB–Special Industrial Recovery Board
SR&P–Special Research and Planning Reports (NRA Records)
TNEC–Temporary National Economic Committee
TVA–Tennessee Valley Authority
WPA–Works Progress Administration

NOTE ON SOURCES

In order to avoid an excessively large number of notes, I have followed the practice of collecting the references necessary for a particular passage in a single note at the end of the passage. The full citation to each title is given on the first mention in each chapter. Of the manuscript and archival collections cited, the Franklin D. Roosevelt and Harry L. Hopkins papers are in the Roosevelt Library at Hyde Park, New York; the Harold L. Ickes and William Borah papers are in the Library of Congress; the Thurman W. Arnold and Joseph C. O'Mahoney papers are in the University of Wyoming Library at Laramie, Wyoming; and the records of the National Recovery Administration, the Temporary National Economic Committee, the National Resources Planning Board, the National Emergency Council, the National Bituminous Coal Commission, the National Power Policy Committee, and the Works Progress Administration are in the National Archives. Special mention should also be made of two collections of source materials on the NRA. One is the Division of Industrial Economics' Staff Studies (cited as DIE, Staff Studies) available in mimeographed form at the National Archives. The other is the NRA Work Materials, which were mimeographed and distributed to depositories of government documents in 1935 and 1936.

THE NEW DEAL AND THE PROBLEM OF MONOPOLY

INTRODUCTION. THE PROBLEM AND ITS SETTING

THE term "monopoly," as commonly used in American parlance, has a variety of meanings and connotations. To the man in the street it usually carries an implication of evil and appears as a vague synonym for such emotionally charged concepts as "big business," the "interests," or the "trusts." To lawyers and academic economists its meaning is far from precise. Some use the word in its generic sense to mean a condition where a single seller controls the entire supply of a "commodity," a term that is itself hard to define. Some use it to designate a situation in which a seller dominates an industry and enjoys protection against potential competition from the outside. Some use it to describe almost any deviation from the abstract model of pure and perfect competition. Some, probably a majority, use it as a synonym for market power, for the ability of a seller or group of sellers acting in concert to control or influence the price and output of what they have for sale.

Charges of "monopoly," then, almost always need further clarification; and the same holds true of any discussion of the "monopoly problem," a term that has also been employed in a variety of ways and with a variety of different meanings. Some have used it to describe the classic evils of monopoly, the alleged tendency, in other words, of market controls to result in economic inefficiency, misallocation of resources, technical stagnation, and the exploitation of unorganized groups. Others have used it as a convenient synonym for the whole gamut of business-government relations. Still others have associated it with the general effects of industrialization and urbanization, with the increasing impersonality of corporate relationships, the decline of a self-employed middle class, the growth of absentee controls, the lack of a corporate moral code, or some other aspect of the general shift from an agrarian to an industrial society.

For the most part, however, those who have used the term have been concerned with questions of power, with the development, in particular, of private concentrations of economic power and with the implications of this development for a democratic society. The "problem," when viewed from this angle, has been one of democratizing "big business," of finding some way to reconcile the tightly organized, stratified, and authoritarian institutions of modern industrialism with the democratic, individualistic, and libertarian ideals of an earlier era. And the hope has been that some "solution" could be found, that Americans could discover some formula that would enable them to enjoy the material benefits of industrialization and economic planning without sacrificing the democratic goals that they had inherited from the past.[1]

It is in this latter sense that the present study deals with the "problem of monopoly"; and in this sense, the problem has been common to most of Western civilization. As Gustav Stolper once noted, "The trend of modern industrialism has been determined in all countries by two conflicting tendencies: the one toward liberation of the individual from ties and codes inherited from the Middle Ages and the mercantilistic era; the other toward integration on a more or less monopolistic basis." [2] In the United States, a land that had long cherished its frontier tradi-

[1] The various meanings attached to "monopoly" and the "monopoly problem" are discussed in Clair Wilcox, *Competition and Monopoly in American Industry* (TNEC Monograph 21, 1940), 9–11; Fritz Machlup, *The Political Economy of Monopoly* (Baltimore: Johns Hopkins Press, 1952), 3–45; John P. Miller, in Earl Latham, ed., *The Philosophy and Policies of Woodrow Wilson* (Chicago: U. of Chicago Press, 1958), 134–36; and Mark S. Massel, *Competition and Monopoly* (Washington: Brookings, 1962), 186–91, 337–39.

[2] Gustav Stolper, *German Economy* (N.Y.: Reynal & Hitchcock, 1940), 83.

tions and democratic postulates, the rise of giant business combinations presented this clash of values in a particularly acute form. Yet curiously, the efforts to do something about it made little progress during the initial stages of industrialization. Material conditions, after all, were better in America than in Europe, and even if they had not been, the ideological climate and power structure made political action difficult. The critics, generally speaking, were lacking in political strength and cohesion. Their long devotion to a philosophy of laissez faire, local rights, and individual liberty made them reluctant to use the federal government as a positive instrument of reform. Even those who favored governmental intervention tended to think in terms of some simple, usually impractical solution, some master coup that would restore the economic and social system to the pristine purity of the pre-industrial era.

The lack of political action was also due in part to the wide appeal of ideological doctrines that justified the status quo and masked the gap between ideal and reality. In the language of contemporary lawyers, politicians, and scholars the giant corporations of the late nineteenth century became "individuals" and the new corporate system became the desirable end product of "rugged individualism" and "free enterprise." Opportunity, so the defenders of the system argued, was still open. Competition, actual or potential, still protected the public and stimulated economic expansion; and even if social evils did exist, nothing could be done about them, at least not in the short run. Human society, like the animal kingdom, was a product of the "survival of the fittest." Poverty was the result of immorality, shiftlessness, and fundamental defects in character. Any interference with "natural law" was bound to penalize the industrious, produce an inferior society, and make things worse instead of better.

In view of these political and ideological obstacles, it is not surprising that the early attempts to deal with the "monopoly problem" enjoyed little success. Prior to 1900, in spite of considerable agitation on the part of the populists and other protest groups, the only federal measures of any consequence were the Interstate Commerce and Sherman Antitrust Acts, neither of which proved very effective in practice. The Interstate Commerce Commission, in fact, found it virtually impossible to win a case in the federal courts. And the Sherman Act, while it forbade all monopolies and all attempts to monopolize, was laxly enforced, narrowly interpreted, and effective only against loose combines, not against such tight combinations as holding companies and mergers. Ironically, the great era of business consolidation, the years from 1897 to 1904, came after the Sherman Act and not before.[3]

It was not until the progressive era in the early twentieth century that major changes in the political and ideological climate began to take place. Then gradually, as economic independence declined and new and larger consolidations appeared, more and more middle-class Americans became convinced that the new industrial and financial empires amounted to a gross perversion of the American dream. They were increasingly dubious, moreover, about the doctrines of laissez faire and Social Darwinism. Man, so they were told by a new generation of intellectuals, could shape his own destiny. He could reform and improve his social and economic institutions, and the place to start was with the "trusts" and the social evils for which they were responsible. When it came to formulating a program, how-

[3] See Samuel P. Hays, *The Response to Industrialism* (Chicago: U. of Chicago Press, 1957), 24–47; Richard Hofstadter, *Social Darwinism in American Thought* (Boston: Beacon Press, 1955 ed.), 44–50, 201; Hans B. Thorelli, *The Federal Antitrust Policy* (Baltimore: Johns Hopkins Press, 1955), 66–85, 109–17, 143–59, 221–32, 254–72, 306–11, 343–58, 371–410, 560–72; Edward C. Kirkland, *Industry Comes of Age* (N.Y.: Rinehart & Winston, 1961), 126–36, 310–24.

ever, there was little agreement. Some reformers, impressed by the productivity of the new corporate institutions, would keep them and then rely upon a strong central government to achieve a more equitable, more humane, and more democratic system. Others, still wary of governmental intervention, hoped that business could reform itself or that non-business groups could develop their own market power. Still others, intent upon returning to a decentralized and automatic economy, favored a program that would limit size, penalize bigness, break up the "trusts," remove the unfair advantages of big business, and enforce competitive behavior.

This divergence in reform philosophies was particularly apparent in 1912 in the clash between Woodrow Wilson's New Freedom and Theodore Roosevelt's New Nationalism. As Louis Brandeis and other advocates of the New Freedom saw it, the "trusts" had grown strong because they enjoyed special privileges or because they used unfair practices to crush their rivals, not because of their greater efficiency or productivity. And the solution was to remove these causes of "monopoly," wipe out special privileges, liberate the credit system from Wall Street control, and pass new legislation that would eliminate unfair practices and restore the reign of free competition. In the New Nationalist view, on the other hand, concentration of economic power was the inevitable result of mass production and an advancing technology. In many areas, competition resulted in a gross waste of natural resources, human life, and human energy. And the real solution was to forget about competition and concentrate upon developing national controls, upon establishing a government that could protect underprivileged groups, engage in purposeful planning, supervise the big corporations, and insure that the benefits of modern industrialism were more evenly distributed. The government, so the New Nationalists insisted, could be used to democratize big business. Jeffersonian ends could be achieved through Hamiltonian means.[4]

Some aspects of the New Nationalism also appealed to business leaders. Industrialists like George Perkins and Frank Munsey, for example, would agree that large corporations were both desirable and inevitable, that excessive competition was mainly responsible for child labor, sweatshop conditions, and other social problems, and that the situation called for some type of regulation and planning. They had their own views, however, about the nature, degree, and type of regulation. Enlightened businessmen, they insisted, were developing a social conscience, a growing awareness of social problems and the need for remedial action; and since these people knew more about the business system than anyone else, business groups should be allowed to govern and discipline themselves with a minimum of government supervision. Along the same line, too, were the theories of the "new competition" expounded by Arthur Jerome Eddy or the idea of government-approved business agreements sponsored by a number of business organizations. Gradually, from these various sources, a third approach to the "monopoly problem" took shape, one that would repeal the Sherman Act, encourage business organization, and allow self-governing

[4] See Hays, *Response to Industrialism,* 73–74, 84–89, 138–39; Eric F. Goldman, *Rendezvous with Destiny* (N.Y.: Knopf, 1952), 93–96, 193–96, 214–15; George E. Mowry, *The Era of Theodore Roosevelt* (N.Y.: Harper, 1954), 18–21; John D. Clark, *The Federal Antitrust Policy* (Baltimore: Johns Hopkins Press, 1931), 109–87; Richard Hofstadter, *The Age of Reform* (N.Y.: Knopf, 1955), 225–54. For contemporary solutions see Herbert Croly, *The Promise of American Life* (N.Y.: Macmillan, 1909), 358–59, 362–63, 369–81; Charles R. Van Hise, *Concentration and Control* (N.Y.: Macmillan, 1912), 248–66, 277–78; Osmond Fraenkel, ed., *The Curse of Bigness: Miscellaneous Papers of Louis D. Brandeis* (N.Y.: Viking Press, 1934), 104–24, 129–36; Woodrow Wilson, *The New Freedom* (N.Y.: Doubleday, Page, 1913), 163–222; J. B. and J. M. Clark, *The Control of Trusts* (N.Y.: Macmillan, 1914 ed.), 187–202; J. B. Clark, Bruce Wyman, E. S. Meade, Allen Foote, and Harry Seager, in *Annals Am. Acad.,* July 1912, pp. 63–73, 83–88, 108–15, 238–45.

trade associations, loosely supervised by federal authorities, to rationalize competition, improve business ethics, and handle the nation's social problems.[5]

By 1912, then, three broad approaches to the "monopoly problem" had emerged, each with its own methods and value configurations, and yet each claiming that it could implement the American dream, narrow the gap between ideal and reality, and achieve an abundant, dynamic, and equitable system. Each approach, moreover, had some influence on progressive reform. Such measures as the Clayton, Federal Trade Commission, Federal Reserve, and Underwood Tariff Acts, for example, were essentially products of the New Freedom. Their sponsors hoped to do away with the causes of monopoly, with unfair practices, special privileges, a rigged credit system, and the various devices by which monopolistic combines were put together and perpetuated; and by doing this, they hoped to restore, strengthen, and preserve a competitive system. Yet alongside these measures came a variety of laws and activities that were basically inconsistent with the New Freedom. The railroads, for example, came under direct regulation. Farm and labor groups received special aid and protection. Action against tight combinations was tempered by the "rule of reason." The job of controlling unfair competitive practices was eventually entrusted to a special trade commission, an agency that resembled the one proposed by the New Nationalists and one that might conceivably sanction cooperative business agreements and carry out the ideas associated with business self-government and the "new competition." [6]

[5] See Goldman, *Rendezvous*, 205–7; Mowry, *Era of Roosevelt*, 55–56; Arthur S. Link, *Wilson: The New Freedom* (Princeton: Princeton U. Press, 1956), 434–35; Arthur J. Eddy, *The New Competition* (Chicago: McClurg, 1920 ed.), 347–57; Robert H. Wiebe, *Businessmen and Reform* (Cambridge: Harvard U. Press, 1962), 80–85, 186–90.

[6] See Link, *Wilson and Progressive Era*, 66–75, 225–29; Miller, in

National planning and industrial self-government also moved to the fore during World War I. The emphasis, once the United States became involved in hostilities, shifted from economic reform to maximum war production; and the latter, it seemed, could best be attained under a form of war socialism, a system under which federal agencies directed and controlled broad areas of the economy, business and labor organizations received official encouragement, and industrial leaders cooperated with government officials to plan production, eliminate waste, and organize the nation's resources and energies. The wartime system, moreover, left some permanent marks. The newly organized trade associations remained as a prominent feature of the postwar economy. Business leaders, especially those who had worked in Washington, had caught a new vision of what could be done by economic planning and business-government cooperation. A new breed of public administrators, skilled in the techniques of wartime control, were more prone to reject competitive values and stress the goal of a planned economy. In the crisis of the nineteen thirties a number of business and governmental leaders would remember the war experience and call for action along similar lines.[7]

It was not surprising that the wartime program of industrial self-government should blossom into the Associational Activities of the nineteen twenties. Once again, public officials were equating business interests with the

Latham, ed., *Policies of Wilson*, 137–38; Edward D. Durand, *The Trust Problem* (Cambridge: Harvard U. Press, 1920), 86–112; Charles C. Chapman, *The Development of American Business and Banking Thought, 1913–1936* (N.Y.: Longmans, Green, 1936), 6–12; Henry R. Seager and Charles A. Gulick, Jr., *Trust and Corporation Problems* (N.Y.: Harper, 1929), 413–26; Wiebe, *Businessmen and Reform*, 137–41.

[7] See Goldman, *Rendezvous*, 293–94; William E. Leuchtenberg, *The Perils of Prosperity* (Chicago: U. of Chicago Press, 1958), 39–42; Wiebe, *Businessmen and Reform*, 221–22; Grosvenor B. Clarkson, *Industrial America in the World War* (Boston: Houghton Mifflin, 1923), 45–64, 299–314, 477–88; Frederic L. Paxson, in *AHR*, Oct. 1920, pp. 54–76.

national interest; and in this atmosphere the vision of a business commonwealth, of a benevolent capitalism under which everyone would be happy and prosperous, took on a new and wider appeal. The kind of thinking once characteristic of George Perkins, Frank Munsey, and a few other Eastern businessmen began to seep through the chambers of commerce all over the country. The result was a rapid burgeoning of trade associations, a rationale that justified their anticompetitive activities, and a public policy under which such agencies as the Department of Commerce and the Federal Trade Commission helped these associations to standardize their products, expand their functions, and formulate codes of proper practices, codes that generally regarded a price cutter as a "chiseler" and price competition as immoral. If the official propaganda of these business organizations could be believed, the nation had entered a new era of cooperative activities, an era in which poverty and class conflict would disappear, business would discipline itself, and everyone would benefit from the joint action of enlightened business leaders.

Eventually, the policies and attitudes of the nineteen twenties ended in economic disaster. They concentrated economic and political power in the hands of a business-financial elite that was less altruistic and far less prescient than was generally assumed; and the result was not utopia but economic breakdown, a system that accentuated maldistribution, encouraged speculation, piled up excessive savings, destroyed its own markets, and plunged the nation into the worst depression in its history. Yet so long as prosperity continued, there was little awareness of these underlying defects and little concern about the decline of competition or the growing concentration of wealth and power. The great majority seemed to agree that what was good for business, or at least what businessmen thought was good for them, was by definition good for everyone. If there were troubled consciences left, they could take comfort from the retention of the antitrust laws, the constant praise of "free enterprise," and the fact that the cartels and supercorporations usually masked their activities behind a veil of competitive terminology.[8]

The Great Depression, however, with its mass unemployment and declining incomes, brought a new and acute awareness of the monopoly problem, a new consciousness of the gap between ideal and reality. Along with the concern over centralization, injustice, and loss of individual freedom, came a new concern, a growing belief that the misuse of business power was responsible for the economic breakdown and the persistence of depression conditions. Reorganization and reform of the business system, so many Americans felt, had now become an imperative necessity; as one might expect, the approaches to the problem tended to follow the patterns established earlier. Once again, opinion divided along lines that were roughly similar to those which had divided the New Freedom, the New Nationalism, and the "new competition."

Like the advocates of the New Freedom, for example, the antitrusters or neo-Brandeisians favored a policy of decentralizing the business structure and enforcing competitive behavior. They did so both with the idea of implementing democratic and individualistic ideals and with a growing conviction that enforced competition was the best way to achieve sustained prosperity. The depression, as they saw it, was a product of monopolistic rigidities. The businessmen, because of their market power, had been able to maintain prices even though their costs of production were falling. This had resulted in excessive profits, oversavings, and a failure of consumer purchasing power. And the only real solution, they felt,

[8] See Goldman, *Rendezvous*, 286–87, 306–9; Leuchtenberg, *Perils of Prosperity*, 9, 199–203; Arthur R. Burns, *The Decline of Competition* (N.Y.: McGraw-Hill, 1936), 45–75; Chapman, *American Business Thought*, 68–97; Clark, *Federal Antitrust Policy*, 227–42; George Roberts, Gilbert Montague, Wilson Compton, and Hugh Baker, in *Proceedings of the Academy of Political Science*, Jan. 1926, pp. 5–18, 27–39, 77–91.

if such crises were to be averted in the future, was a program that would restore flexible prices and allow competitive forces to keep the economy in balance. They believed, moreover, that these goals were attainable. They could be attained by rigorous antitrust prosecution, by limits on size, by a tax on bigness, by controls over business financing and competitive practices, and by other measures that would encourage more reliance on free markets.

The economic planners, on the other hand, like the New Nationalists of an earlier period, felt that antitrust action was a hopeless anachronism. In a modern economy, they maintained, concentrations of economic power were inevitable. They were necessary for efficient mass production, technical progress, and reasonable security; and while the abuse of this power was largely responsible for the depression, the idea that it could be dispersed was both impractical and dangerous. The only real answer lay in systematic organization and planning, in conscious and rational administrative control of economic processes so as to restore economic balance and prevent future breakdowns.

Again, however, there was strong disagreement as to who should do the planning and the degree and type that would be necessary. On the political left were national economic planners who would deprive businessmen of their power and transfer much of it to the state or to organized non-business groups. In the center were those who felt that some scheme of business-government cooperation could be effective. On the right were industrialists and pro-business planners, men who drew their ideas from the war experience or the Associational Activities of the nineteen twenties, and who felt that an enlightened business leadership, operating through self-governing trade associations, should make most of the decisions. The depression, so some of these business planners argued, was due mostly to irresponsible "chiseling" and "cutthroat competition";

and the government, if it wanted to bring about recovery, should help "responsible and enlightened businessmen" to force the "chiselers" into line.

Under depression conditions, this clash of values and policies became particularly acute. On the one hand, the depression produced insistent demands for planning, rationalization, and the erection of market controls that could stem the forces of deflation and prevent economic ruin. On the other, it intensified antimonopoly sentiment, destroyed confidence in business leadership, and produced equally insistent demands that big business be punished and competitive ideals be made good. The dilemma of the New Deal reform movement lay in the political necessity of meeting both sets of these demands, in the necessity of creating organizations and controls that could check deflationary forces and provide a measure of order and security while at the same time preserving democratic values, providing the necessary incentives, and making the proper concessions to competitive symbols. From a political standpoint, the Roosevelt Administration could ignore neither of these conflicting currents of pressure and opinion; and under the circumstances, it could hardly be expected to come up with an intellectually coherent and logically consistent set of business policies.[9]

The present study is the story of the New Deal's efforts to resolve this political dilemma, both in terms of the conflicts and compromises between various schools of thought and in terms of achieving a balance between the pressure groups and popular symbols that affected policy decisions. Part I deals with the NRA program, the accompanying conflicts between planners, antitrusters, and business rationalizers, and the resulting inconsistency be-

[9] This conflict among New Dealers is described in detail in Chapter 2. See also Arthur M. Schlesinger, Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin, 1959), 179–84; and *The Politics of Upheaval* (Boston: Houghton Mifflin, 1960), 385–408; Goldman, *Rendezvous*, 326–28, 333–42, 361–67; William Hale, in *Common Sense*, July 1938, pp. 16–20.

tween the competitive goals set forth in formal policy pronouncements and the anticompetitive provisions that remained in the codes. Part II deals with economic planning after the NRA and notes, in particular, the waning influence of the national planners and business rationalizers, the growth of the idea of counterorganization, and the circumstances that led to government-supported cartelization in such areas as transportation, natural resource industries, and retail trade. Part III deals with the antitrusters, with their ideas and programs, the sources of their support, their activities prior to 1938, and their limited success in such fields as financial policy, electrical power, and the control of unfair practices. Finally, in Part IV, the study deals with the reaction of the Roosevelt Administration to the recession of 1937, the resulting monopoly investigation, the new antitrust campaign, and the growing tendency to avoid broad programs of reform and concentrate on compensatory spending as the way out.

From the viewpoint of a logical economist, about the only term that could adequately describe these conflicting policies and gyrations would be "economic confusion." The New Deal began with government sponsorship of cartels and business planning; it ended with the antitrust campaign and the attack on rigid prices; and along the way, it engaged in minor excursions into socialism, public utility regulation, and the establishment of "government yardsticks." Certainly, there was little in the way of economic consistency. Nor was there much success in terms of restoring prosperity and full employment. Neither the planning approach nor antitrust action nor any of the compromises in between ever contributed much to economic recovery, although they did lead to increased governmental activities of each sort. Recovery, when it came, was largely a product of large-scale government spending, and not of any major reorganization of the business system.

From a political standpoint, however, there was a certain amount of consistency and logic to the New Deal programs. In dealing with business, Roosevelt faced a political dilemma. On the one hand he was confronted with strong pressures for punitive action against big business and with the necessity of making proper obeisance to the antitrust tradition. On the other was the growing pressure for some sort of planning, control, and rationalization. As a practical matter, his Administration did a fairly respectable job of satisfying both sets of demands. The denunciations of "monopoly" and the attack on unpopular groups like Wall Street, the Power Trust, and the Sixty Families kept the antitrusters happy, while at the same time organized industrial pressure groups were being allowed to write their programs of market control into law, particularly in areas where they could come up with the necessary lobbies and symbols. Politically speaking, New Deal business policy was a going concern, and one of the basic tasks of this book is to explain why this was so and how this policy developed and changed.

PART I

THE NRA EXPERIENCE

Many good men voted this new charter with misgivings. I do not share these doubts. I had part in the great cooperation of 1917 and 1918 and it is my faith that we can count on our industry once more to join in our general purpose to lift this new threat and to do it without taking any advantage of the public trust which has this day been reposed without stint in the good faith and high purpose of American business.—*Franklin Roosevelt*

CHAPTER 1. THE BIRTH OF AN ECONOMIC CHARTER

FOR the group of congressmen standing behind the President's desk on the morning of June 16, 1933, the occasion was obviously a momentous one. With a few strokes of the pen, Franklin Roosevelt had just affixed his signature to the National Industrial Recovery Act, a measure that in the President's own estimation represented "the most important and far-reaching legislation ever enacted by the American Congress." And in the summer of 1933 it was difficult to find anyone that would challenge the President's statement. Senator Robert Wagner, the man chiefly responsible for piloting the bill through Congress, was convinced that the new measure would "bring this country out of the depression." Henry I. Harriman, president of the United States Chamber of Commerce, felt that it marked the beginning of a "new business dispensation," a new rule of "constructive cooperation," under which fair-minded business leaders might rid themselves of the "industrial buccaneer," the "exploiter of labor," and the "unscrupulous price-cutter." Hugh Johnson, the man who would administer the law, hailed it as "the charter of a new industrial self-government." William Green, president of the American Federation of Labor, saw it as an opportunity for the resuscitation of trade unionism, as final recognition of labor's contention that prosperity depended upon the development of strong labor unions.[1]

From the act alone, however, it was difficult to tell just what was intended. In essence, the National Industrial Recovery Act was a piece of enabling legislation, a law that

[1] Franklin D. Roosevelt, *Public Papers and Addresses*, II (N.Y.: Random House, 1938), 246; *Time*, June 26, 1933, p. 12; *American Federationist*, June 1933, pp. 565–69; *Literary Digest*, June 24, 1933, pp. 3–4; *New York Times*, June 8, 14, 17, 25, 1933.

gave the President unprecedented peacetime powers to reorganize and regulate an obviously ailing and defective business system. There was no definite prescription as to just what course this reorganization and regulation would take. As Hugh Johnson said, the law provided an economic charter, not a prescribed course of action. There was a good deal of validity in Senator William Borah's contention that the act prescribed no standards at all, that it laid down no rules and gave no indication of what codes of "fair competition" should include. Such codes, apparently, might include anything "which industry agrees upon and can get approved."

In practice, the content of the law was likely to depend upon the ideas and preconceptions of its administrators. And in this very fact, in the widespread confusion over the meaning of the act, lay the explanation of much of its popularity. To some it represented an attempt to elevate, humanize, and purify the competitive struggle, to stop the type of "cut-throat competition" that resulted in drastic wage reductions, declining quality, reckless waste of natural resources, and predatory price cutting. To a second group it appeared primarily as a labor measure, as a means of raising wage rates, spreading work, abolishing child labor, and promoting trade unions. To others its major objective was the promotion of a cartelized, risk-free economic order, a system in which the government would help organized business groups to fix prices, restrict production, control entry, protect capital investments, and eliminate the "chiselers." To still others it offered an escape from the "anarchy of the competitive system," a promise of both the organization and control that were necessary for the development of a centrally planned, collectivist democracy. Within a single piece of legislation, the authors of the measure had made room for the aspirations and programs of a variety of economic and political groups; but in a phraseology that could be used to implement any of several policies, they had laid the basis for future confusion and controversy.[2]

II

A part of the ambiguity stemmed from the necessity for speed and improvisation, coupled with a willingness to use broad, vaguely worded language that would mask internal conflicts and allow a maximum of experimentation and flexibility. In a sense the National Industrial Recovery Act was a product of rapid, impromptu consideration. When Congress convened in March 1933 the new Administration had no plans for broad changes in the business structure. The current discussions of economic planning and reorganization, Roosevelt felt, had not "jelled" sufficiently to justify action; and accordingly, his Administration showed little official interest. It was not until other developments had made some action imperative that he changed his mind.[3]

The train of events that led to the writing of the Na-

[2] C. L. Dearing et al., *The ABC of the NRA* (Washington: Brookings, 1934), 7–9, 23; Leverett S. Lyon et al., *The National Recovery Administration* (Washington: Brookings, 1935), 4–7, 14, 19–26, 751–52; Charles F. Roos, *NRA Economic Planning* (Bloomington: Principia, 1937), 43–44; John P. Miller, *Unfair Competition* (Cambridge: Harvard U. Press, 1941), 312–14; Rexford G. Tugwell, *The Battle for Democracy* (N.Y.: Columbia U. Press, 1935), 6–9, 14, 18–20, 56; Charles A. Beard and G. H. E. Smith, *The Future Comes* (N.Y.: Macmillan, 1933), VIII, 43; Saul Nelson, *NRA Work Materials 56 (Minimum Price Regulation under Codes of Fair Competition)*, 17–19, 23; CIA, *The National Recovery Administration* (House Doc. 158, 75 Cong., 1 Sess., 1937), 2; *Congressional Record*, 73 Cong., 1 Sess., LXXVII, 5166; L. S. Lyon and C. L. Dearing, in *American Journal of Sociology*, May 1934, p. 760; R. E. Flanders, in *Atlantic Monthly*, Nov. 1933, pp. 626–27; *New York Times*, June 17, 1933.

[3] Raymond Moley, *After Seven Years* (N.Y.: Harper, 1939), 185–86; Hugh S. Johnson, *The Blue Eagle from Egg to Earth* (Garden City: Doubleday, Doran, 1935), 201–3; Arthur M. Schlesinger, Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin, 1959), 8, 87–89; Lyon et al., *NRA*, 563–65, 883.

tional Industrial Recovery Act began on April 6, when the Senate passed Senator Hugo Black's thirty-hour-week bill, a measure that would prohibit the shipment in interstate commerce of any goods produced by men working more than a six-hour day or a five-day week. The bill reflected the popular notion that available work should be shared; it enjoyed the support of organized labor; and in the atmosphere of the time, it seemed likely to win the approval of the House as well as the Senate. Roosevelt, moreover, was reluctant to embarrass the Democratic senators who had voted for the bill; yet, from his point of view, it was seriously defective. It was far too rigid, likely to be held unconstitutional, and said nothing about minimum wages. Under the circumstances, he asked Secretary of Labor Frances Perkins to develop a "workable" substitute; and on April 17 Miss Perkins submitted a number of proposed amendments to the House Labor Committee. Drawing upon her experience with the New York minimum wage law, she proposed, first of all, to establish minimum wage levels based upon the recommendations of special industrial boards, agencies upon which labor, management, and the government would each have representatives. A similar board, she suggested, might grant limited exemptions from the requirement of a thirty-hour week; and in certain cases, the Secretary of Labor might impose and enforce machine-hour limitations.

The Perkins proposal produced a flood of protests from business leaders. Such an "inelastic measure," they claimed, was "inequitable and grossly impractical." It would substitute "the judgment of a Federal officer for that of experienced and responsible management"; and if ever put into operation, it was likely to dislocate industry, increase production costs, and aggravate the unemployment problem. Constructive wage-and-hour legislation, said Henry Harriman, should be based upon the principles of "industrial self-government" that had been recommended by such organizations as the Chamber of Commerce, the National Association of Manufacturers, and the American Bar Association. The antitrust laws should be relaxed so as to allow employers to enter into voluntary trade association agreements covering such things as hours, wages, and "destructive competition." Such agreements should then be approved by an appropriate government agency; and, once approved, they should be forced upon recalcitrant industrial minorities.[4]

Efforts to devise a measure more acceptable to industry were also underway in other quarters. Ever since March, the office of Raymond Moley, Assistant Secretary of State and one of the key figures in the President's so-called Brains Trust, had served as a sort of clearinghouse for industrial recovery plans. Following the Senate's approval of the Black bill, Moley undertook a serious investigation of the proposals emanating from the Chamber of Commerce and the Brookings Institution, and, during the course of his inquiry, he enlisted the aid of General Hugh Johnson and decided that he was just the man to draw up an industrial bill. Johnson, after all, was familiar with the operations of the War Industries Board, the only comparable project that could serve as a precedent. The depression had strengthened his conviction that unregulated competition led to disaster. Long conversations with such individuals as Bernard Baruch and Alexander Sachs had convinced him that he knew exactly what should be done. With a minimum of delay, he wrote out his first

[4] Moley, *After Seven Years*, 186–87; Schlesinger, *Coming of New Deal*, 91–92, 95; Charlotte Williams, *Hugo L. Black* (Baltimore: Johns Hopkins Press, 1950), 47–48; John P. Frank, *Mr. Justice Black* (N.Y.: Knopf, 1949), 89–91; Frances Perkins, *The Roosevelt I Knew* (N.Y.: Viking, 1946), 192–96; House Labor Committee, *Thirty-Hour-Week Bill* (73 Cong., 1 Sess., 1933); *Congressional Record*, 73 Cong., 1 Sess., LXXVII, 1350; John T. Flynn, in *Harper's*, Sept. 1934, pp. 388–91; *Nation*, April 19, 1933, p. 432; *Business Week*, April 19, 1933, pp. 4–5; April 26, 1933, p. 4; May 3, 1933, p. 9; *Congressional Digest*, May 1933, pp. 157–58; *New York Times*, April 2, 7, 13, 19–21, 26–30, 1933.

draft on a couple of sheets of legal-size foolscap. It would suspend the antitrust laws, empower the President to sanction business agreements dealing with competitive and labor practices, and then allow federal licensing to secure compliance.

The conflicting testimony of participants makes it difficult to reconstruct the drafting process, but Moley and Johnson soon discovered that they were not the only ones working on an industrial recovery measure. Another group centered in the office of Senator Robert Wagner, although the initiative here seems to have come originally from Meyer Jacobstein, a former congressman from New York. Jacobstein, with the assistance of Harold Moulton, a Brookings Institution economist, had persuaded Wagner to broaden his public works bill to include a program of industrial loans; and later, at the suggestion of President Roosevelt, Wagner began exploring the whole matter of industrial recovery. Eventually, he drew upon the advice of a wide assortment of business, labor, and governmental planners. Included were prominent trade association lawyers, like David Podell and Gilbert Montague; advocates of a government guarantee against losses, like Fred Kent; progressive business executives, like Malcolm Rorty and James Rand; labor economists, like W. Jett Lauck; and interested congressmen, like Clyde Kelley and Robert M. LaFollette, Jr. The work of the group continued to emphasize public works, but plans were also made for direct loans to industry and for governmental sanction of trade association agreements.

Still another version of industrial recovery was being developed in the office of John Dickinson, the Undersecretary of Commerce. Since his position constantly exposed him to the current agitation against the antitrust laws, Dickinson had early become interested in the possibilities of economic planning, and his interest had led him into long conversations with the economic planners of the Department of Agriculture, particularly with such individuals as Jerome Frank and Rexford G. Tugwell. Frances Perkins had later joined the group; and with the aid of such advisers, Dickinson had drafted a measure that would make use of the trade associations as instruments of national planning. From the beginning, too, he had established contact with the Wagner group; eventually, the two groups got together and went to work on a common draft.

By early May there were two major drafts, and consultations with business and labor leaders were underway. The Wagner-Dickinson version combined a program of public works and government loans with a plan for industrial self-government through trade associations. The Johnson version laid more stress on federal licensing, an approach that had the support of Raymond Moley, Budget Director Lewis Douglas, and Donald Richberg, a prominent labor lawyer whom Johnson had brought in to represent the unions. On May 10 the principal drafters met at the White House, where the President, after listening to arguments for each of the rival versions, suggested that they lock themselves in a room until an agreement could be reached. As Johnson put it, "We met in Lew Douglas's office—Lew, Senator Wagner, John Dickinson, Mr. Richberg and myself, with a few 'horners-in' from time to time." In the process of compromise, the provision for industrial loans disappeared; but most of the other provisions survived, and the final version contained something for nearly all of its principal authors. The authority to formulate codes of fair competition satisfied the business planners. Section 7a, with its promise of collective bargaining and minimum labor standards, made the measure attractive to the trade unions and social workers. The provision for federal licensing gave some hope for national economic planning. And a $3,300,000,000 public works program appealed to the spenders and pump-primers.

On May 17 the President sent the bill to Congress, along with a message recommending immediate action. Congress, he said, should provide the necessary machinery for "a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week and to prevent unfair competition and disastrous overproduction." [5]

III

For a time it seemed that the President's plea for cooperation had fallen on fertile ground. Business, labor, and political spokesmen united in a chorus of approval. The Chamber of Commerce hailed the new bill as a "Magna Charta of industry and labor"; and the National Association of Manufacturers, while it had some reservations about the licensing and labor provisions, regarded the proposal as a great step forward. After all, noted *Business Week*, the measure was substantially what industry had been asking for "ever since Senator Black first confronted it with the threat of rigid control from above."

Nor was there much doubt about the goals that business leaders had in mind. The Administration might stress the idea that recovery would come through an increase in mass purchasing power, that cooperative business groups would hire more workers, pay higher wages, defer price increases, and return to profitable operations by expanding their volume. But business spokesmen were quick to combine the idea of chiseling on wages with that of chisel-

[5] Moley, *After Seven Years*, 184–89; Johnson, *Blue Eagle*, 101, 160–63, 193, 196–204; Perkins, *Roosevelt*, 197–200; Roos, *NRA Planning*, 37–41; Schlesinger, *Coming of New Deal*, 87–88, 93–99; FDR, *Public Papers*, II, 163, 202; Flynn, in *Harper's*, Sept. 1934, pp. 390–94; Johnson, in *Saturday Evening Post*, June 30, 1934, pp. 5–7, 87; *Business Week*, May 24, 1933, p. 3; *New York Times*, April 14, 19, May 3–8, 10–14, 17–18, 1933.

ing on prices. "We must take out of competition," said Henry Harriman of the Chamber of Commerce, "the right to cut wages to a point which will not give an American standard of living, and we must recognize that capital is entitled to a fair and reasonable return, . . . that . . . goods must be sold at a price which will enable the manufacturer to pay a fair price for his raw material, to pay fair wages to his men, and to pay a fair dividend on his investment." The real difficulty, as business leaders saw it, was that excessive competition had destroyed profitable operations, undermined business confidence, and reduced the rate of investment. The solution, they maintained, lay in devices that would stop competitive price cutting and insure a reasonable profit, in price fixing, production controls, and extensive regulation of trade practices. The model code issued by the National Association of Manufacturers on May 31 bristled with provisions for controlling prices and output, and a number of trade association spokesmen made it plain that they hoped to imitate the practices of European cartels.

In some industries, moreover, the argument for publicly sanctioned cartels had a particularly strong appeal. In the oil industry, for example, the opening of new pools during the period 1926 to 1931 had produced a condition of excess capacity; and after voluntary arrangements and state laws had failed to solve the problem, industry leaders and conservationists had begun to plead for federal controls, both to check the fall in prices and to prevent the immense waste involved in competitive development. Many lines of retail trade were also greatly overexpanded in terms of existing demand, and the associations of independent retailers had long been pushing for legislation that would peg prices and remove the competitive advantages of the chain stores. Similar conditions existed in the garment trades and in such industries as cotton textiles and bituminous coal. In all of these peculiarly depressed industries, the phenomena of glutted markets, chronic losses, and drastic wage cutting constituted real problems. In all of them, there was a long history of proposals for antitrust exemption. And in all of them, the new industrial recovery bill was hailed as the way out. The leaders of these industries felt that industrial codes offered a better solution than special legislation. They would presumably be more flexible, would offer less chance of governmental dictation, and would leave the initiative and controls in the hands of the industry itself.

Labor spokesmen, too, were jubilant over the prospect of industrial stabilization. Leaders like John L. Lewis of the United Mine Workers and Sidney Hillman of the Amalgamated Clothing Workers had long advocated a planning approach and a measure of industrial self-government. It was illogical, they argued, to expect a chaotic and overly competitive industry, one that was almost chronically depressed, to pay decent wages. The labor theory of recovery, however, differed considerably from that being expounded in business circles. "The essential factor in this new order," declared the American Federation of Labor, "is a guarantee to labor of the right to organize and bargain collectively. . . . Strong union organization in each industry can keep workers' income constantly moving upward as their producing power increases. Without this constant check, we shall again find billions of dollars diverted into million-dollar incomes while mass buying power falls behind."

Finally, the proposed legislation had a strong appeal for social workers and national economic planners. Frances Perkins, for example, stressed the prospect of eliminating child labor and sweatshop conditions. Adolf Berle thought the measure was indispensable, both as a means of restoring economic order and a method of forcing business leaders to recognize their social responsibilities. For Rex Tugwell, the bill represented a growing recognition that "cooperation and not conflict" was the better "organizing principle," that "the old sentiment of fear of big business" had now become unnecessary.[6]

In spite of Tugwell's reassurances, however, most of the opposition to the proposal came from antitrusters and small business liberals, men who stressed the evils of monopoly and were reluctant to abandon the competitive tradition. A good deal of the congressional debate, in fact, centered about the efforts of Administration spokesmen to convince such old-line progressives as Senator William Borah that the measure would strengthen the competitive system rather than destroy it. In reality, said Senator Wagner, the bill was designed "to protect the small business man," to prevent the use of "rebates, discrimination, and selling below the cost of production in order to destroy some little business man." Actually, Wagner argued, the antitrust laws had never prevented the growth of monopoly. They had been used chiefly against labor and small business; and the proposed bill, by providing a method of rationalizing small business, would remove the existing incentive for further mergers and consolidations. The real intention was not to abolish competition, but to purify and strengthen it.

[6] Roos, *NRA Planning*, 43–44; Perkins, *Roosevelt*, 200; Schlesinger, *Coming of New Deal*, 89, 122–23; Tugwell, *Battle for Democracy*, 56–58; Dearing et al., *ABC of NRA*, 30–32; Schuyler C. Wallace, *New Deal in Action* (N.Y.: Harper, 1934), 160–66; Edward Chamberlin, in Douglass V. Brown et al., *Economics of the Recovery Program* (N. Y.: McGraw-Hill, 1934), 30–37; Myron W. Watkins, *Oil: Stabilization or Conservation?* (N.Y.: Harper, 1937), 43–54; H. E. Michl, *The Textile Industries* (Washington: Textile Foundation, 1938), 103–5, 260–62, 271–72; W. E. Fisher and C. M. James, *Minimum Price Fixing in the Bituminous Coal Industry* (Princeton: Princeton U. Press, 1955), 9–27; Ruth P. Mack, *Controlling Retailers* (N.Y.: Columbia U. Press, 1936), 71–74, 128–32; DIE, Staff Studies, 45; Harry Mulkey, *NRA Work Materials 36* (*The So-Called Model Code*), 3–5; FDR, *Public Papers*, II, 255; House Ways and Means Committee, *National Industrial Recovery* (73 Cong., 1 Sess., 1933), 1–7, 117–20, 132–38, 192; *Congressional Digest*, June 1931, pp. 165–68; June 1933, p. 176; *Business Week*, May 24, 1933, p. 1; May 31, 1933, pp. 3–4; *New York Times*, May 3, 14, 18, 20, 21, 26, 28–30, June 3, 4, 11, 1933.

In the lower chamber, the protests of a few conservatives and antitrusters were easily ignored; and on May 26 the House passed the measure by the overwhelming majority of 325 to 76. In the Senate, however, the bill ran into greater difficulties. Efforts to strike out the licensing provisions, emasculate Section 7a, and add a manufacturers' sales tax were defeated; but amendments were adopted limiting the duration of the licensing powers to one year, authorizing the establishment of import controls, and revamping the new taxes that were to help finance the public works program. The senators also inserted a brief section empowering the President to stop interstate shipments of oil produced in violation of state laws. And they seemed more inclined to listen to the criticisms of the antitrusters, to Senator Borah's contention that the measure would create a system of gigantic trusts under which competition would disappear and the monopolies would "regulate the regulators." In the end, Borah succeeded in adding an amendment providing that no code should "permit combinations in restraint of trade, price fixing, or other monopolistic practices"; and with this gesture toward the competitive tradition, the Senate passed the measure by a vote of 58 to 24.

The victory of the antitrusters, however, proved to be short-lived. Business protests made it clear that Borah was striking at the heart of the measure, that businessmen were set upon establishing "fair, just, and reasonable price levels, in consideration of decreased working hours and increased wages." If the bill did not permit price fixing, wired one industrialist, then it became "nothing more than an unsatisfactory labor measure." Upon second thought, too, Senator Wagner became convinced that the Borah amendment might interfere with cooperative agreements in the public interest. "Monopolistic price fixing," he thought, was obviously wrong, but some form of price control might be necessary to protect small enterprises, halt destructive price wars, and prevent senseless and harmful price fluctuations. Accordingly, the conference committee decided to remove the specific prohibition of price fixing, to forbid only "monopolies or monopolistic practices." The Senate, in spite of strong protests from Borah and other old-line progressives, went along with the conference report.[7]

IV

In its final form, the National Industrial Recovery Act contained three titles, two of which dealt with public works and the taxes that would help to finance them. Under Title II, a total of $3,300,000,000 might be spent on a variety of projects ranging from highways to public housing; and in order to increase revenue, chief reliance was placed upon a new system of capital stock and excess profits taxes. The plan, as finally adopted, called for a levy of one-tenth of one percent on the declared value of a company's stock, and, to encourage fair valuation, all profits over twelve and one-half percent of the declared value were to be taxed at the rate of five percent.

The act's most widely publicized provisions, however, were contained in Title I, the portion that dealt with the formulation of industrial codes. In the first two sections, the authors of the measure set forth its general purposes, limited its application to a period of two years, and authorized the President to designate or create appropriate administrative agencies. Then, in subsequent sections, they proceeded to lay down rules for the making of codes. The President, under Section 3, might approve codes drawn up by trade or industrial groups providing that he found such codes to be equitable, truly representa-

[7] *Congressional Record*, 73 Cong., 1 Sess., LXXVII, 4373, 5152–53, 5162–66, 5238, 5247, 5257, 5275, 5279–84, 5293–99, 5404–5, 5411–16, 5424–25, 5620, 5701, 5834–46, 5861; Roos, *NRA Planning*, 45–52; Schlesinger, *Coming of New Deal*, 99–102; *Congressional Digest*, June 1933, pp. 172, 175, 177; *New York Times*, May 10, 11, 27, June 2–4, 6, 8–11, 14, 1933.

tive, and not designed to promote monopolies or monopolistic practices. He might also make any necessary additions or deletions; and in an industry where no agreement could be reached, he might impose a code.

The act, however, said little about the type of provisions that should be included in the codes. The only specific instructions, in fact, were those dealing with labor standards. Each code, according to Section 7, had to contain an acceptable provision for maximum hours, minimum wages, and desirable working conditions. In addition, it had to include a prescribed Section 7a, which outlawed yellow dog contracts and guaranteed the right of laborers to organize and bargain collectively through representatives of their own choosing. Aside from these labor clauses, the only other guide was the declaration of policy contained in Section 1, a declaration that was couched in terms of broad, general goals rather than specific instructions. The act, it stated, was designed to promote cooperative action, eliminate unfair practices, increase purchasing power, expand production, reduce unemployment, and conserve natural resources; but there was little to indicate the type of code provisions that might be used to achieve these laudable objectives.

The act also contained several other important provisions. Section 5 exempted the codes from the antitrust laws; Section 8 provided that they should not conflict with the provisions of the Agricultural Adjustment Act; and Section 3e allowed the President to control imports that might have an adverse effect upon code operations. There was, in addition, the controversial licensing power, under which the President, for a period of one year, might resort to licensing particular industries in order to prevent destructive wage and price cutting. Other powers, too, were conferred upon the President. He could prescribe the necessary rules, regulations, and fees; he could require the filing of necessary information; he could enter into voluntary agreements with business firms; he could approve and give the force of law to collective bargaining agreements between business and labor; and finally, under Section 9, he could regulate pipeline companies and prohibit the interstate shipment of oil produced in excess of the limit prescribed by state law.

Within the confines of a single measure, then, the formulators of the National Industrial Recovery Act had appealed to the hopes of a number of conflicting pressure groups. Included were the hopes of labor for mass organization and collective bargaining, the hopes of businessmen for price and production controls, the hopes of competitive industries to imitate their more monopolistic brethren, the hopes of dying industries to save themselves from technological advance, and the hopes of small merchants to halt the inroads of mass distributors. Overlying these more selfish economic purposes was a veneer of ideals and conflicting ideologies, conflicting beliefs as to what the act would do and the ultimate form that the business system should take. Finally, added to the superstructure, were conflicting theories of economic recovery, a belief, on one hand, that by raising wages, spreading work, and holding down prices, total purchasing power could be expanded; a belief, on the other, that by checking destructive competition and insuring profits, business confidence could be restored and new investment spending stimulated.

For the time being, the numerous conflicts had been glossed over by a resort to vagueness, ambiguity, and procrastination. Congress, in effect, had refused to formulate a definite economic policy or to decide in favor of specific economic groups. It had simply written an enabling act, an economic charter, and had then passed the buck to the Administration. The very nature of the act made internal dissensions among its administrators virtually inevitable. In practice, the NRA became a mechanism that conflicting groups sought to use for their own ends, an agency that was unable to define and enforce a consistent line of policy; and in this welter of conflict and confusion, it was scarcely surprising that the result turned out to be what Ernest Lindley called an "administrative, economic, and political mess." [8]

[8] 48 *U.S. Statutes* 195, Public, No. 67, 73 Cong.; Dearing et al., *ABC of NRA*, 23, 30–32; Lyon et al., *NRA*, 751–52, 756–58; Ernest K. Lindley, *Halfway with Roosevelt* (N.Y.: Viking, 1937), 156; Miller, *Unfair Competition*, 314–17; Memo. re Interview of Corwin Edwards, Nov. 16, 1933, Lorwin File, NRPB Records.

CHAPTER 2. THE CONFLICT OF GOALS

To many people in 1933 the National Industrial Recovery Act represented something new and unique, a bold and original plan that would lift the blight of depression from a stricken country. Yet appearances were deceptive. In reality the act was a product of trends, objectives, and ideals that were deeply rooted in American history. The attempt to administer it produced a running debate over these historic goals, over the best way to organize, motivate, and operate an industrial system. In order to understand the conflict, one must look briefly at the nature and background of the goals involved.

The policy struggle of the NRA period, insofar as it related to the business structure, was a three-cornered affair. At one corner was the vision of a business commonwealth, of a rational, cartelized business order in which the industrialists would plan and direct the economy, profits would be insured, and the government would take care of recalcitrant "chiselers." At the second was the concept of a cooperative, collectivist democracy, a system under which organized economic groups would join to plan their activities, rationalize their behavior, and achieve the good life for all. At the third corner was the competitive ideal, the old vision of an atomistic economy in which basic decisions were made in an impersonal market and the pursuit of self-interest produced the greatest social good. As written, the National Industrial Recovery Act could be used to move in any of these directions, to cartelize the economy, establish overhead planning, or attempt to eliminate the market riggers and enforce competition. There were those who would move in each of them, and it was not surprising that a conflict resulted.

It would be an oversimplification to represent the policy struggle as merely a conflict between three schools of thought. It was much more complex. Individuals simply refused to accept ideological systems intact and then stick to a given position. They changed their minds, made exceptions, accepted intellectually inconsistent ideas, yielded to political and personal loyalties or pressures, and tried to stake out positions that were somewhere between the three points of orientation. Pressure groups, too, used ideological symbols for selfish ends, sometimes to mask operations that were completely at variance with the professed ideals. And non-ideological figures, men who regarded themselves as pragmatic realists, were inclined to skip from one approach to the other on the basis of what seemed to work at the moment or what was expedient from a political standpoint. Such complexities made it difficult to follow the struggle, define positions, and identify the participants. Yet for purposes of analysis, the concept of a three-cornered ideological clash is useful, particularly if one uses the ideological goals to identify policy directions rather than fixed positions. Once the conflict of goals is understood, the nature of the National Industrial Recovery Act and the administrative debates over its implementation become much more understandable.[1]

II

One possible goal, then, was the business commonwealth, the further elaboration of the "associational activities" that had been so prominent in the "New Era" of the nineteen twenties. In a sense this philosophy dated back to medieval civilization, and critics could point to striking parallels between the concepts of medieval ideology and

[1] William H. Hale, in *Common Sense*, July 1938, pp. 16–20; Arthur M. Schlesinger, Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin, 1959), 18–19, 193–94; *The Politics of Upheaval* (Boston: Houghton Mifflin, 1960), 233–35, 393–94, 399–400, 650–51; J. F. Carter, *The New Dealers* (N.Y.: Literary Guild, 1934), 3–6, 25–27.

those contained in latter-day trade association literature. Both stressed a system of cooperative, associational activity. Both laid emphasis upon security and status. Both had visions of a "just price." And in each there was the idea of government-granted monopolies and the notion that governmental powers could be properly exercised by economic or vocational groups. More immediately, however, the proponents of the business commonwealth had drawn their ideas from the defenders of business combination, the critics of the antitrust laws, the advocates of cartelization in Europe, and the economic planners of World War I. The war had led to the creation of hundreds of trade associations; and following the war, the so-called "association idea" came into its own. Open price associations flourished under the benign auspices of the Department of Commerce. Formal codes of ethics "blossomed like spring flowers in every field." And the Federal Trade Commission gave official sanction through its trade practice conference procedure. In such an atmosphere, price-cutting became taboo. The price-cutter became a chiseler, a fellow closely akin to the "scab" in labor circles; and the competition that remained shifted from the field of price to the fields of quality, service, and advertising.[2]

[2] Louis M. Hacker, *Short History of the New Deal* (N.Y.: Crofts, 1934), 27, 43; Charles F. Roos, *NRA Economic Planning* (Bloomington: Principia, 1937), 1–5; Arthur R. Burns, *The Decline of Competition* (N.Y.: McGraw-Hill, 1936), 8–25, 40–45, 73–75; N. S. B. Gras, in M. P. McNair and H. T. Lewis, eds., *Business and Modern Society* (Cambridge: Harvard U. Press, 1938), 43–53; Emmet H. Naylor, in Dept. of Commerce, *Trade Association Activities* (1923), 301–4; Frank Hursey et al., *NRA Work Materials 61* (*Code Compliance Activities of NRA*), 56–58; *NRA Work Materials 46* (*Code Authorities and Their Part in the Administration of NIRA*), 161–62; DIE, Staff Studies, 61–68, 78–90; Richard H. Hippelheuser, ed., *American Industry in the War* (N.Y.: Prentice-Hall, 1941), 105; George Galloway, "Industrial Control in the U.S. before NRA," Feb. 1935, SR&P, NRA Records; Harry W. Laidler, *Concentration and Control in American Industry* (N.Y.: Crowell, 1931), 453–55; R. L. Wilbur and A. M. Hyde, *The Hoover Policies* (N.Y.: Scribner's, 1937), 303–4; Leon Henderson

Throughout the twenties, too, business apologists and trade association secretaries elaborated a rationale to justify their activities. At the center of their system was the concept of the industrial group, a body of individuals engaged in the same trade and united for the joint protection of their common interests. This group had legitimate group interests that transcended those of individual members. Where the competitive ideal called for the free action of the individual in his own interest, the "new competition" required that the individual conform to group standards and refrain from engaging in any form of competition that might be destructive to the group as a whole. Nor were such requirements inimical to the public interest. Price competition, after all, was essentially wasteful. And a higher degree of group control would mean less waste, more stability, steadier employment for labor, greater security for the investor, and more and better goods for the general public. Besides, business leaders knew more about economic processes and were better qualified to make economic decisions than anyone else. They had played a major role in the creation of American society; they were responsible for its continued well-being; they had taken and would take a paternalistic and fair-minded interest in the welfare of their workers, so it was only fair that they should be given a free hand to organize the system in the most efficient, rational, and productive manner.

The government was generally assigned a supervisory role, but if one assumed, as was usually done, that the interests of business were identical with those of society as a whole, it followed that the supervisors would not have a very difficult task. For the most part, they would limit their activities to advising and supporting business

and Theodore Kreps, "On the Necessity for a Broad Inquiry into the Present Status of Competition," Dec. 30, 1935, Blaisdell File, NRPB Records; Ellis W. Hawley, "The Relation of Hoover's Policies to the NIRA," M.A. Thesis, U. of Kans. (1951), 14–50.