A COMPARISON OF MEDIEVAL AND MODERN PRICE FIXING

by

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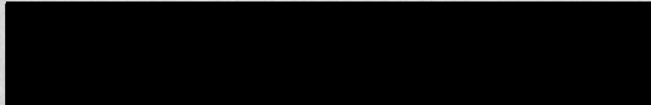

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TABLE OF CONTENTS

INTRODUCTION... 1
CHAPTER I: ECONOMIC THEORY OF THE MIDDLE AGES......... 5
The just price... 9
Wages.. 12
Commerce... 13
Usury.. 14
Rent... 19
Machinery of exchange.................................. 21
Private property....................................... 23
Summary.. 24
CHAPTER II: DEVELOPMENT OF MEDIEVAL GUILDS............ 28
Gild Merchant.. 33
Craft guilds... 34
Internal decay of the guilds........................... 40
External forces affecting guilds....................... 44
Summary.. 47
CHAPTER III: PRICE-FIXING: MEDIEVAL AND MODERN....... 50
Attitude toward price-fixing........................... 50
Size and extent of market.............................. 53
Importance of capital in price fixing.................. 56
Regulation of wages as a factor in price fixing... 58
Price fixing... 64
Prevention of unfair competition....................... 67
Maintenance of uniformity of quality and size..... 70
Miscellaneous regulations affecting price......... 73
Summary.. 74
CHAPTER IV: HISTORICAL BACKGROUND OF MODERN TRADE ASSOCIATIONS... 76
American attitude toward trade associations....... 82
CHAPTER V: PRICE FIXING UNDER THE N R A CODES......... 94
General requirements................................... 95
Process of code enactment.............................. 96
Price fixing... 98
Code provisions affecting price........................ 100
Establishment of minimum prices........................ 101
Resale price fixing.................................... 106
Provisions against sales below cost of production. 109
Compulsory cost-accounting systems..................... 112
Open-price system...................................... 113
Regulation of production and productive capacity.. 116
Summary and conclusions................................ 117
SUMMARY AND INTERPRETATION............................. 128

INTRODUCTION

History should not be regarded as the "dry bones" of the past, unreal, and of no significance for the present. Governments in the past have faced serious economic crises, unemployment, agricultural discontent, burdensome taxation and depression. While it cannot, with any degree of exactitude, be said that history repeats itself, because of the innumerable factors which serve to make each historical event unique in itself, nevertheless man's proposed solution for the changing economic and social problems offers little variation.

The problems of agriculture and unemployment relief, the issues bearing upon inflation, a "managed" currency, and price-fixing all sound familiar. They are present-day economic problems of the first order, but ancient history records them as problems of antiquity. Not only are the natures of the problems similar but the attempted solutions are similar as well, even though history has demonstrated that some of the attempted solutions are unworkable. The philosopher, Hegel, has pessimistically summarized the situation in his statement that, "--what experience and history teach is this,--that peoples and governments never have learned anything from history, or acted on principles de-

ducted from it."[1]

Governments have experimented in the field of price-fixing innumerable times. Hammurabi, in his code of laws written four thousand years ago, attempted to keep down the prices of some commodities.[2] In 301 A.D. Diocletian, in his famous "Edict" established a maximum schedule of prices for agricultural and industrial products, as well as a wage scale for services, throughout the Roman Empire. He urged the loyalty and cooperation of all merchants in carrying out the provisions of the Edict and threatened with death any who failed to comply with the fixed price schedules. This plan of government price-fixing was too comprehensive in its scope to meet the needs of the different sections of the Empire. It was disregarded by merchants and traders and finally discarded.[3]

Price fixing plans have been tried in modern times as well as in the past. During the World War the United States inaugurated a system of price fixing, and more recently has given its support to a system of price fixing under the NRA codes. Now, as in the past, it has been

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1. Lectures on the Philosophy of History, trans. from the 3d German edition by J. Sibree, (London: Henry G. Bohn, 1861)
2. V. Van Ness Myers, Ancient History, (2nd. ed. rev.) chap. IV, pp. 61-62.
3. H. S. Jones, The Roman Empire B.C. 29-A.D. 476, ch. X, p. 371.

demonstrated that, when arbitrarily imposed, without consideration of varying conditions, or of the need for gradual adjustment to changing economic situations, such plans have resulted in failure.

The guild system of the Middle Ages illustrates well a plan of price fixing which not only was in harmony with the economic thought of the period, but which endured over a long period of time. Prices, then, were regulated by law, or by custom which had the force of law.

Frequently attempts are made to definitely link up modern events with those of the past; to show a gradual transition from and relationship between economic organizations existing today and those existing several centuries ago. Thus attempts have been made to trace the development of modern trade unions as outgrowths of the medieval guilds. More recently allusions have been made to the organizations of industry under the NRA codes as "modern guilds". For example, in outlining the policy of the National Recovery Administration, the President of the United States said, "But if all employers in each trade now band themselves faithfully in these modern guilds..... without exception.....and agree to act together and at once, none will be hurt, and millions of workers, so long deprived of the right to earn their bread in the sweat of

their labor can raise their heads again".[1] Less than two years later these same "modern guilds" were to pass into oblivion.

It is the purpose of this paper to indicate some of the essential differences existing between these so-called "modern guilds" and those of the Middle Ages; to show the gradual development of the medieval organizations in response to economic needs, and not as a sudden development superimposed upon industry by an outside authority; to contrast with modern economic ideas the economic thought of the Middle Ages which lent strength to the guilds in the matter of price fixing; to compare guild organization and functions with that of industry under the NRA, stressing particularly the price fixing regulations as to purpose, extent and results; and finally, to trace the decline and disappearance of these organizations when their economic service had terminated.

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1. Statement by the President of the United States of America Outlining Policies of the National Recovery Administration, NRA Bulletin no. 1, Washington: Government Printing Office, June 11, 1933, p. 2.

CHAPTER I

ECONOMIC THEORY OF THE MIDDLE AGES

An analysis of a system of economic thought requires a knowledge not only of the earlier system out of which it grew but of the fundamental changes responsible for its development. To trace the political changes which ushered in the Middle Ages is beyond the scope of this paper and but brief space can be given to those teachings of the ancient world which influenced medieval economic ideas.

It may be conceded that the Roman philosophers contrbuted little to the subject of economics.[1] They held agriculture to be the only honorable industry and, although the economic significance of utility, the use of money in exchange, and even division of labor did not entirely escape them, little interest was displayed in these subjects. The fact that the decline of the Roman Empire was well under way when her chief writers were engaged in their work explains in part their economic ideas.

Although no treatises on economics were written, the

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1. Alfred Marshall, Principles of Economics, 8th ed., (London: Macmillan and Co., 1922), Appendix A--732-733.

works of the Roman jurists are of economic significance because they emphasized the rights of private property and freedom of contract, and, what is more important from the theological viewpoint of the Middle Ages, they made a distinction between human and natural law. This doctrine of natural law which profoundly influenced medieval thought, declared "that characteristics of nature were simplicity and similarity; and--that all men were by nature equal".[1] Theologians concluded from this that private property was contrary to natural law.

As contrasted with modern economic theory, the pre-eminence of morality in the economic field was distinctly characteristic of the medieval period. Christian ethics laid down certain principles of right and wrong. Thus, to supply a bad article was morally wrong. To demand excessive payment for goods or labor was contrary to Christian teachings. Economics was thus a part of theology and medieval economists were primarily theologians.

During the Middle Ages the Canon law was the test of right and wrong in all economic activity--in production, consumption, distribution and exchange. Before the thirteenth century the Church fathers were little concerned

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1. W. J. Ashley, An Introduction to English Economic History and Theory, vol. 1, The Middle Ages, 2nd ed., (New York: G. P. Putnam's Sons, 1893), p. 127.

with economic matters as such, and one finds only moral and religious dissertations concerning the evils of luxury and the pursuit of riches, the proper use of material goods, etc. This was due in large part to the miserable condition of a society in which trade and commerce were relatively unimportant, to the predominance of village economy, and to the influence of religious ideas which praised agriculture, but held trade to be of uncertain status, if not actually sinful.

St. Jerome (340-420) had stated that what the trader gained must be another's loss, and had condemned it as dangerous to the soul. Later, Leo the Great (440-461) had pointed out that it was the manner in which a man conducted his trade that determined whether it was good or bad. Nevertheless, the church opposition to trade had resulted in ecclesiastical legislation prohibiting the clergy from engaging in it.[1]

Isidore of Seville (560-636), whose "Etymologies" was regarded as a reliable encyclopedia in the early Middle Ages, well illustrates the state of economic thought by his treatment of the subject of money. The following was the best instruction offered on the subject:

> "Money,--is so called because it warns, 'monet', lest any fraud should enter into its composition or its weight. The piece of money is the coin of

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1. W. J. Ashley, An Introduction to English Economic History and Theory, vol. 1, The Middle Ages, 2nd ed. (New York: G. P. Putnam's Sons, 1893), p. 129.

> gold, silver, or bronze, which is called 'nomisma', because it bears the imprint of the name and likeness of the prince---The pieces of money 'numma' have been so called from the King of Rome, Numa, who was the first among the Latins to mark them with the imprint of his image and name."[1]

The revival of interest in economic studies dates from approximately the thirteenth century, when the growth of towns, the establishment of markets, and the expansion of trade and commerce had become so pronounced as to command the attention of the medieval scholars. It was at this time, too, that the writing of Aristotle received renewed study.

In the "Ethics" and "Politics" Aristotle had dealt with the theory of wealth and had touched upon the utility of money and the injustice of usury. His works were eagerly studied by the scholastics, especially Albertus Magnus and Thomas Aquinas. Albertus Magnus (1206-1280) whom Hulme describes as "the most widely read and most learned man of the time"[2] set forth the doctrines of Aristotle with interpretations and additions of his own. Aquinas (1225-1274), the greatest of the scholastics, was a pupil of Albertus, He revised translations of the work of Aristotle and infused them with certain Christian elements. His greatest

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1. George O'Brien, An Essay on Medieval Economic Teaching, (London: Longmans, Green and Co., 1920), p. 15, quoting "Etymologies" XVI, 17.
2. The Middle Ages, (New York: Henry Holt and Co., 1929), p. 747.

work was the "Summa Theologica" in which he distinguishes between revelation and reason, emphasizing the former as of greater importance and dependent upon faith alone. His work in the field of economics is of particular interest because he not only summed up the teachings of his predecessors but gave the foundation for subsequent economic doctrine upheld by the Church.

The just price

Medieval economic theory was concerned with the problems of exchange. Production was comparatively simple because the lack of capital necessitated production on a small scale. There was no complex division of labor such as is found today. The productive process was a unit and the master-workman was not only an employer but a laborer as well and worked at his craft with his employees. Thus there was not the distinct break between employer and employee that is found in modern times. Problems of distribution were also comparatively simple. Wages and rent received some consideration, profits were of little significance, and the question of interest was included under the theory of exchange.

> "Finally," says Seligman, "problems of consumption attracted little attention. In the age when custom reigned supreme, and when unusual expenditure was deprecated as ungodly, the

effects of social expenditure and the connection between social demand and production were so slight that they were scarcely noticed."[1]

The problem of exchange may therefore be considered as the dominant one in medieval economics, and this centered about the idea of "justum pretium", or a just price. The idea of a just price was based upon the theory that every commodity had some true, objective and absolute value which could be determined. The cost of production was regarded as the decisive factor in determining the just price.[2]

Aquinas defined justice as "the perpetual and constant will of giving to every one that which is his right".[3] Applying this definition to trade, he held that, to buy a thing for less, or sell it for more than its intrinsic value was unjust under ordinary circumstances. Exchange appeared to exist for the common advantage of mankind and should be to the equal advantage of the parties concerned. Thus the doctrine of "just" price as stated by St. Augustine in the fifth century was definitely formulated once

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1. Edwin R. A. Seligman, Principles of Economics, 9th ed. rev., (London: Longmans, Green and Co., 1921), ch. VIII, sec. 49, p. 115.

2. Lewis H. Haney, History of Economic Thought, (New York: Macmillan Co., 1920), p. 92.

3. W. J. Ashley, An Introduction to English Economic History and Theory, vol. 1, The Middle Ages, 2nd ed. (New York: G. P. Putnam's Sons, 1893), p. 134.

more in the thirteenth.[1]

Roman law had allowed the utmost freedom of contract in sales. However, it was enacted that if a thing were sold for less than half its value, the seller could recover the property unless the buyer paid the additional sum. The medieval theologians quoted this as evidence that even Roman law considered contracts as subject to review on equitable grounds.

The right of authority, be it state, town, guild, or church, to fix prices was not questioned. The one requirement was that the price should be "just".[2] This just price need not be a fixed, unalterable standard, and a slight deviation above or below was not held to destroy the equality of justice. However, it made no difference whether the price was paid at once or in the future, because no increase for giving credit was allowed. Aquinas emphasized this point to some extent. To increase the price in return for giving credit was usury.[3] To buy for less, even though the buyer paid now for goods to be delivered later was also usury. However, the seller could allow a rebate on the

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1. For a discussion on the comparison of the 'just price' with the 'free competitive price' see E. R. Adair, Economics: Medieval Contributions to Modern Civilization, A Series of Lectures Delivered at King's College University of London, edited by F. J. C. Hearnshaw, (London: George G. Harrap & Co., Ltd., 1921), p. 237.

2. W. Cunningham, The Growth of English Industry and Commerce During the Early and Middle Ages, 4th ed., (Cambridge: University Press, 1905), pp. 252-255.

3. E. R. A. Seligman, Op. cit., ch. VIII, p. 114.

just price in order to get his money sooner, and, if he suffered because of extending credit, he could be compensated.

Aquinas insisted that to sell or buy one thing for another without observing due quality and measure was unlawful. If the seller were at fault he was bound to make restitution, as was the buyer if he had gotten a thing too cheaply because of the ignorance of the seller. In the case of selling a faulty article, the seller was not bound to reveal the fault unless such concealment injured the buyer.[1]

The theory of a just price in the Middle Ages was based principally upon establishing just, ethical practices in buying and selling rather than in seeking to fix the price at which goods could be sold. The "just price" was an abstract conception of what was right under ordinary circumstances and according to common estimation. It may be compared to the modern abstract conception of "normal" price which tends to prevail over a long period of time.

Wages

> "To the medieval theologian, the 'just price' of an article included enough to pay fair wages

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1. W. J. Ashley, An Introduction to English Economic History and Theory, vol. 1, The Middle Ages, 2nd ed. (New York: G. P. Putnam's Sons, 1893), p. 142.

> to the worker, that is, enough to enable him
> to maintain the standard of living of his
> class."[1]

Wages also conformed to the doctrine of just price. It was the duty of the employer to give a wage which would support the worker in accordance with the requirements of his class.[2] Custom served to establish the just price for labor, and wage fluctuations were unusual.[3]

Commerce

The medieval attitude toward commerce was one of disapprobation. Christian teachings exalted labor. All forms of labor were admitted to be honorable, necessary and entitled to just remuneration. The different occupations were ranked according to the estimate to which they were held to be entitled. First came agriculture, then manufacturing, followed by administrative occupations. Commerce was listed last. Trade, in the scholastic sense, was selling a thing, unchanged, at a price higher than had been paid for it, and in the early Middle Ages had been condemned as sinful. Aquinas condemned commerce as wrong unless jus-

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1. The Catholic Encyclopoedia, vol. XII, (New York: Robert Appleton Company, 1911), Art. Political Economy, p. 214.
2. J. M. Clark, Social Control of Business, (Chicago: University Press, 1926), p. 25.
3. Slave labor, of course, received no wage. In return for his services, the slave received the necessaries of life. It is of interest to note that both St. Augustine and Aquinas justified slavery.

tified by good motives, such as usefulness to the state. If the goods were physically improved by the trader he was entitled to remuneration. The church teachings concerning trade are reflected in the regulations of the guild merchants against regrating, forestalling and engrossing.

> "What the medieval teaching on commerce really amounted to was that, while commerce was as legitimate as any other occupation, owing to the numerous temptations to avarice and dishonesty which it involved, it must be carefully scrutinised and kept within due bounds."[1]

"Cambium", or money-changing, was held to be a form of commerce and subject to the same rules. The right of the money-changer (campsor) to remuneration for risks taken was only gradually admitted. Three forms of cambium were recognized; ordinary exchange of the moneys of different currencies; exchange of moneys of different currencies between different places; and usurious exchange of moneys of the same currency. The last was condemned.

Usury

Another great economic doctrine of the Middle Ages was that of usury, or the taking of any payment for a loan of money. Greek and Roman law had sanctioned the payment of interest although the philosophers of these countries had condemned it. The early Christian Fathers disapproved of

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1. George O'Brien, Op. cit., p. 154.

usury, regarding it as the exploitation of the defenseless and unfortunate. Borrowing was principally for urgent personal needs and those in distress were deserving of charity. The Church Fathers referred to the Gospels (Luke VI, 35) in which Christ said, "Lend, hoping for nothing again". Aquinas interpreted this verse to be counsel as to the repayment of the principal, but a precept as to the payment of interest.

The Council of Elvira, held in the early part of the fourth century, passed a decree against usury, but this applied only to the clergy.

In the early Middle Ages the civil law made no attempt to suppress usury. The Church Fathers condemned it not as a sin against justice, but because of its oppressiveness on the poor. In the 8th century a capitulary canon decreed that all were forbidden to give anything as usury, and this was emphasized still more by the decree of 813 which stated that not only the Christian clergy but laymen as well were not to demand usury. Both Alexander III and Innocent III expressed the view that usury was a sin against justice.

In 1311 Clement V declared all secular legislation in favor of usury null and void, branded usury as sinful and those engaged in taking usury guilty of heresy.

The medieval church had very plausible grounds for its policy against the taking of usury. The great majority of loans were for unproductive purposes and had the character

of temporary assistance to persons in unfortunate economic straits. The Church aimed to prevent the oppression of the weak.[1]

The doctrine of usury was included in the medieval theory of exchange. Usury was considered as the price paid for the use of money which, itself, was the medium of exchange. Aristotle had said that money was barren, could not breed money, and to demand usury for its use was unjust. So, too, Aquinas, basing his views upon those of Aristotle and the medieval idea of just price, said that the just price of a loan was the return of the amount lent.[2] Even though the borrower made a profit from such a loan, neverthe less to repay more than the original sum would be the "exploitation of another man's exertion".[3]

According to scholastic teaching, it was impossible to distinguish between taking usury because the borrower made a profit by wise use of the loan, and taking it because the borrower was in dire distress and accordingly derived a greater advantage from the loan than a person in

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1. cf. A. Marshall, _Op. cit._, Appendix A, Footnote 1, p. 737.

2. E. Lipson, _An Introduction to the Economic History of England: I The Middle Ages_, (London: A. & C. Black, Ltd., 1915), pp. 526-531.

3. George O'Brien, _Op. cit._, pp. 181, 182. Also A. Abram, _Social England in the Fifteenth Century_, (London: George Routledge & Sons, Ltd., 1909), pp. 59, 60. cf. A. Marshall, _Op. cit._, pp. 585, 586.

more comfortable circumstances would have.

Delay in the repayment of a loan was held to be no valid reason for increasing the amount to be repaid because that would be a sale of time. Time was common property and belonged to God.

Aquinas pointed out that to take usury for a loan of money was to sell what does not exist. Money was a "Res Fungibilis" or "consumptible". Its use could not be separated from its ownership. To lend it was to give up ownership of it, and, manifestly, to ask a payment for the use of what was sold was unjust.

O'Brien states that whereas usury was condemned, "interest was in every case allowed".[1] It was unjust that a greater price should be paid than the sum lent, but it was also unjust that the lender should suffer loss because of having made the loan. Payment for such loss was called interest.

It was generally agreed that a penalty should be paid in case of default in the repayment of the loan at the stipulated time. This was called the "poena conventionalis".[2] Duns Scotus, one of the great scholastics of the late 13th century, as well as Alexander of Hales, both recognized the justice of the "poena conventionalis" as being based

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1. Op. cit., p. 184.
2. W. Cunningham, Op. cit., p. 258.

upon a presumed injury occurring after the expiration of the loan period.

Interest proper was divided into the following classes: "damnum emergens" and "lucrum cessans".[1] "Damnum emergens" included all cases in which the lender had suffered an actual loss because of having made the loan. The lender had to prove, however, that he had incurred an actual loss. Aquinas justified the payment of compensation here because "'It may happen also that the borrower avoids a greater loss than the lender incurs, wherefore the borrower may repay the lender with what he has gained'".[2]

The justice of "lucrum cessans" was gradually admitted by theologians. This involved recompensing the lender who by parting with his money had lost the opportunity of making a profit. Aquinas admitted the justice of such compensation and this view was practically universally upheld by theologians of the 15th century.

The question of receiving more than the amount of the loan because of "periculum sortis" was not settled until the middle of the 17th century. This concerned payment for the risk involved. Thus, there was risk that the loan

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1. W. J. Ashley, _An Introduction to English Economic History and Theory Part II The End of the Middle Ages_, 8th impression, (London: Longmans, Green and Co., 1914), pp. 397-405.

2. George O'Brien, _Op. cit._, p. 186.

would not be paid back because of the insolvency of the borrower. However, this is concerned with the contract of "mutuum", or loan of money, and will be considered later.

The Church recognized other grounds also as justifying the return of more than the amount of the loan. Thus the lender might justly accept anything the borrower chose to pay him, as a favor, in addition to the principal sum. Then, too, it was lawful to borrow from one charging usury if the borrower was justified, through good motives, in securing the loan. The usurer was at fault but not the borrower.

During the period of the Middle Ages until the fourteenth century there was but a very small field for the investment of capital. Agriculture was carried on under a system which gave little opportunity for profits. The rising manufactures were very limited in output and opportunities for profitable investment were few. The legality of the borrower deriving a profit from investments was not questioned because under the contract of "mutuum" when money was lent the borrower became the owner of it and entitled to any profits accruing from its wise use. The use and substance of money were inseparable.

Rent

The scholastics acknowledged the justice of receiving rent from a tenant because it was held that the use of land

could be sold, apart from the ownership. Moreover an individual drawing a fixed rent for a piece of land could transfer that right to another. The Church was one of the largest property holders, and much of the revenue of ecclesiastical bodies consisted of rent charges.

Rent, in the modern sense, is producer's surplus, connected with the physical character of the land, its productiveness and location. This was not the sense in which the term was used in the Middle Ages.[1] The rent a manorial lord received from his dependents was determined in part by the number of tenants and cattle on the estates, and by the tenants' economic status. The rent of a free man was less than that of a villein.

The partnership offered an opening for investment that was sanctioned by the Church. The merchant could remain at home and entrust his goods to an agent and bargain for a share of the profits of the venture. The canonists justified this because the investor remained the owner of his capital and shared in the risk, thus earning a right to share in the profits. Aquinas distinguished between profits made from entrusting one's money to a merchant to be used by him in trade, and profit arising from a loan. The former was held to be justifiable. Common participation in the gains and losses of an enterprise was thus the essen-

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1. W. Cunningham, Op. cit., p. 5.

tial feature of a partnership contract.

The contract of bottomry,[1] which was a loan with interest to the owner or master of a ship to be repaid after the ship's voyage, was not a partnership, nor was it considered usurious because the lender shared in the risks of the undertaking.

Machinery of exchange

The question of money was one of the first economic questions to arouse the interest of the late medieval writers. One of the first treatises devoted to the theory of money was that of Nicholas Oresme,[2] which appeared near the close of the 14th century. Prior to the thirteenth century the vast majority of transactions had been carried on without the use of money and the amount of coin in circulation was small. Trade was hampered not only by the scarcity but by the defective character of the coins. The sovereigns increased their revenue by tampering with the coinage. French monetary history shows that in 1348 there were at least eleven variations in the value of money in France; in 1349 there were nine, and in 1351, eighteen. In the years 1359 and 1360, during the reign of John the Good, French coinage underwent a series of constant varia-

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1. W. J. Ashley, An Introduction to English Economic History and Theory Part II The End of the Middle Ages, 8th impression, (London: Longmans, Green & Co.), pp. 421-423.
2. W. Cunningham, Op. cit., pp. 356-359.

tions.

The work of Oresme was a careful examination of the actual difficulties felt in commercial centers at that period. He argued that the money of a country belongs to the community and not to the prince. The prince, however, has authority to issue coinage and regulate it, but not to debase it. Money exists for public benefit, and any tampering with it would result in injustice to either creditor or debtor. Oresme pointed out that "arbitrary changes in the value of money are really equivalent to a particularly noxious form of taxation; that they seriously disorganize commerce and impoverish many merchants; and that the bad coinage drives the good out of circulation." This last observation by a fourteenth century writer is of special interest as it shows that "Gresham's law, which is usually credited to a sixteenth-century English economist, was perfectly well understood in the Middle Ages."[1]

Oresme discussed materials suitable for a medium of exchange and decided in favor of the precious metals because they could be easily handled, were portable and had large value in small bulk. He favored bimetallism because he considered gold too scarce to meet all the needs of a medium of circulation. He held that the ratio of exchange between gold and silver should follow their relation as

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1. G. O'Brien, _Op_. _cit_., p. 221

commodities--their market price. The views of Oresme were accepted by the theologians of the fifteenth century.

One of the striking differences between medieval times and the present was the absence of commercial credit as a basis for transactions. Bullion or coin served as a basis for trade as there was no paper currency. The first English coins were of gold but from the end of the 8th to the middle of the 14th century the only coin of general use in England was the silver penny. The development of banking was due to the accumulation of wealth, and was indicative of the end of the Middle Ages. It occured first in the thriving commercial centers of Italy. Bills of exchange, one of the earliest forms of credit instruments, passed between the Italian bankers and their correspondents as early as the 13th century.

Private property

Although the problem of exchange was the major one in medieval economics, nevertheless some consideration should be given to the medieval idea of private property. Aquinas devoted an entire section of the "Summa" to the medieval Church teachings on the subject of property. He concluded that the right of private property in general was essential because every person is more careful to procure that which is for himself alone, human affairs are conducted better if each must care for his own property, and it insures a more

peaceful state.

There were certain duties involved in the acquisition and use of property. First such a right involved the duty of making good use of it. Aquinas taught that "the supreme justification of private property was that it was the most advantageous method of securing for the community the benefits of material riches."[1] Therefore, the owner of property must, in the use of it, benefit his neighbor.

If the property owner withheld his property from those needing it he could be forced to apply it properly. The rich were to regard their possessions as entrusted to them to use and manage not solely for their own enjoyment, but for mankind at large. Thus Aquinas stressed liberality as opposed to avarice. Charity and almsgiving were stressed, but in theory alms were to be given only to those recognized as in need and only in proportion to the donor's means.

It is evident from the above that medieval writers recognized the right of private property but associated this right with moral obligations.

Summary

The economic theory of the Middle Ages was closely interwoven with religious teachings. The beginning of the

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1. George O'Brien, *Op. cit.*, p. 69.

period witnessed the decline of the towns and commercial activity of the Roman Empire and the development of a village economy exemplified by the manorial system. The economic life was primarily agricultural and centered about the manorial village. Primitive methods were employed in agriculture which was carried on for local consumption and not for markets or profits. There was little manufacturing and that, too, was for purely local use. It is evident that, with the almost total absence of capital, money, and a free laboring class, problems of exchange and distribution were comparatively simple. Under such conditions the Church fathers exalted the dignity of labor and the praiseworthiness of agriculture, but condemned trade.

Toward the close of the medieval period the manorial system was in decay, the open field system with common farming was being replaced by the enclosed method with individual farming, a class of free laborers had appeared, the use of money was spreading and village economy was giving way to a town economy dependent upon trade and industry. These factors stimulated economic thought and certain definite economic theories evolved which centered about the doctrine of "justum pretium" or just price.

The system of thought dominant during this period was scholasticism, in which the theological element prevailed. This system sought to apply certain rules of conduct to existing conditions. The greatest of the scholastics, Thomas Aquinas, endeavored to weld Christian teachings,

Roman law and the doctrines laid down by Aristotle into one composite whole as an explanation of the rules governing human conduct.

The doctrine of just price rested upon the objective cost conception of value as formulated and explained by the scholastics. Value should equal the expenditure of labor and other costs. The theory of wages was included in that of just price, but was also dependent upon the social rank of the laborer. With the growth of towns the medieval notion of value was gradually modified.

The doctrine of usury occupied a prominent place in Medieval thinking. This, too, was influenced by the teachings of Aristotle and of the church. Attention was placed upon the personal needs of the borrowers and the use of the loan for unproductive purposes. The scholastic teachings against usury stressed the points that money was a "consumptible" and could not be separated from its use, that usury was a payment for time, that money in itself was barren and that the Bible opposed the taking of usury.

The use of capital for productive purposes evolved with the expansion of trade and industry and explains the modifications made in allowing interest for a loss incurred by a loan, or for a profit missed. Then discounts were allowed on bills of exchange, investments in partnerships gave a justifiable return to the money invested, etc.

With the revival of commerce and growth of cities,

markets expanded in scope and money was brought into circulation. This helped to undermine the foundation of feudalism for, as long as rents and fees were paid in personal services and produce the laborer was bound to remain on the manorial estate. The use of money made it possible for him to commute his services into money payments.

Medieval writers emphasized the need to regulate the coinage of money as a necessary part of the doctrine of just price. Any change in the quantity of money, which was comparatively small, would affect prices.

The medieval towns promoted the formation of guilds and market places. Here, too, the doctrine of just price permeated the economic order. Manufactures were regulated, competition was prevented and forestalling, regrating and engrossing were prohibited, in order to protect consumer and producer.

Medieval economic thought thus shows a gradual evolution influenced, at first, by a simple village economy. The transition to a town economy brought with it changes and modifications in the economic view. Throughout the period the church influence was felt and the economic teachings, as expressed by the theologians, aimed at controlled production, wise consumption, an appreciation of the dignity of labor, and just distribution.

CHAPTER II

DEVELOPMENT OF THE MEDIEVAL GUILDS

Although organizations of a semi-religious nature appear to have existed throughout the Middle Ages, commercial and industrial organizations belong to the closing centuries of medieval history.[1] To what extent they were molded by medieval political factors and economic thought cannot be exactly determined. Their development was a gradual process coincident with the growth of towns. When the rigid commercial policy of the towns collapsed with the emergence of a national economy, disintegration of the guilds occurred.

There are no definite and exact lines of demarcation separating the Middle Ages from the ancient and modern eras. That period of transition characterized by the barbarian invasions, the growth of the church, and the fall of the Roman Empire in 476 mark its beginning. The economic situation at that time was one of marked decline in the prosperity of the towns, burdensome taxation, immobility of labor, and a decrease in population. Agricul-

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1. The Medieval Guild organization was not limited to the civilization of the West, but was found in China, India, Japan, and elsewhere in the Orient.

tural lands were concentrated in the hands of a few because many small farmers, unable to meet the heavy taxes abandoned their lands and went to the city. The lot of the merchants and craftsmen in the towns was particularly hard. Those of the same trade had formed "colleges" or guilds, which, recognized and protected by law, had formerly prospered. During this period of economic stress, when trade and industry languished, the law not only compelled the members of the "colleges" to remain in the particular occupation selected but also fixed the prices of the commodities they sold.

From 476 until the close of the seventh century medieval history was concerned with the struggles involved in laying the foundation for a new ecclesiastical and civil system. The following three centuries were devoted to the work of consolidation as well as defense against the invaders.

It was during these centuries that the foundation for the feudal order emerged. This aristocratic administrative system, known as feudalism, was supported by an economic system much older and known as manorialism. In it, the economic life centered around the village which was predominately agricultural. The products of each rural district sufficed for its needs and the necessity for trade was slight.

Village economy as illustrated by the manorial system

helps to interpret medieval economic thought. Individual liberty as it is understood today, did not exist, so this stimulus to economic competition was lacking. There was a strong element of communalism in the medieval villages and although the ownership of land was recognized nevertheless the individual farmer was subordinated to the general will. He could not exercise private initiative and enterprise nor have complete individual control over his acres. The community as a whole determined crop rotation, methods of work, and the crops to be grown. The individual was prevented, as much by custom as by the intermixture of his holdings with those of others, from pursuing his own policies.

Whereas the tenant-farmer of the present time supposedly pays a rent based upon the value of his land in terms of its productivity, in the Middle Ages his payment depended upon his economic status. If he were free he could obtain good land for little service or payment. If not free his obligations to the lord were greater. Nor was he a tenant in the modern sense of the word. He was a landholder, bound to the soil. His rent, paid principally in services, was fixed by custom and as a result, he paid not what he could afford but what was customary.

It is interesting to note that, in those centuries which best exemplify the outstanding characteristics of the Middle Ages, the eleventh, twelfth, and thirteenth, the

manorial system had reached its height and those factors which led to its decay were in part responsible for the development of the medieval industrial guilds. Noticeable among these forces were the commutation of services or the substitution of money payments for labor dues, which gradually gave rise to a wage-earning class, the enclosures of the more fertile parts of the waste lands, and the growth of the towns.

It is with the rebirth of the towns that the guild movement is particularly associated. The Middle Ages, up to the twelfth century had witnessed the triumph of village economy, an economy predominately agricultural; but with the restoration of internal peace following the Norman Conquest, and the stimulus given to trade and industry, the towns developed rapidly.

At the time of the Norman Conquest there were about one hundred towns in England, which were, in reality, large-sized villages dependent mainly upon agriculture. Commerce, however, was gradually achieving a place of greater importance. By the middle of the thirteenth century there were about two hundred towns in England. Cheyney estimated that the average population of these towns was between 1500 and 4000 people.[1] It is important, in making a comparison

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1. E. P. Cheyney, An Introduction to the Industrial and Social History of England, (New York: Macmillan Company, 1920), p. 50.

of present day industrial organizations with those of the Middle Ages to bear in mind the exceedingly small market served by the medieval guild.

The town charters, received from the king, granted the towns certain privileges which included the payment of a fixed annual amount in place of the tolls and customs payable as feudal dues, the right to elect their officials, hold court and organize guilds.

As already indicated, guilds of a social or religious nature had existed in the early Middle Ages. Unwin cites the existence of guilds in England as early as the ninth century.[1] Opposing theories have been advanced as to the actual origin of the guilds. One was that they were survivals of the Roman "colleges", another that they originated from the German guilds or associations of individuals who pledged their vows with a blood seal. Still another theory is that each guild was a separate creation, unassociated with the past, and formed because of the mutual interests of its members. Irrespective of the value of the various theories advanced it is evident that guilds developed simultaneously with the growth of towns, that they responded to the needs of medieval industry, that their general organization was similar in the various trades and

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1. George Unwin, The Gilds & Companies of London, (London: Methuen & Co., 1908), ch. II. cf. also Henri Pirenne, "European Guilds", Encyclopaedia of the Social Sciences, ed. by R. A. Seligman, (New York: The Macmillan Co.), vol. VII, p. 208.

in the different countries, and that they were most powerful in the free towns of the Continent.[1]

Gild Merchant[2]

Late in the eleventh century an organization known as the Gild Merchant began to appear in the towns in England.[3] Its chief privilege was the right to buy and sell free of toll in the town. Membership included all those who habitually engaged in selling. Guild members paid an entrance fee, were bound to obey the regulations, and, in return, received benefits in case of sickness or unemployment, assistance in collecting debts and other social services. The Gild Merchant sought to reserve to its members a monopoly of trade and to prevent such illegal transactions as regrating, forestalling and engrossing.[4]

The ordinances which have been preserved show a similarity of organization in the various merchant guilds. Thus, each guild was ruled over by one or two officials usually called aldermen, assisted by two or more wardens. There

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1. George Renard, Guilds in the Middle Ages, trans. by D. Terry, ed. by G. D. H. Cole, (London: G. Bell & Sons, Ltd., 1918), pp. 1-5.
2. E. Lipson, Op. cit., ch. VII, pp. 238-278.
3. The first positive mention of a merchant gild is not earlier than 1093. cf. C. A. Beard, An Introduction to the English Historians, (New York: The MacMillan Co., 1906), p. 172. cf. also W. J. Ashley, An Introduction to English Economic History & Theory Vol. I The Middle Ages, (New York: G. P. Putnam's Sons, 1893), p. 71.
4. Ibid.

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was generally an inner council consisting of twelve or more members.[1] The majority of guildsmen consisted of land-owners within the town itself who exercised the right of excluding or restricting the trading privileges of "foreigners" and other non-members. Occasionally, merchants from other towns were admitted to membership. As there were, at first, no sharp lines of demarcation between merchants and artisans, the Gild Merchant included both. The master craftsman was regarded as a merchant because he engaged in the business of buying the raw materials as well as selling the finished products.

Craft guilds

The growth of urban communities, the expansion of trade and the development of inter-municipal treaties granting trading privileges,[2] led to specialization. The old general associations of merchant guilds no longer met the needs of industry, and craft guilds or associations of the members of a single craft, or trade developed. By the end of the twelfth century such associations of artisans had been organized in practically every city of northern

1. W. J. Ashley, An Introduction to English Economic History and Theory Vol. I The Middle Ages, (New York: G. P. Putnam's Sons, 1893), p. 72.

2. D. W. Roberts, Outlines of the Economic History of England, (London: Longmans, Green & Co., 1931), ch. II.

Europe.[1] The name applied varied in the different countries. In Italy it was the "arte", in France the "metier", in Germany the "zunft" or "amt", and in England, Normandy and Holland the craft guild.

The first craft guilds in England were those of the weavers and fullers of woolen cloth. The Pipe Roll of 1130 shows that there were weavers' guilds in London, Lincoln, and Oxford and the number of separate craft organizations continued to increase during the twelfth and thirteenth centuries.[2]

> "Among the oldest traceable guilds in Paris were the Master Chandlers and Oilmen, who received royal privileges in 1061. The butchers, tanners, shoemakers, drapers, furriers, and purse makers were other old Parisian guilds."[3]

The two oldest guilds in Germany were the fishmongers of Worms (1106) and the shoemakers in Magdeburg (1128).[4] Guilds were prevalent not only in northern but also in southern Europe. Bologna had twenty-one guilds in 1228 and, by 1386, had twenty-six. In Pisa the industrial organiza-

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1. Henri Pirenne, "European Guilds", Encyclopoedia of Social Sciences, vol. VII, (New York: The Macmillan Co., 1932), pp. 209-210.
2. W. Cunningham, Op. cit., pp. 158-161, Appendix, pp. 652-653. cf. C. A. Beard, Op. cit., p. 178.
3. W. S. Davis, Life on a Mediaeval Barony, (New York and London: Harper & Bros., 1922), Footnote p. 360.
4. J. W. Thompson, Economic and Social History of Europe in Later Middle Ages: 1300-1530, (New York and London: The Century Co., 1931), ch. XVII.

tion at the beginning of the fourteenth century centered on the "Arte della Lane" or wool guild and the "Septem Artes" or seven craft guild including the smiths, skinners, shoemakers, tanners, butchers, vintners, and the notaries.[1]

The number of guilds varied in the different communities. London had forty-eight companies of crafts at the close of the reign of Edward III and at least sixty before the close of the fourteenth century. Frankfurt at one time had one hundred thirty-seven and Hamburg was credited with one hundred fourteen.[2] In some of the smaller urban centers where the members of a craft were too few in number to form a guild of their own an organization of several crafts occurred. J. M. Lambert, in discussing the guilds of provincial towns, says in reference to Hull:

> "Thus it is that we find such a heterogeneous body as goldsmiths, smiths, pewterers, plumbers, glaziers, painters, cutlers, musicians, stationers, bookbinders, and basketmakers, all associated in one guild, the ordinances of which extended even to forbidding a musician who was not a free burgess of Hull and not a freeman of the company to keep a dancing school in the town."[3]

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1. F. C. Dietz, "Industry in Pisa in the Early Fourteenth Century", The Quarterly Journal of Economics, 28: 338-59, F '14
2. C. Seignobos, History of Mediaeval and Modern Civilization to the End of the Seventeenth Century, ed. by J. A. James, (New York: Charles Scribners' Sons, 1907), p. 166. cf. H. W. Webster, Early European History, (Boston, New York: D. C. Heath & Co., 1917), pp. 534-543. cf. J. W. Thompson, Op. cit., ch. XVII
3. J. M. Lambert, "Two Thousand Years of Gild Life", (A Review), The Athenaeum, no. 3376, II (July 9, 1892), p. 55

The organization and functions of craft societies were fundamentally alike throughout western Europe. The craft guilds were governed very much as the Gild Merchants, by wardens or masters to oversee the industry, and by an assembly. In England, they made annual payments to the crown, and guilds not authorized by the king were amerced as "adulterine". In 1180, several London guilds including the goldsmiths, butchers, and pepperers were amerced but not dissolved.

At first the formation of craft guilds was opposed by the governing body of the towns which feared the loss or limitation of their governing functions. Beginning with the reign of Edward I the guilds were fostered by the crown and later, in the fifteenth and sixteenth centuries the guild officials had become powerful enough to dominate the town government.

The craft guilds endeavored to establish a monopoly of the industry, to secure control over guild members and to promote their mutual interests. The religious functions of the guild were also stressed.

To insure monopolistic control, the guild restricted membership through the system of apprenticeship, and by the requirement that only guild members could participate in the trade. The apprenticeship system which dates back to at least the middle of the thirteenth century did not

apply with absolute uniformity in all guild organizations. Nevertheless there was sufficient similarity on the whole to justify a general description of the system.

The contract between master and apprentice, made either verbally or before a notary established the mutual obligations of each. The master was required to provide food, shelter, clothing and, occasionally a small salary and some schooling. The apprentice, on his part, had to obey the master and could not leave before his apprenticeship period was served or marry without his master's consent.[1]

The number of years of apprenticeship varied from three to twelve, but was generally seven years. By 1563, the seven year apprenticeship had become so widely recognized in England that it was made compulsory by law. The tendency, toward the close of the Middle Ages, was to extend the period of apprenticeship apparently for the twofold purpose of limiting the membership of the guild and of securing better workmanship. Regulations were also prescribed as to the age limit for apprentices. Frequently the age designated was from 14 to 18 years.[2]

The number of apprentices which a master might employ

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1. W. Cunningham, <u>Op</u>. <u>cit</u>., pp. 349-353.
2. E. Lipson, <u>Op</u>. <u>cit</u>., p. 284.

was gradually restricted and in the fifteenth and sixteenth centuries the guilds tended to become more and more exclusive.[1] Thus the slaters of Newcastle provided that a master could not take a second apprentice until the first one had completed six years of the required term. The tailors of Exeter required a license from the company, for a master to have more than one apprentice. The fishmongers of London allowed their master craftsmen to have only as many apprentices as they could support, and this rule was supported by other guilds including the weavers of Hull and the London founders. It is probable, however, that there tended to be a shortage of apprentices rather than any surplus as indicated by the attempts of various towns to have the acts of 1388[2] and 1406 modified or annulled. The act of 1388 provided that those who were agricultural laborers until the age of twelve could not become apprentices but must remain in agriculture, and that of 1406 required the ownership of land as a prerequisite to placing one's child as an apprentice in a craft.[3]

The second step in the apprenticeship system was that of journeyman or wage-earner. It was customary for a

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1. W. J. Ashley, _An Introduction to English Economic History & Theory Part II The End of the Middle Ages_, 8th impression, (London: Longmans, Green & Co., 1914), pp. 91-92.
2. W. Cunningham, _Op. cit._, pp. 405-6.
3. E. Lipson, _Op. cit._, p. 284.

journeyman to remain with his master a year after completing his apprenticeship, but he was paid the customary wage during that period. On the continent journeymen frequently spent some time traveling from place to place securing broader training before establishing themselves in one place. Before becoming a master, the journeyman, to establish proof of his competence, was sometimes required to produce a sample of his work or a "masterpiece".

Toward the close of the Middle Ages a journeyman frequently found himself limited to that particular field of enterprise without any opportunity of becoming a master. Regulations found in the guilds of carpenters and paviors of London required a three year period of service as a journeyman. This appears to have been quite customary.

Journeymen guilds, composed of wage-earners only, were organized in defiance of their employers, for the purpose of bettering their working conditions by raising wages and reducing the hours of labor. One such guild appeared in London as early as 1303. Their prevalence during the fifteenth century was evidence of the decay of the craft guilds.

Internal decay of the guilds

The beginning of disintegration in the craft guilds came as a result of the friction between the journeymen and masters. The discord was due to the wages paid journeymen who complained that they were defrauded of wages by the

masters, to the importation of foreign labor, and to the privileges accorded the sons of masters one of which was the shortening of their period of training.

Following the Black Death the guilds were faced with the same difficulties which confronted the employers of agricultural help--a rising wage scale and a scarcity of labor. Laws were enacted to prevent wage increases, and journeymen's guilds were condemned as combinations to enhance wages. The Statute of Laborers enacted by Parliament in 1351, endeavored to force people to work at the old, customary wage. It was provided that:

> "---saddlers, skinners, white-tanners, cordwainers, tailors, smiths, carpenters, masons, tilers, shipwrights, carters, and all other artisans and labourers shall not take for their labor and handiwork more than what, in the places where they happen to labour, was customarily paid to such persons in the said twentieth year and in the other common years preceding, as has been said, and if any man take more, he shall be committed to the nearest jail in the manner aforesaid."[1]

A similar state of affairs existed in other countries. An Ordonnance, issued in France in 1350, dealt with all matters of trade and industry, and attempted to keep wages down.[2]

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1. Select Historical Documents of the Middle Ages, trans. and edited by E. F. Henderson, (London: George Bell & Sons, 1905), p. 167.
2. W. Cunningham, *Op. cit.*, p. 333.

Journeymen were prohibited from keeping apprentices or working for anyone except a master. They could not work, even part time on their own account. It is evident, from a review of the complaints voiced by journeymen and masters during the fifteenth and sixteenth centuries, that the guild system was disintegrating internally.

By 1400 the journeymen guilds were widespread although their organization was opposed by both masters and town authorities. The late fifteenth and the sixteenth centuries witnessed the merging of the journeymen and small masters who no longer dealt directly with the consumers. Their raw materials were furnished by influential masters or traders who also received back and sold the finished products.

In 1548, an act of Parliament (a forerunner to the combination acts) forbade the establishment of unions of workmen to raise wages and reduce hours of labor. The Statute of Labourers passed in 1563, during the reign of Queen Elizabeth, gave justices of the peace, not craft guilds, the right to fix workmen's wages. By this time the journeymen guilds, as originally organized, had disappeared.

Additional internal causes for the decay of the craft guilds were their detailed and oppressive regulations pertaining to other matters than control of journeymen. Outsiders were excluded by the requirement of excessive admission fees. In some guilds, members, upon admission were

compelled to give costly feasts. Strict subjection of subordinates to those in authority was opposed by the workmen. Officials were accused of abusing the right of investigation, seizure and fine. By lengthening the apprenticeship period the master secured skilled labor for practically nothing.

Division of production and distribution was a major cause for the breaking up of the craft guild system and its replacement by a different industrial organization. During the fifteenth century an amalgamation of the crafts within a town frequently occurred. This was due both to the limited membership and poverty of each individual guild and to the desire to control all branches of the same industry.

Livery companies, composed of industrial capitalists, were organized within the guilds during the course of the fourteenth and fifteenth centuries. Sharp class distinctions resulted. The masters of little means and journeymen were organized into strictly subordinate bodies of yeomenry and control of the guilds became centered in the hands of a few powerful members.

The craft guild was well adapted to meet the needs of local industry and to supply cities with food. By the fourteenth century its inadequacies to meet the needs of the growing export industries was quite apparent. As a result, the period of craft guild disintegration witnessed the development of a distinct class of traders who were

not associated with the craftsmen. In London the merchants retained independent organizations but in other towns they tended to come together in one company. As the mercantile organizations grew in power they sought to exclude craftsmen from engaging in trade. Thus the Merchant Adventurers of Newcastle tried to exclude craftsmen from retailing merchandise. A decree of the Star Chamber in 1516 upheld the contentions of the merchants and provided that craftsmen "were not to engage in trade unless they first renounced their craft".[1]

External forces affecting guilds

The Middle Ages during the twelfth and thirteenth centuries represent a rather stable period in history, when compared to the following two centuries. There was well organized town government and the church presented a solid structure. Disintegration began in the fourteenth century for which various reasons have been advanced. Serfdom was passing out, the craft guilds had displaced the Gild Merchant, a wealthy class of citizens appeared in the towns, feudal institutions were disappearing and the church suffered loss of authority and unity, as indicated by the pope's residence in Avignon, the Great Schism and the spread of Lollardy.

The fourteenth century was particularly turbulent. Not only did the nations participate in the Hundred Years War

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1. E. Lipson, _Op_. _cit_., pp. 386-387.

but popular uprisings occurred throughout Europe. The lower classes revolted against the hegemony of the wealthy classes. Jacob Van Artevelde, a Flemish brewer, led an uprising in 1337. Ten years later a revolt occurred in Rome under Cola di Rienzi. In 1378, the wool carders, one of the lesser guilds in Florence revolted against the nobles who represented the greater guilds. In France the Jacquerie, an uprising of peasants and townsmen, under Marcel occurred in 1358. England did not escape the spread of revolt. The Peasants' Insurrection of 1381, which included English townsmen, can be traced to the opposition existing against the Statute of Laborers, the records of the manor courts which listed many as serfs, the presence of foreign artisans, imposition of poll taxes, and local quarrels.

The authorities sought to reestablish order and meet the emergencies that arose by curtailing the authority of the crafts. Early in the fourteenth century, when the price of wheat in France was exorbitant, Philip IV forbade the formation of new trade guilds and struck at the very heart of the guild monopoly in Paris by ordering a survey of the grain supply, selecting supervisors to check on the price charged by bakers and by abolishing the guild rules which forbade night work and limited the amount of work each guild member might do. The Ordinance of 1307 was only temporary. John II of France, in an ordinance of 1355, abolished the restrictions upon the number of apprentices

and their term of apprenticeship. This ordinance also soon ceased to be effective.

In Rouen, following the uprising there in 1382, the guilds lost their independence and were made subject to the king. In Paris, in 1372, the trades became free and the provost was given jurisdiction over them.

The fifteenth century which witnessed the formation of great states in Europe saw also the emergence of a national economy. Trade expansion necessitated increased production. Producers, hampered by craft restrictions, ignored them or took their industry outside the towns where the workers were not bound by guild rules. This gave rise to the domestic system of "scattered" manufacturing.

Although Turgot issued an edict in 1776 abolishing the guilds, with the exception of four,[1] and prohibited all association of masters and journeymen, it was not until 1791 that the guilds of France were completely destroyed by the Revolution.[2] In Holland the guilds were of no importance after 1766 and in Tuscany all guild tribunals were abolished in 1770, although it was not until 1907 that the settlement of property belonging to the Arte della Lana was completed.

In England the laws of 1814 and 1835 definitely ter-

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1. The wig makers, printer-booksellers, goldsmiths, and apothecaries.

2. F. Walker, "The Law Concerning Monopolistic Combinations in Continental Europe", Political Science Quarterly, vol. 20 (1905), pp. 13-16.

minated the special privileges of the guilds although they evidently continued as associations as shown by the following quotation from the New York Tribune, (January, 1900):

> "Among many extraordinary honors which have been conferred upon Lord Kitchener, in recognition of his victory over the Dervishes at Omdurman a year ago, there is none that to American ears sounds more peculiar than his appointment as a fishmonger, a draper, a grocer, a mercer, and a goldsmith. Moreover, he is about to become an apothecary, a butcher, and a merchant tailor."[1]

Summary

Guild development throughout northern and western Europe appears to have been directly associated with the growth of the towns. At first such organizations took the form of Gild Merchants composed of both artisans and merchants but by the twelfth century craft guilds of artisans only emerged. Town, authorities, at the outset, opposed the separate organizations of crafts but, in the thirteenth century appear to have fostered and encouraged their growth in order to better control industry and supervise production.

Craft guilds were originally voluntary associations of artisans given the exclusive right to practice their pro-

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1. "Wealth and Power of the Great London Guilds", New York Tribune in <u>Current Literature</u>, vol. 27:42-3, Ja. 1900, p. 42.

fession according to regulations prescribed by public authorities. They were distinctly urban institutions although membership was occasionally extended to outsiders. The outstanding characteristic of the craft guild was its organization into three classes of members, the masters, journeymen, and apprentices. As long as transition from the two lower classes to that of master could be readily made there was little internal friction.

The guild aimed to control industrial activity in its particular field in order to protect the consumer against defective goods and the producer against a low wage. The apprenticeship system was admirably adapted to provide the technical training necessary, and the guild regulations and inspection of finished goods gave additional assurance of good workmanship. Cost of production was, in general, accepted as the guiding principle in determining wages but was modified by custom which determined a fair wage as one which enabled the recipient to live in accordance to his habitual economic and social status.

Dissention within the societies due to the increased term of apprenticeship, the arbitrary reduction of the number of masterships, prohibitory fees, and other irksome regulations led to the disintegration of the craft guilds. This was hastened by the political situation which gave rise to national states and substituted a national for a town economy. The narrow guild rules could not meet the

needs of the wider markets. Production hampered by restrictions had little vigor and lacked the economic initiative necessary to meet changing conditions.

The guild system was far more than a temporary experiment in industrial control. It met the needs of a medieval society in which the absence of a strong national government necessitated an organization powerful enough to protect industrial interests. The medieval period was one in which "elementary conceptions of good and honest work needed to be driven into the general conscience by minute rules vigorously enforced".[1] This need was met by the craft guilds, whose minute regulation of industry served the interest of both consumers and producers. The service of the guild system to society terminated when markets were expanded, when capital became a more important factor in production and when the monopolistic control of industry by industrial workers themselves was replaced by capitalistic control. The driving force of capitalism, i.e. the profit motive, was major factor in destroying the medieval craft guild cooperative organization.

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1. W. J. Ashley, An Introduction to English Economic History & Theory, Part II The End of the Middle Ages, 8th impression, (London: Longmans, Green & Co., 1914), p. 168.

CHAPTER III

PRICE-FIXING: MEDIEVAL AND MODERN

Attitude toward price-fixing

During the medieval period the right to fix prices by law was generally conceded by both theologians and jurists, and accepted as the customary procedure by the people.[1] This power, moreover, could be given to towns, guilds, and the church.[2] Theoretically, the prices fixed were to conform to the "just price", and account was to be taken of the needs of labor, difficulty of production, and risks of transportation. A just price, in the absence of one fixed by law, was held to be what the commodity could generally be sold for at the time of the exchange. This was established by custom and upheld by Canon law.

Price control in modern times shows no such general acceptance. The legality and extent of governmental or in-

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1. "The assize of bread and beer is so old that it is undated. For centuries afterwards local authorities were empowered to fix prices--nor does it seem that these regulations caused discontent." James E. Rogers, The Economic Interpretation of History, Lectures delivered in Worcester College Hall, Oxford, 1887-8, (New York & London: G. P. Putnam's Sons, 1909)

2. J. Franck Bright, A History of England Period I Medieval Monarchy From the Departure of the Romans to Richard III, 449-1485, (New York; E. P. Dutton & Co., 1875), p. 261 .

dustrial price fixing varies in the different countries. European cartels, or voluntary trade associations, are permitted to prescribe minimum prices, to establish minimum-maximum levels, or to set fixed uniform prices. Legalized price fixing in the United States under the Codes of Fair Competition was rather an innovation which contrasted sharply with the earlier accepted principle of "free" competition. The anti-trust laws and the resulting court decisions[1] had made it illegal for industrialists to enter into price fixing agreements.

During the World War price fixing was resorted to as an emergency measure. The United States guaranteed a minimum price for wheat. It resorted to various devices of price fixing, such as limiting the price of commodities to a maximum excess above prewar levels, limiting the profits of producers to a definite percentage on their investment, and requiring producers to fix their own prices so that their earnings would fall within a prescribed limit.[2] Governmental intervention in industry, to this extent, was

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1. Trenton Potteries case, (273 U.S. 392) 1927, held that a trade agreement to fix reasonable prices violates the Sherman Act. See J. E. Davies, "Trust Laws and Unfair Competition", Dept. of Commerce, Bureau of Corporations, (Washington: Government Printing Office, 1916), pp. 718-724.

2. John Maurice Clark, Social Control of Business, (Chicago: University Press, 1926), ch. XVI, p. 281. Also F. W. Taussig, "Price Fixing as Seen by a Price Fixer", The Quarterly Journal of Economics, 33: 205-41, F '19.

regarded as temporary, emergency control, to be withdrawn as soon as the emergency itself had ceased to be.

The period from 1930 to 1933 was one of business demoralization characterized by business failures, loss of markets, and a drastic fall in prices. Heavy overhead expenses caused a continuance of business even though the price failed to cover total costs. There was a wide resort to disreputable and disastrous methods of competition. As a result of this economic situation, the National Industrial Recovery Act was enacted and approved by President Roosevelt June 16, 1933, to remain in effect for a period of two years, unless the emergency recognized should be declared at an end. Under this act, the President established the National Recovery Administration which encouraged industries to formulate their own codes of fair competition and work out their own ideas as to what the public interest required. Emphasis was placed first upon the preparation of codes and then upon code administration.

Each code drawn up was intended to be representative of an entire trade and industry throughout the United States, a far more comprehensive matter than the old guild regulations which bound only the craftsmen of a particular industry within a town.

The burdens imposed upon industry by the provisions of the Recovery Act and the adoption of codes providing for higher wages and reduced working hours increased the pres-

sure for price fixing provisions in the codes. The motive of protecting the interests of the members of an industry is common to both medieval and modern times. However, it is to be borne in mind that guild price regulation was the accepted order of the medieval period and not a temporary expedient introduced to tide industry over a difficult period of business stress. Moreover, the guild or town authority in fixing the price of commodities sought not only to secure a just income for the producer but to protect the consumer against exploitation.

Size and extent of market

The medieval guild, by the very nature of its organization, was monopolistic, direct control of industry being centered in the hands of the producers and competition being restricted in the interest of the entire trade. The NRA, while giving exemption from the provisions of the anti-trust laws,[1] provided that codes could not permit monopolies or monopolistic practices; that they could not oppress, eliminate, or discriminate against small enter-

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1. J. Dickinson, "Controlled Recovery" in Atlantic Monthly, (September, 1933), pp. 371-380. Also National Recovery Administration Bulletin no. 1, (Washington: U. S. Government Printing Office, June 16, 1933), p. 3. Calvin Crumbaker, "The Joker in NRA", Barron's, (July 16, 1934), p. 9.

prises.

The guilds were essentially local organizations serving small, restricted areas. The extent of the market varied with the size of the town, which, during the medieval period, remained small. In England, in the latter part of the eleventh century, the larger towns contained only "seven or eight thousand inhabitants" and, at the beginning of the fifteenth century the estimated population of London was "about forty thousand".[1]

Modern industry serves not only the local but national and international markets, as well, and its problem in price fixing is a much different one than that faced by the medieval town guild whose monopolistic control broke down with the expansion of trade and widening of markets during the latter part of the fifteenth century.

The localization of the market and the fact that the demand for commodities produced was based principally upon necessity rather than fashion caused demand to be relatively

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1. W. J. Ashley, An Introduction to English Economic History and Theory, The Middle Ages, (2nd ed.), (New York and London: G. P. Putnam's Sons, 1893), vol. I, ch. II, pp. 68-69, vol. II, 8th impression, 1914, ch. I, p. 11. cf. A. P. Usher, "An Introduction to the Industrial History of England" (Boston: Houghton Mifflin Co., 1920), pp. 87-108. For controversial material on population of England during the Middle Ages see W. Cunningham, Op. cit., p. 331.

stable. "None of the social difficulties now caused by the rapid and incalculable fluctuations in demand had as yet begun to show themselves."[1] This additional factor made price fixing quite simple. The producer, who was ordinarily also the seller,[2] knew his buyers, their needs, standards of living and means. He was able, through the guild, to gauge his production and maintain the customary price.[3] Nor was he concerned with changes in fashion. It was not until the expansion of trade and industry accompanied by a rising standard of living gave impetus to new wants that fashion changes became a problem to be faced by the guild craftsman. As was to be expected, such changes were bitterly opposed by the guilds which prohibited the adoption of new devices or patterns by the masters.[4]

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1. W. J. Ashley, An Introduction to English Economic History and Theory, The Middle Ages, 2nd ed., (New York and London: G. P. Putnam's Sons, 1893), vol. I, p. 93.
2. Goods usually were made up in the rear of the shop and sold over a small counter directly upon the street where the customer stands. W. S. Davis, Op. cit., ch. 22, p. 357-372.
3. A. P. Usher states that many writers "insist upon the mythical direct contact between the medieval craftsman and the consumer." His classification of the craft guilds into three groups: the purely local, such as butchers and bakers; those serving both local and distant markets such as textile crafts, leather workers, etc; and the merchandising crafts, would tend to refute such a view.
4. George Renard, Op. cit., ch. VIII, p. 117, also James W. Thompson, Op. cit., ch. XVII, p. 401.

It is evident, from the above, that medieval price fixing was the usual procedure--a part of the accepted order of things--easily established and maintained because of the monopolistic nature of the guilds, the limited market and the stability of demand. However, before considering guild regulations and price fixing procedure in detail some attention should be given to the place of capital and labor in determining prices.

Importance of capital in price fixing

Capital in the medieval guild period played a relatively unimportant part in production. The guild master, employing two or three individuals, who made and sold the finished goods, required little besides simple tools, the necessary materials and a place in which to work. "During the Middle Ages the capital goods were so few and crude that each producer supplied himself with his needed equipment without great difficulty. Instead of commanding interest the accumulated wealth of the rich had often to be stored and a fee paid for its safe-keeping."[1] Moreover, there was little accumulation to lend. The uncertainty of governmental protection and the heavy taxation which often

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1. Henry R. Seager, Principles of Economics, 3rd ed., (New York: Henry Holt & Co., 1923), ch. IX, p. 150.

amounted to property confiscation were not conducive to saving.[1]

Medieval church doctrine, as indicated in Chapter I, was opposed to the taking of interest or usury. Canonists held that lending money was a sale in which payment was deferred. Therefore, to lend money at interest was the same as selling an article and then unjustly charging more for it. The fact that a time period leapsed between the time of the loan and its replacement did not justify the payment of interest because time was "common property".

Aquinas taught that the "just" price of a loan was the return of the amount lent. If there was delay in repaying the loan then interest should be paid for "damnum emergens", or loss arising from delay. However, in the case of "lucrum cessans", or gain prevented by non-fulfilment of the obligation, no interest payment was justifiable.

The attitude of the church on this matter is readily understood when account is taken of the fact that most loans were for consumptive and not for productive purposes.[2] In commenting upon this view of the church, Ashley states:

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1. H. de B. Gibbons, Industry in England Historical Outlines, 10th ed., (New York: Charles Scribner's Sons, 1920), ch. VII, p. 99.

2. F. W. Taussig, Principles of Economics, 3rd ed., vol. II, (New York: The Macmillan Co., 1924), ch. 40, pp. 36-37.

> "It is scarcely denied by competent modern critics that, at some period at any rate, during the Middle Ages, there was such an absence of opportunities for productive investment as relatively to justify this strong prejudice against interest."[1]

The theory of usury came to be closely identified with that of the just price. For example, if goods purchased on credit cost more than their real value, the bargain was held to be usurious. Such was also the case if goods were bought at less than their real value and sold at more.

Although capital was relatively unimportant during the Middle Ages, it is an essential factor in production in modern times. Capitalistic production has advanced so much that "the average capital equipment of the modern producer is easily a hundredfold larger than that of the medieval workman."[2] Heavy investments have been made in such capital goods as tools, complex machinery, warehouses, factories, railways, etc. In any plan of arbitrary price fixing, interest on capital now figures as one of the shares in distribution--one of the expenses of production.

The regulation of wages as a factor in price fixing

Under the guild system there was no class of wage-ear-

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1. W. J. Ashley, An Introduction to English Economic History and Theory, The Middle Ages, 2nd ed., (New York: G. P. Putnam's Sons, 1893), vol. I, ch. III, p. 156-157.
2. Henry R. Seager, Op. cit., ch. IX, p. 151.

ners in the modern sense of the word. The labor organization within the craft consisted of the master, journeymen and apprentices. Small workshops operated by the master alone or assisted by one apprentice were common, and those employing more than four or five persons were the exception, not the rule.[1] There was fear lest a master employ so many workers that his business would become large enough to ruin his competitor. The guild system seems deliberately contrived to perpetuate the existence of a great number of very small industries.[2] The apprentice was the student learning the craft. Upon him depended the maintenance of that professional skill in which the guild took pride. Occasionally the apprentice received a small salary. The journeyman was the wage-earner or hired workman. As discussed elsewhere in this paper, he aspired to become a master, but, until he could do so, he worked in a shop with the master and apprentices in compliance with the rules of the craft and in return for wages paid partly in money and partly in kind.

Toward the latter part of the Middle Ages the journeyman's position was less favorable. It became increasingly

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1. W. S. Davis, Op. cit., ch. 22, pp. 357-372. Also Funck Brentano, The Middle Ages, trans. by E. O'Neill, (New York: G. P. Putnam's Sons, 1923), ch. XVI, pp. 343-346.

2. W. S. Davis, Op. cit., ch. 22, p. 363.

difficult for him to acquire the means necessary to establish himself as a master. The latter position tended, too, to become hereditary.[1]

The guilds seldom had charters, but drew up rules or ordinances which, when approved by the town authorities, were binding upon all members. These regulations, like the codes of fair competition, regulated conditions of labor, including hours of work and wages. Thus the Ordinances of the Spur Makers of London which "are fairly representative of the rules of a vast number of such organized trades in London and other cities and towns"[2] provides that:

> "No one of the trade of spurriers shall work longer than from the beginning of the day until curfew rung out at the Church of St. Sepulchre without Newgate."

Unlike the code regulations which provided minimum wages and maximum hours of labor ostensibly to protect labor, the reason given in the guild regulations for the limitation of hours of work is that

> "---no man can work so neatly by night as by day, and many persons of the said trade, (spurriers), who compass how to practice deception in their work desire to work by night rather

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1. George Renard, Op. cit., p. 6.
2. Edward P. Cheney, Readings in English History Drawn from the Original Sources, (Boston, New York, Chicago, etc.; Ginn & Co., 1908), ch. IX, p. 209.

> than by day; and then they introduce false iron, and iron that has been cracked for tin, and also they put gilt on false copper, and cracked"[1]

Not only were hours of work regulated, but persons of the same guild were not to hire foreigners, that is, individuals foreign to the town whether aliens or not,[2] as long as guild members were available. There was, no doubt, fear that the employment of such labor would result in lower wages, and, as a consequence, foreigners so employed had to pay an excessive entrance fee.

The number of laborers, including apprentices, and their term of training were specified in the guild regulations. The term of apprenticeship differed in the various trades and in the different countries. In England, the time was generally seven years, in France, from three to four years, and in Germany, from two to four years.[3] The length of apprenticeship for certain trades was considerably in excess of these general averages. Thus, the Parisian brass-wire drawers served an apprenticeship of six

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1. Edward P. Cheyney, Translations and Reprints from the Original Sources of European History, vol. II (Revised), (Department of History of University of Pennsylvania) no. I "English Towns and Gilds". See also footnote 2. above.

2. W. Cunningham and E. A. McArthur, Outlines of English Industrial History, (New York: MacMillan & Co., 1895), ch. IV, p. 57.

3. "English Gilds", The Original Ordinances of More than One Hundred Early English Gilds, ed. by Toulmin Smith, (Essay on the History and Development of Gilds by Lujo Brentano), (London: N. Trubner & Co., 1892), p. cxxix.

years, the chest-makers seven, iron-shield makers eight, curriers of shoe-leather nine, and jewellers ten.[1] In Paris in the thirteenth century, the mercers, fullers and silk weavers were allowed two apprentices; the rope-makers, pewterers, goldsmiths, drapers, and shield-makers, one, whereas alebrewers, shoe-makers, green-grocers, corn-dealers, etc. were allowed as many as they wished.[2]

In the determination of the wage[3] to be paid, the guild was influenced by custom. This is well illustrated in the case of the weavers presented "before the King's justices, on the charge that 'by confederacy and conspiracy, in the Church of S. Margaret Pattens, they ordained among themselves that for weaving each cloth they should take sixpence more than anciently they had been wont'; and it would appear," Ashley states, "though the record is imperfect, that they were obliged to return to the old charges."[4]

In the "Ordinances of the White-Tawyers" appears the statement that "---no one shall take for working in the said

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1. F. B. Millet, Craft Guilds of the Thirteenth Century in Paris, Bulletin of the Departments of History and Political and Economic Science in Queen's University, (Kingston, Ontario, Canada: Jackson Press, 1915), p. 4.
2. Ibid.
3. For guild regulation of wages see E. Lipson, Op. cit., ch. VIII, pp. 300-301.
4. An Introduction to English Economic History and Theory, The Middle Ages, 2nd ed., (New York: G. P. Putnam's Sons, 1893), ch. III, p. 195.

trade more than they were wont heretofore, on the pain aforesaid"[1]

It is quite difficult to distinguish between medieval wages and medieval prices. The price charged by a master craftsman included the wage he, himself, received for his labor. The only true wages were those paid to laborers employed by the master.[2]

Following the Black Death, municipal authorities, in England, attempted to regulate wages. Some unsuccessful attempts were made to fix wages in accordance with the price of foodstuffs. The Ordinance of Labourers(1349) and the Statute of Labourers(1351) provided that labor was to work at the old wage rates. Although it is generally considered that the Statute of Labourers failed in its attempt to keep wages down there is some evidence to show that it helped to check unusual wage increases.[3]

The doctrine of price underlies the guild regulations as to wages. The just price was one which brought fair remuneration to the producer and enabled him to maintain his

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1. Edward P. Cheyney, Translations and Reprints from the Original Sources of European History, vol. II (Revised), (Department of History of University of Pennsylvania) no. I "English Towns and Gilds", p. 25.
2. E. Lipson, Op. cit., ch. VIII, pp. 301-302.
3. A. Abram, Social England in the Fifteenth Century, (London: George Routledge & Sons, Ltd., 1909), ch. IV, pp. 122-124.

standard of living. It was one which insured good quality and sound workmanship, and was reasonable to both buyer and seller. The cost of production, in which a reasonable wage was the first consideration, was a primary factor in determining price.

Such seems also to have been the guiding principles of the NRA. In his letter to the President, when submitting the code for the cleaning and dyeing trade, General Johnson stated that "in order to provide adequate wages and assure standards of quality for services rendered, the Code Authority is vested with the power to establish and prescribe fair and reasonable wholesale and retail prices."[1]

Price fixing

Thus far we have been concerned with the general attitude toward price fixing and the factors bearing upon it, including size of the market, stability of demand, and relative importance of capital and labor. It now remains to compare the actual price fixing provisions made by the medieval guilds with those made under the NRA Codes of Fair Competition. Such a comparison may be objected to on the grounds that the guilds, as an established part of the economic order of the Middle Ages, endured for centuries and

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1. Business Week, Nov. 25, 1933, p. 11. Also Code for Cleaning & Dyeing Trade, Approved Nov. 8, 1933, no. 101, p. 8.

could hardly be compared with modern trade associations brought together under regulatory codes which endured a brief period of two years. However, as indicated in Chapter IV, the tendency toward industrial regulation and cooperation has been a gradual development in modern times and the brief code enacting period but an abortive effort to hasten this development.

Facts pertaining to guild price fixing are quite difficult to find. In explaining the reason for this Lipson states that:

> "Evidence of this is necessarily scanty because the gilds would not openly claim the right to do so in the ordinances for fear of awakening the jealousy of the authorities. But the evidence of Leicester shows that the crafts made among themselves an assize or standard of prices.--- in the ordinances of the London Shearmen (1452) we have unmistakable evidence that the craft gilds regulated prices by fixing what the master craftsman should take for his work: 'for shearing of scarlet and all other engrained cloth every yard twopence---and for all manner cloths folded and tacked in Genoese manner twopence---and for folds and tacks of twelve streits in Venetian manner eight pence.'"[1]

Additional evidence of the fact that guilds fixed prices is to be found in the preamble of a statute enacted by Parliament early in the sixteenth century, (1503), during the reign of Henry VII. This states that,

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1. _Op_. _cit_., ch. VIII, p. 301.

> "Masters, wardens and people of gilds, fraternities, and other companies corporate,---, often time colour of rule and governance to them granted and confirmed by charters and letters patent of divers and unreasonable ordinances as well 'in prices of wares' as other things for their own singular profit and to the common hurt and damage of the people."[1]

The Norwich Chandlers formed an agreement whereby none would sell a pound of candles cheaper than the others, but as they were amerced for this action, the prices must have been unreasonably high. The London Lime-burners fixed the minimum price for their wares, but their leader was jailed as a result.[2]

Although government authority fixed the prices of foodstuffs as illustrated by the assizes of bread (1202) and wine (1100), the guilds appear to have fixed the prices of manufactured goods, directly, as illustrated above, or to have influenced prices indirectly in various ways. These included:

1. Prevention of unfair competition.
2. Maintenance of uniformity of quality and size.
3. Miscellaneous regulations affecting price.

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1. W. J. Ashley, An Introduction to English Economic History and Theory Part II The End of the Middle Ages, 8th impression, (London: Longmans, Green & Co., 1914), p. 160. Also "English Gilds", Op. cit., p. CXLIX.
2. E. Lipson, Op. cit., ch. VIII, p. 302.

Prevention of unfair competition

The maintenance of fair dealing was one of the goals of the guild organization, and members were forbidden to monopolize the advantages of trade. One is reminded, in reading the guild regulations, of the goal of modern code regulation of industry as expressed in the title "Codes of Fair Competition."

Competitive methods held to be unfair and objectionable in the Middle Ages included regrating, forestalling and engrossing. These terms as used in the thirteenth and fourteenth centuries were nearly synonymous. Regrating was the act of buying in order to sell again at higher prices without increasing the value of the goods. This, of course, was contrary to the doctrine of "just price", and punishable by law. In the court records of 1354 certain craftsmen were charged with fixing excessive prices:

> "---the same dyers and tanners use their craft in too excessive wise, to wit, the aforesaid dyers take for a cloth sometimes half a mark, sometimes 40d. and sometimes more, where they were wont to take for a cloth 6d. only, and the aforesaid tanners buy oxhides and divers other hides at a low price and refuse to sell them unless they gain on the sale fourfold, to the greatest oppression and damage of the whole people."[1]

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1. English Economic History: Select Documents, ed. by A. E. Bland, P. A. Brown, and R. H. Tawney, (London: G. Bell and Son, Ltd., 1914), section VI, Excessive Prices Charged by Craftsmen, (King's Bench, Ancient Indictments 38, m.22d), 1354, p. 169.

Forestalling was the purchasing of goods before they came into the open market where all had the same opportunity in buying. Engrossing was the purchasing of larger quantities than necessary or of the whole supply and thus not allowing other dealers to get what they needed.[1]

Because of the restricted area which furnished materials for the market, the establishment of a monopoly over certain necessary commodities was possible. Under such circumstances exorbitant prices could be demanded. For this reason we find, in guild regulations, the provision that if one member made a bargain, any other member could come up and demand to be allowed to participate in it, upon giving security that he could pay for the share he desired.

In the Ordinance of the Gild Merchant of the Holy Trinity of Lynn Regis is the provision that:

> "If any one of this house shall buy anything and a brother shall come in unexpectedly before the agreement, or at it, he ought to be a partner with him that buys and if the buyer refuses it, he is to be amerced half a mark."[2]

Frequently the amounts which the individual could purchase were definitely determined and, in some instances,

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1. E. P. Cheyney, An Introduction to the Industrial and Social History of England, (New York: Macmillan Co., 1920), pp. 29-82. Also H. W. Webster, Early European History, (Boston: D. C. Heath & Co., 1917), pp. 534-543.
2. Translations & Reprints from the Original Sources of European History, vol. II (Revised), (Published by Department of History, University of Pennsylvania), No. I, English Towns and Gilds, p. 18.

the guild undertook to buy wholesale for its members. Thus the "Arte della Lana", or wool guild, of Pisa bought wool, kermes, alum, and oil and distributed them in proportion to the needs of its members.[1] Such regulation prevented guild masters from having undue advantages over their competitors.

Funck-Brentano, in writing of the French crafts, states that it was, "forbidden to the weavers, dyers, and fullers to plot together to influence the price of raw materials or to monopolize supplies---". Nor could several merchants "join together to ruin a competitor, or come to an understanding together so as to sell articles at a lower price."[2]

Unfair competition in the performance of duties in allied crafts was also guarded against. The maker of boots and the mender of boots could not engage in the same work.[3] In Paris the tailors brought charges against the old-clothes dealers because the latter "repair their garments so completely as to make them practically new."[4]

interesting!

Other unfair competitive methods included individual advertising by a guild member. This was considered "unlaw-

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1. George Renard, Op. cit., ch. IV, p. 40.
2. The Middle Ages: The National History of France, trans. by E. O'Neill, (New York: G. P. Putnam's Sons, 1923), ch. XVI, p. 346.
3. Arthur D. Innes, A History of England and the British Empire Vol. I to 1845, (New York: The Macmillan Co., 1913), ch. IX, p. 350. Also The Legacy of the Middle Ages, ed. by C. C. Crump and E. F. Jacob, (Oxford: Clarendon Press, 1926), p. 445.
4. W. S. Davis, Op. cit., p. 361.

ful, dishonest bait", and is specifically restricted in the Ordinances of the Spur makers of London (1345).[1] Inducing an apprentice or journeyman to leave a rival workman was forbidden, as was the enhancing of the rent of a guildsman's booth by offering more rent for it.[2]

Maintenance of uniformity of quality and size

The guilds, in their attempt to secure excellence of quality and workmanship, were influenced not only in maintaining the "just price" but in guarding the good name of their organization. Regulations were made to prevent fraudulent devices and careless work. In the "gild rolls" of Leicester a record may be found of the conviction upon three separate occasions of a vermilion cloth maker for making the cloth contrary to established rules, "to wit, with the woof in the middle poorer and worse than at the ends."[3]

Very minute instructions were prescribed by the guilds in the regulation of quality. Thus the Florentine dyer was instructed as to the number of vats into which he was to dip materials, and the "quantity and quality of coloring

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1. E. P. Cheyney, Readings in English History Drawn from the Original Sources, (Boston, New York, etc: Ginn & Co., 1908), pp. 209-210.
2. F. C. Dietz, "Industry in Pisa in the Early Fourteenth Century", The Quarterly Journal of Economics, 28: 338-59, F '14.
3. E. Lipson, Op. cit., ch. VII, p. 247.

matter to be used".[1] The Weavers of Bristol determined the width of the drapery and its quality. F. B. Millett, in discussing thirteenth century craft-guilds in France, cites several restrictions including the following: Rope makers were not to use hemp and flax in the same rope; chandlers could not use too heavy a weight of wick and it was stipulated that four pounds of tallow should carry only a quarter-pound wick.[2]

The mixing of inferior materials with better was prohibited as detrimental to the buyer, nor could patched up articles be sold as new.[3] In the Ordinance of the White-Tawyers it is provided that

> "---all skins falsely and deceitfully wrought in their trade which the overseers shall find on sale in the hands of any person, citizen or foreigner, within the franchise shall be forfeited ---, and the worker thereof amerced in the manner aforesaid."[4]

The cordwainers of London were accused of mixing "basil (an inferior leather made from sheepskin) with cordwain, and calfskin with cowskin, and cut out shoes of

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1. George Renard, Op. cit., ch. IV, pp. 32-67.
2. Op. cit., p. 14.
3. "English Guilds", Op. cit., p. cxxx.
4. Translations & Reprints from the Original Sources of European History, vol. II (Revised), (Department of History, University of Pennsylvania), No. I, English Towns and Gilds, p. 25.

basil, of calfskin, and of dogskin and sell the same---
for cordwain and kind."[1]

To insure good quality, night work was generally prohibited, although the Weavers of Leicester were permitted to weave "by night and by day" if no defects were found in their work.[2]

This detailed regulation would indicate that medieval methods of fraud were not only quite prevalent but also quite primitive and necessitated careful supervision.

One is reminded of the "Blue Eagle" insignia placed upon articles made in compliance with the Codes of Fair Competition when reading of the guild requirement that every article should be examined, stamped, and bear its just price. "The goldsmith's mark on all silver plate is a relic of this custom."[3] Such a stamp, in the medieval period, indicated to the purchaser that the workmanship, quality, and measurements had been tested and approved. The "Blue Eagle" code insignia testified only to compliance with code regulations and was in no sense indicative of whether the price demanded was "just" or not.

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1. W. Cunningham, Op. cit., p. 339. Also footnotes 1 and 2, p. 339.
2. E. Lipson, Op. cit., ch. VIII, p. 299. Also Charles A. Beard, Op. cit., ch. II, p. 184.
3. Rev. J. Franck Bright, Op. cit., p. 261

Miscellaneous regulations affecting price

The prevention of unfair competitive methods, the maintenance of set standards of quality and size, and the supervision of wares to detect fraud enabled the guilds to determine a just price commensurate with the labor cost of production. The limitation of the number of craft members and the establishment of definite rules pertaining to the term and conditions of apprenticeship enhanced their price-fixing powers in view of the fact that membership in the guild was compulsory and the conditions of guild production monopolistic. Ordinances were passed by town authorities prohibiting the manufacture or sale of commodities by non-guild members.

The requirement that a journeyman complete a masterpiece before qualifying as a master craftsman militated against the competition of untrained workmen and insured a standard of workmanship as a basis for price determination.

The regulation that a craftsman was not to take legal action against a fellow-guildsman[1] and the "oath of obedience"[2] exacted from all members made possible the enforcement of any price-fixing regulations which might have been

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1. E. Lipson, Op. cit., ch. VIII, p. 307.
2. C. M. Waters, An Economic History of England 1066-1874, (London: Oxford University Press, 1925), Part II, ch. II, p. 67.

made secretly, and in opposition to municipal ordinances to the contrary.[1] The violator of such an oath would be subject to trial in an ecclesiastical court. An incident of this nature which occurred in 1344 is cited by Lipson, "A purser complained before the Husting that his fellow-craftsmen had bound him by oath not to sell his wares below a certain price, and when he broke his oath, summoned him before a spiritual court as a perjurer."[2]

Summary

It is evident from the foregoing that usage and regulation determined medieval prices. Usage demanded that the price asked be just to both producer and buyer. Regulation insured skilled workmanship, a set standard of quality and size, and the elimination of competition. The advantages to be secured from such guild regulation are quite evident: the assurance to the consumer of a steady supply of reasonably priced commodities of good quality and, to labor, of a comfortable living. As Millett points out, there were "shadows in the picture," of guild regulation, " and among them we may distinguish the immoderate extension of the term of apprenticeship, difficulties set in the way of becoming a

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1. George Unwin, The Gilds and Companies of London, (London: Methuen & Co., 1908), ch. VII.
2. *Op. cit.*, ch. VIII, p. 314.

master; arbitrary fiscal measures and dues; meticulous regulation and too frequent cessation from work; a routine transmission of methods of manufacture; maintenance of a fixed price; and prohibition of combinations such as would encourage inventions and stimulate a wider economic unit."[1]

In modern times the idea of justice as a determining factor of price is no longer held. Complex division of labor, international trade, capitalistic, large scale production, make it impossible for the buyer or seller to determine the "just" cost. Detailed regulation in the matter of price fixing, as indicated in the NRA Codes of Fair Competition proved to be inadvisable. A highly complex industrial system such as the modern one is not adapted to the same treatment which made price-determination possible in the medieval period.

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1. *Op. cit.*, p. 21.

CHAPTER IV

HISTORICAL BACKGROUND OF MODERN TRADE ASSOCIATIONS

Following upon the passage of the National Industrial Recovery Act industry was confronted with the necessity of cooperating in the formulation of codes of fair competition. The Act provided that any trade or industrial associations or groups truly representative of their trades or industries could submit codes of fair competition to the President for his approval.[1] The organization of industry for such cooperative action gave impetus to the trade association movement and both local and national organizations participated in the formulation of codes.

Trade associations are organizations of individuals engaged independently in particular lines of trade for cooperative action in eliminating unfair trade practices and in advancing the general prosperity of the particular industries. They may be local, state, national or even international in scope and comprise associations of manufacturers, retail and wholesale dealers and producers of raw materials.

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1. _National Industrial Recovery Act_, Title I, Section 3 (a).

A. H. Onthank, assistant to the Executive under the NRA, stated that, "Trade associations are no new things in our history. They are and have been the logical followers of the trade guilds of the Middle Ages."[1] There are, however, important differences between the two. The medieval guilds were composed of all classes of workers including the masters or directors of industry. Modern trade associations represent only the interests of those who direct industrial enterprises. Unlike the trade associations, the guilds wielded absolute authority over their members and curtailed individual initiative through a system of regulations and penalties. Medieval guilds were essentially monopolistic price fixing organizations,[2] whereas modern trade associations, formed for the purpose of securing for business the benefits of cooperation, were prevented by law from engaging in price fixing activities. Moreover, the medieval guilds were concerned with the problem of giving each member a fair share of the limited supply of needed materials available at a given time. The trade association sought to furnish its members a fair participation in satisfying a limited demand in the market.

The trade association did not immediately succeed the

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1. A. A. Berle, and others, America's Recovery Program, ed. by C. Wilcox, H. Fraser, and P. M. Malin, (London: Oxford University Press, 1934), p. 73.

2. E. H. Naylor, "History of Trade Associations", Trade Association Activities, (Washington: Gov't. Printing Office), Appendix A, p. 301.

guild organization of industry. Between the period of medieval guild and present day industrial control intervened a period of nearly three centuries which are characterized first by a restrictive national system of industrial regulation followed by the so-called laissez-faire policy of limited non-governmental interference.

In the United States the period prior to 1860 was one of largely unrestricted and unregulated competition. The pressure of economic conditions following the Civil War gave rise to industrial cooperation as a protection against the severe competition which resulted when geographical trade barriers were removed by the rapid expansion of railroads, and when the period of falling prices after 1873 kept profits at a relatively low level. The trade association was one form of industrial organization that developed at that time, along with the trust which it resembled "in spirit if not in structure".[1] One of the oldest trade associations in the United States was that of the Writing-Paper manufacturers, founded in Massachusetts in 1861.

During the period following the Civil War until the passage of the Sherman Act many trade associations were formed to fix prices and regulate output. Following 1890 the number of associations increased in spite of the antitrust law and the movement was greatly accelerated during

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1. Ibid., pp. 302-3.

the decade following 1910. This was due, in part, to reassurance as to the legality of trade associations following the Supreme Court decision in the Standard Oil case (1911) in which the court voiced the rule of reason with reference to the Sherman law. The war period witnessed a rapid development of trade associations. In 1914 there were about 800, while in 1919 the estimated number was placed at about 2000[1] although some of these were short-lived. The War Industries Board had found it expedient in mobilizing business, in 1917, to centralize each industry in one body or trade association.

The number of trade associations in existence prior to the passage of the National Industrial Recovery Act has been estimated by one authority as approximately 1500[2] and over 500 new ones were organized the first year the Recovery Act was in effect.[3]

Unlike the medieval guild the trade association is a

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1. Myron T. Watkins, "Trade Associations", Encyclopaedia of the Social Sciences, vol. XIV, (New York: The Macmillan Co., 1934), p. 674. 76 representative trade associations were formed and many old organizations revived in the period 1913-1919.

2. Authorities appear to disagree as to the classification of trade associations. R. C. Butler, "Needed Changes in the Anti-Trust Laws", The Annals of the American Academy of Political and Social Science, vol. CXLVII, (Philadelphia: 1930), p. 193. In this article the number of trade associations in the U. S. in 1930 was estimated at about 13,000. Cf. H. A. Marquand, The Dynamics of Industrial Combination, (London: Longmans, Green & Co., 1931), pp. 21-22.

3. NRA "The Blue Eagle", June 25, 1934, p. 2.

voluntary organization without legally binding authority over its members who may obey or disregard any proposals made by it and withdraw from the organization at will. Even under the codes of fair competition a trade association had no authority and could not compel its members to adopt economically sound policies.[1]

Until 1890 the primary purpose of a trade association was to regulate output and fix prices. In some instances the purpose to maintain prices was specifically stated in the association's constitution and carried out through formal agreements. However, such agreements were generally held to be invalid at common law[2] and could not be enforced. Later, because of the popular antipathy toward price fixing, the associations eliminated price fixing clauses from their constitutions and in some instances even disavowed such intentions.[3]

More recent price activities and services[4] of trade associations include the compilation of information and its distribution to the members of the association, the establishment of business standards, and the cooperative handling

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1. Bruno Burn, Codes, Cartels, National Planning, (1st ed.), (New York: McGraw-Hill Book Company, Inc., 1934), p. 294.

2. J. E. Davies, Trust Laws and Unfair Competition, Dep't. of Commerce, Bureau of Corporations, (Washington: Gov't Printing Office, 1916), p. 5-6.

3. Ibid., p. 707.

4. W. J. Donald, Trade Associations, (1st ed.), (New York and London: McGraw-Hill Book Co., 1933), pp. 330-347.

of problems which are common to the production or distribution of commodities. The trade association makes possible a discussion of the pricing policy for a trade so as to determine what activities will result in reduced costs and more profitable business. This activity, unlike the trade association agreements fixing prices, has not been held to be illegal.

Trade associations furnish information as to price conditions, past and current, through the distribution of data secured from the members. The distribution of price lists with the requirement of a waiting period of several days before a published price list could be changed was an activity revived under the NRA codes.

The distribution of trade statistics as to the condition of the market was an activity of benefit both to producers and consumers. It tended to produce stability of prices by preventing excessive or delayed purchases. Trade association activities in seeking to prepare and secure the adoption of a uniform cost-accounting system in an industry are of value in that such a system would enable members of the industry to detect and correct high costs. One who knows his costs will no doubt be disinclined to sell below them.

Collection and distribution of data regarding output and supplies on hand tend to prevent a surplus of goods being thrown on the market and help to make prices more uni-

form. However, the control of production by rationing the market among the various producers upon a quota basis may result in excessive prices.

The most important field of trade association activities has to do with the attempt to eliminate unfair trade practices and to secure greater uniformity in the matter of sales terms, cash and quantity discounts, trade-in allowances, etc. Many associations are primarily interested in standardizing materials, processes or products and in securing technical improvements to lessen the cost of production.

Prior to the passage of the National Industrial Recovery Act they were able to carry on a wide range of activities but were prohibited by law from engaging in monopolistic practices or seeking directly or indirectly to control prices.

American attitude toward trade associations

The traditional legislative policy of the United States in the regulation of business activities has been, in general, to "outlaw wrongful conduct" but otherwise leave business independent.

Prior to the passage of the Sherman Act in 1890 the common law rule was that agreements tending to fix prices or control the market in restraint of trade were null and

void.[1] The trade associations organized in this early period sought to regulate output and fix prices, and although successful for short periods they collapsed in periods of economic stress and falling demand. Their agreements were without binding force and could not be enforced in the courts.

The Sherman Antitrust Act was passed in 1890 because of the wave of public animosity toward business combinations and their ruthless elimination of competitors. This Act made illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations."[2] Under this federal statute the Attorney-General brought several early trade associations to court. One of these cases involved the association of coal dealers, who were accused of fixing prices and of maintaining a higher scale of rates for non-members than for members of the association. The association was temporarily enjoined.[3]

In the case of Wheeler-Stenzel v. The National Window Jobbers Association it was contended that the association attempted to select customers and fix prices and output. The court held that the association had the right to select

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1. M. W. Watkins, Industrial Combinations & Public Policy, (Boston, New York: Houghton Mifflin Co., 1927), pp. 243-249.
2. The Federal Antitrust Laws with Amendments, (Washington: Gov't Printing Office, 1931), p. 1.
3. E. H. Naylor, Op. cit., p. 303.

customers but did not have the right to fix prices or output.[1]

Judicial decisions as to the activities of trade associations affecting competition were based in large measure upon consideration of one or more of the following factors:[2]

1. Trade association control of prices either by direct agreement or publication of price lists.
2. Association activities to prevent the sale by manufacturers directly to consumers and "irregular dealers".
3. Attempts to secure limitation of output.
4. The allotment of customers and division of territory.
5. The refusal to extend credit to delinquent debtors.

In 1911 the Supreme Court reversed the established interpretation of the antitrust law as prohibiting all combinations, whether reasonable or unreasonable, that interfered with competition and, in the Standard Oil case of that year (221 U.S. 1), introduced the "rule of reason".[3] Henceforth only such trade combinations or associations as imposed unreasonable restraints upon trade were to be prohibited.

The Clayton Act of 1914 attempted to establish, more clearly than the Sherman Act had done, those devices which

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1. *Ibid*., p. 303.

2. E. J. Davies, *Trust Laws and Uniform Competition*, Dep't. of Commerce, Bureau of Education, (Washington: Gov't. Printing Office, 1916), p. 717. For state antitrust laws see H. R. Seager, *Op. cit*., p. 488.

3. E. J. Davies, *Op. cit*., pp. 86-88. "Rule of reason" applied also in U.S. v. American Tobacco Co., 221 U.S. 106, (1911).

tend to lessen competition such as price discrimination, exclusive selling or leasing contracts, acquisition of stock in one corporation by another, and interlocking directorates. The Federal Trade Commission Act of the same year provided for the establishment of a Federal Trade Commission to determine questions of unfair competitive methods and to enforce the antitrust laws.

During the period from 1915 to 1918 the Federal Trade Commission brought some 86 complaints against 188 trade associations for alleged violation of the antitrust laws and 31 "cease and desist" orders against 81 such organizations.[1]

The Supreme Court decision in the Steel case in 1920 had important bearing upon trade associations in that the court held that the antitrust laws do not make mere size an offense, that they do not compel competition nor require all that is possible.[2]

In 1918 an association was formed of some four hundred hardwood lumber producers responsible for about 30 per cent of the total annual production of hardwood lumber in the United States. The manager of statistics of the association sent out letters advising hardwood producers to curtail production and wait for higher prices. These activities of the

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1. H. W. Laidler, Concentration of Control in American Industry, (New York: T. Y. Crowell Co., 1931), p. 400.
2. C. W. Dunn, The Federal Anti-Trust Law, (New York: Columbia University Press, 1930), p. 7.

association were held to be illegal.[1] A similar view was held in the American Linseed Oil Co. case (262 U.S. 371) decided in 1922. In this instance various competing concerns contracted with a bureau to secure and report facts. The statistical service was conducted on an open price plan and the bureau distributed the minutest details of any particular sale. Such activities were held to be illegal although the prices charged by competitors within the association were regarded as reasonable.

The joint program for curtailment of output in the window glass industry was not considered as a violation of the antitrust laws "because it was done through the medium of a national trade agreement between organized employees and the trade association of the manufacturers."[2]

In the case of the Maple Flooring Manufacturers Association the Supreme Court approved an association[3] which met and exchanged information on output and prices. The court held that an association which openly gathered and disseminated information as to cost, volume of production, former prices, cost of transportation, without attempting to reach an agreement fixing prices or restraining competition was not engaged in unlawful restraint of trade. The following

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1. American Column and Lumber Co. case, (257 U.S. 377), 1921.
2. M. W. Watkins, "Trade Associations", Encyclopaedia of the Social Sciences, vol. XIV, p. 675.
3. 268 U.S. 563 (1925).

quotation from the court decision indicates the extent to which the Supreme Court departed from its early conception of enforcing competition under the Sherman Law:

> "It is not, we think, open to question that the dissemination of pertinent information concerning any trade or business tends to stabilize that trade or business and to produce uniformity of prices and trade practices---Knowledge of the supplies of available merchandise tends to prevent over-production and to avoid the economic disturbances produced by business crises resulting from overproduction.---(the) natural effect of the acquisition of wider and more scientific knowledge of business conditions on the minds of individuals engaged in commerce and its consequent effect in stabilizing production and price can hardly be deemed a restraint of commerce, or if so, it cannot, we think be said to be an unreasonable restraint or in any respect unlawful."[1]

In spite of the liberal view expressed by the court it nevertheless remained unchanged in its opposition to actual agreements for fixing prices even though the prices fixed were reasonable. In the Trenton Potteries case decided in 1927 the court held that

> "the aims and effect of every price fixing agreement, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices.--- Agreements which create such potential power

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1. Quoted by E. P. Schmidt, "The Changing Economics of the Supreme Court", The Annals of the American Academy of Political and Social Science, vol. CXLVII, (Jan., 1930). cf. H. A. Marquand, Op. cit., pp. 184-185.

> may well be held to be in themselves unreasonable---Whether the prices actually agreed upon were reasonable or unreasonable was immaterial."[1]

Thus the court condemned comprehensive trade price agreements without examining the merits of pleas concerning economic necessity or expediency.

In 1926 the Federal Trade Commission inaugurated the procedure known as "trade practice conferences" in order to establish and maintain trade terms, grades and standards. These resulted in attempts on the part of trade associations to control prices by definitely designating price policies which were "unfair" or "discriminatory".

After an analysis of the activities of some ninety open price trade associations the Federal Trade Commission reported:

> "In trade association circles emphasis on seeking profits instead of volume of business is current and conspicuous, (and) emphasis on restriction of output, though, of course, on its face without any element of concert or agreement, is the central idea of the theory back of trade association work."[2]

The commission reported also considerable uniformity in prices among the members of such associations.

A few months before the enactment of the National Industrial Recovery Act the Supreme Court handed down a de-

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1. Quoted by H. W. Laidler, Op. cit., p. 399. cf. U.S. v. Trenton Potteries Co., et al., 273 U.S. 397 and 401, (1927)

2. Federal Trade Commission, Open Price Trade Associations, (Washington: Gov't. Printing Office, 1929), pp. 358, 365-6.

cision in the Appalachian Coal Case.[1] The court held that the organization of a joint sales agency by the producers of about three-fourths of the total supply of a product did not violate the antitrust laws in the absence of proof of the abuse of the price fixing power thus established.

It would appear that prior to June, 1933, the prevailing attitude of the Supreme court in regard to trade association activities was one favorable to the dissemination of information which tended to secure to industry the economies of uniform practise and to stabilize business, but that it opposed price fixing agreements as contrary to the antitrust laws. As indicated in the Trenton Potteries case, cited above, the court considered the public interests best protected "from the evils of monopoly and price control by the maintenance of competition".[2]

After the passage of the National Industrial Recovery Act there was some doubt as to the application of the antitrust laws to industry. The President, in outlining the policies of the National Recovery Administration stated:

> "We are relaxing some of the safeguards of the antitrust laws. The public must be protected against the abuses that led to their enactment, and to this end we are putting in place of old

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1. 288 U.S. 344.
2. C. W. Dunn, Op. cit., p. 18.

principles of unchecked-competition some new Government controls. They must be importial and just. Their purpose is to free business not to shackle it. ---Let me make it clear, however, that the antitrust laws still stand firmly against monopolies that restrain trade and price fixing which allows inordinate profits or unfairly high prices."[1]

The Attorney-General attempted to clarify the situation as follows:

"There seems to be an impression in some quarters that the anti-trust laws have been repealed or suspended in whole or in part. This is an entirely erroneous impression---Industrial and other groups must abide by the terms and conditions of the antitrust laws, unless and until they obtain actual exemption from certain of the requirements thereof by formulating a code under the National Recovery Act and obtaining its approval by the President."[2]

Trade associations were active in the formation of codes under the NIRA. A. H. Onthank stated that 987 codes "representing truly national associations and about 3000 codes representing regional, state, and local associations"[3] were submitted. Following the adoption of a code of fair competition the trade association in that particular industry was relegated to a secondary position and the code authority deriving its powers from the code, and responsible to

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1. NRA Bulletin No. I, (Washington: Government Printing Office, June 16, 1933), p. 3.
2. Statement of Attorney General on the Relation of the Act to the Antitrust Laws, July 6, 1933, in A Handbook of NRA Laws Regulations Codes, (Washington: Federal Codes, Inc., 1933), pp. 31-32.
3. *Op. cit.*, p. 77.

the National Recovery Administration, assumed control over the industry. Generally, however, the code authority was closely affiliated with the trade association of a given industry.

In the formation of codes, trade associations were quick to take advantage of the opportunity afforded under the NRA to regulate prices and production, and included such provisions in the codes submitted for approval. A discussion of the price fixing features of the codes is included in Chapter V.

The efficacy of trade associations to meet industrial needs was, on the whole, disappointing to the Recovery Administration. Donald Richberg, in an address before the National Association of Manufacturers in New York stated that the Administration "found few trade associations truly representative of an entire trade or industry, and even in the best of them the capacity for self government was pretty weak. Probably in the long years of intermittent and uncertain enforcement of the antitrust laws it could not be expected that strong trade associations would develop."[1]

Prior to the decision of the Supreme Court invalidating the NRA, lower Federal courts had ruled upon the constitutionality of code price fixing. On Oct. 6, 1934, Federal

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1. Commercial and Financial Chronicle, vol. CXXXIX, (Dec. 8, 1934), p. 3537.

Judge H. B. Anderson sustained the petition of 600 manufacturers of hardwood for an injunction to prevent criminal prosecutions for disregarding minimum prices fixed by the enforcement agency of the Lumber Code Authority.

"Competition," according to Judge Anderson in his decision, "has three elements: First, price; second, quality; and third, service. Price regulation is the antithesis of competition, fair or otherwise."[1]

Judge M. E. Otis, in the Federal District Court at Kansas City, Mo. (Dec. 27, 1934) maintained that price fixing destroyed fair competition. "Fair competition must still be competition. The adjective does not destroy the noun."[2]

The National Industrial Recovery Act was inconsistent in that it exempted industry under the codes from the anti-trust laws and, at the same time, provided that codes should not be designed to promote monopolies or eliminate or oppress small enterprises or discriminate against them. However, "the opportunity to organize trades and industries openly and lawfully for self-discipline provided also a means of promoting monopolistic schemes for the restraint

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1. Commercial and Financial Chronicle, 139:2304, (Oct. 13, 1934)
2. Ibid., 139:4065, (Dec. 29, 1934)

of fair, as well as unfair, competition and the maintenance of high, as well as reasonable prices."[1]

Code termination resulted in a revival of the antitrust laws and a return to the traditional governmental policy toward trade and industry of "fostering and maintaining free competition."[2]

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1. Donald Richberg, "The Importance of Maintaining Production Volume and Price", <u>Fortune</u>, vol. X, (Oct., 1934), p. 174.
2. Dean Dinwoodey, "Old Laws on Trusts Take Place of Codes", <u>New York Times</u>, (June 16, 1935), vol. LXXXIV, sec. IV, p. 12E.

CHAPTER V

PRICE FIXING UNDER THE N R A CODES

"History probably will record the National Industrial Recovery Act as the most important and far-reaching legislation ever enacted by the American Congress."[1]

This statement was made by the President of the United States when he signed the National Industrial Recovery Act, June 16, 1935, and, although events since then would tend to refute such a prophecy, due credit should be given to the elaborate attempt made, under the law, to create a fundamentally new institution in American economic life. The organization of industry under codes of fair competition, inaugurated under the Act, represented a new experimental undertaking for the United States.

To lend clarity to a detailed discussion of the complex price fixing features found in the codes some consideration will be given, first, to the general code provisions common to all of the codes, and, second, to the code making process.

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1. Quoted in Social and Economic Reconstruction in the United States, International Labour Office, (London: P. S. King & Son, Ltd., 1934), p. 94.

General requirements

The National Industrial Recovery Act required that each code approved should comply with certain requirements as follows:[1]

1. Associations or trade groups formulating codes must "be truly representative of such trades or industries."
2. Codes must not be designed to promote monopopies or to oppress or discriminate against small enterprises.
3. Codes must not permit monopolistic practices.
4. Codes must embody Section 7A of the Act providing:
   a. for the right of labor to organize and bargain collectively;
   b. for the protection of labor from coercion in the matter of joining (or not joining) labor organizations;
   c. "that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."
5. Codes must state that "the President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title."
6. Codes must contain such provisions as the President finds necessary "for the protection of consumers, competitors, employees and others, and in furtherance of the public interest."[2]

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1. A. H. Onthank, "How Codes Are Made", America's Recovery Program, ed. by C. Wilcox, H. F. Fraser, P. M. Malin, (London: Oxford University Press, 1934), pp. 70-71. Cf. also "Social and Economic Reconstruction in the United States", International Labour Office Studies and Reports, Series B, Economic Conditions, No. 20, Geneva, 1934, (London: P. S. King & Son, Ltd.), pp. 95-96, chart, p. 35.

2. The President required that codes submitted after Mar. 14, 1934, should provide that every employer "provide for the safety and health of employees during the hours" of work and that "standards for safety and health---be submitted---to the Administrator." NRA Office Order no. 71, March 14, 1934.

The above were the mandatory provisions included in all codes. Other provisions found in various codes were:

1. Minimum-wage clause
2. Definitions of terms used
3. Organization of a code authority and provision for administration of code
4. List of unfair trade practices
5. Price control devices
6. Production control
7. Procedure for amendments and revisions

Variety and experimentation in code making were encouraged by the Administration as is indicated by the following quotation:

> "We adopted the deliberate policy of approving codes based on different economic theories and inconsistent business policies.---Let one industry experiment with open price filing and another with regional marketing associations; let one try allocations of production and another limitation of machine hours---out of a frank use of the trial and error method we would arrive at conclusions of fact instead of conjectures of good or evil."[1]

Process of code enactment

The process of code making was rendered difficult not only by the vast number of industries to be organized under codes, in many of which no trade associations had been formed, but by the lack of adequate administrative machinery to

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1. Donald R. Richberg, General Counsel in NRA, Release no. 3502, p. 1. Cf. also Donald Richberg, "Constitutional Aspects of New Deal", Annals of American Academy of Political and Social Science, vol. CLXXVIII, (March, 1935), pp. 29-30.

handle the procedure. The fact that there was no established precedent, and that new problems constantly arose bearing upon code interpretation, compliance, and enforcement necessitated highly flexible Administrative machinery.[1] It is quite unnecessary here to trace the numerous changes made in the administrative organization in order to present the sequence of steps in the code-making procedure.

In general, the code was formulated by an association or group representative of the management of industry; it was then checked by the NRA staff to see if it conformed to the policy adopted; a preliminary conference with representatives of the industry and of the industrial, labor, and consumers' boards present, preceded a public hearing. A final conference conducted by a member of the NRA staff was followed by the final drafting of the code which was then submitted to the President in the case of major industries, or to the proper NRA authority, if a minor industry, for approval. A code when approved was binding upon all members, whether signatories, or not. Once approved the code was administered, usually, by the code authority or official agency established in the industry, which in turn was respon-

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1. "Social and Economic Reconstruction in the U. S.", *Op. cit.*, p. 98.

sible to the National Recovery Administration.[1]

Price fixing

No direct authority for price fixing appears in the language of the National Industrial Recovery Act, although the first section authorized cooperation to eliminate unfair competitive practices. Title I, Section 3 (a) of the Act provided that: "Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition---" if he finds (1) "they do not impose inequitable restrictions on admission to membership", and (2) "are not designed to promote monopolies or to eliminate or oppress small enterprises." Section 4 (b) states that, if he finds "destructive wage or price cutting", he may suspend or revoke the license granted after due notice and opportunity for hearing. A penalty was attached if the person persisted in carrying on business. The elimination of unfair trade practices, as provided for in the law, was interpreted as authorizing "prohibitory or mandatory" provisions in the codes directly concerning prices.

That some price fixing in the codes was intended, is indicated in the President's statement that "the antitrust

1. NRA: "Manual for the Adjustment of Complaints by State Directors and Code Authorities", Bulletin no. 7, (Washington: Government Printing Office, 1934), p. 4.

laws still stand firmly against monopolies that restrain trade and price fixing which allows inordinate profits or unfairly high prices."[1]

In General Johnson's 12-point program presented in the public hearing held February 27, 1934, he clearly indicated the acceptance by the NRA of the principle of price control. The points of that program bearing upon prices are:

> "1. A more uniform and equitable rule of national price stabilization in those cases where it is necessary to maintain wages at a decent standard against the certain results of predatory and cut-throat competition, and further insurance against increase of price faster and further than increase of purchasing power.
> 2. A more effective rule on costs for the purpose of maintaining rules against sales below costs of production.
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> 6. Certainty of protection against monopoly control and oppression of small enterprise, and, especially, the inclusion in codes of adequate buying (as well as selling) provision to guard against oppression of small business.
> 7. A much improved method for securing prompt and effective compliance.
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> 9. Elimination of inconsistent or conflicting provisions among various codes."[2]

It is evident from a study of the codes that the pressure for direct or indirect price control was very pronounced. The NRA held out to industry a relaxation from the pro-

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1. NRA Bulletin no. 1, Op. cit., p. 3.
2. C. F. Horner, "What is the NRA?", National Recovery Administration--A Guide for Study and Discussion, (Washington: Government Printing Office, 1934), pp. 1-22.

visions of the antitrust laws. It legalized agreements on production and the marketing of products, and it aimed at the elimination of certain unfair practices including cut-throat competition. As a result, the hundreds of codes prepared and submitted containing price fixing provisions created a maelstrom of confusion.

Code provisions affecting price

The principal provisions affecting prices which were found in the various codes of fair competition include:[1]

1. Direct fixing of minimum prices in the code or by the Code authority.
2. Resale price fixing.
3. Provisions against selling below cost of production.
4. Compulsory cost-accounting systems.
5. "Open-price" system with or without a waiting period.
6. Regulation of production by (1) limitation upon the number of hours during which plants or machines may operate; (2) restriction upon the installation of new machinery.
7. Basing-point system of quoting prices.
8. Elimination of trade discounts.
9. Pricing of second quality goods.

The above tabulation of pricing provisions does not exhaust the list, but serves to indicate their variety and complexity. W. L. Churchill points out that in twenty typ-

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1. "Social and Economic Reconstruction in the U. S.", Op. cit., Three main types of price provisions are given in this volume and include "the fixing of uniform minimum prices or of uniform mark-ups; prohibitions against selling below individual cost of production; and the reporting of prices to the code authority under so-called open-price arrangements." ch. VII, p. 169. cf. also G. Terborgh, Price Control Devices in NRA Codes, (Washington: The Brookings Institution, 1934), ch. II, III, and IV.

ical codes, fifteen different pricing methods were used,[1] and an analysis of approximately 400 codes disclosed the fact that, together, they contained "provisions relating to fifty different trade and price practices."[2]

Establishment of minimum prices[3]

Code provisions for arbitrary and absolute price fixing were not numerous. However, they were found in some of the most important codes including the steel, lumber, petroleum and bituminous coal codes. The power to set minimum prices was given, generally to the code authority, or in those instances in which a mandatory minimum price was established, it was subject to the approval of the NRA administrator. In the case of the oil code the President of the United States was at first given authority to fix prices, but later this power was assumed by a Federal agency.

A classification of the principles used as a basis for the determination of minimum prices under the codes showed wide variety. Thus a code might provide that minimum prices

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1. "Right Price--What is it?", New Outlook, (June, 1934), pp. 26-28.
2. G. W. Robbins, "The NRA and Unfair Trade Practices", *Annals of the American Academy of Political and Social Science*, vol. CLXXVIII, (March, 1935), p. 195.
4. For an analysis of minimum price provisions see Alexander Sachs, "National Recovery Administration Policies and the Problem of Economic Planning", *America's Recovery Program*, *Op. cit.*, pp. 166-168.

prices conform to one of the following principles:

1. Be "fair and reasonable".
2. Equal the "lowest reasonable cost" of production.
3. Equal the cost of the "lowest-cost representative firm".
4. Be determined "on the basis of the cost of the service rendered and the responsibilities assumed".
5. Equal the "average" or "weighted average" cost of production.
6. Cover the cost of production plus a mark-up equal to the "modal" cost of handling and selling.

Alternate methods of price fixing were also prescribed in some codes.

An interpretation of most of the above principles was left to the various price fixing agencies, although some codes included certain provisions for guidance. For example, the code of the bituminous coal industry, which represented the first attempt to definitely fix a fair market price and establish marketing agencies, interpreted a "fair" price as one necessary "to carry out the purposes of the National Recovery Act, to pay the minimum rates---and to furnish employment for labor." The cleaning and dyeing code interpreted a "fair and reasonable" price as one sufficient to carry out the purposes of the Act and maintain minimum standards of quality, minimum wages, and furnish stable employment.

The provision that minimum prices should equal the "lowest reasonable cost" of production presented the possibility of a wide range of interpretations. A certain degree

of confusion resulted from the fact that it was not stated whether the "reasonable cost" of production referred to the cost of the individual member of the code or to that of industry as a whole. The code for the merchandise warehousing industry provided that minimum prices should not be less than "the lowest reasonable cost of the most efficient and lowest cost operator in the locality."

Determination of the "lowest cost representative firm" presented certain difficulties, including a satisfactory explanation of the term "representative". A consideration of the cost-accounting systems used by the individual members was also necessary.[1]

The banking code provided that "cost of the service rendered and the responsibilities assumed" should form the basis for determining minimum fees for trust services. The method of computing the cost of rendering a particular service was not given.

The principle that minimum prices should equal the "average" or "weighted average" cost of production, found in such codes as those for lumber, lime, and slate, resulted in the establishment of rigid, inflexible prices. Opposition to such a price fixing provision was very pronounced in the lumber industry. For example, fifty of the principal lumber

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1. G. Terborgh, Op. cit., pp. 8-9.

operators in the Northwest formed an organization, in protest, known as the "Lumbermen's Price Repeal Association."[1] In the South six hundred manufacturers of hardwoods petitioned for and secured an injunction preventing prosecutions for disregarding the minimum prices fixed by the enforcement agency for the lumber code.[2] On December 22, 1934, the NRA suspended its orders establishing minimum prices under the lumber code.[3]

Some codes including that of the builders' supplies, forbade the members to sell at less than actual cost plus a mark-up equal to the "modal" cost of handling and selling. Members were to submit records of their individual costs to the code authority and the modal expense was to be determined from such data.

The mark-up or loss limitation provision was included in a number of retail and wholesale codes. It was intended to protect sellers against the so-called unfair practice of using the "loss leader". A loss leader, it should be explained, is an article sold at less than the retailer's own cost in order to attract trade by giving an impression of

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1. Commercial and Financial Chronicle, vol. CXXXIX, (Nov. 10, 1934), p. 2936.
2. Ibid.,(Oct. 13, 1934), p. 2304.
3. Ibid., (Dec. 29, 1934), p. 4065.

low prices.[1]

Alternative methods for determining prices were prescribed by some codes including those for the lime industry, rubber manufacturing, mica and graphic arts.

In several of the most important codes approved, the basing-point system of quoting prices was included. In this, the industry selected certain cities to be used as basing points, and each producer, in quoting his prices, had to include the freight charges from these basing points to the buyer's city. This eliminated variation in transportation costs due to distance. The basing-point plan was first approved in the steel code, which specified basing points for 32 groups of products. On May 30, 1934, the President approved a revised version of the Iron and Steel Code which retained the quotation of prices of basing points.

In his report to the Administrator, following the public hearing held in January, 1934, the division administrator stated:

> "Our past experience has demonstrated that it is almost impossible even if it were contemplated, for groups of producers or distributors in which the number of units engaged is more than very few to maintain prices at fixed levels for a

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1. Nation's Business, (April, 1934), pp. 60-62. Also Annals of the American Academy of Political and Social Science, (May, 1934), p. 110.

> protracted period, for in all divisions of industry there are excess production facilities, and in the circumstances price agreements, if made, will inevitably be broken."[1]

The cleaning and dyeing industry is an excellent example of the result of mandatory minimum price fixing. In this instance regional minimum prices were established and approved by the NRA. The code went into full effect on December 1, 1933. The following day 97 alleged code violations were announced. The decline in business forced a uniform reduction of about 20 per cent in prices, but the reduced price schedule, which was also approved by the Administration, failed to correct the condition. On May 27, 1934, President Roosevelt, by executive order, exempted the service industries, including the cleaning and dyeing industry, from the fair trade practice provisions of their codes. Thus they were freed from all attempts at arbitrary price fixing. Following closely upon the suspension of the price control provisions in the codes for the service industries, the NRA abandoned minimum price fixing in the new codes submitted for approval.

Resale price fixing

Several codes contain mandatory provisions pertaining

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1. NRA Reporter, Supplement to A Handbook of NRA, vol. 2, no. 2, p. 39, (Jan. 31, 1934), "Summary and Preliminary Report", by Division Administrator A. D. Whiteside, Release no. 2706, (Jan. 15, 1934)

to resale price maintenance. Manufacturers have, in the past, endeavored to legalize this action on the grounds that retail price cutting destroys the manufacturer's good will, which has been created by years of costly advertising. Other arguments advanced for the inclusion of such powers in the codes are (1) that competition would still remain between manufacturers, which would protect the public against unfair prices and prevent monopoly; (2) that such provisions would protect the retailer from competition of chain stores and (3) that legalizing of contracts to fix resale prices would simply restore to the manufacturers a legal right of which they had been deprived by the courts.

The opponents of resale price maintenance, including the National Retail Dry Goods Association, the American Federation of Labor, the American Farm Bureau Association, and organizations of consumers, contended (1) that there was no evidence to show that a good article was ever driven off the market by price cutting and "good will" accordingly destroyed. They also pointed out (2) that resale price fixing would not stop price cutting, but might cause it to take other and perhaps more vicious forms, such as trading stamps, excessive trade-in allowances, and the like. (3) The manufacturer, they maintained, could not establish fair retail prices because he could not ascertain retail costs for selling his merchandise. Such action would give the

manufacturer control of the retailer's profit margin and of distributing machinery in which he had not invested. (4) They held, also, that uniform resale prices were unfair because of differences in service, volume of sale, types of stores, managerial efficiency, etc. (5) Finally, they refuted the contention that the manufacturers had been deprived of any legal rights in the matter by the courts because restraint on alienation or transfer of a property was illegal at common law.

When the retail drug code was presented for approval the resale price fixing clause which it contained stated that the bottom limit of retail competition should be "the manufacturer's suggested retail price less 21 per cent." This would have placed the manufacturer in absolute control of retail prices. However, the provision was eliminated from the code as approved.[1]

The amendment to the code of fair competition for the retail trade, approved March 29, 1934, provided that it was an unfair practice, and therefore prohibited, for any drug retailer to sell any drugs, cosmetics, and the like, "below the manufacturers' wholesale list price per dozen---and---any discount, free deal, or rebate which is made available

1. Q. Forrest Walker, "Retailers and Consumers Under the NRA", Economic Forum, vol. II, (Spring, 1934), p. 238.

to all purchasers of dozen lots or comparable quantities, shall be considered a part of the manufacturers' wholesale list price."[1]

The Code Administrator, in his report to the President upon submitting the above code amendment for approval stated:

> "It has been found in the several months during which this code has been effective that the 'loss limitation provision' has been unenforceable, and as the result the competitive abuse of 'loss leader' selling has continued in about five per cent of the total numbers of retail drug outlets to the great hardship of the remaining 95 per cent of the trade.
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> "This modification---establishes a definite standard base price which is universally subject to exact interpretation, which the original failed to provide."[2]

Provisions against sales below cost of production

"More than half of the first 250 codes approved contained provisions against sales below individual cost of production---."[3] Many of the codes, containing this prohibition, allow a violation of the rule to meet competition and financial emergencies. The Administration, on April 12, 1935, called attention to the two types of cost systems, "those that are mandatory and used in connection with sell-

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1. See approved Code No. 60, Amendment no. 2, p. 4.
2. Ibid., p. 2.
3. NRA Release, 10920, (April 12, 1935)

ing below cost provisions in codes, and those that are permissive and used for educational purposes only to extent found practicable."[1] Of these, the mandatory system only was subject to enforcement. The difficulties met with here are principally in determining the meaning of the ambiguous term "cost of production" and in deciding the legitimate meeting of competition. Some codes defined the term "cost of production" as the cost below which no seller is to quote prices. Others provided for "reasonable" or "representative" costs, or specified that certain items of indirect cost must be included. In one code the cost of production included only materials and direct labor, while in another it included these items plus overhead, factory burden, administrative expense, taxes, insurance, interest, depreciation, and obsolescence. In the men's clothing code, cost included "cost of piece goods consumed, trimmings, cuttings and making; and a percentage on selling price to cover all overhead."

Variations in the provisions against sales below cost found in the various codes were: (1) The producer could not sell below his own cost. This would result in a multiplicity of minimum prices even in the case of identical compe-

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1. "NRA Order" (not in form of Administrator's Order) dated Feb. 3, 1934, NRA Reporter, Op. cit., vol. 2, no. 6, (March 31, 1934), p. 122.

titive commodities because there would be as many prices for an article as there were producers. (2) He could sell below cost to meet competition, if the competitor's costs were lower. This necessitated determination by the code authority if there was competition and if the lowered prices properly met such eompetition. (3) He could sell below cost to get rid of obsolete goods, or seconds, or liquidate inventories at less than cost.[1] (4) Prices below cost were permissable to meet financial emergencies.

"The consumer's chief criticism of these provisions," according to Dr. W. N. Loucks of the University of Pennsylvania, "is that most of them tend to establish as the minimum price for a product a cost which is higher than that of the most efficient producer in the industry."[2] It would appear, however, that those industries whose costs were higher than the stronger, more efficient producers, would be unable to sell at all, unless, to meet competition they sold below cost, which would force many out of business.

The enforcement of cost clauses was rendered practically impossible by the difficulty of ascertaining the cost of production of hundreds of thousands of articles. For ex-

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1. "Social and Economic Reconstruction in the United States", Op. cit., Footnote no. 2, p. 175.
2. "Price-Fixing: The Consumer Faces Monopoly", Annals of the American Academy of Political and Social Science, (May, 1934), p. 121.

ample, in 1929, there were over 1,500,000 retail distributors (the number is estimated now at possibly 1,200,000). The principal individual retailers may stock several hundred thousand separate items and the smaller stores several thousand. The retail code cost restrictions applied to <u>all</u> items.

<u>Compulsory cost-accounting systems</u>

A large number of codes (167 out of the first 250) provided that a standard cost accounting procedure be set up by the code authority to determine costs of production. Again, many obstacles were encountered. It was difficult to accurately establish the value of investments, the rate of depreciation, cost of advertising, salaries, wages, and the like, all of which are factors in cost determination. There was, too, the ethical matter of requiring the most efficient members to divulge the secrets responsible for their lower costs.

There were certain merits in the requirement that producers file their costs and have uniform accounting systems, even though the installation of such a system is intricate and costly. A uniform cost-accounting system provides data for purposes of comparison, shows the range of costs, and furnishes information which should help prevent uneconomic pricing. Some notable examples of uniform cost-accounting systems include those prepared by the National Retail Dry

Goods Association and the National Electrical Manufacturers Association. Cost figures in the former instance, secured from the members of the industry show where particular costs are high and where low.

Open-price system

Under the open-price plan, adopted by over half of the first 400 codes,[1] each member was to file, with the code authority, his schedule of prices, discounts, and terms of sale. The code authority was to immediately notify each member of the revised price schedule and sales at other prices than those filed were prohibited. In a large proportion of the codes (171 of the first 400 codes and 16 of the 32 supplements)[2] the schedule of prices filed was not to become effective until a specified time had elapsed, generally ten days. This waiting period allowed time for price information to be disseminated and for individual manufacturers to adjust their prices to those filed.

In the public hearings on price changes held in Washington, January 9 and 10, 1934, under the auspices of the National Recovery Administration a representative of the Mail Order Association declared the open-price clauses of

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1. Business Week, (Oct. 13, 1934), p. 36, 248 out of 500 codes approved, provide for open-price plans, complete or modified. See Burn, Bruno, and Flink, S., Op. cit., Footnote no. 1, p. 99.

2. "Social and Economic Reconstruction in the United States", Op. cit., p. 176.

some codes to be simply a disguise for price fixing, and that the waiting period was one of "persuasion" during which the price cutters were "whipped into line."[1]

Of the six general causes for complaint against the operation of the codes presented at the price hearings held at that time, one was that open price agreements, particularly those having a waiting period between the filing date and the effective date of price lists, had resulted in uniformity of prices and excessive price increases.[2]

The Divisional Administrator, in his preliminary report to the Administrator considered that it would be "necessary to hold hearings to investigate the specific implications involved in regard to price provisions in some codes" and shortly after, in an intermediate report stated:

> "The so-called 'waiting period' should probably be temporarily deleted from the majority of open price provisions. Theoretically, this provision has a legitimate purpose. In practical operation, it may lead to intimidation and coercion and result in a uniformity of high prices. Opportunities for monopolistic practices are available."[3]

This report was followed, shortly after, by an announce-

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1. Nation's Business, March, 1934, p. 70.
2. The other causes for complaint were excessive and/or uniform surcharges; collective understandings between code members and groups extraneous to it; limitation on cash and quantity discounts which may be means of raising prices; limitation on manufacture or distribution of second quality goods; interpretation of cost as lowest level for pricing, NRA Reporter, vol. 2, no. 3, (Feb. 15, 1934), p. 63. Summary of and excerps from "Intermediate report" submitted by Division Administrator A. D. Whiteside.
3. Ibid., p. 64.

ment by the Administrator, General Johnson, that all open-price provisions containing a "waiting period" before the price filed became effective would be stayed for sixty days pending completion of a study of open-price associations.

The conclusion reached by a Code Authority conference called by the Administrator and attended by 4,000 industrialists was that open-price policies would be tolerated under supervision, if the industries could show need for them. The Whiteside-Harriman report also endorsed the open-price plan with a "waiting period", provided there was adequate supervision so that the waiting period could not be used for "intimidation".[1]

In a press release, dated June 7, 1934, the Administration announced the following policy: Open-price provisions should be filed with a disinterested agent of the Code Authority, or one designated by the NRA. The data should be furnished all members and customers who apply and defray the costs thereof. No higher price was to be filed within forty-eight hours, and no sales should be made at other than filed prices. Any combination or intimidation to fix prices was prohibited.[2]

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1. Business Week, March 17, 1934
2. NRA Release no. 5600, containing Office memorandum no. 228, June 7, 1934: Open-price filing, costs, price cutting and accounting provisions in codes.

Open-price listing is not necessarily price fixing although it does lead to uniformity of prices for identical commodities. The prices under the open-price system are those of individual producers or companies while fixed prices are those agreed upon by competitors.

Regulation of production and productive capacity

Although the National Industrial Recovery Act expressly stated that the codes were not to "permit monopolies or monopolistic tendencies", some codes definitely curtailed output by limiting the number of machine or plant hours of operation. Limitations were placed, in some codes, upon the installation of new machinery, and a few codes, including "those for the lumber and timber products, petroleum, iron and steel, and glass container industries,"[1] limited production directly.

Agreements to restrict output by a limitation upon the number of hours during which machines or plants may operate serves to check production but may operate to the disadvantage of the lower cost, more efficient producers.

The limitation of production capacity by restrictions upon the installation of new machinery and/or the erection of new plants was intended to protect the market against

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1. "Social and Economic Reconstruction in the United States", Op. cit., p. 179.

competition. A difficulty encountered here was in determining when the capacity of an industry justified such limitations.

Only 7 of the first 280 approved codes provided for the direct limitation of production. Four of these, including the petroleum and the lumber and timber codes, imposed definite production quotas on each member of the industry.[1]

Summary and Conclusions

The explanation given above of some of the outstanding code provisions bearing upon prices serves to illustrate the complexities involved in price fixing and the need that arose for a revision of the NRA price policy to eliminate the confusion which existed.

The exemption in May, 1934, of the service industries[2] from the price fixing provisions of their codes was one of the first steps in a general revision of the NRA's code pricing policy.[3] Shortly after this the President approved the revised version of the Iron and Steel code, which eliminated the only outright minimum price fixing provision.

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1. America's Recovery Program, Op. cit., Introduction, pp. 11-12. cf. Table next page.
2. NRA Release no. 5371, May 28, 1934
3. NRA Release no. 5188, May 20, 1934, exempted certain small businesses in towns of less than 2500 from code provisions relating to wages, hours and minimum prices.

Pricing Provisions	No. Codes
1. Minimum price provisions	568
2. Prohibition of destructive price cutting	122
3. Minimum prices in emergency	203
4. Prohibition of sales below cost (without emergency)	420
5. Prices fixed by Code Authority without declaration of emergency	12
6. Price filing	416[1]
7. Waiting period before revised prices become effective	295
8. Waiting period stayed	184
9. Uniform accounting system	507[2]
10. Basing point system	5

Based upon statistics given by Leon Henderson, director of Division of Research and Planning in the Blue Eagle, vol. II, no. 3, NRA, (Washington, Jan. 16, 1935), p. 1.

1. Includes codes and supplements
2. NRA had approved but 37 of these and 240 had never been submitted

This was the power of the code authority to set aside an "unfair" price filing and fix a "fair base price."

The new NRA policy announced early in June, 1934,[1] prohibited minimum price fixing except in temporary emergencies not to exceed 90 days, when such action was deemed "necessary to halt destructive price cutting, protect small enterprises, curb monopolistic tendencies, or maintain code wages and working conditions." Open-price provisions without a waiting period were to be permitted, but, after filing, the declared prices were not to be changed for 48 hours. The NRA encouraged the inclusion of standard cost-finding and accounting provisions in the codes, but these were not to be obligatory. Any combination or conspiracy to fix prices or intimidate others was prohibited. This appeared to be a step in the direction of reinstating the operation of the anti-trust laws.

Another departure from the established code price provisions was the executive order of June 29, 1934, in which the President authorized contractors bidding on projects for the Federal government, or any other public authority, to submit prices at as much as 15 per cent below the prices filed by the contractors with their code authorities. This

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1. NRA Release no. 5600, June 7, 1934, NRA Reporter, vol. II, no. 11, (June 1-15, 1934), pp. 212-214.

action was considered necessary as a means of correcting the perplexing situation of having the submission of identical prices by bidders seeking contracts to supply materials for government projects.[1] However, the President's order[2] permitting manufacturers to quote private buyers the same prices given in their government bids eliminated many of the code benefits of price filing and was opposed on the grounds that prices on very few products could be quoted at 15 per cent below the filed prices without violating the code provision against selling below cost of production, that it reverted back to cut-throat competition, and was contrary to the Administration's stand that recovery must come through higher prices.

On Oct. 4, 1934, Donald Richberg, director of the Industrial Policy Committee announced that price-fixing and production control features of the codes would probably be eliminated except in specific cases. Such elimination would take place gradually, industry by industry.[3]

The reasons why the NRA permitted the various price provisions found in the codes was summarized by Donald Rich-

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1. On July 29, 1934, the lumber industry was exempted from the President's order of June 29 because it fixed only minimum prices for its cost protection which returned less than the actual costs of production.

2. "President's order no. 6767", Business Week, (Sept. 29, 1934), p. 20.

3. "Business and Financial Conditions: Changes in NRA Policies", The Guaranty Survey, (Oct. 29, 1934), vol. XIV, p. 7.

berg as follows:

> "1. Minimum prices--of a cost recovery nature--were often necessary to stop destructive competition under which it would be impossible to maintain decent wages and hours.
> 2. Open prices were commonly essential to prevent secret discounts, rebates and other forms of unfair competition, and also depressed labor conditions.
> 3. A waiting period---was felt necessary---to prevent sudden changes that demoralized the market and denied to big and little concerns a fair opportunity to meet the price reductions of competitors.
> 4. ---actual agreements upon prices in producing areas seemed necessary to end suicidal price wars---
> 5. ---price provisions of questionable wisdom were written into codes under heavy pressure from business groups---"

However, he maintained that price fixing could be justified only in certain instances and assailed both production control and price fixing.[1]

The chairman of the National Industrial Recovery Board, on Dec. 17, 1934, announced that a series of open hearings on major code provisions would be held the following month. These hearings were to inaugurate a definite change in NRA policies, in favor of the abolition of minimum price schedules in the code system.

Before concluding with the abrupt termination of the NRA following the Supreme Court decision in the Schechter

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1. Donald Richberg, "The Importance of Maintaining Production Volume and Price Competition", Fortune, (Oct., 1934), vol. 10, pp. 178 and 186. See "Donald Richberg sees 'New Era' in Code Enforcement," Commercial and Financial Chronicle, (Nov. 10, 1934), vol. CXXXIX, p. 2935.

Case, some consideration should be given to the effect of code price fixing upon the consumers.

To protect the consumer against harmful provisions, the Consumers' Advisory Board was represented in the code-making process. It had a staff which studied the extent of price and quality changes as a result of the codes and the effects of such changes on the public. It watched, particularly those provisions in the codes which it believed might unduly raise prices.

In 1933, the Consumers' Advisory Board went on record as favoring:

1. Abolition of cut-throat competition, especially in the "natural resources."
2. Price fixing if accompanied by adequate public regulation.
3. Gradual development of a cost accounting system.
4. The open-price system (a) without a time lag or (b) with a time lag of not over five days duration.
5. Careful check of price increases and provisions in codes against unfair practices.

After a year's observance of the operation of the open-price system, the Board opposed that plan, because it facilitated "the use of pressure" to force low price firms up to the price level desired.

In the public hearings held in January, 1935, the Consumers' Advisory Board proposed a simplification of the codes to eliminate price and production control. The Board charged that some groups had used the codes "in violation

of the purpose of the Act and even in defiance of their plain terms, as a means of eliminating active price competition---," and added that the codes might be utilized to serve three important purposes. "They might create minimum quality standards for the protection of the consumer. They might set up minimum wage and hour standards for the protection of labor. They might establish trade practice rules for the protection of the business man against his less scrupulous competitor."[1]

It is evident that there was no "definiteness" in the NRA's price policy, that certain price fixing practices broke down and that the NRA desired to reduce the extent of industrial self-government as far as price fixing was concerned. The NRA's price policy was aptly summarized by W. M. Kiplinger in this statement that "There are executive orders, rulings, interpretations and interpretations of interpretations but no clarity."[2]

The complexities of price fixing are not usually realized with the result that governmental efforts along this line have been marked with failure. Under a system of "free" competition, there is an automatic adjustment. If prices fall, some high cost producers are forced out of business, demand is stimulated and prices tend to rise. No

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1. Commercial and Financial Chronicle, vol. CXL, (Jan. 12, 1935), p. 257.
2. Nation's Business, (August, 1934), p. 23.

such adjustment results from a system based upon arbitrary margins and costs. Price fixing is difficult and costly to enforce. As long as it is profitable to produce a commodity at a price lower than the one artificially fixed, some one will do so. The supervision of the multitudinous activities of private business would require an enormous expansion of bureaucratic machinery.

The Administration stressed the need of price stabilization in order to eliminate "predatory and destructive price cutting". It failed, however, to define these terms. Thus an efficient manufacturer who did not exploit labor, but who had low costs which enabled him to undersell his competitors could be classified as a "destructive price-cutter". For the most part the interpretation given to "destructive price cutting" was a sale made at a price too low to cover costs plus overhead.

By the restriction of production and rigid price maintenance the codes sought to establish an orderly and balanced production, but they failed to give an opportunity for the development of new products and services; they did not eliminate high cost producers, and they promoted monopolies.

The Brookings Institution, in a report signed by six economists, including a member of the National Industrial Recovery Board and two code administrators held that the NRA had retarded recovery by (1) curtailing the volume of indus-

tutional. The Court held that Section 3 of the recovery act which empowered the government to regulate business by codes was "without precedent," and that it supplied "no standard for any trade, industry, or activity." It was stated further that,

> "It is not the province of the court to consider the economic advantages or disadvantages of a centralized system (of government). It is sufficient to say that the federal constitution does not provide for it---"[1]

Thus the codes of fair competition adopted under the NIRA were wiped out. Their voluntary continuance by industries was rendered precarious due to the possibility of prosecution under the anti-trust laws. Some industries applied to the Federal Trade Commission for authority to revive trade practice conference agreements which had been in effect prior to the adoption of the codes, or to write new ones.[2]

General operations in the steel industry were carried on with full regard to the terms of the former NRA code and it is considered probable that no attempt will be made to adopt a different course.

The retail grocers and national retail coal merchants'

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1. Text of Supreme Court decision invalidating NRA, Morning Oregonian, vol. LXXIV, no. 23, 264, (Tuesday, May 28, 1935), pp. 6-7.

2. Many such trade agreements were made under the auspices of the Federal Trade Commission during the administrations of Presidents Coolidge and Hoover.

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association proposed "to keep code benefits for (then) members through a plan of self-government---." The drug and electrical wholesalers came under Federal Trade Commission rules.

A trade magazine describes the situation as follows:

> "The Supreme Court decision ending government supervision of codes outlawed nearly 800 national code authorities, hundreds of divisional ones. Industries geared to these codes had, in some cases, let trade association activities lapse. Quick action was necessary to guard against chaos, meet the challenge to self-government. While it's still too soon for many to have gotten beyond the drafting of hopeful emergency resolutions, some have already launched definite plans for cooperative action."[1]

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1. Business Week, June 15, 1935, p. 11.

SUMMARY AND INTERPRETATION

"The roots of the present lie deep in the past, and nothing in the past is dead to the man who would learn how the present came to be what it is."[1]

Medieval industry, its problems, organization, and regulation are of interest in considering present day industrial problems and their attempted solution. In comparing medieval and modern price fixing due consideration must be given to the inadequacies of some of the data and the difficulties involved in comparing a simple industrial organization with one that is highly complex.

The late Middle Ages witnessed the transition from the simple village economy of self-sufficiency to a town economy in which exchange was basic. The problems of exchange, considered from the standpoint of Christian ethics, centered about the doctrine of just price, a doctrine which influenced much of the commercial and guild regulations. Under the theory of just price every commodity was held to have some true, objective, and absolute value determined in

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1. Cf. Medieval Contributions to Modern Civilization, ed. by J. F. C. Hearnshaw, (London: George G. Harrap & Co., Ltd., 1921), p. 213.

the last analysis by the cost of production in which labor was a major consideration. Wages, too, conformed to this doctrine and a fair price for labor was held to be one which supported a workman in accordance with his customary station in life. Industrial capital played but an insignificant part in medieval production, and competition had little or no part in determining prices. Goods were produced by guildsmen who were not permitted to underbid each other.

According to modern economic theory the value of a commodity is measured by its command of other commodities in exchange for itself. Ordinarily prices are determined under competitive conditions. The current economic theory of normal price which tends to prevail over long periods of time and which comes quite close to measuring the cost of production of marginal producers may be regarded as a fair or customary price, and in that sense is comparable to the medieval theory of just price. The productivity of labor, and not the economic status of laborers, determines the general wage scale.

Capitalistic production has progressed enormously since the Middle Ages, and modern economists accept interest, or the price paid for the use of capital, as a matter of course. Taussig states that it "seems to be an inevitable outcome

of the system of private property and free exchange."[1] The theory held during the Medieval period that the just price for a loan was the return of the amount lent was gradually modified as trade expanded and as capital began to be used more extensively for productive purposes. Toward the close of the period interest was considered permissable in certain instances.

Medieval economic theory had a constant regard for the relations of persons rather than for the exchange of things. Justice in all economic activities was emphasized. Under modern conditions it would appear that "few notice the preponderant role of the moral forces in economic activities because---we concentrate on values, or exchange prices. However, we acknowledge them when we describe value and prices as honest, fair, reasonable, good or bargains---In other words, in all our social contracts, the moral laws prevail predominently."[2]

Modern industrial organizations under codes of fair competition were hardly deserving of the name "modern guilds". The guild was essentially an organization of master and workmen whereas industrial organization under the NRA was based upon trade associations representative of in-

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1. Op. cit., vol. II, p. 48.
2. "Moral Basis of Economics", The Banker and Financier, vol. CXXXIV, (June, 1935), p. 7.

dustrialists, only, who formulated the codes. It is true that the medieval guild masters drew up the regulations which were binding upon journeymen and apprentices, but the master was also a workman and no sharp class distinctions appeared within the guild until the system itself began to disintegrate.

The guilds were urban institutions closely associated with the growth of the towns. Their development, dating from the close of the eleventh century, reached its height during the twelfth and thirteenth centuries and evidence of decay was discernible following that period. Membership in the guild was compulsory, all grades of producers were included, and all economic activity was subjected to minute regulations. Through strict enforcement of rules and because of the restricted area served, a guild was able to successfully rule out competition and establish and maintain monopolistic conditions pertaining to output and prices. The price fixing activities regulated by custom aimed at a price which would be "just" to pay and to receive. As shown in Chapter III this system was well adapted to medieval conditions. It insured adequate training of workmen and the protection of the consumer against crude methods of fraud and the purchase of defective wares.

The collapse of monopolistic control which accompanied the trade expansion of the late medieval period and the formation of distinctly laboring and capitalistic groups within

the guilds were major factors responsible for the decline of the guild system. The internal disorder which accompanied the emergence of national states helped also to break the monopolistic power of the guilds.

Like the medieval guilds, the early American trade associations sought to promote the mutual interests of their members and to regulate both production and prices. Unlike the guilds, they were voluntary organizations without binding authority over their members. Following the enactment of antitrust laws and prior to the passage of the National Industrial Recovery Act they were prevented from engaging in monopolistic practices including price fixing. The NRA temporarily released the antitrust law restriction but prohibited monopolies. Like the guild restrictions, code regulations drawn up by trade associations and approved by the Administration were binding upon all members of the industry.

Both the guilds and the code authorities which took the place of trade associations after the codes went into effect sought to raise the standard of business ethics and to prohibit unfair trade practices. Both established wage and hour regulations which protected labor, and trade practice rules for the protection of producers against unscrupulous competition. The guild went one step farther in the regulation of price and established quality standards for the protection of the consumer. Such a purpose could well

have been served by the NRA.[1] However, under the price fixing power of the codes there was no assurance given the consumer that this power would be exercised in the public interest. The Consumers' Advisory Board of the NRA had a minor part in the determination of industrial policy and the initiative in the codification process rested with industry. Workers and consumers had the right to be represented in public hearings on the codes but could not participate in formulating them and had little power in changing those adopted.

Medieval guild price fixing was a simple procedure. The industries regulated were small local concerns, the conditions of supply and demand in the restricted area served were known, demand was relatively stable, capital unimportant, guild membership compulsory and guild regulation monopolistic. Moreover price fixing conformed to the economic viewpoint of the time. In some instances direct price fixing provisions were included in the guild ordinances. In others indirect price fixing was resorted to by the prevention of unfair competitive methods between guildsmen, the maintenance of uniformity of quality and size of commodities, the regulation of production, limitation of guild membership, and punishment of offenders.

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1. "NRA Consumers Advisory Board Recommends Changes in Codes to Protect Public", Commercial and Financial Chronicle, vol. CXLV, (Jan. 12, 1935), p. 257.

In the prevention of unfair competitive methods guild regulations attempted to keep members from monopolizing the advantages of trade and prohibited regrating, forestalling and engrossing. Many detailed restrictions were enacted to enforce economic activity in the interests of the entire group and to insure uniform quality and size of commodities as well as good workmanship. The advantages to be derived from such regulations are apparent. However, these too detailed restrictions discouraged private initiative and hampered the adoption of efficient methods of production. They resulted also in friction within the guild which terminated in the decay of the guild system. The plan of price control which evolved under the guilds was workable because its application was restricted to a single industry which engaged in the production of but one kind of product and which served a narrow local market.

Price fixing under the present complex industrial system was a very different matter from that of the medieval guild era. Industries which for several decades had been prevented by law from entering into price fixing agreements were suddenly called upon, under the NIRA, to cooperate in economic self government. They were immediately confronted with many new problems for which there was no established precedent and in many instances no effective machinery under which to operate. The variety of price fixing provisions and the confusion as to interpretation of terms testified

to the lack of factual data pertaining to industrial conditions and the incapacity of the administrative machinery set up under the codes to effectively deal with the matter. The codes increased the barriers to the free working of the price system by rigid price maintenance and restriction of production.

Whether a workable plan of price control could be devised which would be of general application to the various members of an industry, without promoting monopolies, curtailing initiative and protecting high cost producers is doubtful. In the light of the National Recovery Administration's experience during the past two years in enforcing pricing provisions found in the codes, such a plan is undesirable. The National Industrial Recovery Board in a notice preliminary to the price policy hearing held in January, 1935, stated:

> "In the usual case, it is inconsistent with the most effective functioning of our industrial system to have in or under Codes of fair competition, price fixing in the form of permanent schedules of minimum prices, with or without mandatory costing systems, for the purpose of establishing minimum prices."[1]

To conclude, price fixing provisions under codes of fair competition were costly and difficult to enforce, and hampered effective code administration. They were destructive of the competitive system and not in accordance with

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1. The Blue Eagle, vol. II, no. 3, p. 1.

modern economic theory. Unlike medieval guild price fixing which was consistent with the teachings and needs of the time and which protected both producers and consumers, modern price fixing under the codes promoted monopolies, encouraged uneconomic high cost producers and proved to be unworkable.

The suspension of all codes of fair competition May 27, 1935, indicated a return to the antitrust laws and the operations of a competitive price system.

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