

THE WARTIME PRICES AND TRADE BOARD *

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A few years before the war, when Fascism and Nazism were in their vociferous heyday, scornful of the democratic system of government, an eminent University Principal said to me that it was the task of my generation to "make democracy work in an emergency". I think that the task was performed successfully during the war in all English-speaking countries and that in Canada the success was outstanding.

This article is confined to the law-making aspects of Canada's emergency effort in the economic sphere as exemplified in the operations of the Wartime Prices and Trade Board. The record of economic achievement is for others to write. Since the article is entirely non-political in spirit and intent, I shall express my personal views freely.

To my mind the success of Canada's economic control has been due, first, to the fact that it was overall in scope—applying to the prices, supply and distribution of all goods and the most important services, and to all rents and wages—and, secondly, to the fact that the need for supplementary administrative law was recognized and met. To evaluate the merits of administrative law, it is necessary to sketch the framework within which it has been employed.

A national economy is a fabric of intricate weave and pattern with hues ever-changing according to the time and point of observation. Consequently, unlike the basic, permanent laws governing human conduct, temporary laws regulating a national economy must be flexible and adaptable to changing economic conditions. A fundamental factor in economic control is the supply situation existing at any given time. The advent of war, its extension globally and the rapid and unexpected shifts in its fortunes made an extraordinary demand on the efforts of our people and their productive capacity, entailing a great diversion of manpower to the armed forces and to production of the goods necessary to meet their enormous needs and those of our allies; consequently the supply of civilian requirements was greatly curtailed. Further, the supply available to meet civilian needs in Canada altered constantly due to the

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changing effects of the war on our sources of foreign supply and their transportation to Canada and to the effect of the seasonal forces of nature on primary produce. In the light of all this, it seems obvious that emergency legislation containing the detail of mercantile and consumer obligations of infinite variety could not be passed by Parliament, because Parliament cannot remain constantly in session and because time for parliamentary debate over policy and detail could not be afforded. For these reasons the War Measures Act of 1914, used in World War I and again in the recent war, conferred on the Executive, the Governor General in Council, broad powers sufficient to regulate the national economy.

It being equally obvious that the Ministers comprising the Council, labouring to the point of exhaustion on the broad governmental measures necessary in the emergency of war, could not by orders in council provide for the varying detail of mercantile and consumer obligations constantly required to regulate the national economy, it was necessary to create subordinate bodies to do so. Therefore, under the authority of the War Measures Act, orders in council were passed, creating various responsible bodies, including the Wartime Prices and Trade Board, and setting out their regulating powers. Thus, the present Wartime Prices and Trade Regulations, Order in Council P. C. 8528 of November 1st, 1941, as amended, applying to all goods and designated services, set forth the general powers of the Board, fixed as each seller's maximum prices the highest prices he obtained in the basic period of four weeks from September 15th to October 11th, 1941, subject to variation from time to time by the Board, gave the force of law to orders made by or under authority of the Board in exercise of its powers and provided penalties for violation of such orders. Similar action was taken through the Wartime Leasehold Regulations in regard to the rental and termination of leases for real property. These regulations authorized the Board to delegate any of its powers to its various Administrators, of whom some seventy were appointed by order in council to act under direction of the Board.

The Board was well organized. Under outstanding chairmanship, its members are top-ranking representatives of key government departments, thus ensuring co-ordination of government policy. It had interlocking membership with the Wartime Industries Control Board, with resulting co-ordination of policy in the division of current supplies between civilian requirements

and military requirements. It has three main divisions—Prices, Supply and Distribution—each under a carefully selected Divisional Chief. It has an Executive Committee, including the Chairman, meeting several times each week to give effect to Board policies. Each Administrator, commonly called a Commodity Administrator, is the head of an administration having jurisdiction over the manufacturers' production and sale of particular goods, wholesale and retail distributors being under the jurisdiction of the Administrator of Distributive Trades. Each Administrator was carefully selected for his practical working knowledge of the industry or trade over which he was to have jurisdiction and each has technical assistants. Some Administrators and assistants were loaned to the Board by industrial or business organizations.

An administrative system of this sort was highly desirable. Each industry or trade under the jurisdiction of an Administrator is a wheel in the machine that produces the fabric of a national economy. Furthermore each member of a trade or industrial group is a working part which operates the wheel that represents the group. The ability of the machine to produce a good fabric depends upon each wheel and each working part running continuously and as smoothly as possible. The main functions of an Administrator are to assist the members of his trade group in obtaining necessary supplies, to see that the desired products are produced in desired quantity, and to ensure that such products are fairly distributed at lawful prices. Much of his work is done by arrangement, guidance and persuasion; the rest by mandatory order—either a formal, published Administrator's Order of general application to his industry or trade, or a personally served "Directive" in individual cases. Since many kinds of goods are raw materials used in the manufacture of other products, so that a particular order or directive dealing with one kind of goods will affect a wide range of others, the administrative work is co-ordinated by appointed Co-ordinators of broad fields of goods, such as Foods, Metals and Textiles.

An Administrator is not "on his own" in either his non-mandatory or mandatory action. His non-mandatory work is carried out in accordance with policy laid down by the Board. His mandatory Orders or Directives are drawn by the Legal Division and must be approved by the Co-ordinator, the Divisional Chief and finally by the Board through the counter-signature of the Chairman, in accordance with Board policy.

In this chain of delegated law-making authority the principle of responsible government has been adhered to, for Administrators are responsible to the Board, the Board is responsible to the Minister of Finance with whom lines of policy are constantly discussed, and the Minister is responsible to the Government and to Parliament. Yet the Board as an organization is able to deal promptly with any situation that arises within its jurisdiction, and to deal with it in a way that seems best to a considerable plurality possessing factual knowledge and good judgment. This it is able to do either by a Board Order, when the subject matter is of wide application, or by an Administrator's Order or Directive in other cases, all having the force of law.

In the various fields of its efforts, the Board appointed Advisory Committees, consisting of representatives of the particular trades and industries concerned; through these Committees and the able work of its Research Division it has constant knowledge of the current circumstances in each field. Through its Consumer Division and Regional Advisory Committees functioning throughout Canada there was a constant check of consumer interests. In turn, it freely imparted relevant information to the public, through its newspaper and radio publicity, trade bulletins and its periodical "Consumer News". It made a Quarterly Report for the information of Parliament.

With the foregoing picture of a law-making structure in mind, one can better judge the merits of such administrative law as is involved.

Again visualizing trade and industry as a machine which produces the fabric of our national economy, it is obvious that, just as anything wrong with a working part will prejudicially affect other connected working parts to the detriment of the machine, so will obstructionist tactics by one merchant or illogical dealing with one merchant, throwing him out of gear, prejudicially affect others with whom he is in business contact. The factors entering into trade and industry at all levels, and varying with the individual, are so multitudinous and complex that all of them could not be foreseen and provided for in formal controlling orders, nor could the correction of obstruction be confined to penalties in prosecutions. The most feasible means of dealing with particular cases in harmony with the objective is the exercise of administrative discretion and direction with the safeguards I have mentioned. To criticize the exercise of such discretion and direction on the ground that it involves discrimination is just as illogical as to say that an engineer

should not lubricate or adjust the working parts of a machine to meet the conditions he observes. No controlling system however, with or without the aid of administrative law, could have succeeded without the support and co-operation of the mercantile public, which unquestionably was given by the great majority. With a view to achieving the national objectives with the utmost commonsense, whether by ameliorating or mandatory action, administrative procedures falling into the following main classes were employed by the Wartime Prices and Trade Board.

1. *Orders providing for administrative exemptions or directions*

Some orders of the Board or of an Administrator are subject to the power of an Administrator in special circumstances to issue such written exemptions or directions as he deems proper in individual cases. Sometimes the orders require the exemptions or directions to be countersigned by the Chairman. Other orders permit their issue without countersignature, in which case they are issued pursuant to the terms of laid-down policy. In either case, the exemptions or directions permitted are sensible and salutary. To illustrate, a particular order may require a wholesaler to notify his customers in a particular way, or identify his goods in a particular way, so as to indicate their maximum prices, but, for reasons peculiar to his organization, notification or identification in the prescribed way is not feasible; in that event he is authorized or directed administratively to notify or identify by another specified method that is feasible. Again, the regulations fixing basic-period maximum prices provided that such prices and any maximum prices fixed by the Board should be subject to the discounts customarily allowed to different classes of buyers, for different quantities or under different conditions of sale (in fairness to the buyers whose own re-selling price ceiling would otherwise be prejudiced); disputes arose as to the actual reason for certain customary discounts and, administratively, in the light of ascertained facts, the arguments were settled by directions that the discounts must be continued or might be discontinued.

2. *Price Fixation*

The effect of the Wartime Prices and Trade Regulations was to give each seller his individual price ceiling on all goods or services sold by him in the basic period and on all goods or services substantially similar to them in kind and quality. The

provisions could not apply, therefore, to persons who did not operate in the basic period or to new or dissimilar goods. Many types of goods rapidly became new or dissimilar due to scarcity of materials, resulting in the use of substituted materials and elimination of expensive features. The importation cost of needed foreign goods rose also, as did the production cost of many domestic goods. For these reasons literally hundreds of thousands of manufactured goods required maximum-price fixation or variation, which obviously could not be specified by general order. Instead an order of the Board required all manufacturers and importers of new or dissimilar goods to apply to their appropriate Commodity Administrator for a price fixation, to which the Administrator of Distributive Trades added the maximum prices fixed by him on sales by wholesalers and retailers. The order provided for similar handling of applications for variation of maximum price. All these administrative fixations had to receive the approval of the Chairman or Chief of the Prices Division, following which a price notification was sent to each applicant and means were provided for notification to his customers of their maximum re-selling prices. A somewhat **similar order dealt with the pricing of new or dissimilar services.**

3. *Specification of Services*

The Wartime Prices and Trade Regulations imposed a price ceiling on a number of specified services and "any activities or undertakings associated therewith or ancillary thereto". Activities of this sort were legion and obviously could not be listed. Naturally there was legal doubt as to the status of many of them. Therefore, under the derivative powers of the Board, the Administrator of Services was authorized to specify, with the countersignature of the Chairman or Chief of the Prices Division, any activity as one deemed to be included in a specified service or as being associated therewith or ancillary thereto.

4. *Production Directives*

It is obvious that in wartime maximum production of needed goods must be procured. Since the main object of the economic control was to keep down the cost of living in order to prevent an inflationary spiral, clearly it was necessary to secure, so far as possible, maintenance of the orderly production of needed goods of the utility type with a proper proportion of low- and medium-prices lines. While a general order required that such production be maintained, it could not be specific, since circum-

stances vary with the individual case, and consequently many administrative directions were necessary to deal with any tendency to discontinue or abate the production of utility goods in the lower price brackets in favour of luxury goods or higher-priced lines yielding more profit. It was necessary, for instance, to require certain materials to be utilized in the production of children's underwear and men's shirts. With these objectives and after investigation of pertinent circumstances, directives frequently specified the quantity of particular goods that was to be produced within a specified period.

To satisfy war needs or urgent civilian requirements, a number of directives had to be issued also requiring some manufacturers to give priority to the production of specified goods.

5. *Distribution Directives*

Clearly, equitable distribution of available supplies was one of the keys of economic control. There were many imponderables relating to distribution, including uncontrollable sources of imported goods, and it was felt that a general order prescribing distribution requirements would not be effective. The Board issued instead a "Statement of Policy on Equitable Distribution of Goods in Short Supply", laying down the general principles that should be followed. The basic principle of the equitable distribution policy was that each manufacturer and wholesale supplier was to distribute his available supplies among his 1941 customers in the same respective proportions in which they obtained his 1941 supplies. This policy protected the "little fellows" as well as the "big fellows". The Statement provided for the issuance of mandatory administrative directives whenever necessary to ensure compliance and prevent mal-distribution. Many such directives were necessary, for the competition for supplies was keen; some individuals were inclined to play favourites, thus virtually putting out of business some "working parts", and others were inclined to withhold their supplies for the highest bidders—the maximum price with something "on the side".

On the other hand, suppliers were relieved administratively from the duty of continuing to supply customers who became bad credit risks or who violated the Regulations. Also, the distributive proportions were varied with administrative concurrence to care for changed circumstances, as for example where wartime shifting of population changed the volume of demand on some customers.

6. *Rationing*

Administrative action of various sorts was necessary in the course of rationing. For instance, in some areas remote from the source of supply administrative exemption from rationing requirements was necessary. Again some citizens, including those suffering from diabetes, must have more than the normal ration of certain foods; under administrative authority they obtained what they required. Administrative action was also necessary to provide visitors to Canada with ration coupons during their stay.

7. *Rental Fixation*

The Wartime Leasehold Regulations, Order in Council P. C. 9029 of November 21st, 1941, fixed as the maximum rental for any living or commercial accommodation the rental payable under the lease in effect on the basic date, October 11th, 1941, subject to variation from time to time by the Board, and set forth the powers of the Board over rentals and termination of leases. Prior to this the Board had controlled rents and termination of leases in selected areas under the authority of preceding orders in council. Since the method of fixing rentals by reference to a basic date could not apply to new or altered accommodation and since many rentals in effect on the basic date were for a number of reasons "out of line" in comparison with those for similar accommodation in the locality, it was necessary that maximum rentals should be fixed or varied administratively in many cases. Originally, this was accomplished by Local Rentals Committees appointed by the Board, the Committee at first consisting of two laymen and a local judge as Chairman and later of a local judge alone. All these Committees functioned in an administrative capacity, applying yardsticks specified in formal orders of the Board. To ensure national uniformity in the application of the specified principles, the decisions of the Committees took effect only when approved by the Rentals Administrator, originally a judge of a provincial Court of Appeal. Later the system was changed to the one now in operation. Local Rentals Appraisers appointed by the Board, and selected for their long training in the work, fix or vary maximum rentals, their decisions being appealable to a Court of Rental Appeals appointed by the Board and consisting of a single judge acting in an administrative capacity.

The Rentals Administrator, now a long-experienced real estate broker, has discretionary authority to fix or vary, or refer to a Rentals Appraiser to fix, any maximum rental that is.

not the subject of a pending application or appeal, to vary the decision of a Rentals Appraiser that is not the subject of a pending appeal, to authorize the re-opening of a case and a fixation *de novo* in cases of apparent error, to specify whether any particular premises shall be regarded as housing accommodation or commercial accommodation respectively (for they are subject to somewhat different rules), and to exempt a particular property from provisions of the orders where no useful national purpose is served by keeping it subject to them.

8. *Termination of Leases*

Orders of the Board made under the authority of the Wartime Leasehold Regulations prescribe the circumstances in which a tenant's lease may be terminated and the procedure for so doing. Due to the comparative scarcity of housing and commercial accommodation the circumstances in which a lease may be terminated are very restricted and, to ensure compliance with the orders, notices to vacate must be stamped by a Rentals Appraiser before they are valid. The orders provide for application to a Court of Rental Appeals for exemption of the property from the requirements respecting termination of leases on the ground that the tenant is obnoxious to other occupants or is causing damage. The Rentals Administrator may also exempt a property from the requirements where no useful national purpose is served by keeping it subject to them. As the facts are usually in dispute, both sorts of exemption are made only after hearing both parties.

9. *Emergency Shelter*

By December, 1944, due to the congestion of industrial and military population in certain areas and the scarcity of materials and labour, a serious shortage of housing accommodation had developed, which could not be entirely relieved by new construction. The congestion seemed likely to be aggravated by potential developments in the war situation. Therefore the Emergency Shelter Regulations were passed by the Governor General in Council, making the Board the co-ordinating authority for the transfer of population into such areas and giving it control over the use of available shelter in the areas.

Under the authority of the Regulations, local Administrators of Emergency Shelter were appointed to act under the direction of the Board. The Regulations prohibited the transfer of persons into a congested area and the conversion of housing accommo-

dation to other purposes without the concurrence of the Administrator. Family quarters were the great scarcity and need. Formal orders issued under authority of the Regulations prohibited family quarters from being occupied by newcomers without a permit from the Administrator who examined into the circumstances. Crown funds were expended on the conversion of various buildings into family quarters, which were occupied under the direction of the Administrator. The various Administrators issued a number of directives requiring particular owners to let premises to particular tenants for a specified period, usually a few months, until other accommodation could be found for them. This was about as close as Canada came to billeting. Though the continued scarcity of materials and labour prevented the provision of sufficient accommodation, much distress was alleviated by this administrative dealing with individual properties.

In December, 1945, upon the creation of the Central Mortgage and Housing Corporation, the administration of the Emergency Shelter Regulations was transferred to the Corporation, between which and the Board, with its continued jurisdiction over rentals and termination of leases, there is all necessary co-ordination and co-operation.

10. *Licences, Permits and Quotas*

To assist in the maintenance of the prices ceiling, orders require sellers of goods or services to obtain a licence from the Board and some sellers to obtain a particular permit from a specified Administrator. The Wartime Prices and Trade Regulations provide that, in such cases, it is unlawful to operate without a licence or permit. While the Board is authorized to suspend or cancel any licence or permit, this action is only taken in practice after repeated serious violation of the Regulations, as evidenced by conviction in the courts.

Permits to export or import some specified goods were also required. In 1942 the controlling authority was centralized in the Minister of Trade and Commerce (in some instances the Minister of National Revenue), functioning through his departmental Permit Branch, which acted upon the advice of the appropriate Administrator under the direction of the Wartime Prices and Trade Board. In general the need for export control was due to high foreign prices for goods in short supply, the foreign market for which, without export control, would have jeopardized Canadian domestic needs. Initially the prime pur-

pose of import control was to conserve foreign exchange; later, the prime purpose was to see that what Canada received out of the international allocation of goods in short supply was of the type most needed. Permits were refused, issued or restricted as current circumstances required.

To ensure the best possible use of some goods in short supply, orders require specified industrial or other users to obtain quotas from an Administrator and restrict their use of the goods to such quotas. The quotas are determined from time to time in the light of the nature and volume of the quota-user's business and the total national supply.

11. *Subsidies*

Analogous to the procedures described are the granting and recovery of subsidies. The Commodity Prices Stabilization Corporation is a Crown company formed at the instance of the Board to serve, under its direction, as its fiscal agent in the necessary subsidizing of some needed imported or domestic goods, the importation or production cost of which was such as to make impossible their marketing under the prices ceiling. Subsidization out of Crown funds was accomplished either by making bulk purchases of goods and putting them on the wholesale market at a trading loss or by direct money advances to Canadian producers, accountable under a profit control system. Published statements of policy indicated the goods entitled to subsidy, the scale of the subsidies and the requirements that must be satisfied. Under the authority of various orders in council, the Corporation recovered the amount of subsidy involved in existing stocks of goods the maximum price of which the Board increased in lieu of subsidy or involved in goods exported and hence exempt from maximum prices.

12. *Enforcement*

PROSECUTIONS. The Board's various enabling Regulations provide that no person may be prosecuted for any offence under the Regulations without the written leave of the Board or of the Attorney-General of the province in which the offence occurred. The purpose of this requirement is to ensure uniformity in the application of legal requirements and to avoid prosecution for merely technical offences. In practice, except in the early period of the war, leave to prosecute has been granted by the Board rather than an Attorney-General. A definite procedure is followed before a prosecution is undertaken.

Canada is divided into thirteen Regions in each of which the Board has a Regional Office presided over by a Prices and Supply Representative. At each Regional Office are a staff of investigators and a number of Enforcement Counsel with considerable experience in the practice of law. In each Region there are Local Offices, with investigators, operating under the direction of the Regional Office.

There is constant investigation of business operators to enforce orders. Whenever it appears that an offence has been committed, any explanation the alleged offender cares to give is obtained by the investigator. The investigator's report, including any explanation, is referred to Enforcement Counsel at the Regional Office. The latter, if satisfied that an important offence has apparently been committed wilfully or in such circumstances as to amount to indifference of the law, sends the file to the Enforcement Administrator at Ottawa with a recommendation for prosecution. On the other hand, if Enforcement Counsel regards the apparent offence as not important enough to warrant prosecution or if he believes it was committed by mistake or inadvertence, he closes the matter with an appropriate letter designed to prevent further occurrences of a like nature. Doubtful or border-line cases are referred to the Enforcement Administration for decision.

At the Enforcement Administration in Ottawa is a group of experienced lawyers who examine carefully the facts of cases received from Enforcement Counsel. There is group discussion of doubtful cases. If a decision is in favour of prosecution, a recommendation for issue of leave to prosecute is given to the Secretary of the Board, who issues all leaves. Thus every prosecution is due to the consensus of a plurality of experienced lawyers. If, in the light of the particular facts and the objective of the Board, it appears that corrective steps other than prosecution should be taken, the Enforcement Counsel concerned is so advised.

LICENCE SUSPENSION. Prosecution in the courts leading to the imposition of a fine is sometimes an inadequate deterrent for the reason that illegal profits are in terms of thousands of dollars while fines are in terms of hundreds. To meet this situation the Board appointed a special Committee, consisting of the Chairman, the Secretary and the Enforcement Administrator, to deal with the suspension, cancellation and restoration of licences and permits. The remedy of licence or permit suspension is only invoked after the person or company concerned has been

repeatedly convicted by the courts for offences, thus indicating a consistent attitude of recalcitrance or defiance of the law. Suspended licences or permits are restored after a period during which satisfactory evidence of future good behaviour is given, sometimes in the form of a personal bond offered to the Board and accepted. Cases of outright cancellation of licence or permit are rare; they only occur where the circumstances indicate that no other course would correct intolerable conduct.

BLACK MARKETS. The wartime expression "black market" was applied to the distribution and sale of goods at illegal prices outside the ordinary channels of trade and was extended by common parlance to include transactions following the ordinary channels but at illegal prices. A good example of a true black market is where sugar is procured and distributed secretly by unlicensed persons at illegal prices and without the required ration documents. There was also a smaller true black market in textiles. A good example of a transaction not amounting to a true black market was the sale of meats by some suppliers to established distributors at illegal prices in periods of short supply.

Counterfeiters also extended their operations to the counterfeiting of ration coupons and other ration documents.

In true black market cases the stocks of the operators who were caught (largely through the efficiency of the Royal Canadian Mounted Police, who gave the Board invaluable assistance in a number of ways from the beginning of the war) were placed by the Board under the control of a custodian to ensure that they were disposed of to established dealers at legal prices.

Where goods were distributed at prices over the ceiling in periods of short supply, as in the case of meats, administrative directives were issued to suppliers, allocating their supplies to specified dealers. Since evidence of illegal prices was difficult to procure from those who were being victimized, due to their fear of being deprived of supplies as a result, the allocation system was at times applied to groups of local suppliers which included those not suspected of any illegality, thus in a sense creating a pool of supplies that could be drawn against at lawful maximum prices.

REFUND REQUIREMENTS. Under the authority of its enabling Regulations the Board issued directives to sellers requiring them to refund to buyers sums charged in excess of lawful maximum prices and took similar action in regard to excess rentals. This was a deterrent against the wilful making of an

illegal net profit after absorbing a fine for the offence of overcharging.

A word or two should be said about appeals. All decisions of an Administrator in the performance of his duties are appealable to the Board. No formalities are required in order to appeal. Very often an interested party appeals indirectly by visiting Ottawa, with or without counsel, or by having his counsel appear alone, to make his representations to the Chief of the appropriate Division, for example the Prices Division. He is given a careful hearing and if, in terms of the objective of the governing policy, it appears that the decision should be altered in any way, a change is made. Direct appeals take the form of a written communication to the Secretary of the Board, setting forth the representations on which the appellant relies. Any further information that is needed from any source is obtained, including a report of the Administrator concerned and, whenever desirable, his entire file on the matter. In discussion with the responsible heads, a decision is made on equitable grounds in the light of policy, confirming, reversing or varying the Administrator's decision.

Such is administrative law in the operations of the Wartime Prices and Trade Board. The Board's task was gigantic. Some idea of its magnitude may be conveyed by stating that, to this date, some 2800 orders have been found necessary (including amending and revoking orders) to deal with the great range of subject matter. These orders involved the breaking of new ground, previously untried in the history of Canadian jurisprudence. In the devising of the orders, not only was it necessary to provide so far as possible for the multitudinous complexities of trade and industry but to consider and plug all possible loopholes that could be taken advantage of by the minority to the prejudice of the law-abiding majority. The whole effort was a constant battle of wits. An outstanding example of breaking new ground is rental control. Reflection indicates that the rental value of a property does not depend only upon its size or original cost but upon a number of intangibles, including location, surroundings, architecture, light, conveniences, appurtenances and other factors affecting its desirability. One sometimes hears the question: Why was the expedient adopted of fixing as maximum rentals those in effect on a stated date? The answer is that the parties to the lease in effect on that date were in the best position to determine the rental value at the time, having regard to all the elements

of desirability I have mentioned, and the emergency of war could not fairly be regarded as the proper vehicle to carry rentals to a level they would not otherwise have attained. For that reason new accommodation had to be dealt with on a comparative basis in fairness to the owners of existing properties. In the same spirit of fairness, it was necessary to provide for the adjustment of existing maximum rentals that could be shown to be "out of line" for reasons not common to the entire locality. Obviously, the fixation and variation could only be done administratively.

It is inevitable that in all the administrative action I have mentioned there should be conflict of opinion between citizens, or between citizens and administrative officers, as to whether any particular decision was right or wrong. In the regulation of a complex national economy, individual cases of hardship and apparent injustice were bound to occur, but that factor has always been inherent in any law. Having guided the Board's legal affairs since a few weeks after the war began, and having observed the honest and painstaking manner in which the Board itself and its personnel with administering powers have discharged their respective tasks, I am firmly convinced that only by the use of administrative law as I have illustrated it in this article could individual hardships be ameliorated, unnecessary thorns removed and wrongdoers corrected in the interests of law-abiding citizens. I think that the procedures I have described in this article are a good way to "make democracy work in an emergency".

A GERMAN DEFINES DEMOCRACY

For the moment, I am concerned with a definition of democracy, and every definition of democracy is insufficient—insufficient for belief in it—if it is confined to the technical-political aspects. It is insufficient to define the democratic principle as the principle of majority rule and to translate democracy literally, all too literally, as government by the people, an expression of double meaning which could also signify mob rule, for that is more nearly the definition of fascism. It is even inadequate—correct as it may be—to reduce the democratic idea to the idea of peace, and to assert that the right of a free people to determine its own destiny includes respect for the rights of foreign people and thus constitutes the best guarantee for the creation of a community of nations and for peace. We must reach higher and envisage the whole. We must define democracy as that form of government and of society which is inspired above every other with the feeling and consciousness of the dignity of man. (Thomas Mann: *The Coming Victory of Democracy*. 1938. New York: Alfred A. Knopf)