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THE NATIONAL INDUSTRIAL RECOVERY ACT AND THE DELEGATION OF LEGISLATIVE POWER TO THE PRESIDENT*

FORREST REVERE BLACK†

Theodore Roosevelt, the great exponent of the strenuous life, who had the personal misfortune to reign during a period of profound peace, insisted constantly on the expansion of national executive power. Primarily a man of action, he was interested more in results than in methods. On September 28, 1906, energetically carrying out his "Big Stick" policy, he telegraphed Secretary of War Taft concerning an adjustment of Cuban affairs as follows: "I do not care in the least for the fact that such an agreement is unconstitutional."¹ Today, Franklin D. Roosevelt, confronted with a critical emergency, and patriotically convinced that strenuous executive leadership and executive action are imperative, has, in effect, accepted the Theodore Roosevelt philosophy of government.

In our opinion, the present Executive, if successful, will go down in history as the master pragmatist. We suspect that his strategy, as divulged to the "Brain Trust," might be formulated as follows: "If the 'New Deal' works, it will be a *fait accompli* before the Supreme Court has an opportunity to pass on its constitutionality;² and if it

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¹Quoted in PIERCE, *FEDERAL USURPATION* (1908) p. 154.

²Under our system, a court can never keep up with a legislature and skillful draftsmen and an alert administration can always keep a year or two ahead of judicial review. Further the court can usually avoid embarrassing decisions on constitutionality by the following devices: (1) refuse jurisdiction on the ground that there was no case or controversy presented (Finklestein, *Judicial Self Limitation* (1924) 37 HARV. L. REV. 338); (2) or that the question is "political" in nature; *Luther v. Borden*, 7 How. (U. S.) 1 (1849); *Georgia v. Stanton*, 6 Wall. (U. S.) 50 (1867); *Pacific States Telephone Co. v. Oregon*, 223 U. S. 118, 32 Sup. Ct. 224 (1912); (3) or existing codes and licensing agreements might be enforced on the theory of "consent", estopping the objector from asserting invalidity, the agreements being not contrary to public policy (See note in (1933) 28 Ill. L. REV. 544, 546); (4) an injured competitor might seek an injunction against the violator of a code of fair competition to restrain its violation, and the court could evade the constitutional question by holding either (a) that the damage shown was too remote or (b) that the petitioner should first exhaust his administrative remedy (See *White v. Federal Radio Comm.*, 29 F. (2d) 113 (N. D. Ill. 1928)). Finally, the court has wide discretion as to its docket.

fails, we'll try to stand up under the additional condemnation of 'half a dozen elderly gentlemen smugly dozing in arm chairs.'"³

If the New Deal is upheld, novel and revolutionary interpretations must be given to the commerce and the due process clauses and to the doctrine of private business affected with a public interest.

Many constitutional lawyers of the old school insist that the most vulnerable point in the Roosevelt legislative program hinges on the delegation of legislative power to the President. We do not share this belief. Referring to this phase of the problem, President Roosevelt in a radio address said: "Our policies are wholly within purposes for which our American Constitution was established 150 years ago. There was no actual surrender of power. Congress still retains its constitutional authority and no one has the slightest desire to change the balance of these powers. The function of Congress is to decide what has to be done and to select the appropriate agency to carry out its will. The only thing that has been happening has been to designate the President as the agency to carry out certain of the purposes of Congress. This was constitutional and in keeping with past American tradition."⁴

The doctrine that Congress cannot delegate legislative power to the President is a corollary of the doctrine of the separation of powers. At the one extreme, we find the legal conceptualists, who laud the separation of powers doctrine as a fetich and regard delegation as a breach of a sacred trust and contrary to the genius of our institutions⁵ and this in spite of the fact that there is no express distributing clause and no mention of the doctrine of *delegata potestas non potest delegari* in the Constitution of the United States. At the other extreme are those who assert that the tripartite division is the great American illusion,⁶ that it is a fiction of law and of political science, void of significance or value, necessarily disregarded in fact, and incapable of consistent application except by pretense.⁷ We submit that the

³ADAMS, BROOKS, *THE THEORY OF SOCIAL REVOLUTIONS* (1913) pp. 214, 215.

⁴Radio address, Sunday, May 7, 1933.

⁵Strange to relate, Justice Story approves the delegation doctrine in an extremely limited sense. He says, "When we speak of a separation of the three great departments of government and maintain that separation is indispensable to public liberty we are to understand this maxim in a limited sense. The true meaning is that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments." *I CONSTITUTION* (5th. ed., 1891) 393.

⁶Book Review (1932) 41 *YALE L. J.* 936, 938.

⁷This statement is challenged by Professor Green, in *Separation of Governmental Power* (1920) 29 *YALE L. J.* 369, 370. See LASKI, *AUTHORITY IN THE MODERN STATE* (1919) pp. 70, 71; GOODNOW, *COMPARATIVE ADMINISTRATIVE LAW* (1903) p. 20.

truth lies somewhere between these extremes. The tripartite system of separation of powers in our government, as evidenced by Articles I, II and III of our Constitution, is the result of a combination of historical experience and a political theory generally accepted in this country in the latter part of the eighteenth century.⁸ Montesquieu, who had much to do with the development of the theory, based it on a misconception of the English Constitution of his day.⁹

Let us start our analysis with the statement by Chief Justice Marshall that "The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law; but the makers of the law may commit something to the discretion of the other departments and the precise boundary of this power is a subject of delicate and difficult inquiry, into which a court will not enter unnecessarily."¹⁰ The second part of Marshall's statement has become significant, in view of the growth and complexity of modern political, economic and social institutions. Congress has been compelled by a sort of manifest destiny to delegate more and greater powers to the President. And with the coming of this unprecedented depression, Congress has transferred unusual and tremendous discretionary powers to the Chief Executive. Hardly any power that can be exercised by a sovereign, short of declaring war, goes further than the power to change the value of the currency¹¹ or, under certain conditions, to put an industry under a system of licensing, and to revoke the license, after notice and hearing, at his discretion.¹² General Hugh Johnson has gained the reputation for exaggerated statement, but when he characterizes this power as the power of "economic life and death," he is verily speaking the stark and naked truth.

The question arises, are there any limitations on this power of delegation? Must we resign ourselves to the constitutional possibility of a further unlimited expansion of bureaucratic government,¹³

⁸Fairlie, *Separation of Powers* (1922) 21 MICH. L. REV. 393.

⁹Ehrlich, *Montesquieu and Sociological Jurisprudence* (1916) 29 HARV. L. REV. 582, 592.

¹⁰Wayman v. Southard, 10 Wheat. (U. S.) 1, 46 (1825).

¹¹TITLE III, SEC. 43. of the AGRICULTURAL ADJUSTMENT ACT (THOMAS AMENDMENT), approved May 12, 1933.

¹²SEC. 4 (b) of the N. I. R. A., approved June 16, 1933.

¹³England, without a written constitution and in the absence of "judicial review" is confronted with the problem of a growing bureaucracy. Lord Chief Justice Hewart has pointed out in an eloquent manner the dangers implicit in the "new despotism". The paradox which is in course of being accomplished in England is indeed rather elaborate. Writers on the English Constitution have for a long time taught that its two leading features are the Sovereignty of Parliament

dictated in the immediate future by a virile party leader, who continues to hold the patronage power over a subservient Congress?¹⁴ It is true that theoretically this is emergency legislation containing a time limit and that theoretically Congress can take back these powers, but on the contrary it should not be overlooked that the bolder spirits in the administration sometimes advocate measures which, after their adoption, lead necessarily to further measures. One sometimes wonders whether there is art in this. Some of the Roosevelt advisors believe in a "totalitarian state" and the legislation thus far enacted is but the first step in an "orderly revolution." That step having been taken, will Congress retrace its steps? Secretary Ickes has said, "The Government has to go a new way because the old way is closed forever."¹⁵

We shall now attempt to analyze, in summary fashion, the leading cases developing the doctrine of the delegation of legislative power to the President. At the outset, the significant fact should be noted that there is not a single case decided by the Supreme Court of the United States in which a delegation of legislative power by Congress to the President has been held invalid on that ground.¹⁶ For convenience,

and the Rule of Law. To tamper with either of them was, it might be thought, a sufficiently serious undertaking. But how far more attractive to the ingenuous and adventurous mind to employ the one to defeat the other, and to establish a despotism on the ruins of both. It is manifestly easy to point a superficial contrast between what was done or attempted in the days of our least wise kings, and what is being done or attempted today. In those days the method was to defy Parliament, and it failed. In these days the method is to cajole, to coerce and to use Parliament, and it is strangely successful. The old despotism, which was defeated, offered Parliament a challenge. The new despotism, which is not yet defeated, gives Parliament an anaesthetic. The strategy is different, but the goal is the same. It is to subordinate Parliament, to evade the courts and to render the will, or the caprice of the Executive, unfettered and supreme," HEWART, *THE NEW DESPOTISM* (1929) p. 17.

¹⁴Mark Sullivan, in a syndicated article, December 2, 1933, takes exception to the statement of former Prime Minister Stanley Baldwin, who, in commenting on our situation, said, "I do not believe there is any man who is good enough and knows enough to exercise dictatorial power over a free people." Mr. Sullivan counters by insisting that "we are still a free people," that Roosevelt is not a dictator, but that we are witnessing the spectacle of a "highly personal government" in operation, within constitutional limits.

¹⁵*SOCIAL CONTROL OF THE SOURCES OF LIVING* (1933), pamphlet, p. 7.

John Dickinson has said, "If the diagnosis on which the N. I. R. A. rests is valid, and if the remedies which it seeks to apply are sound, it is addressed not merely to the emergency but to certain continuing and long-run problems which the emergency serves to bring out and set in sharp relief." (1933), 33 *COL. L. REV.*, pp. 1095-1096.

¹⁶Duff and Whiteside, *Delegata Protestas Non Potest Delegari, A Maxim of American Constitutional Law* (1924) 14 *CORNELL LAW QUARTERLY* 168; (1923) 23 *COL. L. REV.* 66; (1933) 47 *HARV. L. REV.* 85, 95.

the cases to date can be classified into three groups.¹⁷ (1) Congress promulgates the basic policy and provides that the enforcement of the statute is to depend on an act or finding by the President. In *Aurora v. United States*,¹⁸ Congress delegated to the President the power to determine whether Great Britain and France had revoked their edicts discriminating against us, upon the proclamation of which, an act of Congress which had previously expired, was to be revived. Here is a fact or contingency to be determined by the President that is rather definite. In *Field v. Clark*,¹⁹ the fact was more difficult to determine; whether foreign countries were imposing duties on American goods that were "unequal and unreasonable". (2) Congress furnishes the "general provisions" and the basic policy and demarcates the limits of the policy delegated as fully as the circumstances permit.²⁰ In *United States v. Grimaud*,²¹ the Secretary of Agriculture was authorized to make rules and regulations governing the occupancy and use of forest reservations, the general policy of the law and the penalties being declared by Congress. In *Buttfield v. Stranahan*,²² the Secretary of the Treasury was to determine what is an "unreasonable obstruction" of interstate commerce. (3) In construing the Flexible Tariff Act,²³ the Supreme Court of the United States introduced a new emphasis in the case of *Hampton v. United States*,²⁴ which makes for a still more liberal policy with reference to the delegation of legislative power to the President. The Tariff Act of 1922 provided that the President should have power to increase or decrease a tariff rate fixed by Congress, not exceeding 50 per cent if, on investigation, he considered it necessary in order to equalize the cost of production in the United States and the principal competing country. Chief Justice Taft, speaking for the Court, held that this Act set up an "intelligible principle",²⁵ i. e., equalization to which the President was to conform. The appellant's argument in a sense began at this point. While conceding an apparent standard, the appellant contended that the production factors are so varied and so indefinite that the *fact* can never be found. Hence, as the standard is incapable of definite ascertainment, the President, in making his decision, is, in effect, setting the standard himself. It is true that the President had the facilities of the Tariff Commission at his disposal and that a

¹⁷An excellent analysis is made in a note in (1933) 31 MICH. L. REV. 786.

¹⁸Cr. (U. S.) 382 (1813).

¹⁹143 U. S. 649, 12 Sup. Ct. 495 (1891).

²⁰(1933) 47 HARV. L. REV. 85, 94.

²¹220 U. S. 506, 31 Sup. Ct. 480 (1910).

²²192 U. S. 470, 24 Sup. Ct. 349 (1903).

²³42 STAT. 858, 941 (1922), 19 U. S. C. §§121, 153-4 (1926), U. S. COMP. STAT. (SUPP. 1923) §58410-19 *et seq.*

²⁴276 U. S. 394, 48 Sup. Ct. 348 (1928).

²⁵276 U. S. 394, at 409, 48 Sup. Ct. 348 (1928).

hearing was provided,²⁶ but on the other hand, experts on tariff making have testified as follows: Professor Taussig²⁷ has said, "Even the most competent and impartial Tariff Commissioner will often have to confess that there is no one figure which can be unqualifiedly said to be the accurate one." Thomas Walker Page²⁸ has said, "The conclusion cannot be escaped that it is rarely possible to ascertain accurately the difference in costs of production at home and abroad." But the court, in addition to holding that the act did establish an "intelligible principle" went further and shifted the emphasis from the inquiry whether there was a delegation to the problem of the *necessity* of the delegation. The court said,²⁹ "In determining what Congress may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to the common sense and *inherent necessities* of the governmental co-ordination." When we bear in mind that the inflexibility of tariff acts in the past has often served to defeat protection³⁰ and that this fact is responsible for the introduction into our legislation of the flexible tariff principle, it requires no great stretch of the imagination to realize that if the Taft "necessity doctrine" is pushed to its logical conclusion it would be possible constitutionally for Congress to pass a general tariff law declaring that the duty on all imported goods should equal the difference between the costs of production here and abroad and delegate to the President the power to ascertain and proclaim the facts, and thereby remove the detailed making of tariff laws from the halls of Congress.³¹

But there is a later case under the Flexible Tariff Act which goes even further—*Fox River Butter Company v. United States*.³² The controversy in this case involved paragraph 710 of the Act, which reads "cheese and substitutes therefor, 5 cents per pound, but not less than 25% ad valorem." Acting under Section 315, the President in his proclamation of 1927 provided, "cheese by whatever name known, having the eye formation characteristic of the Swiss or Emmenthayler type, seven and one-half cents per pound, but not less than thirty-seven and a half % ad valorem." The Court of Cus-

²⁶It should also be noted that the President has a broad discretion as to whether he will initiate the process. ²⁷CONG. RECORD, Jan. 4, 1926, at p. 1051.

²⁸MAKING THE TARIFF OF THE UNITED STATES (1924) p. 99.

²⁹*Supra* note 25.

³⁰Walter F. Welch, *The Flexible Provisions of the Tariff Act* (1926) 31 VA. L. REV. 206. ³¹*Idem*, at p. 226.

³²T. D. 44667 (Customs Court, 3rd. Div.). *Held*, invalid. Reversed in 20 C. C. P. A. (Cust.) 38, *certiorari denied* by United States Supreme Court in 287 U. S. 628, 53 Sup. Ct. 83 (1932).

toms held that this was an invalid delegation of legislative power because the President was in fact reclassifying and re-writing the Act. The Court of Customs and Patent Appeals reversed this finding and the Supreme Court of the United States denied a writ of *certiorari*.³³ The United States Court of Customs and Patent Appeals said, "The statute contemplated a legal investigation by the Tariff Commission as a condition precedent to the issuance of a lawful proclamation by the President, but the findings contemplated by the statute were to be made by the President, not by the Tariff Commission. The investigation was to 'assist the President'." But the court held that it was immaterial what opinions were entertained by the investigators, or the members of the Tariff Commission, as a result of such investigation. The statute, as construed, provides for a queer form of "assistance" to the President.³⁴

From this review of the cases,³⁵ it should be noted that the Supreme

³³This denial of *certiorari* by the Supreme Court of the United States is significant because it appears that the Fox River Butter case is more extreme than the Hampton case. The statute creating the Court of Customs Appeal (Act of Aug. 5, 1909, c. 6 U. S. Stats. at Large, v. 36, p. 100) was amended on Aug. 22, 1914 (c. 267 U. S. Stats. at Large, v. 38, p. 708) so that it was made possible for the Supreme Court, in its discretion, to call up by *certiorari* decisions which it regards of "sufficient importance to review." (See DICKINSON, ADMINISTRATIVE JUSTICE AND THE SUPREMACY OF LAW (1927) p. 276).

A writer in (1932) 20 CALIF. L. REV. 330, believes that the Fox River case is an illustration of declaring the "event" on the happening of the "contingency" . . . If upon investigation of "cheese and substitutes therefor" he finds one particular grade out of adjustment, whereas the rest of the class is properly adjusted, is it not "common sense" that the President should single out this particular grade rather than allow the inequality, or cause a greater inequality by adjusting the whole field?

³⁴It would seem that the Act of 1930 [46 STAT. 701, §336, sub. c., 19 U. S. C., p. 172, §1336, sub. c., CUMULATIVE PACKET, (1933)] reduces the discretion of the President to merely affirming or refusing to affirm the findings of the Tariff Commission, and puts in the latter body the actual determination of changes, where it could more easily be controlled by the courts.

³⁵Some of the state courts have formulated a different test. Dowling v. Lancashire Insurance Company, 92 Wis. 63, 65 N. W. 738 (1896) sets up the mechanical standard that the law must be complete, in all its terms and provisions when it leaves the legislative branch. This is contra to the U. S. v. Grimaud doctrine. See also Arms v. Ayers, 192 Ill. 60, 61 N. E. 851 (1901) for similar view. Another method by which the courts give lip service to the doctrine is to strictly qualify "legislative" *i. e.*, it must be "strictly and essentially" or "strictly and exclusively" legislative, see Lumpkin, J. in Southern Railroad v. Melton, 133 Ga. 227, 65 S. E. 665 (1909), or "purely legislative duties" in State v. Crosby, 92 Minn. 176, 99 N. W. 636 (1904). A few state courts have held that if the standard is too vague and indefinite, the law is invalid, *i. e.*, a California statute was held invalid on the ground that the standard was too indefinite, which enforced through the State

Court³⁶ considers at least three principles: (1) the definiteness of the standard laid down by the statute for the guidance of the President; (2) the degree of necessity, in view of the subject matter, for the delegation; and perhaps (3) as a practical element, the confidence felt by the court in the body so entrusted with the power.

In conclusion, let us consider the basic policies³⁷ laid down by Congress in the National Industrial Recovery Act.³⁸ They are ten in number: (1) to remove obstructions to commerce, (2) to promote cooperative action among trade groups, (3) to eliminate unfair competitive practices, (4) to utilize more fully the productive capacity of industry, (5) to avoid undue restriction of production (except as may be temporarily required), (6) to increase the purchasing power of consumers, (7) to reduce unemployment, (8) to improve standards of labor, and (9) to rehabilitate industry and (10) to conserve natural resources. In view of the precedents,³⁹ we conclude that the N. I.

Director of Agriculture a law which provided that "oranges shall be considered unfit for shipment when frosted to the extent of endangering the reputation of the citrus industry." *Ex Parte Peppers*, 189 Cal. 682, 209 Pac. 896 (1932). The Supreme Court of Illinois, by a 4 to 3 decision, held invalid a law that conferred on the fire marshal power to order "any building to be removed or remedied which for want of proper repair, or by reason of age and dilapidated condition, or for any cause, is especially liable to fire," *People ex rel Camber v. Sholem*, 294 Ill. 204, 128 N. E. 377 (1920).

³⁶See (1928) 41 HARV. L. REV. 95, Intermountain Rate Cases, 234 U. S. 476, 34 Sup. Ct. 986 (1913).

³⁷Professor McLaughlin has said that "the act not only announces no rules of law, but it *sets up no standard* to guide the employees who are to make the law, except the vaguest references to general welfare . . . Of less importance, it endeavors to outline no organization or machinery. In general, it discloses a dearth of ideas concerning the policy to be pursued by the United States." CASES ON THE FEDERAL ANTI-TRUST LAWS OF THE UNITED STATES (1933) p. 719.

³⁸Title I, §I-B. See also OUTLINE OF THE NEW DEAL LEGISLATION (1933), by PROFESSOR HOWARD S. PIQUET, p. 7.

³⁹In the case of *N. Y. Central Securities Co. v. U. S.*, 287 U. S. 12, 53 Sup. Ct. 45 (1932), the court held that there was no unconstitutional delegation of power by reason of uncertainty in the stated criteria in section 5, sub-division 2 of the I. C. C. Act empowering the Commission to authorize the acquisition of control of one carrier by another if of the opinion that such acquisition of control will be "*in the public interest.*" The term is not synonymous with general welfare, but has direct relation to the adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities . . . (Comment in (1933) I GEORGE WASH. L. REV. 114). In *Mutual Film Co. v. Industrial Commission of Ohio*, 236 U. S. 230, 245, 35 Sup. Ct. 387 (1914) the commission was given power to determine whether a given film was "*moral or educational or amusing or harmless.*" In *Sears Roebuck v. Federal Trade Commission*, 258 Fed. 307-312 C. C. A. the Federal Trade Commission was to determine what was "*unfair competition.*" The court said the words

R. A., which authorizes the President to prescribe codes of fair competition, issue and revoke licenses, fix hours of labor, rates of pay and such other conditions as he may find necessary to effectuate the policy of the Act is not unconstitutional as a delegation of legislative power. Our highest court has taken an extremely liberal view with reference to the definiteness and clarity of the legislative standard.⁴⁰ In the last analysis, the doctrine of *delegata potestas non potest delegari* is deduced from the nature of our institutions. When there is a revolutionary change in economic and social structure, it is inevitable that this will be reflected in our political institutions, and no court, unless bound by a square holding, will refuse to recognize this phenomenon. It is our prediction that if the judicial axe is applied to the "New Deal" it will be because Congress has attempted to legislate with reference to a subject matter that is outside the scope of its constitutional powers, and if delegation to the President happens

"Unfair methods of competition" stand on the same footing with such terms as unsound mind, undue influence, unfaithfulness, unfit for cultivation, unreasonable rate and unjust discrimination. In *Mahler v. Eby*, 264 U. S. 32, 44 Sup. Ct. 283 (1924), the court upheld a statute empowering Secretary of Labor to deport aliens who had been convicted under war-time statutes "if after hearing he should find such aliens are *undesirable residents of the United States*." The court declared that in its opinion "our history has created a common understanding of the words 'undesirable residents' which gives them the quality of a recognized standard."

In an article entitled *Administrative Discretion* (1933) 2 GEO. WASH. L. REV. at pp. 6-7, Mr. Henry Wolfe Bikle, General Counsel of the Pennsylvania Railroad has said, "I have sometimes asked ex-Commissioners of the I. C. C. how they decided that rates were 'unreasonable' or that things were 'in the public interest'. I have never got a very satisfactory answer. They seemed just to do it. And I never had the temerity to ask a sitting Commissioner because of a little verse that was called to my attention some time ago."

"The centipede was happy quite
Until a frog in fun
Said; 'pray, which foot comes after which
When you begin to run?'
Which wrought her mind to such a pitch
She lay distracted in a ditch,
Considering how to run."

⁴⁰"Specificity is a characteristic of primitive law, but in a complex social system, specificity must be supplanted by general rules embracing large classes of facts, to be applied in accordance with some more general standard." Pound, *Juristic Science and Law* (1918), 31 HARV. L. REV. 1047, 1060. The delegation issue raised by the Recovery Act challenges our legal thinking to disclose whether it is organic and living, or merely mechanical, verbal and restrictive." John Dickinson in (1933) 33 COL. L. REV. 1095, 1100.

to be involved in such a case, that will be only an incidental consideration.⁴¹

⁴¹Sections of the N. I. R. A. which might conceivably involve the delegation of legislative power to the President:

(1) Sec. 2 (a) The President is hereby authorized to establish such agencies to accept and utilize such voluntary and uncompensated services, to appoint without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officials and employees . . . as he may find necessary, to prescribe their authorities, duties, responsibilities and tenure, and without regard to the Classification Act, fix the compensation of any officers and employees so appointed.

(2) Sec. 3 (a) Upon the application of the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry. . . if the President finds (1) that such associations . . . impose no inequitable restrictions on admission to membership . . . and are truly representative of such trades and (2) that such codes are not designed to promote monopolies . . . or to oppress small enterprises. The President may, as a condition of his approval of any such code, impose conditions . . . for the protection of consumers, competitors, employees and others, and in furtherance of the public interest, and may prescribe such exceptions to such code as the President in his discretion deems necessary to effectuate the policy herein declared.

(3) Sec. 3 (d) Upon his own motion, or if complaint is made, and if no code of fair competition therefor has been approved by the President, the President after notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(4) Sec. 4 (b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policies of the Act are being practiced in any trade or industry, and after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition . . . and shall publicly announce, no person shall after a date fixed in such announcement engage in or carry on business, in or affecting interstate or foreign commerce, unless he shall first have obtained a license . . . The President may suspend or revoke any such license, after due notice and opportunity for hearing . . . Any order of the President suspending or revoking such license shall be final if in accordance with law . . . This subsection shall cease to be in effect at the expiration of one year after the passage of the Act.

(5) Sec. 7 (b) The President shall so far as practicable afford opportunity for mutual agreement of employers and employees as to maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary to effectuate the policy of this act, and the standards established by such agreements, when approved by the President under subsection (a) of section 3.

(6) Sec. 7 (c) Where no such mutual agreement has been approved, he may investigate conditions . . . and after such hearings as he deems advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours, minimum pay, and other conditions of employment as he finds to be necessary to effectuate the policy of the act, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of Section 3 . . . There is a limitation on the President from setting a maximum wage.