ECONOMIC CONTROLS AND THE CONSTITUTION

With the intense past election campaigns and the adoption of a stringent austerity program by the incumbent President, the importance of a stable and balanced national economy has come to the fore, defects of former economic policies magnified, and the advantages of proposed plans sanctimoniously exalted. Not a few of the then candidates claimed to be the only agency thru which an imagined sound economic policy of a predecessor could be continued, while one furiously advocated the abolition of economic controls.[1] Some even claim to possess the panacea to all our economic ailments.

If there be any significance attached to all these wrangglings, it is the awareness by our national leaders that the national economy is a primary concern of the State — an awareness in line with our constitutional provisions.

Economic Policies Embodied In Our Constitution

The statement in the preamble of our Constitution: "The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall x x x promote the *general welfare* x x x under a regime of justice, liberty, and democracy, do ordain and promulgate this Constitution," is no more than a repetition of what is virtually a ritualistic aim of every Constitutional government.[2] (Emphasis supplied.)

The term "general welfare" though vague in its broadness of scope, covers among other things, measures and services conducive to the safety, the health, the happiness, the comfort and the prosperity of its country and its people. Its primary concern is the well being of the group, the social good, rather than the welfare of just one individual or a particular group of individuals. It means, the economic advancement or social uplift of the nation.[3] It is clear therefore that the economic advancement of society has been made a concern of the government established by the Constitution. This conclusion is further supported by the provision which declares that "the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State".[4] This is inevitable, for the government of today is not simply an instrument of social control but also an agency of public service, and its latter functions are daily expanding and multiplying. The principal though not the sole aim is economic security, otherwise known as freedom from want.[5]

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1 Senator Claro Recto in the Symposium sponsored by the U.P. Writers Club on an "Economic Program of Administration" decried the obsolescence of economic controls and proposed their abrogation.

2 SINCO, PHILIPPINE POLITICAL LAW 114 (10th ed. 1954).

3 *Ibid.*

4 PHIL. CONST. Art. II, Sec. 5.

5 SINCO, *op. cit. supra* note 2, at 126.

The law is often said to reflect the climate of the social, political and economic opinion, the *zeitgeist* of any given period in history.[6] Therefore, before the industrial revolution when the general feeling was characterized by an emphasis on rights and there was absence of need for much government[7] because every man or family could be a self-sufficient economic unit,[8] the legal concept of justice was confined to the protection of the individual. The state was merely a legal organ.[9] But with the advent of the industrial revolution, complexities of life so increased that the individual left alone became a helpless victim in his new social and economic environment. And his helplessness did not adversely affect himself only but the whole of society of which he was a member suffered, too. It was with this environment that justice assumed a new conception.[10] It took into account not only the individual, as an independent unit, and his legal rights as such, but also his place as a member of the community, his relations with the social group, and the effect of his own social and economic condition upon the general welfare of the state and society. Its administration was not merely a judicial matter, but among other things involved the equalization of economic opportunities by proper regulation of the right of property. The State became a positive force for social service.[11] It is this new conception of justice which was embodied in our Constitution.

History Of Controls

Prior, and up to the end of the 19th century, the Mercantilist school of thought, as opposed to the Bullionist school who favoured restrictions, believed that precious metals, which were indispensable as instruments of exchange at home and for the liquidation of the adverse balances which might arise in the course of foreign trade, could be sent out of any country like any commodity provided a favorable balance of trade existed.[12] The old mercantilists therefore concluded that the government should regulate, not the flow of precious metals, but the stream of commerce, directing it into channels which would secure a balance of trade.[13] With "balance of trade" becoming the touchstone of national prosperity, the first justification for government interference and control in economy had its beginnings.[14]

After World War I, mercantilism took a new turn. Not only was government interference in economy tolerated, but it became, according to this school, the bounden duty of the government to maximize social welfare. The prominent features of this duty being

6 TWISS, LAWYERS AND THE CONSTITUTION 1.

7 *Ibid.* 5.

8 SINCO, *op. cit. supra* note 2, at 127.

9 *Ibid.* 127-128.

10 HAYEK, THE ROAD TO SERFDOM 43-49 (1944).

11 SINCO, *op. cit. supra* note 2, at 127-128.

12 LIPSOM, A PLANNED ECONOMY OR FREE ENTERPRISE, THE LESSONS OF HISTORY, 4-5 (1946).

13 *Ibid,* at 6.

14 Andaya, L. V., *Economic Controls from* 1945 *to July* 1952, PHILIPPINE SOCIAL SCIENCE AND HUMANITIES REVIEW, 217-286 (September, 1953).

the social planning of economic life either through complete centralization under a dictatorship or through mass action under a democratic form of regimentation and the correlative effort to protect the national economic life against others by trade, monetary and other regulations.[15]

The potency of this school, however, waned during the early part of the thirties of the present century when, as regards, gold, the Bullionist's view was actually adopted by all countries[16]. With the advent of the Keynesian theories of economics, however, which steadfastly advocated state protection and guidance, state control was re-accepted.[17] Keynes' theories removed the sting from Thoreau's and Emerson's philosophy, which characterized the period, that the government "never furthered any enterprise but by the alacrity with which it got out of its way."[18] And the historians who wrote from the point of view that freedom for private enterprise was the key to our national development lost much of their persuasive powers. Adam Smith himself, the staunchest proponent and defender of *laissez faire,* who believed in the concept of a divinely ordered harmony comprising "natural justice" and in the idea that man in seeking his own interests unconsciously promoted the public interest, that government regulations of economic activity were artificial and deterrent to this national order and that finally all restraint being taken away the simple system of natural liberty established of its own accord,[19] conceded government interference in the fields of foreign commerce, banking, interest rates and education.[20] He was fundamental in most pronouncements against governmental interference in individual enterprise, but he acknowledged that national security (economic planning) was more important than opulence (*laissez faire*) largely conceding the principle at issue.[21]

John Stuart Mills elaborated and carried over the principles enunciated by Smith.[22] In a chapter of his *Principles of Political Economy* entitled "Of the Grounds and Limits of the Laissez Faire or Non-interference Principle," he stated the presumption to be against the necessity for interference, saying:

> "Even in those portions of conduct which do effect the interests of others, the onus of making out a case always lies on the defenders of legal prohibition x x x Laissez faire, in short, should be the general practice; every departure from it, unless required by some great good, is a definite evil."[23]

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[15] HANEY, L. H., HISTORY OF ECONOMIC THOUGHT 124, 144-145 (4th ed. 1949).

[16] LIPSOM, *op. cit. supra* note 12, at 48.

[17] LEWIS, W. A., THE PRINCIPLES OF ECONOMIC PLANNING, 180-181 (1949).

[18] CARPENTER, W. S., DEVELOPMENT OF AMERICAN POLITICAL THOUGHT 122 (1930).

[19] TWISS, *op. cit. supra* note 6, at 5.

[20] Andaya, *supra* note 14, at 222.

[21] LIPSOM, *op. cit. supra* note 12, at 4.

[22] TWISS, *op. cit. supra* note 6, at 5.

[23] *Compare* MILLS, J. S., PRINCIPLES OF POLITICAL ECONOMY 533-542 (1857) *with* J. Sutherland in Adkins v. Children's Hospital, 261 U.S. 525 (1913).

But he, approved of government interference if the greatest good of the greatest number is covered by such government activity.[24]

Keynes' novel theory, which expounded on the necessity of deficit-spending and managed-currency system of controlled economy, swept many American economists off their feet, particularly Harvard University professors, and, indeed, decisively influenced the New Deal philosophy of the Roosevelt and Truman administrations.[25]

Deficit-spending, which is the large-scale expenditure of public funds in excess of the current revenues of the government, is financed either by borrowing money from abroad or from the citizens, or by printing paper money.[26] When a real emergency exists, the propriety of unbalancing the budget may be conceded,[27] and when the first means of financing is pursued, there is not much adverse effect. But when the method is to print paper money, inflation comes inevitably and not only the internal value but also the external value of the peso is affected.[28] Once the value of the peso decreases, its power to purchase goods as well as foreign currencies is diminished. To remedy the domestic decrease in the value of the peso, that is, the decrease in the amount of goods it can purchase, price, export, fiscal, monetary and credit controls are imposed. And to put a stop to the diminution in its external value — power to purchase foreign currencies — exchange and import controls are enacted.

The genesis of controls therefore, is the policy and practice of deficit-spending which formed an integral part of the "new" economics founded by Lord John Meynard Keynes.[29]

Rationale Of Economic Controls

Economic controls — the organized forms of government interference — limit economic activities in the general interest so that the resources of society are utilized in the best possible manner.[30] But there are many who denounce planning and controls in fierce language and who appear by implication to be arguing for *laissez-faire*. On closer examination, however, there are always a few pages in their books which give the game away. *Laissez faire* can be complete or it can be modified by state action at many crucial points, and similarly planning and controls can be complete or it can be combined with a market economy in various degrees.[31]

Free-enterprise denotes a system in which there are many thousands of individuals engaged in the production or marketing of goods, whose operations — guided by the motive of profit making in

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24 Andaya, *supra* note 14, at 222.

25 Padilla, B., *The Rationale of Price and Exchange Controls* THE MANILA CHRONICLE, July 25, 1957; Andaya, *supra* note 614, at 223.

26 Padilla, *ibid.*; Bigay, S. P., *The Dollar Reserves,* XI THIS WEEK 6 August 19, 1956.

27 Balmaceda, C., *Controls in Philippine Economy* PROGRESS 156 (1955); Padilla, *supra* note 25.

28 Padilla, *supra* note 25.

29 *Ibid.*

30 LERNER, A. P., THE ECONOMICS OF CONTROLS 2-3 (1949).

31 LEWIS, *op. cit. supra* note 17, at 14.

a market of competitive prices — are supposed to achieve the harmonies of a balanced system of production and consumption.[32] The ultimate arbiter of a free economy is the consumer, whose control is exercised by his readiness to buy goods and services at the market price. A free economy is self regulating in the sense that the supply and demand are equated not by external authority but automatically by the workings of an impersonal force, namely a competitive price system.[33] It is of course not incompatible with planning, it does not function without foresight or organization; neither is it entirely unregulated for it is conditioned by property rights, by social conventions, by trade union pressure and by commercial agreements or combinations.[34] Actually, there is a great deal of "management" in a free economy. The State can do all the planning it wants by controlling in its turn the market which controls the entrepreneur (invisible controls). The manipulation is carried, not by direction (visible controls) but by persuasion and inducement thru the price mechanism.[35]

But the recognition of the principle of private property does not by any means necessarily imply that the particular delimitation of this right as determined by existing laws is the most appropriate.[36] The question as to which is the most appropriate permanent framework which will secure the smoothest and most efficient working of competition, is of the greatest importance.

It is impossible to rely exclusively on planning by manipulating the market demand (free economy) because of the immobility of resources.[37] Under this kind of planning reliance is on inducement to bring about a supply large enough to meet market demand. But supply may not be so responsive to the inducement, thus leaving market demand unsatisfied. And the efficiency of an economic system is to be judged by the speed with which shortages are eliminated, price controls rendered unnecessary and a sound balance of trade established.[38] The truth is that, while it is best to operate through the market, temporary shortages will always emerge, and they may demand drastic measures.

The case against *laissez faire*, and in favor of economic planning and control is much more formidable than these. It rests on the following counts:

> "First, under this system income is not fairly distributed; and as a corollary of this, less urgent goods are produced for wealthy people while the poor lack the necessities and ordinary comforts which could be supplied instead. For justice in distribution we clearly have to summon the forces of the State.
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> "Second, the market mechanism does not humanise the wage relation. The state is much more certain protection.

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[32] LIPSOM, *op. cit. supra* note 16, at 313.
[33] *Ibid*, at 314.
[34] *Ibid*, at 315.
[35] LEWIS, *op. cit. supra* note 17, at 20.
[36] HAYEK, *op. cit. supra* note 10.
[37] LEWIS *op. cit. supra* note 17, at 21.
[38] *Ibid.*

"Third, the market economy is unstable. Private enterprise in the creation of money produces cycles, unemployment and misery. The present unanimity is in favor of State control of money.

"Fourth, the market's handling of foreign monies is inadequate. Foreign trade must be regulated by the state.

"Fifth, the market economy is ineffective in coping with major changes. Where resources need to be moved in considerable degree, its methods are too slow and cruel. Scarcities are not quickly eliminated, with a result that a few persons receive abnormally large incomes at the public's expense, and that scarce commodities are unjustly distributed; and at the same time over production is not quickly reduced, with the result that other persons suffer abnormally low incomes. State action to speed the mobility of resources is clearly needed.

"Sixth, the market economy is wasteful. Competition induces heavy expenses on sales promotion.

"Seventh, the merits of the market depend on the existence of competition and perfect competition is rare. Only State action can assure competition."[39]

The dispute, therefore, is whether state control could not do better, either as an alternative, or as a supplement. And because of the belief that deliberate regulation of all social affairs must necessarily be more successful than the haphazard interplay of independent individuals[40] "public administration is the alternative to private enterprise, and since private enterprise is corrupt and selfish, we supersede it by democratic control." [41] Free-enterprise has failed because of the incessant clash of individual interest with social interest,[42] and it is only thru the imposition of controls in the economy that we facilitate the use of improved means to aid society attain the rational end of its economic activity, the maximization of income and welfare.[43]

Assuming, therefore, that the government knows what economic result it wishes to achieve[44] it could set about persuading or forcing private enterprise to fall into line only by deliberate regulation of all social affairs thru economic controls, to bring about order in the existing chaos, to apply reason to the organization of society, and to shape it deliberately in every detail according to human wishes and the common ideas of justice.[45]

Democratic economic planning, therefore, implies central direction of the national resources.[46] In essence, it is distinguished from free economy in its scope, because the difference between them is fundamentally a matter of degree — as to how far government inter-

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[39] *Ibid*, at 12-14.

[40] HAYEK, F. A., COLLECTIVIST ECONOMIC PLANNING, 1 (1950).

[41] WEBB, B., OUR PARTNERSHIP 117 (1894).

[42] BOULDING K. E., THE ECONOMICS OF PEACE 74 (1947).

[43] *Ibid.;* Andaya, *supra* note 14, at 217.

[44] LEWIS, *op. cit. supra* note 17, at 4.

[45] HAYEK, *op. cit. supra* note 40.

[46] This has been adopted in our country. According to our Constitution "The Filipino people x x x establish(ed) a government that shall embody their ideals, conserve and develop the patrimony of the nation, (and) promote the general welfare x x x under a regime of justice, liberty and democracy x x x"

ference is to be tolerated—rather than of principle.[47] It need not supersede free enterprise, nor involve (as in totalitarian states) the absolute regimentation of the economic life of the community. Nevertheless it does not tolerate an uncontrolled private enterprise that functions under "natural forces" which virtually means self-interest. It supplements, and in a measure limits, the innumerable decisions of individuals by super-imposing upon them a coordinated and deliberately planned program. For an economic jig-saw puzzle into which an infinite number of fragments are fitted (often-haphazardly), it seeks to substitute a system in which conscious direction at the centre achieves unity of design and construction. This system may prove the more flexible because it can do what is normally beyond the province of free enterprise — it can make allowances for social reactions.[48]

The Case Against Controls

As previously stated[49] the dispute is not on whether we ought to choose intelligently between the various possible organizations of society, neither is it on whether we ought to employ foresight and systematic thinking in planning our common affairs. It is a dispute on what is the best way of so doing. The question is whether for this purpose it is better that the holder of power should confine himself in general to creating conditions under which the knowledge and initiative of individuals are given the best scope so that *they* can plan most successfully; or whether a rational utilization of our resources requires control, central direction and organization of all our activities according to some consciously constructed "blueprint."

What economic planners and the advocates of controls demand is a single direction according to a single plan,[50] laying down how the resources of society should be "consciously directed" to serve particular ends (definite social goals) in a definite way. This demand puts the basic issue very clearly for it directs us to the point where the conflict arises between individual freedom, which we value so much to the extent of having guarantees embodied in our constitution,[51] and collectivism.[52] Their argument presupposes, in short, the existence of a complete ethical code in which all the different human values are alloted their due place to arrive at the "social goal" or "common purpose".

As to having an ethical code to govern our economic activities, there is no objection. But to have it *complete* requires some effort of imagination and a thorough analysis of its consequences. We will soon find out that our moral code will be full of gaps. For, not only do we not possess an all-inclusive scale of values, but it would also be impossible for any mind to comprehend the infinite variety of

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47 LIPSOM *op. cit. supra* note 16, at 3.

48 *Ibid,* at 4.

49 *Ibid,* at 7-8.

50 *Ibid,* at 9; HAYEK, *op. cit. supra* note 10.

51 These guarantees are embodied in the Bill of Rights of our Constitution.

52 According to HAYEK, *op. cit. supra* note 10, at 56: "Collectivism is totalitarianism in the true sense of this new word."

different needs of different people which compete for the available resources and to attach a definite weight to each. It is an indisputable fact that the limits of our powers of imagination makes it impossible to include in our scale of values more than a sector of the needs of the whole society, and since, strictly speaking, scales of value can exist only in the individual minds, nothing but partial scales of value exist — scales which are inevitably different and often inconsistent with each other.

And when there can be no agreement as to the social goal or common purpose to be achieved, the state will be constrained to undertake direct controls in fields where there is no agreement, in which case, it is bound to suppress individual freedom, because in a planned system, we cannot confine collective action to the tasks on which we can agree. The enforcing agency will be forced to produce agreement in order that any action can be taken.[53] Planning will cause reactions which will defeat its own end, and any attempt to act consistently will necessitate further and further measures of control until all economic activity is brought under one central authority.[54] Then our economic life will be regimented for the "control of the production of wealth is the control of life itself."[55]

The people may unanimously express their will that whatever comprehensive economic plan Congress should prepare, is the expression of their common purpose. But Congress, like any other planning body will be confronted with the same difficulties. And ultimately the inability of democratic assemblies to carry out what seems to be a clear mandate of the people will inevitably cause dissatisfaction with democratic institutions.

There has been another planning system proposed. Of its advocates, Senator Jose P. Laurel stands foremost. It is the plan to entrust the power of economic control to an economic body composed of a few statesmen. Regarding this plan we only have to quote Adam Smith's prediction of the consequences to dissuade any patriotic leader from thinking seriously about it.

> "The statesman who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention but assume an authority which could be safely trusted to no council or senate whatever, and which would nowhere be so dangerous as in the hands of a few who have folly and presumption enough to fancy themselves fit to exercise it."[56]

Then, Lord Acton's strong language that "power tends to corrupt, and absolute power corrupts absolutely"[57] will find application.

Pursuing further the argument that economic planning entails suppression of individual freedom, it is said that "when authority presents itself in the guise of organization, it develops charms fascinating enough to convert communities of free people into totali-

[53] *Ibid,* at 60-62.
[54] HAYEK *op. cit. supra* note 40.
[55] HILAIRE, B., ECONOMIC CONDITIONS 131 (1946).
[56] Adam Smith as quoted in HAYEK, ROAD TO SERFDOM 56, (1944).
[57] *Ibid,* at 134.

tarian States."[58] The point is not that dictatorship must inevitably extirpate freedom but rather that planning leads to dictatorship because dictatorship is the most effective instrument of coercion for the enforcement of ideals,[59] and as such, essential if central planning on a large scale is to be possible. The clash between economic controls and democracy arises simply from the fact that the latter is an obstacle to the suppression of freedom which the direction of economic activity requires.

Of the various arguments employed to demonstrate the inevitability of planning, the one most frequently voiced is: technological changes have made competition impossible in a constantly increasing number of fields and the only choice left to us is between control of production by private monopolies and direction by the government.[60] The alleged technological cause of the growth of monopoly is the superiority of the large firms over the small, owing to the efficiency of modern methods of mass production. But this argument singles out one effect sometimes accompanying technological progress; it disregards others which work in the opposite direction. As pointedly exhibited by C. Wilcox:

> "The superior efficiency of large establishments has not been demonstrated; the advantages that are supposed to destroy competition have failed to manifest themselves in many fields. Nor do the economies of size, where they exist, invariably necessitate monopoly x x x the size or the sizes of the optimum efficiency may be reached long before the major part of supply is subjected to such control. The conclusion that the advantage of large-scale production must lead inevitably to the abolition of competition cannot be accepted. It should be noted moreover, that monopoly is frequently the product of factors other than the lower costs of greater size. It is attained thru collusive agreement and promoted by public policies. When these policies are reversed and these agreements invalidated, competitive conditions can be restored."[61]

It is further argued that the increasing difficulty of obtaining a coherent picture of the complete economic process makes it indispensable that things should be coordinated by some central agency if social life is not to dissolve in chaos.[62] But this argument is based on a complete misapprehension of the working of competition. Far from being appropriate only to comparatively simple conditions, it is the very complexity of the division of labor under modern conditions which makes competition the only method by which such co-ordination can be adequately brought about.[63] There would be no difficulty about efficient control or planning were conditions so simple that a

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[58] *Ibid*, citing THE LONDON TIMES.

[59] *Ibid*, at 181.

[60] Prof Robbins, *The Inevitability of Monopoly*, in THE ECONOMIC BASIS OF CLASS CONFLICT 45-80 (1939); HAYEK, *op. cit. supra* note 40; SINCO, *op. cit. supra* note 2.

[61] Wilcox, C., *Competition and Monopoly in American Industry* in TEMPORARY NATIONAL ECONOMIC COMMISSIONS MONOGRAPH, NO. 21, 314 (1940).

[62] LIPSOM, *op. cit. supra* note 16; LEWIS, *op. cit. supra* note 17; HAYEK, *op. cit. supra,* note 40.

[63] HAYEK, *op. cit. supra* note 10, at 48.

single person or board could effectively survey all the relevant facts. It is only as the factors which have to be taken into account become so numerous that it is impossible to gain a synoptic view of them that decentralization becomes imperative. Decentralization has become necessary because nobody can consciously balance all the considerations bearing on the decisions of so many individuals. The co-ordination can clearly be effected not by "conscious control" but only by arrangements which convey to each agent the information he must possess in order to effectively adjust his decisions to those of others.[64] And because all the details of the changes constantly affecting the conditions of demand and supply of the different commodities can never be fully known, or quickly enough be collected and disseminated by any one center, what is required is some apparatus of registration which automatically records all the relevant effects of individual actions and whose indications are at the same time the resultant of, and the guide for, all the individual decisions. This is precisely what the price system does under competition, and which no other system even promises to accomplish.[65]

Controls In Philippine Economy[66]

Not only in countries under authoritarian rule, but those under the democratic and free enterprise system as well, do various forms of economic control generally form part of the national economy. During normal times, government controls take the forms of statutes that regulate or control certain business enterprises in order to protect the general welfare of society, e.g., laws governing prohibition of monopolies or combinations in restraint of trade, laws regulating the operation of banks, insurance companies, exchanges and other trade and financial institutions.[67] In times of national emergencies other forms of economic controls are created, usually with more drastic and far reaching effects on business in general. Like the normal methods of control these emergency control measures also have for their objective the protection of the general welfare, but they are adopted only as *temporary* measures.[68] They come usually in such forms as price controls, credit controls, export controls, and exchange controls. It is this kind of controls which we shall discuss.

Emergency controls may either be direct or indirect. Direct controls are the limiting measures imposed by specific legislative acts, designed to achieve certain desired objectives which are complementary to the maximization of income — the ultimate objective of all economic activities of society.[69] For example, price controls, aimed at the prevention of scarcity and profiteering in essential goods; export controls, to promote economic rehabilitation and de-

64 *Ibid*, at 49.

65 LEWIS, *op. cit. supra* note 17.

66 Other writers have discussed fully the different controls in Philippine economy therefore the writer aims at making only a cursory and introductory discussion of the subject.

67 Balmaceda, *supra* note 27, at 156.

67 *Ibid.*

68 Andaya, *supra* note 14, at 218.

69 *Ibid.*

velopment of national security; import controls, to improve the unfavorable balance of trade; and foreign exchange control, to conserve the deminishing national reserves and the revision of the pattern of imports.[70] Indirect controls are the limiting measures which are only directly backed by any legislative act but are part of the powers granted to top officials charged with monetary, credit and fiscal authority and responsibility. Indirect controls therefore consist of monetary, credit and fiscal policies.[71]

In general, the emergency caused by World War II, and in particular, the unbalanced trade caused by the free trade relationship between the United States and the Philippines which made us very dependent on the former[72] necessitated the adoption of controls in our economy.[73]

Exchange Control

Exchange control was imposed on December 9, 1949 by the Central Bank under Circular No. 20[74] intended to supplement the Import Control Law,[75] to equalize receipts and disbursements of foreign exchange and to prevent the dissipation of our dollar reserves as well as maintain the stability of the peso.[76] Since then, the law has been amended by Republic Act No. 601 on March 28, 1951 which levied a tax of 17% on sales of foreign exchange, and by Republic Acts Nos. 814, 871, 1175, 1197 and 1375.

The purposes therefore of its adoption were: (1) to effect an equilibrium in our balance of payments; (2) to reduce to a minimum the import of non-essential and luxury goods; (3) to conserve the dollar reserves and channel their use to essential imports such as machinery and materials for economic development and (4) to maintain the stability and interconvertibility of the peso.[77]

But despite import and exchange controls we have not been able to balance our international trade. Our international reserves which on June 1953 was $294.63 (million) has, up to November 19, 1957, been reduced to a dangerous all-time low of $156.06 (million).[78] The frequent changes in control policies have brought losses and serious set-backs to business in general because of uncertainties and instabilities. Foreign exchange tax and onerous restrictions on remittances of interest or dividends on foreign investments and on reparation of foreign investments to aid in the country's economic development. And industrial enterprises have continuously com-

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70 *Ibid*, at 219.

71 Republic Act No. 371 (An Act to Provide for Trade Relations Between the United States and the Philippines and other Purposes, 1946) II-III, 4-14; U.S. Economic Survey Mission headed by D. W. Bell, ***Report to the President of the United States, Washington, D.C., October*** 9, 1950, PHILIPPINE ASSOCIATIONS INCORPORATED 9-12 (1950).

73 Balmaceda, *supra* note 27, at 156.

74 Andaya, *supra* note 14, at 238.

75 Rep. Act No. 330 (June 24, 1648).

76 Balmaceda, *supra* note 27, at 157.

77 *Ibid.*

78 THE MANILA CHRONICLE, November 22, 1757 P.I.

plained of their inability to secure sufficient dollar allocations to enable them to operate economically.[79]

Import Control

Republic Act No. 330, otherwise known as the Import Control Act passed on July 15, 1948, was enacted primarily to arrest the consistent drain on the international reserves. It was hoped to reduce the heavy visible trade deficit which began in 1945, besides conserving the diminishing international reserves.[80] It was extended by Republic Act No. 426 on May 18, 1950 and No. 650 approved on June 15, 1951, and expired on June 30, 1953. It was finally re-established on July 1, 1953 under the control of the Central Bank and will continue indefinitely.[81]

The main objectives of the Act are to conserve the dollar reserves through the reduction of non-essential imports, channel the use of foreign exchange to the purchase of capital goods and other imports needed in the economic rehabilitation of the country, and stimulate production of dollar-saving industries.[83]

The salutary effect of the imposition of import control was the over-all reduction of non-essential and luxury imports and the increase in the imports of machinery, equipment and other capital goods and raw materials needed for economic development. It was the change in the general pattern of imports. Import controls aided the development of new industries. Big American companies were impelled to establish branch offices and factories and assembly plants in the Philippines because of the restrictions.[84]

But the import control was a source of no little confusion, disturbance and losses. Free enterprise and general business activity suffered a severe jolt. And the ten-percent intermediaries caused additional heavy burdens on the public by increasing the cost of goods.[85] Despite the increase in our exports, our imports still outweight the former.

Export Control

Second to be instituted among the controls was export control.[86] It was imposed as early as July 2, 1946 when Commonwealth Act No. 728 was enacted prohibiting the exportation of some foodstuffs, medical supplies and building materials, industrial goods and agricultural implements, without a permit from the President. The original measure [87] expired on December 31, 1948, but was extended by Executive Order No. 192 issued on January 1, 1949 by President Quirino. However, Executive Order No. 192 was declared null and

79 Balmaceda, *supra* note 27, at 160.
80 CENTRAL BANK SECOND ANNUAL REPORT 124, (1950).
81 CENTRAL BANK FIRST ANNUAL REPORT, 47 (1949).
82 PROGRESS '55, 157 (1955).
83 Balmaceda, *supra* note 27.
84 Andaya, *supra* note 14.
85 Balmaceda *supra* note 27, at 161.
86 *Ibid.*
87 Commonwealth Act No. 728.

void by the Supreme Court, consequently restrictions on exports of all the listed commodities except those under quota pursuant to the Bell Act of 1946 were removed at the end of September 1949,[88] only to be reenacted on May 11, 1951 as Republic Act No. 613 to include military equipment or supplies suitable for military use, and continued in force by Republic Acts Nos. 842 and 999 which expired on December 31, 1956.[89]

Export control was imposed to prevent the drain of domestic supplies of needed articles for consumption of the people, for economic rehabilitation,[90] and to restrict export or re-export of strategic materials.[91] It was enacted to protect the public against scarcity and rise of prices at the same time to comply with international commitments such as the International Emergency Food Council and agreements with the United States.[92]

Export control did not operate restrictively since most of the controlled goods enjoyed great local demand, hence its termination did not make much difference.[93] It had the effect of keeping within the country the articles, supplies, and materials that were needed for industrialization and economic development of infant industries and safe-guarded our national security.[94] Thus the government has kept pace with the stock-piling race of different countries for strategic materials caused by the troubled international situation, and prevented the channelling of these items to communist held territories, and instead made them available for domestic needs.

Price Control

Commonwealth Act No. 600 gave the President emergency powers which included the power to fix and regulate prices of commodities. Pursuant to this Act price control was originally imposed by President Quezon in August, 1940 to avert profiteering and hoarding caused by the tension of an impending war. It was continued in force by President Osmeña, Roxas and Quirino after World War II in the exercise of the same wartime powers of the President. Upon cessation of the emergency, price control expired. Only to be renacted as Republic Act No. 509[95] for fear of shortage of commodities that would lead to high prices due to extensive import controls and the Korean War. Price control was extended by Republic Act No. 608 and 729 until the latter law expired on December 31, 1953, only to be re-established by Republic Act No. 1168[96] ultimately expiring on February 15, 1955.

The purposes of price control were to mitigate the effects on domestic prices of the import and exchange controls, and to prevent

88 CENTRAL BANK FIRST ANNUAL REPORT, 48 (1949).
89 Andaya, *supra* note 14, at 229.
90 PROGRESS '55, 157 (1955).
91 Rep. Act No. 613 (May 11, 1951).
92 Balmaceda, *supra* note 27, at 158.
93 CENTRAL BANK FIRST ANNUAL REPORT 48 (1949).
94 *Changes in Export Regulations*, EXPORT CONTROL DEPARTMENT OF THE CENTRAL BANK OF THE PHILIPPINES 129 (June 26, 1952).
95 Enacted June 13, 1950.
96 Enacted June 1954.

locally or generally, scarcity and profiteering in essential imported and domestic commodities.[97]

As a whole, the attempts at price control were ineffective in spite of the penalty attached.[98] It was hard to administer because of the practical impossibility of watching or guarding every transaction and also because of the lack of cooperation from the public due to necessity. Price control is said to be ineffective because prices declined only upon the relaxation of the import control. The relaxed import control resulted in the coming in of goods which had formerly been in short supply and hence marketed at high prices. It was the over supply of imported commodities as well as the increase in local production which brought down the high prices of commodities and not the control of prices.[99]

The causes for the inefficacy of price control are: (as in any under-developed country (1) local economy has limited employed resources and, (2) complete dependence on foreign sources for its supply of commodities. And when the supply of commodities in the domestic economy cannot meet effective demand, prices for these goods rise.[100]

The solution to price problems, therefore, lies not in the imposition of price control in the economy but in the increase in local production, accompanied by a gradual decrease in imports, so that the local supply of goods can sufficiently meet demand at lower price levels.

Monetary and Credit Policies

Since 1903 up to the enactment of the Central Bank Act,[101] the power to issue money was vested in the Philippine Treasury which issued certificates only upon a 100% backing by silver coins and United States Dollars.[102] This 100% reserve system was vehemently criticized for inflexibility. It tended to immobilize needlessly a part of the official international reserves of the country, since dollar reserves had to be maintained even against notes that were always needed to finance domestic transactions and would never be presented for conversion into dollars to finance remittances or payments abroad.[103]

The Central Bank Act brought to end the rigid 100% currency reserve and substituted a modern flexible monetary system at the same time recognizing the objective of the former monetary system of maintaining stability and orderly economic development.[104] To preserve monetary stability within the country, preserve the international value and convertibility of the peso and promote an orderly

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97 Rep. Act No. 509 (June 13, 1950).

98 *Supra* notes 72, 35.

99 Andaya, *supra* note 14, at 228.

100 *Ibid.*

101 Rep. Act No. 265 (June 15, 1948).

102 Andaya, *supra* note 14, at 244.

103 GROVE, D. L., THE CENTRAL BANK ACT 2, (1950).

104 Andaya, *supra* note 14, at 245.

growth in production, employment and real income,[105] the Central Bank was granted broad regulative authority over monetary and credit operations of the economy.[106] The objectives guiding its monetary and credit policies were defined, to wit:

> "x x x to control any expansion or contraction in the money supply or any rise or fall in prices, which is prejudicial to the attainment of a high level of production, employment or real income.[107]
> "x x x to regulate the volume, costs, availability and character of bank credit and to provide the banking system with liquid funds in time of need."[108]

To discharge its monetary and credit functions effectively, the Central Bank has been provided under the law with instruments of action, all flexible in design.[109]

Fiscal Policies

Formerly, our government depended for fiscal support primarily upon loans from the United States because the Philippines was unable to sell its securities. The amount borrowed was augmented only by tax reforms, intensified tax collection and loans from local banks.[110] But with the establishment of the managed currency system under the administration of the Central Bank,[111] money supply can now be expanded and contracted according to the needs of the domestic economy — the fiscal aim of any country. The government can now easily obtain budgetary loans and other forms of credit from the Central Bank[112] with the sole limitation that the borrowing should not have adverse effects on the money supply, price level and balance of trade.

As a consequence of the fiscal policy of the government to attain the highest degree of financial independence by limiting importation of non-essential and luxury goods, by reducing excessive consumption as well as by aiding the development of the country by increasing the portion of income that would be saved and invested, the following measures have been taken. Tax burden was more equitably distributed between high and low income groups with the approval of several tax measures during Congressional session in 1951[113] Serious attempts were also made to reduce deficit-spending to an essential minimum and not to intensify inflationary trends.[114] These tax measures, administrative reforms adopted and the intensification

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105 Rep. Act No. 265, Sec. 2.

106 *Ibid*, secs. 64-70.

107 Objective of monetary policies as expressed by Central Bank Act, sec. 64.

108 Objective of credit policies as enunciated by sec. 86 of the same Act.

109 Rep. Act No. 265, Chapters III-IV.

110 Andaya, *supra* note 14.

111 Central Bank Act, sec. 115.

112 *Ibid.* sec. 137.

113 Rep. Act No. 589 — increased rates on most commodities subject to specific taxes; Rep. Act No. 590 — increased the rates of corporate and individual income tax; Rep. Act No. 601 — imposed the special excise tax on foreign exchange.

114 Andaya, *supra* note 14, at 259.

of tax collection improved considerably the tax position of the government.[115]

In order to decrease dependence of Philippine trade on the United States, a canvas of markets in non-dollar areas, one of which was Japan, was made.[116] The drive against the Huks was also, in a way, a fiscal policy adopted by the government for it sought to bring peace and order and revive production and investment in Huk infested areas, resulting in the decrease of unemployment.[117]

Other fiscal measures were enacted to raise the wage level and improve living condition of agricultural and industrial workers among which were: Republic Act No. 602, otherwise known as the Minimum Wage Law; Republic Act No. 720, which provided for adequate credit facilities on reasonable terms within easy reach and access of small farmers; Republic Act No. 3428, which increased the amount of benefits and compensation to be paid to workers; and Republic Act No. 821, passed to assist small farmers in forming cooperatives in securing liberal credit and market agricultural commodities efficiently.[118]

All these fiscal policies require the highest degree of coordination with the monetary and credit policies of the Central Bank.

Conclusion

When the history of controls is written, it will not be said that they failed to contribute anything to national progress. Their retarding and detrimental effects will be brought out but so will their beneficial effects upon the national economy. On the whole it can be said that to some extent their effects have been salutary. The defects or unfavorable features are outweighed by the favorable effects and the stabilizing influence that they have had on the national economy.[119]

But how long will these controls have to continue? Has not the time come when these deterrents to free enterprise and individual liberty are no longer needed and should be totally abolished if we were to enjoy the freedom guaranteed by our constitutional democracy? Or should not a definite program of gradual decontrol be at least started now?

These controls were not meant to stay permanently. They were adopted merely as temporary expedients for a period of emergency.[120] It is now time that these controls be re-examined and the national policy regarding them revised in order to meet current developments and changes in the economic situation.

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115 IV ECONOMIC SURVEY MISSION REPORT 22; CENTRAL BANK SECOND ANNUAL REPORT 46; CENTRAL BANK THIRD ANNUAL REPORT 34.

116 CENTRAL BANK CIRCULAR NO. 40 (January 26, 1953).

117 CENTRAL BANK THIRD ANNUAL REPORT 214 (1952).

118 PHILCUSA ANNUAL REPORT (1955-1956).

119 Balmaceda, *supra* note 27, at 161.

120 *Supra* note 14.

The trade agreements with the United States has been revised and its new provisions went into effect on January 1, 1956. Among the important changes are the new tariff provisions and the abolition of the 17% foreign exchange tax. And in addition to the tariff duties, a special import levy is imposable to take the place of the abolished foreign exchange excise tax of 17%. When import control was adopted eight years ago, these means of restricting imports and affording protection to domestic industries through the tariff were not available.

According to Cornelio Balmaceda "the new program of economic development needs to adopt more practical and effective means of increasing production. Everything in the economic program, including such forms of control as might still be retained temporarily if any, must be geared to the principal objective of greater production. The present control system must therefore be fully re-examined in the light of this principal objective so as to eliminate all restrictions which may hinder the full implementation of an all out program of greater production."[121]

A program of gradual elimination of controls should be adopted. We can start with the elimination of all controls on capital and essential goods. And with the abolition of the 17% tax on foreign remittances, the restrictions on the repatriation of capital invested in local industries and remittances of interest and dividends to foreign stockholders should be further relaxed in order to encourage the entry of more foreign capital to aid in our economic development.

But we cannot as yet afford to allow unrestricted importation of purely luxury goods. Some degree of control of foreign exchange must still be maintained in order to prevent the dissipation of our dollar reserves, and the maintenance of the international reserves at safe levels.

The complete and sudden removal of these restrictions would be ill-advised at this time.[122] Such a radical step may prove disastrous to the economy. A selective and progressive elimination of restrictions systematically applied with a view to their total elimination should be preferred. Given a well integrated and carefully planned economic program which should now be devised and implemented, there is no reason why domestic production in all its branches cannot be successfully expanded within a reasonable time so that import and exchange controls and all other forms of economic restrictions will no longer be necessary.[123]

Much as we would not want to surrender the economic freedom protected by our Constitution, practical necessity caused by emergencies force us to submit to controls. But let us be controlled only when there be compelling necessity and urgency.

Francisco T. Andres

121 Balmaceda, *supra* note 27.
122 *Ibid.*
123 *Id.*

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