

SOME ECONOMIC AND SOCIAL IMPLICATIONS OF FAIR TRADE LEGISLATION.*

BY LEAVITT C. PARSONS¹

Five hundred years before the year one A. D. there lived in China a philosopher and teacher named Kung-fu-tse known as Confucius, the founder of one of China's three great religions. Confucius was a much beloved and practical preacher whose ethical and social creed rested on his belief that there was a formula through the use of which man could make happier his contacts with his fellowmen. Confucius phrased his formula thus: "What I do not wish men to do to me, I also wish not to do to men."

Five centuries later another religious leader, preaching to a rising Occidental Civilization, offered a similar social creed. In one of the most remarkable human documents that history records, Jesus Christ closed the Sermon on the Mount with this drastic injunction: "Do unto others as you would have them do unto you."

Although one formula may be negative and the other positive, there is no conflict. Together, as supplements, they summarize my title, for do they not in fact, cover all implications of Fair Trade? Let it be known that the Fair Trade Laws serve only to record in legislation the basic principles of the Golden Rule and you have built the best defense against destructive selfish interests. However, before we can teach we must learn. For this purpose I have tried to dig out and arrange some of the facts and philosophies that I believe have an influence on how Fair Trade will work.

Without definitions we would probably be talking without direction, for the field is very large and full of obstacles that fog our vision. I define Fair Trade Legislation as that phase of the laws of social control which aims to clarify, simplify and purify business relations. With this concept in mind I will try to introduce and develop four premises.

First, Social Control, and the laws recording it, represents an inevitable social trend; *Second*, society grows constantly more complex and these advances in organization are accompanied at intervals by the appearance of new types of property, which systematically, first secure legal recognition, and then in their possession, are made responsive to Social Control; *Third*, the exercise of Social Control tends to restrict the property rights of individuals and in so doing, to a definite extent, also restricts free competition in the interests of society; *Fourth*, the exercise of Social Control tends to clarify and simplify fundamental business relations between buyers and sellers in the interest of both ethical progress and economic security.

We can set no date when laws of Social Control first operated; probably in some remote age when a local chief or king issued mandates on how his followers should behave in their relations with the state and with each other. It is sufficient to indicate that during the past one hundred years the influence of Social Control has been exerted on most businesses in most fields of activity. The gradual recognition of certain kinds of business as being "affected with the public interest," and for this reason, being placed under special restrictions in their consumer relations is the most advanced manifestation of Social Control. We call these businesses public utilities and they are legally protected from competition. A possible expansion of this group into the fields of enterprise that now enjoy free competition (through further public interference with private price structures as has been already officially inferred) represents a serious implication.

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However, the types of social control legislation with which we are immediately concerned are numerous in our daily life. You are all familiar with our city and state health and fire regulations. A new federal food and drug bill has just been passed. Child labor laws and wage control are also of daily concern. Finally, we have the various anti-monopoly laws, state and federal, which, in turn, break down into direct anti-trust laws, anti-discrimination laws and special legislation abolishing wasteful cut-price competition, principally on trade-marked merchandise in free and open competition. In most of these laws, the purpose or implications are economic. In some, including the last two, they are also of social and ethical significance.

The Fair Trade Laws with which the druggists are most immediately concerned do not relate solely to druggists' problems and should not be regarded as applying to them only. Whenever it becomes necessary in the interest of society as a whole to crystallize in legislation some trend in which the complete freedom of action of the individual must be subordinated to the best interests of society, Social Control is exerted and individual freedom from that point on is restricted. Thus, not only are the laws of social control being constantly expanded, but also they are cumulative in their effect, and such laws once voted, usually remain.

Thus, we see in Premise No. 1 that the prevention by law of such practices as "loss leaders" and hurtful price competition is a part of the same trend as has already controlled fire menace and many public health risks.

Taking up Premise No. 2, we will high-point the historical development of certain types of property. If we start back with the earliest social organizations there was but one type of private property, tangible personal property, represented largely by weapons and ornaments, utensils and women. Later, when our ancestors discovered agriculture and settled down to work land, society gradually recognized ownership in individual fields and, as wealth grew and common lands vanished, real property came into the picture. Still later, the development of agriculture and industry brought in a type of intangible personal property, representing, first, special concessions or monopolies granted by the King, and then other instruments under which the government created a monopoly property right in the product of a man's mental genius. We know this family of property to-day as franchises, letters patent and copyrights.

Somewhere in this same period of growth there developed also property rights in contracts and in this field we find bonds, insurance and even bank deposits. Finally, as the Industrial Revolution created new problems in the relationship of buyer and seller; and as consumers, in many cases, were unknown to distant producers, we find that the reputation of a conscientious manufacturer came to be reflected in the demand for his particular identified product. And, thus, first the hall-mark and later the trade-mark received a tangible value in consumer acceptance apart from and above and beyond the value enjoyed by unidentified products that were recognized as inferior. As a result, the probability that satisfied customers would seek to purchase again the same goods that they knew had yielded satisfaction, came to be recognized as the company's "good-will." In spite of the fact it was as intangible as health, it is nevertheless held as of value in the law and many cases prove the courts will guard goodwill as property protectable against injury by unfair competitors.

Probably the final step in this recognition was recorded in December 1936 when the Supreme Court in its memorable decision on the Illinois and California Fair Trade Acts definitely separated in the eyes of the trade and the law, a physical commodity from the identifying trade-mark bearing package in which it went to market. It is the protection of this new type of property that is the primary purpose of our state Fair Trade Laws, for the abuse of a trade-mark by creating a price instability not consistent with the known quality of the product, has now, when so desired by the trade-mark owner, become unfair competition, and in all but a few states, is actionable at law.

Although the school of merchandising that rests on "store goodwill" rather than "trade-mark goodwill" denies the theory of separability of goods and label and the existence of any protectable property right in the manufacturer's trade-mark as related to resale price, the implications of a "loss leader" price policy cannot be defended, either on ethical or on social grounds, and, as will be shown later, it is economically wasteful rather than constructive. For the present, it is enough to say that most of the objectors to the trend of Fair Trade Legislation are tactically in the same position as were the operators of canals when the railroads came along. Times have not changed. Self interest never will be a defense against social progress.

To sum up Premise No. 2, a new type of property, goodwill, which includes a trade-mark owner's right to set the minimum price on all items offered for sale as carrying the benefit of his goodwill, has become established both in usage and in law, and will probably continue to survive. Fair Trade Laws aim to protect both consumers and producers in the social use of this new property.

As Premise No. 3, the exercise of Social Control Legislation tends to restrict the property rights of individuals and, to a definite extent, also restricts free competition in the interest of society. There are hundreds of state laws and municipal ordinances effecting this every day. The best illustration may be the traffic laws. A motorist passively yields his rights with the clear understanding that he too benefits through the same restriction applied to others. Fair Trade Laws likewise should regulate the flow without objectionable burden, and they should supervise our operation without interfering with the way any individual chooses to run his own machine so long as he does not violate the law.

The earliest social legislation in this field of free trade restriction aimed to prevent prices from being too high. There was a wealth of such laws in the days of Queen Elizabeth. Since then, however, the Machine Age, which introduced and multiplied the middlemen, created new distributor groups, all of which are gradually finding protection in the law. It is to guard these that social legislation now takes its new direction. Gradually a legal framework is being built up which now seeks to set bottom prices, the abuse of which may some day be regarded just as illegal and just as morally wrong as are prices that are too high.

Although the most effective social legislation in this field has to do with prices, it is not price-fixing. Personally, I feel that direct price-fixing legislation is both economically futile and socially wrong. It has never been successful for any long period and can be resorted to successfully, only as a war or emergency measure when its object is frankly to check price movements by legislation or proclamation. I have had a chance to see such price-fixing attempts both here and in France. It is just as bad as it is complicated, for it aims to arbitrarily peg prices sometimes in the face of basic trends. Further, it breeds bootlegging and political corruption. However, all the early English anti-monopoly statutes had a different legal motivation. They sought to forbid any planned artificial price advance, the purpose of which was to profit at the public expense, regardless of the exact price exacted.

Under our new philosophy, free competition is being restricted by laws which now put a legal bottom under certain kinds of prices. In these laws the state for the first time has extended its protective wing to cover middlemen, and so it binds competing merchants. It has been a long fight. The Sherman Anti-Trust Act was unable to touch it. The Clayton Act two decades later did not stop it. They properly forbid horizontal agreements. Neither of these important measures recognized the fact that a vertical price contract was not necessarily in restraint of trade and that predatory competition could be just as much an instrument of monopoly as conspiracy or combinations. Yet, in spite of specific Supreme Court cases against the legality of vertical price agreements, Justice Holmes showed that the purpose of resale price maintenance was not in itself unsocial, and that the practice could be carried out within the law. It was his minority opinion in the Dr. Miles case some twenty-five years ago that started General Electric and Westinghouse selling price-protected lamps on a consignment basis and inspired the recently revived "del credere" system of agency distribution.

However, the small retailer still had no legal protection from injury if neighboring dealers used "loss leaders." Clearly, the only answer lay in new laws that aimed directly at specific types of unfair competition involving irregular or unfair pricing. The first law in this field was the Robinson-Patman Act. Although the Law itself is wordy and a bit ambiguous, its social purpose is very clear. It aimed to forbid secret discrimination in prices as between middlemen. It did not seek to reach the consumer. Its value lies in its intent rather than its technical language. It makes both buyers and sellers think about the Golden Rule. They must ask themselves, "Is this trade fair?" for under the law, they must now do unto others equally and without prejudice. To-day we realize that though this law stops discriminatory discounts and secret rebates, it does not touch retail prices or predatory competition. Originally it was otherwise represented, even by some sponsors of the bill. But the trade was well aware of what it needed and even during these debates the required protection was already being written in several scattered state legislatures.

These legal restrictions on predatory price wars first found expression in the machinery of vertical price maintenance contracts affecting intrastate commerce. Valid contracts applied only to trade-marked goods in free and open competition and were optional with the trade-mark owners. The Tydings-Miller Bill served merely to save the old conspiracy penalties of the Federal Anti-Trust Laws from falling on those who sought to carry out across state lines the execution of contracts that were legal in both the states involved.

Since both the trade-mark and the optional features of these first state Fair Trade laws restricted their application, hurtful price cutting did not cease except in certain fields. Further machinery was obviously necessary for more complete protection. To aid the unprotected, a search was made for a new line of approach.

As a result of this difference between trade-marked and unbranded merchandise, we now find two distinct groups of dealer organizations working in the field of retail price control. The original Fair Trade group is focusing on the enactment of laws permitting resale price maintenance by formal contract. This is the field the druggist pioneered. They are now supported largely by trade-mark distributors, and these groups form the backbone of the revived American Fair Trade League.

The second group under the leadership of retail food distributors and dry goods outlets, has disregarded the contract minimum price theory and is seeking to eliminate "loss leaders" by broad "floor price" legislation. They ask no standard resale price but instead a determinable cost minimum plus a standard mark up, generally around 6%, although the recently suspended Minnesota Law carried a minimum mark up of 10%.

The purpose is definitely to prevent free competition involving sales at a loss regardless of the character of the merchandise and whether or not it is packaged or identified by a trade-mark.

Although the approach and economic function of these groups differs distinctly they are not in conflict and there is nothing in the second group which restricts the operation of the first, provided the makers of a price contract do not set their minimum resale price below the cost to the dealer, which, obviously, is not likely to occur. Our main purpose here is simply to show that the major issue of outlawing "loss leaders" competition is more than the druggists' personal problem. It echoes along the entire industrial front.

However, do not let these comments give an impression that the clash between the two schools here reviewed is theoretical only. Listen to what President Paul Willis told the Associated Grocery Manufacturers, "In discussing the dealing with Fair Trade Laws and 'loss leader' laws, the first step is to understand what we're talking about. Grocery manufacturers are in favor of legislation to establish floor prices below which retailers cannot sell; they are not in favor of fixing prices or establishing high margins such as obtain in the drug industry." This paragraph from "Tide" clearly defines the issue and we who would weigh the future cannot ignore it, because it represents the sincere effort of an unprotected group to extend the protection of Social Control legislation to their particular type of business.

America is not alone in this campaign to eliminate predatory price-cutting. We must not overlook the effective way in which some foreign countries respond to this same social trend and try to protect the economic security of their small merchants by frankly restricting free competition when it employs "loss leaders" in trade-marked goods. In England, for instance, the law allows the manufacturers of proprietary products to act as a group. Here, our outmoded Sherman Act would make such action a criminal conspiracy.

Yet, in spite of our cumbersome legislative efforts, we are nevertheless conforming to the same pattern by which definite and inevitable social trends aiming to restrict abusive trade practices usually appear. As a rule, they show first on the statute books of the states, and later are consolidated in Federal legislation backed up by Federal enforcement machinery. To-day forty-three states permit resale price maintenance agreements, twenty-four have anti-discrimination laws, and nineteen prohibit sales below cost. The Robinson-Patman Act and the Tydings-Miller Enabling Act are the first steps in the national recognition of the long fought battle for permissive resale price control.

Let us now examine the fourth premise, that the increasing employment of Social Control Legislation tended to clarify and simplify the mechanics of distribution. In this I would establish but one basic change. The elimination of "loss leaders" and introduction of price maintenance

contracts, tend to restore price-making and competition by the same elementary economic process that operated prior to the Industrial Revolution. Then, prices were made by the pressure of a direct consumer demand reacting on the producers themselves.

Taking first a review of the conditions of trade in the handicraft days that preceded the factory era, we can cover this in a few statements of historic facts.

(1) The producers of goods manufactured almost exclusively for the needs of their own community; (2) There were no middlemen, and producers generally sold to consumers direct; (3) Trade organizations, we call guilds, set standards of quality and workmanship affecting the products of their members. The trade associations exercised a definite influence in Social Control; (4) Individual producers then knew individual consumers, and sales were made by a process the economist called haggling; (5) As a result of these conditions the ultimate price at which goods passed to the consumer was frankly determined solely by the producer in his appraisal of the type of consumer demand that would give him the largest volume.

With the introduction of the factory, both social and economic conditions changed and when producers began to manufacture an amount of goods above and beyond what their immediate neighborhood could consume they were faced immediately with new problems in the sound solution of which lay their destiny and economic security. Before commenting on this new direction of our more complicated process of production and distribution, we will review first some of these new problems associated with distribution to-day. (a) Increasing consumer consciousness; (b) Waste in distribution; (c) Price and profit determination; (d) Private brands *vs.* trade-marked goods; (e) The deal; (f) The trade-in.

A. Increasing Consumer Consciousness.—The striking feature here is the change in the moral attitude and legal obligations of producers toward consumers. In the earliest trading law we know it was assumed that a seller was not obliged to disclose imperfections in his goods. This early school of thought was summed up in the Latin legal phrase "Caveat Emptor," meaning "let the buyer beware." Even the clerical philosophers who wrote on business problems through the Middle Ages did not change this tradition. It was not until the Eighteenth Century that society began to feel an increasing consciousness of any obligation to protect its members from unfair trade practice. Some of the economists of the last hundred years have built up philosophic arguments on relative consumer-producer importance. One writer, Bastiat, developed a theory directly subordinating the producers to the consumers, claiming that all success in trade was solely dependent on consumer treatment. There is little doubt that many people are exploiting the new consumer protection trend for ulterior motives. Some are private research organizations and some are government agencies. However, Social Control measures, such as the Food and Drug Act, the new honest-labeling campaign of the department stores, and public statements of some of our own leaders, mean that a new day in consumer treatment is here.

B. Waste in Distribution.—To-day it costs more to sell goods than to make them. The percentage of the consumer's dollar that represents profit in distribution is very small. However the cost of marketing sometimes is more than twice the actual production cost. A recent study of the Harvard Business School shows that the operating cost of department stores has risen to over 34%. Operating cost of drug stores probably runs about 29%, while the pine board and supermarket figures range from between five and fifteen cents on each dollar of sales. One reason for this is set forth by Hector Lazo in his new book, "Who Gets Your Food Dollar." There he says that higher consumer costs are largely the result of many wholesale houses and many retail establishments attempting to give services that are not really justified. He bluntly calls these unnecessary services economic waste.

Yet, the most indisputable and obvious source of waste lies in the unfair trade practices that have crept into large scale distribution since the Industrial Revolution. These do not include poor credit and bankruptcy losses, which also, in the final analysis, must be redistributed in the pricing of future goods, and consequently they too must be paid for by the ultimate consumer.

Two or three years ago at a meeting of the American Marketing Society our guest, Mr. Lincoln Filene, was asked to discuss unfair trade practices in distribution. I still have his memoranda and I am going to review here this list of the principal causes of complaint in business transactions to-day, breaking them down into four groups.

In Group One, the retailers' complaints, we find five principal causes: (a) The salesman

promising things a house cannot fulfil; (b) Selling direct to consumer or to professional men for consumers; (c) Selling to competitors when line is exclusive; (d) Substitution of inferior merchandise in filling order; (e) Sending unordered merchandise.

In Group Two we find the wholesaler accuses the manufacturer on three principal grounds: (a) Discriminatory prices to customers; (b) Unsatisfactory delivery; (c) Selling to competitors.

In Group Three where the manufacturer complains against the wholesaler, we list three major offenses: (a) Unreasonable cancellation and return of goods; (b) Unfair pushing of competitive or private brands; (c) Unreasonable demand for concessions.

In Group Four, representing the complaints of the manufacturer and wholesaler against the retailer, I am inclined to add a sixth as "f," which since the N.R.A. is now generally recognized as "unfair:" (a) Failure to confirm orders; (b) Demanding unfair concessions; (c) Taking discounts not earned; (d) Unfair cancellations of orders; (e) Unjust return of merchandise; (f) Advertising trade-marked lines at cut prices as "bait" for substituting off brands.

If we examine critically this collection of unfair trade practices we can reclassify them as representing one or another of three different types. One group of complaints arises from just plain fraud because somebody lied. The second small group may represent merely slovenliness in business relations. And the third type might be called a profit "putsch" where one party merely tried to "jump" somebody else and grab a profit solely because he thought he could get away with it and the other fellow would not kick.

Most will admit that all these charges are unfair trade practices. The Robinson-Patman Law makes many illegal, if employed as agreed upon retailer-wholesaler relationships. Only one comes directly under consumer price-maintenance restrictions. However, I feel that all can be eliminated by a more frank application of the Golden Rule and the teachings of Confucius.

C. Price and Profit Determination.—It is impossible to seriously discuss the implications of Fair Trade without considering the part that *price* plays in our social and economic set-up. The proper determination of prices determines also the type and amount of profit. It is sufficient to say that *price* under our capitalistic system is also an effective instrument of competition. In using this instrument, the aggressive competitor is, as a rule, not concerned over the fact that the competitive price he decides to set may carry no profit to him.

As we have seen, restrictions first sought to set a ceiling against monopoly prices that might oppress the public. Now they set a floor against "loss leader" pricing, which deprives many small competitive enterprises of the possibility of profit making. To-day, we are trying to absorb this last element of Social Control. Although, in theory, Social Control should cover all similar enterprises with no more discrimination than does the weather, we still find that due to irregularities, either in the phrasing of legislation or the methods of administration, or in the courage and ingenuity of its opponents, its application is not uniform.

Gradually law and order are coming out of the price-maintenance problem and the courts are recognizing a reasonable price as protectable property. In the Calvert Case the court confirmed the referee's statement "Honest retailers of the plaintiff's goods should be protected from unfair competition of the price cutter."

Most prices in highly competitive fields are determined more by the risk of substitution than by actual cost of production. The price zones that determine the quantity production schedules in the motor car business show clearly how this theory works.

Free competition, however, does bring out noticeable price differences for the same product, which vary according to the intensity of the competition. The price reactions brought out by a study of Fair Trade Law effects, illustrate this clearly. In general these elaborate studies have proved that in the big city hot-spots the minimum prices have been raised, while in the rural and the less competitive areas the prices have been lowered. The net result has been a narrowing of the maximum variations, although the country stores will normally continue to quote higher prices for the same product than their city brothers. The reason for all this lies in an economic law that applies to all fields of merchandising. It says that retail price levels are normally set by the individual distributor's experience in competition.

One general example would be useful here as indicating what is happening everywhere. Last spring a voluminous report was released representing a careful check-up on 3203 items sold in a chain of twelve stores operating under highly competitive conditions in New York City, which showed that 2657 items or 83% of the total were unchanged in price, 9% had been lowered

and only 8% were raised. In general, as subsequent surveys also prove, prices appear to have been about half way between the makers' list price and the extreme cut prices used by the "loss leader" salesmen.

Although prices are normally determined by competition, we must not overlook the fact that profit determination or the amount of mark-up received by the distributor has some influence on price and a lot of influence on the economic security of a retail enterprise. The average mark-up determines whether a distributor shows a loss or a profit. The high frequency of a small profit may show a larger net and also greater consumer goodwill than the theory of a big mark-up when the goods don't move. However, the high frequency of sales that show no profit in themselves can never earn any net for a distributor on those items, but instead, they cost just as much money to handle as if they did show a profit.

Fair Trade Legislation has reduced the pricing problem of the druggist. He is now vulnerable to local competition rather than long distance competition through "loss leader" advertising. If he sticks to his minimum prices and pushes his volume, he should soon find himself in the happy field of growing business and unexpected profits.

D. Private Brand.—In the earliest days of trade there were no nationally advertised trade-marked brands, since the home was the factory and handicraft industries manufactured only for the needs of their own community. Producers knew their customer, and the only trade-marks recognized were store brands or own brands or what in this competitive day we call a private brand.

The machine age and mass production have developed the national brand. It has been predicted that under price maintenance contracts the increased sale of private brands would steal a big share of the market formerly enjoyed by nationally advertised trade-marked lines.

If any producer of a trade-marked commodity so prices his product as to be out of line with other competing and substitutable products, he will either gain volume or lose volume in accordance with how the shopping public appraise his product price in relation to its competitors. In this purely economic process of price correction the best possible public safeguard against price abuse lies in the private brand.

On this basis the private brand enjoys a legitimate social function and under normal conditions the tendency will be that the development of private brands will help protect consumers by keeping the spread in substitutable merchandise small enough for effective price competition.

Suspensions of inferior quality in private brands are not always supported by the facts when trade-marked and private brand goods are offered on a deadly parallel basis. Whenever the clash between the two type brands represents also the clash between a reputable advocate of the "store goodwill school," and a national advertised item, then the private brand enjoys the handicap of a greater consumer acceptance, but, nevertheless, it still requires, to stimulate volume, the maximum price differential. I have frequently used examples of such a price comparison to illustrate the important function that the private brand plays in safeguarding the public against the risk of overpricing by the manufacturer of a nationally advertised trade-marked product.

A questionable feature enters the picture when, solely for the purpose of making more profit, distributors substitute long mark-up private brands for the advertised product that brought the customer into the store. We will not touch the matter of the ethics of such substitution. Sometimes it looks like fraud, at other times it merely expresses the voice of competition among the retailers on the front line of consumer service.

E. The Deal.—Although some criticize all deals whether they be Combination Deals or Free Deals as improper devices for stimulating sales, I feel, personally, that the theory of the Deal is not only a proper one, but also serves a useful economic purpose as a part of the trend toward simplifying the mechanics of competition.

Although the deal by its nature aims to capitalize the human appeal in "something for nothing," most people, including many ultimate consumers, know this is not the case. It is true that the primary appeal is a price appeal, and in a long run the profit margin in the manufacturers' prices must be sufficient to make his deals worth while. The effectiveness of any deal depends largely on the size of the jolt that can be given the retailer to jump his volume distribution.

My reason for approval, however, rests on other grounds. I see both an economical and a social justification. The first of these has to do with the fundamental rigidity of the price

structure involved in merchandising standardized packaged trade-marked goods that enjoy a national distribution. All the ingredients in any product are subject to cyclical changes in costs of materials. The cost of labor varies also. These variations cannot be reflected by changing the list prices. Hence, in periods of falling prices, manufacturers whose national policy forces them to maintain their recognized list price, still try to protect their trade against competition from lower priced private brands, by occasionally feeding to the trade attractive unit packages at abnormal but temporary market price levels. Sometimes they support their deals with competitive publicity to stimulate consumer demand. Such deals often benefit wholesalers, retailers and consumers without forcing manufacturers to juggle or even to revise Fair Trade Contracts.

My second approval involved a more fundamental fact. Since the changing process of competition is narrowing the price difference between competing and substitutable lines it is also accenting new distributor cultivation in the form of competitive deals. To me the deal represents a vehicle through which the *focus of price-making competition has passed back from the point of consumption to the sales manager's office of competing manufacturers*. In other words, the deal is merely another instrument through which we are again restoring the elementary conditions when producers competed with producers, and they themselves set the prices at which their commodities passed to the ultimate consumer.

F. The Trade-In.—Here is a great spongy morass in modern merchandising. It is pointed to as a threat to Fair Trade. However, the real threat lies not in the fact that such trades are made, but in the past indifference of some manufacturers concerned. There is, however, a secure bridge available if the manufacturers choose to draw certain types of contract. The real answer lies in practical economics, not ethics. It is a matter of how much price goes into the contract. In June of this year the General Electric led the way out with a new contract that specified the maximum allowance a dealer can grant on each new G. E. set. This ended the dealer's day of discretion. Since then other manufacturers have suggested that their distributors use the same idea. The idea is sound but not new. It is a system that long ago was found necessary in the price-protected automobile industry. Also, it is merely a little different version of your own drug-trade problem involving the use of premiums, coupons and certain types of hybrid deals. The solution lies in a clear and honest determination of a contract minimum price.

Let us now summarize the conditions of distribution to-day under the same five heads with which we viewed distribution prior to the Industrial Revolution.

1. The producers of goods now seldom manufacture for their own community alone, as mass producers they are now dependent on mass distribution.
2. Middlemen, such as wholesalers and retailers, are essential for producers to-day who seldom know personally their ultimate consumers.
3. Trade organizations are gaining both in strength and social responsibility and are again becoming factors in the exercise of Social Control.
4. The process of making prices is passing from the retailer back to the producer.
5. The final price determination will be conditioned on consumer acceptance, and the middlemen will theoretically become pipes or conduits through which the prices fixed in producer competition including deals are passed with the goods to the ultimate consumer.

The influence of Social Control will continue to be exerted and may further change the mechanics of distribution just as price-maintenance legislation and "loss leader" prohibitions have exerted their influence in the past two years.

We find four great epochs in the history of Social Control. The first and most primitive step involves the establishment of permanent government. It reflects the organization around the ruler of an administrative force, generally with no other objective than to perpetuate his power. Originally this may have been but a bodyguard, next a royal army; to-day a huge administrative bureaucracy.

The second epoch introduces a more formal relationship. Under this the ruler's subjects up to that time, completely submissive, now by collective effort exert their demands for recognition in the royal process of planning and spending. We might call this "the revolt of the taxpayers." In English history it is marked by the signing of the Magna Carta.

The third epoch was introduced when the economic liberties of a people were threatened by private monopolistic trusts and again the influence of the masses was reflected in restrictive legislation which this time aimed to clip the wings of the big corporations. The Sherman Act, state

anti-trust laws, the Interstate Commerce Commission and the creation of the Federal Trade Commission date this epoch.

The fourth period is marked by efforts to restrict the numerous abuses that had crept into the youthful system of large-scale distribution. Here is its dominant theme: Unless restrained, unscrupulous individual traders can injure society as well as their competitors.

The difference in these four epochs can be distilled into a few contrasting phrases. The first period aimed to protect the ruler against the people; the second to protect the people against the ruler; the third period aimed to protect the individual against the group; and now we are establishing, through Social Control, the protection of the group against the unscrupulous individual.

We must approach the solution of current problems with both knowledge and common sense. We must know the difference between sentiment and fact. The real difference between anarchy and an organized free society lies in the degree of individual restraint and in the kind of rules set up to insure mutual satisfaction in the economic relations of men. In a complex capitalistic economy like that in which we live such regulations usually serve as a legal framework, an invisible cage within which those who trade may freely work and play. These rules, sometimes coded, sometimes uncoded, are the formulated ritual of society as it gropes gradually toward a healthier community existence, where expanding mutual confidence brings a second reward in greater mutual satisfaction. All such rules must represent a compromise of individual freedom for community protection. They are the barometers of community morality, constantly changing to meet the altered conditions of a changing world clouded with economic storms. Thus, Social Control becomes the shining armor that protects society. Without it, there would be either chaos and confusion, or the helpless despair of economic slavery.

Another has phrased it thus: "The restraint of rules under which you work and play is the price you pay for personal opportunity, for love and content, for a home, for a certain mental and spiritual stability, for all the treasures of the past and the security of the future."

To conform to these moral and economic restraints means that you understand the basic differences between Liberty and License. To record this difference in flexible law, to guard it and to guide its growth toward a happier destiny, is the real objective of a true democracy.

There can be no real economic peace, no real moral progress until we prove by application that the philosophy of the Golden Rule is both sound and practical. Whether or not we are destined to enjoy the peace and prosperity that rightfully belong to a great people depends upon how eagerly we accept this challenge and how seriously we respond to all its obligations and restraints. Whether Fair Trade is to be remembered merely as a political catch-phrase or as a living creed depends on how well you twentieth century guilds inspire your members with the two-way purposes of Social Control. In this decision, you of the A. P. H. A. whose long traditions of unselfish service command respect, should rightly lead. I feel so, and I hope that in these observations you have found some fact or phrase that perhaps may serve as either sword or buckler in the great crusade for fundamental Truth and Justice that we call *Fair Trade*.