Tradition, Innovation, and Expertise: Writing the Steel Code for the National Recovery Administration

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In the winter of 1932-33, as the United States economy hit bottom in the Great Depression, the iron and steel industry was its poster child. Steel was in desperate circumstances. When the National Industrial Recovery Act (NIRA) became law in June 1933, steel was among the earliest to act, and it established a powerful code dominated by and operated in the interest of the steel firms. Its swiftness surprised both contemporaries and later analysts, for industries characterized by large, bureaucratic, and professionally managed firms were thought to have more stable patterns of competition with better control of price and production and stronger profit margins. Why then did steel join such highly competitive industries as clothing and textiles in a pell-mell rush to have its code accepted by the National Recovery Administration (NRA)?

The prevailing literature emphasizes a history in which large, powerful firms simultaneously took advantage of their smaller, weaker competitors, of an inexperienced, poorly run, and pro-business NRA, and of the marginal position of labor unions and their leaders to establish a hegemony in the codes, at least in the first year of the NIRA [Schlesinger, 1965, pp. 87-176; Hawley, 1966, pp. 19-146; Bellush, 1975; Himmelberg, 1976; Brand, 1988; Gordon, 1994, pp. 166-203]. But this interpretation explains only the early outcome and not the initial process of code writing and steel's primary place. Two close studies of the steel code astutely note its broad support among most steel firms regardless of size and point to a unique contract arrangement that organized and enforced the code authority [Brand, 1988, pp. 207-26; Moody, 1965]. But why was a binding arrangement necessary amidst such a harmony of firms, just how was cooperation achieved, and how did the contract itself come to be formulated and adopted?

The recently available papers of Hoyt A. Moore, chief counsel for the Steel Code Authority, offer a rare inside view of the code-making process and suggest a series of interrelated answers to the above questions. Moore's materials point out the important role of professional industry experts in code making and ratification, a hitherto little-noticed group in the NRA, whose

BUSINESS AND ECONOMIC HISTORY, Volume Twenty-five, no. 2, Winter 1996.
 ISSN 0849-6825.

history has focused largely on the roles of government, business, and (to a lesser extent) labor leaders. Harmony was achieved by appeals to tradition, including the familiar, well-respected leadership of large firms (principally, the United States Steel Corporation and the Bethlehem Steel Corporation), an emphasis on maintaining the independence of private enterprise in the face of apparently serious threats of government regulation and labor organization, and a guarantee of "fair competition" for all companies.

Achieving stability, maintaining autonomy, restoring profits, and engineering fairness, however, also compelled an important innovation: the new, highly centralized, and forceful Steel Code Authority headed by the board of directors of the American Iron and Steel Institute (AISI). Previously separate and sometimes fiercely competitive companies of all sizes thus voluntarily bound themselves under a powerful body, which in turn was largely created and directed by newly emerging experts led by Hoyt Moore and several close associates. In a single stroke Moore's brilliantly conceived contract offered autonomy and decentralization to defend traditional prerogatives of private enterprise and control over labor, while it simultaneously created an authoritative central mechanism that promised standardized, uniform trade practices with equal opportunity for restored profits for all.

The Impetus

The emergence of an influential expert like Moore was not an opportunity of his own making. Instead, the steel industry was responding to two urgent, external threats – the Great Depression and the apparent intrusion of the federal government and organized labor into the operation of steel enterprises. The devastating impact of the depression on the steel business was obvious to all observers. *Iron Age*, which had already described 1931 as a "calamitous" year for the industry, was lost for words to label an even worse performance in 1932. Annual use of capacity had fallen from 87% in 1929 to 19% by early 1933 and averaged 25% between 1931 and 1933. The drop in volume reduced output for 1932 to the smallest level in thirty years and fueled a fierce battle for dwindling sales in the face of high fixed costs [Wright, 1933; "Hearing," 1933]. A *New York Times* analyst described secret price cutting as "chaotic," and a contemporary expert judged that such practices had "demoralized the system" [Robbins, 1933; Daugherty, 1937, I, p. 541]. The resulting losses were unprecedented in the industry in the twentieth century. In 1932 alone the five biggest steel companies lost $100 million while the losses of the twenty largest firms totaled nearly $150 million ["1932's," 1933; "Losses," 1933].

As steel executives counted the costs of the nation's worst depression in the spring of 1933, an outpouring of legislation during the first one hundred days of Franklin D. Roosevelt's New Deal seemed to herald a political upheaval that would vastly magnify the role of the federal government in the American economy. Of particular concern to businessmen was the NIRA.

Under the NRA it promised to restore order and prosperity through a series of industry codes produced jointly by representatives of government, business, and labor and focused on two areas hitherto regarded as central to the control of private enterprise – labor relations and manufacturing and trade practices. In order to boost employment and purchasing power, the labor portions provided for the first time close government control in the setting of wages and hours, while Section 7(a) of the NIRA enticed the support of organized labor by guaranteeing the rights of workers to unionize and bargain collectively free of harassment. Trade provisions in the codes were to set standards for production and sale and to regulate other commercial matters. The implementation of the NIRA was virtually irresistible, given its billing as a great patriotic crusade in the midst of the country's worst crisis since World War I and a tremendous publicity campaign launched by NRA head General Hugh Johnson to combine themes of national loyalty, recovery, and fair play [Schlesinger, 1965, pp. 114-16; Hawley, 1966, pp. 53-55; Brand, 1988, p. 22].

The fortuitously timed general meeting of the AISI in New York City in May 1933 permitted the heads of the nation's largest steel firms to initiate the industry's response as the NIRA bill was making its way through Congress. On May 26, eighty-six top executives, including the heads of over fifty firms, gathered in anxious discussion about the pending law [Minutes, May 26, 1933].

Despite an assertion in the most recent analysis of the NIRA that steel was a proponent of the new law, industry leaders were definitely unenthusiastic and viewed the new program (in the words of the most detailed study of the steel code) "with caution" [Gordon, 1994, p. 172; Moody, 1965, p. 106; Fine, 1995, pp. 257-58]. Two months earlier, AISI president Robert Lamont had publicly criticized a bill for a government agency to help enforce industrial self-regulation because he worried about "what industry might lose by getting tied in with bureaucracy." Like Eugene Grace, president of the Bethlehem Steel Corporation, Ernest Weir, head of the National Steel Corporation, and many other industry leaders, Lamont deeply opposed government in business and wanted only voluntary self-control. As steel's spokesman he urged only a government council composed of leading businessmen as advocated in the plan of Secretary of Commerce Daniel Roper [Galambos, 1966, p. 190; Scholes and Leary, 1994, p. 174; Moffett, 1932, p. 270; "Industrial," 1933].

Thus the steel industry moved forward not because of its enthusiasm for the NIRA but because of defensive concerns about disorganized markets and growing government power. Fears about the loss of individual firms' traditional dominion over wages and hours and over worker organization dominated the first meeting. Labor issues were the major subject of W.A. Irvin, the president of the U.S. Steel Corporation (the nation's largest steel company) and the first speaker after AISI president Robert Lamont opened the meeting. Furthermore, labor concerns and the organization of the writing of a code continued to resurface in the ensuing discussion. Irvin and his colleagues were dubious about proposals that the recovery bill define the work week as five days totaling as little as thirty-two hours. The change would be a drastic

reduction for an industry that had only in the last decade abandoned a schedule organized around a twelve-hour day and a seven-day week. The suggestion that forty cents per hour should serve as a national standard minimum wage for common labor was equally shocking, and particularly challenged the much lower wages that prevailed in Southern mills ["Industrial," 1933; Daugherty, 1937, I, pp. 267-68; Moore, February 23, 1934, Box 54; "Statement," 1933, Box 67].

Among all labor issues, steel manufacturers were especially frightened about labor unions [Fine, 1995, pp. 257-58, 261]. Any advance in organized labor was seen as a serious threat to an industry in which only 2% of the work force were in independent unions. Even worse, Irvin was convinced that William Green, president of the American Federation of Labor, meant to organize the entire steel industry, which had so stubbornly fought unionization in a costly 1919 strike [Minutes, May 26, 1933]. So hysterical were industry leaders that they would later even refuse to attend a bargaining session with government officials when Green was invited to participate. W.J. Filbert, vice-chairman of U.S. Steel, aptly summarized the assumptions and the approach of steel leaders when he urged that each company have "a plan of some kind to carry out the provisions of collective bargaining with the employees" as well as for dealing with wages and hours beyond any minimum standards set in the code [Minutes, May 26, 1933; Newspaper clippings, August 16, 1933].

So powerful were fears about the defense of traditional, individual company control of labor issues that the second major issue, the organization of manufacturing and trade practices, received scant attention. The slight was even more remarkable because Eugene Grace, as head of the industry's second largest firm, Bethlehem Steel, had followed Irvin at the meeting's beginning to present commercial regulation as "an opportunity" to organize the industry in order "to help ourselves and under the guidance and support of the Federal Government, to conduct our business commercial-wise on a fair and equitable basis." The potential of government support for control of price and production was virtually ignored until near the meeting's end, when F.F. Read of George W. Prentiss & Company chided his fellow executives that "so much attention was being paid to the labor clause, and so little attention to the other provisions of the bill which would permit regulation of production and consumption and making a profit." He indicated that he favored "centralized control" to achieve those objectives [Minutes, May 26, 1933].

The provisions of the NIRA and the discussion at the steel association meeting clearly identified the two issues that would become the centerpieces of the steel code as it was written and adopted in the summer of 1933. Nevertheless, much remained to be done. Someone had to reduce the posturing and the vaguely phrased desires of several dozen steel leaders to a concrete, workable document. Somehow the code would have to bridge the conflict between the defensive, decentralized approach to the labor issue and the centralized, more aggressive tack taken by those concerned with the management of trade. The unresolved split became more obvious when the

meeting endorsed a centrally administered code authority while it also called for a group of confederated committees organized around traditional product lines and appointed from top executives running the firms or corporate divisions involved [Minutes, May 26, 1933]. Participants simply voted that the executive committee of the AISI make arrangements to meet the requirements of the recovery bill when enacted and then report back. If steel executives knew where they wanted to go, there was scant indication that they knew how to get there.

Hoyt Moore and Code Writing

Code writing required a comprehensive approach, compelled a revamping of the central body representing the industry, and necessitated the rise of experts to a new status in the steel business. Of course there were and had been hundreds of experts in steel for decades. For the most part, however, such people were salaried managers and technical men with very specialized knowledge who administered narrowly proscribed areas in the middle and lower ranks. There were also a handful of top managers like Eugene Grace and W.A. Irvin who, along with owner-operators like Tom Girdler of Republic Steel Corporation and Ernest Weir of National Steel Corporation, made key strategic decisions and who enjoyed an industry-wide view. But such men lacked the requisite legal expertise and experience in business-government relations, and in any event each one was hampered by close identification with a single firm.

What was needed were people who combined knowledge of very special kinds and an independent authority with a comprehensive view and an appreciation for the power conferred by their mastery and position. Also helpful would be the negotiating skills essential for dealing with government administrators and bureaucrats and with dozens of fiercely autonomous businessmen from companies of vastly differing sizes. Thirty years ago, the historian of the trade association in the cotton textile industry highlighted the work of "professional middlemen" from a strong industry organization in making policy and in mediating between representatives of government and business, but there has been little effort to identify similar figures since then [Galambos, 1966, p. 200].

In the steel case Hoyt A. Moore, who became general counsel of the AISI and the Steel Code Authority, was precisely that kind of leading expert. However, though Moore's new, powerful status owed much to the opportunity provided by the depression and the passage of the NIRA, it also emerged because the AISI was a hollow shell, a sharp contrast to the situation in cotton textiles. Established in 1908, the AISI had played a central role in its early years by hosting the famous Gary dinners, where top steel men openly discussed agreements about stabilizing price and production in order to increase profits. After federal legislation, close scrutiny by government, and a major antitrust prosecution stopped such discussions, the organization

stagnated. By the late 1920s it played a limited, rather perfunctory role, collecting and publishing data on basic industry statistics and membership. The AISI sustained its predominant social function by hosting semiannual dinners that concluded a day-long gathering devoted to the presentation of papers. Recordkeeping was incomplete, the board of directors stopped meeting during the summer, and the annual business meeting was conducted by proxy. Though the society claimed over sixteen hundred members, it enrolled only ninety-four companies, scarcely one-fourth of the firms in the industry. As Hoyt Moore aptly put it, "The American Iron and Steel Institute is not a trade association in any sense, in so far as we usually understand the term" [National, 1934, pp. 247, 85, 248-49; Barnett, 1994].

An attempt in 1932 to revitalize the association was stillborn. The board of directors created an executive committee and hired former steel manufacturer Robert P. Lamont as a full-time president to replace Charles Schwab, the semi-retired creator of Bethlehem Steel who had presided in a largely ceremonial capacity. Lamont resigned as secretary of commerce in the Hoover administration to join the AISI amidst considerable ballyhoo about fresh programs for public relations, product development, and promotion of new markets. The reform was ill-timed in the face of the depression, and Lamont and new AISI secretary George Charls (another former industry executive) produced no plans in the ensuing year [Newspaper clippings, September 14 and November 8, 1933].

In the spring of 1933 the organization was simply unprepared to play a central role in writing a code of conduct vital to the steel industry. Lamont's limited role at the May 26 meeting, where he served merely to introduce the topic and the speakers and to moderate discussion, demonstrated that he was more a spokesman than an administrator and policy maker [Minutes, May 26, 1933]. Although the inexperienced executive committee was composed of several industry heads, including Irvin and Grace, its members scattered to their various headquarters and did nothing for two weeks until Hoyt Moore and his associates arrived on the scene.

In such a vacuum Moore's emergence must have seemed nearly inevitable. The steel industry and the AISI certainly required legal expertise in writing a code for the federal government, but it needed much more than a lawyer. Its expert had to be experienced in government negotiation and regulation, be knowledgeable about the steel business, and enjoy the confidence of industry owners and managers in order to provide leadership in making policy.

Moore satisfied all of these essentials. Born into an upper-middle-class family in a small Maine town in 1870, he had graduated from Harvard Law School in 1904 and immediately joined the prominent corporate law firm of Cravath, DeGersdorff, Swaine and Wood (as it was titled in 1933), which would subsequently be renamed Cravath, Swaine and Moore. He became a partner in 1913, and by 1933 he was a veteran in business-government relations. For nearly three decades he had labored as a committed supporter of

private enterprise and of big firms in appearances before the Federal Trade Commission, in negotiations with the Department of Justice, and in filing briefs with the United States Supreme Court. He had a well-earned reputation as a workaholic and a powerful advocate who depended on precise, detailed mastery of data and corporate law for his considerable successes [Swaine, 1946-48, I, p. 193, and II, pp. 142-44, 159, 410-11, 557].

Moore was particularly attractive because of his long association with the steel industry, serving for more than two decades as chief counsel for the Bethlehem Steel Corporation. The Cravath firm had been general counsel for Bethlehem Steel since 1903, and Moore had begun working on the account in 1905 before taking charge of it in 1911. Bethlehem soon became Moore's major client, and a Cravath partner aptly observed that "no lawyer ever unreservedly gave more of himself to a client than Hoyt Moore has given to Bethlehem" [Swaine, 1946-48, II, pp. 144, 71, 73, 411-14]. Dedication, mastery, and success had earned the complete trust and confidence of Bethlehem founder Charles Schwab and of his successor, Eugene Grace, who as president had worked closely with Moore for twenty years.

Bethlehem Steel in turn sponsored Moore's emergence as a key industry expert and leader during the code writing in 1933. After Judge Elbert Gary's death in 1927 ended his control of U.S. Steel, Schwab had become the grand old man and titular head of the steel industry, serving first as president and then as chairman of the board of the AISI. As the steel's senior active top official (Myron Taylor and W. A. Irvin had become chairman of the board and president respectively of U.S. Steel in 1932), Eugene Grace wielded considerable authority and respect [Hessen, 1975; Scholes and Leary, 1994]. The two Bethlehem men easily promoted the well-known and respected Moore's appointment as unofficial chief counsel for the AISI in charge of writing the steel code for the NRA.

Building on his ability, expertise, and impressive backing, Moore quickly consolidated and extended his power and influence by creating a network of closely associated experts in key positions. The Cravath firm provided the bulk of his roster. Eventually no less than eight Cravath partners and associates worked on the AISI account, headed by Moore's assistant, Chester McLain, who also brought impressive credentials in law, business, and government. After graduating from Harvard Law School in 1917 he had worked as counsel in the Treasury Department, assistant professor at Harvard Law School, and as European counsel (in the Paris office) after becoming a partner at Cravath in 1926 who specialized in corporate law [Swaine, 1946-48, II, pp. 358, 556; "Chester," 42, p. 333].

To extend his network into U.S. Steel and Bethlehem Steel, the industry's two largest and most influential companies, Moore depended on links to alumni of the Cravath firm. Robert E. McMath had been an associate at Cravath before joining Bethlehem in 1918, first as secretary and later as vice-president. Kenneth B. Halstead, an associate at Cravath between 1906 and 1910, had become general solicitor of U.S. Steel in 1923 [Swaine, 1946-48, II,

pp. ix, xii, 200]. As powerful senior executives and legal experts to whom considerable authority was delegated, they served as consultants who helped validate, for the industry and for their companies, Moore's work in creating the code.

Finally, Moore's team contained one key steel expert who was not a lawyer. Walter S. Tower had earned a doctorate in economics from the University of Pennsylvania in 1906 before embarking on a career that included teaching positions at the Wharton School and the University of Chicago, trade expert for the U.S. Shipping Board during World War I, and commercial attache to the U.S. embassy in London. After joining Bethlehem Steel in 1924, Tower worked for nine years as a middle-level manager in charge of commercial research. Just as in Moore's case, Schwab and Grace sponsored Tower's appointment as informal chief administrator in early June 1933. However, the fact that Tower's son was married to Moore's daughter suggests that Tower's selection owed as much to the Cravath lawyer as it did to the senior Bethlehem people. Throughout the summer of 1933, Moore closely and frequently consulted with Tower, who provided critical industry data and expert knowledge, and who formally became AISI's head as executive secretary with an annual salary of $36,000 after the code became official [Seely, 1994; Executive Committee, September 13, 1933].

As Moore's record and network building suggest, his role far exceeded the simple transformation of top managers' and owners' ideas into legal language. Indeed his work as leader, interpreter, and policy maker was so critical that very little happened until he and Tower joined the AISI between June 9 and June 11, 1933. As already noted, the executive committee remained inactive following the May 26 meeting until some of its members joined Moore when he led a series of intense conferences between June 11 and June 14 with senior officials at Bethlehem and U.S. Steel.

From this point onward, Moore and (to a lesser extent) Tower were the only men who participated both in essential strategic planning sessions and in the technical meetings held to consolidate and organize ideas and to draft the code. Moore's work diary scarcely mentions the executive committee, which played a limited, periodic role in a continuing round of conferences that produced a basic document by the end of June. Eugene Grace and W.A. Irvin, who were by far the most frequently mentioned chief executives, appeared at less than one-half of the meetings. The technical and writing conferences generally included Chester McLain from Cravath, Kenneth Halstead from U.S. Steel, R.E. McMath and Joseph Larkin from Bethlehem Steel, and Walter Tower ["Record," 1933; Executive Committee, 1933]. Moore clearly occupied the central role in the process of gathering data and formulating an approach.

His drafting of the code itself, which began only four days after he took on the AISI account, not only gave concrete form to others' ideas; Moore's work also included his interpretation of what ought to be done and set the agenda for all ensuing discussions. As might be expected, the meticulously worded document carefully defined terms and conditions, including first and

foremost membership in the industry. Those eligible to join the "Code of Fair Competition for the Iron and Steel Industry" were producers of "pig iron, iron or steel ingots,...rolled or drawn iron or steel products...and standard Tee rails of more than 60 pounds per yard, angle bars and rail joints, or any such products" [Code, Art. I, Sec. 3]. The definition comprehensively included makers of steel in its basic shapes while excluding firms that only fabricated products from the industry's output.

Moore carefully arranged Article IV, the longest portion of the code, to meet the fears and defensive concerns of manufacturers so clearly expressed in the May 26 meeting. Despite NIRA provisions that attempted to establish national labor standards, the steel code maximized decentralization to preserve the autonomy of individual firms. The nation was divided into twenty-one labor districts with minimum wages for common labor ranging from twenty-five and twenty-seven cents per hour in the Southern districts to forty cents in some northern districts. Instead of a forty-hour week, member firms were required only to average forty hours per week over a six-month period. Although the language of Section 7(a) was restated to assert workers' rights to organize and bargain collectively, additional subsections provided for the maintenance of the open shop and promoted company unions (which the industry called employee representation plans) in order to discourage independent organized labor [Code, Art. IV, and Scheds. C, D; "Code," 1933].

The regulation of trade, the industry's second major concern, was the code's other central issue. In this case Moore moved artfully in the opposite direction to mandate standard and uniform practices that would stabilize price and production and restore profit margins by eliminating price cutting and secret deals. The key to re-establishing order was to reduce discretion by requiring all firms to sell by means of a delivered price that had two essential components – base prices and all-rail transportation costs. Centers of production were named as basing points and every manufacturer had to list prices publicly for each of his products at the nearest basing point. A ten-day period for implementation precluded rapid changes, while open pricing promoted the homogenization of quotations. Transportation costs were to be the all-rail published prices (as regulated by the Interstate Commerce Commission) from the basing point and not from the place of production, which standardized freight costs. The discretion of individual firms was further narrowed by forbidding quantity discounts and by a list of uniform extras and deductions for special orders [Code, Arts. V, VII, IX, X, and Scheds. E, F, G]. In short, once a company publicly set a price the code intended to make it binding.

In designing the code, Moore's interpretations settled a number of questions and shaped policy. Formal power to administer the document was placed in a central body and would not be left to a federated network of individual product committees operated by industry members. Authority was vested in the board of directors of the American Iron and Steel Institute, but not in the AISI itself, because of charter limitations and Moore's probable desire to further concentrate power. As he later wrote, "We gave a great deal

of thought to the question of how the Board should operate" [Moore, March 29, 1934]. Published prices were to be filed with the board, which, as the Steel Code Authority, was empowered to enforce the entire system of sales and delivery by assessing "liquidated damages" of $10 per ton. Since the composite price per ton of steel was $39.14 in 1932, such fines had real bite and far exceeded the misdemeanor punishments provided for violators in the NIRA itself. Furthermore, the board's administrative power was virtually final, for the amending process was deliberately made very difficult [Code, Art. X, Sec. 2, and Art. XII, Sec. 1; "1932s," 1933].

With a natural preference for law and order, Moore bound the industry in a series of simply administered rules for the regulation of trade. The entire process of commercial transaction was narrowed to three elements – base prices, charges for extras, and transportation costs. The lawyer subsequently explained to Walter Tower that he thought that "it was understood by everyone that in determining the price at which any product might be sold, only one of these factors could be changed, that is the base price, and that factor could only be increased" [Moore, December 30, 1933].

However, Moore was no mere technical mechanic, for he readily understood the need for flexibility. His major specific contribution to the substance of the code ironically threatened to complicate matters when he argued persuasively on behalf of discounts to jobbers. In this case he perceptively judged that the attractions of simplified practice and one-price policy were a siren song. Preferential status and special discounts to jobbers, who acted as the middlemen between the manufacturers and the retail dealers or final customers, were long-standing customs fundamental to the trade. He was quite fearful of damage to the marketing process and of potential attacks on the code by outraged jobbers themselves [National, 1934, p. 226]. At the same time he skillfully drew on widespread popular and political concerns about discrimination against small firms in the code-making process. Moore provided for jobber discounts in the steel code but used Hugh Johnson's strictures about protecting small enterprise to justify the denial of quantity discounts to jobbers, which helped maintain the principle of simplified pricing [Moore, January 4, 1934].

As the previous example suggests, Moore occasionally and reluctantly employed government power, but he followed the clear wishes of the industry as well as his own basic instincts to minimize the federal government's part in the code's administration. Basing points for all products were specifically listed in the code so that the intricate amending process could protect them against popular and political pressure. Moore wrote one correspondent that "I planned the Code in that way because I was fearful that, if it were made easy to amend the basing point schedule, there would be pressure from all sides, particularly from Washington which as you know desires to have all basing points cut out and to have the products sold either f.o.b. mill or f.o.b. destination" [Moore, September 7, 1933]. Moore also made sure that the Steel

Code Authority had no price-setting power in order to avoid the antitrust charges that he clearly anticipated [Moore, July 29, 1933].

Moore's single greatest innovation for the steel code was the use of a private contract, which simultaneously bound members together by force of law, minimized the role of the federal government, and exalted his own power as chief counsel for the Steel Code Authority who was inevitably and frequently consulted about the interpretation and enforcement of the contract. Article XI stipulated that the document was "a binding contract by and among the members of the code." That provision, which was apparently unique among all the NRA codes, gave Moore extraordinary flexibility. On the one hand he could craft a document that centralized authority over code members and enforced tightly regulated trade practices, including the surrender of copies of individual sales contracts and the payment of substantial fines to the Steel Code Authority. As Moore put it, "All parties are to be bound by the contract so long as any of them are bound by it" [Code, Art. XI, Sec. 3; Moore, August 8, 1933]. On the other hand, the contract allowed Moore to follow a decentralized approach to labor relations, which compelled the federal government to pursue individual firms for any transgressions and which insulated the code authority from any requirements to participate in or enforce matters not stipulated in the document. Moore realized that he had created an instrument that centralized power over the steel industry as requested and approved by the federal government. As he planned it, the use of a contract prevented the government from using that authority to further extend its own power over the steel industry and private enterprise [Moore, June 30, 1934].

The device was even designed to bind the president of the United States, whose signature would directly authorize the code. As Moore publicly argued after adoption, the NIRA allowed the president to "cancel or modify any order, approval, license, rule or regulation issued under Title I of said Act. Now he issued an order approving this code. He may rescind that. He may modify that order but that does not mean that he can modify the code." In short, the president could "cancel or modify his order of approval but that does not mean that he can let that approval stand and modify the instrument which he has approved" [National, 1934, pp. 121-22].

While obviously acknowledging the president's final authority, Moore was betting that by limiting the chief executive to either accepting or rejecting the code, he would be prevented from tampering with it or from interfering in steel enterprise. As long as the industry's and the code authority's behavior remained reasonably moderate, FDR was unlikely to take the drastic step of canceling the code with a public admission of failure. When asked if the courts might not broadly construe the NIRA as an emergency act, Moore blandly replied that "this is a contract, and you would not think that the law would give the power to the President to modify contracts as between citizens" [National, 1934, p. 122]. Moore's theory was never tested, but given the U.S. Supreme Court's notoriously conservative, strict constructionist approach at this time, his argument was at the very least a reasonable one.

Hoyt Moore's subsequent boast that "I planned the code in that way" accurately summarized the process [Moore, September 7, 1933]. As an expert he was employed to reduce the ideas of steel industry executives to concrete legal form in order to meet the requirements of the NIRA. The urgency of the crisis in the late spring of 1933 combined with his experience, comprehensive view, and special knowledge to expand rapidly his informal authority. As a consultant, an adviser, and even a policy maker, he crafted a remarkably powerful yet flexible document on the steel industry's behalf.

Negotiation and Adoption

Negotiations for the final form and adoption of the steel code were completed in July and August 1933. They included discussion and formal acceptance by members of the steel industry, by representatives of the NRA, and ultimately by President Franklin Roosevelt himself. Moore's drafting of the document, his evolving network of experts, his expertise, and his mastery of the details of the contract and the requirements of the National Industrial Recovery Act supplied authority and momentum that made him a key player in the process.

The first evidence of his impact was the overwhelming assent to the code given by steel companies at a ratification meeting on July 13. Of the 118 firms eligible and casting ballots, 112 voted in favor (though 17 assented with reservations). Supporters of the code comprised the core of the industry, accounting for over 93% of ingot capacity and 84% of industry sales in 1932 [Minutes, July 13, 1933]. Although the AISI and the process of code writing were dominated by large firms, the ratification vote clearly indicated the support of dozens of smaller enterprises and suggested a surprising and unusual cohesiveness.

Moore's document helped produce that remarkable support among widely varying companies because of its appeal to traditional techniques and principles. The basing point system had been an industry staple since the 1880s, and most of the multiple basing points adopted in the 1933 code were virtually identical with those used in the late 1920s [Moore, August 9, 1933; "Requirement," 1933; Daugherty, 1937, I, pp. 533-41]. Sale at a delivered price, extra charges for special features, virulent opposition to unions, reliance on private contract, and an entrenched anti-government attitude had all been staples in the industry for decades. Although the centralization of authority and the binding rules of the steel code were new and somewhat intimidating to fiercely independent owners, the code's reliance on familiar practices and beliefs eased fears and promoted acceptance.

Moore also generated support by effective if obvious appeals to the language of "fair competition" among firms of differing sizes, which appeared in all codes and which was heavily used by business interests in code making. The phrase politely symbolized trade regulations to reduce price cutting and restore profit margins for all steel firms. Moore described the steel contract as

"a code that would enable the members of the code to compete on a substantially equal footing for any piece of business anywhere in the country" [National, 1934, p. 72]. Such stability and preservation of opportunity had special appeal to tiny enterprises whose reserves were nearly exhausted after four years of depression.

In the six weeks between the industry's approval of the document and FDR's signature and official implementation of the code, essential administrative needs inevitably compelled Moore and (to a lesser extent) Walter Tower to play central roles as the reigning experts. Until formal adoption of the steel code, their positions as administrators remained unofficial but were no less important for that. Moore alone billed the AISI for eighty-six days of work between his entry on June 11 and President Roosevelt's assent on August 19, 1933 ["Record," 1933]. Tower shuttled between his job at Bethlehem and his place as adviser at AISI headquarters in New York City where he was constantly consulted by Moore.

To the Cravath partner fell the tedious and sometimes tricky task of rounding up written assents for the code from steel company heads. Some had voted with reservations; others had second thoughts after returning home; and still many more firms had not sent representatives to the ratification meeting. Such enterprises frequently responded to the AISI's request for written approval with letters giving only qualified agreement in order to protect a particular contract or a special labor arrangement. In these cases Moore and Chester McLain used the code's contract arrangement to compel complete acceptance. To such doubters they patiently explained that a contract's provisions uniformly bound all parties, and none could unilaterally amend the contract. Secretary George Charls then sent two copies of a standard form of simple assent without reservation. Moore's arrangement left industry members with little choice, for in effect refusal to join rejected the New Deal and the national crusade to restore the American economy [McLain, 1933]. By the summer's end 184 had assented, and eventually 250 of the estimated 350 eligible firms signed the agreement [Tower, 1934; National, 1934, pp. 106-7].

Because of the lawyers' legal expertise and detailed knowledge of the document, they immediately supplanted Lamont and Charls in the interpretation of all matters related to the code. Indeed, Moore and McLain answered all correspondence related to the code in letters mailed over the president's and secretary's signatures. The lawyers and Tower conferred with confused or worried owners, negotiated temporary settlements or put off those with real or imagined grievances, defended the choice of basing points, and counseled parties caught in overlapping codes. In effect the AISI's two full-time officers had become ciphers managed by the newly powerful experts. As one applicant wrote Moore, "We turn to you as the only authoritative source of advice" [Moore, August 15, 1933].

Because of Hoyt Moore's mastery of the code and his expert knowledge of the NIRA, he also served as the steel industry's central link in negotiations with the federal government during the summer of 1933. On July 1 he joined

Eugene Grace, W.A. Irvin, Robert Lamont, and three additional company presidents for the first meeting with government officials to discuss the proposed document, a conference that included Bernard Baruch, Hugh Johnson, head of the NRA, Kenneth Simpson, the deputy administrator at the NRA charged with oversight of the steel business, and John Reynders, a former steel man now employed by the NRA as liaison with the industry. Although the steel company heads then returned to their firms, Moore maintained frequent contacts with NRA representatives by letters, telephone calls, and personal conferences in order to explain or defend provisions, clarify uncertainty, test ideas, and discuss specific code language ["Record," 1933].

Like Eugene Grace and other industry leaders, Moore was adamant in defending against potential federal government intrusion into the operation of the steel industry. Shortly after the implementation of the code, he wrote Grace that "as we go along under the Steel Code, there is more and more indication of government getting into business." He was especially worried about the appeals of dissident steel manufacturers to the NRA and thundered that "it is the height of folly for members of the Code to make any inquiries of the administration regarding the Code, or indeed, to make any complaint unless they first exhaust every effort to have their matters dealt with satisfactorily by the Board of Directors." He even proposed letters and telephone calls to code members to discourage any direct contact with the NRA [Moore, September 8, 1933].

The lawyer's participation in the public defense of the proposed code was indirect but significant. Based on questions submitted in advance by Donald Richberg, general counsel of the NRA, Moore spent four days helping draft Robert Lamont's speech at a public hearing on the proposed steel code held by the NRA on July 31 ["Record," 1933; Moore, July 27, 1933]. When Secretary of Labor Frances Perkins used the hearing to offer a number of criticisms and suggestions about the code's labor provisions, Moore organized and consolidated responses from Bethlehem and other top firms into a memorandum that articulated the industry's steadfast defense on all major points. For political purposes the document conceded a few unimportant issues like prohibiting the seven-day week (which the Bethlehem Company thought had "already disappeared") and dropping the qualification that child labor was a violation only if done "knowingly." Though the memorandum was not sent, the arguments were used to good effect in final negotiations with the NRA and the Roosevelt administration a few days later [Moore, August 5 and 12, 1933; Daugherty, 1937, I, pp. 267-69].

Finally, Moore's greatest contribution during the period of negotiation and adoption was the steel code itself. The powerful, binding, and meticulously written document effectively conferred just about every potential advantage on the steel business while it resisted public and government attacks. D.S. McDannell, the chairman of the contracting committee for the Farm Equipment Institute, later commented enviously and sarcastically that "the

Steel Code is a very nice piece of work. In fact I personally think it a masterpiece" [Moore, January 8, 1934].

Though criticisms were made frequently and by powerful groups and individuals, they effected only minor changes in the proposed steel code. Attacks on the basing point system by the General Motors and Chrysler corporations were easily turned aside as self-serving efforts on behalf of Detroit and as defeating a system of equal bidding opportunities for all code members. Within the NRA itself a sense of urgency and a lack of expertise in the face of the powerfully written and well-informed document muted any attempt to modify the basing point system [Lamont, 1933; Moody, 1965, pp. 117-18].

Nor was the Roosevelt administration any more effective. Secretary Perkins's pleas for a simple forty-hour week and for a standard national wage of more than forty cents per hour for all common labor went unheeded, despite the data and best efforts of NRA labor experts in a final four-day round of negotiations in mid-August. Furthermore, two dramatic personal appeals by Franklin D. Roosevelt to the industry's leaders caught the attention of contemporaries and some later historians but had little impact. The president's personal conversation with Myron Taylor on July 11 did not persuade the industry to raise wages further or to shorten hours. And his joint meeting with Taylor and Charles Schwab on August 16 did not break the impasse in the last round of discussions, which dragged on for two more days [Daugherty, 1937, I, pp. 267-69; Schlesinger, 1965, pp. 116-17; Moody, 1965, pp. 115, 127; Ohl, 1985, pp. 121-22].

The steel industry made only those insignificant concessions that it already anticipated or that it had to make. To offset the mandated increase of basic labor rates, wages and salaries for those above the minimum were increased 15%. Moore withdrew the provision that the NRA require all industry members to join the code, for the government agency flatly refused to make individual firms party to a private contract that included heavy penalties for violations. He also successfully urged the industry to accept non-voting representatives from the NRA at code authority meetings, a popular but meaningless concession since the code was predicated on the defeat of secrecy with published prices and the open regulation of trade. Significantly, however, spokesmen for organized labor were excluded as potential representatives. The code was now formally amended to forbid the seven-day week and child labor, and steel operators accepted a maximum work week of forty-eight hours and six days. However, a flat forty-hour week would not become effective until the industry reached 60% capacity [Daugherty, 1937, I, pp. 263, 269; National, 1934, p. 150; Special, 1933; Moffett, August 24, 1933].

The most publicly celebrated concession was engineered by Moore to win popular support while it probably strengthened steel's resistance to government regulation. In a clearly planned maneuver at the public hearing on July 31, the industry voluntarily withdrew the code's statement of labor principles that negated workers' rights of organization and collective bargaining as promised by Section 7(a). Nevertheless, the simultaneous

reaffirmation of anti-union beliefs and the rapid proliferation of company unions vividly indicated that nothing had changed [Moffett, August 3, 1933; Daugherty, 1937, I, p. 264; Moody, 1965, pp. 121-22]. In fact, the amendment now allowed the code to avoid any responsibility for the enforcement of Section 7(a). This expansion of the defensive, decentralized approach meant that the NRA would have to proceed on a tedious case-by-case basis if it ever wished to act.

In the end, then, "the battle went to the strong," as one contemporary expert observed [Daugherty, 1937, I, p. 269]. Faced with steel's well-prepared code and Moore's able defense, the administration's urgent desire to enroll industries under the NIRA, particularly in major areas like iron and steel, outweighed the document's obvious self-interest. On August 19, 1933, President Franklin Roosevelt signed the iron and steel code, which became effective ten days later.

So What?

Hoyt Moore had swiftly and effectively drafted a powerful code for the organization of the iron and steel industry, which would endure for the remaining twenty-one months of the NIRA with little serious change despite two subsequent reviews and renewals. The corporate lawyer had garnered enthusiastic support from steel manufacturers by melding traditional industry beliefs in private enterprise and private contract with the emergence of an effective central authority to administer the steel business. Contrary to existing scholarship, however, the code was not made strong in order to stave off unfriendly government controls, for the contract itself kept the NRA at arm's length [Brand, 1988, pp. 224-25]. As we have seen, the steel code was intended to employ its might to stabilize trade and to assure fair competition among all members, which gave the authority such broad support.

The adoption of the code also formally signified the arrival of Moore, Walter Tower, and their team of experts as leaders and administrators of the iron and steel industry. On August 29 at the first official meeting of the board of directors of the AISI as the code authority, Moore directed and dominated the day-long session. He drafted the agenda, oversaw the discussion, and submitted more than a dozen prepared resolutions on such matters as creating major committees, funding and staffing the code authority, regulating jobbers, and monitoring contracts, all of which passed easily [Broun, 1933]. Two days later Robert Lamont submitted his resignation as president of the AISI and secretary George Charls left in two months. The Cravath firm became chief counsel for the Steel Code Authority with Moore in charge of the account, supervising Chester McLain and several associates. On September 20 Walter Tower was formally confirmed as executive secretary, and within a few months he hired L.V. Collings, an associate at Cravath, to replace the departed Charls.

The episode of code writing and adoption also has larger significance beyond the changes in iron and steel. It clearly indicates that private experts

like Moore and Tower were far more than technical mechanics in the implementation of the National Industrial Recovery Act. The current literature on the application of the recovery law needs to be expanded beyond the interplay of top executives and government officials to acknowledge the central role of such experts who articulated businessmen's wishes and fears, interpreted law, fashioned codes, shaped policy, led negotiations, and headed administration. We already have studies of New Deal lawyers; we are only beginning to get a fuller appreciation of their very able counterparts on the other side [Irons, 1982; Fine, 1995].

The steel case also helps sharpen our understanding of the precise nature of the business reaction to the NIRA. Most studies acknowledge industrialists' wish for autonomy, but that freedom is sometimes placed in a corporatist context in which businesses, particularly large enterprises, sought to use public power to expand and further their own ends [Himmelberg, 1976, pp. 1-2; Bellush, 1975, p. 176]. The steel experience makes clear the wary response of the industry when faced with what appeared in the early summer of 1933 to be an astounding assertion of public authority along with a significant increase in the power of organized labor.

Under Hoyt Moore's direction, the steel manufacturers' approach was not enthusiastic, aggressive, or expansionist, but was instead defensive and adversarial. Although the steel code depended on public authority, the industry had not sought the National Industrial Recovery Act that suggested the relocation of the power to settle issues of pricing, production, and labor relations. Moore's decentralized solution to the labor question and his use of private contract to regulate commerce in iron and steel were clearly reactions to insulate manufacturers from what they viewed as external threats. The emphasis on protection rather than extended control was underscored when Moore and his associates quickly abandoned any attempt to compel all steel makers to join the code.

In the midst of depression and upheaval, such men were too busy seeking to restore profits and to maintain their firms to view themselves as architects of broad economic and social policy, whatever the actual consequences of their actions. Whether the experience with the NIRA awakened such executives to the potential use of state power, as a recent study has argued, will require a separate analysis of the actual administration of the steel code [Gordon, 1994, pp. 2-3, 200-202].

Finally, the formation of the steel code raises questions about the prevailing interpretation that attributes the recent decline of the American steel industry to events occurring in the fifteen years following World War II [Tiffany, 1988]. In 1933 code regulations erected a price umbrella to supplant competition, restore order, and revive profits. In effect the industry as a whole adopted the conservative strategy that had helped promote stagnation at U.S. Steel, while steel manufacturers abandoned the aggressive, expansionist approach of Charles Schwab and other owners and top managers whose firms had wrested significant market share from the industry's leader during the

previous three decades. This shift to caution and defense indicates that there may be deeper roots for steel's ultimate decline (though their consequences were delayed or hidden by the Depression and World War II), and suggests that the rise of experts and the restoration of order had their own significant costs.

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