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TEN YEARS
OF GERMAN
INDEMNIFICATION

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1964





NEHEMIAH ROBINSON

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NEHEMIAH ROBINSON (1898-1964)

Nehemiah Robinson was born on June 7, 1898 in Vistytis, Lithuania. After completing his general and Jewish education, he attended the University of Jena, Germany, where he studied law and political science and took his degree (Dr. rer. pol.) cum laude in 1927. He then joined the law office of his brother, Jacob, in Kaunas, Lithuania, and worked there until the outbreak of World War II.

He arrived in the United States in December, 1940, and joined the Institute of Jewish Affairs of the American and World Jewish Congress in 1941. In 1947, he was appointed Director of the Institute of Jewish Affairs, and continued in that post until his sudden death on January 11, 1964.

He was a member of the Executive of the World Jewish Congress, one of the Directors of the Jewish Restitution Successor Organization, and advisor to the Conference on Jewish Material Claims Against Germany and to the Committee for Jewish Claims on Austria on legislation concerning restitution and indemnification.

His interests extended over four fields: contemporary Jewish affairs, the United Nations, prosecution of war criminals, and indemnification of the victims of Nazi persecution.

In the course of more than 20 years at the Institute of Jewish Affairs he published a number of books and numerous articles in the general and Jewish press. In addition, he published annual surveys of Jewish life, the last of which covered the year 1963.

As Director of the Institute of Jewish Affairs, he also edited three volumes: *European Jewry Ten Years After the War* (1956);

the *Institute Annual* (1957) and the *Institute Anniversary Volume* (1962). In the same category, fall a *Dictionary of Jewish Public Affairs and Related Matters* (in collaboration with G. Jacoby, O. Karbach and S. Sokal) 1958, the *Jewish Communities of the World* (Demography, Political and Organizational Status, Education, Press), second revised edition, 1963. He also edited monthly *Periodic Reports* since 1959.

From the time of its establishment, he followed closely all the activities of the United Nations which had some Jewish interest, and in this connection he published six books. They consisted of four commentaries on the following Conventions, which are important from the Jewish viewpoint, and two monographs:

Commentaries

The Declaration of Death of Missing Persons (1951);
Convention Relating to the Status of Refugees (1953);
Convention Relating to the Status of Stateless Persons (1955);
The Genocide Convention (1960).

Monographs

Universal Declaration of Human Rights (two editions, second 1958);
The United Nations and the World Jewish Congress (1955).

Nehemiah Robinson also studied closely the problem of war crimes, giving special attention to the prosecution of war criminals. Among his writings on this subject is a survey on the status of the *Prosecution of War Criminals Since the End of the War*. His major concern in this field was the tracing of witnesses who could testify to the crimes committed by the Nazi regime in trials to be held in Germany and Austria. He maintained continuous contact with the prosecuting authorities in these two countries and with hundreds of potential witnesses. He helped find witnesses for two of

the most recent trials: the Lodz trial in Hannover and the Auschwitz trial in Frankfort/Main.

His main interest was devoted to problems of reparation, restitution and indemnification. In 1944, he pioneered with a volume *Indemnification, Reparations, Jewish Aspects*. Since then he followed developments in this field both on the international scene and in individual countries, and published English translations of the pertinent enactments including such comprehensive texts as the Federal Indemnification Law, the Federal Restitution Law and the Swiss Law on Heirless Property. He kept the Jewish communities informed on these activities in periodic reports, some of them voluminous. In 1952, when the problems of restitution, reparation and compensation entered into an active phase, and negotiations between the Conference on Jewish Material Claims against Germany and the Government of the Federal Republic of Germany began in The Hague, Nehemiah Robinson was invited to advise the Jewish delegation and to draft agreements to be concluded between the two parties. Since then, he served as an advisor to the Claims Conference and participated actively in all the stages of legislation, in the framing of amendments and in implementation. In 1962, he gave a brief account of the problems involved in his study *Spoliation and Remedial Action* (translated into German and Hebrew). In 1963, he prepared the present manuscript for the Claims Conference and put the finishing touches to it on the last day of his life.

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Preface

What follows is not a history of compensation in Germany. Such a history cannot be written as yet because the program remains far short of completion. Neither is it a history of what has been done so far; in view of its wide scope and complexity it would require a whole volume to do justice to the program, the efforts involved, the difficulties encountered, the role of parliament, government, judiciary, administration, and persecutee organizations, in particular the Claims Conference.

The purpose of this report is more modest. On the occasion of the tenth anniversary of the effective date of the first federal compensation law, the report seeks to describe in basic terms the background of the legislation, the negotiations conducted by the Claims Conference with the Federal Republic of Germany, the legislative and administrative efforts involved, and the results of the program. At the same time, the report strives to demonstrate the difficulties encountered and the scope of unfinished business pertaining to this part of indemnification to victims of Nazi persecution.

The Nazi onslaught on the Jews was so global in scope and so extensive in execution that even partial redress of its material consequences requires more than has been done so far and probably will be done on the basis of existing legislation. The existing program, despite its wide scope and large costs, provides most of the survivors of the Nazi holocaust with too little material redress of the damage done. Many have been totally excluded.

Amendments to the Federal Compensation Law have been contemplated for a considerable time and will soon be dealt with by the West German Parliament. It is useful at this junction to review what has been done and what remains to be done. This is what the report tries to do.

NEHEMIAH ROBINSON

New York, January, 1964

Introduction

Compensation Legislation on the Laender Level

Before 1953 there existed some compensation laws enacted under the occupation regimes, on the basis of the Laender then in existence. At that time, the most comprehensive and uniform laws were those of the Laender in the U.S. Zone, promulgated between August 10 and 16, 1949; a law of similar nature was enacted somewhat later in West Berlin and was also applicable to former East Berlin residents. In the British Zone for the most part, compensation was provided only for loss of liberty by former residents of Germany; in the French Zone, the rather extensive bills which were drafted were not permitted to become law. Thus, the laws in the various Zones and Laender, wherever they existed, differed considerably, and none of them was satisfactory.

The Allied-German Agreement drafted in 1952, known as the Contractual Agreement, provided for the obligation of the Federal Republic, that had meanwhile been established, to enact a uniform federal law at least as favorable as the U.S. Zonal laws. However, these laws, in part because they were drafted at a time of limited German financial capacity, were too restrictive. In particular, they provided no benefits to persecutees other than to former German residents of the particular Land, residents of the Land at the effective date of the laws, and DP's who were inhabitants of a DP camp in the U.S. Zone on January 1, 1947. Up to October 1, 1953, a total of DM 738,183,145 was paid out.

The Negotiations Leading to the Federal Compensation Law

The Contractual Agreement did not become a binding treaty before 1955, so that the obligation referred to above was legally in suspense, when the negotiations between Israel and the Conference on Jewish Material Claims Against Germany, on the one hand, and the Federal Republic of Germany, on the other, were initiated in March, 1952, in The Hague. They were based on the September 27, 1951 declaration by Dr. Adenauer and his statement of December 6, 1951. In his declaration the Federal Chancellor expressed willingness to discuss, with representatives of Israel and the Jewish people, the possibilities of paying indemnification for the material consequences of the anti-Jewish acts of the Third Reich. This declaration, later approved by Parliament, referred to the limits of the German ability to pay, due to the need to care for the innumerable war victims, refugees and expellees. The statement of December, 1951, was to the effect that the German Government regarded the time as propitious to open negotiations.

The Hague negotiations, which began on March 21, 1952, were interrupted because of differences on the amount payable to Israel. They were resumed in June, to be completed by September, 1952. Although during the first phase certain agreements were reached on matters of indemnification (restitution and compensation), the resumed negotiations were not based thereon, but started anew. The results were laid down in two documents known as Protocols No. 1 and No. 2.

As far as compensation was concerned, the agreements arrived

at between the delegation of the Federal Republic and the representatives of the Claims Conference were incorporated in Part One of Protocol No. 1.* Its purpose was to expand the groups of beneficiaries and to improve the provisions of the U.S. Zonal laws which—as mentioned—were to become the basis of federal compensation legislation.

The expansion concerned basically two groups: a) stateless persons and refugees, and b) expellees. Stateless persons and political refugees were to be brought within the purview of the law, even if they had acquired a new nationality after the end of persecution. Compensation was to be granted to them for deprivation of liberty and damage to health; their survivors were to receive compensation for loss of life. A condition for the granting of all benefits was that the persecutee had suffered deprivation of liberty. Since the Federal Republic maintained at that time that it represented only a part of the Reich, the German delegation agreed to pay to this group only three-quarters of the amounts payable for the same category of damage to the "original" categories of persecutees.

Expellees were Nazi victims who belonged to the German cultural or linguistic group in the countries of their former residence, which they had left because of Nazi persecution or in the post-war years. Expellees who left before the end of the war were to be granted, in addition to compensation for damage to life, health and liberty, certain rights to compensation for damage to professional advancement and for the payment of discriminatory taxes. Those who left later were to receive compensation for personal damage only, *i.e.*, damage to liberty, health and life.

The improvements consisted, in the main, in the provision, under certain conditions, of annuities instead of one-time payments for damage suffered by members of self-employed professions; a sliding scale for annuities payable under the law; pensions to former officials and employees of Jewish communities and public institu-

tions in Germany; compensation for the interruption of education, for compulsory labor under conditions similar to detention and for living under inhuman conditions in hiding within the borders of Germany; compensation to war victims; inheritability, in certain instances, of compensation for the deprivation of liberty, etc. Protocol No. 1 also established the principle of equality of German and foreign residents in adjudication, as well as priorities in the adjudication and payment of compensation for persecutees who were older, indigent, and in ill health. Also introduced were provisions facilitating proof of evidence of damage suffered and the death of missing persons.

* The second part of Protocol No. 1 dealt with restitution; Protocol No. 2 was devoted to the payment of DM 450 million to the Claims Conference.

The Federal Supplementary Compensation Law

The work of transforming the compensation provisions of Protocol No. 1 into law got under way soon after it was signed. The Federal Ministry of Finance, in cooperation with the Ministries of Justice and the Interior, drafted a bill which was modeled on the laws in the U.S. Zone, and incorporated the provisions of Protocol No. 1 and of the Contractual Agreement. More or less parallel, a second bill was introduced in the Bundesrat, the upper house of Parliament. The first Bundestag, the lower house of Parliament, was to be dissolved in the late summer of 1953. Apprehension was felt that if enactment were to be postponed for a considerable time, the bill could not pass the Bundestag and be dealt with by the Bundesrat in time for the solution of possible disagreements between the two houses.

The Claims Conference centered its efforts on improving and promoting the Government bill, which had better chances to pass, although the Bundesrat bill had certain advantages.

The improvements achieved consisted in introducing minimum annuities for loss of life and damage to health; the amount of compensation for deprivation of liberty, damage to health, and loss of life to stateless persons or refugees aged sixty and over was not made subject to the 25% cut and annuities were made payable as of January 1, 1949; higher amounts of compensation for communal property were provided. An exact priorities list for adjudication and payment was established, which favored older, indigent, and incapacitated persons. Except for these groups, compensation for

personal damage, such as injury to liberty and health, and loss of life, were given priority over material damage.

The law passed both Houses virtually as originally drafted, although there was agreement that it included a number of deficiencies. It was promulgated on September 18, 1953, and entered into force on October 1, 1953. The law was comparatively short and a number of its provisions were spelled out in greater detail in the implementary regulations issued thereunder.

The Federal Compensation Law (BEG-Bundesentschaedigungsgesetz)

Although preparations to amend the Supplementary Law started almost at once after its promulgation, it took almost three years until the amended law was finally enacted. The results were the Third Law to Amend the Federal Supplementary Compensation Law.* It consisted of an introductory law and the text of the amended law, which acquired the name "Federal Compensation Law." The Law became effective on June 30, 1956, and has remained valid until today. The Claims Conference was active all this time in promoting improvements.

The Federal Compensation Law showed many improvements over the preceding law. First, its validity was extended to the whole of Germany within the borders which existed on December 31, 1937, with one exception, while the preceding law dealt only with the Federal Republic and West Berlin, East Berlin being covered, as stated, by the Berlin Compensation Law. Thus, persecutees from German areas outside the Federal Republic became eligible. Some benefits were increased, such as certain annuities for loss of life. The minimum disability for eligibility to an annuity was decreased from 30% to 25% and the probability of the causal nexus between persecution and damage to health was declared as sufficient. The responsibility of the German Federal Republic (legally of the Third Reich) for incarceration, and of other damage caused by foreign

* The first two amending laws only modified the Federal Supplementary Compensation Law.

governments, was specifically stated. The notion of damage to liberty was expanded to include illegal life under inhuman conditions and the wearing of the Star of David everywhere. Maximum benefits granted for damage to property and professions were raised and compensation for the payment of discriminatory taxes was freed of ceiling restrictions. Considerable improvements were achieved in the field of compensation for professional damage: the maximum amount was raised, annuities were also introduced for former non-self-employed persons, the election of an annuity was made easier, the maximum monthly amount was increased, widows became eligible, and the inheritability of benefits under the Law was expanded in certain respects.

Some improvements were also introduced in the case of expellees, and stateless persons and refugees: in the case of expellees, fixed amounts for damage to professions were introduced, and widows became eligible for annuities. In the case of refugees and stateless persons, the cuts in the compensation amounts were eliminated; the prerequisite of deprivation of liberty was dropped. Only the period of initial annuity payments and some other differences remained unchanged.

The existing restrictions on payments were eliminated, with the exception of certain amounts above DM 10,000, but even these became fully payable as of April 1, 1957.

The supplementary regulations (the first three dealt with loss of life, damage to health, and damage to professions) were revised, and in some instances they expanded benefits of the Law, *e.g.*, by permitting the accounting of income in foreign funds at a lower rate than at the official exchange rate or by introducing increases in the annuities for former employees.

The Implementation of the Legislation

The Extent of Implementation

The extent and general import of the law become evident from the data given below.

The two laws are statistically separated, except for the amounts paid out. In the latter respect, the statistics deal with the whole period as a unit; as regards filing and adjudication, the two periods are separated. Thus, to obtain a picture of the results of the implementation of the compensation legislation, one must treat the two periods separately.

During the effective period of the Federal Supplementary Law a total of 1,354,586 claims were on file. They consisted of those which were received on the basis of the Laender laws, as well as those filed after October 1, 1953. Due to time limitations, etc., not all claims were classified according to the residence of the claimant; thus, the 657,585 claims filed with the Compensation Agencies by foreign residents and the 530,295 by German residents represented part of the respective claims only. During that period, decision on 272,088 claims in toto and 63,739 in part were reached. Of those decided in toto 124,852 were positive. The total sum paid out during this period amounted to DM 1,062,153,000; of this total, DM 523,389,000 were paid to foreign and DM 538,764,000 to German residents. Under the law a court claim is permitted against the adjudication by the Compensation Agency. During the validity of the first law, court suits were filed in 74,233 cases; in 52,483 cases decisions

by the Court were reached. A part of the claimants, whose suits were rejected, appealed from these decisions to higher courts.

More details about the claims filed and adjudicated in the court decisions are to be found in the statistical tables attached to this study (See Part A, Tables 1-3).

In the second period, the compensation agencies' statistics encompass the claims which remained on file on June 30, 1956 and those filed thereafter. Although a filing deadline of April 1, 1958 was fixed in the law, it applied only to the initial filing, i.e., the submission of an application. Once the application was filed in time for any claim, the applicant has been permitted to register additional claims. This subsequent filing went on during the whole period. For instance, in 1959, over 130,000 new claims were registered with the Compensation Agencies. The year 1960 witnessed a considerable drop but in 1962 new claims almost reached the 100,000 mark.

Under the Federal Compensation Law, 2,976,140 claims were filed and registered in the above sense with the Compensation Agencies, 790,364 by residents of Germany and 2,185,776 by residents abroad. Of them, 2,489,396 were adjudicated by the Compensation Agencies: 732,686 filed by German residents and 1,756,710 by foreign residents. Not all claims were, however, dealt with in substance: 147,983 claims by German residents and 391,943 by foreign residents were disposed of otherwise than by award or rejection: they were, mostly, duplicate and triplicate claims filed under the Laender law, the 1953 law and 1956 law, claims withdrawn by the applicants, and claims without foundation in the law. Thus, a total of 1,949,470 claims were adjudicated on their merits; 584,703 by German and 1,364,767 by foreign residents. As a result of the adjudication by the Compensation Agencies there remained on file in these agencies, as of September 30, 1963, a total of 486,744 or some 16% of the total filed. Almost all of them (429,066) were by applicants residing abroad. The much higher ratio of adjudicated claims filed by German residents is mainly due to the circumstance

that their adjudication started earlier and was frequently simpler, due to the geographical proximity. It ought to be mentioned that of the 486,744 claims on file, 214,062 or roughly 44% were in Rheinland-Pfalz. Berlin still has 117,083 and Nordrhein-Westfalen 57,070 claims on file in the Compensation Agencies. Of the rest only Bavaria had over 20,000 claims each for local residents and foreign residents (see Part B, Tables 1-6).

A considerable part of the adjudicated claims was rejected by the Compensation Agencies: 283,262 filed by German and 395,068 filed by foreign residents. Consequently, the total number of claims on which positive awards were rendered by the Compensation Agencies was 1,271,140: 301,441 filed by German and 969,699 by foreign residents. The ratio of claims recognized, in full or in part, to those adjudicated by the Compensation Agencies is almost exactly 1:2. The ratio is somewhat lower regarding claims filed by German residents and somewhat higher concerning claims by foreign residents. The basic reason lies in the by far larger number of claims for deprivation of liberty filed by foreign residents. In this category the ratio of recognized claims to those adjudicated is higher than the average and higher than for the same category of claims by German residents.

The same is true of claims for professional damage; 307,850 court suits were filed with the courts of original jurisdiction and 46,106 appeals were lodged with courts of the secondary jurisdiction and in 2,208 instances with the Supreme Court. In the first two court instances a number of claims, rejected by the Compensation agencies, were recognized. For instance, the courts of original jurisdiction ruled positively on 26,936 suits; in 75,916 cases amicable settlements were effected in court. A part of the positive decisions was nullified on appeal by the competent Land; but in a portion of the cases which was rejected by the court of original jurisdiction, positive decisions were reached in the courts of secondary jurisdiction. During these ten years, DM 14,681,170,000 was paid out: DM 3,291,552,000 to residents of Germany and 11,389,618,000 to

foreign residents. Since some of the claims granted provide not one-time payments but annuities, the value of the claims positively adjudicated will be higher than the amount cited. The Ministry of Finance estimates the present annual outlay for the recurrent annuities at DM 700 million and assumes that it will rise somewhat in the near future as more annuities will be granted. On the other hand, due to the natural death of recipients, some annuities are being discontinued and after a while the annual amounts will decrease progressively.

The largest single amount (DM 4,757,003,000—not counting advances) was paid for damage to professions (of it DM 3,888,233,000 to foreign residents). The second largest amount was for damage to health (DM 4,354,738,000; of it DM 3,130,019,000 went to foreign residents); the third largest was for damage to liberty (DM 2,375,171,000; of it DM 2,193,770,000 went to foreign residents). For loss of life, DM 1,573,325,000 was paid; of it DM 1,149,640,000 went to foreign residents.

As seen in Table B-5, over 100,000 claims were adjudicated in the second half of 1956; in the years 1957 and 1958, the average was over 270,000 per annum. The peak was achieved in 1960 with over 470,000 claims; thereafter a decline ensued, due to the adjudication of more complicated cases (health, for instance) and the decrease in the number of available claims. In 1962, a total of some 385,600 claims, and in the first nine months of 1963, a total of some 195,000 claims, were adjudicated by the Compensation Agencies. In moneys, the trend was more or less the same: in the second half of 1956, some DM 593,000,000 were spent. The amounts in the years 1957/1958 came to about DM 1,600,000,000, exceeded the DM 2,000,000,000 mark in 1960 and reached the peak of DM 2,265,000,000 in 1962. In the first nine months of 1963, a total of DM 1,597,000,000 was spent.

The statistics are organized on the basis of claims, a claim representing a demand for compensation in any of the existing categories of damage (liberty, life, health, profession, etc.). There

are no statistical figures on the number of applicants either in general, according to residence (in Germany or abroad) or otherwise. The number of claims filed does not represent the number of applicants: an applicant may have one or more claims, such as for deprivation of liberty, and at the same time for damage to health, and/or loss of life, professional damage, or loss of property. The Central Statistical Office in Duesseldorf, where claimants are all registered, carries the names of over 1,700,000 applicants. This figure, however, reflects not the number of persecutees but only those who were registered either as principals or as successors in right. The statistics also do not show the number of successful applicants, but only the number of claims positively adjudicated. The positive category includes every award, however small. Thus, for instance, the number of recipients of health annuities is much smaller than the number of positive awards for damage to health: frequently compensation is paid for a restricted period or only medical care is provided.

Although the law is a federal statute, its implementation is within the exclusive competence of the Laender, except for the enabling regulations for whose issuance the Federal Government has received special powers. Thus, the claims are filed with and adjudicated by Laender Compensation Agencies; court suits are filed with the ordinary courts and adjudicated by special chambers.

Claimants with a regional connection to a Land (former residents, residents as of the effective date of the law and DP's in a camp on January 1, 1947) file in the respective Land. Those with no regional connection (former residents of the Soviet Zone, stateless persons, refugees and expellees with foreign residence) file in Laender to whom competence was accorded by law: former residents of the Soviet Zone in Lower Saxony, all others in Rheinland-Pfalz (if their residence at the effective date was outside of Europe) and Nordrhein-Westfalen (residents in Europe). Because of their specific competence, the two last mentioned Laender had the largest volume of claims under the 1956 law: in Rheinland-Pfalz, 684,819

claims by foreign residents were filed; the corresponding figure for Nordrhein-Westfalen was 430,994. Berlin with 320,932 foreign claims (almost all former German residents) ranks third, and Bavaria with 216,332 (former residents and DP's) fourth. As regards payments, Nordrhein-Westfalen ranks first with DM 3,902,745,000 (DM 2,942,372,000 to foreign residents), Berlin is second with DM 3,738,369,000 (DM 2,877,466,000 to foreign residents), Rheinland-Pfalz is third with DM 2,459,423,000 (DM 2,339,187,000 to foreign residents), and Bavaria is fourth with DM 1,356,000,000 (DM 969,740,000 to foreign residents). Part B, Tables 2-3 provide detailed information on the adjudications by Land.

Complications in Implementing the Law

The law is complicated and deals with events for which no precedents worth while existed. As mentioned, it is administered separately by each Land, the Federal Government having no powers over the administration. The costs of the program are shared by the Federal Government and the Laender fifty-fifty, except for Berlin, where the costs are shared by the Federal Government, the Laender and the City. In practice, the Federal Government carries 55% and all the Laender together 45% of the total costs. It was quite unavoidable that the implementation of such a law on separate bases would create difficulties of a legal and practical nature. The fact that the Supreme Court had to render almost 2,000 decisions is in itself an indication of the legal complexities. There is hardly any major provision of the law which, in one way or another, did not become controversial. The German authorities, the Claims Conference and the United Restitution Organization have invested innumerable efforts in making the law work, but there still are many unsolved problems.

Although a considerable number of claims—as shown above—were filed under the supplementary law of October, 1953, the processing, except for the Laender of the U.S. Zone and Berlin,

was comparatively not large due to the need of establishing the apparatus, hiring of personnel, getting acquainted with the law and procedure, enactment of enabling regulations by the Federal and the Laender governments, etc. It took almost a year until the first enabling regulation (concerning claims for loss of life) was published on September 17, 1954; the second regulation (*re* damage to health) was published on December 24, 1954; the third regulation (*re* professional damage) on April 6, 1955 and the one providing for priorities in payments on February 22, 1955. The law contained only basic rules which had to be spelled out in the enabling regulations, so that the delay in their enactment of necessity provoked delays in adjudication. Several basic problems arose in the practice, in addition to those which were due to the brevity of the law and the lack of experience. Most prominent among them was the problem of liability under the law for persecutory measures by foreign governments, mostly those which were allied with the Third Reich (Japan, Rumania, Hungary, Bulgaria, Italy, Vichy France, Croatia), and in the case of some neutral countries, with regard to internment. Another problem which arose was that of the "residence quality" in a concentration camp or in a DP camp after the end of the war, a problem decided positively by the courts contrary to the view of the administrative agencies. The problems of who is an "expellee" and who is a "refugee," when and to whom hardship payments are to be made, were also among the problems in dispute.

As we have seen, the implementation of the legislation made progress with the enactment of the 1956 law. But together with the progress a very large number of problems, due to their complexity, their method of implementation and their scope, arose. Although they were to be expected, their factual extent was not foreseen. The aforementioned almost 2,000 decisions by the Supreme Court on matters of principle, the over 37,000 decisions by the courts of secondary jurisdiction (Oberlandesgerichte) which, at least in part, are also decisions of general application, and the over 256,000 deci-

sions by the courts of original jurisdiction (Landgerichte), are evidence of the extreme complexity of the procedure and the difficulties of interpretation encountered. The comprehensive commentaries published, the innumerable articles which have appeared in the legal periodicals (there is a special monthly—*Rechtsprechung zum Wiedergutmachungsrecht*—devoted to compensation and restitution), the Laender regulations and general rules, are also evidence of the same nature.

It is impossible to deal here with all the problems which became a matter of controversy or dispute. We will, therefore, select a number of the more important controversies to demonstrate the difficulties encountered and the solutions which were reached, frequently with considerable delay, when a solution was possible at all within the framework of the existing law. The large volume of amendments proposed by the Federal Government, which will be discussed below, shows that far from all were susceptible to solution so far. In 1959, the Laender agreed upon common interpretation of a few provisions to alleviate the hardships caused by adverse judicial decisions.

Damage to Liberty

The 1956 law prescribed that its provisions relating to damage to liberty were also applicable to acts of foreign governments when the deprivation of, or restriction on, liberty was *inter alia* the result of an "inducement" (*Veranlassung*) of the foreign government by the Nazi Government. This was intended by its drafters as a means of putting an end to the difficulties which the corresponding provision in the 1953 law had created. However, the administrative and, in part at least, the judicial practices went their own ways. First, the word inducement was narrowly interpreted, requiring adequate proof that the foreign government was actually compelled to comply with the German demand. The problem of from what date and for how long such an inducement existed in each of the various states involved, led to litigation, negotiations and

discussions which lasted for years and, in some instances at least, to varying practices in the Laender. As regards Rumania, a full stop in the consideration of all cases was in effect for several years from the beginning of 1958, which led to the non-filing of thousands of claims and the need of *restitutio in integrum* thereafter. In the case of Hungary, when inducement began was in dispute for a long period but no restitution was granted for those who failed to file in time. Volumes of documents, prepared mainly by the United Restitution Organization, had to be assembled for each country and sometimes for individual camps to demonstrate the pressure exercised by the Third Reich upon these Governments to persecute the Jews, the conditions of life in internment, and the period involved. It was only by 1962 that most of the leading decisions regarding the application of this rule had been issued. To date a few problems of application are still open and the starting point in certain cases has not yet been definitely fixed.

Recently, the application of the law to acts of foreign governments was challenged by the administrative authorities on the basis of the so-called renunciation clause in the 1946 Peace Treaties between the Allies of the Second World War and the German Satellites: Rumania, Hungary and Bulgaria. This clause provided that these countries renounce, for themselves and their citizens, all claims against Germany arising out of the war. It was claimed that these treaties became part of West German legislation by virtue of the London Debt Agreement. The argument had been used in earlier years (also as regards Austria*), but it was only on October 2, 1963, that the Supreme Court threw out this argument.

The problem of "inducement" was put into jeopardy in another, and very important respect. It was until very recently unchallenged that, although it referred explicitly to "liberty," the liability of the Federal Republic also extended to other damage caused by the "induced" foreign state. In 1963, the Supreme Court

* This was solved by an Austro-German Agreement.

called this into doubt in a passing sentence. However, the Laender, with one exception, have refused to follow this interpretation of the law. It is not yet clear, how the dissenting Land will proceed.

The same provision also provoked difficulties of application and interpretation as regards cases of incarceration and other damage by a state not "induced" thereto by the Third Reich, in particular, the Soviet Union, the deportations and incarcerations by the mandatory power in Palestine, Great Britain, and similar instances. While the Supreme Court, in 1962, had confirmed, against the contrary attitude of the Laender and some judicial organs, that a causal nexus between existing or feared persecution by the Third Reich and the damage suffered anywhere was sufficient to involve liability under the BEG, it held that in cases of deprivation of or restriction on liberty, such a nexus did not suffice, because the respective provision, on its face, did not cover this category of damage.

Damage to Health

No less difficulties have been encountered in the adjudication of claims for damage to health. The basic difficulties lie in the proof of the causal nexus between the state of health (or, rather the loss of health) at the time of the medical examination and the time when the persecutory measures were applied; the nexus is required for the recognition of compensation. Neither the presumption of the existence of a causal nexus between certain acts of persecution and the damage to health as evidenced at the time of persecution or soon thereafter, nor the rule that the probability of the existence of a causal nexus suffices (introduced in 1956), proved satisfactory to deal with the results of persecutory acts which had occurred 15 to 20 years earlier. The legal relevance of the aggravation of illnesses existing at the time of persecution by acts of persecution, the impact of the passage of time on once proven disability due to persecution, and a number of other problems of health cases were the subject of several decisions by the highest court, which until now have not been fully adhered to, in particular

as regards cases settled beforehand. The problem of the medical examination of persons residing outside of Germany and of confirming the findings of the local "trusted physicians" (Vertrauens-*aerzte*) has not yet found a proper solution. After long stretched-out interventions, German physicians were dispatched to New York, to examine the findings on the spot. The necessary complement of physicians was rarely present, however, and an extension of the program to other overseas localities could not be achieved.

The fact that claimants were classified by the law into four particular categories, depending upon the group of officials competent to fix the amount of compensation, the fixing of the percentage of incapacity in each case and of the annuity due, have also provided innumerable road-blocks in the way of a smooth adjudication of claims for damage to health.

Damage to Professions

Here, too, the problems of application and interpretation have been many and complicated. Several remain outstanding. First is the definition of "satisfactory income" as such (this is the basis on which a decision whether an annuity is due or not depends); second is the conversion rate (to convert the income received in a foreign currency into German marks); third is the start of the annuity (after many annuities had been granted, the Supreme Court decided on a much less advanced starting point, not justified by either The Hague Protocol or the wording of the law, thus creating an inequality between the same groups of persecutees); fourth is the right to elect an annuity, in particular by widows and other survivors. These have been the basic problems to be faced, in addition to some problems peculiar to certain countries (Israel, and the U.S.A., for instance).

Differences in the rules of compensation between self-employed persons and those not self-employed, the problem of which income is to be set off and which not have also slowed down adjudication and frequently led to unwarranted rejections of claims.

Loss of Life

The requirement in the law calling for proof in many instances as a precondition for granting annuities to survivors that the persecutee who lost his life supported or would have supported the survivor, caused problems and difficulties which have not been solved, for the most part. The difficulties are aggravated where the survivor had a number of relatives who had supported him or would have had to do so.

Special Categories of Persecutees

In addition to the general and special problems created by the "inducement," the processing of the claims by the "expellees" and the "stateless persons and refugees" met with specific difficulties. In the case of the expellees there were three basic problems: a) the definition of "expellees"; b) the particular problem of the later emigrants (after October 1, 1953, in particular); c) the extent of compensation due to them. Almost every aspect of the law became disputable: What does the belonging to the German "folk" mean? What must the reason for the departure be? When must it have occurred? Who decides definitely upon the "belonging"? Due to these difficulties, adjudications proceeded from more liberal to very restrictive stages with total "stops" of adjudication of cases of later emigrants, practices varying in individual Laender. Decisions by the Supreme Court answered some but not all questions; the administrative agencies were not willing to follow these decisions. By the end of the ten-year period no solution of these problems was achieved.

The application of the law relating to stateless persons and refugees was somewhat less erratic but also gave rise to difficulties. Unclear has remained up to the last moment the status of the so-called "de facto stateless persons" ("réfugiés sur place") and of pre-war emigrants from the Eastern countries. The significance of documents testifying to the status of a refugee; the import of payments

by foreign governments; the decisive data on acquiring the status of a stateless person or a refugee—these and some other problems were the subject of administrative and judicial decisions. A problem particular to this group has been the application and the extent of hardship payments, specifically provided for in the law for their benefit. The administrative agencies are still unwilling to accept the Supreme Court's decision fully in accord with the wording and intent of the relevant provisions of the Protocol and Law.

Hardship

The relevant provision in the 1953 law became disputable. The amendment of 1956, although clear in its wording and intent, did not remove the difficulties. For years the administrative agencies refused hardship payments to Jews, because of the DM 450 million paid to the Claims Conference by the terms of Protocol No. 2. It was only after a decision by the Constitutional Court and lengthy negotiations that this difficulty was alleviated in the Laendervereinbarung. But instead, the Laender adopted general rules which, for all practical purposes, excluded all special groups, the residents of DP camps as of Jan. 1, 1947, and otherwise restricted severely the application of this remedy. They were supported in the restrictive interpretation by the Supreme Court regarding both eligibility and date of filing an application.

Formalism

The administrative agencies, contrary to the practice in other and similar measures, have refused so far to review decisions arrived at, even though they were not justified under the particular circumstances of the case.

The law grants the Compensation Agencies the right to refuse compensation or to withdraw a favorable decision already rendered (with the resulting repayment) if the applicant used improper means to obtain it or made obviously false statements. In practice, insufficient consideration was given to the lack of knowledge of

German by many persecutees, the absence of many claimants from the place of adjudication, faulty memory, the long span between persecution and adjudication and the complexity of the law.

Other Problems

The following problems are a few of those among a considerable number:

One thorny question was the provision of the law under which compensation is to be refused if the damage would have occurred without persecution. The war and its aftermath caused many losses to persecutees and the delimitation between what would have necessarily happened without persecution, which was probable, likely or possible, is extremely difficult. Thus, claims for damage in the Soviet Zone of Germany (nationalization, expulsion), induction into the army, bombings, the status of foreigners etc. became controversial. The Laendervereinbarung tried to wipe out the difficulties, but by the end of the ten-year period, the application of the clause in accordance with the leading decisions of the Supreme Court still awaits final action.

The Supreme Court decided that "no one can emigrate to his own country." Under this interpretation, made after many similar cases were favorably decided, foreigners and residents of Germany in 1933 and later, who were forced to leave the country and return to their homeland, were excluded from compensation. A similar difficulty arose in connection with the statutory DPs who had left their homeland after Jan. 1, 1947. In the first instance, in some Laender at least, compensation was paid by way of hardship. The legal inequality between earlier and later decisions still persists.

Procedural Difficulties

One of the road-blocks in obtaining decisions by the Supreme Court has been the restrictive admissibility of legal appeal ("Revision") to the Supreme Court. In point of fact, although the BEG

represents new law and new problems, the admissibility of legal appeal is more restrictive than under the general law of civil procedure. The courts of secondary jurisdiction have in many instances refused permission to file a legal appeal and the Supreme Court has frequently sustained them, thus preventing clear-cut legal decisions.

The law includes a specific provision to deal with the difficulties encountered due to the persecutory measures. However, the practice did not apply it to difficulties which have been encountered where the evidence needed was in a Communist country or where evidence could not be obtained due to the sheer passage of time, (for instance, over and above the period of keeping records).

Differences in the Various Laender

Since every Land applies the law in its own competence, differences in interpretation and application are inevitable. To reduce them as much as possible, regular conferences of the top administrators of the Laender, with the participation of some federal officials, have been held. These conferences could only deal with matters of principle and the decisions arrived at are not binding, since there was no relevant provision in the law.

As a result, there has developed a varying proportion of favorable decisions in the same category of damages. For instance, in Baden-Wuerttemberg out of 20,222 decisions by compensation agencies only 4,089, some 20% were awards, while in neighboring Hessen (with more or less the same kind of applicants) 9,325 out of 24,298, some 38%, were positive. (See Part C, Table 1-7, for statistical data covering the entire ten-year period.)

The Government Bill to Amend the BEG

The need to amend the 1956 law has been evident for very long; preparatory work by a special committee has been going on for some time. However, it was only in July, 1963, that a formal government bill was passed by the Cabinet and presented to the Upper House (Bundesrat) which, having considered it in its first reading, sent it back to the Cabinet for further action, together with a few amending proposals. Moreover, the Laender refused to participate in the costs of the Fund referred to below. The Cabinet has transmitted the bill to the Bundestag which gave it a first reading and transmitted it to its Committees. Two Committees will deal with the bill: the Compensation Committee and the Budgetary Committee. The bill, as adopted by the Bundestag, goes for final action to the Bundesrat.

The bill, as submitted, contains 106 specific amendment proposals, not counting the transitory provisions, and three new chapters. Many of them are more or less technical in nature, intended to clarify the existing text without involving basic changes. There are also a number of substantive changes, not all of them improvements, unfortunately. The bill contains a number of provisions designed to eliminate or curtail rights existing under the wording of the 1956 law and/or its interpretation by the Supreme Court.

Basically, the improvements consist of: a) a direct adaptation (and in some instances, newly introduced) of the amounts of annuities to the increase in the salaries of officials; b) some improvements in the granting of annuities to survivors for damage to professions; c) an increase in the amount of compensation for inter-

ruption of education; d) the provision of health care for victims of persecution residing in Germany, even though the illness was not due to persecutory measures; e) the provision of some compensation for damage to professions, by way of hardship, to residents of Germany not otherwise eligible thereto; f) an adaptation of earlier decisions in health and professional damage to the new administrative or judicial practices; g) the introduction of a presumption that a 25% incapacity of persecutees, who spent at least one year in a concentration camp, was due to persecution, if the general incapacity is at least as high; in addition, hardship payments may be provided for damage to health if uncertainty exists in medical science on the probability of the causal nexus between persecution and damage to health; h) the inhabitants of the City of Danzig are to be treated equally with those of the Reich.

The bill also introduces some improvements in the case of former residents of Germany dwelling outside the present area of the Federal Republic, but who did not emigrate during the Nazi period. Some improvements in favor of the "national" persecutees were also introduced in accordance with the 1960 Agreement with the High Commissioner for Refugees. A fund of DM 600 million is proposed for persecutees who are not eligible under the present law and are also not nationals of a country with which a global agreement has been concluded. Beneficiaries would basically be the post-1953 refugees and some smaller groups. The payments are not to be a matter of right but only "hardship payments." Eligible are to be non-remarried widows of persecutees who were killed, and persecutees who were deprived of liberty for at least one year, provided they do not reside in a country whence Germans were expelled or in East Germany or in East Berlin. The amounts and modalities of payment are to be laid down in a special regulation.

The bill also contains some procedural improvements, for instance, some extension of the admissibility of legal appeals. It sets a time-limit to claims (when an application had been submitted in time), which does not exist under the law.

The Government put a DM 3 billion valuation on the amendments. The estimates for the various proposals (except the fund and the increase in the compensation for damage to education) are not known.

As welcome as the action itself and the improvements contained in the bill may be, it must be mentioned that it introduces also a number of curtailments of existing rights: a) it would refuse recognition as an "expellee" to all persecutees who left the country of expulsion after Oct. 1, 1954; b) it proposes to define the hardship provision in favor of stateless persons and refugees by a special regulation to be issued in the future. The wording of the amendment itself is so vague that the resulting benefits might amount to nothing at all; c) it excludes residents of former parts of Germany now under Polish or Russian administration, at the effective date of the law, from the benefits granted by the Supreme Court; d) it proposes to annul the rights of widows of stateless persons and refugees whose husbands died as a result of the injury which entitled her to compensation, but after the initial period stated in the law.

The persecutees whose claims have not been recognized at all or in a satisfactory manner had pinned their hopes on the amendment for a long time. In this respect the following is to be noted:

The bill would not alleviate the difficulties of interpretation referred to above in the previous section regarding the "inducement" (Veranlassung) or its application in the various areas, although it introduces a uniform (but not satisfactory) beginning for Rumania, Hungary and Bulgaria. Neither would it clarify legislatively its application to damage other than to liberty. It does not clarify the terms "expellee," or "support" (in case of loss of life). It does little to alleviate the difficulties experienced in the application of the hardship provision or the difficulties of proof. The improvement regarding legal appeals falls short of expectations. The presumption in case of health would in practice create a discrimination against Jewish persecutees, because due to the Nazi policies

very few Jews came to be incarcerated for as long as one year in what was officially designated as a concentration camp. Thus, the presumption will apply only to a small part of the Jews who were incarcerated during the war. The Government has even refused the suggestion of the Bundesrat that the Government designate an internment camp as concentration camp. Furthermore, the presumption is valid only for a 25% disability; for the rest the old procedure with the difficulties of proof will prevail; moreover, the disability may even be challenged. The adaptation to the present practice is partial; for instance, in cases of health only when an annuity had been refused totally; it works only for the future, meaning that the payment of annuities, if at all, will only start with the effective date of the law.

The bill does not provide for annuities to survivors when the injured persecutee dies (as in the case of annuities for damage to professions); no payments are to be granted to remarried widows, even if they are in economic distress.

By establishing the DM 600 million fund, two kinds of persecutees would be created, depending on an artificial distinction of a date (before and after October 1, 1953), instead of on the severity of the damage suffered. The prerequisite of one year's deprivation of liberty, for whatever benefit, which should also apply in cases of damage to health, would exclude a large number of persecutees. It is not known how the fund would function, how much the persecutees would receive, or when and how.

The bill does not eliminate the existing discriminatory provisions in disfavor of the special groups, for instance, the later start of annuity payments, the less liberal rules of inheritance, or the factual impossibility of earlier emigration, nor does it provide for even limited benefits other than already exist in the law (damage to professions, for instance).

It is to be hoped that in the consideration of the bill in the German Parliament at least the most basic improvements necessary will be adopted. Otherwise, the amendment will not accom-

plish its purpose: to provide a worthy conclusion to an extensive program of the greatest importance to Nazi victims and to the German Federal Republic. The discussion of this program in the Parliament was presented in the Bulletin of the Press Service of the Federal Republic, under the title "Indemnification is a legal obligation." As the Federal Minister of Finance, Dr. Rolf Dahlgren, stated in his address of July 19, 1963, in Hamburg: "The importance of indemnification for the prestige of the Federal Republic in the world cannot be overemphasized."

PART A

Adjudications and Payments
under the Federal Supplementary Law

(October 1, 1953 to June 30, 1956)

TABLE I

Adjudications by Compensation Agencies

Claims Received	Claims Disposed of				Payments (Thousands of DM)		
	Total	Awards	Rejections	Other Dispositions	Total	Residents Abroad	Residents in Germany
1,354,586 ¹	272,088 ³	124,852	96,199	45,356 ⁴	1,062,153	523,389	538,764
657,585 530,295 ²							

1. Includes claims received before Oct. 1, 1953, but adjudicated under the BEG. Also included are 166,706 claims in Bavaria and Schleswig-Holstein, which were not broken down by residence of the applicant.
2. Only those broken down by residence of the applicant. The figure on the left is for foreign residents and the one on the right for German residents.
3. There were, in addition, 63,739 partial decisions.
4. The difference of 6,552 claims is due to incomplete information.

TABLE II

Adjudications by Compensation Agencies
According to Category of Claim

Category of Claim	Claims Received ¹			Claims Disposed of ²				Payments ³		
	Total	Residents Abroad	German Residents	Total	Awards	Rejections	Other-wise	Total	Foreign Residents	German Residents
Life	49,329	29,893	19,436	19,290	6,035	8,021	5,234	110,146	32,624	77,522
Health	257,395	113,616	143,779	56,375	19,283	28,236	8,856	254,451	53,898	200,553
Liberty	235,062	164,619	70,443	74,213	45,486	22,661	6,066	299,629	211,613	88,016
Property	283,645	173,481	110,164	39,623	17,678	15,828	6,117	77,579	55,068	22,511
Professional and similar damage	302,960 ⁴	140,189	162,771	70,354	36,370	21,453	12,531	206,659	100,322	106,337
Hardship	—	—	—	5,681	4,441	894	346	6,897	720	6,176
Advance payments	—	—	—	—	—	—	—	106,792	106,792	37,648

1. In addition, 166,706 claims were not specified in accordance with the residence of the applicant.
2. Not included are 6,552 "other dispositions" not classified according to the category of claim.
3. In thousands of DM.
4. The difference between the sum total plus the 166,706 claims mentioned in Footnote 1, and the figures in the first column in Series A, Table I is due to incomplete information.

TABLE III
Adjudication by Courts¹

Kind of Court	Claims Received		Claims Adjudicated									
			Total		Awards		Compromises		Rejections		Others	
	74,233		52,483		4,884		20,221		13,284		14,094 ²	
Landgericht	37,107	37,126	21,733	30,750	1,947	2,937	11,006	9,215	3,159	10,125	5,621	8,473
	7,802		5,373		680		732		1,573		2,388	
Oberlandesgericht	2,810	4,952	1,165	4,208	145	535	312	420	327	1,246	381	2,007
	208		88		39 ³		6		57		88	
Bundesgerichtshof	38	170	9	79	2	37	—	6	14	43	9	79

1. In the table, the figure above the line pertains to total claims, the figure on the left below the line to residents abroad, the one on the right to German residents.
2. Includes withdrawals.
3. Decisions in favor of claimant.

PART B
Adjudications and Payments
under the Federal Compensation Law
(July 1, 1956 to September 30, 1963)

TABLE I

Claims Filed, and Adjudications Made by Compensation Agencies, by Years, and Residence of Claimants, Payments Effected by Years and Residence of Claimants.¹

Year	Claims filed as of the end of the year		Claims adjudicated as of the end of the year		Claims filed at the start of the year		Claims filed during the year		Claims adjudicated during the year		Claims on file at the end of the year		Payments during the year (in thousands of DM) ²		Payments as of the end of the year (in thousands of DM)	
	1		2		3		4		5		6		7		8	
July 1 to Dec. 31, 1956	1,225,846		Same as in column 5		1,003,145 ²		222,701		100,650		1,125,196		593,456		Same as in column 7	
	748,222	477,624					153,282	69,419	53,131	47,519	695,091	430,105	426,088	167,368		
1957	1,718,912		378,971		1,125,196		493,066		278,321		1,337,941		1,641,695		2,235,151	
	1,170,421	548,491	214,669	164,302	695,091	430,105	422,199	70,867	161,538	116,783	953,752	384,189	1,123,236	513,459	1,554,324	680,827
1958	2,542,233		655,752		1,337,941		823,321		276,781		1,886,481		1,549,677		3,784,828	
	1,880,660	661,573	383,591	272,181	953,752	384,189	710,239	113,082	168,902	107,879	1,497,089	389,392	1,154,084	395,593	2,708,408	1,076,420
1959	2,674,328 ³		996,403		1,886,481		132,095		340,651		1,677,925		1,669,912		5,454,740	
	1,975,771	698,557	627,894	368,509	1,497,089	389,392	95,111	36,944	244,323	96,328	1,347,877	380,048	1,308,529	361,383	4,016,937	1,437,803
1960	2,703,254		1,469,599		1,677,925		28,991		473,196		1,233,660		2,059,856		7,514,596	
	1,971,613	731,641	988,702	490,897	1,347,877	330,048	-4,098 ⁴	33,089	360,808	112,388 ⁵	982,911	250,749	1,626,793	433,063	5,643,730	1,870,866
1961	2,799,574		1,908,680		1,233,660		96,315		439,081		890,894		2,241,251		9,755,847	
	2,039,680	759,894	1,321,543	587,137	982,911	250,749	68,067	28,248	332,841	106,240	718,137	172,757	1,881,293	359,958	7,525,023	2,230,824
1962	2,899,540		2,294,308		890,894		99,966		385,628		605,237		2,265,564		12,021,411	
	2,129,148	770,392	1,603,493	690,815	718,137	172,757	89,468	10,498	281,952	103,676	525,653	79,574	1,955,281	310,283	9,480,304	2,541,107
Jan. 1 1963 to Oct. 1, 1963	2,976,140		2,489,396		605,232		76,600		195,088		486,744		1,597,809		13,619,017	
	2,185,776	790,364	1,756,710	732,686	525,653	79,579	56,628	19,972	153,215	41,873	429,066	57,678	1,385,125	211,684	10,866,229	2,752,788

1. In the table, the figure above the line pertains to total claims or payments, the figure on the left below the line relates to residents abroad, the one on the right to German residents.
2. Tentative total of pending claims. There is no breakdown by residents because not all the Laender had reported it.
3. Corrected figure.

4. The decrease was due to a recount of the claims.
5. Corrected figure.
6. In this and other tables, no completely direct relationship exists between adjudications by compensation agencies and court decisions. Furthermore, these decisions included adjudications by agencies which had taken place at an earlier period.

TABLE II

Payments by Land

<i>Land</i>	<i>Total Payments</i>	<i>Residents Abroad</i>	<i>German Residents</i>
Baden- Wuerttemberg	515,063,000	384,289,000	130,774,000
Bavaria	1,356,000,000	969,740,000	386,260,000
Bremen	76,710,000	34,074,000	42,636,000
Hamburg	455,461,000	245,516,000	209,945,000
Hessen	1,123,646,000	855,091,000	268,555,000
Niedersachsen	885,228,000	670,796,000	214,432,000
Nordrhein- Westfalen	3,902,745,000	2,942,372,000	960,373,000
Rheinland-Pfalz	2,459,423,000	2,339,187,000	120,236,000
Schleswig- Holstein	89,395,000	21,371,000	68,024,000
Berlin	3,738,369,000	2,877,466,000	860,903,000
Saar	79,130,000	49,716,000	29,414,000
Total	14,681,170,000	11,389,618,000	3,291,552,000

TABLE III

Claims on File on September 30, 1963, by Land and Category of Damage

Land	Life	Health	Liberty	Property	Possessions	Special Levies	Professions	Economic Advancement	Aid to Returnees	Hardship	Claims Pending Sept. 30, 1963
Baden-Wuerttemberg	300	1,201	316	1,701	13,537	1,236	1,410	558	20	54	10,333
Bavaria	2,252	9,358	1,127	1,781	2,003	1,491	2,540	476	13	2	21,043
Berlin	3,437	15,025	7,747	22,366	24,920	4,461	27,463	11,602	59	3	117,083
Bremen	57	166	165	278	313	124	384	141	5	1	1,634
Hamburg	890	2,170	1,144	2,895	4,933	2,018	4,246	1,362	63	2	19,723
Hessen	817	4,264	812	2,359	2,248	2,075	954	744	18	—	14,291
Nieder-Sachsen	922	2,583	2,040	3,235	3,708	1,671	3,293	1,436	65	32	18,985
Nordrhein-Westfalen	8,328	21,658	20,930	1,434	576	1,735	737	1,610	28	34	57,070
Rheinland-Pfalz	22,918	31,448	122,023	5,483	9,478	4,384	15,841	1,076	47	1,364	214,062
Schleswig-Holstein	51	121	57	30	20	40	45	49	14	12	439
Saar	591	1,530	1,555	2,052	1,864	578	1,903	2,052	156	—	12,081
Total	40,363	89,524	157,916	43,614	63,600	19,813	58,816	21,106	488	1,504	486,744

TABLE IV
Suits Filed in the Courts of Original Jurisdiction (Landgericht),
and Appeals to the Courts of Secondary Jurisdiction (Oberland-
esgericht) and the Supreme Court

Court	Suits Filed	Suits Disposed of	
		Awards	Amicable Settlements
Landgerichte	307,850	26,936 ¹	75,916
Oberlandes- gerichte	46,106	3,389 ²	7,253
Supreme Court	2,208		

1. Subject to appeal by the Land.
2. These are awards on the appeal of claimants only.

TABLE V

Adjudications by Compensation Agencies by Years, Categories of
Decision and Residence of the Applicant¹

	<i>Total Adjudications</i>		<i>Awards</i>		<i>Rejections</i>		<i>Other Dispositions</i>	
July 1 to Dec. 31, 1956	100,650		71,479		20,871		8,300	
	53,131	47,519	41,484	29,995	7,047	13,824	4,600	3,701
1957	278,321		198,004		53,554		26,773	
	161,538	116,783	127,905	70,099	17,997	35,557	15,636	11,137
1958	276,781		176,257		70,188		30,336	
	168,902	107,879	122,236	54,021	28,691	41,497	17,975	12,361
1959	340,651		184,182		87,141		69,328	
	244,323	96,328	147,872	36,310	49,757	37,384	46,694	22,634
1960	473,196		194,832		131,252		147,112	
	360,808	112,388	154,258	40,574	83,161	48,091	123,389	23,723
1961	439,081		183,268		140,684		115,129	
	332,841	106,240	152,942	30,326	93,271	47,413	86,628	28,501
1962	385,628		165,594		121,199		98,835	
	281,952	103,676	138,385	27,209	78,569	42,630	64,998	33,837
Jan. 1 to Sept. 30, 1963	195,088		97,534		53,441		44,113	
	153,215	41,873	84,617	12,917	36,575	16,866	32,023	12,090

1. The figures are subject to corrections which were made from time to time. Thereupon the data on adjudications differed somewhat, in fact, from the figures given in the table.

In the table, the figure above the line pertains to total claims, the figure on the left below the line to residents abroad, the one on the right to German residents.

TABLE VI

Awards Made by Compensation Agencies,
by Category of Damage

<i>Category of Claim</i>	<i>Total Claims</i>	<i>Claims of German Residents</i>	<i>Claims of Foreign Residents</i>
Life	57,756	15,440	42,316
Health	152,515	40,317	112,198
Liberty	491,188	55,120	436,068
Property	31,072	11,927	19,145
Possessions	102,780	17,598	85,182
Discriminatory Levies	44,081	11,471	32,610
Damage to Professions	327,448	115,152	212,296
Damage to Economic Pursuits	36,474	10,480	25,994
Assistance to Returnees	23,468	21,094	2,374
Hardship Payments	4,358	2,842	1,516
Totals	<u>1,271,140</u>	<u>301,441</u>	<u>969,699</u>

PART C

**Statistical Data Covering the
Whole Ten Year Period**

TABLE I

Payments by Category of Damage (Thousands of DM)

Category of Damage	Total Payments	Payments to Residents Abroad	Payments to German Residents
Life	1,573,325	1,149,640	423,685
Health	4,354,738	3,130,019	1,224,719
Liberty	2,375,171	2,193,770	181,401
Property	340,280	124,096	216,184
Possessions	398,997	321,947	77,050
Discriminatory Levies	262,157	229,962	32,195
Damage to Professions	4,757,003	3,888,233	868,770
Damage to Economic Pursuits	85,520	59,488	26,032
Assistance to Returnees	136,363	9,971	126,392
Hardship Payments	63,990	18,757	45,233
Totals	14,347,544	11,125,883	3,221,661
Advances on Future Payments	333,636	263,733	69,903

TABLE II

Claims Filed, and Adjudications by Compensation Agencies, by Category of Damage¹

Category of Claim	Claims Filed	Claims Adjudicated	Claims on File Sept. 30, 1963
Life	209,752	169,389	40,363
	48,293 161,459	46,190 123,199	2,103 38,260
Health	441,094	351,570	89,524
	123,209 317,885	114,197 237,373	9,012 80,512
Liberty	901,318	743,402	157,916
	129,062 772,256	124,462 618,940	4,600 153,316
Property	228,722	185,108	43,614
	77,828 150,894	70,307 114,801	7,521 36,093
Possessions	295,510	241,910	53,600
	77,677 217,833	66,808 175,102	10,869 42,731
Discriminatory Levies	135,526	115,713	19,813
	34,236 101,290	31,254 84,459	2,982 16,831
Damage to Professions	570,751	511,935	58,816
	216,234 354,517	203,432 308,503	12,302 46,014
Damage to Economic Pursuits	144,716	123,610	21,106
	47,733 96,983	40,475 83,135	7,258 13,848
Assistance to Returnees	38,374	37,886	488
	30,580 7,794	30,239 7,647	341 147
Hardship	10,377	8,873	1,504
	5,512 4,865	5,322 3,551	190 1,314

1. In the table, the figure above the line pertains to total claims, the figure on the left below the line to German residents, the one on the right to residents abroad.

TABLE III
Claims Filed, and Adjudications by
Compensation Agencies, by Land¹

<i>Land</i>	<i>Claims Filed</i>		<i>Claims Adjudicated</i>		<i>Claims on File Sept. 30, 1963</i>	
	170,874		160,541		10,333	
Baden- Wuerttemberg	58,215	112,659	55,631	104,910	2,584	7,749
	340,055		319,012		21,043	
Bavaria	123,723	216,332	116,837	202,175	6,886	14,157
	18,090		18,090		1,634	
Bremen	12,281	5,809	12,281	5,809	951	683
	116,587		96,864		19,723	
Hamburg	52,008	64,579	46,071	50,793	5,937	13,786
	234,684		220,393		14,291	
Hessen	46,187	188,497	41,852	178,541	4,335	9,956
	185,528		166,543		18,985	
Niedersachsen	49,030	136,498	47,254	119,289	1,776	17,209
Nordrhein- Westfalen	709,871		652,801		57,070	
	278,877	430,994	274,630	378,171	4,247	52,823
	706,513		492,451		214,062	
Rheinland-Pfalz	21,694	684,819	17,566	474,885	4,128	209,934
Schleswig- Holstein	35,426		34,987		439	
	26,216	9,210	25,957	9,030	259	180
	424,920		307,837		117,083	
Berlin	103,988	320,932	84,169	223,668	19,819	97,264
	33,592		21,511		12,081	
Saar	18,145	15,447	11,389	10,122	6,756	5,325
	2,976,140		2,489,396		486,744	
Grand Total	790,364	2,185,776	732,686	1,756,710	57,678	429,066

1. In the table, the figure above the line pertains to total claims, the figure on the left below the line to German residents, the one on the right to residents abroad.



TABLE IV

Data on Claims Filed, Claims Adjudicated, Awards Granted, and Payments Made¹

Land	Life	Health	Liberty	Possessions	Property	Special Levies	Professions	Economic Advancement	Aid to Returnees	Hardship
Baden-Wuerttemberg	9,427 (6,530)	21,423 (12,916)	31,711 (22,077)	26,151 (20,058)	16,432 (10,769)	11,857 (8,605)	40,150 (23,709)	10,267 (7,494)	2,513 (328)	984 (196)
	9,127 (6,298)	20,222 (11,898)	31,395 (21,839)	22,614 (17,331)	14,731 (9,489)	10,621 (7,594)	38,749 (22,876)	9,709 (7,090)	2,498 (328)	880 (172)
	2,477 (1,523)	4,089 (2,912)	12,276 (9,554)	8,177 (7,601)	1,052 (706)	3,350 (2,465)	19,681 (13,564)	2,205 (1,877)	1,563 (45)	351 (69)
51,506 (27,932)	71,297 (44,872)	61,446 (51,986)	27,993 (24,482)	8,158 (3,379)	16,059 (15,123)	251,296 (204,975)	7,364 (5,560)	8,230 (568)	5,196 (432)	
Bavaria	23,686 (10,760)	66,253 (45,307)	112,648 (82,519)	31,200 (19,922)	25,703 (14,352)	11,188 (8,141)	55,070 (24,799)	9,997 (5,535)	3,394 (965)	916 (172)
	24,434 (14,692)	56,935 (36,968)	111,521 (81,522)	29,197 (18,775)	23,922 (13,183)	9,697 (6,768)	52,530 (23,779)	9,521 (5,353)	3,381 (964)	914 (171)
	6,603 (4,056)	25,240 (18,342)	59,436 (44,530)	8,756 (7,071)	2,449 (1,675)	5,224 (3,980)	26,819 (13,073)	2,159 (1,692)	1,396 (230)	509 (71)
	103,624 (59,453)	507,590 (372,501)	322,139 (285,865)	22,982 (18,601)	50,959 (34,655)	21,978 (18,307)	285,520 (199,755)	5,588 (4,643)	10,017 (625)	15,801 (1,166)
Berlin	20,036 (13,826)	51,240 (35,788)	57,559 (44,553)	64,945 (53,547)	36,918 (29,911)	16,348 (13,400)	129,650 (100,803)	38,169 (28,460)	8,956 (—)	1,299 (644)
	16,599 (10,999)	36,215 (23,219)	49,612 (38,594)	40,025 (32,278)	14,552 (10,720)	11,887 (9,547)	102,187 (78,975)	26,567 (18,692)	8,897 (—)	1,296 (644)
	6,825 (4,077)	24,995 (15,551)	36,907 (29,973)	28,183 (24,115)	6,029 (4,351)	8,638 (7,072)	86,259 (69,498)	20,413 (14,445)	7,734 (—)	1,057 (563)
	250,343 (160,305)	952,574 (601,951)	193,591 (153,500)	177,976 (145,834)	29,222 (23,070)	109,747 (92,773)	1,647,027 (1,426,039)	17,172 (14,381)	41,711 (—)	17,093 (11,559)
Bremen	801 (265)	2,153 (647)	2,114 (668)	1,933 (1,116)	2,540 (802)	927 (408)	5,586 (1,471)	1,522 (395)	385 (45)	129 (3)
	744 (244)	1,978 (576)	1,949 (631)	1,620 (962)	2,262 (682)	803 (355)	5,202 (1,822)	1,381 (356)	380 (45)	128 (3)
	241 (63)	1,097 (275)	860 (407)	574 (433)	672 (377)	356 (151)	8,470 (991)	500 (85)	225 (35)	109 (3)
	7,077 (2,126)	22,520 (7,626)	3,531 (1,873)	2,175 (1,809)	1,274 (575)	1,562 (453)	34,573 (18,490)	158 (122)	1,337 (—)	1,426 (—)
Hamburg	6,484 (3,095)	9,564 (4,200)	15,088 (7,941)	14,664 (10,207)	15,321 (9,817)	11,107 (8,226)	33,694 (16,334)	8,125 (4,481)	2,251 (197)	289 (81)
	5,594 (2,335)	7,394 (2,754)	13,944 (7,586)	9,731 (6,742)	12,426 (6,936)	9,089 (6,310)	29,448 (14,238)	6,763 (3,594)	2,188 (197)	287 (81)
	1,609 (540)	2,709 (973)	8,500 (5,537)	4,528 (3,846)	2,188 (1,491)	4,651 (3,504)	20,062 (10,539)	1,916 (1,352)	1,638 (106)	150 (41)
	45,867 (13,764)	112,289 (33,170)	25,199 (17,733)	20,632 (13,098)	3,273 (2,183)	12,607 (10,551)	217,338 (150,000)	4,535 (2,355)	9,852 (1,538)	2,968 (268)
Hessen	14,446 (11,842)	28,562 (22,648)	45,796 (38,157)	34,664 (29,398)	23,577 (19,159)	15,938 (14,313)	55,945 (41,503)	10,814 (8,986)	4,395 (2,415)	547 (60)
	13,629 (10,999)	24,298 (18,711)	44,984 (37,478)	32,416 (28,391)	21,218 (17,266)	13,863 (12,633)	54,991 (41,105)	10,070 (8,943)	4,377 (2,415)	547 (60)
	3,484 (2,507)	9,325 (7,415)	26,435 (22,431)	15,195 (14,429)	2,062 (1,736)	4,804 (4,287)	36,057 (27,704)	2,228 (2,061)	2,262 (677)	504 (58)
	88,644 (51,346)	216,887 (163,447)	145,354 (127,478)	36,543 (33,653)	73,753 (64,366)	30,826 (28,816)	502,023 (424,881)	10,446 (10,144)	13,972 (3,367)	5,193 (1,491)
Niedersachsen	9,373 (6,032)	25,112 (16,992)	32,301 (24,746)	25,463 (21,817)	20,179 (15,726)	11,655 (9,529)	47,359 (32,394)	10,928 (8,420)	2,497 (1,263)	661 (179)
	8,451 (5,237)	22,529 (14,024)	30,261 (22,959)	21,755 (18,338)	16,944 (12,776)	9,984 (7,953)	44,066 (29,544)	9,492 (7,070)	2,432 (1,210)	629 (169)
	2,245 (1,329)	8,915 (6,512)	16,081 (14,118)	9,161 (8,463)	2,280 (1,698)	3,796 (3,199)	27,142 (20,261)	1,387 (1,257)	1,504 (694)	147 (26)
	40,338 (34,034)	225,534 (142,189)	95,096 (85,654)	30,089 (26,467)	20,760 (9,175)	22,176 (21,314)	401,694 (348,121)	3,950 (3,697)	9,061 (—)	4,649 (208)
Nordrhein-Westfalen	64,113 (45,933)	163,751 (118,173)	189,123 (146,875)	54,400 (23,291)	52,498 (25,426)	30,979 (15,901)	113,915 (42,161)	29,478 (12,553)	9,148 (1,698)	2,486 (983)
	55,785 (37,746)	142,093 (97,508)	168,193 (125,945)	52,966 (22,244)	51,922 (23,187)	29,244 (14,568)	113,178 (41,914)	27,868 (12,386)	9,120 (1,692)	2,452 (981)
	14,955 (10,466)	61,922 (48,088)	89,656 (79,770)	11,948 (4,880)	17,234 (9,054)	9,541 (4,783)	67,089 (25,124)	3,961 (1,812)	4,779 (429)	828 (218)
	485,610 (359,897)	1,925,324 (1,500,487)	404,783 (356,631)	118,994 (89,340)	53,960 (35,972)	29,717 (25,572)	814,484 (581,414)	36,016 (18,482)	27,878 (3,074)	5,979 (1,303)
Rheinland-Pfalz	57,385 (55,906)	64,677 (60,999)	403,895 (406,392)	25,904 (23,888)	36,276 (34,352)	22,531 (21,337)	71,584 (66,118)	19,382 (18,187)	2,109 (532)	2,770 (2,508)
	34,467 (33,602)	33,223 (29,357)	291,872 (279,080)	20,421 (19,465)	26,738 (25,628)	18,147 (17,643)	55,743 (50,293)	18,306 (17,897)	2,062 (496)	1,406 (1,234)
	17,891 (17,531)	12,612 (11,466)	239,102 (237,456)	2,013 (1,780)	9,716 (9,234)	3,338 (3,117)	33,051 (29,352)	1,464 (1,310)	1,340 (40)	548 (461)
	445,614 (435,238)	273,655 (247,067)	1,112,619 (1,106,817)	30,729 (8,839)	21,903 (19,134)	16,791 (15,673)	534,484 (496,373)	— (—)	7,533 (219)	5,536 (2,285)
Schleswig-Holstein	2,588 (647)	5,195 (1,399)	5,949 (1,532)	3,088 (1,005)	3,283 (1,318)	1,633 (733)	10,366 (1,656)	2,271 (816)	715 (66)	338 (38)
	2,537 (629)	5,074 (1,361)	5,892 (1,505)	3,058 (986)	3,263 (1,303)	1,593 (712)	10,321 (1,637)	2,222 (796)	701 (66)	326 (35)
	655 (81)	1,021 (320)	1,971 (502)	275 (59)	788 (544)	328 (83)	4,577 (615)	172 (50)	150 (11)	148 (5)
	16,629 (1,589)	32,687 (7,401)	5,771 (3,206)	1,876 (253)	896 (430)	539 (296)	27,980 (8,058)	193 (19)	901 (67)	1,923 (46)
Saar ²	1,513 (633)	3,184 (1,416)	5,334 (2,401)	4,660 (2,184)	4,433 (2,678)	1,563 (699)	7,423 (3,570)	3,763 (1,596)	2,011 (269)	8 (—)
	1,022 (423)	1,654 (797)	3,779 (1,801)	2,608 (1,144)	2,569 (1,567)	785 (376)	5,520 (2,820)	1,711 (949)	1,855 (244)	8 (—)
	381 (143)	588 (344)	1,964 (981)	104 (32)	667 (532)	75 (31)	3,241 (1,775)	69 (53)	1,077 (109)	7 (—)
	8,073 (3,929)	14,361 (9,308)	5,642 (3,027)	582 (161)	3,850 (2,461)	155 (104)	40,584 (30,127)	103 (85)	5,871 (513)	121 (—)

1. Four lines of figures are given for each land. The first line pertains to claims filed, the second to claims adjudicated, the third to awards granted, and the fourth to payments made, in the thousands of DM. The first three categories pertain to the period June 30, 1956-September 30, 1963, and the fourth to

the period October 1, 1953-September 1, 1963.

Figures in parentheses pertain to residents abroad, and the others to residents in Germany.

2. From July 1, 1959 to Sept. 30, 1963.

TABLE V

Court Actions Filed in the Landgerichte, by Land and Disposition.¹

Land	Actions		Judgments for Plaintiff	Nature of Dispositions			Actions Pending Sept. 30, 1963
	Filed	Disposed of		Dismissals	Settlements	Withdrawals	
Baden- Wuerttemberg	27,995	23,791	3,342	8,806	6,712	4,931	4,204
Berlin	34,392	32,271	3,298	10,448	4,710	13,815	2,121
Bremen	1,150	1,104	386	477	89	152	46
Hamburg	7,166	6,208	678	3,231	865	1,434	958
Hessen	34,525	31,298	5,023	8,451	10,954	6,870	8,227
Nieder- sachsen	16,348	14,671	2,494	7,157	1,659	3,361	1,677
Nordrhein- Westfalen	55,203	42,121	5,451	18,334	6,983	11,535	13,082
Rheinland- Pfalz	45,101	26,368	1,809	8,071	10,152	6,336	18,733
Schleswig- Holstein	5,263	5,056	291	1,728	1,011	2,026	207
Saar	1,397	907	187	410	33	277	490
Total	228,540	183,795					44,745

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1. Bavaria has not supplied statistical material on court actions. The totals are therefore incomplete.

TABLE VI

Appeals Filed Against Decisions of the Landgerichte, by Land and by Nature of Disposition.¹

Land		Total Appeals Filed	Appeals Filed by Plaintiff	Nature of Disposition			Appeals Disposed of	Pending Appeals Sept. 30 1963	
				Appeals Rejected	Appeals Granted	Settlements			Withdrawals
Baden-Wuerttemberg ²	A	4,431	3,731 (700)	1,544 (174)	352 (190)	626 (94)	481 (128)	3,589	842
	B	248	190 (58)	81 (11)	75 (43)	2 (-)	23 (4)	238	10
Berlin	A	6,015	4,863 (659)	1,409 (114)	306 (204)	1,135 (136)	2,013 (205)	5,522	493
	B	252	183 (43)	79 (9)	80 (29)	3 (1)	21 (4)	226	26
Bremen	A	355	167 (146)	107 (47)	25 (66)	4 (12)	31 (21)	313	42
	B	31	17 (12)	11 (4)	1 (7)	- (-)	5 (1)	29	2
Hamburg	A	1,979	1,753 (226)	836 (56)	292 (84)	240 (21)	285 (36)	1,850	129
	B	151	85 (66)	38 (15)	27 (48)	- (2)	10 (-)	140	11
Hessen	A	5,259	3,870 (608)	1,798 (192)	621 (197)	876 (37)	575 (182)	4,478	781
	B	429	297 (85)	184 (20)	41 (54)	1 (1)	71 (10)	382	47
Nieder-sachsen	A	4,026	3,072 (637)	1,509 (176)	351 (296)	370 (48)	842 (117)	3,709	317
	B	209	155 (41)	64 (17)	75 (23)	- (-)	16 (1)	196	13
Nordrhein-Westfalen	A	8,755	4,896 (914)	2,563 (355)	789 (253)	611 (117)	933 (189)	5,810	2,945
	B	478	286 (79)	152 (25)	62 (49)	- (-)	71 (5)	365	113
Rheinland-Pfalz	A	3,387	2,961 (426)	1,155 (85)	132 (118)	415 (97)	249 (51)	2,302	1,085
	B	197	146 (51)	58 (16)	59 (28)	2 (-)	7 (3)	173	24
Schleswig-Holstein	A	727	600 (82)	302 (32)	77 (28)	56 (12)	165 (10)	682	45
	B	57	38 (12)	22 (7)	1 (4)	- (-)	15 (1)	50	7
Saar	A	233	88 (29)	62 (8)	1 (13)	3 (2)	22 (6)	117	116
	B	6	5 (-)	2 (-)	3 (-)	- (-)	1 (-)	6	-
Total	A	35,167						28,372	6,795
	B	2,058						1,805	253

1. Bavaria has failed to supply statistical material on appeals before the Oberlandesgericht and the Supreme Court. The totals are therefore incomplete.

2. A = Oberlandesgerichte (in Berlin the Kammergericht).

B = The Supreme Court.

The figures in parentheses refer to actions taken by the individual Land.

TABLE VII

Awards by Compensation Agencies, by Years and by Category of Damage and Payments (Thousands of DM)¹

Period	Life	Health	Liberty	Property, Incl. Possessions and Discriminatory Levies	Professions	Economic Advancement	Aid to Returnees	Hardship
by 1 to 1956	2,148 (152,358)	4,964 (349,523)	30,705 (435,225)	8,056 (141,338)	17,700 (342,169)	1,150 (10,042)	6,451 (39,046)	805 (15,898)
	868 1,280 (54,425) (97,933)	1,608 3,956 (99,288) (250,235)	23,549 7,156 (358,479) (76,746)	5,232 2,824 (105,351) (35,987)	9,340 8,360 (201,722) (140,447)	674 476 (2,095) (7,947)	160 6,291 (998) (32,048)	53 252 (1,567) (13,831)
1957	12,085 (305,600)	23,061 (712,697)	105,756 (757,969)	27,746 (267,290)	81,470 (882,001)	4,528 (15,934)	13,797 (79,579)	1,030 (17,742)
	5,517 6,568 (141,558) (164,042)	8,830 14,231 (271,705) (440,992)	85,792 19,964 (648,295) (109,674)	19,849 7,897 (207,885) (59,407)	45,676 35,794 (604,058) (277,943)	2,727 1,801 (5,591) (10,343)	898 12,899 (4,216) (75,363)	100 930 (1,980) (15,762)
1958	19,862 (450,549)	39,842 (1,070,263)	166,764 (1,002,434)	49,151 (374,077)	151,887 (1,488,765)	8,899 (25,073)	17,678 (98,963)	1,647 (22,501)
	10,684 9,178 (239,770) (210,779)	18,149 21,693 (476,603) (593,660)	137,270 29,494 (872,904) (129,530)	35,930 13,221 (281,967) (92,110)	92,372 59,515 (1,118,848) (369,917)	5,709 3,190 (12,234) (12,839)	1,365 16,313 (6,471) (92,492)	146 1,501 (2,296) (20,205)
1959	27,417 (621,030)	56,770 (1,463,744)	246,614 (1,301,054)	71,088 (493,997)	192,478 (2,138,249)	14,514 (37,490)	19,011 (110,468)	2,020 (27,221)
	16,510 10,907 (366,777) (254,253)	29,818 26,952 (731,416) (732,328)	210,578 36,036 (1,156,709) (144,345)	53,271 17,817 (361,349) (132,648)	117,663 74,815 (1,642,015) (496,234)	9,865 4,649 (21,719) (15,771)	1,602 17,409 (7,395) (103,075)	190 1,330 (2,259) (22,570)
1960	37,117 (876,779)	80,317 (1,999,387)	330,189 (1,657,490)	96,507 (678,929)	236,873 (2,820,617)	20,673 (52,797)	18,704 (122,713)	3,168 (45,573)
	24,526 12,591 (574,032) (302,747)	47,536 32,781 (1,132,923) (866,464)	285,141 44,998 (1,497,202) (160,288)	72,447 24,060 (440,208) (288,721)	147,420 89,453 (2,218,626) (601,991)	14,426 6,247 (32,756) (20,041)	1,886 18,704 (8,614) (114,134)	700 2,468 (4,465) (34,462)
1961	45,312 (1,121,889)	110,028 (2,790,685)	401,314 (1,966,739)	126,304 (832,210)	272,884 (3,531,922)	26,991 (65,244)	22,011 (130,708)	5,168 (45,573)
	31,413 13,899 (771,585) (350,304)	73,736 36,292 (1,789,095) (1,001,590)	351,530 49,784 (1,796,276) (170,463)	95,147 31,157 (540,315) (291,895)	173,102 99,782 (2,830,071) (701,851)	18,950 8,041 (42,810) (22,434)	2,119 19,892 (9,306) (121,402)	700 2,468 (9,111) (34,462)
1962	53,288 (1,386,002)	136,852 (3,697,403)	457,268 (2,196,900)	158,285 (941,575)	308,420 (4,260,711)	32,862 (79,495)	22,838 (133,169)	3,793 (56,055)
	38,315 14,973 (991,620) (394,382)	97,928 38,924 (2,568,089) (1,129,314)	403,761 53,507 (2,019,130) (177,770)	120,369 37,916 (624,315) (317,260)	198,051 110,369 (3,460,397) (800,314)	23,292 9,570 (54,360) (25,135)	2,274 20,564 (9,767) (123,402)	1,092 2,701 (15,189) (40,866)
1963 3 months	57,756 (1,573,325)	152,515 (3,854,738)	491,188 (2,375,171)	177,933 (1,001,434)	327,448 (4,757,903)	36,474 (85,520)	23,468 (136,363)	4,358 (63,980)
	42,316 15,440 (1,149,640) (423,685)	112,198 40,317 (3,130,019) (724,719)	436,068 55,120 (2,193,770) (181,401)	136,987 40,996 (676,005) (325,429)	212,296 115,152 (3,888,283) (686,770)	25,994 10,480 (59,488) (26,032)	2,374 21,094 (9,971) (126,392)	1,516 2,842 (18,759) (45,221)

1. In the table, the figure above the line is the total of adjudications or payments. The figures below the line refer on the left to residents abroad and on the right to German residents.

Figures in parentheses are payments, and pertain to the whole ten-year period (as shown in the official statistics). To obtain the payments made under the Federal Compensation Law only, payments made between October 1, 1953

and June 30, 1956 (see Part A, Table I) must be deducted. This is not always possible because the statistical reports for the first period are less detailed than for the second.

Advance payments made are not included because the statistical reports do not divide them by category of damage.

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Arab states. It seems both reasonable and natural for any people with a community of interests to unite on a federal basis. The Arabs long ago realized that they have common interests and aspirations, sufficiently important to form a union. Moreover, they had bitter experience with disunity during the period between the two World Wars. A kind of Arab "interdependence feeling," accordingly, has emerged which is particularly sensitive in its reaction to any encroachment on the independence and political integrity of the Arab countries. The Franco-Lebanese crisis of 1943 and the Franco-Syrian crisis of 1945 have stirred the whole Arab World and given sufficient grounds for the belief that the Arab countries are ready to cooperate and to act together when there is need. During the recent Franco-Syrian crisis, the Council of the Arab League met on June 4, 1945, and after a few meetings it passed a resolution on June 7 declaring that France had committed aggression on Syria and the Lebanon and supporting the demand of Syria and the Lebanon for the immediate evacuation of all French troops from the Levant. The Council then declared that "in accordance with Article six of its covenant [providing mutual aid for a member attacked] the Arab League has decided to take necessary measures in order to resist French aggression."

The Arab League showed further evidences of cooperation in the United Nations Conference on International Organization held in San Francisco. Five states of the League were represented, namely, Iraq, Syria, the Lebanon, Saudi Arabia, and Egypt; and the delegations of these states stood together as one *bloc* in all matters of common interest to the Arab World. They will most likely take the same attitude in any future international conference, as well as in the new United Nations Organization.

The League of Arab States is regarded by predominant opinion in the Arab World as a step toward the realization of a future United Arab State. Arabs are quite aware of the difficulties which must be overcome before that ultimate objective is reached. The present arrangement, accordingly, is only a transitional stage which most likely will lead to closer unity between certain Arab countries, such as Syria and Transjordan; and later probably between Iraq, Syria, the Lebanon, and Palestine. The Arab League will then be maintained only to provide a medium of cooperation between the Arab Union and those countries which have remained outside the Union.

SHALL ENEMY PROPERTY BE RETURNED? A LONG-TERM VIEW*

CONSTANT SOUTHWORTH

Washington, D. C.

The ultimate disposition of some hundreds of million dollars' worth of property of enemy aliens, now under the control of the United States government, awaits a decision. In addition to patents, trademarks, copyrights, etc., the Alien Property Custodian has subjected to control enemy property amounting to nearly 200 million dollars, composed primarily of business enterprises. The United States Treasury has blocked some 330 million dollars worth of the assets of enemy nationals not involving control over specific productive assets.

Many international lawyers hold that international law requires post-war restitution of, or in lieu of restitution compensation for, enemy private property sequestered during a war; and an important question of policy now presents itself. This article, on the basis of long-term considerations, advocates a policy of restitution.

I. DISTINCTION BETWEEN RESTITUTION AND COMPENSATION

The distinction between restitution and compensation is, of course, significant in developing a policy on treatment of enemy property. Restitution, which consists in returning the property in a form as similar as possible to that in which it was taken over, was contemplated where it should be feasible in the original Trading with the Enemy Act of 1917, under which enemy property was sequestered in the last war. Section 12 of that act gave the Alien Property Custodian the powers of a "common-law trustee," and a sale or other disposition of the property was to be made only "when necessary to prevent waste and protect such property and to the end that the interests of the United States in such property and rights, or of such person as may ultimately become entitled thereto, or the proceeds thereof, may be preserved and safeguarded." Compensation involves the sale or other disposition of the property and eventual return to the previous owner of the actual proceeds of sale or money representing the property's value.

The Alien Property Custodian says that "the program of converting vested property into cash does not in any way prejudice the character of any ultimate settlement" and that the "original owners are in general interested not in specific pieces of property but in the economic value

* The attitudes expressed in this article are those of the writer only, who, however, desires to make appreciative acknowledgment of the encouragement and help received from Dr. Robert R. Wilson of Duke University and Mr. Walter Hollis.

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of their property as a source of income."¹ He indicates that compensation, at current market prices, will satisfy the owners as well as restitution. One may question this assumption, since the current market price would ordinarily not be as great as the value the property had as a "going concern"—as an integral part of the economy of the country where it is located. For instance, without the know-how of the previous owners; their personal skills, and long-time familiarity with the technical and competitive ins and outs of a business, its productive and profit-making possibilities may be considerably less. Also the former owner of a property might not be permitted to convert the dollars he receives for it into the currency of his own country, or might not be able to do it on terms satisfactory to him. Furthermore, the owner might have an interest in retaining the property quite apart from its pecuniary value.

Nevertheless, in cases where liquidation has taken place compensation on a fair-value basis would ordinarily be the most that could be done for the owner. Although for convenience in the following discussion of a desirable policy compensation has not ordinarily been separately mentioned, references to restitution are meant to apply also, where appropriate, to cases in which, because of previous liquidation or for other reasons, compensation would take the place of restitution.

II. PROPOSALS MADE IMPLY NON-RETURN

The general implication of action and statements relative to enemy property sequestered by the United States Government appears to be that the property will not be returned. A similar implication exists in inter-governmental pronouncements to which the United States is a party covering the treatment of enemy property in the Western hemisphere. The Alien Property Custodian has stated: "Our third responsibility is undertaken on the specific instruction of the President. We shall refuse to sell or to release title to the enemy patents. The inventions covered by these patents *will be made a permanent possession of the American people*, and, through freely granted licenses, they will be incorporated in our national industrial machinery."² (Italics mine.)

Although up to April, 1945, the Alien Property Custodian sold only a negligible portion of the business enterprises which he had subjected to control, he intended, as soon as the necessary arrangements could be made, to sell all such property except enterprises which, in the national interest, it might be desirable to keep under control for a longer period.³

¹ Annual Report of Alien Property Custodian, 1943-45, p. 70.

² Alien Property Custodian, *Patents at Work—A Statement of Policy* (Jan., 1943), p. 11.

³ For statement of policy in this regard, see Annual Report of Alien Property Custodian, 1943-45, especially p. 66.

The Treasury Department has stated that it "is the policy of the United States Government to eliminate all financial and commercial activity engaged in by individuals and concerns within the United States whose influence or activity is deemed inimical to the defense of the Western Hemisphere."⁴

On November 15, 1943, Representative Gearhart introduced a bill (H. R. 3672) which would have brought about the sale of enemy patents, trademarks, copyrights, and other enemy property in the United States, impounding their proceeds, together with enemy funds in the United States, in an account to be used after the war to reimburse American nationals for losses sustained by them due to the action of enemy governments. The bill enunciated the policy that enemy governments should, as part of the peace settlement, reimburse their nationals in full for their property in the United States seized by the United States government.

At a conference held in Washington in 1942, all of the American Republics, including the United States, joined in recommending, among other things, that each of these countries adopt as soon as possible "all necessary measures . . . to eliminate from the commercial, agricultural, industrial, and financial life of the American Republics all influence of governments, nations, and persons within such nations who, through natural or juridical persons or by any other means, are, in the opinion of the respective governments, acting against the political and economic independence or security of such Republics." The declaration went on to recommend that businesses, properties, and rights of such natural or juridical persons in the American Republics should be forcibly transferred or totally liquidated or—if the American Republic government concerned should prefer—blocked, occupied, or intervened.⁵

III. REASONS FOR RESTITUTION

However, such a policy of liquidation of enemy interests in this hemisphere seems undesirable, from the points of view both of avoiding permanent politico-economic warfare and of protecting the concept of private property.

Avoidance of Politico-Economic Warfare. It is argued in some quarters that liquidation of enemy private interests in the countries united against the Axis Powers would help eliminate the postwar German threat to their economy. In taking this position, a distinction is frequently made between property of *bona fide* private owners of the character, for

⁴ Treasury Department, *Administration of the Wartime Financial and Property Controls of the United States Government* (Dec., 1942), p. 26.

⁵ *Final Act, Inter-American Conference on Systems of Economic and Financial Control, Washington, D.C., June 30-July 10, 1942* (Pan American Union, Washington, D.C., Recommendation No. VII).

instance, of the typical property of American citizens in foreign countries, and that which has been used by enemy states, particularly the Nazi state, to promote their political and military aims.⁴ Restitution after the war, according to this school, might fittingly be contemplated for the former class of property, whereas it might not be appropriate for the latter. The central thesis of this body of opinion appears to be that postwar restitution in certain areas, particularly in Latin America, of certain cartellized enemy properties, such as those of I. G. Farben, Schering, and Bayer, which have had a particularly intimate connection with the Nazi state, and which have especially strong possibilities of postwar mischief, would constitute the return of an instrumentality of economic warfare to a totalitarian state in which private enterprise in any real sense of the word no longer exists. It would tend, from this point of view, to guarantee the continuance not merely of the prewar cartel pattern without appreciable alteration, but of the skeleton Nazi organization established through the instrumentality of the German cartel members, and would restore in such areas a degree of German industrial and political influence far greater than could have been attained without use of the between-war politico-economic cartel arrangements.

Those who especially concentrate on liquidation of such cartellized properties appear to proceed on the theory that it is unrealistic and dangerous to permit any tools which were once obviously used against our interests and the interests of a stable, peaceful world to go back into our former enemies' hands. The theory seems to rest on the assumption of (1) unregeneracy on the part of our former enemies; and (2) inability of the victorious Allies pursuant to the peace settlement to institute governmental controls adequate to prevent former enemy governments from resuming their prewar methods of politico-economic penetration of other countries.

This approach has the obvious appeal of taking away from a captured criminal certain tools which he has misused in the past, in order to prevent him from committing crimes in the future. The trouble with it, however, is that the tools are also capable of constructive use and, deprived of them, the presumably reformed criminal may be less disposed, and find it harder, to go right. It is to be expected, in any case, that the Allies will establish safeguards against the criminal's rearming, and generally keep him under careful surveillance for a reasonable time; also that they will try to cure him of his mental disease and generally to fit him to take a constructive part in society. For instance, there should be no question of

⁴ For example, see discussion by Mitchell B. Carroll and Edgar Turlington in *Proceedings of the American Society of International Law at its 57th Annual Meeting*, pp. 72-73. See also Carroll's article in the *American Journal of International Law* (Oct., 1943), pp. 628-630.

returning the property to the control or partial control of anything resembling the recent Nazi government. The restored property would, under this theory of regeneration, be used by our former enemies to further the world's productiveness, and there would be avoided the sense of injustice which could easily result from failure to restore, and which could provide just the fillip necessary to start off our former enemies at the first opportunity on their old game of politico-economic warfare.

Although on the surface such confiscation of cartellized properties under the control of the former Nazi state might appear to be the only realistic way of ridding the world of Nazi contamination, it would be likely to start the peace with what would be tantamount to an announcement that we have no real hope of exercising an effective discipline over our former enemies with a view to their ultimate full incorporation in a rational world order. Instead of attacking basically the problem of making our enemies behave, we should merely be sniping at the tenacles of their influence in other countries, and perhaps should be confessing a fear that we cannot compete successfully with them without first placing them at an economic disadvantage.

Putting it another way, only reconciliation of our enemies with their conquerors can ensure their sincere cooperation in building up a sound world economy and a permanent peace; without such cooperation, in view of the influence which our defeated enemies are bound eventually to exercise again in the world, those objectives cannot be attained. This does not mean a "soft" peace. It is presumed that the German and Japanese horrors of this war will be adequately punished and their repetition guarded against in the future. It is not meant here to suggest refraining from applying, in as long a postwar period as may be necessary, effective controls to prevent our former enemies preparing for war. It is only that we do presumably have to live with them for some time and, as someone has said, you cannot keep a man in a ditch without staying down there with him. It seems indispensable to try to convince our former enemies that they can expect from us a fair chance to participate in the world's industry and trade—that we are not planning to try to handicap them permanently. Such a course would seem to accord with the general approach toward the peace settlement made by the Commission on a Just and Durable Peace of the Federal Council of the Churches of Christ in America, which has espoused the idea that the peace settlement "should make possible the reconciliation of victors and vanquished."⁵

John Dickinson holds that failure to return enemy property, or to make

⁵ Carnegie Endowment for International Peace, *International Conciliation* (Mar., 1945), No. 409, p. 147. (Quotation is from program of action adopted on January 19, 1945, by a conference of churches at Cleveland convened by the Commission.)

adequate compensation for it, would have disastrous results in international trade and prosperity. He believes that liquidation of German property in America in an effort to meet the postwar German threat to our economy would involve our taking over Nazi methods and embarking on a more or less continuous state of economic warfare with our present enemies which would be very likely to lead to economic war with other countries as well. The upshot of such international economic warfare, he further contends, could not fail to be defeat of the peace; for, as in the thirties, it would mean the erection of trade barriers, followed by curtailment of production and consumption, with depressing effects on human welfare.⁸ One may agree with Dickinson in recognizing such possibilities of a confiscatory policy.

Safeguarding the Private-Property Concept. The concept of private property has been a cornerstone of American economic development, including of course the development of our foreign trade. In spite of the fact that over a long period there has been a gradual tendency to break down the distinction between public and private property, the desire of the American people to keep that distinction alive appears clear. Unless this country, as seems most unlikely, is prepared and desires to move toward a conception of property-holding more like that of state-operated economies than like that which has been built up by political theory and juridical evolution in most Western countries, it would seem dangerous to take the proposed step of confiscation.

In this connection, one may take issue with Ralph M. Carson, who, after pointing to the invocation of the principle of eminent domain in the present war by England and France in adopting "measures designed to enable them to appropriate foreign-held property of their own nationals or domiciliaries against compensation in domestic currencies," states that such "measures, as applied to affected property in this country, have generally been recognized in our courts on the theory that the measures are not confiscatory and do not violate any public policy of our own."⁹ It is very doubtful whether our courts, except in relation to purely wartime measures, have, in general, as freely approved appropriation of private property by the federal government as Carson indicates. On the contrary, court approval in the United States of governmental appropriation of private property under the principle of eminent domain has consistently been limited to instances where a strong case of public interest in such appropriation could be made. For instance, in 1935 the National

⁸ John Dickinson, "Enemy-Owned Property: Restitution or Confiscation," *Foreign Affairs*, Oct., 1943, pp. 126-142.

⁹ Speech on "War Claims and the Protection of Property," in *Report of Proceedings of Foreign Property-Holders Protective Committee*, Convention of National Foreign Trade Council, Inc., New York City, Oct. 11, 1944, p. 28.

Industrial Recovery Act, so far as it attempted to authorize the national government to condemn private property for low-cost housing and slum-clearance projects and for the purpose of reducing unemployment, was held unconstitutional, on the ground that such use of the property was not a "public use."¹⁰

Also as regards governmental wartime assumption of certain functions formerly exercised by private business, it is clear that opinion generally in the United States favors early return to the previous situation. For instance, both official and private statements recently made in this country favor the return of our foreign-trade to private enterprise as soon as the war effort and the availability of products now in short supply permit. The Economic Charter of the Americas, part of the Final Act of the recent Inter-American conference at Mexico City, declared that one of the guiding principles of the American Republics is "to promote the system of private enterprise in production which has characterized the economic development of the American Republics, to take appropriate steps to secure the encouragement of private enterprise, and to remove as far as possible obstacles which retard or discourage economic growth and development."¹¹ It seems not at all unlikely that in the long-run so important and conspicuous a precedent as confiscation of enemy property following the present war would tend to work against the country's keeping as free as it otherwise might from unnecessary governmental controls over business.

IV. REPARATION CONSIDERATIONS

It is clear, however, that no decision to return enemy property can be made to "stick" unless the reparation program is devised with such an end in view. The reparation conditions could, as Seymour J. Rubin has made plain,¹² easily leave no choice to the enemy governments but to appropriate their nationals' property in Allied countries for the purpose of assisting in making the payments involved—particularly for the purpose of providing exchange in the currency of the countries receiving the reparation payments. Under such circumstances, the return of the enemy property would, of course, be an empty gesture. To some of those immediately affected, it might even appear a cruel hoax, or at the least a piece of hypocrisy.

The decision, then, to return or not to return enemy property must be

¹⁰ *U.S. v. Certain Lands in City of Louisville* (Circuit Court of Appeals), 78 F. (2d) 684 (1935).

¹¹ *Final Act of the Inter-American Conference on Problems of War and Peace, Mexico City, February 21 to March 8, 1945*—provisional English translation, p. 61.

¹² Seymour J. Rubin, "Inviolability of Enemy Private Property," *Law and Contemporary Problems*, Winter-Spring, 1945, pp. 180-181.

made in close cooperation with those who determine reparation policy. The problems of reparation objectives—methods, amount, etc.—cannot be discussed in detail here. But it seems probable that the hardship which would be imposed on Allied citizens with claims against enemy governments by failure to turn over to them the proceeds of selling enemy property in their countries would not nearly offset the contribution to long-term objectives which, as suggested above, might be made by return of the property. Although, as indicated above, it is assumed that effective control measures aimed at preventing Germany and Japan from rearming will be imposed on those countries, the amount of reparation must not be so large and the requirements as to its payment in the currency of the receiving countries must not be so onerous as to force the enemy governments to appropriate the restored property from their citizens. It would probably be well to include in the provisions of the peace settlement a statement of the motives of the Allied governments in returning the enemy property.

Adherence to this course on the part of the Allied governments, however, is not going to be easy. The pressure to liquidate enemy property in a given Allied country in order to use it as a specially ear-marked fund to recompense citizens of that country for losses in enemy countries will be very great. Take the case of Germany vis-à-vis the United States. It seems reasonable to assume that the terms of the peace will give Germany no choice but to restore American property in Germany, where restorable, to its previous owners. But much of such property will have been destroyed. As pointed out by *The Economist*, even if Germany is asked, by way of reparation, only to return everything stolen by the Germans and to restore everything needlessly destroyed, the bill will be quite as much as Germany can bear. Payment by Germany, in addition, for the general damages of war inflicted by the armed forces of either side would be physically impossible.¹³ This being true, the pressure will inevitably be very great to utilize German property in the United States to create a fund to reimburse American property-owners in Germany—a sort of special United States-German reparation arrangement outside the over-all arrangement for German reparation to the Allies—even though such sale is almost certain to yield less than the worth of the German property as an integral part of the United States economy.

The feeling behind such pressure is very understandable, especially since certain countries—notably Great Britain—have been forced during the war to liquidate a large part of their foreign investments. But Great Britain did, at least, have the full use of the proceeds of these investments to help win the war and will, after the war, be in a far more favorable situation than Germany, physically and by reason of her better psychological relations with the rest of the world, to restore and solidify her inter-

¹³ *The Economist* (London), Nov. 6, 1943, p. 603.

national economic position. Furthermore, and more fundamentally, the fact that the world's economic integration was impaired by Britain's forced liquidation of her foreign assets is no reason for damaging the world's economy still further through forcing the liquidation of Germany's foreign assets.

The all-important thing after this war, from an economic point of view, seems to be that every country shall feel free to engage in the particular forms of economic activity best suited to its resources and skills, in relation to the resources and skills of other countries, and not be forced to develop industries and engage in other activities designed as a defense against military or economic aggression. The Economic Charter of the Americas expresses this idea in emphasizing the need for "acceptance of responsibility and cooperation which will provide full use of labor, management, and capital in the efficient-economic development of the agricultural, industrial, and other resources of the Western Hemisphere." The Charter goes on to say: "An atmosphere of confidence based on freedom from economic discrimination is an essential prerequisite to the development of natural and human resources and to the expansion of markets. The ability to trade without discrimination and without undue restriction will, moreover, provide a solid basis for the political and personal liberties of the peoples."¹⁴ These fundamental principles may fairly be said to apply not only to the peoples of the Western hemisphere, but to those of the entire world. Restitution of enemy property, as a dramatic gesture of international economic confidence, fairness, and good will, would seem to offer real promise of contributing toward a new conception of world economic relations along the lines laid down in the Charter.

It is, of course, important to bear in mind that compensation of American owners of property abroad who have suffered war damages can take place through means other than confiscation of the private property of enemy nationals. Presumably, resources of the enemy countries will be drawn upon in meeting the Allied claims. What amount American claimants will receive naturally depends on the over-all amount made available to the Allies and on any special provisions, as regards priority of payment or otherwise, affecting the payment of particular types of claims and the claims of particular countries. In any event, there is certainly no reason to suppose that American claimants will not receive their fair share of the proceeds of the bill which it is finally decided that Germany shall pay.

V. RELATION TO BASIC PRINCIPLES

Obviously, a categorical assertion that restitution of enemy property would achieve the objectives above outlined would be absurd. Other

¹⁴ *Final Act, etc., op. cit. supra*, footnote 11, at p. 59.

factors may obscure or neutralize any influences exerted by restitution. But it is of some significance to point out that the principles underlying the course recommended here are, in effect, nothing more than those principles of mutual trust, tolerance, and cooperation which have been enunciated for thousands of years by the greatest religious and political leaders. Unfortunately, they have been tried for only limited periods of history and in limited areas of the world, and their potentialities for peace and prosperity are not fully known. One case bearing on their validity may be cited. Nearly two centuries ago, Edmund Burke urged that Great Britain, in dealing with its North American colonies, look beyond what might seem to be the realistic, practical course of self-interest and try out these principles of mutual trust, tolerance, and cooperation. Failure to heed him contributed importantly to the loss of the colonies. But largely as a result of Great Britain's later adhering to the sort of principles advocated by Burke, there has come into being perhaps the outstanding example of long-continuing association of nations for peace and mutual assistance in the history of the world—the British Commonwealth of Nations. True, the relation to the mother country, in the last century and a half, of the young offshoots of Great Britain is very different from the relation of the victorious Allies after this war to their conquered enemies; nevertheless the same principles of human relations as a whole would seem to apply.

Recently, in the Atlantic Charter, these principles have received a new formulation in their application to the acts of nations. The fourth point of the Charter reads: "They [the United States and the United Kingdom] will endeavor, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity." The principles of the Atlantic Charter were later subscribed to by all of the United Nations. Also Art. VII of various mutual-aid agreements may be at issue. In that article, the United States and the other countries party to these agreements have espoused objectives which include reduction of trade barriers and expansion of production and consumption. Should confiscation result, as feared by Dickinson in the article cited above, in the erection of trade barriers and the curtailment of production and consumption,¹⁶ the achievement of these objectives would obviously be prevented.

After all, as pointed out by Edward Hallett Carr, the fundamental issue of the future is moral. Carr may have placed his finger on a profound truth when he said that the war will not leave us where it found us, that

¹⁶ *Op. cit. supra*, footnote 8.

It will be the prelude either to rapid disappearance of the civilization we have known or else to a decisive turning point and new birth, with possibly "a revision of some of our estimates of human nature."¹⁶ One may agree with the Commission to Study the Bases of a Just and Durable Peace that "only if spiritual revelation strike from our eyes the scales of hatred, hypocrisy, intolerance, and greed, will we be competent to cope with the immensely difficult problems that confront us."¹⁷ Restoration of the restorable bits of pre-war international economic organization is, of course, only a small part of the picture, but, as far as it goes, it would seem to be in the right direction, and the United States is in a position to make the gesture more effectively than any other country.

VI. SUGGESTED IMMEDIATE PROCEDURE

Since it is not absolutely certain that Congress will not eventually adopt a policy favoring the return of the identical pieces of sequestered property, it would seem only reasonable that property now under United States control should, before Congress rules on the subject, be administered in a manner which, to the extent compatible with advancing the war effort and with sound wartime property administration, will avoid establishing any unnecessary impediment to such return. A practical problem in this connection seems likely to arise only in handling business enterprises now being operated by the Alien Property Custodian, since the Custodian has announced a definite policy of non-sale of patents and copyrights, and since the property under the Treasury's control consists of cash and of investment securities not involving control of specific productive assets, the sale of which would appear likely to serve no useful war purpose and the intention to sell which has not been announced by the Treasury.

It would, therefore, seem desirable to make a careful review, company by company, of the problems of government operation of the remaining properties under the Alien Property Custodian—which, as indicated above, the Custodian intends to sell as soon as the necessary arrangements can be made—with a view to ascertaining in the case of each property involved how substantial a wartime purpose would be served by sale. The Alien Property Custodian states: "The decision to transfer vested properties to private enterprise has been adopted because of the generally accepted advantages of private management. . . . Continued administration of vested properties would involve this Office not only in the selection of management but in continued evaluation of its accomplishments. This

¹⁶ Edward Hallett Carr, *Conditions of Peace* (London, 1942), p. 128.

¹⁷ *A Just and Durable Peace: Statement by the Commission to Study the Bases of a Just and Durable Peace Instituted by the Federal Council of the Churches of Christ in America* (Mar., 1943), p. 4.

would mean the assumption of responsibility for a host of details with respect to such items as method of production, proper scale of operation, appropriate pricing policy, and labor relations. Activities of this character are foreign to the effective operation of the Custodian's Office as an agency of the Government."¹⁸

This argument may, of course, have a good deal of weight in a war as lengthy as the recent one. However, in any event, it would appear desirable to have some more concrete indication than is now available of the probable effect on the war effort of refraining from sale of these properties. Even should the burden of retention of them seem to be too great to warrant such retention, consideration might be given to the possibility of including in each sales contract a provision that in the event that Congress eventually directs return to the original owners of the identical sequestered property, the property covered by such contract shall be given up by the purchaser (of course with appropriate compensation). Such a study also would probably help in determining a fair basis for restitution of certain properties whose function and importance, as pointed out by Rubin,¹⁹ may have been expanded while under the jurisdiction of the sequestering authority, as well as in clarifying the relation of the prices currently obtainable for the various enemy properties in general to the values that might be placed on them as integral portions of the long-term economy of the United States.

Also the executive branch of the federal government as a whole should proceed as rapidly as possible with formulation of a coordinated policy toward enemy-property treatment. In so doing, consultation with other members of the United Nations or American Republics might be helpful. Delay in formulating such a policy may postpone, or even prejudice, ultimate satisfactory solution of the problem by Congress, and in any case would seem to make it harder for certain executive agencies, particularly the Alien Property Custodian, to leave the way open for effectuation of Congress' ultimate decision. A course of drift or expediency in this matter could damage our hopes of building a world free from the resentments and misunderstandings that make men fight.

¹⁸ *Annual Report of Alien Property Custodian, 1942-43*, p. 69.

¹⁹ Rubin, *op. cit. supra*, footnote 12, at pp. 173-174.

SOME ASPECTS OF STATELESSNESS SINCE WORLD WAR I

JANE FERRY CLARK CAREY

Barnard College

I. DEFINITIONS

Statelessness, in its technical sense, is the result of denationalization by the country of origin of a person who has acquired no citizenship elsewhere.¹ A stateless person is also referred to as *staatenlos*, *apatride*.² Protection and assistance may be withdrawn by the country of a person's origin without juridical suppression of that person's nationality.³ Such a person outside his own country, though not fully denationalized, is in a position in some measure akin to that of the stateless, as neither has the protection of any government.

Although many refugees are stateless, statelessness is not the essential quality of a refugee, who is defined in accepted international usage as a person who for political reasons has been driven from his country of origin, or who fears the political consequences of his return. He may be stateless, or, although not technically denationalized, may have lost the protection of his government by refusing to return home when the possibility was presented. As a person without governmental protection, he loses the advantages of international rights which depend for enforcement on the action of his home government. Furthermore, an alien who is not a national of any state is denied many of the privileges of a citizen, granted reciprocally through treaties. Such treaties give to the citizens of one state privileges in other states party to the treaties, including the right to work, the benefits of social insurance (such as workmen's compensation laws), and the right to education.

Even more important is the fact that every country is obliged to receive its nationals if they wish to return to it. The stateless actually have no country to take them back, nor to issue passports for them to enter other foreign countries if they so desire, although in theory there may be a duty

¹ Conflicts of nationality legislation of the countries of a child's parents may occasionally cause statelessness at birth. This subject, however, is not discussed here.

² Cf. Lawrence Proves, "International Law and Deprivation of Nationality," *Georgetown Law Journal*, Vol. 23, p. 250 (Jan., 1935); "Jurisprudence américaine en matière de droit international (1933-35)," *Revue Générale de Droit International Public*, Vol. 48 (1936), p. 589 ff.; Berthold Schenck Graf von Stauffenberg, "Die Entstehung der Staatsangehörigkeit und das Völkerrecht," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 4 (1934), pp. 261-276.

³ Louise W. Holborn, "The Legal Status of Political Refugees, 1920-1938," *American Journal of International Law*, Vol. 32, p. 680. Cf. Joseph Chamberlain, "Without A Country," *Survey Graphic*, Vol. 34, p. 85 (Mar., 1945).

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THE FINANCIAL EXPERIENCE OF UNRRA

By THEODORE A. SUMBERG

New York City

As the first working agency of the United Nations, already almost two years old; the United Nations Relief and Rehabilitation Administration is of special interest to students of international organization. Despite its unique features it has already grappled with many of the problems that will confront all future international organizations. Its financial experience is particularly interesting because all such organizations, whether dealing with political, judicial, or economic subject matter, have very early in their history to go through the difficult process of collecting funds from resolutely sovereign-minded member governments. The Economic and Social Council of the United Nations, in view of its coordinating authority over all international specialized agencies, cannot fail to be guided by the results of the financial experience of UNRRA. The International Monetary Fund and the International Bank for Reconstruction and Development can be expected to be especially attentive to UNRRA's experience because, like it, they require the collection of vast funds for more than administrative purposes.

The basic facts about UNRRA are fairly well known. It was established on November 9, 1943, just about a year after the Allied invasion of French North Africa, when representatives of the forty-four United and Associated Nations signed the Agreement at the White House. This Agreement provided for a legislative and policy-making Council made up of all members, a Central Committee of limited executive powers containing China, the United States, the Soviet Union, and Great Britain, and a chief executive or Director-General. The purpose of UNRRA is simply to aid in the relief and rehabilitation of the "victims of war" of the member countries at their request and after termination of the civil affairs responsibility of liberating military officials. The basic policies of UNRRA have been set up at three meetings thus far held by the Council, the first held at Atlantic City from November 10 to December 1, 1943, the second at Montreal from September 16 to 26, 1944, the third in London from August 7 to 24, 1945.

There has been a considerable whittling down in the scope of UNRRA since the days of its planning by American and British officials in 1942 and 1943. This narrowing of UNRRA's field of authority has been carried out by specific policies formulated by the Council as well as by the bias of developing events. UNRRA was first conceived of as an agency of more or less supreme authority, empowered to assist in large-scale industrial and agricultural rehabilitation projects, that would have ultimate coordination

powers in all relief and rehabilitation work. It is true that UNRRA has only marginal authority at the request of both military authorities and, secondly, because it lacks authority upon decisions of national supply agencies of the United States and Great Britain. Its functions in areas liberated by the Soviet Union, Italy, Germany and other ex-enemy countries are that, contrary to its original planners' intentions, in the larger rehabilitation efforts the narrow scope of UNRRA has been limited to the performance, with the apparent aim of forestalling better performance, have modestly designed.

After a warm initial response, public opinion in UNRRA, which proceeded to make pleas for continued support, Richard K. Law, the British representative, said: "If this, the first venture in practical relief by the United Nations fails, nothing is going to be done for us to appraise tentatively somewhat the UNRRA to date."

The financial basis of UNRRA was set up in the Financial Plan, with minor modifications. This Plan sets up a distinction between countries not invaded, which undertake to make their own arrangements, such as the purchase of supplies, transportation, etc., in invaded countries,² which are not required to do so. There is also a distinction drawn among the countries as to gold and foreign exchange resources, and the assistance received from UNRRA, and the conditions under which they are to pay only in local currency. Except in the United States and London, no assistance to exchange is provided in the Plan unless they are able to offer some other means to satisfy certain rigid non-financial provisions made in the Plan between operating countries. The amount of administrative expenses; all forty-four member countries contribute to meeting the administrative expenses. There is no compulsory basis for exchange.

¹ See *UNRRA—Organization, Aims, Program*, a pamphlet by the agency.

² These include Belgium, China, Czechoslovakia, France, Netherlands, Norway, Philippines, Poland, U.S.S.R., etc.

powers in all relief and rehabilitation operations. It is now clear, however, that UNRRA has only marginal authority, first because it operates only at the request of both military authorities and liberated national governments and, secondly, because it lacks supplies whose allocation must wait upon decisions of national supply agencies and the Combined Boards of the United States and Great Britain. Moreover, it has strictly circumscribed functions in areas liberated by the Soviet Union and only very minor ones in Italy, Germany and other ex-enemy countries. It has therefore turned out that, contrary to its original planners, UNRRA will not be able to participate in the larger rehabilitation efforts that must somehow be carried on. The narrow scope of UNRRA has been accepted by its operating officials who, with the apparent aim of forestalling public disappointment with its limited performance, have modestly designated it as a "service agency."¹

After a warm initial response, public opinion has shown considerable disappointment in UNRRA, which prompted its officials at the Montreal meeting to make pleas for continued support. It was pointed out for instance by Richard K. Law, the British representative to the Montreal Council, that "If this, the first venture in practical peacetime coöperation among the United Nations fails, nothing is going to succeed." This report will enable us to appraise tentatively somewhat more than the financial performance of UNRRA to date.

I

The financial basis of UNRRA was laid at Atlantic City in the so-called Financial Plan, with minor modifications introduced at London and Montreal. This Plan sets up a distinction between the thirty-one countries which were not invaded, which undertake to make contributions for operating expenses, such as the purchase of supplies, transport, and so on, and the thirteen invaded countries,² which are not required to do so though they may. There is also a distinction drawn among the latter between those having adequate gold and foreign exchange resources, which are to pay with such resources for assistance received from UNRRA, and those without such resources, which are to pay only in local currency. Except for slight changes made at Montreal and London, no assistance to ex-enemy countries is provided for in the Plan unless they are able to offer suitable foreign exchange and can also satisfy certain rigid non-financial provisions. Another basic distinction is made in the Plan between operating expenses and the much smaller amount of administrative expenses; all forty-four member countries are required to contribute to meeting the administrative budget.

There is no compulsory basis for either operating or administrative con-

¹ See *UNRRA—Organization, Aims, Progress*, p. 3, put out as a public information pamphlet by the agency.

² These include Belgium, China, Czechoslovakia, Ethiopia, Greece, Luxembourg, France, Netherlands, Norway, Philippines, Poland, U.S.S.R., and Yugoslavia.

tributions to UNRRA. There obviously is no international governmental power to force contributions of member governments to UNRRA. The international agency must therefore be satisfied with contributions to it on a simple request basis. Article V, paragraph 1, of the Agreement merely states that "each member government will contribute." The policy provisions formulated at Atlantic City are slightly more specific in pointing out that "the Council recommends that each member government . . . shall make a contribution. . . ." ³ The collection experience of UNRRA therefore reveals the degree of willingness of member countries to make their contributions, except where they are manifestly unable to do so.

As to operating contributions, their voluntary basis is somewhat weakened by the fact that no definite payment quotas are fixed. There was some suggestion in the planning stages of UNRRA that no definite quotas should be fixed at all, because countries might come to regard them as exactions and therefore would tend to hold back. It was suggested as an alternative that gifts of no specified amount should be requested and that diplomatic channels should be used to obtain the largest possible amounts. This suggestion was turned down as failing to provide a business-like basis for UNRRA's income. However, it was not possible to establish set quotas for the member countries. The individual or collective use of the economic indices of population, gold holdings, foreign trade, and others was found unsatisfactory. Reliance upon the national income of member countries as the basis for operating contributions was finally decided upon as most practicable and fair. The Financial Plan therefore recommends that governments of uninvaded countries shall contribute "approximately equivalent to 1 per cent of the national income of the country for the year ending June 30, 1943 as determined by the member government." ⁴ The Council left the estimation of the national income of each country to each government concerned, not only out of statistical modesty but as an acknowledgment of an element of truth in the principle of free consent.

The economic all-inclusiveness of national income, and the widespread practice of using it in measuring the relative economic strength of countries, recommends it as a basis for contributions in preference to alternative indices. However, its use by UNRRA, as well as by other international organizations contemplating its adoption, involves certain drawbacks. For one thing, of the thirty-one uninvaded countries of UNRRA, even moderately reliable national income estimates do not exist for more than six, and even for some of these the required information may be lacking for the stipulated year. The result is that most governments are in a position to make an estimate not entirely uninfluenced by the fact that it will serve as a contribution basis. Moreover, on such a basis the international agency can never have more than an approximate idea of its total receipts. For

³ First Session of the Council of the United Nations Relief and Rehabilitation Administration, *Selected Documents*, Resolution No. 14, Section 4, p. 45.

⁴ Same, p. 45.

another thing, it is inequitable to charge a percentage of its national income as a standard of living of an average man. One per cent taken from the average man's income is a consideration is recognized in the Financial Plan from countries where the operating contributions with particular demands arising from the war are excessively burdensome because of the unavailability of funds. It is reasonable that this clause may be, in the operating contributions.

The Financial Plan conspicuous of contributions. The Plan simply requires that the member governments take at the earliest possible opportunity administrative, or legislative steps as available when needed for the purpose of failure to fix definite dates for payment of contributions fall due. Another reason was that the member governments obtain large sums from one way or another thereby free the organization as a whole from periodically running to member countries for funds. It was thought that the national income basis would tide the organization long enough to care for all or almost all of its needs. It is unnecessary for UNRRA to have a reserve fund again. The failure of this hope was the result of the operating contributions are made on a voluntary basis.

According to the Plan the Council shall not require more than 10 per cent of the national income of each government . . . shall be in such a form as to be available in areas outside of the contributing countries. It is taken for granted that the foreign exchange of the United States is not available except in the case of the United States dollars since they are universally accepted for payment in dollars by member countries with a definite volume of free funds available wherever they may exist. The Financial Plan provides for non-member countries. There was a provision in the attempt to square the circle of contributions with the unquestionable bias of the member countries in their own currencies. The result is that total payment in local currencies is dumped in UNRRA's lap of

⁵ Same, p. 45.

⁶ Same

no international governmental governments to UNRRA. The ed with contributions to it on n 1, of the Agreement merely contribute." The policy pro- ntly more specific in pointing ch member government . . . ection experience of UNRRA member countries to make their ly unable to do so.

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l income, and the widespread economic strength of countries, n preference to alternative in- ll as by other international or- olves certain drawbacks. For ntries of UNRRA, even mod- o not exist for more than six, rmation may be lacking for the vernments are in a position to y the fact that it will serve as a basis the international agency idea of its total receipts. For s Relief and Rehabilitation Admini- n 4, p. 45.

⁴ Same, p. 45.

another thing, it is inequitable to ask the poor country to give the same per- centage of its national income as the rich country; one per cent out of the standard of living of an average man in India, for instance, hurts more than one per cent taken from the average American. The pertinence of this con- sideration is recognized in the Financial Plan by approving lower contribu- tions from countries where the one per cent recommendation may "conflict with particular demands arising from the continuance of the war or may be excessively burdensome because of peculiar situations."⁵ However under- standable this clause may be, its effect is to add to the discretionary basis of the operating contributions.

The Financial Plan conspicuously fails to set definite dates for the making of contributions. The Plan simply recommends "that each member govern- ment take at the earliest possible time such constitutional budgetary, ad- ministrative, or legislative steps as may be necessary to make its contribution available when needed for the purposes of the Administration."⁶ The failure to fix definite dates for payment is partly explainable by the im- possibility of knowing at what times the relief and rehabilitation load will fall due. Another reason was the desire of the planners of UNRRA to obtain large sums from one wave of contributions at the beginning and thereby free the organization as much as possible from the necessity of periodically running to member government legislatures for additional funds. It was thought that the 2 billion dollars or so expected upon the national income basis would tide UNRRA over for a long period, perhaps long enough to care for all or almost all of the work load, and therefore make it unnecessary for UNRRA to go hat in hand to member governments again. The failure of this hope will be discussed later.

Operating contributions are made payable in local and foreign currencies. According to the Plan the Council "recommends that as much as possible but not less than 10 per cent of the amount contributed by each member government . . . shall be in such form of currency as can be expanded in areas outside of the contributing country. . . ." ⁷ Though not specified, it is taken for granted that the foreign currency in mind would be the dollar, except in the case of the United States which can make its full payment in dollars since they are universally acceptable. The purpose of the part payment in dollars by member countries is to provide UNRRA authorities with a definite volume of free funds to take advantage of supply oppor- tunities wherever they may exist even, as expected to a small degree, in non-member countries. There was much early discussion around this provision in the attempt to square UNRRA's need for freely-spendable funds with the unquestionable bias of most member countries for maximum payment in their own currencies. The thought was frequently expressed that total payment in local currency would result in useless idle balances or in the dumping in UNRRA's lap of unwanted surpluses. The compromise

⁵ Same, p. 45.

⁶ Same, p. 46.

⁷ Same, p. 45.

figure of 10 per cent was acceptable to UNRRA and to the contributory governments.

With total operating receipts of about 2 billion dollars, UNRRA will come to have about 1,415 million dollars (in dollars) and 585 million dollars equivalent in foreign currencies. The largest contribution on the national income basis was 1,350 million dollars (all in dollar balances) of the United States. The rest of the dollar sum will be supplied from the 10 per cent portion of the contributions of the other uninvaded countries. The 585 million dollar equivalent in foreign currencies will be supplied as the bulk of the contributions of the other countries making operating payments.

Repayment policies are dominated by the familiar lesson of the financing of relief operations of World War I, that is, that relief-receiving countries should not be saddled with a volume of debts that their economic position will not permit them to meet. The Plan therefore stipulates that "an applicant government shall not be required to assume the burden of an enduring foreign exchange debt for the procurement of relief and rehabilitation supplies and services."⁸ Countries not having adequate gold and foreign exchange will therefore pay in local currency which will go toward meeting UNRRA's administrative and other expenses in particular areas. Financially-well-situated countries, like France, Belgium, and others, are expected to meet most of their relief and rehabilitation expenses independent of UNRRA's financial assistance, and for any aid given them reimbursement in foreign exchange will be made.

As to administrative contributions, all forty-four member countries are requested to contribute. Though they are not requested to, the thirteen invaded countries may contribute to the operational sum as well, but so far none but France (\$100,000) has done so. The contribution is here fixed by the Council as a definite quota, namely, a certain per cent of the total annual administrative budget; thus, the United States pays 40 per cent, Great Britain and Russia 15 (Russia later 10) per cent each, China 5 per cent, France 4 per cent, and 0.5 per cent for fifteen smaller countries. These sums are all payable in dollars. To lighten the financial burden of the uninvaded countries, they are permitted to treat their share of the administrative expenses as part of their operating contributions.

As an agency with obviously humanitarian aims, the Council of UNRRA did not feel it appropriate to formally exclude ex-enemy countries as eligible recipients of its assistance. However, this is the effect of its provision requiring full repayment in foreign exchange by such countries. Even apart from the huge reparation claims that will undoubtedly be placed against Japan and Germany, these countries, Italy, and other European ex-enemy countries have little disposable gold and liquid assets in their possession. The Council maintained this policy at its Montreal meeting, except for such minor changes as the approval of the expenditure (without

⁸ Same, p. 47.

repayment) of 50 million dollars for specifically designated, however, operations in other enemy or ex-enemy territories of the Italian Dodecanese Islands, which were later recognized as Greek territory after the war. The Montreal Council permitted under its terms assistance in removing United Nations prisoners of war, and extension of medical aid to combatants by the governments of liberated territories, and the repatriation of German nationals.¹⁰ At the session of the Council for the grant of assistance for the military operations of the United Nations, it was never invaded. The same policy was followed when foreign exchange was fixed. The Council in June, UNRRA assistance to displaced persons, and borders. Though these provisions are for a large clientele, the main effort is still expected to be for invaded member countries.¹¹

According to newspaper dispatches, the Council also added some minor new provisions, including the inclusion of Formosa, Korea, Austria, and other areas, the last-named country having its special aid eliminated. To take account of the originally contemplated, including the Ukrainian and White Russian Republics, that the thirty-one uninvaded nations should contribute their national income for the year ending 1944, not taken without opposition and with the compliance by some delegates at the Council to add the Ukrainian and White Russian Republics, and to include France and the United Kingdom as the first country in view of its recognition.

¹⁰ JOURNAL, Second Session of the Council.

¹¹ Any other relief aid required by German and Austrian people. See *Parliamentary Debates*, House of Commons, 1944, p. 328.

¹² Minor provisions in the Financial Plan concerning the contribution of countries and private organizations, auditing of expenditures, and other matters, will be discussed here. For obvious political reasons, the Council had apparently preferred to extend relief to uninvaded countries rather than via UNRRA, as the agreement was reached. Information given this author by UNRRA officials and agencies have contributed \$6 million in direct expenditures for relief abroad have been

UNRRA and to the contributory

billion dollars, UNRRA will come (dollars) and 585 million dollars (in dollar balances) of the United be supplied from the 10 per cent uninvaded countries. The 585 will be supplied as the bulk making operating payments.

The familiar lesson of the financing is, that relief-receiving countries debts that their economic position can therefore stipulates that "an to assume the burden of an ocurement of relief and rehabilita- not having adequate gold and eal currency which will go toward ther expenses in particular areas. France, Belgium, and others, are habilitation expenses independent any aid given them reimbursement

of forty-four member countries are are not requested to, the thirteen operational sum as well, but so far

The contribution is here fixed by certain per cent of the total annual d States pays 40 per cent, Great per cent each, China 5 per cent, en smaller countries. These sums e financial burden of the uninvaded their share of the administrative utions.

rian aims, the Council of UNRRA lude ex-enemy countries as eligible this is the effect of its provision hange by such countries. Even that will undoubtedly be placed ntries, Italy, and other European le gold and liquid assets in their is policy at its Montreal meeting. proval of the expenditure (without

47.

repayment) of 50 million dollars for special welfare aid to Italy, which was specifically designated, however, as not to "constitute a precedent for operations in other enemy or ex-enemy territories."⁹ Assistance to inhabitants of the Italian Dodecanese Islands, which will probably be reconstituted as Greek territory after the war, was also approved. In addition, the Montreal Council permitted under appropriate circumstances UNRRA assistance in removing United Nations nationals out of Germany, and the extension of medical aid to combat epidemics in Germany. When invited by the governments of liberated territory UNRRA may also assist in the repatriation of German nationals.¹⁰ Approval was also granted at this session of the Council for the grant of aid to any area in need important to the military operations of the United Nations, such as India, even though it was never invaded. The same stipulation of maximum repayment in foreign exchange was fixed. The Central Committee also authorized, early in June, UNRRA assistance to displaced Italians outside of their country's borders. Though these provisions have broadened UNRRA's eligible clientele, the main effort is still expected to be expended among the thirteen invaded member countries.¹¹

According to newspaper dispatches, the recent London Council meeting also added some minor new provisions to the Financial Plan, notably the inclusion of Formosa, Korea, Austria, and Italy among recipient-eligible areas, the last-named country having its previous maximum figure on financial aid eliminated. To take account of greater need for assistance than was originally contemplated, including \$250,000,000 of aid requested by the Ukrainian and White Russian Republics, the Council also recommended that the thirty-one uninvaded nations contribute an additional 1 per cent of their national income for the year ending June 30, 1943. This action was not taken without opposition and without expressions of doubt of national compliance by some delegates at the meeting. The Council also voted to add the Ukrainian and White Russian Soviet Socialist Republics to its membership, and to include France and Canada on its Central Committee, the first country in view of its recognition as a full-fledged member of the

⁹ JOURNAL, Second Session of the Council, Volume II, No. 11, p. 145.

¹⁰ Any other relief aid required by Germany will be a responsibility of the occupying military officials. Prime Minister Churchill has promised that food will be given to the German and Austrian people. See *Parliamentary Debates, House of Commons*, 1940, quoted by Allen G. B. Fisher, "The Constitution and Work of UNRRA," *International Affairs*, July 1944, p. 328.

¹¹ Minor provisions in the Financial Plan cover contributions to UNRRA by non-member countries and private organizations, auditing, budgetary, and other matters that need not be discussed here. For obvious political reasons, neutral countries like Sweden and Switzerland have apparently preferred to extend relief assistance directly to the relief-receiving countries rather than *via* UNRRA, as the agency invites them to do. According to unpublished information given this author by UNRRA's Public Information Director, private individuals and agencies have contributed \$68,868 to UNRRA up to April 30, 1945. Their direct expenditures for relief abroad have been much larger.

Big Five and the second because of its prompt supply contributions to the organization.

II

The signing of the UNRRA Agreement by the forty-four nations took place on November 9, 1943. Though not all national representatives signed subject to ratification by their governments, it was necessary for almost all member governments to take some appropriate legislative and executive action to approve their participation. This process of approval proved to be unexpectedly long. Most countries had not yet indicated their formal approval six months from the date of the signing of the Agreement document. Five countries,—Poland, Bolivia, Venezuela, Uruguay, and Colombia,—were still unpledged a year after November 1943, but have since signed. The long process of approval of UNRRA, if it foreshadows the experience of other international agencies, points to the necessity of speeding up planning efforts behind other such contemplated agencies. To be sure, it is possible that the formal approval of UNRRA required more time than will prove to be true of other international organizations because of special wartime difficulties and because UNRRA pioneered onto new ground, so to speak, so far as international organizations to develop out of this war are concerned. Yet it was widely recognized that there was a greater urgency to UNRRA in the sense of human need than will be true of other organizations.

Approval was usually, but not always, followed by the making of the stipulated administrative contribution. These were specifically requested in December 1943. According to official United States sources, eight of the member countries have failed to meet any of their administrative quotas as of December 31, 1944, and three have done so only in part. According to official publications of UNRRA, some countries still remained delinquent for administrative payments on July 24, 1945. The totally-delinquent countries at the end of 1944 included Bolivia, Chile, Costa Rica, Ecuador, Iran, Iraq, Paraguay, and Uruguay, while Australia, Russia, and Yugoslavia have paid in part, \$16,000 of a quota of \$150,000, \$200,000 of a quota of \$1,500,000 (later 1 million), and \$5,000 of \$70,000; respectively.¹² The administrative receipts for 1944 amounted to \$8,416,000 of a budget of \$10,000,000 estimated by the Director-General for the entire calendar year of 1944 and for the last two months of 1943.¹³

The administrative budget for 1945 was estimated at the Montreal meeting at \$11,500,000, of which \$4,000,000 is to come from the unexpended

¹² *Second Report to Congress on United States Participation in Operations of UNRRA*, December 31, 1944, pp. 16 and 17.

¹³ This budget is larger than for any other international organization established to date. The top annual figure for the League of Nations, including the International Labour Organization and the Permanent Court of International Justice, was never more than about \$7,400,000, for the fiscal year of 1938.

balance of the year before. The arrangements made at Montreal percentage for two years from 15 to 100,000, leaving the difference of 5 per cent amount, and also the unsatisfied portion of \$1,950,000 to UNRRA on administration. Russia's traditional reluctance to tardiness may simply be due to a shortage of gold shipments from Russia are at transport difficulties. And yet Russia has contributed of almost 2 million dollars on single shipments of tons of gold (net weight). Much has been sent to the United States during the war. The Government (about \$55,000,000 in 1944) has had to suffer friction between the Soviet Government. It may be a more likely explanation of the delay. Though UNRRA has not been able to collect its funds, its collection experience in the past has been satisfactory. The available funds have been satisfactory. The available funds have been satisfactory. The available funds have been satisfactory. As of December 31, 1944, only three countries,—Britain,—were paid up in full, and only one, Africa, and the United States,—in part. The total amount in full by April 30, 1945.¹⁴ Total amount amounted to almost 1.3 billion dollars. The figure is due almost entirely to the United States (out of a total of 1,350 million)¹⁵ and

¹⁴ Discussion of Soviet-UNRRA political relations, *Science Monitor*, January 27, 1945, p. 14; *New York Times*, April 5, 1945, p. 14. The total amount of Russia's administrative liability is \$800,000.

¹⁵ According to information given me by the Director-General, the countries are Australia, New Zealand, Venezuela, Dominican Republic, Costa Rica, Haiti, and India. The total amount of funds available for 1945. Costa Rica is mentioned in the Director's list; it agreed to be responsible for its share. See *Foreign Commerce Weekly*, May 19, 1945, p. 12.

¹⁶ Only 450 million dollars was actually appropriated for transfer under the Lend-Lease Act and the United States Joint Chiefs of Staff and the War Relocation Authority do not measure the full contribution of the United States assistance abroad. About 1 billion dollars of the United States military command for foreign operations has already been appropriated. However, it is not

supply contributions to the

the forty-four nations took national representatives signed was necessary for almost all the legislative and executive process of approval proved to not yet indicated their formal of the Agreement document. Uruguay, and Colombia,— 1943, but have since signed. foreshadows the experience the necessity of speeding up agencies. To be sure, it is required more time than will organizations because of special entered onto new ground, so to develop out of this war are there was a greater urgency will be true of other organi-

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al organization established to date. g the International Labour Orga- nization, was never more than about

balance of the year before. The only other change in administrative budget arrangements made at Montreal was the reduction of Russia's quota percentage for two years from 15 to 10 per cent, or from \$1,725,000 to \$1,150,000, leaving the difference of 5 per cent unallocated. Until it pays this amount, and also the unsatisfied portion from 1944, Russia will be liable for \$1,950,000 to UNRRA on administrative expense account. In view of Russia's traditional reluctance to hold large dollar balances abroad, this tardiness may simply be due to a scarcity of available funds at a time when gold shipments from Russia are attended with great internal and overseas transport difficulties. And yet Russia could meet its obligation to UNRRA of almost 2 million dollars on single air cargo shipment of only about two tons of gold (net weight). Much larger amounts of gold have been delivered to the United States during the war to meet obligations to the American Government (about \$55,000,000 in 1941 and 1942). The reports of political friction between the Soviet Government and UNRRA, if true, would seem to be a more likely explanation of the laggard payments.¹⁴

Though UNRRA has not been embarrassed by any lack of administrative funds, its collection experience in the first year and a half cannot be said to have been satisfactory. The available facts indicate that its collection experience with the far more important operating contributions has been even less satisfactory. As of December 31, 1944, about a year since the signing of the Agreement, only three countries,—Canada, Brazil, and Great Britain,—were paid up in full, and only four,—Iceland, Liberia, South Africa, and the United States,—in part. Eleven additional countries paid in full by April 30, 1945.¹⁵ Total operating contributions on this date amounted to almost 1.3 billion dollars of the expected 2 billion or so. This figure is due almost entirely to the 800 million dollars of the United States (out of a total of 1,350 million)¹⁶ and the \$322,400,000 of Great Britain.

¹⁴ Discussion of Soviet-UNRRA political relations is scanty. See the following: *Christian Science Monitor*, January 27, 1945, p. 14; *New York Herald Tribune*, March 24, 1945, p. 7; and *New York Times*, April 5, 1945, p. 14. UNRRA's press release No. 173 reports that \$800,000 of Russia's administrative liability was in process of transfer on June 13, 1945.

¹⁵ According to information given me by the Public Information Director, these countries are Australia, New Zealand, Venezuela, Uruguay, Bolivia, Peru, Panama, the Dominican Republic, Costa Rica, Haiti, and India. Not all of these countries made their full sums available for 1945. Costa Rica is mistakenly omitted from the Public Information Director's list; it agreed to be responsible for its operating contribution on April 10, 1945. See *Foreign Commerce Weekly*, May 19, 1945, p. 50, and *Monthly Review of UNRRA*, May 1945, p. 12.

¹⁶ Only 450 million dollars was actually appropriated and the remaining 350 million dollars held for transfer under the Lend-Lease Act and supplementary acts, subject to the approval of the United States Joint Chiefs of Staff and the Foreign Economic Administrator. These sums do not measure the full contribution of the United States Government for relief and assistance abroad. About 1 billion dollars is expected to be spent for civilian supplies by the United States military command for foreign distribution; about 562 million dollars has already been appropriated. However, it is not known what portion of this amount, as well

with the funds. Not having a deposit in its own name prevents UNRRA from engaging in independent procurement of supplies, though this is also prevented more directly by the wartime supply controls of the national governments. In the United States, for instance, UNRRA's requirements for supplies have to wend their way through the established war supply allocation machinery, while in countries having less complicated allocation machinery the specific control of goods granted to UNRRA is no less close. The control of the local currency funds of UNRRA reinforces control on the supply side and assures that UNRRA will not obtain any national supplies other than those specifically allotted. National contributions therefore really amount to payments in kind.

The date when member countries turn over their supplies to UNRRA is presumably to be decided by negotiation, though in the cases of Brazil, Venezuela, Bolivia, Peru, Panama, Mexico, Dominican Republic, and Costa Rica an artificial provision has been adopted making the local and foreign currency contributions available in three annual installments. Though designed to prevent an excessive drain at any one time, this provision is obviously in conflict with the interest of UNRRA to have the supplies "when needed for the purposes of the Administration." Only one country so far,—Panama,—has elected to make its contribution entirely in a foreign currency (dollars).

Only one country, the United States, has specified by its legislation the kinds of commodities that may be turned over to UNRRA. This the United States has done with respect to a minor portion of its direct appropriation of 450 million dollars, where not over 21.7 million dollars is required to be spent for stockpiled domestic raw wool and 43.2 million dollars for domestic cotton.²⁰ Though these sums are relatively small, the universalization of their principle would tend to narrow, by legislative enactment, UNRRA's range of procurement opportunities and even in some cases to lead to the dumping of unwanted surpluses. Such limitations would be more dangerous in the United States, where the range of procurement opportunities is relatively wide, than in the thinly-supplied countries which have specific procurement controls anyway.

The experience of UNRRA in spending has been very scanty so far. The actual volume of supplies bought has been very small in amount. The Director-General has indicated his intention to draw upon military and lend-lease stocks, as well as upon the current stream of production.²¹ Meanwhile, some countries have indicated that they will not require UNRRA's assistance in the procurement of supplies. These include countries having relatively large foreign exchange resources, such as France, Belgium, Nether-

²⁰ Public Law 382, Section 201—78th Congress, Title II.

²¹ Of over a million long tons of relief supplies shipped or slated for shipment by June 30, 1945, amounting to about a quarter of a billion dollars, 550,000 tons have been bought from Allied military authorities. See *Journal of Commerce*, May 28, 1945, p. 16.

lands,²² Luxembourg, and Norway. Assistance may be given to some of the Central Committee on February 1, 1945, they are expected to call upon UNRRA for the distribution of displaced people. On Yugoslavia, and Czechoslovakia, are located the cases of Poland and Czechoslovakia. UNRRA's supply responsibility by the military. The distribution of supplies for Europe will therefore be weak in the Eastern areas. As for the intention to call for direct supplies for occupied Dutch, French, and British territories. It may be that a considerable responsibility, and the expenses are concentrated in the Far East.

Only tentative conclusions can be drawn from UNRRA and applied to specialized relief. This not only because UNRRA's structure but also because of its unique features. The organization will display a certain flexibility of its experience to other agencies. If financial resources is concerned, the organization is tentative. The basic reason for this is that organizations which will be set up in the majority of UNRRA's member countries directly and immediately anyway. In other words, in countries where organizations, UNRRA does not expect to gain with sacrifice. The result is a loss of gain, or of privilege, in influencing conditions, there not being any apparent sacrifice. Where the sacrifice is asked on the part of the and where international responsibility is true at present for many nations in the world, funds cannot be expected to be made available. It has been true of the experience of

²² The inclusion of the Netherlands in UNRRA's program to spread flooding and military damage. See *The Department of State*, by Edward G. Miller, Jr., in *The Department of State*.

²³ The official Chinese delegate to the UNRRA, minimum Chinese relief and rehabilitation fund for the first year after liberation, of which UNRRA has contributed \$100 million, or 37 per cent. See the *Monthly Bulletin*.

in its own name prevents UNRRA procurement of supplies, though this is also the case with some supply controls of the national government. For instance, UNRRA's requirements are met through the established war supply channels. Countries having less complicated allocations of supplies granted to UNRRA is no less close to the control of UNRRA reinforces control on them and they will not obtain any national supplies. National contributions therefore

turn over their supplies to UNRRA is a common provision, though in the cases of Brazil, Mexico, Dominican Republic, and Costa Rica, the government has adopted making the local and foreign contributions in annual installments. Though de jure any one time, this provision is obviously not binding on UNRRA to have the supplies "when available." Only one country so far, — the Netherlands, — has contributed entirely in a foreign currency

has specified by its legislation the amount to be turned over to UNRRA. This the amount of its direct appropriation over 21.7 million dollars is required for wool and 43.2 million dollars for other commodities are relatively small, the universalization of contributions is narrow, by legislative enactment. Such limitations would be more in line with the range of procurement opportunities available to the singly-supplied countries which have

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lands, Title II.

shipped or slated for shipment by June 30, 1945, 550,000 tons have been bought from the United States Commerce, May 28, 1945, p. 16.

lands,²² Luxembourg, and Norway, though some small supplemental assistance may be given to some of them according to a policy adopted by the Central Committee on February 26, 1945. These countries, or most of them, are expected to call upon UNRRA largely for assistance in the repatriation of displaced people. Other countries, as Poland, Greece, Yugoslavia, and Czechoslovakia, are looking to UNRRA for direct supply aid, in the cases of Poland and Czechoslovakia with no intervening period of civilian supply responsibility by the military. UNRRA's expense for the financing of supplies for Europe will therefore be confined largely to the financially-weak Eastern areas. As for the Far East, China has already announced its intention to call for direct supply aid.²³ It is expected that most of the occupied Dutch, French, and British territories in the Far East will do likewise. It may be that a considerable portion of UNRRA's total supply responsibility, and the expenses involved in meeting it, will therefore be concentrated in the Far East.

III

Only tentative conclusions can be drawn from the financial experience of UNRRA and applied to specialized international organizations as a whole. This not only because UNRRA still has to demonstrate its nature in action but also because of its unique features. To be sure, every international organization will display a certain degree of uniqueness limiting the transferability of its experience to other agencies. But so far as the contribution of financial resources is concerned, the character of UNRRA is unusually distinctive. The basic reason for this lies in the fact that, in contrast to other organizations which will be set up to help all their member nations directly, the majority of UNRRA's membership is expected to help not itself—not directly and immediately anyway—but only a minority number of member countries. In other words, in contrast to more broadly selfish international organizations, UNRRA does not offer most of its members an equivalence of gain with sacrifice. The result is that UNRRA cannot use the threat of a loss of gain, or of privilege, in influencing the observance of financial obligations, there not being any apparent privileges for thirty-one countries. Where the sacrifice is asked on the basis of a slim margin of economic safety and where international responsibilities are primitively developed, which is true at present for many nations in all parts of the world, the contribution of funds cannot be expected to be made enthusiastically and promptly. This has been true of the experience of UNRRA.

²¹ The inclusion of the Netherlands in this group is somewhat doubtful because of widespread flooding and military damage. See "The Second Session of the Council of UNRRA," by Edward G. Miller, Jr., in *The Department of State Bulletin*, October 29, 1944, p. 503.

²² The official Chinese delegate to the UNRRA Council has tentatively announced that minimum Chinese relief and rehabilitation needs would amount to \$3,439,000,000 for the first year after liberation, of which UNRRA would be requested to meet about 1.3 million dollars, or 37 per cent. See the *Monthly Review of UNRRA*, October 1944, p. 7.

The disappointing financial experience of UNRRA reveals the various aspects in which, by comparison, other international organizations will be more favorably situated. For one thing, in contrast to UNRRA, other agencies will be able to stipulate in advance of signature of the basic document the definite "cost" of membership and will be able to require some initial financial contribution as a condition of membership. Secondly, though the relief organization was not able to do so, other agencies can set up a definite schedule for the meeting of financial commitments. Thirdly, other institutions will undoubtedly be in a position to require the submission of the information used as a contribution basis, thereby making possible independent verification. And lastly, other agencies will to some extent be able to "fine" their delinquent members; the "fine" may be a money payment, though this would be unusual, a suspension of the rights of participation,²⁴ or even, in serious cases, expulsion from membership. To be sure, in an unrepentant nationalistic world where the authority of international agencies, such as it is, is unmistakably derived from national governments, the frequent imposition of "fines" is difficult to imagine.

As they appear in draft form, the proposed International Monetary Fund and International Bank for Reconstruction and Development fully incorporate the above favorable comparisons with UNRRA. However, UNRRA's experience casts a light on three main dangers to the successful financial operation of these organizations, as follows:

1. It was noted before that some national governments have placed specific conditions of time and manner in UNRRA's use of their appropriated funds. The drafts of the Fund and the Bank narrow, though do not entirely eliminate, the opportunity for national governments to insinuate separate conditions on the use of their contributed financial resources. If these conditions should seem unduly restrictive, the Fund and the Bank authorities would face the dilemma of either rejecting the membership of the particular countries, which it must always be wary of doing especially with respect to the more powerful countries, or else of accepting membership along with the restrictive conditions, thereby taking upon itself burdensome administrative difficulties in the way of successful operations. There is no getting around this dilemma as long as the financial resources of international institutions depend upon the action of individual governments and, in particular, as long as national legislative bodies maintain the full strength of their special prejudices and traditions of purse string control in their consideration of contributions to international organizations.

²⁴ The charter of the United Nations suspends a delinquent country's voting privileges in the General Assembly. Article 19 reads: "A member which is in arrears in the payments of its financial contributions to the organization shall have no vote if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member."

2. With respect to the International Bank's quota subscription would not be a fault of loans guaranteed by the Bank. In such cases, the Bank would call upon member countries of the particular currency obligations, or of gold or dollars. Failure to be out of the question in two contingencies: a) where national legislation (as during a depression) more than in the Bank; and b) where national legislation requires approval to meet such calls, a requirement. In this latter case instances of late payment could easily arise. Though the Bank would call upon other member countries to meet its obligations, the quality of the Bank's guarantee would be spread of the habit of the non-fulfillment.

3. In approving UNRRA, the United States amendment . . . involving any new institution shall be binding upon the United States without the approval of Congress."²⁵ The legislation authorizing the Bretton Woods institutions, although the United States accepts this point of view and specifies the amount of the regular authorization by Congress.²⁶ The point is understandable but its integration with the Fund, especially at a time of dollar shortage, is to allay a wave of exchange restrictions in other countries, the Fund would seek to be approved by the United States. But the United States approval is required, may not act without the approval for political reasons unrelated to the Fund. In the case of dollar shortage, considerable interest would pass from the executive hands of the Fund to Congress. The result might be the failure of the Fund over foreign exchange transactions.

These brief considerations raise two questions: first, to the ways and means by which national legislation is adapted and, perhaps, streamlined to improve the performance of international institutions; secondly, the promptness in making approval and the developing restraint in attaching special conditions.

²⁵ Public Law 267, Sec. 101.
²⁶ Public Law 171, Sec. 101.

UNRRA reveals the various international organizations will be contrast to UNRRA, other signature of the basic document will be able to require some of membership. Secondly, so, other agencies can set up commitments. Thirdly, other require the submission of the thereby making possible indeedes will to some extent be able " may be a money payment, the rights of participation," or ship. To be sure, in an unreality of international agencies, national governments, the frengine.

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quent country's voting privileges in which is in arrears in the payments ave no vote if the amount of its ar due from it for the preceding two ermit such a member to vote if it is yond the control of the member."

2. With respect to the International Bank, 80 per cent of a member country's quota subscription would not be called upon except to make good defaults of loans guaranteed by the Bank, or the Bank's own defaulted loans. In such cases, the Bank would call up proportionate amounts from all member countries of the particular currency required to discharge the Bank's obligations, or of gold or dollars. Failure to meet such calls will by no means be out of the question in two contingencies: a) where a member country wished to use its limited dollar and gold resources for national purposes (such as during a depression) more than it feared the loss of its privileges in the Bank; and b) where national legislatures would require their specific approval to meet such calls, a requirement not ruled out by the Bank draft. In this latter case instances of late payment or of failure to make payment could easily arise. Though the Bank would make additional calls upon other member countries to meet its obligations in full, the deterioration of the quality of the Bank's guarantee would not be unexpected in the event of the spread of the habit of the non-fulfillment of calls.

3. In approving UNRRA, the United States Congress stipulated that "No amendment . . . involving any new obligation for the United States shall be binding upon the United States without approval by joint resolution of Congress."²⁵ The legislation authorizing United States participation in the Bretton Woods institutions, although drawn up by executive officials, accepts this point of view and specifically states that no loan to the Fund or Bank, over the amount of the regular subscription, can be made except upon authorization by Congress.²⁶ The political necessity for this stipulation is understandable but its integration with a successfully operating Fund, especially at a time of dollar shortage, is less clear. At such a time, in order to allay a wave of exchange restrictions on dollar transactions by member countries, the Fund would seek to borrow extra-quota dollar sums from the United States. But the United States Congress, as long as its specific approval is required, may not act with sufficient speed or perhaps not at all for political reasons unrelated to the matter at hand. In any case, at a time of dollar shortage, considerable international monetary responsibility would pass from the executive hands of Fund officials to the United States Congress. The result might be the failure to get rid of that government control over foreign exchange transactions which is among the leading aims of the Fund.

These brief considerations raise two main problems. One problem refers to the ways and means by which national constitutional machinery can be adapted and, perhaps, streamlined to the requirements of the successful performance of international institutions, in particular to the matter of promptness in making approval and in providing appropriations, and also in developing restraint in attaching special conditions to national participation

²⁵ Public Law 267, Section 5—78th Congress.

²⁶ Public Law 171, Section 5e—79th Congress.

in membership. The second problem refers to the development, from the primitive state existing today, of an articulate world-wide public opinion that could be relied on to bring pressure against the obstacles, national and international, and financial and otherwise, which stand in the way of the successful operation of international institutional life. Lacking the absolute sanction of force, specialized international agencies must lean heavily on the imperfect sanction of public opinion. The development of international organization cannot go far without the parallel growth of international public opinion.

The Economic and Social Council of the United Nations can contribute to the solution of both these problems. For one thing it can try to establish a coordinated set of rules of liaison and integration of existing and contemplated international agencies with national governments. This would help national governments to organize their relations with international agencies with regard to requests for funds and other matters. The Council may also recommend to national governments ways of legislative and executive adjustment to the requirements of international institutions. For another thing, as to the development of a public opinion watchful of the fate of international bodies, the Economic and Social Council may require that reports made to it by such bodies give prominent display to the honoring of financial commitments by member countries. Otherwise, and not without regard to the experience of UNRRA, the international agency may try to hide judiciously the failure to make contributions for fear of wounding "sensibilities" and thus jeopardizing payments at a later date. The Council, on the other hand, may set up a platform upon which the financially recalcitrant countries would be displayed before the world-wide public for the very purpose of embarrassment.

INTERNATIONAL AGENCIES I

By RUTH

Division of International Law, Carn

In the course of the last fifty-five years the Western Hemisphere has developed effective international action in many fields of common interest. The official governmental machinery for the Western Hemisphere—American system—which operates in many fields. There are, furthermore, some thirty international agencies (Inter-American, Caribbean, Latin American, and as well as bipartite) which have been established by the action of general or special Inter-American conferences. The government of some one American country, and finally, there are seventeen official international agencies in the Western Hemisphere. states to deal with problems of special interest. Now eighty-six international agencies are governmental.² An adequate presentation for collaboration would exceed the limits of this attempt here to show the variety of official international agencies in the Western Hemisphere. Individual agencies must be rather briefly mentioned concerning the history, purposes, international relations. Of all agencies here mentioned may be found in a book published by the Carnegie Endowment for International Peace.

Since most of the agencies are established directly to, the Inter-American system. Remarks concerning the nature of the international relations of the independent states of the Western Hemisphere. It constitutes the only regional organization.

¹ Four codification agencies—generally considered as not begun working; if these are excluded, there are eighty-two.

² Eleven of these are war-time bodies and probably be continued after the war in altered form.

³ *Handbook of International Organization*, p. 10.

⁴ Other staff members of the Division of International Law. Although not an official member, Canada has participated in Inter-American conferences and is a member of several international conferences. Resolution XXII of the Mexico Conference "that the collaboration of Canada be made closer."

Indemnities for Nazi Victims

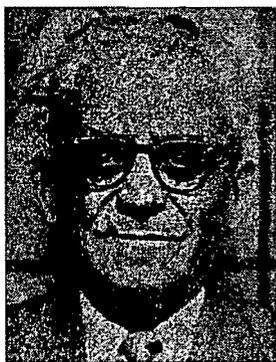
By

DR. ABRAHAM TEITELBAUM

Doctor of Jurisprudence, Universities of Czernowitz and Vienna, Bachelor of Laws, University of Pennsylvania Law School.

THERE ARE IN THIS COUNTRY many people who were persecuted by the Nazis for racial, religious and political reasons. Few of them are informed concerning their right to indemnification.

Since these are matters which have come within my experience as a lawyer who also has suffered from the atrocities of the Nazi system, I feel it may be helpful to many others to outline the restitution laws enacted up to this time by the United States Military Government and the German States.



When the Nazi domination was destroyed and the doors of the Ghettos and concentration camps were opened in 1945, the chaos in Germany was indescribable. Obviously any immediate organized help for the victims of the Nazis was out of the question. Yet the need was great, and out of that great need came the drive to overcome difficulties that stood in the path

of uniform legislation requisite for a definitive indemnification law.

The Law of Restitution of property, enacted by the Office of United States Military Government for Germany, was promulgated as Military Government Law No. 59 on November 10, 1947. It represented the first step in the development of a complete indemnification system.

This law provided for the restitution of identifiable property and aggregates thereof, of which the lawful owner was forcibly deprived during the Nazi regime (January 30, 1933, to May 8, 1945) because of race, religion, nationality, ideology or political opposition to National Socialism.

Law No. 59 expressly provides that claims for damages and injury not connected with the wrongful taking of identifiable

1955

property are not within the scope of this law but must await further legislation. Such legislation was forthcoming on September 30, 1949, when the U. S. High Commissioner for Germany announced that the German "Laenderrat" (Council of States) had enacted a Law to indemnify victims of Nazi persecution for injuries and damages suffered at Nazi hands. This legislation was approved in principle by the U. S. Military Government after many months of study by German and United States authorities. It was promulgated as the General Claims Law (Entschadigungsgesetz). The new legislation completed the remedy for those classes of persons who suffered monetary and other losses during the Nazi regime which were outside the scope of Law No. 59.

The new "Laender Laws" (Laws of the Council of All States) provided that persons who were persecuted during the same 1933-45 period for political convictions or for racial, religious or ideological reasons, thereby suffering damage to life and limb, health, liberty, occupation, possessions, property or economic advancement, were entitled to restitution.

For a "Land" (State) to be liable as restitutor, the victim must have had his legitimate domicile or usual residence within that State on January 1, 1947, or have been assigned to that State as refugee, or having had such domicile or residence have died or emigrated prior to that date. It thereby established that those who had to flee from Nazism enjoy the same rights as those who remained. Persons who resided in Displaced Persons camps on January 1, 1947, are also eligible.

The law provides that the right to claim restitution and compensation passes, under certain circumstances, to the heirs of claimants.

The administrative procedures necessary to carry out the provisions of this law, as well as its actual administration, were declared to be the responsibility of the German authorities. Each State was required in due course to establish procedures for the filing, processing and adjudication of claims.

After four years, the Law of September 18, 1953 BG B1. IS. 1387, called the "Entschadigungsgesetz" (Indemnification Law) was enacted. This law provided the necessary regulations to make the basic law effective. Under it, each State has named officers to accept claims.

Although the basic law, embodied in 113 sections, cannot be discussed in this brief outline, some of the more important provisions relating to eligibility are worth noting.

Those persons covered by the Law of September 18, 1953, include all persons who between January 30, 1953, and May 8, 1945, were persecuted because of political convictions or for racial, religious or ideological reasons, and thereby suffered damages to life, health, liberty, possessions, properties, economic advancement, loss of occupation or profession, loss of earnings and the like. The law further requires that such persons have had their domicil or residence within that State on January 1, 1947, or resided in a Displaced Persons camp, or died or emigrated prior to that time.

Public officials and employes are entitled to compensation for loss of salary and pension.

Regulations require that claims be prepared in the form of a sworn statement which should contain, in narrative form, a clear chronological statement of the essential facts upon which the claim is based. Relationship of the claimant to the deceased (in death cases), the time and place and circumstances under which injury or death occurred, the nature and extent of damages suffered, are likewise required.

Statements of claimants in support of their claims must be corroborated by other evidence. Accordingly, there should be attached to the sworn statements of claim the documentary evidence, if available, the affidavits which support the material allegations, the sworn statements of eyewitnesses to the commission of the acts complained of, or of others having personal and reliable knowledge of the circumstances (such as fellow prisoners of the deceased in Nazi camps).

In cases involving deprivation of liberty, the claimant must prove the length and the nature of such deprivation, such as the number of months or years he was in a K.Z., Ghetto, forced labor camp, or other place of restraint.

In injury cases the evidence should establish, as convincingly as possible, the following:

- (a) The age of the claimant and his earning capacity at the time of the injury.
- (b) The extent of injuries and the physical suffering resulting therefrom.
- (c) Loss of time from gainful employment.
- (d) Extent of temporary or permanent impairment of earning capacity.

The amount of damages will depend upon the percentage of

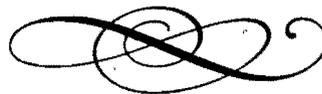
disability, the time of the loss of occupation, the number of members in the family of the deceased, and similar considerations.

A claimant for damages for deprivation of liberty receives DM-150 for each month of imprisonment. Preferential treatment as to the time of payment is provided by the law for sick people, for men over 65, and for women over 60.

These few highlights, of course, cannot cover all the requirements for preparation of a claim, and can serve only as a general guide. Variation in the facts of particular cases may require special treatment and methods of proof.

When claimants are represented by an attorney he should make certain that he files a power of attorney evidencing his authority to act.

The deadline for filing claims for claimants in the United States is October 1, 1955.



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Article XIV exempted the tax upon the capital gain to the trust. The intervention of a trust and trustee having legal title did not contradict the pattern of reciprocal taxation and impose an unintended economic burden.

The fact that the Income Tax Convention between the United States and the United Kingdom does not contain a "savings clause" found in sixteen of twenty Tax Conventions negotiated by the United States is significant. Treaties containing the usual "savings clause" were negotiated both before and after the United Kingdom Treaty. The purpose of the "savings clause," as we read it, was to make plain that the United States reserved the right to include all items of income taxable under its revenue laws. Hence, were we here dealing with a treaty containing a savings clause, a different result might possibly be reached. Thus, it seems that the savings clause was incorporated into certain treaties with the express purpose of limiting exemptions. Its omission from the United Kingdom Treaty is further evidence of a purpose to exempt completely income from capital gains belonging to residents of the United Kingdom, regardless of where lodged between the time of receipt and distribution. . . .

Trading with the Enemy Act—1951 Joint Resolution of Congress terminating war with Germany—standing to sue

FARBENFABRIKEN BAYER, A.G. v. STERLING DRUG, INC. 251 F.2d 300. U. S. Ct. A., 3rd Circuit, Jan. 2, 1958. Biggs, C.J. Certiorari denied May 19, 1958.

Plaintiff, a German corporation, brought action against defendant American corporation for alleged breach of contract occurring in 1941, or shortly thereafter, and prior to January 1, 1947. The claims on which action was brought were subject to seizure and vesting under the Trading with the Enemy Act of 1917.¹ Defendant's answer alleged as an affirmative defense the express limitation in House Joint Resolution No. 289, approved October 19, 1951.² In the District Court, the defendant's motion for judgment was denied and the action dismissed without prejudice. 148 F.Supp. 733 (U. S. Dist. Ct., D. N.J., Feb. 5, 1957. W. F. Smith, D.J.), digested in 51 A.J.I.L. 639 (1957). In reversing the judgment below, the court said in part:³

The plaintiff, Farbenfabriken Bayer A. G. (Farben), a corporation organized under the laws of the Federal Republic of West Germany, a former enemy alien within the meaning of Section 2(a) of the Trading with the Enemy Act, 50 U.S.C.A., App. § 2(a), seeks an accounting and other relief against Sterling Drug, Inc. (Sterling), basing its claims on alleged breaches of a cartel agreement, occurring in 1941 or soon thereafter. These claims, choses-in-action, constitute "property" within the meaning of the Act, *Propper v. Clark*, 351 U. S. 472, 480 (1949), and were not seized by the Alien Property Custodian though subject to seizure and vesting under Section 5(b), 50 U.S.C.A. App. § 5(b). Sterling contends that Farben has no right to "institute or maintain" its action, in view of the limitation or

reservation contained in Joint Resolution No. 289, 65 Stat. 451, approved October 19, 1951, 50 U.S.C.A. App. XX. Sterling moved for judgment on the pleadings under Rule 12(c) and for summary judgment under Rule 56(b), Fed. R. Civ. Proc., 28 U.S.C. The Court below agreed with Sterling that Farben could not maintain its suit but did not concur in Sterling's view that it was entitled to a judgment on the merits under the rules cited and therefore dismissed the action without prejudice to Farben to institute and maintain a new action when the disqualification deemed by the court to have been imposed by Executive Order No. 8389, April 10, 1940, 5 Fed. Reg. 1400 as amended, Executive Order No. 8785, June 14, 1941, 6 Fed. Reg. 2897, pursuant to Section 5(b) of the Act has been removed. See 148 F. Supp. 733 (1957).

. . . Following the enactment of the Joint Resolution President Truman on October 24, 1951 proclaimed a termination of the state of war with Germany. Proc. 2950, 16 F. R. (Oct.), p. 10,915.

Farben has advanced several theories under any one of which it asserts that it is entitled to maintain the present action. We will discuss its principal contention only for we deem it to be dispositive of the appeal. Put briefly, Farben's principal argument is that the Joint Resolution and the Presidential Proclamation gives it *locus standi* in the court below and entitles it to maintain the suit even if it be the fact that its property under the Joint Resolution still remained subject to vesting and seizure. Sterling asserts that the "status" of the property under the Joint Resolution remains the same as when Farben was an enemy alien and since as an enemy alien it was unable to maintain a suit in our courts, it cannot do so now. We cannot agree.

Our primer in resolving the controversy is, of course, the Trading with the Enemy Act, as amended. We need not discuss the provisions of the Act at length for its purposes and its application are too well known. It is sufficient to state here that it authorized the President to sequester or seize property of enemy governments or enemy aliens *inter alia*, as defined by Section 2, to the end that the United States might successfully prosecute all objects of war. *United States v. Chemical Foundation*, 272 U. S. 1 (1926); *Koehler v. Clark*, 170 F. 2d 779 (9 Cir. 1942). See Dulles, *The Vesting Powers of the Alien Property Custodian*, 28 Cornell L.Q. 245 (1943). See also the First War Powers Act, 55 Stat. 839 (1941), 50 U.S.C.A. App. Title III, amending Section 5(b) of the Trading with the Enemy Act. It is agreed that Farben was an enemy alien. It is also agreed that the property, the choses-in-action, which are the subject of this suit were never seized.

Nothing in the Act prohibits an enemy alien from maintaining a suit in our courts. In respect to the bringing of suits Section 7(b) of the Act provides in pertinent part: "Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of an enemy prior to the end of the war. . . ." In short Congress in respect to an enemy maintaining a suit within the United States was content to rely on decisional or common law. The early rule of law, sometimes referred to very generally as "the common law rule," that the King's subjects had a duty to plunder the King's enemies, subsequently modified to a prohibition, personal to an enemy, that

for an alien goes only so far as it would give aid or comfort to the other side." *Ex Parte Kawato*, 317 U. S. 69 (1942), quoting in part from *Berge-Farbes Co. v. Heve*, 251 U. S. 323.

We are somewhat troubled by the statement in *Kawato* that "Section 7 bars from the courts only an 'enemy or ally of an enemy.'" 317 U. S. at p. 75, but we are of the opinion that a failure to authorize a suit is a bar to suit when the strict common law rule that an enemy cannot maintain a suit in our courts is in effect, and that this is what the Supreme Court had in mind. Cf. *Ex Parte Colonna*, 314 U. S. 510 (1942), wherein it was stated *per curiam* by the Supreme Court refusing leave to file a petition for writs of mandamus and prohibition to be issued to this court: "This provision [Section 7(b)] was inserted in the Act in the light of the principle, recognized by Congress and by this Court, that war suspends the right of enemy plaintiffs, to prosecute actions in our courts." It follows that we must hold that though the property chases-in-action, was available to Farben prior to the declaration of war between the United States and Germany on December 11, 1941, 55 Stat. 796, upon the declaration of a state of war by Congress on that date, the right of Farben to institute suit was then suspended. The disability caused by the suspension was a personal one as we have stated. It was not a substantive failure of the causes of action. They continued to exist but could not be sued upon in a court in the United States.

On December 31, 1946, the President proclaimed the cessation of hostilities of World War II. See Proclamation 2950, *supra*. Then came the enactment of the Joint Resolution of October 19, 1951 with which we are concerned and Proclamation 2950 by the President followed it by four days. Whether or not Farben could have maintained its suit during the period from December 31, 1946 to October 19 or 21, 1951, is a question with which we need not concern ourselves for the suit at bar was commenced on September 28, 1955.

We are of the opinion that Farben is entitled to maintain its suit. The purpose of the Joint Resolution and its proviso is made very clear by its legislative history. The Joint Resolution was enacted at the request of the President. The Senate Report, Sen. Rept. 892, 82nd Cong., 1st Sess., Para. 8 (1951) refers to the Presidential message, quoting from it the reason for the President's request. This was that it was necessary to retain control of German property already vested and possibly to vest other German property, even though the war had terminated.

Congress intended to terminate the state of war so as to remove the disqualifications of German nationals as enemies but deemed it necessary to make certain that the President should retain the right to vest certain German property. The proviso of the Joint Resolution was designed to effect this end; a result which was deemed to be in doubt "unless expressly provided for in new legislation." The terms of the proviso were held to effect the result intended. *Ladue & Co. v. Brownell*, 220 F. 2d 468 (7 Cir. 1955). In brief it was the intention of Congress to effect peace between the Federal Republic of West Germany and German nationals and the United States and to restore the normal rights and relations ordinarily in effect between friendly peoples but to retain and obtain control of Germanic property in the United States under Section 5(b) of the Act where necessary. We have no doubt the legal effect of the Joint Resolution and

The error of the court below lies, we believe, in its approach to the term "status" as employed in the Joint Resolution. While the court properly held that property of a former German enemy alien was subject to vesting and seizure at the will of the Executive, the primary concern of both the President and the Congress was with the power of the Executive to vest property and not with access to courts in the United States. The term "status" is properly used in respect to a relationship to property, *viz.*, ownership of property or a right to possess property. The proviso deals with ownership in or a right to property. The right to bring a suit, to access to a court may not be described properly as a status. It is a general right of a procedural, not of a substantive, character. One does not say that a plaintiff possesses the status to bring a suit. He either has a right to maintain a suit or he does not but his right of access to a court is a personal qualification and is not a *status*.

We conclude therefore that Farben is entitled to maintain its suit and, if the nature of its causes of action and the evidence permit, to secure judgment in the court below. Beyond this the way is pointed out by *Zittman v. McGrath*, 341 U. S. 446, 449-552 (1951), which held that attachment levies against American holders of claims against German banks were not nullities though, of course, transfer of the funds could not be effected without a license. See *Propper v. Clark*, 337 U. S. 472 (1949), *Orvis v. Brownell*, 345 U. S. 183 (1952), Mr. Justice Douglas's dissenting opinion *id.* at p. 191, and *Polish Relief v. Banca Nazionale Rumaniiei*, 288 N.Y. 332, 43 N.E. 2d 345 (1942). In *Zittman* the claims had been vested in the Alien Property Custodian, while Farben's claims have not been seized. Public Circular No. 31, 8 C.F.R. § 511.331(d), throws light upon the problem confronting us. This explains the purpose of General Ruling No. 12, 8 C.F.R., § 511.212, promulgated pursuant to Section 5(b) of the Trading with the Enemy Act. In pertinent part Section 511.212(d) states that the Treasury does not desire to interfere with litigation concerning enemy aliens "so long as it is clearly understood that judicial process cannot, without a license or other authorization from the Secretary of the Treasury, operate to transfer or create any interest in blocked property." In so holding we assume *arguendo* that Farben's claims are still blocked or frozen by Executive Order 8389 as amended by Executive Order 8785 and General Rule No. 12. We need go no further to dispose of the appeal at bar for Farben may not secure a judgment against Sterling. If Farben should secure a judgment against Sterling and then seek execution on the judgment, it will be necessary for the court below to determine whether General License No. 101, Section 511.101, 8 C.F.R. (Com. Supp.) has freed Farben's claims then reduced to judgment. . . .

Taxation—interest in property in foreign government—use for public purpose

FRASER-BRACE OVERSEAS CORP. *v.* ST. JOHN. 9 D.L.R. 2d 391.
New Brunswick Sup. Ct., May 9, 1957. Bridges, Richard and Jones, JJ.

Certain real and personal property in the possession of appellant was

and worthy noncitizens" within the forces suggests an element of discretion on the part of the officers certifying. It is understood that the Immigration and Naturalization Service has construed the words "lawfully admitted" and "resident," as used in the statute, to include aliens who are in the country with student visas. That part of the plan which permits purely administrative naturalization of men who are outside the jurisdiction of any "naturalization court" is apparently to be exercised with some discretion in the officers conducting the proceedings.

The move which the United States has made toward granting its citizenship without delay to persons who serve willingly in its armed forces is consistent with international law and seems thoroughly desirable from the point of view of liberal policy. The plan seems adequately safeguarded against abuses. It should help to avoid anomalies which have been possible in the past. It permits the addition to the citizenry of a considerable number of individuals who, without being compelled to do so, have elected to enjoy the opportunities which the country offers and to bear their share of responsibility for its protection.

ROBERT R. WILSON

VESTING ORDERS UNDER THE FIRST WAR POWERS ACT, 1941

Title III of the First War Powers Act, 1941, approved December 18, 1941, amends Section 5 (b) of the Trading With the Enemy Act of 1917 so as to provide, among other things, that during the time of war or during any other period of national emergency declared by the President

any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States.

The authority thus conferred upon the President was delegated by him on February 12, 1942, to the Secretary of the Treasury, who had previously been entrusted, under a series of executive orders beginning on April 10, 1940, with the "freezing" and regulation of foreign funds in excess of seven billions of dollars, or approximately fourteen times the value of all the property which came into the hands of the Alien Property Custodian during World War I under the provision in Section 7 (c) of the Trading With the Enemy Act of 1917 that the property of enemies or allies of enemies should, if so ordered by the President, be conveyed, transferred, assigned, or paid over to the Alien Property Custodian or seized by him.

In the exercise of his new authority, the Secretary of the Treasury, on February 16, 1942, issued an order vesting in himself 97% of the outstanding service of the United States and outside the jurisdiction of any court authorized to naturalize aliens. 40 Stat. 542, 543.

shares of the stock of the General Aniline and Film Corporation, a corporation organized under the laws of the State of Delaware. The order of February 16, 1942, contained findings that the shares vested thereunder were the property of nationals of a foreign country designated in the executive order of April 10, 1940, as amended,¹ and that the action taken was in the public interest. It declared that the shares vested in the Secretary of the Treasury and any proceeds of those shares would be held in a special account pending further determination by the Secretary, who specifically reserved the power to return the shares or the proceeds thereof or to indicate that compensation would not be paid in lieu thereof in the event of a determination that such return or compensation should be made. The right to file a notice of claim, with a request for hearing thereon, was accorded to any person (other than a national of a foreign country designated in the executive order of April 10, 1940, as amended) asserting any interest in the shares or to any party asserting any claim as a result of the vesting order.

In a press release bearing the same date as the order it was stated that in the judgment of the Secretary of the Treasury the real interest in the shares vested in him was German, notwithstanding the fact, set forth in the order, that more than 2,500,000 of the shares were registered in the name of Dutch and Swiss concerns and only 4,000 shares were registered in the names of German nationals. The purpose of the Treasury Department in vesting these shares was, according to the press release, "to carry forward recent steps to Americanize the company and better utilize the productive facilities of the company in the war effort." The action was also "intended to protect the investment of the American bondholders," who held approximately 95% of the outstanding bonds and debentures of the company. The press release concluded with the announcement that "the question of ultimate disposition of the property sequestered is being left open"; that claims may be filed with the Secretary of the Treasury; and that regulations providing an orderly determination of such claims have been issued.

The vesting order of February 16, 1942, was not affected by the executive order of March 11, 1942, by which the power of vesting foreign property and interest therein, under the Act of December 18, 1941, was transferred from the Secretary of the Treasury to a new officer to be known by the title of Alien Property Custodian. Any property or interest therein subject to the control of the Secretary of the Treasury under the vesting order of February 16, 1942, or otherwise, is, by the terms of the executive order of March 11, 1942, to be released to the Alien Property Custodian upon written notice by

¹The designation of foreign countries in the order of April 10, 1940, as amended up to December 26, 1941, included every country on the European Continent with the exception of Turkey. It also included China, Japan, Thailand and Hongkong. The Union of Soviet Socialist Republics was relieved of the freezing restrictions upon its entry into the war. British and American territories occupied by the Japanese were added to the list of "blocked countries" after our entry into the war.

him to the Secretary of the Treasury. The power transferred to the Alien Property Custodian on March 11, 1942, was redelegated by him to the Secretary of the Treasury on the same date, pending the staffing and organization of the Office of the Alien Property Custodian. The first vesting order of the Alien Property Custodian was issued on March 25, 1942. This order followed precisely the form which had been used in the vesting order of February 16, 1942. The property affected was that of I. G. Farbenindustrie, "an enemy corporation", and others. It consisted of "all right, title and interest" of that corporation and others in specified contracts, agreements, patents, capital stock, etc., largely related to the production of motor fuels, oils and synthetic rubber.

The guarded terms of the orders of February 16 and March 25, 1942, indicate that the officers who have been entrusted with the responsibility for the vesting of foreign property under the First War Powers Act, 1941, are aware of the questions of constitutional and international law which may arise in connection with the discharge of that responsibility. These questions are somewhat complicated by the fact that the vesting power conferred upon the President is not limited by the statute to periods of war but may be exercised during any other period of national emergency declared by the President. In view of the fact that the reference to periods of national emergency other than war was inserted in the Trading With the Enemy Act during the financial crisis of 1933, and in view of the circumstances in which the recent amendment was made, it is reasonable to assume, for the purposes of the interpretation and administration of the amended provision, that Congress intended by that provision to exercise, at least to a limited extent, its constitutional power to "make rules concerning captures on land and water" during war. In the exercise of that power, as long ago pointed out by Chief Justice Marshall in *Brown v. United States*, 8 Cranch 110, Congress might have confiscated the property of the enemy wherever found. That power does not, however, extend to the confiscation of the property of alien friends²; and, in the light of "the humane and wise policies of modern times" referred to in *Brown v. United States* and in later cases, including *Cummings v. Deutsche Bank*, 300 U. S. 115, 123, it could hardly be believed that Congress intended to confiscate any of the property the vesting of which it authorized in the recent amendment. The vesting of property, "when, as and upon the terms, directed by the President," must, in the circumstances, be deemed to have been authorized in contemplation of subsequent provision for compensation to non-enemy owners and either compensation or credit (against claims) to enemy governments. Such provision might be made under rules and regulations to be prescribed by the President. It would be preferable that it be included in supplemental legislation, which might also appropriately set forth in detail the standards of judgment which Congress desires the Executive to apply in the administration of the Act.

² *Russian Volunteer Fleet v. United States*, 282 U. S. 481.

The questions of international law which may arise, now or later, in regard to vesting orders issued under the Act of December 18, 1941, include the following:

1. To what extent may our Government interfere with the property rights of foreign individuals and concerns without affording grounds for claims to indemnification under general international law?
2. To what extent does the standard imposed by general international law in this respect differ from the standard accepted by our Government in treaties in which the nationals of certain countries are assured that their property in this country shall not be taken without due process of law and without payment of just compensation?
3. To what extent does the position of nationals of countries with which we are at war differ, as regards the action of our Government with respect to their property, from the position of other foreigners?
4. What consequences attach to the vesting of property claimed by foreign governments?

It is a well recognized principle of general international law that interference with foreign property in the exercise of police power does not afford grounds for claims to indemnification. As stated by Mr. Herz, in an article in this JOURNAL,³ it may often be difficult to ascertain whether interference with private property in purported exercise of the police power is actually necessary for the protection of the public against a direct danger threatening its safety or is in reality expropriation for public use. "Injuries sustained by private property as a direct result of belligerent acts . . . or incidental thereto are not the subject of indemnification."⁴ The destruction of buildings as a sanitary measure falls within the same rule.⁵ The seizure and destruction of property to prevent its falling into the hands of the enemy do not give the owner a right to compensation if the danger was immediate and impending and its capture by the enemy was reasonably certain.⁶ The line between over-ruling necessity in the face of immediate danger and deliberate destruction for the ultimate end of preventing . . . capture by the enemy is often exceedingly vague, so that courts and commissions in numerous cases have considered such destruction under the latter head as an expropriation of private property for the public use and have awarded indemnities to the owner.⁷ The authorities cited in relation to military appropriations are applicable in principle to any interference with property.

³ "Expropriation of Foreign Property", Vol. 35 (1941), 243, 252.

⁴ Borchard, *Diplomatic Protection of Citizens Abroad*, p. 256.

⁵ *Ibid.*, p. 257, citing *Hardman (Great Britain) v. U. S.*, this JOURNAL, Vol. 7 (1913), 77, in which it was held that "necessary acts of war do not imply the belligerent's legal obligation to compensate" but that "there is, nevertheless, a certain humanitarian conduct generally followed by nations to compensate the private war losses as a matter purely of grace and favor."

⁶ *Ibid.*, p. 258, citing *Respublica v. Sparhawk* (1788), 1 Dallas 357, 362, and Final Report of Spanish Treaty Claims Commission, May 2, 1910, p. 12.

⁷ *Ibid.*, p. 265.

in reliance upon the "rights of necessity" which, the court held in *Republica v. Sparhawk*, "form a part of our law". The officers charged with the responsibility for the vesting of foreign property may lay the foundation for numerous claims under international law unless they hew closely to the line between measures necessary to avert impending danger and measures constituting the taking of private property for public use.

Our treaties with a number of countries, including Germany, Hungary, Finland, Estonia, Latvia, Norway, and Poland,⁸ contain the following provision:

The nationals of each high contracting party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

The standard of treatment recognized in the first of the two sentences quoted is the standard of general international law. The second sentence assures to nationals of each high contracting party the standard of treatment which has been recognized by our Supreme Court as the right of all friendly aliens in the United States.⁹ Due process of law does not require the following of any prescribed course of procedure. It does, however, import a guarantee of essential safeguards against a denial of justice.¹⁰

The rights of nationals of Germany and Hungary with respect to action by our Government affecting their property are as broad as the rights of any other foreigners if the provision quoted above from our treaties with Germany and Hungary are still in force. In the absence of specific denunciation, this provision might be deemed to be reconcilable with a state of war, and in view of the enlightened doctrine set forth in *Techt v. Hughes*, 229 N. Y. 222, 240-247, it may be considered to be still in effect. According to the standard of general international law, on the other hand, the nationals of countries with which we are at war are liable to the confiscation of their property by Congress, subject only to the above-mentioned "humane and wise policies of modern times". The Act of December 18, 1941, was, as noted above, an exercise of the power of Congress "to make rules concerning captures on land and water". That power, however, has not yet been exercised by the Congress to the extent of confiscating the property of enemies. The statement in the Treasury Department press release of February 16, 1942, that the property vested in the order of that day is considered to be "sequestered" is an indication that the full rigor of war is not yet being applied to the property of alien enemies.

⁸ 44 Stat. 2132, 2379, 2441; 45 Stat. 2641; 47 Stat. 2135; 48 Stat. 1507; 49 Stat. 2659.

⁹ *Russian Volunteer Fleet v. United States*, *supra*.

¹⁰ Compare Borchard, *op. cit.*, p. 100; Cowles, *Treaties and Constitutional Law, Property Interferences and Due Process of Law*, p. 2.

The decree of the Royal Netherlands Government in exile, dated May 24, 1940, vesting in the Netherlands State title to all Dutch property interests outside Europe, entails the possibility of a violation of a principle of the principle, established by the decision of the Supreme Court in *Schooner Exchange v. McFaddon*, 7 Cranch 116, and consistently recognized since the date of that case, that the property of a foreign state is immune from interference while in the territory of the United States. If extraterritorial effect is conceded to the Netherlands decree of May 24, 1940, the majority of the shares vested in the Secretary of the Treasury by his order of February 16, 1942, may possibly be regarded as belonging to the Netherlands State. The claim of the Netherlands State is not likely to be pressed under existing circumstances, but it may lead to extensive discussion and possible arbitration after the return of normal conditions.

EDGAR TURLINGTON

War—Recovery by Government on Bearer Bonds of Enemy Alien Located Outside United States Held Valid.—The Attorney General, as successor to the Alien Property Custodian, sued the Cities Service Company, obligor, and the Chase National Bank, indenture trustee, on negotiable bearer bonds owned by a German national and located outside the United States. The bonds were last reported to be in Russian hands. The district court granted summary judgment for defendants. The court of appeals reversed and entered summary judgment for the plaintiff, and the defendants sought certiorari. *Held*, affirmed. The seizure of property represented by a bond without seizure of the instrument is constitutional and recovery on the bond is not a taking of property without compensation in violation of the Constitution. *Cities Service Co. v. McGrath*, 342 U.S. 330 (1952).

The power of the government to confiscate enemy property in time of war is well established. *E.g.*, *White v. Mechanics Securities Corp.*, 269 U.S. 283, 300 (1925); *Brown v. United States*, 8 Cranch 110, 122 (U.S. 1814). Thus, Congress may authorize the seizure and sequestration of property belonging or supposed to belong to the enemy if adequate provision is made for its return in case of the mistaken seizure of a citizen's property. *Stoehr v. Wallace*, 255 U.S. 239 (1921); *Central Union Trust Co. v. Garvan*, 254 U.S. 554 (1921). The original Trading with the Enemy Act provided only for sequestration of enemy owned property, 40 STAT. 411 (1917), but by more recent amendments the grant of authority to the Executive has been considerably broadened by providing that "... any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President . . ." 50 U.S.C. APP. § 5(b)(1) (1946), *see Markham v. Cabell*, 326 U.S. 404, 411 (1945). A debt owing to an alien enemy is property which may be seized under the Act. *Clark v. Manufacturers Trust Co.*, 169 F.2d 932 (2d Cir. 1948), *modified and aff'd*, 338 U.S. 241 (1949); *Clark v. E.J. Lavino & Co.*, 72 F. Supp. 497 (E.D. Pa. 1947), *rev'd on other grounds*, 175 F.2d 897 (3d Cir. 1949). The power of the Alien Property Custodian to reach a bonded indebtedness without seizure of the bond is specifically recognized by the Act which provides for seizure "... where the right, title, and interest in the property (but not the actual certificate or bond or other certificate of interest of indebtedness) was . . . seized . . ." 50 U.S.C. APP. § 9(n) (1946); *cf. Silesian-American Corp. v. Clark*, 332 U.S. 469 (1947) (sustaining the Custodian's authority under § 5(b)(1) to vest stock without seizure of the certificates).

Absent a statute a problem of jurisdiction has confronted the courts. In one instance the court indicated that jurisdiction over the obligor gave the power to seize the debt, *see Standard Oil Co. v. New Jersey*, 341 U.S. 428, 439 (1951), but the weight of authority is that only jurisdiction of the document gives jurisdiction of the right. *See United States Fidelity &*

Guaranty Co. v. Riefler, 239 U.S. 17, 25 (1915); *Bozant v. Bank of New York*, 156 F.2d 787, 790 (2d Cir. 1946); RESTATEMENT, CONFLICT OF LAWS § 52 (1934). Generally, the decrees of a foreign government confiscating property within their jurisdiction are binding and will not be modified or reexamined by the courts of the forum. *Ricaud v. American Metal Co.*, 246 U.S. 304 (1918); *Oetjen v. Central Leather Co.*, 246 U.S. 297 (1918). *Contra: Frenkel & Co. v. L'Urbaine Fire Ins. Co.*, 251 N.Y. 243, 167 N.E. 430 (1929). But there appears to be no principle necessarily requiring the actions of the Custodian to be given effect outside of the United States. *See Ingenohl v. Olsen & Co.*, 273 U.S. 541, 545 (1927). *But cf. Disconto-Gesellschaft v. United States Steel Co.*, 267 U.S. 22 (1928) (action of English Public Trustee recognized in the United States). An unconstitutional taking of property gives rise to an implied promise by the United States to compensate therefor. *See, e.g., United States v. North American Co.*, 253 U.S. 330, 333 (1920); *United States v. Lynah*, 188 U.S. 445, 465 (1903).

The result reached by the court in the instant case appears to be consistent with the terms of the Trading with the Enemy Act, which specifically refers to such a seizure, and with the traditionally liberal construction given to this statute in the past. The Court in its opinion recognized the possibility that the petitioners might be subject to future liability in a foreign court which refused to recognize payment to the Attorney General as a defense to a suit on the bonds. This, the Court stated, would render the present action an unconstitutional taking of petitioner's property to the extent of the double liability and would give rise to a right against the United States for "just compensation" which would accrue upon payment under the foreign decree to a holder in due course of the bonds. Only by this unusual and perhaps questionable technique could the Supreme Court say that the present seizure was not an unconstitutional taking of property under the Fifth Amendment.

Wills—Class Gift—Where Executory Devise Made to Class, Effect Given Testator's Intent That Class Remain Open Until Distribution of Estate.—The testator died in 1928. One item of his will provided for the establishment of a trust fund of one hundred thousand dollars, the income therefrom to be distributed for "... the benefit of each and every male child of my sons who shall by birth inherit and bear ..." the name of the testator. Provision for the termination of such trusts was made in accordance with the rule against perpetuities, with the distribution of the entire corpus of the estate to be postponed until the termination of such trusts (*i.e.*, twenty-one years after the death of the last surviving grandchild or great-grandchild who was living at the time of the testator's death). At the time of his death the testator had two sons, one of whom then had no issue. In

THE MONETARY FUND: SOME CRITICISMS EXAMINED

By H. D. White

PERHAPS no economic measure has ever received the careful consideration, extensive discussion and painstaking labor that went into the formulation of the proposal for an International Monetary Fund. The preparations for the United Nations Monetary and Financial Conference were a model of democracy in action. During the two years that elapsed between the emergence of the proposal in its original form and the final draft drawn up at Bretton Woods, literally hundreds of conferences were held with experts of some thirty nations. Hundreds more took place among American experts — from the staffs of the Treasury, the Federal Reserve Board, the State Department and other agencies of the government — and among interested groups of businessmen, bankers and labor. Comments pouring in from all over the country were studied with care. The original documents went through more than twenty drafts, several of which were published here and abroad and widely distributed for study. Before the Conference was called, foreign experts had many months to study the proposals and to discuss them with appropriate groups at home.

In June 1944, about sixty representatives of some fifteen major nations met with a score of American experts at Atlantic City, and for two weeks worked to improve the proposals. Finally, in July 1944, representatives of 44 nations met at Bretton Woods. These representatives included finance ministers, officials of Central Banks of most of the countries, Treasury officials who help to shape monetary policy in the major countries and to administer the large stabilization funds of the world, scores of monetary experts, economists, legal authorities, bankers, and almost all of the hundred or so technical representatives of foreign countries who for more than a year had participated with the American experts in consideration of the various drafts.

For three and a half weeks these experts labored 14 to 16 hours a day in committees and subcommittees, going over every provision, studying every suggestion, discussing in greatest detail every point of difference. Each line of each provision was subjected to the closest scrutiny. In the light of all this, the attempt which has been made by certain commentators, familiar with the

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background, to convey the impression that the monetary proposal was the hastily compiled and visionary blueprint of a handful of men inexperienced in the real problems of foreign exchange and finance is somewhat puzzling. The charge that it was thrust full-born upon the public without giving it an opportunity to examine, criticize, or make recommendations can be interpreted only as a manoeuvre to undermine confidence in the soundness of the proposal.

Fortunately this criticism comes from a small, albeit powerful, group. The bulk of expert and informed opinion approves the proposals, and the number of supporters multiplies as the plan is studied and understood. This is due to the fact that, once understood, the proposals are recognized as effective machinery for achieving ends the desirability of which has been driven home by painful experiences of the last quarter century.

The proposal for an International Monetary Fund rests on two premises. The first is the need for stability, order and freedom in exchange transactions; without these we cannot have the expansion of world trade and the international investment essential to the attainment and maintenance of prosperity. The second is that stability in the international exchange structure is impossible of attainment without both international economic coöperation and an efficient mechanism for implementing the desire for such coöperation among the United Nations. Once these premises are accepted, the proposed International Monetary Fund is recognized as the necessary instrument for securing coöperation on international monetary and financial problems and the most logical and effective means for adopting and maintaining mutually advantageous policies.

Owing to the essential simplicity of the framework, the area of agreement was broad almost from the beginning. It is with respect to the technical details, from their nature complex, that agreement had to come slowly. That it was reached at last was unquestionably due to the wide discussion the proposal received and to the careful and earnest consideration given to every criticism and suggestion.

Many of the criticisms and suggestions proved invaluable. Certain others, however, had to be rejected for the reason that they did not meet the need or did not offer a practical basis for coöperation on international monetary and financial problems. I should like to consider some of these suggestions and criticisms and explain just why they are unacceptable.

II

A suggestion frequently offered is that exchange stability can be most effectively established by restoring the gold standard in other countries, particularly England. To these critics the automatic functioning of the gold standard on pre-1914 levels appears as the ultimate desideratum of international monetary policy.

Now it is true that the decades before the First World War were a period of relative stability in international economic relations, and that in part the stability was a consequence of the gold standard. However, that gold standard was never even in its heyday an automatic and self-correcting mechanism, but one requiring a considerable amount of supple management. The gold standard could not have been maintained even to the extent that it was unless there had been coöperation among the leading Central Banks, particularly at critical junctures.

Fundamentally the stability of the decade before the First World War was due not to the gold standard but to the fact that the world economic structure was sufficiently resilient and adaptable to permit playing the game according to gold-standard rules. Unfortunately, the world today is much more complicated than the world of the nineteenth century, and the economic problems with which it confronts us are much less amenable to simple and rigorous solutions. To expect the restoration of the gold standard to bring back the resiliency of bygone days is, therefore, to put the cart before the horse.

That is not to say that there were not real advantages in the old gold standard. It did give assurance to businessmen that the exchange policy of a country would conform to a prescribed pattern of stability and freedom in exchange transactions. That is a worthwhile advantage in so far as it contributes to a high level of international trade and investment; but unless the economic structure of the great industrial countries and of the countries producing primary raw materials has the degree of flexibility and adaptability requisite for the operation of the gold standard, it will not be possible to continue maintaining the gold standard in periods of stress. The gold standard has repeatedly broken down under the strain of acute emergencies. Twice within a generation the gold standard has been abandoned by the very countries that had struggled to restore it. It is no use to argue that if countries would only make the "necessary adjustments"

the gold standard could be maintained. The countries involved regard such adjustments as adjustments to a Procrustean bed.

The restoration of the gold standard in the leading countries is not a policy that we can hope to see widely accepted. Few countries are again willing to commit themselves irrevocably always to undertake restoration of equilibrium in their balance of payments wholly via the route of wage and price deflation or through import restrictive devices. In Britain, for example, the public is convinced that the difficulties of the 1920's and the 1930's were due to the restoration of sterling to its prewar parity and to the overvaluation of the pound. So long as these views are widely held, no British Government will assume the responsibility for restoring the gold standard. In a debate in the House of Commons, the Chancellor of the Exchequer said most emphatically: "Certainly the attitude of His Majesty's present Government would be one of most vehement opposition to any suggestion that we should go back to the gold standard." The representatives of many other countries have likewise indicated that a return to the old gold standard is politically impossible in their countries.

But while a return to the old gold standard is of doubtful wisdom for some countries and impossible for many countries, there is no reason why we should not obtain its advantages without imposing its rigidities on countries unwilling to accept it. That is precisely what the International Monetary Fund does. It requires countries to define their currencies in terms of gold, to maintain exchange rates stable within a range of one percent above and below such parity, to make no alterations in the parity of their currencies except after consultation with the Fund, or with its concurrence, and to impose no restrictions on current transactions except after consultation with the Fund, or with its approval. While some countries are not prepared to adopt the gold standard, they are willing to take cooperative measures of this kind to provide stability and order in international exchange transactions. Those countries which elect, as does the United States, to adhere to the gold standard can, of course, do so without in any way complicating the operations of the Fund.

It should be pointed out that even if countries were to adopt the gold standard there would be no assurance that they would maintain it. It would do little good to have countries repeat the experience of the 1920's, struggling to restore the gold standard only to abandon it under the impact of a great depression. It is

far better to obtain an agreement through international monetary cooperation, and to establish a stable if moderately flexible exchange structure which has good chances of being maintained, than it would be to impose on other countries an ephemeral and involuntary restoration of the gold standard which they will abandon at the first opportunity or pretext.

III

Some critics object to the Fund because it permits flexibility in exchange rates; they seem to believe that, once established, the parity of a currency has the sanction of moral law.

The Articles of Agreement for the International Monetary Fund provide that one of the purposes of the Fund is "to promote exchange stability, to maintain orderly exchange arrangements among members and to avoid competitive exchange depreciation." Stability of exchange rates is not, however, identical with rigidly fixed rates that cannot be changed under any circumstances. The difference between stability and rigidity in exchange rates is the difference between strength and brittleness. It is the difference between an orderly adjustment, if conditions warrant it, and eventual breakdown and painful adjustment. The assumption that rigidly fixed exchange rates are always advantageous is no longer held to be axiomatic. It is true that if countries permit wide fluctuations of exchange rates in response to temporary changes in their balance of payments, the level of international trade and international investment will be adversely affected. But when the economic position of a country shifts because major factors have affected the world's demand for its exports, the proper remedy may be an adjustment in exchange rates.

The world needs assurance that whatever changes are made in exchange rates will be made solely for the purpose of correcting a balance of payments which cannot be satisfactorily adjusted in any other way. The world needs assurance that exchange depreciation will not be used as a device for obtaining competitive advantage in international trade; for such exchange depreciation is never a real remedy. It inevitably leads to counter measures, and the ultimate effect is to reduce the aggregate volume of trade. This is precisely what happened in the period of the 1930's when competitive exchange depreciation brought wider use of import quotas, exchange controls and similar restrictive devices.

The Fund gives the assurance the world is asking for; it provides a method of obtaining orderly exchange adjustments if they

are needed to correct a fundamental disequilibrium. Such adjustments can be made only on the proposal of a member and only after consultation with the Fund. The Fund cannot object to a proposed change if, together with all the previous changes — whether increases or decreases — it does not exceed 10 percent of the initial par value of the currency. All other changes in exchange rates can be made only with the concurrence of the Fund. In the postwar period initial exchange rates will have to be set for countries that have been cut off from world trade during the war, and a procedure has been provided to adjust promptly any error made in the selection of initial parities. Such adjustment is preferable to allowing a persistent overvaluation or undervaluation of a currency.

The purpose of exchange stability is to encourage trade. We should defeat this purpose if we insisted on rigid exchange rates at the cost of severe deflation, which would reduce world trade and investment and spread depression from country to country. While the Fund would have every reason to object to exchange depreciation as a means of restoring equilibrium better achieved in other ways, it would not force upon a country a rigid exchange rate that can be maintained only by severe deflation of income, wage rates and domestic prices. Nor if a change in exchange rates is necessary to correct a fundamental disequilibrium, could the Fund object on the grounds of the domestic social or political policies of a country; it cannot be placed in the position of judging such policies of its members. It could not forbid countries to undertake social security programs or other social measures on the ground that such measures may jeopardize a given parity. Englishmen have not forgotten that in the sterling crisis of 1931 social services were cut in the attempt to maintain the fixed sterling parity. To use international monetary arrangements as a cloak for the enforcement of unpopular policies whose merits or demerits rest not on international monetary considerations as such but on the whole economic program and philosophy of the country concerned, would poison the whole atmosphere of international financial relations.

These provisions of the Fund assure a stable and orderly pattern of exchange rates without restrictive rigidity. It puts the sanction of international agreement on stable and orderly exchange arrangements. If any change in exchange rates is made after the Fund has expressed its objection, the member becomes ineligible to use the resources of the Fund; and if the difference

between the member and the Fund continues, the member may be compelled to withdraw from the Fund. Altogether, the Fund provides greater assurance of exchange stability than would be possible under the gold standard.

IV

It has been asserted that the Fund is only a device for lending United States dollars cheaply and that the money will be wasted or lost; that other countries just want to get our dollars, and that there is nothing to stop them from quickly draining our dollars from the Fund.

This is an argument that could be made only by persons who either have not carefully studied the Fund document, or are attempting to frighten people into economic isolationism. The fact is that from Article I to Article XX safeguards have been written into this agreement to make sure that the Fund's resources cannot be dissipated or lost. Some of these safeguards are briefly discussed below.

The Fund will not accept an initial par value for the currency of any country if, "in its opinion the par value cannot be maintained without causing recourse to the Fund on the part of that member or others on a scale prejudicial to the Fund and to members." In fact, the Fund will "postpone exchange transactions with any member if its circumstances are such that, in the opinion of the Fund, they would lead to use of the resources of the Fund in a manner contrary to the purposes of this Agreement or prejudicial to the Fund or the members."

To meet an adverse balance of payments for approved purposes, a country is entitled, subject to certain quantitative and qualitative limitations, to purchase the needed exchange from the Fund. The purchases of exchange must not cause the Fund's holdings of the member's currency during a 12-month period to increase by more than 25 percent of its quota, nor to exceed by more than 100 percent the quota of the country. The Fund may waive these limitations, especially in the case of members with a record of avoiding large or continuous use of the Fund's resources. The Fund may also require the pledge of collateral as a condition of waiver and it may prescribe whatever other terms and conditions it regards as necessary to safeguard its interests.

Some critics have spoken of these provisions on the sale of exchange as confirming automatic credit rights to countries who are not what they call "credit worthy." The criticism is wholly

unjustified. The technique of conditionally permitting a country to buy foreign exchange to a limited amount is commonly used in stabilization operations. It is included in all of the bilateral arrangements under our own exchange stabilization fund and in the Anglo-Belgian, Anglo-Dutch and Belgo-Dutch exchange agreements recently announced. The safeguard is that this conditional right can be terminated whenever it is not used for the purposes of the agreement. It is specifically provided that a member acting contrary to the Fund's purposes may be declared ineligible to use the resources of the Fund.

Apart from these general limitations, there are special provisions designed to assure the liquidity of the Fund and the revolving character of its resources. Members purchasing foreign exchange from the Fund are expected to use their own reserves of gold and foreign exchange in an equal amount, provided their monetary reserves exceed their quotas. When their balance of payments become favorable members are expected to use half of the increase in their reserves in excess of their quotas to repurchase their currencies held by the Fund. The provision that a country must use one-half of the increment in its reserves to repurchase its currency from the Fund is the counterpart of the provision that a country must meet one-half of the deficit in its balance of payments by use of its own reserves. The fact is that if over a period of time all countries were to maintain their international payments in equilibrium, the distribution of the Fund's resources would not only be restored to its original position, but because of the growth in monetary reserves, even strengthened.

The Fund has other provisions to assure the revolving character of its resources. A country purchasing exchange from the Fund with its currency must pay a service charge of three-fourths of one percent. This is a relatively heavy charge and it will induce countries, as intended, to place primary reliance on their own resources rather than the Fund's. Further, the Fund levies charges on its balances of a member country's currency; these charges rise steadily as the balances held by the Fund increase and the period over which they are held lengthens. When the charge rises to 4 percent on any of the Fund's holdings, the member and the Fund must consider means of reducing the Fund's holdings of the currency.

Finally, there is a specific provision safeguarding the gold value of the Fund's assets. No country can diminish its obligations to the Fund through depreciation. Whenever the par value of a

member's currency is reduced, or its foreign exchange value depreciates to a significant extent, the member must pay to the Fund an amount necessary to maintain the gold value of the Fund's assets.

Some critics fear that other nations are not interested in maintaining a sound Fund, that the Fund will be managed by debtors and that the United States will have only a minority voice. This fear is hardly warranted by the facts. The United States will have 28 percent, and the United Kingdom, the British Dominions and India together will have 26 percent of the total voting power. Provision is made for having the two largest creditor countries on the Executive Directorate. In all voting involving the sale of exchange, the votes of creditor countries are adjusted upward and the votes of debtor countries are adjusted downward. These are quite obviously ample safeguards to protect the creditor countries. But the greatest safeguard is the common interest of all countries in maintaining a Fund that will become the basis for stable and orderly exchange arrangements without which the world cannot have the expansion of international trade and the resumption of international investment essential to a prosperous world economy.

In the period after the war the world may need more dollars for imports from the United States and other payments to the United States than will be available; a number of countries may experience a scarcity of dollars. If we attain a high level of employment in this country after the war and resume international investment on an adequate level, the dollar will not become a scarce currency; the volume of imports and the purchase of services from abroad should be sufficient to cover all legitimate foreign demands for dollars. Failing such action, however, there is the real possibility that dollars will become so scarce that the Fund will not be able to sell as much dollar exchange as members wish to buy. This is not likely to happen quickly: 1, the Fund would have large resources of dollars and gold; 2, there are quantitative and qualitative limitations on the purchase of exchange from the Fund; and 3, member countries are required to use their own resources of gold and dollars when making use of the Fund. But in time, if the balance of payments becomes too one-sided, there may be a shortage of dollars. Such a shortage, if it develops, will not be because of the Fund but in spite of the Fund. Some critics have argued as if the Fund itself would be the cause of the scarcity in dollars. The Fund cannot create a shortage of dollars. On the

contrary, the Fund inevitably postpones a shortage of the currency most in demand, even when it doesn't prevent it.

Long before any acute scarcity of a currency develops, the Fund would have considered the situation and taken whatever steps were feasible to remedy it. The Fund might find that the principal cause of the difficulty was excessive imports by countries utilizing the Fund, and it would require corrective measures as a condition of continued use of the Fund's resources by such countries. The Fund might find that the causes of the scarcity were high trade barriers in the country whose currency was scarce, or a failure to undertake adequate international investment, and it would propose appropriate remedies. In the meantime, if the Fund should find that the difficulties were of a temporary character, it could use its gold resources or borrow the scarce currency under terms agreed with the country.

If, notwithstanding the delaying and corrective action of the Fund, a general scarcity of a particular currency is developing, the Fund may issue a report to member countries setting forth the causes of the scarcity and making recommendations designed to bring it to an end. This report may be issued while the Fund still has that currency and means of obtaining more. When the Fund finds that it will not be able to meet the prospective demand for a member's currency, the Fund will declare that currency scarce and thereafter apportion its existing and accruing supply of the scarce currency with due regard to relative need of members, the general international economic situation, and other pertinent considerations. The Fund would, of course, never exhaust its dollar supply. It would have a continued inflow of gold and dollars from its other transactions which would be available for sale to members. These provisions make the resources held by and accruing to the Fund available for dollar payments in the United States. The over-all utilization of dollars is sure to be larger under the Fund than it could be without it.

When a country is short of dollars, it is certain to take steps to limit the demand of its nationals for dollars. Without the Fund this action would take the form of establishing whatever controls the country wished. Under the Fund agreement, the limitations on the freedom of exchange operations that a country may impose with respect to a scarce currency are definitely prescribed and are undertaken only after consultation with the Fund. They must be no more restrictive than is necessary to limit the demand for the scarce currency, and the limitations must be relaxed and

removed as rapidly as conditions permit. Furthermore, a member must give sympathetic consideration to the representations of other members regarding such restrictions.

Very definitely this country assumes no moral responsibility for a scarcity of dollars. The technical representatives of the United States have made it clear to other countries in a number of memoranda that a scarcity of dollars cannot be accepted as evidence of our responsibility for the distortion of the balance of payments. I quote from such a memorandum: "It should not be overlooked that the disequilibrium in the balance of payments cannot be manifested as a problem peculiar to one country. Whenever the supply of a member country's currency is scarce, this scarcity is likely to be accompanied by excessive supplies of the currencies of other countries. In such cases the responsibility for the correction of the maladjustment is not a unilateral one. It will be the duty of the Fund to make a report not only to the country whose currency is scarce but also to the member countries who are exhausting or are using the resources of the Fund in a manner which is not consistent with the purposes of the Fund."

Some critics have expressed the view that once the Fund's holdings of dollars have fallen considerably below the subscription of the United States, it will not be able to function. This is completely wrong. The Fund will continue to be the means for international monetary cooperation and for maintaining stability and order in exchange transactions. The Fund will hold all currencies, except the dollar, in adequate amounts and will continue to sell such currencies to members. From its transactions, the Fund will also have dollars accruing to it, which it will sell in limited amounts to other countries. In time, of course, the Fund's position with respect to dollars will be fully restored if the United States does not have a persistently large favorable balance of payments. The United States can always acquire whatever currency it needs from the Fund. Furthermore, its position as a subscriber to the Fund is fully secured by the obligation of other countries to maintain unimpaired the gold value of their currencies held by the Fund, and by their obligation to redeem in gold or dollars any currency that is distributed to the United States if the Fund should be liquidated.

v

A view frequently expressed is that the proposal for the Fund is too ambitious, that the problem can best be solved by stabiliza-

tion of the key currencies — the dollar and sterling and perhaps some few others — and that other currencies can achieve some degree of stability by adherence to the dollar or sterling.

In part this exclusive concern with the key currencies reflects a fear that exchange stability and freedom in exchange transactions are not universally desirable policies; that many countries should be permitted to have fluctuating currencies and to use exchange control to manage their international payments. Whether this objection to the Fund is well taken is a matter of opinion. Regardless of the degree of stability or freedom one may prefer, few will deny that orderly exchange arrangements are essential, and such arrangements are practicable only through coöperation on a multilateral basis.

The emphasis on the key currencies in which international payments are made seems to me completely mistaken. The dollar and sterling are, of course, the most important currencies; but the currencies of other countries also are important to the extent that they affect volume of international trade and investment.

Some illustrations may help. Taking the sum of exports and imports, England's trade in 1937 was about 15 percent of the world total and the United States' trade was about 12 percent of the world trade. Is it of no importance to achieve currency stability in the countries carrying on nearly 75 percent of world trade among themselves? Only 11.5 percent of our trade in 1937 was with England and only 23 percent with British Empire countries other than Canada. Is it of no consequence to us to obtain currency stability in the countries with which we have more than 75 percent of our trade?

The fact is that we are directly interested in the exchange rates of all countries, because all countries are either our customers, competitors or suppliers. The problem of the American cotton exporter offers a helpful illustration of the importance of general exchange stability. He is interested, of course, in the exchange rates of cotton importing countries, cotton exporting countries, and textile importing countries — in other words, he is interested in the exchange rates of England, Japan, Germany, India, Egypt, Brazil, Mexico and a host of other nations. What happens to the price of cotton in the United States when the exchanges depreciate in these countries? The answer can be found in the sharp fall in the spot price of cotton in New Orleans from 9.08 cents in May 1931 to 6.06 cents in October 1931, when currency depreciation occurred in nearly all of these countries.

Some critics carry the key currencies concept so far that they completely identify postwar monetary problems with the British balance of payments in the postwar period. They propose that the United States and England enter into a bilateral agreement for stabilization of the dollar-sterling exchange rate, and that Britain remove restrictions on exchange transactions and fund the abnormal sterling balances accumulated by India and the Dominions as a result of Britain's war expenditures. To enable England to meet the need for foreign exchange that such a program would involve, it is proposed that the United States lend five billion dollars to Britain.

There are, of course, a number of variations of this approach, all of which miss completely the real postwar problem in Britain, the United States and elsewhere. The net change in Britain's foreign exchange position on capital account is large, and in time Britain will want to restore her international economic position. But that problem is neither as urgent nor as great as the question of her current balance of payments after the war. To facilitate the restoration of balance in her international accounts Britain needs an expansion of world trade. A loan to Britain to enable her to establish exchange stability and freedom from exchange control will not of itself help significantly with Britain's problem, or with the world's problem of establishing a sound postwar pattern of international payments. Such a loan might burden Britain with a dollar debt while making no real contribution toward balancing Britain's international payments. On the other hand, the Fund and the Bank, by providing the favorable conditions necessary for expanding world trade and investment, would be of real help in establishing a sound postwar pattern of international payments and would contribute substantially to prosperity in this country and abroad.

VI

With those critics who say that additional measures are necessary no one disagrees. The position of the United States Government from the beginning has been that the Fund and the Bank must be supplemented by other measures. There is every reason to expect that these other measures will be taken, and that they can be taken with greater confidence because of the Bretton Woods program.

The maintenance of stable and orderly exchange arrangements will be best assured if the great industrial countries pursue poli-

cies for maintaining a high level of business activity. Under such conditions international payments can be kept in balance without difficulty, for the greatest distortion in the balance of payments occurs during periods of business depression, when international trade and investment fall off.

It would be helpful, of course, to lower the barriers to international trade. The United States has been pursuing the policy of reducing tariffs through reciprocal trade agreements. More can be done and will be done to achieve a general relaxation of trade barriers. But this cannot be done until there is assurance of orderly exchange rates and freedom in exchange transactions for trade purposes. A depreciation in exchange rates is an alternative method of increasing tariff rates; and exchange restriction is an alternative method of applying import quotas. With the Fund, countries can undertake reciprocal tariff reduction knowing that such agreements will not be defeated by offsetting action on the exchanges. It should be noted that with high levels of business activity, countries will not be tempted to follow the false road of trade restrictions to provide more employment at home.

Nearly every critic has said that stability of exchange rates is possible only if countries put their economies in order. Nobody disagrees with this view, certainly not those who were at Bretton Woods. The countries that were occupied by Germany have a difficult but not insuperable problem in restoring their economies. In western Europe, the Germans retained wage and price controls in order to exploit production more effectively in these countries. Because of these controls, the monetary system did not get out of hand, and with energetic measures it will be possible to attain international economic stability. In eastern Europe, the situation has deteriorated so far that completely new monetary systems will probably be necessary. The measures that will be taken for monetary stability can be effective only if the public has confidence in the currency. Can there be any doubt that reconstruction and stabilization in these areas will be more prompt and more effective with the Bank and the Fund to give confidence to the people of these countries?

To those who sincerely believe that the Fund should not be instituted until after the period of postwar transition, it must be pointed out that while the Fund is not intended to provide resources for relief, reconstruction, or the settlement of wartime indebtedness, it does have a most valuable function to fulfill during the transition period. Quite apart from the special prob-

lems of the transition, the world will have the same problems of exchange and payment as before, and the Fund is essential for dealing with them. It is of vital importance that the postwar pattern of exchange rates should be initially determined by consultation between the Fund and member countries, and that whatever adjustments become necessary should be made through and with the Fund. Most significant, during this period of transition the general lines of international monetary policy will be definitely determined, and it would be a tragic error to allow a relapse to the monetary disorders of the 1930's through inaction and delay.

The plea that we should wait several years before attempting any comprehensive program for international monetary collaboration has been made by a few economists whose objectives are admirable and whose approach is careful and responsible. But it is the approach of perfectionism: let us postpone action until more evidence is in — next month, next year, some years hence. Unfortunately, this counsel of caution plays directly into the hands of those who are not disinterested. There are, in truth, economic isolationists as well as political isolationists. One tactic of political isolationists is the attempt to kill all concrete and specific proposals for international political security and cooperation not by forthright opposition — the public would too soon recognize such opposition for what it is — but by a plea for postponement. They hope that the passage of time will multiply frictions among the United Nations, and that they can effectively use the time thus gained to create frictions and aggravate points of potential difference; therefore, they reason, the very deferment of agreement will make the attainment of agreement more difficult. To them delay is merely a subterfuge to facilitate sabotage of our plans for an international security organization. The economic isolationists hope that the general environment may somehow become unfavorable for measures of international economic cooperation. We must answer them in the same way as we are answering the political isolationists — by going straight ahead with the implementation of the program for international economic as well as political cooperation. The American people have unequivocally endorsed that program.

Quite recently, the suggestion has been made that the Fund be dropped and that the Bank be authorized to make stabilization loans. There is in this suggestion a basic error — the assumption that the principal purpose of the Fund is to provide additional exchange resources. Primarily, the Fund is the means for estab-

lishing and maintaining stability, order and freedom in exchange transactions. The resources of the Fund are only for the purpose of helping countries to adopt and keep such policies. Long-term stabilization loans would defeat this purpose. We need constant, continued and general coöperation on exchange problems and exchange policies, and this is possible only through the Fund. Both the Fund and the Bank have important but distinct functions in maintaining a high level of international trade and sound international investments. While each could function alone, they supplement and strengthen each other. Together they could make a great contribution to a prosperous world economy.

The world is in desperate danger of reverting to economic isolation after the war, and economic isolation will inevitably breed political isolation. Those who talk of waiting and of bilateral arrangements with one or two countries are in fact proposing that we do nothing, that we allow the world to drift back to the restrictions and the disorders of the prewar decade. This is a risk neither we nor the rest of the world can afford. We have the opportunity to put into effect the fundamental principle which must be the basis for a peaceful and prosperous world, the principle that international problems are an international responsibility to be met only through international coöperation. The Fund and the Bank are concrete applications of this principle in the international currency and investment spheres.

THE VATICAN'S POSITION IN EUROPE

By Luigi Sturzo

WHAT are the intentions and the goals of the Vatican in this tragic yet challenging moment when the end of the war in Europe is near and a new world is emerging from the ruins of the old? The question is being widely discussed. This paper is an attempt to describe the position of the Vatican in Europe in terms that are as close to reality as possible, and to suggest some of the problems which the Church faces. The author uses the facts and the Vatican documents which can be verified by all, and interprets them in the light of his own experience and his knowledge. The analysis is a personal contribution in no way authorized.

The problem which the question poses is complex. One cannot place in any single category the relationships between the Holy See and the various states of the world or the attitudes which can be taken by the hierarchy of each country. Nor can one thus simplify either the attitude of the ecclesiastical hierarchy as such or the positions which Catholics acting under their own responsibility think it right and necessary to take, individually or in groups. Within the Catholic Church there is a margin of freedom large or small according to circumstances which, moving from purely religious forms to social and temporal activities, quite often permits the emergence of truly autonomous movements especially in politics.

An example taken from actual recent events may illustrate this point to those who, being outside the discipline of the Church believe or surmise that the Church is a kind of militant army in which only the will of the supreme head prevails. In his speech of September 1, 1944, Pope Pius XII reasserted two points of Catholic doctrine: that private property is in the sphere of natural law, and hence cannot be abolished; and that the social duties which flow from the very nature of property transcend the private good and must aim at the common good. This is the doctrine. In the process of applying it to the conditions of each country the bishops will perhaps issue certain guiding statements, the philosophers will discuss the ethical implications of the doctrine, the economists will examine the practical consequences of its application, the sociologists will inquire into its social effects, the jurists will frame possible legislation, and the statesmen

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THE COMING OF ECONOMIC SANCTIONS INTO AMERICAN PRACTICE

BY BENJAMIN H. WILLIAMS

Professor of Political Science, University of Pittsburgh.

Political institutions attain their stature largely by organic growth, taking form through a process of evolving practice. In this connection the economic sanctions developed by the United States in the years immediately preceding Pearl Harbor have much significance. As the architects of a new world order now draw up plans for the defense of the international community against war, they can include economic sanctions with greater assurance of American approval than in 1919. For certain types of such sanctions have in the last few years taken their place among our precedents, and the United States may well be expected to view proposals for their use with a more friendly eye than at the close of the first World War.

In the years following the armistice of 1918, despite the greatly altered position of the United States in the world community, American respect for impartial neutrality was still strong. That sentiment had been built up by the justified and successful practice of more than a century. Proposals to use economic measures to penalize aggression conflicted with this well entrenched attitude, and such proposals were time after time rejected. During the Senate's consideration of the League of Nations Covenant, the second of the Lodge reservations, prohibiting, among other things, the assumption by the United States of any obligation to employ economic discriminations, was adopted by a decisive vote. That particular reservation was devoted mainly to military sanctions, but the heavy vote by which it was attached to the treaty (56 to 26) may be taken to indicate in a general way Senatorial opposition to economic sanctions. In fact, much of the opposition to the League arose from the realization that its provisions were contrary to our traditional concept of neutrality.

During the 1930's, as aggression broke out in various parts of the world, numerous proposals were made in this country for economic discrimination against the aggressors. In the beginning, effective sentiment was unfavorable to such discrimination. In 1932 a petition was circulated by President Lowell of Harvard and former Secretary of War Newton D. Baker requesting the President and Congress to announce their willingness to concur in any boycott that should be instituted by the League of Nations in the Manchurian controversy. Much opposition existed, however, in Senatorial circles. Paraphrasing King Lear, Senator Borah declared: "That way lies madness." The lack of assurance that the United States would participate in anti-Japanese commercial discriminations was a discouragement to League plans

for economic sanctions against Japan. The framing of various neutrality bills in the middle 1930's brought the question of economic sanctions up for much Congressional discussion. Bias in favor of traditional neutrality on the part of many Congressmen, however, blocked plans to give authority to the President to apply munitions and financial embargoes against aggressors as distinguished from their victims. Accordingly, the Neutrality Acts of the years 1935-1937 contained provisions for embargoes on munitions and loans which would necessarily apply to both sides equally. In 1937 President Roosevelt delivered his famous "quarantine" speech in Chicago. The address was given on October 5, about three months after the war in China had begun. The President suggested the quarantine of aggressors as a method of protecting the peace of the world. Numerous pacifists and isolationists opposed such a policy, and Congressional comment was discouraging to friends of collective security.

Up to this time, as has been shown, the record of the United States was rather consistently against economic sanctions. Nevertheless, some beginnings had already been made by the Administration in its discrimination in favor of China through the nonapplication of the neutrality statutes, in its unequal loan policy which favored China over Japan, and in its tariff discriminations against Germany. These matters will be mentioned later. The stark reality of the growing aggression of Japan and apprehension of the gathering storm in Europe now began to develop widespread sentiment for economic sanctions. Ultimately, the commercial and financial strength of this neutral country was thrown against the aggressors in some respects as strongly as it had been hurled against our legal enemies during our belligerency in the first World War. The use of American products by the aggressors in the destruction of their victims convinced a large section of the public that equal economic treatment of belligerents was not rationally consistent with a desire for world order and justice. Perhaps, however, the fear and anger created by ruthless conquest was more important in changing the American attitude than was the force of pure logic. At any rate, by the time the Germans had overrun France in the tragic summer of 1940, the policies of the United States had already begun to shift radically.

The sanctions applied by the United States were of two main kinds: (1) negative or punitive acts directed against the aggressors, and (2) positive or assistance-granting measures aimed at aiding the opponents of aggression. The purposes of the negative sanctions were to shut off American materials and dollars from the aggressor nations and to reduce the funds being used for Axis propaganda in the United States and other neutral countries. The purpose of the positive sanctions¹ was to give the victims and opponents of

¹ The word "sanction" as used in municipal law refers to the punishment and coercion of the law-breaker. Since in international relations the aggressor is put at a disadvantage by aid given to his opponent, the extension of the term "sanction" to include such positive action appears justified.

aggression easier access to American materials. The outline of these policies is as follows:

- I. Negative or punitive sanctions applied against the aggressors:
 1. Moral embargoes.
 2. The withholding of tariff reductions from German commerce.
 3. Countervailing duties.
 4. The licensing of the export of materials essential to national defense and the discriminatory application of the law.
 5. The freezing of funds.
 6. The blacklist.
- II. Positive or assistance-granting sanctions aimed at defeating aggression by aiding its opponents:
 1. The gold purchase policy.
 2. The discriminatory loan policy.
 3. The repeal of the arms embargo.
 4. The Lend-Lease Act.

NEGATIVE OR PUNITIVE MEASURES

Moral Embargoes. The moral embargo, as it was employed in 1938 and 1939, consisted of a mere request from the Department of State to American exporters to stop the shipment of certain kinds of goods; there was no legal prohibition. On June 11, 1938, after heavy loss of civilian life in the Japanese bombardment of Canton, Secretary of State Hull issued a statement that the administration disapproved of the sale of airplanes to countries which had engaged in the bombing of civilian populations. The statement was followed by a letter of July 1 to manufacturers and exporters of airplanes and airplane parts in which the Secretary said that the Department would issue export licenses "with great regret" for shipment to such countries. Over a year later, at the time of Russia's attack upon Finland, further statements were issued. On December 2, 1939, President Roosevelt publicly asked that American manufacturers should bear the government's condemnation of the bombing and machine-gunning of civilians in mind before selling planes or parts to countries obviously guilty of such unprovoked bombing. Elaborating on this declaration, the Department of State addressed a letter to the manufacturers and exporters of munitions, stating that:

... the Department hopes that it will not receive any application for a license to authorize the exportation, direct or indirect, of any aircraft, aircraft armament, aircraft engines, aircraft parts, aircraft accessories, aerial bombs or torpedoes to countries the armed forces of which are engaged in such bombing or machine-gunning.²

The moral embargo, so far as it affected Russia, was revoked on January 21, 1941; but it evidently continued to apply to Japan until that country attacked the United States on December 7, 1941. In each of the instances of moral embargo mentioned, the advisory restrictions were intended to

² Department of State Bulletin, Dec. 16, 1939, Vol. I, p. 685.

reduce the power of the aggressor, although the word "aggressor" was not used. Congress had opposed any attempt to name aggressors in foreign wars; but, by designating the aggressive countries as those which bombed civilian populations, the executive used rhetorical tactics to impose what amounted to a sanction against the aggressor states.

Withholding Tariff Reductions from German Commerce. One discrimination against Germany which evidently arose from mixed economic and political motives was that of withholding from imports coming out of Germany the advantages of tariff reductions made under the Trade Agreements Act. According to this Act, the reductions of tariffs made under specific trade agreements (excepting those with Cuba) were to be generalized, that is, to be extended to all countries. The President was authorized, however, to suspend the application of this advantage to articles from any country because of its discriminatory treatment of American commerce, or because of other acts or policies which in his opinion tended to defeat the purposes set forth in the Act. During most of the life of the Act before the entry of the United States into the war, Germany was the only country which was designated by the President for suspension of the tariff reductions. In other words, during the greater part of this time all other countries received the advantage of the tariff reductions while Germany was required to pay the regular duties under the Hawley-Smoot Tariff Act. The reason given for suspension in the case of Germany was that that country did not allocate a fair amount of foreign exchange for the purchase of goods from the United States. How much effect the aggressive political attitudes of Germany and the repugnant Nazi ideology had upon American officials in the inauguration and maintenance of this policy it is difficult to prove, but presumably these influences were considerable.³

Countervailing Duties. Another type of discrimination against the trade of the totalitarian States was the imposition of countervailing duties. The law authorized the imposition of such duties against imports from countries which bestowed bounties upon their exports, and the countervailing duties were presumed to offset the aid given by the governments of the subsidizing countries. The best illustration of the use of this type of discrimination came at the time of the Czechoslovakian crisis in March, 1939. On March 15 Germany annexed Bohemia and Moravia, and the action brought forth intense indignation in the United States. Acting Secretary of State Sumner Welles, on March 17, stated:

This government, founded upon and dedicated to the principles of human liberty and of democracy, cannot refrain from making known this country's condemnation of the acts which have resulted in the temporary extinguishment of the liberties of a free and independent

³ Other countries which discriminated against the United States in the allocation of exchange, such as Argentina, were not placed upon the disfavored list, although for a time Australia suffered from this penalty.

people with whom, from the day when the Republic of Czechoslovakia attained its independence, the people of the United States have maintained specially close and friendly relations.

It is manifest that acts of wanton lawlessness and of arbitrary force are threatening world peace and the very structure of modern civilization.⁴

The next day the Treasury Department gave notice of the application of a 25% rate of countervailing duties against goods coming from Germany, which, added to the higher duties Germany was already paying, constituted quite an obstacle to German sales in this country. It became increasingly difficult for Germany to find through exports to the United States the foreign exchange with which to purchase the vast amount of materials necessary for her armament program. The reason given by the Treasury Department was that Germany, through the barter system, was paying what amounted to bounties upon exports to the United States.⁵ The coincidence in time between the Treasury action and the strong official condemnation of Germany for the rape of Czechoslovakia, however, gave to the discrimination the appearance and force of a rebuff against an aggressor. In July of the same year the United States imposed countervailing duties on certain silk imports from Italy. Altogether a marked distinction was made between the aggressor totalitarian States and the democratic countries in the application of these penalties by the United States.⁶

The Licensing of Exports of Materials Essential to National Defense and the Discriminatory Application of the Law. Drastic trade discrimination against Japan was prevented by the commercial treaty of 1911 with that country. Under the treaty, the United States agreed not to place prohibitions upon imports from or exports to Japan which did not equally extend to the like articles imported to or exported from any other country. On July 26, 1939, in accordance with the termination clause in the compact, the United States gave a six months' notice of withdrawal from the treaty. The termination became effective as of January 26, 1940, and constituted in itself something of a diplomatic rebuke or sanction. Several months later, on July 2, 1940, the President signed the Export Control Act which granted him the power to list any materials which he should decide to be essential to our national defense. The export of such materials was placed under a license system, and the President was given the power to prevent exportation entirely should he

⁴ Department of State, Press Releases, March 18, 1939, pp. 199-200.

⁵ *Ibid.*, p. 203.

⁶ Margaret S. Gordon, *Barriers to World Trade* (Macmillan, New York, 1941), p. 408, note 51.

⁷ It has been argued that, on principles of reprisal, economic discriminations were permissible, because of Japan's violation of various treaties, in spite of the commercial convention of 1911. See Q. Wright, "The Legal Status of Economic Sanctions," *Amerasia*, February, 1939, p. 569.

believe such a step necessary. On July 31 an order was announced which prevented the export of aviation gasoline except to countries in the Western Hemisphere and to other places where such gasoline was necessary for the operation of American-owned companies. The order was principally intended to prevent the shipment of this important military material to Japan. About two months later the export of iron and steel scrap was restricted to the countries of the Western Hemisphere and Great Britain.⁸ Thus Japan was deprived of some of its most important steel-making materials. In cases of various other articles, greater facilities were provided for the issuance of licenses to Western Hemisphere and British companies than to those of Japan.

The Freezing of Funds. In his authority to control financial transactions and thus to freeze the funds of aliens, the President possessed power for a much more sweeping sanction than any yet mentioned. The authority for such action was derived from the Trading with the Enemy Act of 1917 as amended in 1933 to meet the requirements of a national emergency. Section 5 (b) of the Act gives the President a comprehensive authority over business transactions involving the regulation by executive order of banking, exchange, and dealings in securities.

This power, which made it possible to prevent resources within the United States from being used by the aggressors, was one of the most notable of the "methods short of war" employed against the Axis during and after the summer of 1940. As the Germans marched into one country after another, the President issued orders placing under a strict license system all financial dealings in this country conducted on behalf of nationals of the occupied countries. The freezing orders prohibited within the United States on the part of such persons the following acts except as they might be authorized by license: the transfer of credit between banks, the payment of funds by or to a bank, transactions in foreign exchange, and dealings in evidences of debt. By these means the President was able to prevent the use of such financial resources in the United States as might pass to the ownership or control of the conquerors.

The list of freezing orders followed the route of the German military machine through Denmark, Norway, The Netherlands, Belgium, Luxemburg, France, Rumania, Bulgaria, Hungary, Yugoslavia, and Greece. It also included Latvia, Estonia, and Lithuania, which were occupied by Russia. Finally, on June 14, 1941, all of Europe was covered, thus placing the nationals and property of Germany and Italy under the restrictive system.⁹ With regard to certain European countries, Finland, Portugal, Spain, Sweden, Switzerland, and the U.S.S.R., which were not a part of the German-

⁸ For the various orders see Department of State Bulletin, July 6, 1940, Vol. III, p. 11; Aug. 3, 1940, Vol. III, p. 94; Sept. 28, 1940, Vol. III, p. 250.

⁹ Department of State Bulletin, June 14, 1941, Vol. IV, p. 718; 6 Federal Register, 2897 (Ex. Order 8785).

Italian order, general licenses could be issued to permit dealings upon adequate assurances that economic aid would not go to the Axis. The effects of the freezing orders upon the Axis were described in an official American publication as follows:

The freezing of assets paralyzed German and Italian efforts to acquire vital and strategic materials in the Western Hemisphere. The Axis was using American dollars and American banking facilities to underwrite sabotage, spying, and a propaganda campaign in both North and South America. The blocking of Axis assets abruptly choked this poisonous stream.¹⁰

The Japanese became subject to the freezing control on July 25, 1941 following the invasion of the southern ports of French Indo-China by Japanese troops.¹¹ The blow to Japan was even more telling than that dealt to Germany and Italy. The starvation of Japan's war machine, so dependent upon imports, produced a feeling of desperation among the Japanese militarists and doubtless had much to do with causing the suicidal attack of December, 1941, upon the United States. The freezing order probably helped to involve this country in war, but such is the risk of withdrawing the assistance of American finance and industry to an international criminal.

The Blacklist. Another method for blocking the flow of resources to the Axis was the blacklisting of trading firms in foreign countries which were presumed to be acting for the benefit of Germany and Italy. On July 17, 1941, a list of over 1,800 persons and firms doing business in the Latin American Republics was proclaimed. Business establishments on this list were prohibited from receiving from the United States any articles covered by the Export Control Act except under special circumstances. They were also regarded as nationals of Germany or Italy and were thus subjected to the prohibitions of the freezing order of June 14, 1941.¹² The Department of State explained that the order was intended to deny the benefits of inter-American trade to persons who had been using commercial profits to finance subversive activities.¹³ The effect of the blacklist was to drive many German and German-sympathizing firms out of business in Latin America and thus to deprive the Axis of useful commercial and ideological agencies.

POSITIVE OR ASSISTANCE-GRANTING MEASURES

There remain to be considered certain other acts in which this country departed from impartial neutrality in order to grant aid to the victims and opponents of aggression. One policy which will not be considered in detail

¹⁰ Office of Facts and Figures, Report to the Nation (Washington, 1942), p. 23.

¹¹ Department of State Bulletin, July 26, 1941, Vol. V, p. 73; 6 Federal Register, 3715 (Ex. Order 8332).

¹² *Ibid.*, July 19, 1941, Vol. V, p. 41. Many other names were added to the list by subsequent proclamations.

¹³ *Ibid.*, Aug. 2, 1941, Vol. V, p. 99.

but which might be regarded as discriminatory aid was the failure to apply the Neutrality Act in the case of the Sino-Japanese War which began in 1937. The Act was intended to be applied whenever the President should find that a state of war existed abroad. Although the Sino-Japanese War was and is one of the most destructive in modern history, the chief executive never found that a state of war existed in China until the Japanese attack upon Pearl Harbor merged the Asiatic and European conflicts into one great world war. The purpose of the oversight was to aid China. Had the President recognized the state of war, munitions shipments to the belligerents would have been stopped; and such a break in commerce would have been to the distinct disadvantage of China. Japan had large munitions industries while China did not. The effect of applying the Act would have been to deprive China of something she could not otherwise get and to take from Japan merely the right to import something she already had. The nonapplication of the Act was in line with Chinese interests and desires and is to be contrasted with the prompt application of the law in the Italo-Ethiopian War, in which case the effect of the Act was to hinder Italy.

The Gold Purchase Policy. The program of purchasing gold freely at \$35 per ounce had an important effect in stimulating American exports to Great Britain and (before June, 1940) to France. A great deal of the British imports from the United States, which were in excess of British exports to this country, were paid for by the shipment of gold. Had the United States not been willing to buy the gold, the British would have found it difficult to have obtained needed American supplies on a large scale. An American student of financial policy stated in 1941 that the purchase at a high price of all gold offered was the most important "aid-short-of-war" rendered the British by neutral America.¹⁴

The Discriminatory Loan Policy. Loans to the victims of aggression have been closely connected with the export of merchandise to such countries. In this connection, their purpose has been to give buying power to the favored borrower or to protect its currency against the strain of heavy buying. While the loan policy is classified here as a positive program of aiding the victim, loans might logically have been mentioned also under negative sanctions, since they were tacitly forbidden to the aggressors. The policy goes back beyond the main period of our discussion. Japan particularly was barred from financial aid in the United States after the Manchurian aggression of 1931 by a governmental attitude which was effective even if it did not receive official expression.

The Reconstruction Finance Corporation and the Export-Import Bank of Washington were the chief institutions by which financial aid to victims of aggression was extended. Credits totalling \$171,500,000 were granted China to aid her in buying necessary commodities in the decade from 1931 to

¹⁴ Charles R. Whittlesey, "Gold Policy and Foreign Policy," *The New Republic*, June 30, 1941, p. 879.

1941.¹⁴ With these China purchased wheat, cotton, locomotives, motor trucks, oil, and other supplies. The loans were contrary to Japanese desires and created indignation in Japan. After the Russian invasion of Finland in November, 1939, the Export-Import Bank extended \$35,000,000 in credits to cover the export of supplies to the invaded country.¹⁵

The loans to China and Finland were partisan acts of sympathy to victims of attack. They were not consistent with the principles of neutrality, which forbid a neutral government to make loans to belligerents.¹⁶

The Repeal of the Arms Embargo. When, after the Munich conference of 1938, a European conflict appeared probable, it became clear that the bilateral munitions embargo of the American neutrality laws would, in such a contingency, operate to the extreme disadvantage of Great Britain and France. In July, 1939, President Roosevelt sent a special message to Congress appending a statement of Secretary of State Hull to the effect that the provision for the munitions embargo was contrary to the interests of the peace-loving nations.¹⁸ Shortly after the war began, the President repealed the former appeal. Congress then passed the repeal provision, and the ban was lifted on November 4, 1939. This action, taken after war had begun, permitted American munitions to flow in a flood to the Allies and unquestionably showed favoritism of a very substantial character.

The Lend-Lease Act. Probably the most important single type of economic sanction employed by the United States in our recent neutrality period was the furnishing of supplies to the opponents of aggression under the Lend-Lease Act. This measure, passed in March, 1941, authorized the chief executive to manufacture or otherwise procure "defense articles" for any government "whose defense the President deems vital to the defense of the United States." The President was to be the sole judge of the terms, and he could regard as a satisfactory *quid pro quo* any direct or indirect benefit rendered to the United States.

The basis for extending this unusual aid was fear of the powerful aggressors and of the calamities which their lawlessness might bring down upon the United States. As Secretary Hull remarked in support of the bill before the House Committee on Foreign Affairs:

¹⁴ The items making the total are R.F.C. credits of \$50,000,000 in 1933, and Export-Import Bank credits of \$1,500,000 in 1937, \$25,000,000 in 1938, \$20,000,000 in March, 1940, \$25,000,000 in October, 1940, and \$50,000,000 in November, 1940. These are the sums of the authorizations of credit. In some cases, particularly the earlier ones, the credits were not fully used.

¹⁵ Three credits were announced in the following sums: \$10,000,000 in December, 1939; \$20,000,000 in March, 1940, and \$5,000,000 in March, 1941. The information regarding the Chinese and Finnish credits is found in Export-Import Bank of Washington, *Statement of Loans and Commitments*, June 30, 1941.

¹⁶ China may well be defined as a belligerent in fact after July, 1937, although war was not formally declared. Governmental loans to China under these circumstances cannot, in a realistic sense, be regarded as consistent with the spirit of impartial neutrality.

¹⁸ Department of State Bulletin, July 15, 1939, Vol. I, p. 45.

We are amply warranted, as a measure of self-defense and in the protection of our security, to allow supplies to go to the countries who are directly defending themselves and indirectly defending us against the onrush of this unholy determination to conquer and dominate by force of arms. We are merely trying to protect ourselves against a situation which is not of our making and for the prevention of which we exerted our every energy.¹⁹

The Act was accompanied by an appropriation of \$7,000,000,000, and seven months later another appropriation of almost \$6,000,000,000 was added. By the time this country entered the war, the aid provided under the Act was being disbursed on a large scale. By the end of the year 1941, \$1,200,000,000 had been spent. Exports to the value of approximately \$600,000,000 had been sent abroad; and the balance of the disbursements had provided for such services to friendly governments as the conduct of training programs in the United States, the repair of ships, and the construction of munitions plants.²⁰

It can thus be seen that, previous to Pearl Harbor, the United States had built up precedents of economic sanctions against aggression. Altogether the purposes of the sanctions were to prevent American supplies and dollars from reaching the aggressor nations, to shut off funds used for Axis propaganda in the United States and other neutral countries, and to make American supplies more easily available to the opponents and victims of aggression. The adoption of sanctions was not due to any one decision but came in a variety of ways over a period of several years. The policy represented a persistent course on the part of the executive; and, at times, the President was supported by Congressional action, as in the case of the repeal of the arms embargo and the passing of the Lend-Lease Act. The coming of sanctions was in no sense due to an accidental decision or one made under the spur of a single emotional appeal.

How far the United States drew away from traditional neutrality during this period can be seen from the fact that, with regard to two types of sanctions, the freezing of funds and the blacklist, the precedents for action came from the period of our belligerency in 1917-1918 and were originally aimed at our legal enemies. In fact, while the United States was a neutral in the first World War, it had protested the use of the blacklist even when used by a belligerent.²¹ In another instance, that of the Lend-Lease Act, the neutral American Government gave more generous terms in 1941 in extending aid to opponents of aggression than the belligerent American Government had given its allies in 1917 and 1918. Our neutral period of 1939-1941 was in some respects more akin to belligerency than neutrality.

¹⁹ Department of State Bulletin, January 18, 1941, Vol. IV, p. 91.

²⁰ Office of Facts and Figures, *op. cit.*, p. 17.

²¹ "It is manifestly out of the question that the government of the United States should acquiesce in such methods or applications of punishment to its citizens." *Foreign Relations of the United States, 1916 (Supplement)*, p. 422.

The measures taken by the United States were not, it is true, entered into in accordance with the written plan of a formal international organization. They were the individual actions of one country, taken on its own volition. However, in these actions we may see in formation something stronger, though slower to develop, than written contract—the shaping of international mores, perhaps later to be transferred into positive law. In applying sanctions, the United States acted in accordance with a general, though unorganized, consensus of world opinion against law-breakers. Americans were motivated most strongly by fear for their national safety, the emotion that is the chief basis of the movement for collective security. And these incidents have set a precedent in American foreign policy which should make the solution of the mutual security problem easier after this war.

A nation is bound, to a certain extent, by its past. In 1919 and 1920 when the United States contemplated the change from the law of impartial neutrality, deeply imbedded in American practice, to the unneutral policy of aiding one set of belligerents as against another, the difficulties of making the transition were great. At the end of the present war the United States will be looking back upon a radically different set of precedents regarding neutrality than those which were remembered in 1919. When terms of world organization are considered, it would appear that economic sanctions should meet with much less American opposition than formerly, since they have already had an important place in our policy. And the prospect that the vast economic power of our country may not be used to support aggressions but rather to defeat them should make the task of providing an effective international organization appreciably lighter.

COMPULSORY ADJUDICATION OF INTERNATIONAL DISPUTES

BY HANS Kelsen

Visiting Professor at the University of California, Berkeley

I

A careful examination of the nature of international relations and the specific technique of international law shows a basic difficulty confronting every attempt to regulate relations between States. It is the fact that in case of disputes between States there exists no authority accepted generally and obligatorily as competent to settle international conflicts, that is, to answer impartially the question: which of the parties to the conflict is right and which is wrong. If the States do not reach an agreement, or do not voluntarily submit their dispute to arbitration, each State is left to decide for itself the question whether the other State has violated, or is about to violate, its right; and the State which considers itself injured is free to enforce the law, and that means what it considers to be the law, by resorting to war or reprisals against the alleged wrongdoer. Since the other State has the same competence to decide for itself the question of law, the fundamental legal problem remains without impartial solution. The objective examination and unbiased decision of the question whether or not the law has been violated is the most important and essential stage in any legal procedure. As long as it is not possible to remove from the States in dispute the prerogative to answer for themselves this question of law and transfer it once and for all to an impartial authority, namely, an international court, further progress toward the reign of law and order in the world will be slow indeed.

Consequently, the next step on which our efforts must be concentrated is to bring about an international treaty concluded by as many States as possible—victors as well as vanquished—establishing an international court endowed with compulsory jurisdiction. This means that all the States of the League constituted by this treaty shall be obliged to renounce war and reprisals as means of settling conflicts and to submit all their disputes without any exception to the decision of the court and to carry out its decisions in good faith.

II

To eliminate war, the worst of all social evils, from interstate relations by establishing compulsory jurisdiction, the juridical approach to an organization of the world must precede any other attempt at international reform. Among the two aspects of the postwar problem, the economic and the legal, the latter has a certain priority over the former. It is not too much of a simplification to say that all the difficulties and absurdities in international relations originate almost exclusively in the possibility of

left flank of the German Army, on the Baltic Sea, as the retirement from Russia develops.

To summarize. The object of German strategy from this time on must be to gain time — time for the United Nations to sicken of the bloodshed, time for dissensions to arise among them, time for political shifts of power in Germany herself which may make it possible for her to secure better terms. The German "Heartland," without which Germany cannot go on fighting, may be described as the territory of Germany itself, western and central Poland, Denmark, the Low Countries, Czechoslovakia, Hungary, Rumania, northern Jugoslavia, Austria, Luxembourg, Belgium, the Netherlands and part of northern France. This central and vital area must be held. Once it is invaded, the beginning of the end is at hand, and the end itself not too far away.

It is, of course, a much smaller area than the Germans now possess. In Russia, they may find themselves compelled to give up much of their present conquests and they may do this rather suddenly, in a strategic withdrawal in great depth and on a broad front. They may also have to abandon Finland and southern and central Italy. But the rest — Norway, western and southern France, the Aegean Islands, the southern Balkans, northern Italy and western Russia — may be the scene of furious delaying actions, in which the German object will be to exact heavy Allied losses without paying too great a price themselves. They will try to keep their positions well consolidated and linked up. They will form powerful reserve armies from the forces they save by their Russian withdrawal. They are unlikely again to take the risk of pushing out large forces into exposed positions, as they did at Stalingrad and in Tunisia. And they will have to abandon hope of an offensive in the air in order to purchase increased defensive power. They may also have to abandon their offensive at sea.

The defeat of Germany will come about when the German Heartland can no longer be defended.

CURRENCY STABILIZATION: AMERICAN AND BRITISH ATTITUDES

By John H. Williams

LAST April the American and British Treasuries published two plans for monetary stabilization after the war, one the work of Harry D. White, Director of the Division of Monetary Research of the Treasury Department, the other of Lord Keynes, now serving as an adviser of the British Treasury. Since I commented on the two plans in these pages last summer several events have occurred which might indicate that the present is not a good moment to continue the discussion. In July there appeared a Canadian plan which was in the nature of a compromise between the other two. In August a revised White plan was published. Then in the autumn Lord Keynes came to Washington for the first time since the plans were announced. Until the results of the conversations which then occurred become known there is much to be said for postponing further technical analysis.

For a discussion of the nature of the problem, however, as well as of the issues which may determine national attitudes towards it, we do not need to await the definitive work of the experts. There are reasons, indeed, to believe that this sort of discussion should not be delayed. Early comments on the plans in the press, both here and in Britain, were largely non-committal. But, as time went on, the opinions expressed took more definite shape. It can be said that from the time of the publication of the revised White plan in August the American press and American banking and foreign trade opinion have been almost uniformly unsympathetic to both plans. For example, on September 29 the *New York Times* rejected them both and quoted with approval a statement calling for the restoration of the gold standard at the earliest possible date after the war.

In England the comment has revealed a strong determination to avoid the gold standard and what is called the "straitjacket of 1925-31." This determination seems to be shared by all classes in the community. The opposition to the White plan has been pronounced. On August 24 the *Manchester Guardian* wrote of it: "Let it be said at once that no British government could accept

¹ John H. Williams, "Currency Stabilization: The Keynes and White Plans," *FOREIGN AFFAIRS*, July 1943.

anything remotely like these proposals and remain in power beyond the first postwar election." On the Keynes plan, British opinion has been generally favorable. But the London *Economist* of August 28, after withholding judgment for several months, stressed the basic similarity of the two plans, warned of the danger of "repeating the gold standard mistake of 1925 and of setting up an excessively rigid system which cannot be maintained," and expressed doubts whether even the British plan is flexible enough to work in the conditions that are likely to exist after the war.

In my previous article I raised two main questions: Is it wise to attempt to deal both with the problems of the transition period from war to peace and with longer-run currency stabilization under a single plan? Could the longer-run stabilization be best effected by the adoption of an over-all plan like the Keynesian clearing union or the White stabilization fund or by a more gradual "key countries" approach, beginning with the dollar-sterling rate and tying in, as circumstances warrant, the other currencies significant for international trade?

Towards the second suggestion American banking opinion has seemed to be generally sympathetic; but in England, so far as I am aware, there has not been the faintest favorable response. British opinion seems fully as opposed to tying sterling to the dollar as to tying it to gold. The British alternative to the Keynes plan is an enlightened bilateralism. How it might work out is described by *The Economist* in the article just quoted. "The principles of the clearing union have for some years been applied within the boundaries of the sterling area. . . . Other such groupings may well come into existence, and it ought not to be very difficult to build up a system of currency groups with substantial freedom of payment within each group and controlled — but not restrictively controlled — exchanges between group and group. . . . There is not the slightest reason why the relations between these groups and the dollar, or the dollar group, should be relations of hostility or discrimination — unless, indeed, it is hostility and discrimination to suggest that other countries cannot spend more dollars than they earn." This proposal has some similarity to my own "key countries" suggestion, except that what I had in mind was that by stabilizing the principal currencies, each of which would be central for an area of trade or be otherwise internationally significant, a truly multilateral system could be maintained. But the difference between the suggestion of starting the

process with the dollar-sterling rate and *The Economist's* hope that the relations with the dollar would not be necessarily hostile shows how wide is the gap to be bridged.

On the other suggestion — to treat separately the problems of the transition period and those of long-run currency stabilization — there seems to be almost complete agreement in this country. Whether the British or the American experts really intended that their plans should be used for both purposes seems now less clear than was at first assumed. It has been said on excellent authority that this was not the case, and the misinterpretation has been ascribed to the failure to bring forward simultaneously with the currency plans the more comprehensive program for dealing with the postwar problems. The need for a clear and unmistakable separation between these two problems now seems to me the greatest single prerequisite for the success of any plan for currency stabilization. There is a fundamental conflict between the requirements of the transition period and those of longer-run monetary stabilization; any plan that serves one purpose well is bound to fail in the other. In the immediate postwar period the chief needs will be for relief and rehabilitation and for the liquidation of the foreign-owned balances that have accumulated in certain countries, most notably in England. These will be needs of very large dimensions. In my previous article I spoke of the inflationary danger of meeting these needs by a method which would expand American bank reserves and deposits, already greatly enlarged by the war. I cannot avoid the conclusion that preoccupation with this problem has been one of the main reasons for the marked difference between the American and British experts with regard to the size of the stabilization fund or clearing union and the amount of the American commitment. But to restrict unduly the provision of funds for these immediate postwar needs would be probably the greatest mistake that could be made. We are brought back to the fact that the two purposes are in conflict with each other.

The immediate postwar need will be for lending and borrowing — or, as I earlier suggested, for extension of lend-lease — and very probably many of the loans will have to stand for a considerable period. It was doubtless because of this problem that Sumner Slichter in the July issue of *FOREIGN AFFAIRS* called for the creation of an international bank before the end of 1943; and one of the most significant recent developments was the publication by our Treasury experts in October of a tentative draft for

an international bank. I cannot discuss this proposal here beyond saying that I have the greatest difficulty in understanding how there can be an international bank, except in a formal or nominal sense, or for very limited purposes, in a world which has only one large creditor country and many debtor countries. My present point is that, however it is to be met, the first and most pressing need after the war will be for lending and borrowing or for lend-lease.

But this is a totally different thing from what is required in any successful plan for currency stabilization. In any such plan the fundamental requirement is the maintenance of an even balance position with only temporary fluctuations from it. Under the gold standard, for example, such a position is supposed to be indicated and maintained by a two-way flow of gold, and any pronounced and sustained tendency for gold to flow one way is a sign of disequilibrium calling for major international adjustment.

The danger under the Keynes or the White plan, unless the needs of the transition period are handled separately, would be that the clearing union or stabilization fund would get into a chronic lopsided condition. Some countries would have run up large debits and other countries (mainly the United States) largely credits, and each group of countries would then be expected to pursue the policies of adjustment which are required by the plans — and this not by reason of anything arising out of their, by then, more normal situations but because of the past misuse of the stabilization fund. The alternative course, and the wiser one, if such a condition were allowed to develop, would be to reorganize the fund and start over again; but it seems not unlikely that by then the whole scheme would be discredited.

The right remedy, as I have said, would be completely separate provision for relief and reconstruction, war balances, and all other requirements of the transition from war to peace. On some parts of this program we are already embarked; but it will be a laborious task, more difficult and less fascinating than working

*As this article goes to press, details are becoming known regarding the funds to be made available through the United Nations Relief and Rehabilitation Administration. The proposal to spend about 2.5 billion dollars in this manner constitutes a step in the right direction, but this amount will not take care of reconstruction needs in a broader sense, which also must be prevented from becoming a drag on the international stabilization mechanism. Britain, for instance, will have a great deal of reconstructing to do, although in the UNRRA she will be not a beneficiary but a contributor. It may furthermore be necessary to make provision for bridging the period which may elapse before Britain and particularly the continental nations can reestablish their export trade. As to British war balances, they have been estimated at 4 to 5 billion dollars, and growing at the rate of some 2 billion dollars a year.

out the mechanics of plans for currency stabilization. It seems fair and prudent to insist that no decision on currency stabilization should be made until these plans are known and have been weighed in their entirety. If this procedure is followed, it may help to create a better atmosphere in this country for further consideration of the plans. Undoubtedly, one factor making for hostility has been the suspicion that under the guise of a world currency plan other matters were being brought in that did not properly belong, and this unfavorable attitude has not been helped by references to the advantages of "anonymous borrowing," or of "denationalizing" or "impersonalizing" loans.

An interesting question in recent discussions has been whether, if an adequate program is worked out for the transition problems, a plan for currency stabilization should be set in operation simultaneously with it or at the end of the transition period. This is another of the major questions and it is closely related to the first, for if the two plans are set up simultaneously the currency plan will inevitably be the catch-all for any inadequacies in the transition program. We would probably do a better job on relief, reconstruction and war balances if we knew we could not fall back on the currency plan; and we would run less danger of ruining the latter if we postponed it. One argument advanced in favor of having the currency plan at once is that we must avoid the monetary chaos that followed the last war. The analogy, however, is misleading. We now have well-developed systems of exchange control, and the task of currency stabilization this time will not be to prevent wild gyrations of exchange rates but to work toward the economic and political conditions and the level of exchange rates under which the controls can be relaxed. This will take time, and meanwhile a good program for handling the transition problems, internationally and nationally, would be the greatest help. From this point of view it can be argued that the right time for a plan designed to stabilize currencies under more normal conditions is when those conditions have arrived.

A more persuasive argument for the immediate adoption of a currency plan is that the only time, if ever, that the nations will agree on such a plan is now, under wartime stress and in close wartime association. With this can be coupled the argument that once the plan is agreed upon it need not go into complete effect at once. The enemy countries, in any case, could be brought in only after a period of preparation; and even in the case of the Central and Associated Nations criteria could be established for

determining the conditions under which each would participate actively. This could be a way of incorporating the "key currencies" proposal into the White or Keynes plan, though it would still leave in my mind the question whether the more elaborate plan, with its international governing body and its formalized rules and quotas and voting powers, is really necessary or would really work. Like the editors of *The Economist*, I fear the plan might prove too rigid, though I think I am not giving this word the application they intended. I do admit, however, that the safeguards I have mentioned — the separate treatment of transition and long-run problems and a well-conceived procedure for a gradual incorporation of countries under the stabilization plan as they become ready — would go some distance toward lessening some of my doubts about the currency plans.

II

But there is a deeper difficulty. The examples of conflict between British and American opinion already cited — and I might have quoted at much greater length — reveal a conflict between two fundamentally different schools of thought. Followed into all of its logical ramifications, the conflict embraces the entire clash of ideas between the principles of a world economic system as handed down from the classical economists and the closed-economy principles developed by Lord Keynes and others during the nineteen twenties and thirties. I have not believed that the two are irreconcilable, and one of the best reasons for such a view now is that Lord Keynes is strongly for their reconciliation. But it will be a formidable task and will call for a high degree of tolerance and sympathetic understanding by each country of the other's problems. The main question about the currency plans is whether we are prepared, on either side, to adopt them in our present divided state of thinking.

England's fears about currency stabilization, and especially about being tied to gold or to the dollar, are summed up in the phrase "the straitjacket of 1925-31." It means two things, or two aspects of the same thing. England wishes to control her internal economy and to avoid the external pressures which threaten that control. All through the British discussions of the currency plans runs the determination to avoid unemployment resulting from deflationary pressure. This is why the British fear the currency plans may be too rigid. The attraction for them of the Keynes plan is that it promises an expansionary method of adjustment,

whereas they think the White plan, like the gold standard, would be deflationary. This is a rather difficult point to unravel. Basically, as I said in my last paper, the monetary mechanism of the currency plans and of the gold standard is the same. The only sense in which the Keynes clearing union could be more expansionary than the gold standard would be in providing larger foreign exchange resources and a better distribution of them. This would be an advantage all round by facilitating trade. But I cannot avoid the feeling that it is just here that the confusion between the transition period and the longer-run enters in. If the problems of the transition period are handled separately, the need for a very large fund, just to facilitate trade all round, becomes much less clear. The main purpose would be to provide some leeway for merely temporary departures, as circumstances might warrant, from the normal requirement that international transactions must balance. If the plan did not work in this way it would be a failure. But the size of the fund is itself an element of the problem, and too large a fund would be as dangerous as one too small. Probably only experience could give the answer.

According to the classical gold standard theory, the effect of gold flow should be two-sided — a fall of prices in the gold-exporting country and a rise in the gold-importing country. This should lead to a reverse flow of gold and the opposite price changes. The complaint of the British about the gold standard in the inter-war period was that it worked only one way, by gold outflow and deflation in the debit-balance countries. I will come back to this question later. But what many of them seem to mean when they contrast the Keynes plan with the gold standard (or the White plan) is that under the Keynes plan the adjustment process would again be one-sided, but that it would be a process of expansion in the creditor country rather than contraction in the debtor country. One thing this suggests is that the surplus country should simply let its credits in the clearing union pile up indefinitely; and some stabilization plans I have seen come to just about that, even providing for periodic cancellations and for starting over again if the credits get so large as to bother either party. Sometimes, too, the discussion of foreign "investment" as the balancing agent becomes almost as mechanical as this. But that of course is not what Lord Keynes means or what his plan provides. Some of the statements in his White Paper, however, do make it seem unrealistically simple for the creditor country to take over the burden of adjustment. This is especially true of

the statement, often made by other British economists as well, that a surplus country need never have a larger surplus than it wants to have.

This could mean a rise of prices in the creditor country, as under the gold standard; but that only raises the question whether inflation is any more desirable to the creditor country than deflation is to the debtor country. It could also mean exchange control or direct manipulation of the trade, capital or other items of the balance of payments; but this raises the question whether direct controls are to be used as methods of adjustment or whether one of the objectives of the plans is not to lessen the need for such controls. Finally, there are the possibilities of correcting the balance by trade and investment policies without direct controls, and of appreciating the currency. But these are not so easy, and their effectiveness is not so clear as the statement that a country need never have a larger surplus than it wants to have suggests. Moreover, all the methods of adjustment mentioned are applicable in reverse to the debtor countries. The discussion leads nowhere, and we are forced to examine more carefully the particular circumstances, and also the character of the thinking, in the countries concerned. The real question is whether the nations can find and agree upon a system requiring mutual adjustments in which the benefits outweigh the costs.

III

For England the dangers in fixed exchange rates are undoubtedly much greater than for this country. With us, foreign trade plays a smaller rôle and the impact of changes in the balance of payments upon the domestic economy is much milder. Only in unusual circumstances, like those of the transition period from war to peace, are we likely to face a serious threat of inflation from external causes. Much more likely in most circumstances would be the threat of deflationary pressures upon the British economy. Two of the chief lessons from the inter-war period are the difficulty of finding new equilibrium exchange rates after a great war has profoundly changed international relationships, and the need for providing an orderly method of adjustment as the basic circumstances change thereafter. It seems safe to predict that no currency plan which does not promise this measure of flexibility of exchange rates will be acceptable to England or to other deficit countries.

But if such countries were to press for changes in exchange

rates as their favorite method of adjustment to international pressures, the main purpose of the plan would be defeated. The circumstances in which a nation can benefit by major changes in exchange rates are rare. England undoubtedly did benefit from the depreciation of the pound in 1931, partly because it had been seriously overvalued when she restored the gold standard in 1925, and partly because the change occurred in the unique circumstance of a world-wide depression. The depreciation of the pound undoubtedly deepened temporarily the depression elsewhere and forced other countries to depreciate. It was one step, though not the first, in the vicious circle of depreciation which is one of the chief dangers of the process. That it enabled England to base her own recovery in part upon cheap imports is one of those paradoxes which could happen only in the buyer's market conditions of a great depression, and probably even then only when practised by a country occupying a central position in world trade. But it did give relief from the tyrannical pressures of the preceding six years, and has stood ever since as the landmark of England's recovery of a reasonable degree of control over her internal affairs.

The counterpart of the undue emphasis upon flexible exchange rates is the emphasis upon the need for protecting the internal cost-price structure from external pressure. The classical economists in discussing the interplay of national price levels under the gold standard did not regard the price adjustments as inflationary or deflationary. This may have been because prices were then less rigid, or because they left the business cycle out of their analysis. For some time I have not been satisfied that price changes played so large a rôle in the adjustment process of the gold standard as the classical theory pretended, and ascribe more importance to capital movements and to income changes. Undoubtedly, however, whenever serious maladjustments persist, we are brought down to a choice between making cost-price adjustments or changing the exchange rates, that is, unless we resort to the third alternative of directly controlling exchange transactions and the balance of payments.

The tendency in modern monetary and fiscal theory to treat the stability of the cost-price structure (or at any rate avoidance of any downward pressure on it) as the *force majeure* to which all policies must be adapted, is the most striking element of conflict between what I earlier called the closed economy economics and the classical world system. Granting that the

latter made too much of the need for price adjustments, I question whether a multilateral trade system can ever be attained along with adherence to a rigid internal cost-price structure. In England's case in 1925, the adjustments would have had to be too sweeping; the mistake was in overvaluing the pound. After this war also the first major task will be in general to adapt the exchange rates to the price levels, rather than the other way round. But for the continuing operation of the system, once reasonably stable currency relationships have been found, cost-price adjustments must also play a part.

Whether such adjustments are deflationary depends upon how they are combined with other policies. In the great depression, Sweden and Australia were able to combine substantial downward adjustments of wage rates and other costs with expansionary monetary and fiscal measures, and with exchange rate adjustments designed to improve their international position and to stimulate recovery. It is noteworthy, too, that these are progressive countries and that the measures in question had the support of a majority of organized labor. In Britain today, and in some other countries, the development of a conscious state responsibility for social welfare, the plans for improving social security, the political as well as the economic emphasis upon the maintenance of full employment by measures under national control rather than in response to international forces whose control must be shared with others, provide ample explanation why fears are felt of too rigid currency plans. But unless a reasonably stable multilateral trade system can be worked out the internal objectives will probably be jeopardized as well.

IV

As for the United States, it is entirely understandable that we should approach the currency plans with a preference for the gold standard. Our brief departure from it in 1933 showed that in severe depressions even we might depreciate the currency if others did, but it indicated no lasting desire for a variable exchange rate. What it may have done (I have the influence of the farm bloc particularly in mind) was to close the door permanently to any possibility of appreciating the currency, which is one of the remedies for maladjustment recommended by Lord Keynes to creditor countries.

The reproaches leveled against this country during the inter-war period — particularly in the twenties — for its failure to

perform its rôle as a creditor country presented a confusing picture and were bound to cause us some uneasiness about undertaking such a responsibility again. The uneasiness is not lessened by the frequent references we read as to how well England performed the task when she was the leading creditor prior to 1914. Some of the main causes of the monetary chaos after the last war were, quite apart from any relations that would normally exist between creditor and debtor countries, mistakes that we must hope will not be repeated, such as the reparation payments and the inter-Allied debts. The failure to achieve political and economic stability in Europe was mainly responsible for the recurrent panicky flights of capital to this country. The raising of our tariffs in the face of a world which was required to repay its debts to us brought down upon us, and rightly, more condemnation than any other single action; but was quite in line with the action of other countries that were demanding reparation payments from Germany. As for exports of capital, they occurred, particularly to Germany and Latin America, but were misdirected and mismanaged, and they are commonly listed as elements of disturbance in a troubled decade. The reproach that we were "burying the world's gold in the vaults of Washington" after England's return to gold was mistaken. There was no lack of expansion here; we were already embarked upon the boom which ended in the crash of 1929, though its development was obscured by the fact that it showed itself not in a rise of commodity prices but in security prices and incomes. Our attempt to redistribute gold by reducing interest rates in 1927, after consultation with the European central banks, ended in increased security speculation and a return flow of the gold. Reviewing the decade as a whole, and in the light of the ideas then held, we find a confusing picture. It is not one to suggest that the rôle of a creditor nation in a postwar period is simple.

As for the analogy with England in the nineteenth century,* there are some rather striking differences. One is our mixed agricultural-industrial economy. There is much more likely to be a divided national opinion in this country than in a more predominantly industrial country where capital exports and receipts of interest are matched naturally by industrial exports and agricultural imports and where controversies about tariff policy

*Of major importance for England, of course, were such factors as her central position in world trade and finance, the use of sterling as the world currency, the London discount market as the international clearing mechanism, and the Bank of England's control over interest rates.

are less likely to arise. This point should not be over-emphasized. I have often pointed out that foreign trade is largest between the industrial countries with high purchasing power. But it is a troublesome feature of our situation, and after the war may be intensified by our production of synthetic rubber and other substitutes for products formerly imported.

Another peculiarity is that though we are a creditor country we still have the power of attracting capital for investment and speculation as well as for safety, under favorable conditions, and in a boom may easily switch from being a net exporter to being a net importer of capital. In such a case, expansion here does not relieve but only intensifies deflationary pressures upon deficit countries, and probably leaves them no effective remedy but direct control of capital exports.

Prior to this war, England was a creditor on income account, with a characteristic excess of merchandise imports. Her foreign investment was for the most part made by leaving her income abroad, reducing her import balance rather than creating an excess of exports. In our case, tourist expenditures and remittances to foreigners have been offsets to our receipts of interest, and they are likely to expand after the war. To them will be added at some stage the export of capital. The prospect is thus for an excess of exports for some time to come. Whether this difference between our creditor position and England's earlier position raises any problems for currency stabilization and the future of world trade I am not sure. Theoretically, it would seem not to matter. Ability of foreign countries to buy from us would be furnished by our capital exports, with no effect upon their debit-credit position in the stabilization fund or clearing union. A country is probably in a better position to control its balance of payments, however, if it has an excess of imports. This advantage has often been pointed out in discussions of a country's ability to benefit from bilateral trade, but it would seem to apply also when the problem is that of a creditor country's responsibility for controlling a multilateral trade system. The application to our own case is that whereas, as a country with a net excess of exports, we have a particular interest in a multilateral system, we are in a less favorable position than England formerly was to make such a system work effectively.

After this war England will need greatly to expand her export trade. Some writers estimate that she will need an expansion of 50 percent and that she will have to couple it with a strict control

of imports. Whether there will be room for both Britain and the United States to expand their export trade, and for the other debit-balance countries to do so too, is an interesting question. It suggests, of course, the desirability of a marked expansion of trade all round. While there may be no theoretical difficulty so far as concerns currency stabilization, one of the main purposes of which is to bring that about, there may be danger of excessive rivalry for markets or of a wave of protection against foreign goods such as occurred after the last war.

It might be better for the outside world to have our capital but to get its imports from Britain or other countries, and under conditions of high production and employment here that might suit us too. Avoidance of the practice of tying loans to the exports of the lending country would be one step in this direction. But for it to go very far, there would have to be something equivalent to one-way gold flow from this country, or in terms of Keynes' clearing union, a deliberate piling up by us of debit balances. Such a movement, coupled with a rise of our price-level relative to outside prices, might achieve the purpose, and some writers have even suggested a deliberate restriction of our exports to help bring it about. But these are heroic measures. Except possibly for the rise of prices, they seem improbable. Certainly there is nothing in the plans to suggest that such actions are expected.

One of the peculiarities of the inter-war period most remarked upon was the persistent demand for American goods and the chronic shortage of dollars to pay for them. This suggests foreign buying in excess of our capital exports and perhaps also mis-directed spending of the borrowed funds. One service we could do to foreign countries would be to restrict our lending to the really necessary demand for foreign goods in the borrowing country. Expenditures for domestic labor and resources should be financed at home. This need not mean that the foreign borrowing should be limited to producer goods; it could include essential consumer goods producible more cheaply abroad than at home. By talking of "satisfactions," an economic theorist could probably convince himself that any disposition of the proceeds is justified; but his case would wear thin if the loan were spent, for example, on foreign grand pianos to entertain the Chinese workers on a Yangtze River Development project financed with foreign funds. One cause of the strong demand for American goods in the inter-war period, and of the persistent bias in our favor in the international accounts, was undoubtedly the attraction of

American durable consumer goods. It suggests that there is room for the application of some homely principles of household economics to international trade between creditor and debtor countries. Another probable cause of the dollar-exchange shortage, however, was technological change; this gave our exports a persistent advantage beyond the power of foreign investment to overcome, despite its theoretical tendency to equalize costs. How to neutralize such a persistent advantage in the interests of international stability is not readily apparent, and suggests again that the task of the creditor country under present conditions is not simple.

I conclude again, as in my previous article, with the statement that the greatest contribution we can make to world stability is to maintain high production and employment here at home.⁴ This would maximize imports and create the most favorable conditions for reducing tariffs, though it probably would not, by itself, lessen exports. The advantages of a high level of production for currency stabilization are sometimes overstated to imply that international trade adjustment could be made a one-sided process of expansion in the high production country. If the expansion could go on indefinitely without danger of a boom this might be true, though there is always the difficulty of a reversal of the capital movement and the feeding of expansion in the creditor country by deflationary pressure on the outside world. That this is not a fanciful fear is shown by the fact that our attraction of foreign funds in the late twenties is often cited as one cause of the world depression which later ensued.

v

The main question about the British and American currency plans, as I said earlier, is whether we are prepared, on either side, to adopt them in our present divided state of thinking. Any solution acceptable to both nations will have to involve some fairly drastic compromising of national attitudes. Whether this can be achieved by a formal plan, at one stroke, and with all the elaboration of an international governing body with votes and quotas, is one of the chief problems. Whether the corrective measures prescribed by the experts would have teeth, and whether if so the countries would join, are parts of the same

⁴The maintenance of high employment at home is, however, a problem no less complex than that of international currency stabilization. On the methods to be employed national opinion is far from united, and government planning for the postwar period seems less advanced than on the currency problem.

problem. It is a nice question whether once the scheme was in operation moral pressure would keep it going and compel the necessary compromises of conflicting viewpoints. Perhaps it would. But a breakdown would be tragic.

My own preference has been for a more gradual approach based initially upon the currencies most essential for world trade, and providing criteria as to the conditions under which currencies could be brought into some more comprehensive scheme. But, as I indicated earlier, these different approaches are not entirely irreconcilable. My present attitude is one of wanting to see how national attitudes and the currency plans themselves develop. Whatever plan is followed, the essential prerequisites for its success are a completely separate plan for handling the problems of transition from war to peace and a thorough going British-American understanding.

This paper must conclude like the last one by pointing out that the currency stabilization plans were announced as only one part of a larger program embracing commercial policy, long-term and medium-term investment, and measures for stabilizing the prices of primary products in international trade. Before final decisions are reached, at any rate before legislation is adopted, we ought to see the whole program. Only then can one form a mature judgment on the currency plans themselves.

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and planters in Camden and Selma and Dublin and Winnfield taking their cut out of the hides of the white and black croppers on their places; and it is very clear to one what it means to lose a war.

WHO IS THE WINNER?

In these days it is extremely difficult to determine who has won a war and who has lost it. The generation that went to school between 1918 and 1939 was taught that it was an open and shut case; Germany lost the war, and the Allies won.

Can we be sure today? Did Germany lose the war of 1914-18? Or did France and Britain lose it? It is all very confusing. We shall know in the year of our Lord 2042, but probably not before.

By then we shall also know who won the war that was formally declared by the United States of America against the Imperial Government of Japan on

the eighth day of December 1941, and we shall know who won the various and sundry other wars of the United States precipitated at about the same time against Germany and Italy and the rest.

Even without the perspective, every American knows now that his life and his fortunes, and those of his children through countless generations, are bound up with the outcomes of the present struggle. This is so whether it be regarded as a thing in itself or as a part of a historical pattern that began to reveal itself generations before and will continue to unfold for a century or for centuries to come. So knowing, every American wishes desperately that the United States of America will win this war and such other wars as may engage the national and individual destinies of Americans.

So feels, indeed, that quintessential American, the Negro in the United States.

Horace Mann Bond, Ph.D., is president of the Fort Valley State College, Fort Valley, Georgia. He has also served as research assistant, the Julius Rosenwald Fund; professor of education, Fisk University; dean of Dillard University; and lecturer at Atlanta University. He is author of The Education of the Negro in the American Social Order (1934); Negro Education in Alabama: A Study in Cotton and Steel (1939); and various contributions to periodical literature.

German Immigrants and Their Children

By CARL WITTKÉ

IN 1930 the German stock in the United States, including German immigrants and native-born Americans with one or both parents born in Germany, totaled 6,873,103 persons, or 17.7 per cent of the total foreign white stock in the United States. Thirty years earlier the percentage was 31.4 per cent. In 1930 there were 1,608,814 persons in the United States who were born in Germany, or 12 per cent of the total foreign-born stock. Of the total German stock of 1930, over 75 per cent were born in America, and the census of 1910 revealed that the rate of naturalization for the German-born exceeded that of any other group in the United States. German immigration had long since passed its high-water mark of the 1850's and 1860's. Over 70 per cent of the total German immigration occurred in the half-century from 1840 to 1890. The census of 1940 provides no tabulation of persons of foreign or mixed parentage, but indicates that there are now only 1,237,772 persons residing in the United States who were born in Germany.

These figures make it abundantly clear that the great period of German immigration is long since past and that the German stock in the United States is well along in the process of being diluted and absorbed into a composite Americanism. Nevertheless, the German immigration of the last century constituted, in numbers and in quality, one of the most significant additions to the American population, and furnished perhaps a greater cultural contribution than that of any other non-English immigrant group. Far more important than the statistical counting of heads is the migration of ideas, as immigrants bring their life patterns to a new land.

The Colonial Germans deserve far more attention than can be given them here. As a cultural group, they and their present-day descendants have been important not only in the development of Pennsylvania but also in many other areas into which this vigorous peasant stock from the Palatinate overflowed. Since the Civil War there has been a veritable renaissance in the study and appreciation of "Pennsylvania German" culture.¹ Like their Colonial ancestors, the Pennsylvania Germans of today are largely an agricultural people, thrifty, sound, and substantial. Religion is still of the essence of their personality. Pennsylvania alone, of all the Thirteen Original Colonies, had a bilingual culture, and large parts of the state remain bilingual to this day. "Pennsylvania Dutch" is the oldest immigrant language still in daily use in America, for the descendants of these Palatine immigrants of two centuries ago have retained their language, whereas many of their fellow countrymen who came much later have lost it. The Pennsylvania Germans have little in common with the militant liberalism of the leaders of the nineteenth-century German immigration. They are less Germanophile than the descendants of Englishmen are Anglophile, and they have less connection with modern Germany than New England has with England.

CHARACTER OF GERMAN IMMIGRANTS

The great mass of German immigrants arrived during the nineteenth century. Most of them were farmers, artisans, and ordinary laborers, plain people motivated by the desire to im-

¹ See, for example, Arthur D. Graeff, *et al.*, *The Pennsylvania Germans*. Edited by Ralph Wood. Princeton, 1942.

prove their earthly lot and augment their personal freedom in a new land of opportunity. They were, for the most part, thrifty and patient home builders who added a conservative and stabilizing force to the America of the last century. They helped to win the West for agriculture and they treated their land as a sacred trust, not as a speculative commodity. The skilled laborers among the new arrivals played a significant part in speeding up the tempo of the industrial transformation of the United States.

Though the bulk of the German immigration consisted of the plain, common people, they acquired a leadership in America which enabled them to make a unique contribution to the emerging American cultural pattern. Among the new arrivals from Germany there were many men of substance, education, professional training, and social standing, who had left their native land after the collapse of the liberal movements of 1830 and 1848 to seek asylum in the United States. They had been champions of the idealism and political radicalism of German organizations like the *Turnvereine*, the *Burschenschaften* of the universities, and the *Freimännervereine* of the rationalist movement. They had risked their future in the Fatherland in a futile endeavor to unify Germany under a republican regime, only to see the abortive revolutions of 1830 and 1848 end in a victory for the forces of reaction.

ATTITUDES OF GERMAN SETTLERS

For some years after their arrival in the United States, these political refugees were primarily interested in using their new home to raise funds, circulate revolutionary propaganda, and organize revolutionary societies in order that all might be in readiness for a new republican upheaval in Europe. But as time

rolled on and their hopes for a republican Germany and a Continental revolution turned to ashes, they took root in the United States. They were sharply critical of many American institutions, particularly slavery, but they appreciated their new-found freedom and quickly assumed the political and intellectual leadership of the German immigration.

To this brilliant group belong some of the most distinguished names in the history of the German element in the United States. Some were rationalists, atheists, and freethinkers; many were violently anticlerical and strongly socialistic; all had a passion for personal liberty. They did not hesitate to express their contempt for the "half-barbarian" culture of the raw American frontier, or to attack what they disdainfully called the shirt-sleeve methods and tobacco-cuds of American politics. They boasted of the civilization which had produced Beethoven, Goethe, and Lessing, and sought to transplant it to the United States. As a matter of fact, many a German immigrant who broke the prairie sod of a Middle Western farm or dug canals or built American railroads had received a classical or professional education in Germany and could read Homer and Cicero in the original. Some envisaged the transplanting of German *Kultur* to sections of the United States, where a new and free Germany might be built in isolation from the rest of America and free from the restrictions that prevailed in the old Fatherland.

Space is not available to describe the *Deutschtum* of which these intelligentsia were the intellectual and spiritual leaders, and which flourished in the United States of the last half of the last century. One need only call attention to such distinguished naturalized Americans of German origin as Schurz,

Körner, Engelmann, Münch, Stallo, Heinzen, Hecker, Kapp, Lieber, and scores of others to appreciate their importance to the United States. These men were the spiritual heirs of Kant and Fichte and Hegel, and they provided a leadership for the German immigration which has never been equaled by any other group. In the recently completed *Dictionary of American Biography* there are sketches of 361 men and women born in Germany proper, a number which is exceeded only by those born in England.

The Germans transplanted their theaters, *Turnvereine*, singing societies, newspapers, churches, schools, and beer gardens wherever they settled, and in them, kept alive the customs and traditions of their Fatherland. In politics, where for a time they exercised less influence than their numbers and ability might have warranted, German immigrants were mostly Democrats, until the antislavery struggle, the homestead policy, and the rise of the Republican Party weaned many of their leaders away from their earlier political allegiance. Even so, the majority of the German voters probably remained Democrats, and though opposed to the further extension of slavery, they were not, for the most part, radical abolitionists. In the Civil War they played a notable patriotic role. In the fields of science, invention, business, and the arts, their contributions are so well known and have been pointed out so often that it is unnecessary to undertake to enumerate them here.²

CLASH WITH NATIVISM

Unfortunately, events of the middle nineteenth century tended to divide the German element from their neighbors,

² See Carl Wittke, *We Who Built America: The Saga of the Immigrant* (New York, 1939), pp. 66-97, 187-261, 362-401.

as a group apart. One reason for this isolation was the role of the "Forty-eighters" and their kind, as leaders of the Germans in the United States. Proud of their culture, they arrived in America at a time when a great struggle with American Puritanism could hardly have been avoided. The radical German leaders were bitterly resentful of blue laws, Puritan Sabbath observance, and the rising temperance "swindle," and even the German Lutherans and Catholics agreed with them in regarding such phenomena as peculiarly offensive manifestations of a Puritan spirit which was utterly contrary to their Continental ideas of personal liberty.

Simultaneously, the United States experienced its worst wave of nativism, culminating in the bigotry and violence of the Knownothing period. The Knownothings opposed unrestricted immigration and wanted to make naturalization more difficult, and they sought to deprive the foreign-born of many political and economic privileges. They opposed free homesteads in the West, an issue on which all immigrants were particularly sensitive. It cannot be denied that there were a number of legitimate reasons for challenging the unrestricted immigration of the fifties, for the abuses associated with immigration, naturalization, and voting in this turbulent period of American politics were no less than scandalous.

The main attack of the nativists was directed against the "Irish papists," but the Germans also received their share of criticism. They were denounced for their clannishness, their "infidelity, Socialism and other soul-destroying errors." Germans were equally aggressive and intolerant in expressing their contempt for native American "barbarians" and "Methodists," and some of the freethinking Forty-eighters viciously at-

tacked all religion and all churches, and espoused a political and economic radicalism which won them the reputation of being "red Republicans" and "foreign anarchists." Thus the German leadership attacked Puritan bigotry, and the native Americans retaliated with the charge that in German communities, with their beer and band music and picnics, the Sabbath was being turned "into a saturnalia."

CULTURAL ISOLATION

A crisis resulted from the clash of these two sharply contrasting points of view which had its repercussions for more than half a century. Both parties to the controversy were guilty of petulance, arrogance, utter intolerance, and even violence. But the important thing to remember is that this crisis, provoked by aggressive German leadership and intolerant native Americanism, solidified the Germans in the United States to a degree that kept them aggressively on the defensive for the next two generations in a battle against complete Americanization and in defense of their cultural isolation. The major political parties, always eager for votes, aggravated the situation by angling for German votes, thus enabling the Germans to assert their demands for special consideration and giving them a false sense of their own importance. In the process, many naturalized German-Americans ceased to be Germans in any political sense, but also never became wholly American. Eagerly bent on preserving what they considered the superior culture of Goethe and Schiller, and stubbornly championing what they considered personal liberty (a concept that came in later years to mean opposition to the spreading prohibition movement), the German element wanted to be let alone. They were not concerned with Germanizing America, but they re-

sented all attempts by the "Yankee" and the "nativist" to interfere with their long-established way of life.⁸

In later years some of the ablest German republicans, like Heinzen, refused to become reconciled with the new Germany of 1871, in which militarism and autocracy were the main supports of the new nationalism. But the majority of the articulate German element in the United States hailed the empire with joy and satisfaction. At the same time, the great mass of Germans in America never really adjusted their cultural life to that of modern Germany or sought to keep abreast of its political and cultural development. What the Germans in the United States continued to adhere to and celebrate in their many societies was the Germany of pre-Bismarckian times, the Germany of the "good old" *Biedermeier* period. Thus, what was defended and cherished in the United States, in a losing battle with the forces of assimilation and Americanization, was a culturally static *Deutschtum*, what the late Heinrich Maurer called "a new colonial culture," or what Professor Feise has referred to as "colonial petrification." The American *Deutschtum* was rooted in the German cultural traditions of several generations earlier, and it found expression not in Pan-Germanism, the rivalry for colonies, and the *Drang nach Osten* of the new Germany, but in the activities of the "old days," with their singing societies, *Turnvereine*, bowling clubs and literary societies, beer halls, sharpshooting, pinochle, and skat tournaments, and all the other things that the American Germans associate so sentimentally with *Gemütlichkeit*. These things they tried to preserve as long as possible, and without the least feeling that thereby they were in any way

⁸ This thesis is ably presented in John A. Hawgood, *The Tragedy of German-America*, New York, 1940.

neglecting their political loyalty to the United States.

EFFECTS OF FIRST WORLD WAR

There probably would have been little reference after 1900 to the question of the "hyphen" among the German-Americans had there not been a first World War. There is abundant evidence to prove the steady inroads the relentless forces of Americanization were making on the isolation of German communities. The first World War was, for the German stock in America, one of the most difficult and humiliating experiences any immigrant group could possibly have had. Never having dreamed of the possibility of a war between Germany and the United States, the German element suddenly found themselves distrusted and spurned by the land of their nativity, and by many of their American neighbors in the land of their choice.

Misunderstanding, suspicion, conflict of emotions, bewildered readjustment, and tragedy marked the years from 1914 to 1918 when everything of German antecedents in the United States was suddenly labeled as part of a vast Pan-German plot to Prussianize America. Partly because of the arrogance and stubbornness with which they had hitherto tried to cling to their cultural separatism, men and women of German blood now were obliged to defend their loyalty and their character in communities where they had lived for decades. A wave of "100 per cent Americanism" threatened to engulf and destroy forever the cultural movement of the Forty-eighters. The patriotic drive against "Huns" and "Teutonism" included attacks on the German language and literature, music, newspapers, street and family names, and everything else of German origin, and led actually, in a few communities, to serious outbreaks of mob violence. The crisis of

1914-18, as far as the German-Americans were concerned, threatened to prove far more dangerous than the attack of the nativists of the middle nineteenth century.

For a brief period the German element closed their ranks to defend themselves and their kinsmen across the sea against what they regarded as the unwarranted attacks of Anglophiles and the pro-British neutrality of an Anglophile government in Washington. From 1914 to 1917 outside pressures upon the German group tended to produce a new solidarity and led to a short-lived renaissance among German societies and German-language newspapers in the United States. In their eagerness to defend against malicious slander the cultural traditions they had cherished in America for decades, some of the American German group clearly overstepped the bounds of common sense, good judgment, and discretion, and by their unwise words and deeds added fuel to the spreading flames of misunderstanding and intolerance.

In 1917 all this ended with tragic finality when the United States went to war against Germany. Some of the German group in the United States at once conducted a hypocritical retreat. The great majority, after a period of sullen silence and conflicts of emotions and loyalties which few of their fellow Americans ever fully understood, arrived at a position of complete support of the Government in its war effort. Even so, they found themselves in a dilemma. If they remained passively loyal, they were criticized for lack of patriotism; if they became extremely active for the war, they were likely to be suspected of duplicity and hypocrisy. As time went on, the German group, like all others, acquired a stake in the war through war loans and, above all, through the drafting of their sons and

state and Federal officials have testified to the complete loyalty of the German stock in the United States in 1917 and 1918. At the same time, newspapers published in Germany bitterly denounced them for their betrayal of the Fatherland in its hour of peril. Alien enemies caused comparatively little trouble during the war.⁴ Thus the German-American hyphen was to a large extent burned away in the trial by fire of the first World War.

EFFECTS OF SECOND WORLD WAR

In spite of the violent temper of the times, the American crusade against the "Hun" died down quickly, but the experiences of the war years left scars and a legacy of bitterness that have not yet been entirely erased. Twenty-three years later, the United States was again at war with Germany—this time with a Germany dominated by a ruthless leadership which by contrast made the Kaiser's Germany shine as a model of virtue and decency. The rise of Hitlerism again raised an issue among what remained of the German societies and activities in the United States. For a time it threatened serious factional divisions among the German element. In part, the German group themselves were responsible for their new difficulties, for some had foolishly tried to recapture their cultural isolation after the first World War, and very few had considered it of the least importance to record publicly their attitude toward the Nazis and the democratic way of life. Like those who belonged to other racial strains and were intrigued by the alleged virtues of fascism, a relatively small number of German-born and native Americans of German stock were attracted, before Pearl Harbor, by the swastika and Fritz Kuhn's aping of

⁴For a more detailed discussion, see Carl Witke, *German-Americans and the World War*, Columbus, Ohio, 1934.

gangster methods, storm trooper camps, parades, and uniforms in the United States. But anti-Nazi leagues were also organized among the German stock to combat Nazi influences, and many German societies were split into violently hostile groups. In the nationwide debate over isolationism, the German element probably agreed, for the most part, with that 75 per cent American majority whom the various polls of public opinion reported as opposed to American intervention in Europe.

Pearl Harbor quickly unified the Nation and ended the argument whether the United States would incur greater risks by going in or staying out of the war. There has been little difficulty with German alien enemies in the present war; Nazi spy rings are being efficiently handled by the FBI; and the German stock in the United States, with unimportant exceptions, is meeting every test of loyalty in this second World War as it did in the first. This second crisis in twenty-five years in German-American relations may finally end the hyphen and convince the German stock in America that it must liquidate once and for all the conflict which inevitably results from efforts to maintain the cultural isolation of a minority group beyond its normal span of years.

AMERICANIZATION PROCEEDS

The German-language press is rapidly dying. Most German churches have long since given up their services in the German language, and German societies of every description find it increasingly difficult to maintain their membership. The second- and third-generation immigrant stock know little of the language or the traditions of their fathers and grandfathers. The process of Americanization goes on relentlessly, and the more naturally it proceeds, the more effective it is likely to be. If in

the present war we avoid the mistakes of twenty-five years ago, both at home and abroad, this may be the last time that the United States will have to face the German-American problem. In several decades more, the cultural heritage of the German immigrant stock will have been absorbed into a composite Americanism.

A heavy responsibility rests on all Americans to deal intelligently and un-

derstandingly with immigrant groups in this time of total war. But an even greater responsibility rests upon what is left of the German stock in the United States to demonstrate with indisputable finality that whatever lingering, sentimental devotion to the language and ways of their fathers they still cherish, they have not the least desire to perpetuate a politically alien group among the American people.

Carl F. Witke, Ph.D., is professor of history and dean of the College of Arts and Sciences, Oberlin College, Oberlin, Ohio. He was formerly professor of history and head of the Department of History at Ohio State University. He is author of A History of Canada (1928), We Who Built America: The Saga of the Immigrant (1939), and other books.



Enemy Property.

Review Author[s]:

L. H. Woolsey

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Professor McNair gives us valuable data on the teaching of international law and conflicts of laws in the British Isles, and makes an eloquent appeal for extending such teaching, believing that it "would make men better citizens of the world" (p. 92). Also, "we shall not attract them (foreign students) in large numbers to this country unless we give that subject a more prominent place in our legal education" (p. 93). "In view of the large part which our country is destined to play in the development of sound international relationships in the post-war world, it is of the greatest importance to increase the number of men and women who have it in their power to give intelligent guidance to public opinion in international affairs" (p. 97).

As the Allies are now undertaking the greatest task of military government in all history, Dr. Wolff's study of municipal courts in enemy-occupied territory is particularly useful. He treats of some of the most controverted and timely questions, and his views demand the most serious consideration, despite the appearance lately of other notable works on the subject. H. C. Gutteridge makes a plea for a wider study of comparative law. By bringing about a common understanding of the many difficult problems of private international law, such a study may pave the way for general agreement on the basic principles upon which all systems of conflict of laws should be founded.

American international lawyers will be intensely interested in F. A. Mann's study of the relation between judiciary and executive in foreign affairs, especially his review of the developments of the past fifty years and the growth of the present tendency of courts to apply to the executive for information in an ever-widening field. The dangers of this development are stressed, as, for instance, if an unwilling or temperizing executive is compelled to disclose its views or intentions when it may be unwise to do so. Although the Russian recognition cases decided in this country are not given full treatment, the author does make a penetrating criticism of the historic case of *United States v. Pink*,¹ which he believes allows "overriding weight to the ideas pervading the foreign policy adopted by the Executive" (p. 159). Deference to the foreign policy of the Executive, maintains the author, should be a rule of judicial decision only in cases in which the harm to the public which otherwise would result is substantially incontestable; it should rest on tangible grounds, not on mere generalizations (p. 163).

JOHN B. WHITTON

Of the Board of Editors

Enemy Property. Volume XI, No. 1, of Law and Contemporary Problems. Durham, N. C.: Duke University School of Law; 1945. Pp. 201. Index. \$1.00.

This timely volume contains twelve well documented articles discussing the legal and administrative aspects of the treatment of enemy property by the United States Government against a background of comparative and inter-

¹ 315 U. S. 203 (1942); this JOURNAL, Vol. 36 (1942), p. 309.

national law. The Foreword by Professor E. R. Latty is followed by a comparative survey of the control over enemy property applied by the countries of the Western hemisphere, by Martin Domke, Research Director of the American Arbitration Association. Next comes a study of the freezing control program of the United States entitled "The Control of Foreign Funds by the United States Treasury," by William Harvey Reeves, of the New York bar. Frederick W. Eisner of the New York bar presents the third article on "Administrative Machinery and Steps for the Lawyer," which contains valuable information for the lawyer practicing before the Foreign Funds Control of the Treasury Department and the Alien Property Custodian.

The control, seizure, and administration of enemy property is covered by the next two articles, entitled "The Work of the Alien Property Custodian," by Paul V. Myron, and "Enemy Patents," by Howland H. Sargeant and Henrietta L. Creamer, all of the Office of the Alien Property Custodian. The latter chapter treats of the seizure of patent contracts which forms a bridge to the next article, "Cartels and Enemy Property," by Herbert A. Berman, a Special Assistant to the Attorney General. The latter shows, among other things, the "network of camouflage" erected by German nationals over certain domestic companies in reality German owned or controlled. Then follows a rather technical article by Judge Ernst Rabel on "Situs Problems in Enemy Property Measures," discussing some of the problems in conflict of laws in relation to the situs of property subject to the freezing and vesting orders. The next two articles, by George A. McNulty, formerly Special Assistant to the Attorney General, and Herbert Wechsler, Assistant Attorney General, respectively, deal with the "Constitutionality of Alien Property Controls." In these articles, which are rather technical, the authors do not see eye to eye on all aspects of the question.

A thoughtful discussion of both sides of the current question whether private enemy property should be confiscated in time of war will be found in the next three articles: "A Brief Against Confiscation," by Otto C. Sommerich of the New York bar, "'Inviolability' of Enemy Private Property," by Seymour J. Rubin of the Department of State, and "Post-war Prospects for Treatment of Enemy Property," by Representative Gearhart. The two latter writers find no difficulty in international law with the retention of private enemy property in the last war and the present one.

These chapters of necessity overlap somewhat, but they all deal with different problems arising out of the administration of the Trading with the Enemy Act of 1917, as subsequently amended and extended, particularly by the First War Powers Act passed eleven days after Pearl Harbor. The war-time control, use, and sale of all kinds of enemy property stem from these laws. The legal effects of these statutes, their constitutionality in the United States, and their validity under international law are discussed at length. The main difficulty has been to ascertain whether property subject to control really belonged to an "enemy," as defined by law, in view of the

efforts made by him to retain, conceal, and camouflage ultimate ownership. What final disposition shall be made of the enemy property seized or controlled by the United States has not yet been determined. How far the United States should go in retaining the proceeds of the property seized is argued pro and con, particularly in the last three of these articles. In the final chapter Representative Gearhart forcefully expounds the pending bill introduced by him on post-war disposition of enemy property in relation to similar legislation after the First World War.

L. H. WOOLSEY

Of the Board of Editors

La Reintegración marítima de Bolivia ante la Historia, el Derecho Internacional, y la Geografía. By W. González Cortés. Potosí, Bolivia: Editorial Universitaria; 1944. Pp. x, 139.

Generally speaking the Americas are not burdened with the resentments and problems of an old past—Goethe's *Amerika, du hast es besser!* Yet even in the Americas there are such things as Alsace-Lorraines and the problems arising out of the Pacific War furnish an example. The problem of Tacna and Arica, between Chile and Peru, was finally settled in 1929 but the problem of a direct access of Bolivia to the Pacific remains unsettled.

It is with this fundamental problem of Bolivia that this doctoral thesis deals. It stresses the geographical necessity of a Pacific port as a prerequisite for Bolivia's economic, political, and cultural development. It laments the backwardness of the country, its spirit of "claustrophobia."

The author gives a full history of the matter: Bolivia's rights since colonial times and under the principle of *uti possidetis juris* of 1810. He narrates Chilean preparations for the conquest, strongly castigates the incompetence of Bolivian Governments. He reviews the different negotiations and treaties with Chile, the discovery of the riches of guano and nitrates, the Bolivian alliance with Peru of 1873, the outbreak of the Pacific War of 1879, Chile's military triumph, the Chilean-Bolivian pact of armistice of 1884, followed only twenty years later by the definitive treaty of peace of 1904, which confirmed Chile's conquests.

The author's attacks against the validity of the treaty of 1904, because of duress, because of "immoral contents," depriving Bolivia of the "inherent right" of free access to the sea, are juridically weak, constitute mere "natural law," i.e. political arguments. Better is his argument or charge of Chile's violation of the treaty of 1904.

The author narrates Bolivia's action before the League of Nations Assembly in 1920-21, for the revision of the treaty of 1904 under Art. XIX of the Covenant. Here again Chile scored a diplomatic triumph.

Just as Art. XIX was greeted jubilantly in Bolivia, as well as Wilson's point on Poland's free access to the sea, just as Kellogg's suggestion of 1926 to cede Tacna and Arica to Bolivia was enthusiastically welcomed in LaPaz

1943

Woolsey

THE FORCED TRANSFER OF PROPERTY IN ENEMY OCCUPIED TERRITORIES

On January 4, 1943, the Department of State announced the text of a formal warning as to forced transfers of property in enemy occupied or controlled territories. The declaration was in the name of the United States, the nations of the British Commonwealth, Russia, China and certain captive countries. They—

reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever, (a) which are or have been situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or (b) which belong or have belonged to persons, including juridical persons, resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder or of transactions apparently legal in form even when they purport to be voluntarily effected.

The generality of this warning is significant. It applies to "any transfers or dealings," including looting or plunder and apparently legal or illegal voluntary or involuntary, transactions in respect of all kinds of property (public or private) at any time situated in those territories or belonging to residents thereof. The chief limitation is that the property shall at some time have been "situated" in the territories in question or "belonged" to persons "resident" in such territories, whether nationals or aliens. However, it goes no further than to reserve the right to declare such dealings invalid. Nothing is said about reparation for wrongs which cannot be thus corrected.

As to the countries involved, presumably the right to nullify such dealings would lie only in those governments having ultimate authority over the property and persons in question, i.e., in the legitimate governments of the occupied or controlled territories. In this connection, it may be noted that several occupied countries, including Denmark, Estonia, Latvia, Lithuania and the Philippines are not parties to the declaration, that the captive countries are represented by refugee governments whose authority may be doubtful in some respects, and that France and the French possessions are only represented by the French National Committee. The warning is not made in the name of the United Nations and does not apply to non-party countries.

Obviously the object is to nullify the predatory acts of the Tri-Axis Powers in certain of the territories which are or have been occupied or controlled by them in the Eastern Hemisphere. Presumably the dealings referred to are only those of enemy authorities, direct or indirect, including "undercover" transactions or dealings influenced by them.

The declaration assumes, of course, that the declaring countries will be victors in the present war and thus in a position to recapture the occupied territories and to establish governments which will accept and enforce the warning in question, and insist on provisions in the armistice or treaty

peace that will cause the vanquished countries to a large extent to undo or compensate the dealings mentioned. The declaration reserves rights which are impliedly retroactive and which may, therefore, need to find lodgment in the terms of peace in order to be effective.¹

Apparently the object of the warning is to lay a basis which will require all transactions and dealings to be sifted out after the war so that those in which the military occupant has not had a hand and which have been carried through in good faith will not be disturbed. The warning apparently contemplates singling out the dealings which are illegal or which are directly or indirectly the result of undue military pressure and compulsion. Indeed an effort will undoubtedly be made to probe beneath any collusive camouflage invented by the diabolical ingenuity of the enemy to cover his tracks.

The declaration raises at once the question of the legality of the acts complained of. It is pertinent to inquire as to what extent the Axis Powers have a right to deal with the property, rights and interests situated in or owned by residents of the territories occupied or controlled by them in this war. In international law this is governed by the principles of belligerent occupation of enemy or hostile territory—a situation precisely envisaged by the declaration itself which relates only to territories occupied or controlled by enemies of the signatory Powers. It applies only between enemies and must, therefore, be read with the enemy status of the belligerents in mind. Thus, Bulgaria is at war with the United States and Britain but not with Russia and apparently not with Belgium, France, Netherlands, or Poland. Poland is not at war with Rumania or Hungary, nor is Russia at war with Japan, nor Finland with the United States, nor Denmark with any country. Furthermore, that part of Yugoslavia under General Mihailovic is still unoccupied by the enemy.

There can be no question that the Tri-Axis Powers have on a scale hitherto unknown plundered, looted, destroyed, seized and in other ways taken over or carried away public and private property in the occupied countries, including money, food, machinery, and manufactured articles, estates and farms, religious property, artistic, historical, cultural and scientific property, in many cases under circumstances unbelievably wanton and shocking to the conscience of mankind.²

¹Some of the governments in exile have issued decrees declaring acts of the occupying authorities or acts done under their compulsion, direct or indirect, null and void: for example, Polish decree of 1939; Belgian and Yugoslavian decrees of 1941. The Polish decree expressly refers to Hague Convention No. IV of 1907 on the Laws and Customs of War on Land.

²New York Times, June 8, Sept. 15, Nov. 5, 7, 18, 1942. For the practice in the last war, see J. W. Garner, International Law and the World War; E. H. Feilchenfeld, The International Economic Law of Belligerent Occupation. The German Land War Book of the last war declared that "the conqueror is in particular not justified in recouping himself for the cost of the war by inroads upon the property of private persons, even though the war was forced upon him." (Cited by Hyde, Land Warfare, 1918, p. 15.) These acts have been countered to some extent abroad by "freezing" orders and sequestration of enemy property.

The law of belligerent occupation is not in a wholly satisfactory state. The first international formulation of the law was the Hague Convention and Regulations on the Law and Customs of War on Land signed in 1864 and revised and supplemented in 1907. These rules are not entirely precise or adequate for all situations and give an unscrupulous occupant opportunity for evasion and abuse of discretion or allow interpretation according to the caprice of the commander. The practice of nations under and outside these rules is far from uniform, as the wars of this century have shown, and is now undoubtedly undergoing a change with the intervention of new implements and conditions of warfare. Wars are now carried on in the field with much larger armies, heavier equipment, greater mobility, greater use of aviation and radio communication, and at home the war industries engage a larger share of the population, the civil residents being less engaged in innocent business. No longer are wars fought by armies alone; in "total warfare" nearly the whole population is involved in supporting the armed forces. The status of privately owned property and the conduct of business have also suffered changes under the inroads of social doctrines and government regulation or control. Alien enemies are subjected to stricter surveillance and are frequently sent to detention camps and their property sequestered. Consequently the demands of the occupying army for supplies and services are greater and the need for protection and security of the troops is more exacting in a territory which is given over more wholly to war industries under government control or discipline and whose inhabitants are better supplied with arms and warlike implements and materials.

Nevertheless, it is significant that the Hague Regulations respecting the Laws and Customs of War on Land have pretty well survived all changes up to the present war and appear to constitute the formal law of belligerent occupation today. They expressly apply only to occupation of hostile territory, but it is usually held that they apply also to forceful occupation of neutral territory, such as Denmark at present. It is recalled that Convention No. IV of 1907 and the annexed Regulations "do not apply except between contracting Powers and then only if all the belligerents are parties to the convention," and that some of the belligerents in the present war, like those in the last war, are not parties or adherents to the convention. Nevertheless, belligerents have not generally taken advantage of this technical provision, but, on the contrary, have made the convention and regulations the formal basis of their practice and their contentions in particular cases. They have not denounced the Hague Regulations and contended for exemption on the ground of changed conditions of warfare. The peace treaties of the last war were based in part on the enforcement of these rules, and the governments of former occupants were held liable to make reparation for violations of them. Moreover, the tribunals established by those treaties in numerous cases made great efforts to uphold and apply the regulations.³

³J. M. Spaight, *War Rights on Land*; C. C. Hyde, *op. cit.*; J. W. Garner, *op. cit.*; E. H. Feilchenfeld, *op. cit.* Karl Strupp cites a statement of the Reparation Commission that

Unfortunately, however, the Hague Regulations leave considerable discretion in the commanders of occupying forces as to interpretation and application. There are also gaps in the regulations which do not, as the preamble states, cover "all the circumstances which arise in practice." The cases not covered by the regulations, the signatory Powers declared, were "under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." The practice of reprisals or fines for alleged violations on the part of the enemy or hostile acts by the inhabitants has also been the source of deviations. Finally the license of "military necessity"—itself a vague and general term—gives rein to the ruthless commander. The Hague Rules, however, appear to be the standard to which belligerents refer in their protests to the enemy, in justification of their actions and even in support of their reprisals.

Without going into detail, it is clear that the Hague Regulations envisage the military occupant as a *de facto* power essentially provisional in character, not a sovereign, and circumscribed by certain unquestioned limitations. They require that "private property . . . must be respected" and "private property cannot be confiscated." "Pillage is formally forbidden." The seizure, destruction or damage of property "dedicated to religion, charity, education, arts and sciences" also "is forbidden." These restrictions prohibit the looting or destruction of private property. Yet a rigid adherence to the sanctity of such property would make war impossible. They must be read subject to the succeeding articles which allow the occupant to levy contributions upon giving a receipt, demand requisitions⁴ in kind and services upon compensation or receipt, seize war materials including means of communication and transport, and inflict penalties to obtain obedience, under certain limitations or conditions. Among other things, the levy of contributions for other than the needs of the army of occupation or the administration of the territory, the imposition of requisitions not needed by the army, the destruction of property not imperative for military operations or the safety of the occupying forces, and wanton confiscations, are condemned. On the other hand, the occupant has a wide latitude in the seizure of movable public property as booty (cash, funds, realizable securities, war-like stores and supplies, etc.) and the usufruct of immovable property owned by the State. Of course, military works may be destroyed. Violations of the regu-

damages inflicted upon nationals of the Allied Powers, as a result of requisitions effected by German authorities, are included in the total amount of the reparations debt when these reparations took place in occupied territory but not when effected in German territory. (This JOURNAL, Vol. 17 (1923), p. 671.)

⁴There is no definite limitation on the amount of requisitions or contributions. Art. 52 merely provides that requisitions (not contributions) "shall be in proportion to the resources of the country." This is a very unsatisfactory rule and does not prevent virtual ruination of an occupied territory.

lations by the belligerent or by persons in its armed forces subject it to the payment of compensation.

Measured by the rules of the Hague Conventions undoubtedly the Tri-Axis Powers have in practice outstripped any past deviations from and violations of the laws of land warfare in their treatment of private and public property and in the commercial, economic and financial subversion of the occupied territories. Surely it must be the intention of the parties to the concerted warning to test the dealings and transactions in the occupied territories by the Hague Rules, and in cases not covered by them to apply the principles of the law of nations as was done after the last war.

In carrying out the objects of the warning effectively, especially in respect of transactions of an intricate character and involving the local laws, it would seem to be necessary to establish in the peace treaty, as was done in the Paris treaties, tribunals to which violations can be referred for adjudication. Such tribunals would be the proper means of protecting the rights of property and the business transactions as well as the interests of innocent third parties affected by the dealings in question. Meanwhile the concerted warning as well as the separate decrees of the refugee governments will put the persons concerned on guard and serve as a caveat to the enemy authorities that law shall prevail.

L. H. WOOLAST

THE END OF EXTRATERRITORIALITY IN CHINA

On February 11 the President ratified with unanimous advice and consent of the Senate a treaty abolishing extraterritoriality in China. The proposal to negotiate this treaty had been made by the United States on October 9, 1942, the day before China's national anniversary. The treaty was signed on January 11, 1943, and submitted to the Senate by the President on February 1, 1943.

The treaty not only "abrogates" all provisions of "treaties or agreements" which authorize the United States "to exercise jurisdiction" over its nationals in China, but also terminates the Boxer Protocol of 1901 except for continued right to use the embassy premises in Peking for official purposes. It terminates United States rights in the international settlements of Shanghai and Amoy, and United States special rights of navigation and of naval police in the coastal and inland waters of China.

On the understanding of reciprocity, China accords citizens of the United States, national treatment in regard to residence, trade, civil rights, and overseas navigation, and most-favored-nation treatment in regard to inland and coastal navigation. Protection to property rights and recognition of judgments made by extraterritorial courts before the treaty went into effect are also stipulated. Treaty ports are abolished, all coastal ports are opened to navigation, and rights of residence are extended throughout the territory of China.

The treaty repeatedly emphasizes the intent to establish relations on a basis of "equality" and respect for "principles of international law and pro-

cedure." It thus acknowledging the propriety of the familiar Chinese protest against "unequal treaties" and against exceptions from the normal standards of international law.¹ It looks forward to the negotiation of a comprehensive treaty "based upon the principles of international law and practice as reflected in modern international procedures and in the modern treaties" of the United States and China, pending which matters not dealt with "shall be decided in accordance with generally accepted principles of international law and with modern international practice." This negotiation is to be begun within six months after the cessation of hostilities in the present war (Art. 7). The powers and functions of consuls are briefly stated and consuls of "each country shall be accorded the rights, privileges and immunities enjoyed by consular officers under modern international usage" (Art. 6).

Great Britain signed a similar treaty with China on the same day.² Most of the former "Treaty Powers" had already signed treaties relinquishing extraterritorial rights or retaining them only so long as they continued to be enjoyed by any of the Treaty Powers. The few Powers which have not done so are in process of negotiating treaties similar to those just concluded by the United States and Great Britain. Sweden, for example, announced on February 22 such a negotiation.

After a century, the régime of extraterritoriality in China has come to an end. The British Treaty of Nanking was signed on August 29, 1842, the American Treaty of Wanghia on July 3, 1844, and the French Treaty of Whampoa on October 24, 1844. All gave unequal advantages to the Western Powers, but China at the time considered these Powers inferior. This is indicated by the Emperor's answer to the letter which Caleb Cushing presented from President Tyler to open the negotiation in 1844. It began:

The Great Emperor presents his regards to the President and trusts he is well.

I, the Emperor having looked up and received the manifest Will of Heaven, hold the reigns of Government over, and sooth and tranquilize, the Central Flowery Kingdom, regarding all within and beyond the border seas as one and the same Family.

R. P. Tenny attached the comment to this document that the character for "Emperor" is preceded by the character for "Great," that the character for "President" has no honorific, and that the first sentence is in colloquial Chinese as if addressed to an illiterate person.³

In treaties of 1902 and 1903 Great Britain, Japan, and the United States

¹ Preamble, Arts. 1, 6, 7, and supplementary exchange of notes. This JOURNAL, Supp., pp. 65, 66, 68, 69.

² Q. Wright, *Legal Problems in the Far Eastern Conflict*, Institute of Pacific Relations, New York, 1941, pp. 51, 109, 124.

³ Bulletin of International News, Royal Institute of International Affairs, Jan. 23, 1943, Vol. 20, p. 49.

⁴ Hunter Miller, editor, *Treaties and Other International Acts of the United States of America*, Government Printing Office, Washington, 1934, Vol. IV, pp. 661-62.

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Woolsey

EDITORIAL COMMENT

NAZI LAWS IN UNITED STATES COURTS

One of the first cases to come before United States courts concerning the despoliation of Jews in Germany under the Nazi régime was the case of *Bernstein v. Van Heyghen Frères*, 163 F. 2d. 246 (1947).¹ Bernstein, a German Jew, was the owner of all the stock of the Bernstein Steamship Line, a German company. In January, 1937, he was arrested and imprisoned by "Nazi Gestapo" in Hamburg. Under duress of "Nazi officials," threats of bodily harm, indefinite imprisonment and business ruin, he assigned, while still in prison, his stock to one Boeger, "a Nazi designee," who took possession of all the assets, including the company's ships, without compensation and transferred same to defendants, a Belgian concern which was said to have full knowledge of the duress. The assignment took place in the British occupied zone of Germany. He was released in July, 1939, upon payment of a "ransom" by his family and allowed to leave Germany. He became naturalized in the United States in 1940.

Plaintiff demanded damages, loss of profits, and insurance of £100,000 received by defendant on the loss of a vessel in 1942. The United States District Court dismissed the case on the ground that the wrong was an act of the German Government committed in German territory and not subject to judicial review here. On appeal the Circuit Court of Appeals affirmed the decision below by a two to one vote, Judge Clarke dissenting.

It may be assumed that the plaintiff could not recover unless he showed he was entitled to the *res* and that the transfer to Boeger and by Boeger was illegal under the then German law. It appears that he only attempted the latter by pleading duress, although duress was countenanced under the Nazi decrees which came into force in 1938.

Judge Learned Hand speaking for the court, in the first place, deemed it clear, though some of the evidence was "fragile," that plaintiff had alleged that he was a victim of persecution by officials of the Third Reich. Although, as the court was informed, no non-Aryan laws might have been passed until December, 1938, and the transfer might have occurred before that time, and a German court might have disallowed the transfer, this, however, was irrelevant because "We have repeatedly declared, for over a period of at least thirty years, that a court of the forum will not undertake to pass upon the validity under the municipal law of another state of the acts of officials of that state, purporting to act as such. [Citations of Circuit Court decisions.] We have held that this was a necessary corollary of the decisions of the Supreme Court, and if we are mistaken the Supreme

¹ Digested in this JOURNAL, Vol. 42 (1948), p. 217.

Court must correct it,"² citing *Underhill v. Hernandez*, 168 U. S. 250, and *Oetjen v. Central Leather Co.*, 246 U. S. 297.

At this point it may be interjected that the non-inquiry doctrine has had a somewhat checkered career in the United States courts. A maze of cases descended upon the courts as a result of Soviet confiscation and nationalization decrees. Before recognition of the Soviet Government by the United States in 1933, the courts, generally speaking, disregarded the decrees so far as concerned companies or property *in the United States*, but did support them in respect of companies and properties located *in Russia*. After recognition and the concurrent Litvinoff assignment of Russian rights to the United States, the courts were still disinclined to give effect to such decrees concerning property *in the United States*, as repugnant to public policy. But the Supreme Court stepped in and held that the United States received good title under the Litvinoff assignment which overrode any State policy to the contrary. This, so far as is known to the writer, is the first instance of enforcing a foreign confiscation decree on property *in the United States*.³

As to Hitler's anti-Jewish decrees, the lower New York courts were scathing in denunciation, but the Court of Appeals held that a German contract to be performed in Germany should be construed according to German law however objectionable. "So long as the act is the act of the foreign sovereign, it matters not how grossly the sovereign has transgressed its own laws." (*Banco de Espana v. Federal Reserve Bank*, 114 F. 2d 438.)

In the second place, Judge Hand questioned whether the Executive, "the authority to which we must look for final word in such matters," has declared that this "commonly accepted doctrine" does not apply.

Since the plaintiff argued that the Government had already acted to relieve this restraint, the court considered the announcements of policy contained in certain official acts of the United States and other victorious Powers before the court,⁴ and held that these spoke *in futuro* and so far

² Petition for certiorari was denied by the Supreme Court, 332 U. S. 772.

³ *Petrogradsky v. National City Bank*, 253 N. Y. 23; *Salimoff v. Standard Oil Co.*, 262 N. Y. 220; *Vladikavkajsky Ry. v. N. Y. Trust Co.*, 263 N. Y. 369; *U. S. v. N. Y. Bank and Trust Co.*, 77 F. 2d 866; *U. S. v. Belmont*, 85 F. 2d 542, 301 U. S. 324; *U. S. v. Pink*, 215 U. S. 203. See discussion of cases in 23 N. Y. U. Law Quart. Rev. (1948), Notes, p. 311; also by Jessup in this JOURNAL, Vol. 31 (1937), p. 481, and *ibid.*, Vol. 36 (1942), p. 232; Borchard, *ibid.*, Vol. 31 (1937), p. 675; and King, *ibid.*, Vol. 42 (1948), p. 811. It may be noted in passing that the confiscation of property of aliens is regarded as a violation of international law. C. P. Anderson, this JOURNAL, Vol. 21 (1927), p. 525.

⁴ The Allied Declaration of June 5, 1945, assuming "supreme authority with respect to Germany including all the powers possessed by the German government, the High Command or any state, municipal or local government or authority"; the Potsdam agreement of Aug. 2, 1945, establishing the Supreme Council and enacting that all Nazi laws of the Hitler régime discriminating in respect of "race, creed, or political opinion

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were only prospective in their operation. No Restitution Law had yet been approved. Moreover, the laws for the American Zone were "in a sense irrelevant," since the Bernstein Line and the assignment had their *locus* in the British Zone, and the court had no access to the British laws of that zone. The court continued: "The only relevant consideration is how far our Executive has indicated any positive intent to relax the doctrine that our courts shall not entertain actions of the kind at bar; some positive evidence of such an intent being necessary." Certainly, the court added, it is no indication of such intent that the Executive may have provided for adjudication *locally* where for the most part the cases will arise.

As an additional reason for maintaining the doctrine in question the court indicated that claims for this property wrongfully seized in Germany would become an item in the reparations account between Belgium and Germany, especially if the plaintiff succeed in this suit, and that therefore these matters should be left for settlement in the peace treaty, in the absence of the most explicit evidence of a contrary purpose of the victorious Powers.

Third, even if the British Military Government had gone as far as would in our opinion be necessary, said Judge Hand, we are not ready to agree that it would relieve a New York court from the need of an equivalent assent of our own Executive. Plaintiff nowhere suggests that the British have passed for their zone any legislation different from our zone.

Finally, as to the argument that the Nuremberg Charter and Judgment declared such acts to be crimes,⁵ this does not aid the plaintiff, for we have assumed the New York law would not approve the validity of the transfer even if valid in Germany. Nor regardless of this does it overcome "the real obstacle in his path" that the New York court is not permitted to apply that law, since the claim along with all other such claims, is reserved for adjudication as part of the final settlement with Germany.

Judge Clarke dissented strongly on the ground that our Executive has repudiated the recognition of the Hitler Government and declared its acts null and void. "We have no precedent to govern this case. In short a new one must be formulated." But first he thought the court should order a trial to clarify the facts and issues in this record, and also request of the State Department a definition of Executive policy in the premises, and a precise recital of the instruments nullifying Nazi laws. The instruments discussed throw light on Executive policy; Executive policy was at

shall be abolished. No such discrimination, whether legal, administrative or otherwise shall be tolerated"; Military Government Law No. 1 and Law No. 52 of the United States Zone. Judge Clarke also mentioned the Directive of April, 1945, and Allied Council Law No. 1.

⁵ It appears from the Judgment at Nuremberg that "The Tribunal therefore cannot make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter . . ." (Judgment, p. 84).

least in formulation. "If the policy of our Executive is one of non-recognition of Nazi oppression and of restitution to the Jews, I think we are bound to observe it in our courts."

Before the Van Heyghen case was decided in 1947, Bernstein brought a similar suit in June, 1945, in the United States District Court against the Holland-American Line. The facts related as to duress are essentially the same. After an appeal the case appears to be still pending in the District Court (*Bernstein v. Holland-America Line*, 76 F. Supp. 335; 79 F. Supp. 38; 173 F. 2d 71).⁶ In this proceeding the attorneys for the plaintiff, taking a hint from the Van Heyghen decision and Judge Clarke's dissent, inquired of the Department of State whether it might care to express its view concerning the Executive policy as to the exercise of jurisdiction by the courts of this country in such cases. On April 13, 1949, the Acting Legal Adviser of the Department replied:

This Government has consistently opposed the forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls. . . .⁷

The policy of the Executive, with respect to claims asserted in the United States for the restitution of identifiable property (or compensation in lieu thereof) lost through force, coercion, or duress as a result of Nazi persecution in Germany, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials.⁸

A copy of this letter was sent to the other parties to the suit and to the judge of the court.

It may be noted that it has not been unusual in the past for the Government to set forth its policies in communications to courts. In the *Transandine Case*⁹ the Government practically told the New York court how it should decide the legal questions, but the court made its own decision that the State and Federal policies were in accord, adding, however, that this sort of thing might have "serious consequences in other cases."

⁶ Digested in this JOURNAL, Vol. 42 (1948), p. 726, Vol. 43 (1949), p. 180, and Vol. 44 (1950), p. 182.

⁷ He listed the following instruments in support of this statement: Inter-Allied Declaration of Jan. 5, 1943; Gold Declaration of Feb. 22, 1944; Potsdam Agreement of Aug. 2, 1945; Directives to U. S. Commander-in-Chief, April, 1945 and July 11, 1947; Allied Control Council Law No. 1; Military Government Laws Nos. 1, 52 and 59. He continued:

"Of special importance is Military Government Law No. 59 which shows this Government's policy of undoing forced transfers and restituting identifiable property to persons wrongfully deprived of such property within the period from January 30, 1933 to May 8, 1945 for reasons of race, religion, nationality, ideology or political opposition to National Socialism. Article 1 (1). It should be noted that this policy applies generally despite the existence of purchasers in good faith. Article 1 (2)."

⁸ Dept. of State Bulletin, Vol. XX, No. 514 (May 8, 1949), pp. 592-593.

⁹ *Anderson v. Transandine Handelmaatchappij*, 289 N. Y. 9.

And courts are inclined to follow the State Department in their handling by regular procedure.

In this principal case, the doctrine of state doctrine. V. In this doctrine, it has become a principle that courts should not question the legality of acts of government.

In the precedents, the doctrine is predicated on the fact that which had been recognized as a means of avoidance of thwarting the policy of the government.

As to the first point, when the Van Heyghen case was decided, the war and its fundamental principles were still in effect. But in the period 1945-1947, which occurred, the Hitler regime was overthrown in the United States. Relations with Germany regarding the treatment of American Ambassadors, Chargé and his staff, and the business as usual with Germany effect recognized the right of Germany to extend its aid of arms and materials to other countries. The destroyer deal with Germany, German Claims Commission, spring of 1939, and Republic of Mexico v. Muir, 254 U. S. 522; Ex parte Peru, 303 U. S. 68; American Circuit Court and State courts for lack of jurisdiction of the judicial arm of government public policy of the forum.

It must be assumed that the United States is at least not hostile, continuing its policy of non-recognition.

¹⁰ Republic of Mexico v. Muir, 254 U. S. 522; Ex parte Peru, 303 U. S. 68; American Circuit Court and State courts for lack of jurisdiction of the judicial arm of government public policy of the forum.

¹¹ This JOURNAL, Vol. 21, p. 100, note 1. Besides the Underhill case, U. S. 304; Ex parte Peru, 303 U. S. 68; American Circuit Court and State courts for lack of jurisdiction of the judicial arm of government public policy of the forum.

And courts are inclined in immunity cases to hang upon the words of the State Department in factual situations which they are perfectly capable of handling by regular procedure.¹⁰

In this principal case Judge Hand relied in the first instance on the act of state doctrine. Whatever the origin and early application of the doctrine, it has become by repetition, as John Bassett Moore says, "a settled principle that courts of one country will not undertake to judge the legality of acts of governmental power done in another country."¹¹

In the precedents cited by the court and others of the same character,¹² the doctrine is predicated mainly (1) upon the existence of a government which had been recognized by the forum government and (2) upon the avoidance of thwarting the foreign policy of the latter government.¹³

As to the first point, there was clearly no government at all in Germany when the Van Heyghen suit was begun in 1946; it had been destroyed in the war and its functions and powers assumed by the victorious Allies. But in the period 1937 through July, 1939, during which the acts of state occurred, the Hitler Government had not been repudiated by the United States. Relations were undoubtedly strained under American protests regarding the treatment of Jews in Germany and the withdrawal of the American Ambassador in November, 1938. Nevertheless, the American Chargé and his staff remained on for three years conducting diplomatic business as usual with the German Government. The United States in effect recognized the annexation of Austria in April, 1938, and agreed with Germany to extend extradition to Austria in November, 1939. United States aid of arms and lend-lease to the Allies and embargoes of war materials to other countries did not begin until after war opened in Europe. The destroyer deal with Britain occurred in the autumn of 1940; the U. S.-German Claims Commission was sitting regularly in Washington until the spring of 1939, and Roosevelt's "shoot on sight" order came in September, 1941.

It must be assumed, therefore, that the Hitler Government was recognized by the United States and diplomatic relations, if not cordial, at least not hostile, continued during the period in question.

¹⁰ Republic of Mexico v. Hoffman, 324 U. S. 30; *The Navemar*, 303 U. S. 68; *Ex parte Muir*, 254 U. S. 522; *Ex parte Peru*, 318 U. S. 578.

¹¹ This JOURNAL, Vol. 27 (1934), p. 607. Mr. Moore was of counsel in the early stages of the Underhill case.

¹² Besides the Underhill and Octjen cases *supra*: *Ricaud v. American Metal Co.*, 246 U. S. 304; *Ex parte Peru*, 318 U. S. 578; *Mexico v. Hoffman*, 324 U. S. 30; *The Navemar*, 303 U. S. 68; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347; also several Circuit Court and State court decisions.

¹³ It may be recalled that the act of state doctrine has not been applied to acts of the judicial arm of government. Courts frequently scrutinize decisions of foreign courts for lack of jurisdiction, fair procedure, fraud and other evils disfavored by the public policy of the forum.

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As to the second point, which speaks as of the time of the suit, how would a decision for plaintiff have adversely affected the then foreign policy of the United States? Judge Hand held that the instruments¹⁴ submitted on foreign policy were not a positive indication of an intent to relax the act of state doctrine. They were, he said merely prospective in operation. Judge Clarke thought the evidence showed at least a policy "in formulation" looking to restitution of duress properties. Rereading these documents, the writer must agree that they in a sense speak *in futuro* by the use of the word "shall"; but "shall" may also be taken as a command, and as showing an intention to annul Nazi laws and to restitute "duress properties." Thus Control Council Law No. 1 merely repealed anti-Semitic laws, though not retroactively. While the Directive of April, 1945, envisaged the eventual restoration of "duress properties," the actual Restitution Law (Law No. 59 of the American Zone) for that purpose was yet to be issued. Until that time the duress properties were simply held in possession and control. It was therefore for the court to decide whether to make inquiry of the State Department or to render a decision and let the Supreme Court correct it. It took the latter course and *certiorari* was denied.

Of the additional documents listed in the Department's letter of April 13, 1949, the first two would have added little as to foreign policy, and the important fifth and ninth documents were published shortly after the decision was rendered. Doubtless they would have been produced had Judge Clarke's view prevailed, and probably would, together with the Department's letter, have determined the question of policy. For they definitely provided for the "speedy restitution of identifiable property (tangible or intangible)" wrongfully taken between January 30, 1933, and May 8, 1945, notwithstanding purchase in good faith (with a few exceptions).¹⁵

The foreign policy of the United States with respect to Germany or the American Zone is, however, not an isolated matter. There were other imponderables involved. The *locus* of duress and ownership of the property was in the British Zone, whose laws were apparently unknown to the court.¹⁶

¹⁴ See footnote 4 above.

¹⁵ See the Special Report of the Military Governor, November, 1948 for the text of other Laws and Regulations. Such restitution was to be made by courts in Germany and not elsewhere. Up to this time the legislation in the American Zone provided only for restitution of identifiable tangible and intangible property (Law No. 59). On Sept. 30, 1949; the German Laender comprising the U. S. Zone promulgated legislation whereby certain classes of persons who suffered monetary and other losses through persecution by the Nazi régime, may receive indemnification for losses falling outside the previous restitution legislation. (State Department, Press Release No. 759, Oct. 3, 1949; Bulletin, Vol. XXI, No. 537 (Oct. 17, 1949), pp. 591-592.)

¹⁶ Also it had been found impossible to make them uniform for all zones or even for two zones (Special Report of Military Governor, November, 1948, p. 22).

If it be assumed that then should they be appraisable property"? Is it of which he owned the owned by the plaintiff the plaintiff leave the Belgian Government in involved in the purchase the plaintiff have interferences, or with the general countries? Judge Hand and, while this was not the study of the international that such cases as this of any one country applying international tribunal of mutual agreement of the While at first blush it in Germany should favor ties to the Jews and that relief here for the same international consideration for the court to recognize competence to do full justice

THE SWING OF
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The history of man's spirit and life as a whole as we see the pendulous swing of the pendulum. Philosophically we see a change taken—all outlined already that the first attitude had for the time being, exhaustively been disproved by the needs of a changed world which may ultimately clarify. And as, in order to establish the former one world, itself often goes to the other, but from side to the other, but from Thus classicism is followed

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m for all zones or even for 1948, p. 22).

If it be assumed that the British laws follow the American Zone laws, then should they be applied to this case and if so, is the *res* here "identifiable property"? Is it the property of the plaintiff or of the steamship line of which he owned the stock? The *res* is the proceeds of property never owned by the plaintiff but by his company. Where would a decision for the plaintiff leave the Belgian company and would it arouse the ire of the Belgian Government in its behalf? Perhaps Belgian laws and policy were involved in the purchase by the Belgian company. Would a decision for the plaintiff have interfered with the United States policies in these directions, or with the general question of reparations in respect of all three countries? Judge Hand wisely considered the question of reparations and, while this was not at first an impressive consideration to the writer, the study of the international aspects of this case leads to the conclusion that such cases as this one cannot be adequately handled by local courts of any one country applying principles of local law, but should go before an international tribunal of some sort to be established and governed by mutual agreement of the governments concerned.

While at first blush it seems incongruous that the United States policy in Germany should favor restitution and indemnification for Nazi atrocities to the Jews and that the court in the Van Heyghen case should deny relief here for the same kind of Nazi acts, yet considering the complex international considerations involved in this case, it seems on the whole better for the court to recognize its limitations than to try a case in which it lacked competence to do full justice in an international sense.

L. H. WOOLSEY

THE SWING OF THE PENDULUM: FROM OVERESTIMATION
TO UNDERESTIMATION OF INTERNATIONAL LAW

The history of man's spiritual activities, of his attitude toward the world and life as a whole as well as toward particular problems shows a continuous swing of the pendulum from one attitude to the opposite one. Philosophically we see a change between the different attitudes which can be taken—all outlined already by the thinkers of ancient Hellas. It may be that the first attitude has reached its fullness, that its possibilities seem, for the time being, exhausted. It may be that the first attitude has seemingly been disproved by historical events and no longer seems adequate to the needs of a changed situation. Then trends and tendencies appear which may ultimately climax in the establishment of the opposite attitude. And as, in order to establish the new attitude, very likely a distorted picture of the former one will be given, and as the new attitude, once established, itself often goes to extremes, the pendulum not only swings from one side to the other, but from one extreme to the other.

Thus classicism is followed by romanticism in the field of art, literature

82d Congress, 2d Session

THE ALIEN PROPERTY CUSTODIAN:

A LEGISLATIVE CHRONOLOGICAL HISTORY AND
BIBLIOGRAPHY OF THE TRADING WITH THE
ENEMY ACT, 50 U. S. CODE APP. 1-40, AND THE
OPERATIONS OF THE OFFICE OF ALIEN
PROPERTY CUSTODIAN, 1917-1952

A REPORT PREPARED BY FREEMAN W. SHARP,
OF THE AMERICAN LAW SECTION, LEGISLA-
TIVE REFERENCE SERVICE, LIBRARY OF CON-
GRESS, AND RAYMOND S. COX, OF COUNSEL,
SUBCOMMITTEE STAFF

SENATOR WILLIS SMITH, CHAIRMAN, SENATE
SUBCOMMITTEE, TRADING WITH THE ENEMY
ACT. ARMISTEAD W. SAPP, COUNSEL

Printed for the use of the Committee on the Judiciary

FOREWORD

The subcommittee, at the outset of its investigations, recognized the need for a basic document which could be used as a general legislative and chronological history and, at the same time, as a bibliographic guide to all the published authoritative material pertaining to the work of the Allen Property Custodian and the administration of the Trading With the Enemy Act. It is my belief that this document will supply that need.

Its preparation has been a joint venture of the American Law Section of the Legislative Reference Service, Library of Congress, James P. Radigan, Jr., Chief, and the staff of the Senate Judiciary Subcommittee on Trading With the Enemy Act, Armistead W. Sapp, subcommittee counsel. The actual research and compilation of the document was performed by Freeman W. Sharp, American Law Section, and Raymond S. Cox, subcommittee staff. The prefatory remarks aptly state the purpose and scope of the document.

WILLIS SMITH, North Carolina,
Chairman, Subcommittee on Trading With the Enemy Act.

PREFACE

The purpose of this document is to afford the subcommittee a framework upon which to base its investigation and study of the operations of the Office of the Alien Property Custodian and the administration of the Trading With the Enemy Act. It is literally, as its title suggests, a legislative chronological history and bibliography designed in chart form to provide a quick orientation of legislation and events, related in time, as well as in subject content.

The seizure of enemy property by a belligerent in war is directed at the enemy's potential to carry on the war. The immediate objects being to weaken the enemy's capacity to wage war and to strengthen one's own. The secondary effect of such seizures may be far reaching in the peace. The rapid growth of the United States dye and chemical industry after World War I, which was in a large measure due to the seizure of German dye and chemical patents during that war, is a case in point.

Originally, an alien enemy had no rights. The Roman jurist Gaius stated the theory of the ancient world when he said that all that is taken from the enemy becomes ours. The practice was that all movables became the property of the soldiers as spoils of war while the immovables became the property of the Roman State (see, 2 Sherman, *Roman Law in the Modern World*, sec. 634, citing Gaius, 2, 69, Dig. 41, 1, 51, 1, Dig. 49, 14, 31, Dig. 49, 15, 20, 1; for a more modern statement of the theory see Grotius, *De jure belli et pacis*, III, 8, 9). With the French Revolution and the rise of liberalism and the democratic age in Europe, Rousseau formulated a new theory that war is solely the relating of state to state and not of individual to individual; that individuals are enemies only by accident and not as men, not even as citizens but as soldiers only (*Social Contract*, Book I, c. 4; see also: Talleyrand, *Moniteur Universel*, Dec. 5, 1806, and Massé, *Droit Commercial*, I, 121). British and American writers have never adopted Rousseau's doctrine and certainly modern "total war" has blasted the last vestiges of any foundations it might have had. The modern British-American view is expressed in Kelth's edition (1929, p. 709) of Wheaton's *International Law*:

"War is sometimes regarded as primarily a relation between states and governments, represented in the conflict by definite military and naval forces, and as only secondarily a relation between the respective subjects individually. Peaceable and inoffensive inhabitants taking no part in the contest should, on this view, be immune from attack, but modern war conditions, by turning enemy countries into something approaching armed camps, have weakened this doctrine. On any theory of war, however, neither person nor property should be injured or damaged, if the legitimate purpose of the belligerent is not thereby clearly promoted, and the overcoming of his enemy not facilitated. * * *

The first acts of the United States respecting limitations on trade with the enemy and seizure of enemy property prior to World War I began with the American Revolution as follows:

The Revolution:

Act of September 30, 1774, of the Continental Congress, prohibiting exports to Great Britain, Ireland, and the West Indies (1 American Archives, 4th series, 906; see also acts in 1778, 4 Journal of Congress 254; 1780, 6 Journal of Congress 163; 1781, 7 Journal of Congress 60; and New York, Act of Mar. 9, 1779, 2d sess., c. 28; New York Act of Apr. 13, 1782, 5th sess., c. 89).

The French nonintercourse acts:

Act of June 18, 1798 (Stat. 565); Act of February 9, 1799 (1 Stat. 613); and the Act of February 27, 1800 (2 Stat. 7).

The War of 1812:

Act of July 6, 1812 (2 Stat. 778).

The Civil War:

Act of July 13, 1861 (12 Stat. 255); Act of May 2, 1862 (12 Stat. 404); and Act of July 2, 1864 (13 Stat. 376).

The Spanish-American War:

Prohibition of clearance of American vessels for Spanish ports by the Treasury Department, see 7 Moore, *International Law Digest*, section 1185.

The Trading With the Enemy Act (50 U. S. C. App. 1-40) was originally enacted in 1917 for World War I and has been in use to date. This document presents an orderly chronological guide to the Alien Property Custodian's administration of that act from the legislative point of view. Read crosswise it affords a general picture of the activities during the period of each session of the Congress from the Sixty-fifth through the Eighty-second Congresses. The columns cover the various main subject fields involved. Legislative histories of all bills introduced on the subject of the act or the Alien Property Custodian are included under "Bills, Resolutions, and Laws". This column includes all the appropriation bills as well as hearings and the action taken upon legislation.

The next column is bibliographical in nature and contains all the Congressional Record and Law Review articles found. Only three volumes appear to have been specifically written on the act: Charles H. Huberich on Trading With the Enemy (1918); Martin Domke on Trading With the Enemy in World War II (1943); and a supplementing volume by the same author, The Control of Alien Property (1947). These books, together with the articles cited, and a few brief sections which appear in the works of writers on International Law, such as Wheaton, *supra*, seem to constitute the entire literature on the subject. Huberich is a gold mine of information on the historical setting of the Act of 1917 including similar acts of the principal belligerents of the First World War. Domke, of course, covers the Second World War and contains a wealth of material on actual operative theory and practice.

The two columns on Presidential Executive orders and International Relations are more or less self-explanatory. The former contains all the Executive orders issued by the President while the latter lists the principal international events such as treaties and declarations of war.

Raymond S. Cox of the subcommittee staff has been responsible for the column on Leading Cases in the Courts. These cases are of special interest inasmuch as they point the way to the construction or interpretation of the act by the courts of the land. The early construction viewed the taking of property by the Alien Property Custodian as vesting the title in the Custodian as trustee rather than as owner. Later decisions are contra, giving the Custodian an absolute title. Because of the piecemeal amendment of the act, conflicts have arisen between various sections. The cases digested here offer a composite picture of the construction by the Courts of these conflicting sections and must be read harmoniously with the entire act in order to arrive at the intent of Congress.

The final column, Chronology of Events, is designed to afford references to the principal events, which have transpired concerning the operations of the Office of the Alien Property Custodian and the administration of the Trading With the Enemy Act. The references are to the news stories published in the New York Times newspaper. These news items are invaluable as history in the making. Their inclusion here will enable investigators to properly evaluate those events with the social, political, and economic aspects of their times.

FREEMAN W. SHARP,
American Law Section,
RAYMOND S. COX,
Subcommittee Staff.

Seventy-sixth Congress—Continued
Second session, Nov. 1—Nov. 3,
1939 (page references are to
Vol. 86, Cong. Rec.).

Third session, Jan. 3, 1940—Jan.
3, 1941 (page references are to
vol. 86, Cong. Rec.).

S. J. Res. 252—To amend section 5 (b) of the Act of
October 3, 1917, as amended, and for other
purposes.

Mr. Wagner; Committee on Banking and Currency,
p. 4943:

Senate Report No. 1498, p. 4946.

Debated, p. 5103, 5168.

Passed Senate, p. 5184.

Passed House (in lieu of H. J. Res. 522), p.
5335, 5336.

Approved (Public Law No. 69), p. 6337.

H. J. Res. 522—To amend section 5 (b) of the Act of
October 3, 1917, as amended, and for other
purposes.

Mr. Steagall; Committee on Banking and Currency,
p. 4979:

House Report No. 2009, p. 5066.

Laid on table (S. J. Res. 252 passed in lieu),
p. 5335, 5336.

1. Allen Property Bureau—Letter from United States
Archivist containing list of ~~assets~~ papers in, p.
8758.

*Balkan National Insurance Company v. Commissioner
of Internal Revenue—Continued*

person who had title" in this case an enemy alien, and
vested the complete title, without reservations, in the
Allen Property Custodian.

III. TOTAL WAR OPERATIONS, 1941-1946

Seventy-seventh Congress:
First session, Jan. 3, 1941—Jan.
2, 1942 (page references are to
vol. 87, Cong. Rec.).

S. 2129—To expedite the prosecution of the war effort.

Mr. Van Nuys; Committee on the Judiciary, p. 9753.
Senate Report No. 811, p. 9789.

Debated, p. 9837.

Passed Senate amended, p. 9846.

Indefinitely postponed (see H. R. 6233), pp.
9803-9805.

S. 2303—To provide for the use of patents in the inter-
est of national defense or the prosecution of the
war, and for other purposes.

Mr. O'Mahoney, Mr. Bone, and Mr. La Follette;
Committee on Patents, p. 1509.

Hearings—Senate Committee on Patents on S. 2303.

H. R. 6233—To expedite the prosecution of the war
effort.

Mr. Summers of Texas; Committee on the Judiciary,
p. 9828.

House Report No. 1507, p. 9801, 9828.

Special order (H. Res. 389), p. 9855-9858.

Passed House amended, p. 9858-9863.

Passed Senate (in lieu of S. 2129), p. 9803-
9805.

House concurs in Senate amendment, p. 9946-
9947.

Approved (Public Law No. 354), p. 10100, De-
cember 18, 1941 (First War Powers Act,
1941).

1. Remarks in Senate on the Trading with the Enemy
Act, pp. 9837, 9838, 9803.

Practical aspects of foreign property control. *New
York University Law Quarterly Review*, Vol. 19,
pp. 1-30, November 1941.

Presidential Declaration (General licenses under sec-
tion 3 (a) of Trading with the Enemy Act),
December 13, 1941, 6 F. R. 6420.

Declaration of War with
786).

Declaration of War with
Stat. 796).

Declaration of War with
797).

Seventy-seventh Congress:
Second session, Jan. 5-Dec. 16,
1942 (page references are to
vol. 88, Cong. Rec.).

S. Res. 107—Authorizing a study of the possibilities of better mobilizing the national resources of the United States.

Mr. Kilgore; Committee on Military Affairs, p. 1186:

Committee to Audit and Control the Contingent Expenses of the Senate, p. 1461.

Agreed to, p. 3028.

Hearings—Senate Committee on Military Affairs on S. Res. 107.

H. R. 3030—Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1943, and prior fiscal years, to provide supplemental appropriations for the fiscal year ending June 30, 1944, and for other purposes.

Mr. Cannon of Missouri; Committee on Appropriations:

House Report No. 577, p. 6343, 6372.

Passed House amended, p. 6420-6450.

Senate Report No. 3861, p. 7106.

Debated, p. 7169, 7174.

Passed Senate amended, p. 7181.

Conference—House Report No. 675, p. 7310.

Agreed to, p. 7358-7362, 7363-7382, 7342.

Second Conference—House Report No. 685, p. 7342-7345, 7406, 7479.

Agreed to, p. 7485-7490, 7446.

Approved (Public Law No. 140), p. 7550.

Hearings—House and Senate Committees on Appropriations on H. R. 3030.

Seventy-eighth Congress:
First session, Jan. 6-Dec. 21,
1943 (page references are to
Vol. 89, Cong. Rec.).

H. R. 3672—To amend the Trading with the Enemy Act, as amended, and for other purposes.

Mr. Gearhart; Committee on Interstate and Foreign Commerce, p. 9557.

1. "Enemy Private Property", article by Edwin M. Borchart, p. A36.

Enemy owned trade marks in Great Britain. Trade Mark Reporter, Vol. 32, p. 119-121, November 1942.

Regulations on alien property. California State Bar Journal, Vol. 17, p. 107-108, March-April 1942.

Vesting orders under the First War Powers Act, 1941. American Journal of International Law, Vol. 35, p. 460-465, July 1942.

1. Estimate of personnel requirements for Office of Alien Property Custodian, p. 7618, 7522, 8107, 8185.

2. Disposal of property held by Alien Property Custodian, p. 9626, A4948.

3. Location of an Alien Property Custodian Office in Portland, Oregon, p. A5336.

4. Seizure of patents, p. 677.

The Alien Property Custodian, Wisconsin State Bar Association Bulletin, Vol. 16, p. 12-18, February 1943.

Allen Property Custodian—Powers and Duties, TIME News, Vol. 23, p. 1-29, December 1943.

Confiscation of the Property of Technical Enemies, Yale Law Journal, Vol. 52, p. 730-770, September 1943.

Enemy Interests in Estates and Trusts and Other Court or Administrative Actions or Proceedings, Journal of the Bar Association of the District of Columbia, Vol. 10, 507-518, November 1943.

Enemy Under the Trading with the Enemy Act and Some Problems of International Law, Michigan Law Review, Vol. 42, p. 383-408, December 1943.

Foreign Funds and Property Control—the Power and Duties of the Alien Property Custodian, George Washington Law Review, Vol. 11, p. 357-366, April 1943.

Presidential Memo, Feb. 12, 1942—section 3 (a) and 5 (b), delegation of powers to Secretary of the Treasury, 7 F. R. 1409.

E. O. 9005 Mar. 11, 1942 establishment of Office of Alien Property Custodian in Office of Emergency Management, powers and duties, 7 F. R. 1971, see also E. O. 9193, 9567, 9788.

E. O. 9012, section 5, Mar. 18, 1942 cooperation with Director of War Relocation authorized, 7 F. R. 2185.

E. O. 9142—Apr. 21, 1942 transfer of Alien Property Custodian powers from Attorney General, 7 F. R. 2985.

E. O. 9193—July 6, 1942 Office of Alien Property Custodian in Office of Emergency Management, powers and duties, 7 F. R. 5205; see also E. O. 9005, 9567, 9788.

E. O. 9325—Apr. 7, 1943 expenses of Office payment from funds in custody of Alien Property Custodian, 8 F. R. 4682.

Ex Parte Kumeko Kaicato, Nov. 9, 1942, 317 U. S. 60

Petitioner, a non-citizen of the United States but resident thereof, brought this suit against others for services, etc. Motion to abate case was allowed on grounds that petitioner had become an enemy alien under Trading with the Enemy Act. Section 2, of the Trading with the Enemy Act, defines an enemy as those residing within an enemy country or unless a citizen of enemy nation, wherever residing as the President may include. Since the President has not made any declaration as to resident aliens the Act does not bar petitioner suit. Lower court reversed.

Declaration of War with Japan, Stat. 307). Declaration 5, 1942 (56 Stat. 307). Imanai, June 5, 1942 (56 :

DECLARATION OF WAR WITH JAPAN, 1942

Storn v. Newton, Feb. 5, 1943, 39 N. Y. S. 2nd 593

Plaintiff brought this action against defendant to recover possession of certain securities held in the account of a French Company. The Alien Property Custodian applied to intervene contending that he had issued a vesting order vesting the securities.

The court allowed the intervention, saying that where the Alien Property Custodian had issued an order vesting in himself the securities he was entitled to intervene.

The fact that securities were plaintiff's property and being held in name of French Company as nominee did not prevent seizure by Alien Property Custodian.

Where the Alien Property Custodian seizes only the right, title, and interest of an enemy national a question is presented as to the extent of that interest, but where the Alien Property Custodian vests the particular property, the Alien Property Custodian takes the entire right, title, and interest, regardless of the quantum owned by enemy national.

It was for Alien Property Custodian to determine whether interests of United States would be effectively served by vesting of enemy property, and validity of that determination, or validity on any other basis of vesting order was not for Supreme Court to review.

Unconditional Surrender 1943 (Treaties and Internat. 1604).

Seventy-eighth Congress—Con.
First session, Jan. 6—Dec. 21,
1943—Continued

Functions of the Estate and Trust Section of the Alien Property Custodian's Office, California State Bar Journal, Vol. 18, p. 39-41, January-February 1943.

Legislation on Treatment of Enemy Property, American Journal of International Law, Vol. 37, p. 611-630, October 1943.

Nationalization of Enemy (Patents), American Journal of International Law, Vol. 37, p. 92-97, January 1943.

New Concepts of Enemy in the Trading with the Enemy Act, Saint Johns Law Review, Vol. 18, p. 56-61, November 1943.

Powers and Duties of the Alien Property Custodian, Title News, Vol. 23, p. 1-20, December 1943.

Recent Innovations in Legal and Regulatory Concepts as to the Alien and His Property, American Journal of International Law, Vol. 37, p. 58-73, January 1943.

Vesting Powers of the Alien Property Custodian, Cornell Quarterly, Vol. 28, p. 245-260, March 1943.

War Measures, the Alien Property Custodian and Patents, Journal of the Patent Office Society, Vol. 25, p. 692-728, October 1943.

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Stern v. Newton—Continued

The vesting order of Alien Property Custodian, vesting in himself securities in name of enemy national didn't determine whether plaintiff or enemy was entitled to securities, but it did give Alien Property Custodian right to immediate possession.

Draeger Shipping Co., Inc., et al. v. Crowley, Alien Property Custodian, Feb. 13, 1943, 49 Fed. Supp. 215

A case wherein the Draeger Shipping Company and Frederick Draeger, brought this suit under section 9 of the Act against the Alien Property Custodian for the return of their property. On plaintiff's motion for an order directing defendant to retain in his custody until final judgment plaintiff's property, and directing defendant to permit plaintiff corporation to carry on its business and individual plaintiff to act as its president under the supervision of the defendant, and on the defendant's motion to dismiss complaint. This case was tried and decided in 1943 in District Court of New York.

The plaintiff Draeger had been a citizen of the United States since 1898. He was not an "enemy," "ally of enemy" or a "national" of any foreign or enemy country within the meaning of the Act. The Custodian, acting under the Act, had taken the plaintiff's property and stock, and had elected another president in his place and had proceeded to liquidate the company. The order vesting in the Alien Property Custodian the stock of the corporation in Draeger's name alleges that he holds it for the benefit of an organization in Germany. Of course, this the plaintiff denies. The defendant contends further that the court is without jurisdiction and that section 9 (a) of the Act, as amended, applies only to seizures of property of enemies or allies of enemies under section 7 (c) of the Act and not to action taken with respect to property of a foreign "national" under section 5 (b) of the Act, as amended by the First War Powers Act 1941.

Where title 8 of the First War Powers Act by its language amended only "The first sentence of subdivision (b) of section 5 of the Act", it would be assumed that Congress intended that all provisions of the Act should be held applicable to such amendment as far as it consistently can be done. Section 9 (a) of the Act as amended authorizing a return of property seized under the Act to any person not an enemy or an ally of an enemy claiming title in property would apply to property taken by Alien Property Custodian under section 5 (b) of the Act as amended by First

Seventy-eighth Congress—Con.
First session, Jan. 6-Dec. 21,
1943—Continued

Second session, Jan. 10-Dec. 19,
1944 (Page references are to
Vol. 90, Cong. Rec.)

- S. 1928—To amend the Trading with the Enemy Act, as amended.
Mr. McCarran; Committee on the Judiciary, p. 4569.
- S. 2038—To amend the Trading with the Enemy Act, as amended, and for other purposes.
Mr. Glass; Committee on the Judiciary, p. 6593.
- H. Res. 631—Requesting information from the Alien Property Custodian as to ownership and control of J. M. Lehmann Company, Inc.
Mr. Deckstein; Committee on the Judiciary, p. 7481.
- H. R. 4840—To amend an act to authorize administrative returns and payment of debt claims.
Mr. Sumner of Texas; House Committee on the Judiciary, p. 4776.
- Hearings—House Committee on the Judiciary on H. R. 4840.
- H. R. 5118—To amend the Trading with the Enemy Act, as amended, and for other purposes.
Mr. Satterfield; Committee on the Judiciary, p. 6680.
- H. R. 5587—Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1944, and for prior fiscal years and to provide supplemental appropriations for the fiscal years ending June 30, 1945 and June 30, 1946, and for other purposes.
Mr. Cannon of Missouri; Committee on Appropriations:
House Report No. 2023, p. 8950.
Debated, p. 8914-8948, 8903-8909, 9064-9078.
Passed House amended, p. 9078.
Senate Report No. 1384, p. 9448.
Debated, p. 9483, 9501-9507, 9507-9516.
Passed Senate amended, p. 9516.
Conference—House Report No. 2087, p. 9608.
Agreed to, p. 9608-9610, 9610-9617, 9630-9632, 9633.
Approved (Public Law No. 529), p. 9806.
- Hearings—House and Senate Committees on Appropriations on H. R. 5587.

1. Sale of patents, p. 7292, A1563, A3719.
2. Annual Report of Alien Property Custodian (House Doc. 417), p. 1627, 1632, 7855.
3. Personnel estimates for office of, 3672, 3727, 5082.
4. Proposed amendment to First War Powers Act, p. 4775.
- Coordination of Allied Enemy Property Department, Journal of the Society of Comparative Legislation (3d Series), Vol. 26, p. 51-53, November 1944.
- Power and Policies of the Alien Property Custodian Relating to Patents, George Washington Law Review, Vol. 12, p. 330-345, April 1944.
- Seizure of Property of Enemy Aliens, Fortnightly Law Journal, Vol. 13, p. 312-314, May 15, 1944.

- E. O. 9423—Feb. 16, 1944 cooperation with Director of War Relocation Authority (see E. O. 9102, section 5) 9 F. R. 1908.

Draeger Shipping Co., Inc., v. Crowley—Continued
War Powers Act relating to taking of property of a foreign "national", as against contention that section 9 (a) applied only to seizures of property of enemies or allies of enemies under section 7 (c) of the Act. The plaintiff's motion to retain property pending determination of the litigation granted. Defendant's motion to dismiss denied.

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- S. 1297—To promote the progress of science and the useful arts, to secure the national defense, to advance the national health and welfare, and for other purposes.
Mr. Kilgore, Mr. Johnson of Colorado; Committee on Military Affairs, p. 7038.
Hearings—Senate Committee on Military Affairs on S. 1297.
S. 1322—To amend the Trading with the Enemy Act, as amended, and for other purposes.
Mr. McCarran; Committee on the Judiciary, p. 8004.
Hearings—Senate Committee on the Judiciary on S. 1322. L. C. call no. JX 5313 U6 A5 1946.
H. Res. 133—Requesting information from the Alien Property Custodian as to ownership and control of J. M. Lehmann Company, Inc.
Mr. Deckstein; Committee on the Judiciary, p. 1080.
H. Res. 419—To authorize the Committee on Interstate and Foreign Commerce to conduct a study with respect to the holding and disposition of alien property.
Mr. Beckworth; Committee on Rules, p. 11078.
H. R. 2111—To extend temporarily the time for filing applications for letters, patents, and for other purposes.
Mr. Boykin; Committee on Patents, p. 1043.
Hearings—House Committee on Patents on H. R. 2111.
H. R. 3368—Making appropriations for war agencies for the fiscal year ending June 30, 1946, and for other purposes.
Mr. Cannon of Missouri; Committee on Appropriations:
House Report No. 653, p. 5450, 5463.
Debated, p. 5732-5750, 5793-5799, 5799-5831.
Passed House, p. 5833.
Senate Report No. 380, p. 6322.
Debated, p. 6724-6739, 6803-6823, 6865-6893, 6895-6906, 6922-6929, 6991-7006, 7060-7068, 7057-7062, 7064-7068.
Passed Senate amended, p. 7068.
Conference—House Report No. 880, p. 7404, 7419, 7474-7494, 7452-7463, 7464.
2nd Conference—House Report No. 913, p. 7519.
Agreed to, p. 7519-7525, 7525-7534, 7509, 7513.
Approved (Public Law No. 156), p. 8321.
Hearings—House and Senate Committees on Appropriations on H. R. 3368.
H. R. 3371—To amend the Trading with the Enemy Act, as amended, and for other purposes.
Mr. Gearhart; Committee on Interstate and Foreign Commerce, p. 5528.

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1. Disposition of Alien Enemy Property, p. 5623, A2722, A3376, A5026.
 2. "Postwar Problems for Treatment of Enemy Property", by Representative Gearhart, p. A3381.
 3. Letter from Secretary Byrnes to Representative Beckworth on, A5032.
 4. "Practical Democracy", editorial from New York Times, p. A5327.
 5. Estimates of personnel requirements for, p. 1994, 2072, 8335, 8574, 8583.
 6. Nazi films, release of, p. A2968.
 7. Annual Report of Alien Property Custodian, p. 4778, 4817.
 8. Estimate of appropriations (Senate Doc. 126), p. 11856.
 9. Hugo Stinnes Corporation, report of June 1944, p. A3337.
 10. Policy of Alien Property Custodian, p. 11358.
 11. Remarks on Trading with the Enemy Act, p. 5683, 5684, 11358, A3376.
- ~~Enemy Property—a Symposium, Law and Contemporary Problems, Vol. 11, p. 1-201, Winter-Spring 1946.~~
Foreign Funds Control and the Alien Property Custodian, Cornell Law Quarterly, Vol. 31, p. 1-80, September, 1945.

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- E. O. 9567—June 8, 1945 Office of Alien Property Custodian in Office for Emergency Management, powers and duties, 10 F. R. 6917, see also E. O. 9095, 9193.
E. O. 9789—Oct. 14, 1946 Transfer of pertinent powers to Philippine Alien Property Administrator 11 F. R. 11983, see also E. O. 8818 and 10254.

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United States v. Borax Consol., Limited, et al., July 27, 1945, 62 Fed. Supp. 220

This action under the Sherman Antitrust Act by the United States of America against the Borax Consolidated, Ltd., and others charging defendants with monopoly and conspiracy and for dissolution of alleged combine and other relief. Alien Property Office had vested one of the alleged co-conspirators in 1942. On defendant's motion to dismiss, to separately state claims, to strike out parts of complaint, to make more certain or for bill of particulars, and on plaintiff's motion to strike certain affidavits.

In this case the important thing to bring out is that the court said that the Alien Property Custodian holds full and complete title to enemy property on behalf of the United States, without any beneficial interest remaining in the former owner, and he may deal with such property, including the selling of it, in any manner appropriate to the interests of the United States.

Markham, Alien Property Custodian, v. Cobell, Dec. 10, 1945, 326 U. S. 404

Respondent brought this suit against the Alien Property Custodian and Treasurer of the United States to recover, from the assets of an Italian, a debt for legal services. Motion to dismiss on ground that 9 (e) barred any debt not due and owing October 1917, or applications made prior to 1928, date of War Claims Act. Court maintained that Trading with the Enemy Act became effective at outbreak of World War II, and that 9 (e) relates to claims of World War I; 9 (e) is not applicable to this type of suit under 9 (a).

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Unconditional Surrender (59 Stat. 1321).
Unconditional Surrender (59 Stat. 867).
Unconditional Surrender (Stat. 378).

Seventy-ninth Congress—Continued.
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- S. 2039—To amend section 32 (a) of the Trading with the Enemy Act of October 6, 1917, as amended. Mr. Mead; Committee on the Judiciary, p. 3262. Hearings—Senate Committee on the Judiciary on S. 2039.
- S. 2101—To amend the Trading with the Enemy Act as amended, to permit the shipping of relief supplies. Mr. Bridges; Committee on the Judiciary, p. 4077: Senate Report No. 1262, p. 4174. Passed Senate, amended, p. 4208. Passed House, p. 4404. Approved (Public Law No. 382), p. 5188.
- S. 2330—To provide for the transfer of certain functions under the Trading with the Enemy Act, as amended, from the Treasury Department to the Department of Justice, and for other purposes. Mr. Bridges and Mr. Eastland; Committee on the Judiciary, p. 6773.
- S. 2345—To provide for the retention by the United States Government or its agencies or instrumentalities of real and person property within the Philippines now owned or later acquired and for the administration of the Trading with the Enemy Act of October 6, 1917, as amended, in the Philippines, subsequent to independence. Mr. Tydings; Committee on Territories and Insular Affairs, p. 7039: Senate Report No. 1578, p. 7265. Passed Senate amended, p. 8107-8110. Passed House (in lieu of H. R. 6801), p. 8192. Approved (Public Law No. 485), p. 8347.
- S. 2378—To amend the First War Powers Act, 1941. Mr. McCarran; Committee on the Judiciary, p. 7803: Senate Report No. 1889, p. 10115. Debated, p. 10367. Indefinitely postponed—H. R. 6890 passed in lieu, p. 10371. Hearings—Senate Committee on the Judiciary.
- H. R. 5069—To amend the First War Powers Act. Mr. Sumners of Texas; House Committee on the Judiciary, p. 12491. Hearings—House Committee on the Judiciary on H. R. 5069.
- H. R. 5223—To extend temporarily the time for filing applications for patents, for taking action in the United States Patent Office with respect thereto, for preventing proof of acts abroad with respect to the making of an invention, and for other purposes. Mr. Boykin; Committee on Patents, p. 313: House Report No. 1498, p. 490. Passed House, p. 1432. Senate Report No. 1502, p. 6886. Passed Senate amended, p. 9223. Conference Report—House Report No. 2696, agreed to in both Houses, p. 10477, 10525. Approved (Public Law No. 690), p. 10789.

1. Disposition of certain property, p. 10217.
2. Annual Report of Alien Property Custodian, p. 7006, 7037.
3. Shipment of relief supplies, p. A2597.
- Duties of Citizens Concerning Property of Alien Enemies, Nevada State Bar Journal 11:14-15, January 1946.
- Enemy Business Enterprises and the Alien Property Custodian, Fordham Law Review, Vol. 15, p. 222-247 and Vol. 16, p. 55-85, November 1946 and March 1947.
- Judicial Review of Alien Property Control, Yale Law Journal, Vol. 55, p. 836-842, June 1946.
- Representational Jurisdiction of the Alien Property Custodian, Fordham Law Review, Vol. 17, p. 82-91, March 1948.
- Shall Enemy Property Be Returned?, American Political Science Review, Vol. 40, p. 101-112, February, 1946.
- Treatment of Enemy Property, Georgetown Law Journal, Vol. 34, p. 389-406, May 1946.

- E. O. 9725—May 16, 1946 Alien Property Custodian to administer sections 20 and 82—return of property, 11 F. R. 5381.
- E. O. 9742—June 25, 1946 cooperation with Director of War Relocation Authority 11 F. R. 7125 see also E. O. 9423 and 9102, section 5.
- E. O. 9747—July 3, 1946 continuation of functions in Philippines after July 4, 1946, 11 F. R. 7518.
- E. O. 9760—July 23, 1946 restriction on authority over diplomatic and consular property of Germany and Japan, 11 F. R. 7999.
- E. O. 9788—Oct. 14, 1946 Office of Alien Property Custodian in office of Emergency Management terminated, 11 F. R. 11961, see also E. O. 9096, 9193, 9567.

Central Hanover Bank and Trust Co. v. Markham, Alien Property Custodian, et al. Oct. 11, 1946, 66 Fed. Supp. 829

Action by the Trust Company to recover stock and dividends vested by Alien Property Custodian, as successor trustee. Cross-motion for summary judgment. The Plaintiff does not dispute the right of Alien Property Custodian to vest or seize the interest of the life beneficiary, but does contend as successor in title to the interest of life beneficiary and the remainderman that Alien Property Custodian does not become entitled to possession of the corpus of the trust.

The court held that the Alien Property Custodian was entitled to possession and dividends where beneficiaries and remainderman, of a trust agreement, were residents and citizens of Germany; notwithstanding a New York statute prohibiting assignment of a trust interest.

When he so takes corpus of a trust he may handle trust property as though he were absolute owner, though he is not required to do anything but preserve it (section 12, as amended).

In Re: Yokohama Specie Bank, Ltd., Nov. 12, 1946, 66 N. Y. S. 2d 289

This is an action by the Superintendent of Banks who is making an application for an order authorizing him to pay to the Alien Property Custodian certain funds which he holds as legator of the New York agency of the Yokohama Specie Bank. Bondholders who claim to be beneficiaries of a trust of the funds in question opposed the application. The United States supports the application. The court held that the Alien Property Custodian had authority to take possession of what he determines to be property of enemy nationals and his determination is conclusive. The fact that the fighting has ceased does not affect the statutory power of the Alien Property Custodian on the constitutional validity of the statutes which grant those powers.

This application by the Superintendent authorizes him to pay over to the Alien Property Custodian certain funds which could not be opposed by bondholders on the ground that the funds constituted trust funds in their favor and that the finding and determination of the Alien Property Custodian was conclusive and should not be determined by the Supreme Court. Determination by the Alien Property Custodian that these funds represent obligations owed by the bank to obligators but did not constitute trust funds in favor of bondholders was conclusive upon bondholders. Notwithstanding bondholder's actions against the Superintendent to determine their interest prior to turnover directive.

A determination by the Alien Property Custodian that property is property of an enemy country or national would be equally effective whether or not it appeared in vesting orders or turnover directives, since statute does not specify any particular form that the

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- S. J. Res. 138—To provide for the return of Italian property in the United States, and for other purposes.
- Mr. Vandenberg; Committee on Foreign Relations: Senate Report No. 300, p. 7685. Passed Senate, p. 8247. House Report No. 1009, p. 9462. Debated, p. 10251. Passed House, p. 10258. Approved (Public Law No. 370), p. 10567.
- Hearings—House Committee on Interstate and Foreign Commerce on S. J. Res. 138.
- S. 989—To amend the Trading with the Enemy Act so as to permit certain aid to civilian recovery in occupied zones.
- Mr. Langer and Mr. Chavez; Committee on Civil Service, p. 2687.
- Hearings—Senate Committee on Civil Service on S. 989. L. C. call no. HE 6331 1947 A53.
- H. Res. 45—To authorize the Committee on Interstate and Foreign Commerce to conduct a study with respect to the holding and disposition of alien property.
- Mr. Beckworth, Committee on Rules, p. 49.
- H. Res. 209—Creating a select committee to make an investigation with respect to alien property, private war losses, foreign loans, and related matters.
- Mr. Gearhart; Committee on Rules, p. 5228.
- H. R. 873—To create an Enemy Property Commission, to provide for the disposal of certain enemy property, and for other purposes.
- Mr. Beckworth; Committee on Interstate and Foreign Commerce, p. 306.
- Hearings—House Committee on Interstate and Foreign Commerce on H. R. 873, 1823, 1000, 2823, etc.
- H. R. 1000—Creating a commission to examine and render final decisions on all claims by American nationals who were members of the Armed Forces of the United States and who were prisoners of war of Germany, Italy or Japan, for payment of its awards, and for other purposes.
- Mr. Van Zandt; Committee on Foreign Affairs and Interstate and Foreign Commerce, p. 330, 2417, 2423.
- Hearings—House Committee on Interstate and Foreign Commerce on H. R. 873, 1823, 1000, 2823, etc.
- H. R. 1823—To create an Enemy Property Commission, to provide for the disposal of certain enemy property and for other purposes.
- Mr. Hinshaw; Committee on Interstate and Foreign Commerce, p. 904.

1. Analysis of debt claims filed with Alien Property Custodian, p. A3608.
 2. Disposition of alien property, p. A2289.
 3. Annual Report of Alien Property Custodian (House Doc. 365), p. 10698, 10769.
- The Alien Property Custodian and Conclusive Determinations of Survivorship, Georgetown Law Journal, Vol. 35, p. 262-271 (January 1947).
- Enlarged Authority of Alien Property Custodian to Seize Property of Friendly Allens Under Trading with the Enemy Act, Yale Law Journal, Vol. 56, p. 1068-1076, June 1947.
- Recovery by Friendly Alien of Property Seized under the Trading with the Enemy Act, Virginia Law Review, Vol. 33, p. 366-368, May 1947.
- Remedy Available to Alien Friend Where Property Has Been Vested by Alien Property Custodian, Columbia Law Review, Vol. 47, p. 1052-1061, September 1947.

- E. O. 9818—Jan. 7, 1947 establishment of Philippine Alien Property Custodian in Office of Emergency Management, 12 F. R. 133, see also E. O. 9789 and 10254.

Drewry v. Onassis, Mar. 31, 1947, 69 N. Y. S. 2nd 850

The plaintiff is a French corporation. A previous action brought by it against this defendant was dismissed by order of the court. The basis of that dismissal was that under the provisions of the Act the plaintiff was an enemy and therefore not entitled to prosecute an action in United States courts. That was in 1943 when France was occupied by the German armies. This suit was instituted in 1946 and France was no longer dominated by the German military authority and was no longer an enemy within the meaning of the Act. The defendant argued that the plaintiff continued to be an enemy until the war had officially come to an end. The court held that at the time of this action, France was freed from the German forces and that such a corporation was not barred from maintaining the action as an enemy, and further that a license from the Treasury Department was not a condition precedent to maintenance of this action even though a license would be necessary before any judgment obtained by the plaintiff could be enforced.

Clark v. Allen, June 9, 1947, 351 U. S. 503

This is a suit by the United States against the executor under the will and the California heirs-at-law for determination that they had no interest in the estate of Alvina Wagner, a resident of California, who had died and left her property by will to four relatives who are nationals and residents of Germany. Six heirs-at-law residents of California filed a petition for the determination of heirship claiming that the German nationals were ineligible as legatees under California law. The Alien Property Custodian had vested all right, title, and interest, of the German nationals in the estate of the deceased. The court held that the provisions of the Treaty of 1923 with Germany prevail over any conflicting provisions of California law unless the provisions of the treaty have been abrogated. They held further that the treaty had not been abrogated though the right to sell and withdraw the proceeds may have been abrogated and that the Federal Government had discretionary powers to vest the property in itself. That the outbreak of war does not necessarily suspend or abrogate treaty provisions. And further that the Trading with the Enemy Act as amended by the First War Powers Act is not incompatible with the right of inheritance of realty granted German aliens under the treaty.

The provisions of the treaty did not cover personality located in this country which an American citizen undertakes to leave to German nationals, but it does

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- S. 2124—To amend the Trading with the Enemy Act, as amended, so as to permit American citizens and charitable, religious, and other nonprofit organizations to make donations for use in the repair of war damage in any area of Germany occupied by or under the control of the United States. Mr. Langer and Mr. Eastland; Committee on the Judiciary, p. 944.
- S. 2431—To amend the Trading with the Enemy Act. Mr. Wiley; Committee on the Judiciary, p. 4007.
- S. 2764—To amend the Trading with the Enemy Act. Mr. Taft; Committee on the Judiciary, p. 6551; Senate Report No. 1619, p. 8075. Passed Senate amended, p. 8722.
- H. R. 4909—To amend section 32 of the Trading with the Enemy Act. Mr. Buck; Committee on Interstate and Foreign Commerce, p. 117.
- H. R. 5188—To amend section 32 of the Trading with the Enemy Act. Mr. Leonard W. Hall; Committee on Interstate and Foreign Commerce, p. 716.
- H. R. 5200—To amend section 32 of the Trading with the Enemy Act. Mr. Wolverton; Committee on Interstate and Foreign Commerce, p. 717.
- H. R. 5607—Making appropriations for the Departments of State, Justice, Commerce, and the Judiciary for the fiscal year ending June 30, 1949, and for other purposes. Mr. Stefan; Committee on Appropriations: House Report No. 1433, p. 1873, 1912. Debated, p. 2062, 2143, 2226. Passed House amended, p. 2251. Senate Report No. 1196, p. 4804. Passed Senate amended, p. 4823. Conference—House Report No. 2068, p. 6827. Agreed to, p. 6827, 6811, 6812, 6830, 6835. Approved (Public Law No. 597), p. 7980.
- Hearings—House and Senate Committees on Appropriations on H. R. 5607.
- H. R. 5880—To amend Section 32 (a) (2) of the Trading with the Enemy Act. Mr. Wolverton; Committee on Interstate and Foreign Commerce, p. 2065.
- H. R. 5960—To amend section 32 (a) (2) of the Trading with the Enemy Act. Mr. Wolverton; Committee on Interstate and Foreign Commerce, p. 3343; House Report No. 1842, p. 1566. Stricken from calendar, p. 7378.

- 1. Property returned to owners, p. A300, A1378.
- 2. List of larger debt and title claims filed, p. A1447.
- 3. Remarks in House on property held by Alien Property Custodian, p. 551, 2243, 8722, 8757, 9091.
- Payment of American Creditors from Vested Assets, Federal Bar Journal, Vol. 9, p. 233-247, April 1948.
- Policy and Practice of the United States in the Treatment of Enemy Private Property, Virginia Law Review, Vol. 34, p. 928-943, November 1948.
- Removal of United States Control over Foreign Owned Property, Federal Bar Journal, Vol. 10, p. 3-82, October 1948.
- Trading with the Enemy Act—Vesting Power of the Alien Property Custodian, Pittsburgh Law Review, Vol. 9, p. 228-236, March 1948.

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Kaku Nagano v. McGrath—Continued
husband remaining in this country—she was entitled under the Act and that the District Court who had dismissed her complaint that that decree of the lower court in granting motion to dismiss should be set aside and the case remanded with instructions.

Clark v. Manufacturer's Trust Company, Aug. 5, 1948, 169 F. 2d 938

Petition by Attorney General, under section 17, against Trust Company to compel bank to pay over to him a debt alleged to be owed by an alien enemy. A vesting order had been issued and also a turnover directive; the bank had refused to comply. Bank contended that the alien enemy owed it monies and contended that it had a right to apply depositor's balance against depositor's debt as a possessory lien within section 8, of the Act. District Court order respondent to pay over the money.

The respondent conceded that a debtor must pay to the Alien Property Custodian an acknowledged debt regardless of any controversy as to who is the creditor. *American Exchange National Bank v. Garvan*, 2 dlr, 273 F. 43 affirmed *sub nom. Simon v. American Exchange National Bank*, 260 U. S. 706, 43 S. Ct. 165. But they contend that when the existence of a debt is denied, and it is required to be paid before judicial determination is in effect by Alien Property Custodian, ex parte determination—a creation of a debt. (See *D. C. S. D. N. Y., 298 F. 520, 524, 298 F. 525, and 72 F. Supp. 497.*)

Section 17 of Trading with the Enemy Act gives court jurisdiction in a summary proceeding to compel delivery of enemy owned property. A debtor must pay to Alien Property Custodian an acknowledged debt owed to an alien enemy, regardless of any controversy as to who is the creditor. A set-off is not allowable—the admitted indebtedness is to be paid over to Alien Property Custodian, and bank is required to resort to provisions of the act.

The bank alleged set-off didn't give it a possessory lien against Alien Property Custodian.

Koehler et al. v. Clark, Attorney General, et al. Nov. 15, 1948, 170 F. 2d 779

This is an action to establish interest in property which had been vested in the Alien Property Custodian by Kurt H. Koehler and William L. Brewster, as executors of the last will and testament and codicil thereto of Bertha Koehler, deceased, and as trustees under the last will and testament and codicil thereto of Bertha Koehler, deceased, and Kurt H. Koehler in his individual capacity against Tom C. Clark, and others. From a judgment of dismissal, the plaintiffs appeal.

The defendant Clark contends that this is a suit against the United States, and inasmuch as the sovereign has not consented to be made a codefendant, no foundation in law existed for this suit. Specifically, the plaintiffs in this case did not have a right, title or

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- H. R. 6116—To amend the Trading with the Enemy Act.
Mr. Wolverton: Committee on Interstate and Foreign Commerce, p. 4079:
House Report No. 1843, p. 5168.
Passed House amended, p. 5994.
Senate Report No. 1532, p. 7221.
Passed Senate amended, p. 8718.
House concurs, p. 9223.
Approved (Public Law No. 874), p. 9363.
- H. R. 6817—To amend the Trading with the Enemy Act.
Mr. Wolverton: Committee on Interstate and Foreign Commerce, p. 7219.

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- S. 603—To amend the Trading with the Enemy Act.
Mr. Taft and Mr. McGrath: Committee on the Judiciary, p. 487:
Senate Report No. 784, p. 10049.
Passed Senate amended, p. 11057.
(2nd Session—Vol. 96, Cong. Record).
House Report No. 2338, p. 9223.
Objected to, p. 10412, 11225.
- Hearings—House Committee on Interstate and Foreign Commerce on S. 603.
- S. 729—To amend the Trading with the Enemy Act so as to extend the time within which claims may be filed for return of any property or interest acquired by the United States on or after December 18, 1941.
Mr. Butler: Committee on the Judiciary, p. 671:
Senate Report No. 242, p. 4228.
Passed Senate amended, p. 4275.
- S. 1017—To amend the Trading with the Enemy Act of 1917, as amended.
Mr. Magnuson: Committee on the Judiciary, p. 1418.

1. Remarks in Senate on S. 603, p. 11057.
2. Remarks in Senate on S. 729, p. 4275.
- Allen Property Custodian May Not Recover Interest From Date of Demanding Payment of Debt Owed Allen, *University of Pennsylvania Law Review*, vol. 97, p. 567-568, March 1949.
- Areas Under the Jurisdiction of the United States, *George Washington Law Review*, vol. 17, p. 301-320, April 1949.
- Enforcement of Seizures of Enemy-Owned Property by the Alien Property Custodian—Remedies, *George Washington Law Review*, Vol. 17, p. 292-298, February 1949.
- Liberal Construction of the Trading with the Enemy Act, *Harvard Law Review*, vol. 62, p. 721-759, March 1949.
- Seizure of Disputed Enemy Claims by the Alien Property Custodian, *Columbia Law Review*, vol. 49, p. 403-408, March 1949.
- The Supreme Court on Trading with the Enemy, *Phi Delta Delta*, Vol. 27, p. 8-9, Jan., 1949.

Kosler et al. v. Clark, Attorney General—Continued

interest to the property vested which would bring him within the purview of Section 9 (a) of the Act. The court had this to say, among other things: The dominant objective of Trading with the Enemy Act is to sequester, under government control the property of alien enemies and their nationals, so that such property may not be employed in the interest of enemy government and against interests of the United States, and to accomplish such objective the Alien Property Custodian can employ summary and drastic procedures under the Act. The court further said that the consequences of an executed vesting order cannot be frustrated by withholding delivery of accused property from custodian. In this particular situation where the mother dies and leaves property to the son, a resident of the United States, as trustee for a daughter in Germany, and a national therefore of Germany, which property is seized or vested by the Alien Property Custodian, that the son and trustee does not have such an interest, right or title in the vested property which would permit him to maintain a suit under 9 (a) of this Act, since his interest, even though he would receive the property eventually, provided the sister and all her heirs were to die, his interest is so remote that the law does not favor contingent remainders.

Clark, Attorney General of the United States, v. Dravo Corporation, Mar. 28, 1949, 83 F. Supp. 123

Attorney General brought this action to compel defendant to pay over to the Alien Property Custodian royalties accruing in account of an enemy national. The Alien Property Custodian had vested the royalties. The amount accumulated in enemy's account was the amount of \$15,000. Defendant secured a general license to pay withholding taxes of this amount—of \$5,000. The defendant paid over to the Alien Property Custodian \$10,000. The Alien Property Custodian demanded the other \$5,000.

By virtue of the General License, the payment to the Bureau of Revenue constituted a defense to plaintiff's claim in this case.

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H. R. 8998—Amending section 34 of the Trading with the Enemy Act of October 6, 1917 (40 Stat. 411) as amended.

Mr. Keogh: Committee on Interstate and Foreign Commerce, p. 9523.

Hearings—House Committee on Interstate and Foreign Commerce on H. R. 8998.

Eighty-second Congress:
First session, Jan. 3-Oct. 20,
1951 (Page references are to
Vol. 97, Cong. Rec.).

S. Res. 72—Authorizing a study of the administration of the Trading with the Enemy Act concerning assets of foreign countries.

Mr. Langer: Committee on the Judiciary, p. 1108.

S. 28—To amend the Trading with the Enemy Act.

Mr. McCarran: Committee on the Judiciary, p. 88; Senate Report No. 59, p. 707.

Passed Senate amended, p. 2232.

S. 172—To amend section 32 of the Trading with the Enemy Act of 1917, as amended, so as to permit the return under such section of property which an alien acquired by gift, devise, bequest, or inheritance, from an American citizen.

Mr. Langer: Committee on the Judiciary, p. 88; Senate Report No. 572, p. 8700.

Objected to, p. 9681, 12942.

(2nd Session—Vol. 98, Daily Cong. Record).
Objected to, p. 480, 9180.

S. 302—To amend section 32 (a) (2) of the Trading with the Enemy Act.

Mr. Green: Committee on the Judiciary, p. 127;

Senate Report No. 506, p. 7764.

Passed Senate, p. 8642.

(2nd Session—Vol. 98, Daily Cong. Record).

House Report No. 1723, 3711.

Passed House amended, p. 8822.

Conference—House Report No. 2003, p. 6167.

Agreed to both Houses, p. 6185, 6237.

Approved (Public Law No. 378), p. 6791.

S. 866—To amend the Trading with the Enemy Act of 1917, as amended.

Mr. Magnuson: Committee on the Judiciary, p. 1188.

S. 873—To amend section 32 of the Trading with the Enemy Act of 1917, as amended, so as to permit the return under such section of property which an alien acquired by gift, trust, annuity, devise, bequest, inheritance, or as beneficiary of any insurance policy from an American citizen or national and to provide that in any present or future conflict similar property be held in trust for such enemy aliens by courts of competent jurisdiction or by an agency of the government appointed by the President subject to the use of the United States for the successful conclusion of hostilities, to be returned to such alien after the end of hostilities under certain conditions set out herein.

Mr. Langer: Committee on the Judiciary, p. 1281.

S. 967—To extend to nations with which the United States engages in armed conflict the provisions of the Trading with the Enemy Act.

Mr. Bricker: Committee on the Judiciary, p. 1419.

1. Confiscation of German property, p. 977, 978, 3638-3640.

2. Halbach—I. G. Farben case, p. 13211, 13352, 13353, 13439.

3. Senator Wiley, statements, p. A6502, A6931.

4. Discrimination against certain individuals, p. 10062.

5. Statements on various bills, p. 1419, 7015, 8642, 9691, 10688, 13409.

6. Investigation of Alien Property Custodian, p. 3653.

7. Administration of Alien Property Custodian, p. 977.

Control of Alien Property in Time of War or National Emergency—Avoidance of Vesting under Trading with the Enemy Act, Cornell Law Quarterly, Vol. 37, p. 110-119, Fall 1951.

~~Confiscation of Alien Enemy Property—Alien Enemy Character or Status Shown in Hawaii, Michigan Law Review, Vol. 49, p. 1241-1244, June 1951.~~

E. O. 10244—May 17, 1951, Property functions of the Secretary of State and the Attorney General concerning intercustodial conflicts.

E. O. 10254—June 15, 1951 transfer of pertinent powers to Philippine Alien Property Administrator, 18 F. R. 5829 (see also E. O. 9789 and 9818).

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