

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

Total war is fought in the field of economics and finance as well as on the field of battle. Economic warfare has gone far beyond simple prohibition against trading with the enemy. In the totalitarian state, property, private or otherwise, with respect to which control can be exercised is an instrument of warfare—and even in times of peace an instrument for the domination of economies of other countries, preliminary to war. The Government of the United States as well as other Governments, has taken vigorous defensive and counter measures. It is not the purpose of this symposium to explore the manifold phases of economic warfare but rather to focus upon those measures which have been taken with respect to property which, with the lack of refinement characteristic of a Foreword, can be called "Enemy Property." These measures have included, necessarily, complication of details and techniques which are perhaps as characteristic of this war as are the technological developments in electronics or aviation. The resulting problems are correspondingly complex. The large number of belligerents, the early successes of our enemies in overrunning numerous countries, the equivocal position of neutrals—all against a background of twentieth-century patterns of transportation, communication and inter-country movement—have added to the complexity and magnitude of the problems. This symposium is published in the hope of exploring and explaining some of those problems.

The symposium opens with a comparative survey by Mr. Domke of the various measures that the western hemisphere nations have adopted in the way of economic and financial controls over property and transactions in an effort to protect themselves against inimical influences.

The second article, by Mr. Reeves, is an exhaustive study, in some 40 pages, of the Freezing Control program of the United States and goes into the background of international financial history, the evolution of the Freezing Control, its objectives, policies, interpretations, applications, and techniques, with special reference to blocked property within the United States.

Tying in with both the foregoing article and those which immediately follow, Mr. Eisner's article, "Administrative Machinery and Steps for the Lawyer," surveys,

as its title indicates, the agencies administering the property controls and contains practical suggestions for the legal practitioner.

While the foregoing articles touch upon the Office of the Alien Property Custodian, the fourth and fifth articles are entirely devoted to this subject; Mr. Myron's article discusses in general the activities of the Custodian, including the types of control exercised over various classes of property, while the Sargeant-Creamer article is devoted exclusively to the highly important problem of enemy patents. The relation between patents and cartels is, of course, obvious and accordingly the patent discussion is followed by Mr. Berman's article on "Cartels and Enemy Property," which gives an insight into the sphere of another agency, the Department of Justice.

One of the more fertile fields of legal uncertainty, of even greater significance during the post-war period than during the period of warfare, is the Conflict of Laws arising from divergent measures taken by and views prevailing in the various countries. The problems to which these divergencies give rise, particularly in the matter of jurisdiction and "situs," are discussed in the seventh article by Mr. Rabel.

The ever-present question of constitutionality involved in the somewhat drastic wartime measures is treated in the eighth article, by Mr. McNulty; this is followed by a very brief three-page comment by Mr. Wechsler who does not entirely agree with Mr. McNulty on a question of remedies available for the return of seized property.

The last three articles discuss various phases of the severity of treatment with which claimants of property may be faced; they touch upon matters which, presumably, will in due course be covered by appropriate legislation. The title of Mr. Sommerich's article, "A Brief Against Confiscation," is indicative of its scope and approach. This article and the following one by Mr. Rubin are in part essays in international law. Of particular interest, in Mr. Rubin's article, is the thesis that, as a practical matter, the enemy owner of private property is probably going to find himself with a claim against his own government rather than in re-possession of his property. The concluding article on "Post-War Prospects for Treatment of Enemy Property," by Mr. Gearhart, author of one of the pending Congressional bills, is indicative of a point of view in Congressional circles—whether it is to be the eventually prevailing view remains to be seen.

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