

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

This symposium does not attempt to debate the merits of the determination to nationalize certain industries in Great Britain; in so far as possible, it deliberately avoids any discussion of the whys and wherefores, pros and cons of this controversial issue. Instead, it proceeds upon the assumption that nationalization, rightly or wrongly, has been undertaken, and examines the methods used to accomplish this objective in the various industries, the problems encountered, and the solutions devised to meet them.

For example, one important question immediately arising is whether to pay any compensation to the former owners of a nationalized industry. If it is decided to do so, a host of other decisions with critical economic, social, and political consequences must be made. How shall individual holdings in the industry be evaluated—by whom and by what standards? What shall be the medium of payment—cash, stocks and bonds of the industry itself, with or without a government guarantee, or bonds or other securities of the government? What shall be the terms, interest rates, redemption periods, of any such securities? Shall these costs be made a charge on the earnings of the nationalized industry, or upon the treasury?

Other financial matters are equally troublesome after nationalization. How shall the industry be financed? By its own earnings, by direct government appropriations or subsidies, by private loans with or without government guarantees? If there are profits, shall they be directly covered into the government treasury and mingled with all other government receipts, or shall they be kept in separate accounts and used for wage increases or capital expenditures in the industry itself, or shall the industry's prices be reduced or its services improved? What sort of accounts should the industry keep and publish, and who shall audit these accounts—the regular government auditors, the industry's auditors, or private independent accountants?

The pricing policies of the nationalized industries are of necessity complex. Must prices be set high enough so that the industry will at least break even, and, if so, what about reserves for depreciation, amortization, wage increases, and capital expenditures? To what extent should government policies in the social areas such as the provision of certain services and products for low income groups force the nationalized industries to operate at losses? What about competition between the nationalized industries and other industries still under private control? Will the absence of any effective competition in certain areas lead to stagnation and other problems of cartel and monopoly growth?

Shall the employees of the nationalized industries be regarded as ordinary government civil servants? To what extent will the nationalized industries bargain collectively with unions and enter into agreements providing for such things as check-offs and closed shops? What about employee training programs? What is the role of the managerial employee in a nationalized industry?

How shall government control be exercised over the operation of those industries? Should management and operations be centralized or decentralized? Should cabinet ministers directly participate in the operation of the industries, and to what extent and in what manner can Parliament control these industries? How can the public and the consumers obtain effective redress for their complaints and grievances? What is the role of the judiciary?

What about the taxation of nationalized industries and to what extent, if at all, do they participate in the tort immunity and other privileges of the sovereign?

Most of these questions are discussed in this symposium, although obviously the final answers are given to few, if any, of them. The fact is apparent that once the decision has been made to nationalize, there are innumerable new difficulties which arise, and nationalization in and of itself does not offer either an easy way out for old problems or a simple solution for the new ones. It will not of itself cure an economically depressed industry, solve manpower problems, dissipate labor unrest, automatically increase production, or provide improved services. At the most, it is only a beginning.

An American lawyer, I think, must be particularly struck by two points. One is the incredibly careful, detailed, thorough, well-conceived and executed workmanship of the statutes which form the basis for nationalization. No doubt there are defects, but certainly one can only have the highest admiration for those who translated the ideas of nationalization into the concrete language of the statutes. Second, to an American, the comparative dearth of litigation over such sweeping and revolutionary legislation is almost incredible. Granting that the absence of our constitutional difficulties is to be expected, I still find remarkable the wide use made of negotiation, arbitration, and all forms of special commissions, in lieu of the regular courts. This is not to say that the British legal profession may not have played an important role in the mechanics of the nationalization program; but certainly the British courts appear to have had little, if any, direct participation in the solution of the fundamental issues involved in this nationalization. Moreover, I am certainly impressed with the relative lack of debate, criticism, and discussion among lawyers in Great Britain, at least as reflected in publications in British legal literature dealing with the nationalization program. I find it hard to imagine our American bar being so silent, so seemingly acquiescent or disinterested, and playing such a subordinate part, if any similar program on such a scale were ever proposed or carried out in this country.

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