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Property Rights in Time of War: Sequestration and Liquidation of Enemy Aliens’ Assets in Western Europe during the First World War

Probably no rule of international law was regarded in 1914 as more firmly established than the rule that private property within the jurisdiction belonging to citizens of the enemy states is inviolable. The rule was not adopted in any sudden burst of humanitarian sentiment, but was the result of an evolution of centuries. It rests upon a sound development in political and legal theory [...] namely, a conviction as to the essential distinction between private property and public property, between enemy-owned private property in one’s own jurisdiction and in enemy territory, and between non-combatants and combatants.¹

Edwin M. Borchard, a professor at Yale Law School, thus opened in 1924 an article criticising the Treaty of Versailles and the victors’ behaviour. His opinion was not isolated among international lawyers,² although it was certainly weaker than it had been before the outbreak of the First World War, since also lawyers, with but few exceptions, «took an impeccably patriotic line in the war».³

The problem raised by Borchard was a crucial one, and not only for international lawyers. The behaviour of the belligerent countries toward citizens of enemy nationality, the way in which they dealt with enemy property during the war and eventually the decision taken with the peace treaties on these issues had important consequences. They marked a crucial shift in the management of property rights in the so-called «civilised» world, a shift supported by the emerging ideology of economic nationalism which took radical forms – sequestration, retaliation, confiscation, liquidation, induced sales – also in the West, where, however, it did not reach the violent and destructive peaks of the Russian and Ottoman Empires.⁴

² Borchard did not change his mind in later years: see his introduction to J. A. Gathings, International Law and American Treatment of Alien Enemy Property, Washington, D.C. 1940. For other international lawyers’ views see footnote 12.
These policies inflicted damages hard to repair on individual rights, the liberal system, the internationalisation of the economy, trust, and all the fundamentals that business activities require to prosper. They were part of a larger and multifaceted economic war made of naval blockade, seizure of goods of the enemy (also at sea), systematic confiscation in occupied territories, blacklisting of enemy companies and firms either in belligerent or neutral countries, and so on. This war, which had somehow begun even before the conflict, aimed at weakening the resistance of the enemy. However, the states that sequestered and liquidated foreign businesses and personal possessions did so also to compensate and reward their citizens for the heavy sacrifices borne during the war.

The impact of sequestration and liquidation extended far beyond the purpose of winning the war. Firstly, they disrupted the practice followed in the past by European countries. Secondly, they constituted a violation of international private law and international conventions as well as a reversal in the attempt to «humanise» warfare. Thirdly, they harshly affected the lives of «individuals of enemy nationality, who [were] not responsible for the war or the manner in which it was conducted». The First World War can thus be regarded as a watershed in the conception and defence of property rights.

The intention in what follows is to develop this hypothesis even further by arguing that the measures adopted and implemented during the war on enemy property as well as the provisions included in the peace treaties on its liquidation, restitution and compensation contributed to accelerating the crisis of the liberal idea and the liberal state as well as the transition from the liberal state to the «vigilant state». The First World War, marked by the increasing interventionist role played by the state in the economy, was also the starting point of the dramatic growth in the state’s power to dispose of individual lives and property that characterised the twentieth century. The crisis of the liberal system was apparent not only in the sequestration and later liquidation/confiscation of private property, but also, and above all, in the idea that enemy nationals could be deemed collectively responsible for the war waged by their countries and had to pay for the damage suffered by the victors and the disruption of their national economies.

The endeavour to eliminate foreign presence and competition thus became part and parcel of the state’s attempt to take control over the economy ignited by the war. Sequestrations and liquidations prepared the ground for policies such as autarchy, forced nationalisation and collectivisation, which become more stringent in the

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5 P. F. Simonson, *Private Property and Rights in Enemy Countries, and Private Rights against Enemy Nationals and Governments under the Peace Treaties with Germany, Austria, Hungary, Bulgaria, and Turkey*, London 1921, IX.


7 D. Gosewinkel, «Histoire et fonctions de la propriété», in: *Revue d’Histoire Moderne et Contempo-
former Russian Empire immediately after the Bolshevik Revolution and in the inter-war period in some of the successor states, where land reforms were undertaken to «nostirify» economies, or for confiscation on racial grounds, as it happened in Nazi Germany and occupied territories during the Second World War.

This article compares the policies of Britain, France and Germany toward enemy property. It begins by analysing the issue of enemy property in international law, and then examines the measures adopted by the various belligerent countries and their implementation. It finally explores the peace settlement and its consequences.

1. Enemy Property and International Law: from Surveillance and Sequestration to Liquidation

At the beginning of the twentieth century, international lawyers considered confiscation «to have become as obsolete as the asportation and enslavement of the enemy’s women and children». The idea that private property was inviolable, which the legal literature presented as «a mark of civilisation», was the outcome of various processes which took place during the nineteenth century: first of all the emergence of the industrial and bourgeois society, and consequently of liberal political systems based on individuals and on the clear distinction between the private and the public sphere. In this new constellation, private law and private international law acquired a central position in both the social and the legal order; then, the growth of international trade and of the conviction that it needed protection in order to prosper. This development gave rise to bilateral commercial treaties whose core was precisely the protection of property rights of the nationals of the contracting parties. Last but not least, the attempts to «humanise» war pursued through the various conventions stipulated in the second half of the century. These conventions, agreed upon by countries with different legal traditions and cultures, sought to reconcile conflicting views of the war: on the one hand, the Anglo-American theory that «war between nations [was] a war between their individual citizens»; on the other, the Continental conviction rooted in Rousseau’s thought according to which war was a confrontation among states and not among individuals, who were enemies only accidentally. One of the
results of this attempt was that private property had to be respected during wartime, while arbitrary plunder, looting and confiscation could no longer be permitted. The Hague Convention of 1899, reaffirmed in 1907, was in this respect unequivocal. Besides other prohibitions such those on pillage, compelling the population to pay taxes, raising tolls, etc., it stated that «Private property [in occupied territory] may not be confiscated». 15

Condemnation of confiscation of enemy-owned property thus became a common feature of both Anglo-American and Continental legal cultures, and it was incorporated in the commercial bilateral treaties which followed the Jay Treaty (1794). Yet it did not become a binding rule, and it was easily disregarded in some of the conflicts or violent changes of regime that occurred in the era between 1789 and 1914. The apparent contradiction between theory and practice was normally settled by resorting to sovereignty. As Chief Justice Marshall clearly stated in a case brought before the US Supreme Court after the British-American War of 1812: «When war breaks out, the question, what shall be done with enemy property, is a question rather of policy than of law.» 16

That policy and sovereignty, and not customs or international law, were the forces which affected the decision-making process on the issue of respecting or not respecting enemy property in nineteenth-century wars is clearly visible in the variety of choices made. Confiscation of enemy property occurred in the American and the French revolutionary wars, in the American Civil War of 1861–1865 17 as well as during revolutions – as in the case of Mexico or the former Russian Empire. It also marked regime changes, such as the unification of Italy. 18 And yet France, which used confiscation during the revolutionary wars, did not take any action against enemy property during the Franco-Prussian War of 1870/1871 (but did decide the expulsion of the Germans living in Paris). Prussia at the time did not retaliate by expelling French or did it take any measure against enemy property. 19 Britain did nothing against Russian property during the Crimean War but used confiscation power in the Anglo-Boer War. 20

18 The reference here is to the expropriation and liquidation of the patrimony of the Catholic Church in 1866.
However, even though policy and sovereignty remained the ultimate criteria upon which policies against enemy aliens and their property rested, the emergence of both international law and «humanitarianism» in the nineteenth century contributed to a shift in language and in the way in which these policies had to be presented, explained, legitimised and enforced.

From this perspective, the novelty introduced by the Great War was primarily one of language. On the one hand, the word «confiscation» almost disappeared from the legal and the political discourse and was substituted by «liquidation», a milder synonym. And yet, confiscation/liquidation became a widespread practice. This change in language dictated by international law discourse was, as I shall seek to demonstrate, an attempt to hide the «divergence between what was actually done and what was believed to be desirable».

2. The War on Enemy Business and Property: the Measures

The policies adopted by the various belligerent countries were determined not only by internal factors (military necessity, number of enemy aliens on the territory, pressure exerted on governments by public opinion, popular reaction). They also depended on the strategies and pacts conceived by and agreed with the allies, and they arose from a response to and a counter-offensive against enemy policies. These policies were closely linked with the other measures adopted against enemy aliens that undermined their personal freedom, liberty of movement and civil rights.

As James Garner wrote in 1918, «The governments of all the belligerent countries very early adopted measures for placing enemy-owned property and enemy business enterprises under the control or supervision of the public authorities», so as to prevent «such property from being used or such business from being conducted in a manner prejudicial to the national defense or for the benefit of the enemy».

Other factors, such as economic competition and economic nationalism, played a major role in boosting the provisions adopted and the way in which they were implemented. The disputes on freedom of trade, freedom of contracts, competition and restraint of trade which had characterised (above all in Britain) the economic debate at the turn of the century came to a halt. Governments and parliaments (the latter in the very few cases in which they continued to operate) were now asked to intervene in order to regulate economic behaviour. United under the banner of economic nationalism, nationalistic press organs and associations, political parties, business elites,
and professional groups called on governments and parliaments to curb foreign competition, to profit from the war in order to «nostrify» the economy, to reduce foreign economic hegemony, to intern enemy aliens and confiscate all their assets.

By the end of September 1914, Britain, France and Germany had already launched their attacks on enemy property. It is difficult to establish which country was responsible for igniting the process. Opinions on the matter differed among coeval observers. In 1921 John W. Scobell Armstrong maintained that it was «initiated by the Allied Powers». Germany, on the contrary, «had obviously nothing to gain and much to lose by such a policy, and was at the outset careful to refrain from any action of the kind». By contrast, French lawyers deemed the German decision of 7 August to declare the rights and actions of persons and bodies of persons residing abroad (no matter what their nationality) inadmissible in a court of law as marking the beginning of this particular kind of economic warfare.

Britain proclaimed on 5 August 1914 (and then again on 12 August and 9 September) that transactions with «subjects of, or resident or carrying on business in, a state for the time being at war with His Majesty» were unlawful. In parallel, on 7 August 1914 Germany took the already-mentioned decision, which according to many violated article 23th of the IV Hague Convention. In both Britain and Germany, in the very first phase of the war, residence, not nationality, was the main criterion used to discriminate. France followed. At the end of September she too started her own economic war, but this time the nationality principle prevailed over residence, and enemy aliens and their businesses became the main targets of the discriminatory provisions.

In an escalation of responses and counteractions, Britain, Germany and France – imitated by almost all the countries which entered the war – enacted a spate of measures which targeted first the property of aliens and foreign enterprises and then those of the citizens or subjects of enemy nationality found on their respective territories. British, French and later Japanese, Italian, but also US or Chinese nationals who happened to live, invest or work in Germany experienced, along many other abuses, seizure of their assets. At the same time, Germans and Austro-Hungarians who lived, invested or worked in an enemy country became the main targets of similar policies.

Nostrification, «to make ours» (from the Latin adjective noster) was the term which designated expropriation and confiscation in successor states after the war.


This article forbade occupants «to declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party». My emphasis.
As a consequence of nineteenth-century or earlier migrations, there were German nationals and ethnic Germans in almost every country at war with the Central Powers. According to the International Labour Office (ILO), in 1910 there were about four million German-born people on the territory of the allied countries and only 145,000 British-, French-, Russian-, and Italian-born people on the territory of the Central Powers (the Ottoman Empire excluded).  

German investments abroad were also very large. According to a quasi-official estimate of the German balance of payments, German portfolio investment at the outbreak of World War I totalled eighteen billion marks, whereas direct German investment abroad was calculated at around eight to ten billion marks. Britain and France had a smaller number of migrants abroad, at least in the territories of the Central Empires, but they had considerable foreign investments, and these of course made retaliation and reprisal possible. No one was willing to assume the responsibility of being the first to violate the law of nations. Retaliation and reprisal thus rapidly became the slogans used to legitimise the policy.

The measures on trading with the enemy and enemy property, their timeline and their implementation show numerous similarities (and few differences) in the behaviour of the warring countries. In particular, a pattern consisting of six different stages can be detected. At the beginning of the conflict, the belligerent countries hastily issued provisions which targeted trade with enemy countries. These provisions affected foreign direct investments, financial transactions, and all businesses with a strong international or supranational orientation such as banks and multinationals. Very soon, however, governments and parliaments began to look inwardly, taking an aggressive stance toward internal enemies, as civilians of enemy nationality, no matter what the magnitude of their business activity. By the end of September 1914, in parallel with the provisions that limited the freedom of enemy aliens, Britain, France and Germany had already targeted enemy properties and enemy businesses, in particular those which belonged to enemy aliens who had been interned in concentration camps. Enemy aliens were thus stripped of their freedom, their civil rights and their business activities. From the beginning of 1915 to
the spring of 1916 an intense legislative activity aimed at making procedures and targets more precise, stringent and harsh. Britain then abandoned its «conservative» attitude toward enemy property by envisaging and allowing its liquidation.\textsuperscript{33} In these three phases, each country built its own policy, trying either to anticipate or counteract the moves of the enemy, and one finds no attempt to coordinate initiatives among allies.

The fourth phase corresponds to the Paris Conference of June 1916, in which the allied governments formally agreed on how to deal with enemy subjects and enemy property for both the war period and the reconstruction.\textsuperscript{34} Liquidation thus became common practice, while the attack on property rights extended to other assets, land above all. Only in 1917 did the Central Empires make limited attempts to coordinate policy. Germans claimed many credits from enemy aliens’ activities in Austria-Hungary and in Bulgaria and were involved in many partnerships with Britons and French. For fear of damaging its own nationals, the German government never applied pressure on its allies to sequester the business activities of enemy aliens.\textsuperscript{35}

The last two phases coincide with the armistice and the peace treaties. After the armistice, the victorious countries, for fear of recovering only a small part of what they deemed appropriate to compensate losses and damages, systematically seized the non-commercial property of enemy subjects: real estate, bank accounts, jewels, personal belongings, etc. The peace treaties opened the last phase, which witnessed massive liquidations, negligible restitutions and ridiculous compensations. Britain, France, and Germany went through all of the phases just outlined, but Germany participated in the last two only passively, suffering the consequences of her defeat.

This pattern becomes more complicated if the activity of courts and judges is taken into account. While governments and armies in occupied territories issued special legislation against enemy aliens under the umbrella of a state of emergency and often without the support of parties and parliaments, tribunals and magistrates resorted to ordinary legislation to deal with enemy property, while enemy aliens were prevented from defending their rights in a court.

\textit{Britain}

The main legislative instruments of British policy against enemy property were the Trading with the Enemy Proclamation of 5 August 1914, the Order in Council of

\textsuperscript{33} Actually, liquidations had already started in the British colonies in at least October 1914.

\textsuperscript{34} Economic Conference of the Allies, \textit{Text of the Paris Economic Pact}, s.l. 1916.

\textsuperscript{35} See Bundesarchiv Berlin-Lichterfelde (hereafter BAB), R901 85392, in particular the letter of the Minister für Handel und Gewerbe of the 22 October 1917. On the negotiations for an economic agreement between Germany and Austria-Hungary see G.-H. Soutou, \textit{L’or et le sang: les buts de guerre économiques de la première guerre mondiale}, Paris 1989, in particular 427ff.
10 August 1914, the Trading with the Enemy Act (TEA) of 18 September 1914, the Trading with the Enemy Amendment Act (TEAA) of 27 November 1914, and the Act of 27 January 1916. By November 1914, the British legislation regulating trade with the enemy, and above all the status of enemy property on British territory, was already in place. The TEA empowered the Board of Trade to nominate an administrator for enemy aliens’ businesses and enterprises provided with extensive prerogatives. The TEAA went further by creating special custodians of enemy property for England and Wales and for Scotland and Ireland.36 At the same time, «[t]he courts were empowered to vest in the custodian any property, real or personal, belonging to or held or managed for or on behalf of any enemy».37 Both the TEA and the TEAA set a complicated machine in motion. All the owners of enemy property had to denounce themselves within a month, while British creditors could ask a court for an order of sequestration and liquidation to gain satisfaction for their claims.

Whilst the first stage in the economic war against the Central European Powers was marked by a series of measures intended to prevent the transmission of supplies and funds to enemy countries and to restrict and control the activities of enemy concerns in the United Kingdom,38 by the end of January 1916 «the outlook of the legislators had changed»:39 with the Amendment Act of 27 January 1916 the controller also obtained the function of a liquidator, while the law gave the Board of Trade the power to wind up any enemy-owned business.40 The stalemate of the war combined with the pressure applied to the parliament and the government by public and popular opinion had produced legislation intended not only to prevent «alien penetration» but also to «put an end to trade activities of persons of enemy nationality in our midst».41

In parallel with the measures adopted by the British government in the UK, Dominions and colonies enacted their own specific and often more aggressive legislation to deal with enemy aliens and enemy property. Australia, Canada, India, Ceylon, and Hong Kong acted by October 1914, New Zealand in August 1915, while South Africa waited until June 1916. At the same time, legislation limiting trade and freedom of movement for enemy aliens started to be issued also in occupied territories such as Egypt, Cameroon, Togoland, and Samoa.42

Germany

On 4 August 1914, the German Parliament issued a law enabling the Federal Council to take economic measures. This law was «the foundation-stone of all the German economic emergency legislation».43 It was immediately followed by the decree of 7 August 1914 excluding «French nationals and establishments domiciled outside the Empire from access to the German courts».44 France considered it the beginning of the economic war between the two countries. German textbooks, however, indicate the Ordinance (Bekanntmachung) of 4 September 1914 as the first economic measure against the enemy.45 The ordinance «empowered the Central State Authorities to place enemy or enemy-controlled undertakings under State supervision».46 Control and supervision were not mandatory until the ordinances of 22 October, 26 November and 22 December 1914, which established compulsory administration for British, French and Russian enterprises.47 These measures were then strengthened by others concerning the sale of property, the export of goods and so on.48

As noted by Matthew Stibbe, «Whereas British imperial policy was proactive, the German approach towards enemy aliens, at least in the initial stages of the war, was largely reactive.»49 The main concern of the government was not to cause excessive harm to German economic interests abroad, which were far more numerous and important than enemy interests, investments and activities in Germany. At the same time, Germany wanted «to preserve the [enemy owned] businesses [...] as an asset for meeting the indemnities to be exacted from the enemy upon the termination of the war».50 When it became clear that the war was going to be long-lasting, the government established the compulsory registration of enemy property.51

For Germany as well, the great watershed was the Paris Conference of 1916. At that Conference, the Allied Powers decided «to adopt and realize [...] all the measures requisite on the one hand to secure themselves and for the whole of the markets of neutral countries full economic independence and respect for sound commercial practice, and on the other hand to facilitate the organization on a permanent basis of their economic alliance».52

These decisions had severe consequences for the Central Powers, and for Germany in particular. From July 1916 onward, the number of blacklisted firms, of properties seized and above all liquidated increased dramatically in Britain, France,
Russia and Italy. Notwithstanding the anger provoked in public opinion by the outcome of the Conference, the discrepancy between German economic interests abroad and allied economic interests in Germany prevented Germany from reacting harshly and effectively. An Ordinance of 31 July 1916 launched the liquidation of British enemy property. On comparing the German policy on enemy property with the British and the French policies, James Garner noticed that «in the beginning, at any rate, it was more liberal». But once inaugurated, «the régime of compulsory administration [was] carried [...] out with their usual thoroughness».

France

The French government proceeded slowly, but enemy aliens were from the outset the target of its policy. The decree of 27 September 1914 forbade commercial relations with the enemy, but, as was already evident to coeval observers, «proceedings against enemy property and business enterprises were initiated, not by Parliament, but by the courts in their exercise of their common law».

Judges and tribunals started to sequester and liquidate enemy firms and businesses from the very beginning of the war, before the issue of any special legislation. They found the legitimation for sequestering credits, firms and shops in the civil and commercial codes. Sequestrations and liquidations were presented as initiatives intended to rescue and preserve the value and accountability of activities supposedly on the verge of bankruptcy because their owners had left the country in haste or had been interned.

Whilst the courts acted on specific cases and without much clamour, the provisions decided upon by the government were accompanied by a discourse in which retaliation, security, necessity and «civilisation» coexisted. France had to act in response to the German provisions of 7 August 1914; she had to paralyse the economic activities of the enemies, to prevent them from contributing to the war effort, but above all, France had to act against the general attack on civilisation launched by Germany. The first measures on enemy property adopted by the government were widely endorsed by French jurists who wrote on the subject in the first two years of the war to support the policy and to offer to courts and lawyers the frame, the instruments and

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53 Garner, «Treatment», 757; Armstrong, War, 11 considered this policy a reaction to the British winding-up policy instituted by the TEAA of the 27th January, 1916. I think that this provision is probably better explained when related to the Paris Conference.

54 Garner, «Treatment», 758, 760.


56 For an overview of the parliamentary debate which preceded the issue of the law see «Interdiction de commerce avec l’ennemi, Textes et documents parlementaires», in: Archives Nationales, Pierrefitte sur Seine (hereafter ANF), F/12/7820.


the legitimisation for implementation of the policy. Even resorting to collective sequestration was seen as possible if it could help achieve this purpose.

While, among lawyers, there were no voices of dissent except on technicalities, such as the lack of precision of the provisions in determining the targets (who were the enemy aliens?) and the practices that ought to be forbidden, doubts and requests of changes were raised by businessmen who complained about the fact that a too restrictive interpretation of the decree risked to damage French trade and industry. The general consensus on the retaliation policy was consistent with the conviction widespread among the French elite that «the war had arisen out of a German grasp at world hegemony, and its conduct had reflected German concepts of sovereignty, raison d’Etat (Kriegsräson) and Notrecht». The decree of 27 September 1914 was followed by many other decrees, laws and instructions. As the Minister of Justice, Aristide Briand, explained to the Parliament on 2 April 1915, enemy property had to be considered an «economic hostage» until the end of the war.

More than in Britain or Germany, the French approach to the enemy aliens issue was characterised by an over-production of instructions and directives issued by the government and sent to courts and parquets or local officials and Chambers of Commerce. It was also characterised by a high degree of flexibility and tolerance toward certain categories of Alsatians and Lorrainians among Germans, toward Poles and Czechs but not Italians or Transylvania Romanians, among Austro-Hungarians, and later toward Syrians, Greeks and Armenians.

3. Implementing the Policy

The measures adopted were received in different ways by public opinion and specific groups. Some did not consider them sufficiently harsh and effective. Newspaper articles, public appeals and private petitions, together with riots and violent demonstrations, vented the anger against enemy aliens, bankers and entrepreneurs in particular, but also shopkeepers and artisans. Pressure was put on governments and parliaments to enact more severe measures and to rapidly implement those already introduced.

62 They asked to lift or soften the ban on commerce with enemy nationals active in allied or neutral countries outside Europe. See the dossier «Délibérations de Chambres de Commerce et réclamations», in: ANF, F/12/7820.
63 Koskenniemi, The Gentle Civilizer, 293.
64 Garner, «Treatment», 750.
65 Ibid., 747.
66 Valery, «De la condition», 361.
Controversies continue to flourish on the role played by public opinion and popular protest, and there is not enough space to deal with this issue here. However, it is difficult to identify a clear cause-and-effect relationship between the adoption of the measures and popular reactions (in the majority of cases, legislation anticipated protests and demonstrations). At least in the countries considered in this essay, however, governments took a more moderate stance than radicals, nationalists, right-wing journalists, and pamphleteers.

Whilst legislations shared many features, their implementation differed greatly from one country to another. This diversity depended above all on the officials given the task of implementing the norms and the decision to centralise or decentralise execution of the provisions. Whilst Britain and Germany decided to entrust the task to dedicated bureaucracies vested with emergency powers – the Public Trustee and the Board of Trade in Britain, the Treuhänder für das feindliche Vermögen from 1917 onward in Germany – France chose instead to rely on her judiciary system and on her ordinary public administration.

Courts and tribunals also played a major role. Judges frequently acted in advance of governments and parliaments, or strengthened their decisions – as evident in the French case. Courts and tribunals, which acted on the demands of their own nationals («nationals of the hostile party» were everywhere prevented from defending their «rights and actions» in a court of law) were frequently more effective than public administrations. According to official figures, in Britain the value of the property vested in the Custodian by the Court amounted to £ 5,000,000, ten times more than the value of the property vested in it by the Board of Trade (£ 500,000).

The measures were unevenly applied especially where the responsibility for implementing legislation had been assigned to local authorities. Far from the control of the central authority, the executioners’ actions swung between zeal and engagement on the one hand and indifference and carelessness on the other. Once the measures had been implemented, they impacted on both juridical and natural persons. In all cases, the officials in charge had to ascertain their nationality and to decide what made them alien: origin, nationality or residence?

Among individuals, the first to be affected were entrepreneurs, whose firms were sequestered, administered by the state and eventually wound up; merchants, whose names were blacklisted; shopkeepers and artisans, who experienced boycott, violence and then closure of their activities; employees, bank clerks, workers, who lost their
jobs either because of the winding-up or because they were no longer considered trustworthy. Very soon, these individuals were joined by their wives and relatives, and by all those enemy aliens who owned anything that could be sequestered. Among juridical persons, the policy impacted not only on firms and businesses which were one hundred per cent of enemy nationality, but also on partnerships, joint ventures and multinationals. By the end of July 1915, in France, prefects had already seized 2961 enterprises, carried out 3744 individual sequestrations, and appropriated 4104 credits, goods and bank deposits out of a registered population of 104,417 enemy aliens.\footnote{Ibid., 17–18; Ninth General Report by the Public Trustee, London 1917, 9; Tenth General Report by the Public Trustee, London 1918, 10.}

The Public Trustee estimated in 1916 that the value of enemy property in Britain (not including colonies and dominions) amounted to £ 134,000,000 (while the total of British property in enemy countries was £ 90,000,000).\footnote{Eighth General Report, 17.} Only a portion of it was vested in the Public Trustee, but it was so at an impressively fast pace: £ 7,955,052 in 1916, £ 12,000,000 in 1917, £ 18,153,694 in 1918.\footnote{Ibid., 17–18; Ninth General Report by the Public Trustee, London 1917, 9; Tenth General Report by the Public Trustee, London 1918, 10.} At the end of the conflict, «much of [the German property] had been collected in the hands of the Custodian; the remainder was within the power of the Executive, [...]. Businesses owned or controlled by Germans had been searched out, and for the most part closed down. Many companies under German influence had been put into liquidation».\footnote{Roxburgh, «German Property», 56.} The amount of property involved and its value testifies that the war against enemy property was seen as an «opportunity to free British trade from German competition» once and for all,\footnote{See the letter of Mr. C. Low, C.I., I.C.S. Secretary to the Gov. of India, 30 August 1915, in: BAB, R901/85517.} to «uproot » «German influence in trade [...] in the United Kingdom and elsewhere».\footnote{Roxburgh, «German Property», 56.}

In Germany the situation was different, not because of a milder attack on enemy property, but because of the «quality» and extent of foreign investments. In January 1919, British enemy property in Germany, Belgium and Romania in the hands of the Treuhänder had been estimated at one and a half million marks (equivalent to 75,000 pre-war pounds sterling), while the French property, including that sequestered and liquidated in Alsace and Lorraine, amounted to two million marks (£ 100,000 / two and a half million francs). But whilst the balance between French and German enemy property was in favour of the latter, between Britons and Germans the deficit was very high.\footnote{F. Lenz / E. Schmidt, Die deutschen Vergeltungsmaßnahmen im Wirtschaftskrieg, nebst einer Gesamtbilanz des Wirtschaftskrieges, 1914–1918, Bonn, Leipzig 1924, 291–295.}

Sequestrations and liquidations had in the meantime taken place in other bellicerent countries as well – in Portugal, China, Japan, Turkey, Bulgaria, US, etc. – but
above all in the colonies and in the occupied former German colonies of Cameroon, Togoland or Samoa, where already in November 1914 «there is no question but that the British firms interested have secured full control of the business affairs of the German and Austrian concerns in their charge and that such control is being managed largely for their own benefit».78

Internment of enemy aliens as well as sequestration and liquidation of their properties went hand in hand.79 Once enemy aliens had been interned, it was even easier to dispossess them of their property.

4. The End of the War and the Peace Treaties

The end of the war did not stop sequestrations and liquidations. In fact, it opened a period during which the victorious countries, whilst waiting for the outcome of the Paris Conference, seized and liquidated enemy property more rapidly because they feared they might not receive sufficient compensation for the loss and damage suffered. In this new phase, dedicated bureaucracies and public administrations turned their attention not only to firms, business activities, shares, patents and bank accounts, but also to personal belongings, small fortunes, jewels, works of art, musical instruments, and so on.

Meanwhile, at the Paris Conference, the discussion on economic clauses engaged the delegations in heated arguments. Reparations in particular occupied the scene (and dominated world politics during the 1920s),80 but the issue of enemy aliens and of sequestered and liquidated property was dealt with separately and gave rise to fewer controversies. After some attempts, and above all after the pressures applied by the US and British delegates for the retrospective approval of the orders of liquidation already executed, the Paris negotiators «abandon[ed] the plan to pool German property for reparation purposes. [...] and left the disposal of other German property to each power».81

The liquidation of enemy property thus became the subject of discussion by a sub-committee of the Economic Commission.82 The debate in the sub-committee was inspired by the following principles: «1° Les dommages causés par la guerre doivent être réparés par les Etats responsable de la rupture de la paix; 2° Les Empires

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78 Memorandum as to German and Austrian Affairs in Hongkong as Related to the American Consulate General in Hongkong during the Month of November 1914, BAB, R901/85511.
79 See for example the reports on interned Germans in the camp of Ahmednagar in India, BAB, R901/85509 or in Nigeria BAB, R901/85438.
Delegates were guided in particular by the sovereignty principle enunciated by the US president Woodrow Wilson in the meetings of the Council of Four. According to Wilson, «each of the Allied and Associated states [had] the right to expropriate, as a means of compensation, the property of German subjects found in its own territory». Since the first meeting of the sub-committee on «ex-enemy aliens», it was clear that «Chacun des Puissances Alliés ou Associés doit conserver son entière liberté d’action pour régler le statut et les conditions de l’établissement des étrangers ex-enemis sur ses territoires, dans ses possessions, colonies et protectorats». However, as the right of expropriation had no limits for the victorious countries, well-defined boundaries had to be set for the successor states which participated in the Conference – Poland in particular.

The work of the sub-commission developed in three directions. First of all the restoration of the rights and interests of the nationals of the allied and associated powers; secondly, the affirmation of the right to keep and liquidate the enemy property to be found on their respective territories; and thirdly, the decision to make Germany pay the indemnities due to all expropriated owners. As a consequence, the Versailles Treaty fully restored the rights of «the nationals of the Allied and Associated Powers» (art. 276). It also established that «[t]he nationals of the Allied and Associated Powers shall enjoy in German territory a constant protection for their persons and for their property, rights and interests, and shall have free access to the courts of law» (art. 277). On the contrary, the Treaty of Versailles did not restore the right of the nationals of the defeated countries unless they had opted for the nationality of one of the successor states.

As for private property, the Treaty established that «[t]he exceptional war measures and measures of transfer taken by Germany with respect to the property, rights and interests of nationals of Allied and Associated Powers [...] when liquidation has not been completed, shall be immediately discontinued or stayed and the property, rights and interests concerned restored to their owners» (art. 297a). On the contrary, the Allied and Associated Powers «reserve[d] the right to retain and liquidate all
property, rights and interests belonging at the date of the coming into force of the present Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates including territories ceded to them by the present Treaty» (art. 297b).\footnote{Ibid.}

The Treaty seemed very harsh. In reality, however, the Allied and Associated Powers at Versailles chose to delay decisions on the enemy property issue, they were given the possibility to mitigate the provisions of the treaties or, on the contrary, to make them tougher. The solution adopted had to respond to different expectations and needs, but above all, it had to provide an \textit{a posteriori} legitimation for the emergency policies on enemy property – liquidation in particular – pursued by the various states during the war.

There were few controversies among delegates, but agreement was complete when the sub-commission discussed compensation. The negotiators decided unanimously that Germany should pay compensation in its entirety. Germany had not only to compensate the nationals of Allied and Associated Powers «in respect of damage or injury inflicted upon their property, rights or interests [...] in German territory as it existed on August 1, 1914» (art. 297e), but she also had to bear the burden of compensating her own nationals for «the sale or retention of their property, rights or interests in Allied or Associated States» (art. 297i).\footnote{Ibid.} This and all the provisions in Part X of the Versailles Treaty were the logical response to the widespread conviction that «Germany [waging war] had determined, not merely to vanquish her enemies on the battlefield, but also to ruin them commercially, so that she would have nothing to fear from them in the sphere of trade after the cessation of hostilities».\footnote{Simonson, Private Property, V.} The provisions on enemy property followed the logic and principles at the basis of the entire settlement: Germany was guilty, she bore responsibility for the war and many violations of international law, and hence she should pay for them.\footnote{M. F. Boemeke, «Woodrow Wilson’s Image of Germany, the War-Guilt Question, and the Treaty of Versailles», in: Boemeke / Feldman / Glaser, The treaty of Versailles, 603–614. For two recent opposite view of the Versailles settlement see P. O. Cohrs, The Unfinished Peace after World War I. America, Britain and the Stabilization of Europe 1919–1932, Cambridge, UK 2006, and S. Marks, «Mistakes and Myths: The Allies, Germany, and the Versailles Treaty, 1918–1921», in: The Journal of Modern History 85 (2013), 632–659. See Part X of the Saint Germain and Trianon Treaties and Part IX of the Neuilly Treaty. The articles on enemy property are respectively: 249, 232 and 177.}

The Versailles Treaty set a standard. The other settlements, Saint Germain, Trianon and Neuilly in particular, followed suit.\footnote{War I. America, Britain and the Stabilization of Europe 1919–1932. Cambridge, UK 2006, and S. Marks, «Mistakes and Myths: The Allies, Germany, and the Versailles Treaty, 1918–1921», in: The Journal of Modern History 85 (2013), 632–659. See Part X of the Saint Germain and Trianon Treaties and Part IX of the Neuilly Treaty. The articles on enemy property are respectively: 249, 232 and 177.} The principal innovation introduced by the treaties in regard to property rights consisted in the idea that individuals – that is, nationals of the defeated countries – could be deemed responsible for the war and the manner in which it had been conducted. After all, Woodrow Wilson and the US administration in particular had come to the conviction that «German people themselves were behind German militarism» and that «people, not just their leaders,
would be on trial». Compulsory compensation imposed on Germany did not diminish the significance of the choices made in Paris. These choices contradicted many of the principles and the rhetoric which had accompanied and justified sequestration. They transformed provisions which had been conceived at the beginning of the war, especially in countries like France or Italy, as precautionary and protective, into a punitive, irreversible policy of expropriation/confiscation, which did not even have the advantage of reducing the credits of the victorious countries.

The words «expropriation» or «confiscation» did not appear in the final text of the treaties, but the term «expropriation» was clearly used by Wilson in the meeting of the Council of Four and then evoked in the post-war international law debate to condemn the practice. In the meetings of the sub-commission, negotiators continued to use the milder term «liquidation», but the essence of what the treaties sanctioned was apparent and beyond any possible ambiguity: it was confiscation. The victorious countries had established the principles that property rights were no longer inviolable and that responsibility for the war could also be blamed on individual ex-enemy aliens.

This was even more problematic because the discussion at the Conference took place when sweeping confiscations and nationalisations had been ordered and executed by the new Bolshevik regime in the former Russian Empire. Was it possible for countries concerned with the spread of Communism and wary of the impact that the Bolshevik revolution might have on their own countries and peoples to adopt a confiscation policy that jeopardised property rights in the same moment when those same rights had been repealed in Russia? The contradiction was evident, and it was also underlined by liberal thinkers and representatives in the parliaments of the victorious countries. Lord Parmoor raised the issue during Question Time in the House of Lords on 9 June 1920: «It was an amazing thing», he said, «at a time when we were supporting the views of safeguarding private property, as against other views held in some quarters, particularly Russia, that we should be consenting to the terms of peace treaties which took away the rights, which had existed for centuries, with regard to private property and land of ex-enemy nationals after the war had come to an end».

Lord Parmoor’s views were not isolated. In particular, the provisions on enemy property provoked the opposition and criticism of many international lawyers and scholars on both sides of the Atlantic, and in winning as well as defeated countries. Only few backed the choice made at Versailles. Whilst politicians like the Chancellor

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96 During the war, almost all the French legislative texts and juridical comments underlined that the provisions on enemy property had a precautionary and protective character. Enemy assets had to be sequestered in order to prevent the enemy to exploit them and as future guarantee for war losses, but their liquidation was always excluded.
97 See the report on the session in: The Times, June 10 1920.
of the Exchequer, Lord Birkenhead, tried to justify the measures on the grounds that they had been taken under the umbrella of international law, for Claud Mullins, a barrister-at-law who delivered a lecture to the members of the Grotius Society in 1922, the legitimacy of the choice was crystal clear: the many violations of international law mainly perpetrated by Germany required a resolute and unambiguous response. After all, the confiscation of private property was to be considered an «advance in civilisation» emerging from humanitarianism because «the penalties attaching to enemy character were transferred from the individual to his property».

For those against, constituting the majority among lawyers, the treaties had marked a «régression du droit international en faisant coopérer directement les biens de particuliers à l’acquittement des obligations internationales des États dont’ils sont les ressortissants». This position was endorsed by the International Law Association, which at the Stockholm 1924 conference unanimously adopted a resolution that considered the confiscation of the private property of alien citizens to be a «relic of barbarism worthy of the most severe condemnation». According to many international lawyers, the treaties had inaugurated not only a policy contrary to international law but also to the basic principles of the capitalist economy, thus rendering the security of future foreign investments open and uncertain.

How did Britain and France deal with the enemy property issue after the signature of the treaties? The resolutions adopted in the treaties established two different procedures for the restitution of sequestered or liquidated enemy property: one for the property of the subjects of the allied and associated powers, the other for the property of the nationals of defeated countries. The negotiators probably underestimated the fact that both procedures required the co-operation of both sides. Thus, they did not fully foresee Germany’s reluctance to fulfil the provisions, and they did not include sufficient enforcement mechanisms in the Treaty. Consequently, seized property continued to be used as a means of retaliation in the following years or as a means to affect, in one way or another, the settlement of controversies deriving from the new borders. These two procedures also involved a different system of guarantees for owners. Some could have access to the mixed arbitral tribunals and clearing offices which were given the task of settling litigation and establishing

98 Ibid.
102 Borchard, Preface to Gathings, International Law, vi.
104 See, for example, the policy of sequestrations and liquidations adopted by France in Alsace at least until the signature of the Traité de délimitation franco-allemand in August 1925 which established the rights of French citizens who owned properties in German territory to cross freely the border. See the dossier in ANF, 19970343/1.
pecuniary compensations; others depended entirely on the decisions taken by the
dedicated bureaucracies, which tended rapidly to legitimise the liquidations executed
during the war.\footnote{105} At the same time, as a consequence of borders redefinition and the
emergence of successor states, the treaties created a new class of former enemy aliens
in possession of a new citizenship that made them no longer subject to requisition.

In general, while the settlements on the property of nationals of allied and associated
powers were soon concluded, those on the property of Germans, Austrians, Hungarians, and Bulgarians followed a path characterised by long diplomatic negotiations, legal controversies and endless bureaucratic procedures.

Briefly stated, the main belligerent countries dealt with this kind of enemy property by following more or less the same pattern. Firstly, they issued laws and decrees which confirmed the sequestrations and liquidations already executed, authorised the liquidation of what had been already sequestered, and established the seizure of the former enemy property which was still to be found.\footnote{106} Secondly, they ordered the restitution of property of little or no value. Britain decided the release «(1) to ex-enemy nationals now resident in the United Kingdom of property to the value of £ 1000, and (2) to ex-enemy nationals formerly resident in the United Kingdom but now resident elsewhere of property to the value of £ 200». It also decided to return property to «British-born ex-enemy nationals», mainly women who had become enemy aliens by way of a marriage with a German, an Austrian, etc.:\footnote{107} «Of the 450 million dollars expropriated by England, some 20 millions was [sic] given back in this way».\footnote{108} France returned very small fortunes – those with a value of less than 300 francs – and personal belongings of no value other than sentimental.\footnote{109}

At the moment, it is extremely difficult to establish a clear set of national figures
for the sequestrations and to determine the total value of the liquidated property and
of the compensations paid by defeated countries. Both sides, although for different
reasons, had an interest in underestimating the value of the liquidated property.\footnote{110}
According to the calculations made by the German compensation authorities after the Treaty of Versailles – calculations which underestimated its value for fiscal purposes – the liquidated German property in Britain, France, Italy, and Belgium, amounted to eight billions of golden marks.\footnote{111} But according to the author of a pam-

\footnotetext{106}{For France, see A. Cauwès / P. Chaudun, La liquidation des biens ennemis en France d'après les termes des traités de paix. Le tribunal arbitral mixte et les intérêts français en Allemagne et en Autriche. Manu-
et pratique, Paris 1921. For Britain, see Armstrong, War, 225 ff.}
\footnotetext{107}{National Archives, London, Board of Trade, 13/
117/1, Interim report of the Committee appointed by the Board of Trade to advise upon applications for the release of property of ex-enemy aliens in necessitous circumstances, London 1922.}
\footnotetext{108}{C. W. Cuthell, Introduction, in: Bitter / Zelle, No More War, 4.}
\footnotetext{109}{Gidel / Barrault, Le Traité de Paix, 62.}
\footnotetext{110}{Currently, I am conducting research in various national archives on this subject and hope to offer a more precise assessment in a monograph that is in preparation.}
\footnotetext{111}{Bitter / Zelle, No More War, 43.}
phlet very sympathetic to the fate of ex-enemy owners, «the total damage inflicted on German nationals through liquidation and displacement is, however, far greater. One would arrive at a total of about 20 billions of gold marks».

Expropriated ex enemy aliens had to wait for the decisions of each country or the end of the negotiations to know whether they would recover something or be compensated for their losses by their own government. Many of them continued to fight to recover their assets. Thousands of petitions were filed. Ordinary courts, arbitral tribunals and public administrations had to deal with requests for restitution filed by former enemy aliens who claimed were stateless, had a different nationality or citizenship status, acquired a new citizenship as a consequence of the new borders drawn at Paris, were in desperate need, they were the owners of property of little value, and so on. The Franco-German Arbitral Tribunal dealt with more than 25,000 individual claims (about half of them filed by Alsatians and Lorrainians) for 7.2 billion francs. Thousands of petitions were also lodged with the Public Trustee in Britain or the French ordinary tribunals. German compensation to its citizens for investments seized in the former enemy countries totalled 7.4 billion marks (of which 0.9 billion for investments made in the former German colonies, 1.6 billion for securities invested in the former enemy countries, and 4.9 billion for direct investments made in those places) with the exception of Alsace-Lorraine.

5. Conclusions

The outcome of the Paris conference and the implementation of the provisions decided by each of the victorious countries marked the defeat of liberalism and of international law, and it proved that economic nationalism was much stronger than internationalism, cooperation and globalisation, even among allied states.

As I have tried to demonstrate, the First World War was a watershed in the conception of property rights. The decisions on the fate of enemy property raised not only many legal problems but also moral ones. The question of confiscation, and above all of compensation, made apparent the collision between the capitalist economy and the «activist state». The war highlighted the problem of how to reconcile the competing demands of state and market, and instead of finding «a way that gives absolute priority to neither», it imposed the prevalence of the state.

The whole story also demonstrates that the war had an important impact on legal cultures promoting transfers and convergence. Although there were numerous

112 Ibid.
114 Die deutsche Zahlungsbilanz, 131.
115 This collision is the subject of B. A. Ackerman, Private Property and the Constitution, New Haven, CT 1977.
116 Ibid., 8.
differences among the legal cultures of the belligerent countries, when private property was involved, common law countries and codified system countries ended up by making the same choices. It may seem paradoxical but the war promoted transfers and the cross-fertilisation of legal culture and jurisprudence.

Above all, the choices made concerning enemy property during the war paved the way to an increase of restrictions to economic activities, to discriminatory policy between nationals and foreigners and, last but not least, to the spoliation of unwanted minorities in the successor states. Agrarian reforms characterised by strong nationalistic urges not only gave rise to «nostrification» and nationalisation but also provoked new waves of expulsion, together with «voluntary» and forced migration.¹¹⁸


¹¹⁸ «That since the war over one million persons have left Poland to return to Germany is partly due to process of liquidation.» Bitter / Zelle, No More War, 42. For an overview see A. Ferrara / N. Pianciola, L’età delle migrazioni forzate. Esodi e deportazioni in Europa, 1853–1953, Bologna 2012.
Property Rights in Time of War:
Sequestration and Liquidation of Enemy Aliens’ Assets in Western Europe during the First World War

This article explores the policies on enemy property in Britain, France and Germany during the First World War and its immediate aftermath. As part of a more complex economic warfare, countries at war halted international trade, imposed system of controls on the trade of neutral countries and launched an attack on the commercial and personal assets of enemy aliens. Real estate, firms, shops, investments, ships, goods, shares, bank accounts, patents and trademarks, and personal belongings owned by citizens of enemy nationality were sequestered and then sold by state custodians to citizens of their own countries. These actions, which started at the very beginning of the conflict, were eventually legitimised by the peace treaties. By analysing these measures, their implementation and the discourse that justified them, the article investigates the emergence of «economic nationalism» and the shift provoked by the war: from the liberal recognition of the inviolability of property rights on a national and international scale to the re-affirmation of state sovereignty.

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