'A Retrograde Tendency': The Expropriation of German Property in the Versailles Treaty

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Abstract

This article explores how the Versailles Treaty was shaped by the effects of economic warfare 1914–1919. The First World War was in part an Allied economic war waged against the Central Powers in conditions of advanced economic and financial globalization. This was reflected in the treaty's expropriation mechanisms, which were used to take control of German property, rights, and interests around the world. Whereas Articles 297 and 298 of the treaty legalized wartime seizures, the Reparations Section of the treaty also contained a provision, paragraph 18, that gave the Allies far-reaching confiscatory powers in the future. The article places these mechanisms in a wider political, legal and economic context, and traces how they became a bone of contention among the former belligerents in the interwar period.

Keywords

Treaty of Versailles – First World War – economic warfare – expropriation – property rights – sanctions – reparations

The Treaty of Versailles concluded between Germany and the Allied and Associated Powers in 1919 was more than just a European peace settlement.¹ It rearranged significant elements of the world economy through international

¹ 225 Consolidated Treaty Series (C.T.S.) 188.

law. The origins of this lay in the conduct of the war itself. Between 1914 and 1918 the Allied and Associated Powers waged an intensive campaign of economic warfare against the Central Powers.² An international blockade cut off Germany, Austria-Hungary, and the Ottoman Empire from inflows of money, goods, food, and information. But the efforts of Britain, France, and later the United States went further than this material siege. Since imperial Germany was a highly globalized industrial export power, the Allies also used the war to attack the German international economic presence.³ This was done primarily through the sequestration and expropriation of German assets abroad. The advantage of seizing property was that it was the only way to wage war that was also a way of paying for it (and for post-war reconstruction as well). There was just one problem for the Allies: their widespread wartime confiscation of private property went against the grain of international economic law as it had been developing for the previous six decades.

This article argues that the Versailles Treaty was an important moment in the modern history of international law because of its endorsement of private property seizure on a worldwide scale. In the first place, it recovers the two elements of the treaty that allowed these seizures. Articles 297 and 298 of Part X of the treaty set up a mechanism to manage *past* and *present* expropriations, whereas paragraph 18 of Annex II of Part VIII was an open-ended clause that enabled *future* appropriations to enforce the treaty. This combination of backward- and forward-looking legal mechanisms made property seizure a much more central aspect of the Versailles Treaty and its legacy than conventionally understood. Due to the proliferation of the legal form during the growth of nineteenth-century globalization, there was a wide range of targets for seizure: not just physical assets such as factories, mines, and stocks of goods, but also copyrights, patents, financial assets, and corporate ownership. Since Austria, Bulgaria, Hungary, and Turkey signed separate treaties to end the war (Saint-Germain and Neuilly-sur-Seine in 1919, Trianon in 1920, and Lausanne in 1923⁴), the Treaty of Versailles concerned the seizure of *German*

2 In what follows, unless otherwise noted, 'the Allies' will be used as a shorthand for the twenty-eight countries known officially as the 'Allied and Associated Powers', a label which includes the United States in its status as a power associated with the Entente (originally the alliance composed of Britain, France, Russia, and Japan, later joined through bilateral and multilateral treaties by Serbia, Belgium, Italy, Portugal, Romania, Greece, China, Siam, Liberia, Brazil and several Latin American states).

3 Torp, Cornelius. *Die Herausforderung der Globalisierung: Wirtschaft und Politik 1860–1914* (Göttingen: Vandenhoeck & Ruprecht, 2005); Conrad, Sebastian. *Globalisation and the Nation in Imperial Germany* (Cambridge: Cambridge University Press, 2010).

4 226 C.T.S. 8; 226 C.T.S. 332; 6 L.N.T.S. 188; 28 L.N.T.S. 226.

property only. Over two thirds of the Reich's foreign capital stock, valued between 14 and 16 billion marks (£0.90 billion–£1.03 billion) was expropriated.

Much of the historiography about the Versailles Treaty has focused on the question of reparations. Yet reparations were but an ongoing instance of property seizure and transfer that was built into the treaty.⁵ The second aim of this article is therefore to argue that we can think of the Versailles moment as turning point in how expropriation was treated in international law. Wartime and post-war expropriation had a long pedigree in European and imperial history. It was quite widespread during inter-state conflict in the seventeenth and eighteenth centuries.⁶ But in the second half of the nineteenth century, mass property seizure became less common and more politically stigmatized. One reason for this was the explosion of global trade in the 1850s and the commerce-friendly maritime law regime inaugurated by the 1856 Paris Declaration.⁷ The separation of inter-state war, an affair ruled by the laws of war, from matters of property and contract, structured predominantly by private economic law, gained further strength as international lawyers emerged as a distinct group of experts in the 1870s.⁸ These jurists focused their efforts on the principles governing inter-state order. Late nineteenth-century globalization was structured by a looser *lex mercatoria*, the product of a globally expanding bourgeois civil society. Insofar as international lawyers concerned themselves with private property rights, they tended to view their spread and enforcement as a mark of 'civilization'.

Like many other nineteenth-century paradigms, the legal containment of confiscation did not survive the First World War. A more statist, pragmatic, and often nationalist pursuit of such dispossession arose. Among contemporaries, the perception that the war constituted a sudden shift in prevailing legal norms concerning property was widespread, prompting a large amount of writing and commentary by legal experts.⁹ Historians have drawn attention to

5 Glaser, Elisabeth. 'The Making of the Economic Peace', in *The Treaty of Versailles: A Reassessment after 75 Years*, eds. Manfred Boemeke, Gerald Feldman and Elisabeth Glaser (Washington, D.C.: German Historical Institute, 1998), 371–400.

6 Lorenzetti, Luigi, Michela Barbot and Luca Mocrelli, eds. *Property Rights and Their Violations: Expropriations and Confiscations, 16th–20th Centuries / La Propriété Violée. Expropriations et Confiscations, XVI^e–XX^e Siècles* (Bern: Peter Lang, 2012).

7 Lemnitzer, Jan Martin. *Power, Law and the End of Privateering* (London: Palgrave Macmillan, 2014).

8 Koskeniemi, Martti. *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge: Cambridge University Press, 2001).

9 Simonson, Paul F. *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: Effingham Wilson, 1921); Borchard, Edwin. 'Confiscation of

the changing definition of enemy property in the First World War, tracing how the doctrine of *territoriality* was increasingly displaced by defining property-owners based on *nationality* wherever they resided – a shift that politicized the international economic order to a new degree.¹⁰ In the common-law countries and their colonies, wartime Trading with the Enemy Acts (the British TWEA of 1914 and the US TWEA of 1917) were used to accumulate large reservoirs of ‘enemy’ (UK) and ‘alien’ (US) property.¹¹ The French state practised *séquestration* of enemy property under civil law, occupying a middle ground between the restrictive continental and the sweeping Anglo-American conceptions. What is remarkable is that property rights were widely suspended or circumscribed in liberal countries as well as in autocratic ones. Economic warfare had a transformative effect on the Paris Peace Treaties.

This article consists of three parts. The first provides a brief economic and legal overview of the wartime seizures and why they have not received the attention they deserve. The second deals with the specific effects of Articles 297 and 298. The third part traces how the legacy of economic warfare marked the history of reparations through the infamous ‘paragraph 18’. The conclusion finishes by reflecting on what these expropriation provisions might mean for the long-term historical trajectory of international law in the twentieth century.

1 A Tacitean Economic War

Assessing the severity of the Versailles Treaty is in part a question of perspective. By the standard of earlier European history, it was a much less harsh peace

Enemy Alien Property’. *Yale Law Journal* 28(5) (1918), 478–503; Lusensky, Franz ‘Der Friedensvertrag und die privatrechtlichen Beziehungen zwischen den Angehörigen der feindlichen Mächte. Die Inanspruchnahme des deutschen Auslandbesitzes’, in *Der Friedensvertrag und Deutschlands Stellung in der Weltwirtschaft*, ed. Deutsche Weltwirtschaftliche Gesellschaft e.V. (Berlin: Julius Springer, 1921), 108–118; Roxburgh, Ronald. ‘German Property in War and Peace’. *Law Quarterly Review* (1) (1921), 46–62; Isay, Hermann. *Die privaten Rechte und Interessen im Friedensvertrag* (Berlin: Franz Vahlen, 1921).

- 10 Lohr, Eric. *Nationalizing the Russian Empire: The Campaign against Enemy Aliens during World War I* (Cambridge: Harvard University Press, 2003); Caglioti, Daniela L. ‘Aliens and Internal Enemies: Internment Practices, Economic Exclusion and Property Rights during the First World War’. *Journal of Modern History* 12(4) (2014), 448–459; Caglioti, Daniela L. ‘Property Rights in Time of War: Sequestration and Liquidation of Enemy Aliens’ Assets in Western Europe during the First World War’. *Journal of Modern History* 12(4) (2014), 523–545.
- 11 Coates, Benjamin A. ‘The Secret Life of Statutes: A Century of the Trading with the Enemy Act’. *Modern American History* 1(2) (2018), 151–172; Mulder, Nicholas. ‘The Trading with the Enemy Acts in the Age of Expropriation, 1914–49’. *Journal of Global History* 15(1) (2020), 87–99.

than it is often made out to be. The idea that Germany was relegated to a future of debt slavery to the Allies in 1919 has sunk into popular consciousness in ways that make it difficult to dislodge. The verdict of harshness rests on the supposedly crushing weight of reparations. Yet as many subsequent historians have pointed out, the reparations clauses of the Versailles Treaty were actually its *most* flexible part, delegating the size of the transfers to a special commission which would fix the amount based on prevailing political conditions several years (at least thirty months) later.¹² Likewise, the view that the territorial adjustments made in 1919 severely negatively affected European trade and exchange has also been drawn into question; economic fragmentation was already taking place before the war.¹³

Reparations became heavily politicized in the interwar years, and they have spawned an enormous historiography.¹⁴ But the expropriation of foreign

- 12 The best assessment of this is Soutou, Georges-Henri. *L'Or et le Sang: Les Buts de Guerre Économiques de la Première Guerre Mondiale* (Paris: Fayard, 1989), 839–843; echoed in the authoritative study of Steiner, Zara. *The Lights that Failed: European International History, 1919–1933* (Oxford: Oxford University Press, 2005), 61–62.
- 13 Wolf, Nikolaus, Max-Stephan Schulze and Hans-Christian Heinemeyer. 'On the Economic Consequences of Peace: Trade and Borders after Versailles'. *Journal of Economic History* 71(4) (December 2011), 915–949.
- 14 Important contributions to this literature are Link, Werner. *Die amerikanische Stabilisierungspolitik in Deutschland 1921–1932* (Düsseldorf: Droste, 1970); Marks, Sally. 'The Myths of Reparations'. *Central European History* 11(3) (1978), 231–255; 'Smoke and Mirrors: In Smoke-Filled Rooms and the Galerie des Glaces', in *The Treaty of Versailles*, eds. Boemeke/Feldman/Glaser 1998 (n. 5), 337–370; and Schuker, Stephen. *The End of French Predominance in Europe: The Financial Crisis of 1924 and the Adoption of the Dawes Plan* (Chapel Hill: University of North Carolina Press, 1976). The first study to recover the remarkably pragmatic attitude of the French government in the 1920s was Trachtenberg, Marc. *Reparation in World Politics: France and European Economic Diplomacy, 1916–1923* (New York: Columbia University Press, 1980). A second wave of work arrived in the late 1980s, notably focused on the relation of reparations to inflation, economic crisis and political stability in Weimar. These works included Holtfrerich, Carl-Ludwig. *The German Inflation 1914–1923* (Berlin: De Gruyter, 1986); James, Harold. *The German Slump: Politics and Economics, 1924–1936* (Oxford: Oxford University Press, 1986); Schuker, Stephen. *American 'Reparations' to Germany, 1919–1933: Implications for the Third-World Debt Crisis* (Princeton Studies in International Finance, No. 61. Princeton: Princeton University Press, 1988); Kent, Bruce. *The Spoils of War: The Politics, Economics and Diplomacy of Reparations, 1918–1932* (Oxford: Oxford University Press, 1989); Balderston, Theo. *The Course of the German Economic Crisis, 1928–1932* (Berlin: Haude & Spener, 1993); the mammoth study by Feldman, Gerald D. *The Great Disorder. Politics, Economics, and Society in the German Inflation, 1914–1924* (Oxford: Oxford University Press, 1993, 1997); Jeannesson, Stanislas. *Poincaré, la France et la Ruhr (1922–1924): Histoire d'une Occupation* (Strasbourg: Presses Universitaires de Strasbourg, 1998); and Heyde, Philipp. *Das Ende der Reparationen: Deutschland, Frankreich und der Youngplan 1929–1932* (Paderborn: Ferdinand Schöningh, 1998). The German debate has been shaped by the work of Borchardt, Knut. *Perspectives on Modern German Economic History and Policy* (Cambridge: Cambridge University Press, 1991); and by Ritschl,

property has been much less examined by historians, even though the sums involved were very large and it was crucial to experts at the time. Decentring reparations as the main 'economic consequence of the peace' and focusing on property seizures qualifies the scholarly correction to the popular misconception. In a sense the Versailles Treaty *was* a relatively harsh peace, but less because of what it imposed for the future – reparations of a size to be determined – than for what it retroactively legitimated: the confiscation of all German foreign property in Allied and Associated states. The famous historical image of Versailles as a coercive settlement obscures the history of the material spoliation preceding it. The treaty entrenched Allied economic war and its effects as a constitutive part of the peace.

There is another reason to focus on the worldwide expropriation licensed by the Versailles Treaty and to de-emphasize subsequent reparations. Whereas reparation payments were a regular occurrence in many peace treaties and constituted a kind of victor's justice, for much of the nineteenth century property seized in wartime was merely suspended temporarily, i.e. sequestered but not permanently expropriated.¹⁵ For most of the German private sector,

Albrecht. 'Reparations Transfers, the Borchardt Hypothesis and the Great Depression in Germany, 1929–32: A Guided Tour for Hard-Headed Keynesians'. *European Review of Economic History* 2(1) (1998), 49–72; Ritschl, Albrecht. *Deutschlands Krise und Konjunktur 1924–1934: Binnenkonjunktur, Auslandsverschuldung und Reparationsproblem zwischen Dawes-Plan und Transfersperre 1924–1934* (Berlin: Akademie-Verlag, 2002). A third wave of scholarship may be said to have arrived with Balderston, Theo. *Economics and Politics in the Weimar Republic* (Cambridge: Cambridge University Press, 2002); Cohrs, Patrick. *The Unfinished Peace: America, Britain, and the Stabilisation of Europe, 1919–1932* (Cambridge: Cambridge University Press, 2006); followed by the important work of Boyce, Robert. *The Great Interwar Crisis and the Collapse of Globalization* (London: Palgrave Macmillan, 2009); and the powerful globalizing argument of Tooze, Adam. *The Deluge: The Great War, America and the Remaking of the Global Order, 1916–1931* (New York: Allen Lane, 2014); the best recent overview of the reparations literature is Gomes, Leonard. *German Reparations, 1919–1932: A Historical Survey* (London: Palgrave Macmillan, 2010). For a more general reflection on the issue of reparations in the interwar years and after the Second World War, see Clavin, Patricia. 'Reparations in the Long Run'. *Diplomacy and Statecraft* 16(3) (2005), 515–530.

- 15 d'Argent, Pierre. *Les Réparations de Guerre en Droit International Public. La Responsabilité des Etats à l'Épreuve de la Guerre* (Brussels: Bruylant, 2002). Britain and the other victors against Napoleon received 700 million francs from France after 1815. France also paid 5 billion gold marks to the newly formed German Reich after its defeat in 1871. See Kindleberger, Charles P. *A Financial History of Western Europe* (London: Allen & Unwin, 1984), 239–250, 297–306. Restitution and reparations were also important to the post-wwii rehabilitation of Germany and the former Axis Powers. See the 'Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy

property seizures came as a shock because they had hoped that the Allies would resurrect a large portion of the pre-war principles which diplomats and international jurists had advanced – arbitration, the most-favoured nation (MFN) principle, the Open Door, freedom of the seas and the immunity of private property from seizure in wartime.

The economic war of 1914–1919 was marked by a dramatic inequality between the two sides. And this imbalance held not just in material strength but also in the amount of damage inflicted on the opponent's national balance sheet through expropriation. To bring the effects of the latter process into view, we need to engage in some quantitative reconstruction.

At the start of the war Germany had between 21–25 billion marks of net foreign investment (portfolio and direct) located around the world, or between 38% and 44% of her national income. This share – a foreign property bundle worth just under half of annual production – is confirmed by recent economists such as Thomas Piketty.¹⁶ The low estimates of German capital investment range from 20 billion (J. M. Keynes) to 21 billion (Hans David); Herbert Feis estimated it at 23.5 billion. Adolf Lenz included short-term credits and bills of exchange and arrived at a total of 31 billion marks.¹⁷ As we can see from Table 1, around 14 billion marks were directly exposed to confiscation under the economic warfare legislation passed by the Entente. Gomes estimates the actual total of Allied seizures to be 16 billion marks (£1.03 billion).¹⁸ This would imply that around two thirds of all German net foreign capital – a stock amounting to 25% to 28% of the Reich's 1913 GDP – was transferred to the victors.

How much property did Germany manage to confiscate in return? German authorities claimed to have liquidated or controlled directly a grand total of 4.2 billion marks of enemy property in an overview prepared for their Justice Ministry in January 1919.

Placing these grand totals side by side, it is clear that Germany by itself lost at least three times as much property to confiscation as all the Allies put

Occupation', 5 January 1943, in *Foreign Relations of the United States* 1943, General, vol. 1 (Washington, D.C.: Government Printing Office, 1963), 439–459; Rombeck-Jaschinski, Ursula. *Das Londoner Schuldenabkommen: Die Regelung der deutschen Auslandsschulden nach dem Zweiten Weltkrieg* (Berlin: De Gruyter, 2005).

16 Piketty, Thomas. *Capital in the Twenty-First Century* (Cambridge: Harvard University Press, 2014), 175–176.

17 David, Hans. 'Das deutsche Auslandskapital und seine Wiederherstellung nach dem Kriege'. *Weltwirtschaftliches Archiv* 14 (1919), 31–70; Lenz, Friedrich. 'Wesen und Struktur des deutschen Kapitaleports vor 1914'. *Weltwirtschaftliches Archiv* 18 (1922), 42–54, 48.

18 Gomes, *German Reparations* 2010 (n. 14), 18.

TABLE 1 Germany's foreign asset exposure to its opponents, 1914–1917^a

Britain	2.43 billion marks
British Empire	c. 1.4 billion marks
France (incl. colonies)	1.2 billion marks
Italy	32 million marks
Russia	1.8 billion marks
Japan, China and East Asia	550 million marks
United States	4.62 billion marks
Merchant marine in Allied and neutral ports	2.0 billion marks
Total:	14.052 billion marks

- a Keynes, John Maynard. *The Economic Consequences of the Peace* (New York: Harcourt Brace, 1920), 174; Wilkins, Mira. *The History of Foreign Investment in the United States, 1914–1945* (Cambridge: Harvard University Press, 1989), 9; Feis, Herbert. *Europe the World's Banker 1870–1914: An Account of European Foreign Investment and the Connection of World Finance with Diplomacy before the War* (Clifton: Augustus M. Kelley, 1974), 74; Clunet, Édouard, ed. 'Faits et Informations'. *Journal du Droit International* 42(3–4) (1915), 268–309, 286; Garner, James W. *International Law and the World War* (London: Longmans, Green & Co., 1920), 102, 106; Nitti, Francesco. *Il Capitale Straniero in Italia* (Bari: Giuseppe Laterza & Figli, 1915), 48.

TABLE 2 Allied and Associated Powers' property under German control, January 1919^a

Country	Total value of seized property (in gold marks)	Percentage of total enemy property seized
Belgium	125,699,900	2.99
Brazil	12,258,000	0.28
China	1,513,000	0.04
Cuba	1,600,000	0.04
England	1,436,517,300	34.39
France (w/o Alsace-Lorraine)	1,425,873,200	34.14
Italy	44,912,000	10.75
Japan	8,963,000	0.21
Panama	24,000	
Portugal	12,979,000	0.31
Romania	201,707,500	4.83
Russia	343,242,500	8.22
Serbia	2,100	
Thailand	1,287,000	0.02

TABLE 2 Allied and Associated Powers’ property under German control, January 1919 (*cont.*)

Country	Total value of seized property (in gold marks)	Percentage of total enemy property seized
United States	560,581,900	13.42
Total	4,177,130,400	100

a Bundesarchiv Berlin-Lichterfelde R2/466 Handakten betr. Behandlung feindlichen Vermögens in Deutschland im 1. Weltkrieg, ‘Feindliche Werte in Deutscher Hand (Statistik RAdJ vom 26.01.1919 ohne Elsaß-Lothringen)’, 10. For rounding purposes, the small Panamanian and Serbian sums have not been added to the breakdown by percentages.

together lost to Germany.¹⁹ Furthermore, this three-to-one loss ratio on foreign assets was a *loss in absolute terms*. As a share of its net international investment position, the damage done to German economy and society by expropriation abroad was the largest of any country in the First World War. And this stark imbalance was not lost on contemporaries. As the German economist Hans David pointed out in 1919, 50% of German capital was invested in the territory of its military opponents, whereas France had only 10–12% and Britain a mere 1.3% of its total stock of wealth in enemy countries.²⁰

The United States alone had seized at least \$600 million and perhaps as much as \$800 million in German property (£127 million–£169 million), depending on the valuation of financial assets that were seized.²¹ The 1923 Winslow Act allowed for the restitution of small sums up to \$10,000 (£2,183) but maintained the very sizeable industrial fortunes as well as thousands of patents and intellectual property also seized by the Alien Property Custodian under the Trading with the Enemy Act.²² The enormous imbalance in mutual investment that was placed at risk by Germany’s turn to unrestricted submarine warfare in 1917 genuinely baffled American observers. The US economy was the premier recipient country of German capital, and German investment in the United States outnumbered American investment in Germany by a factor of 10 to 1.²³

19 Here I have not incorporated German losses in *neutral* countries due to the Versailles Treaty.
20 David, ‘Das deutsche Auslandskapital’ 1919 (n. 18), 42.
21 Potterf, Rex M. ‘Treatment of Alien Enemy Property in War Time and after by the United States’, *Indiana Law Journal* 2(6) (1927), 453–472, 465.
22 Wilkins, *Foreign Investment* 1989 (n. 16), 113.
23 Kabisch, Thomas R. *Deutsches Kapital in den USA. Von der Reichsgründung bis zur Sequestrierung (1917) und Freigabe* (Stuttgart: Klett-Cotta, 1982), 26–27; Garner,

Wartime expropriation itself hid some of the international imbalance of property losses. In a 1920 study for the Carnegie Endowment of International Peace, Ernest Bogart provided the first quantitative overview of the costs of the war. Yet in keeping with the endowment's pacifist outlook, Bogart emphasized the destructive character of war; only lives and property that were lost to humanity as a whole were counted. The effect of this focus was to ignore the redistributive effects of conflict, as he left property seizures and transfers wholly out of the equation. Bogart explicitly did not count one of the largest Allied confiscations of tangible assets: merchant ships that belonged to the neutrals and the Central Powers, worth at least \$600 million (£127 million). His justification was that 'as seized and interned vessels do not represent a loss, but merely a transfer of possession, these should not be counted in estimating the property losses resulting from the war'.²⁴ But from a national balance sheet perspective, the expropriation of these ships had to be a loss for someone, in this case for Germany and its allies.

Another reason for focusing more on property expropriation and immediate asset transfers enshrined in the treaty is that burdens imposed in the future can become easier to bear with time. The actual reparations bill due from Germany was decided two years after the treaty was signed at the 1921 London conference, and set at 132 billion gold marks. However, since it was divided into bonds of variable duration, the present value of this sum was in fact closer to 50 billion gold marks (the experts estimated 3 billion a year discounted at 6% annually because of 5% interest plus 1% amortization). Only 12 billion marks, the so-called A bonds, were justified as direct compensation for war damages (including German expropriation and destruction of Allied and Associated assets, capital, land and goods). Although Germany faced high immediate payments in 1921 and 1922, for the rest of the following decade its annual treaty payments never rose above 4.0% of GDP.²⁵ By contrast, the 14 to 16 billion marks of German property seized during the war and by the treaty in 1919 represented a big concentrated shock, not a drawn-out series of small annual payments.

Although he famously attacked the harshness of the reparations settlement, John Maynard Keynes did pay serious attention to expropriation, mainly because property already seized was always a real influence on the feasible size

International Law 1920 (n. a), 106 n. 2; Fite, Emerson D. 'Germany's Losses in America.' *Current History* 13 (1921), 266–272, 271. My own calculations based on Wilkins (1989) and German government records of foreign wealth in the Reich suggest the actual ratio may have been closer to 8 to 1 (4.62 billion versus 560 million marks).

24 Bogart, Ernest L. *Direct and Indirect Costs of the Great World War* (Oxford: Oxford University Press, 1920), 288.

25 Tooze, *The Deluge* 2014 (n. 14), 369, Table 9.

of future reparations – both those that the Allies felt they needed and those that Germany would be able to provide.²⁶ Sequestered property was first used to settle outstanding Allied losses and the remainder would then be credited to Germany's reparations account; but since the total size of this bill remained unknown, its confiscation was total.

2 Property Transfers under Articles 297 and 298

The Versailles Treaty's Articles 297 and 298 contained the bulk of the expropriation clauses dealing with *property* as well as the related categories of *rights* and *interests*. Article 297 laid out the claims on German property, whereas Article 298 restored sequestered Allied property within the Reich to its proper owners. Article 297's crucial section (b) read:

The Allied and Associated Powers reserve 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.

This gave Allied governments power over all German property, broadly defined, under their jurisdiction. But this ongoing power vested in Allied sovereigns was not the only relevant part of the article. Paragraph (c) specified that the Allies could determine the methods of valuation used in these liquidations and transfers. Paragraph (d) declared all 'the exceptional war measures, or measures of transfer' to be 'final and binding' unless otherwise noted in the treaty. In one fell swoop, this legitimated the considerable seizures that had taken place during the previous four years. Paragraph (e) entitled Allied property owners who had suffered damage to their assets located in Germany on 1 August 1914 to claim compensation at the Mixed Arbitral Tribunal set up in London by the Versailles Treaty. In all these private lawsuits, 'compensation shall be borne by Germany, and may be charged upon the property of German nationals within the territory or under the control of the claimant's State'.

Together, these two Articles constituted one of the greatest post-war asset transfers in modern history.²⁷ Keynes saw this as meaning that 'the whole of

²⁶ Keynes, *Economic Consequences* 1920 (n. a), 66–74.

²⁷ Versailles was also a pioneering treaty in the settling of 'enemy debts' through Clearing Offices. These were set up by Article 296. Ostensibly, this was a chance to even the

German property over a large part of the world can be expropriated, and the large properties now within the custody of the Public Trustees and similar officials in the Allied countries may be retained permanently'.²⁸ A full nationalization of enemy property on both sides would already have left Germany much worse off due to the significantly larger exposure of its foreign assets described earlier. The great imbalance contained in Articles 297 and 298 was that whereas Germany bore the full brunt of this exposure, it was also forced to pay restitution for the Allied property under its control. Britain, France, Italy, the United States and the other Entente powers had their nineteenth-century extraterritorial ownership rights in Europe's largest industrial economy restored, whereas Germany saw its foreign assets nationalized almost everywhere except in a few neutral countries.

That the Allies did not intend expropriation under Article 297 to be confined to countries involved in the war became clear at the Brussels Financial Conference in December 1920. There the Supreme Council told German delegate Carl Melchior that there were some 13 billion gold marks (£836 million) of German capital unaccounted for in Entente countries. Melchior parried this by pointing out that after wartime expropriation laws had been implemented, there were only nine territories in the world where German capital was safe from confiscation: the three Scandinavian countries Norway, Denmark, and Sweden, the Netherlands, the Dutch East Indies, Spain, Argentina, and Chile. It was in his view 'completely unrealistic' to suppose that these countries held half the German pre-war foreign capital stock. More to the point, Melchior argued, without specific bilateral agreements, there was no way that the German fiscal state could gain access to this private capital to pay reparations to the Allies.²⁹

Countries that had not fought against Germany but which fell under the formal or informal imperial control of Britain and France, or in the imperial or regional orbit of the United States, were also arenas for expropriation. During the war the Allied governments had successfully induced local businesses to break contact with German merchants and firms, sometimes by threatening

outcomes of economic warfare by netting out mutual claims against each other. The debts to be settled were those that remained in private hands, and therefore the debts 'already collected by the authorities under war legislation' were not included. Scobell Armstrong, John W. *War and Treaty Legislation Affecting British Property in Germany and Austria, and Enemy Property in the United Kingdom* (London: Hutchinson & Co., 1921), 227.

28 Keynes, *Economic Consequences* 1920 (page 8, a.) (n. 16), 74.

29 Politisches Archiv des Auswärtigen Amtes (PAAA), Berlin, Germany, R 34570 Friedensvertrag 10 Nr 4, Güter, Rechte und Interessen (Artikel 297–298), Note by Melchior, 'Besprechung mit Mr. Lepreux, Mitglied der Alliierten Delegation', 21 December 1920.

exclusion from Entente markets.³⁰ Their blockade ministries had done so by operating a system of blacklists. These were occasionally applied extra-territorially in states beyond the Entente itself, which would later join the war on the Allied side. As a result, the Versailles Treaty made Germany renounce all its property, rights, interests and privileges in China (Articles 129 and 132), Egypt (Article 148), Liberia (Articles 135–140), Morocco (Article 141) and Siam (Articles 135–137).

Even if they had wanted to, the Allied and Associated governments could hardly have returned to Germany all the property that they had taken from it. Much of the proceeds from sales of seized German and Austro-Hungarian assets had been invested in government bonds and war loans. Effectively, the British and American states were using confiscation as another way to pay for the war. Compensation for these losses would have entailed either increasing their own government debt or expropriating whoever now owned the assets in question. Neither of these options was necessary in the light of the overwhelming victory achieved in November 1918. Nor would they have been remotely palatable to the British and American public, which saw the expropriation of enemy aliens as fully justified.

Articles 297 and 298 functioned by allowing private individuals to bring claims against the German government. They were thus in a sense out of the control of the Allied governments and constituted a continuing stream of claims for monetary or natural restitution which continued independently of the setting of reparation payments by the Allies. Although the treaty allowed Germany to credit its restitutions against its reparation obligations, Allied governments and Allied property owners constituted two distinct groups, each with their own interest in leveraging expropriation for their own ends.

Upon being presented with the contents of economic clauses in Section x, the German delegation complained that the confiscations entailed 'a general undermining of the fundamental principles of international legal intercourse' and that it was an intolerable exaction on top of the wealth already lost.³¹ The Allies rejected the German complaint entirely, pointing out that the money earned by selling seized German property would be discounted from the future reparations bill (noted in Articles 242 and 243(a) of the treaty). To the Germans, this was cold comfort, since the future reparations debt to be

30 Dehne, Phillip A. *On the Far Western Front: Britain's First World War in South America* (Manchester: Manchester University Press, 2010).

31 Section IV. – Property, Rights and Interests (Arts. 297 and 298), Note to Section x. (Economic Clauses), in *Papers Relating to the Foreign Relations of the United States*, Paris Peace Conference, vol. XIII (Washington, D.C.: Government Printing Office, 1947), 596.

repaid remained an open question. There was nothing to prevent the Allies from cashing in the proceeds from the property already seized *and* imposing a major reparations bill to be repaid annually for a long time to come. Some governments had already started to liquidate seized property before the treaty was signed. German economists estimated that the Reich should prepare to relinquish an additional 8 billion gold marks (£417 million) worth of property, rights and interests under Articles 297 and 298 – approximately one third of the total foreign capital stock, adding to the nearly two thirds of its foreign wealth that had been confiscated already during the war.³²

Britain went on to use Article 297 to great effect. In addition to the confiscations during the war, between 1919 and 1932 His Majesty's government seized £60 million worth of property, of which £20 million was liquidated outright, £14.5 million was awarded to British citizens through the mixed arbitral tribunals, and only a small fraction (£18,000) of which was restored under paragraph (f) by the German government. France had seized between 800 million and 1.3 billion francs (£15.4–£25.1 million) worth of German property by 1920.³³ At the end of the decade total seizures amounted to 2.66 billion francs (£50.2 million).³⁴ High inflation in the immediate post-war years and the subsequent deflation and shrinking of government budgets should be taken into account when assessing the worth of this sum. But for Britain the seizures covered between 6% and 8% of annual government spending in the 1920s, an amount big enough to cover an entire year's expenditure on pensions or education.³⁵ In 1922, the US Alien Property Custodian still possessed \$350 million (£79.1 million) in enemy assets, equivalent to 8–9% of annual federal spending.³⁶

Not all Allied governments engaged in maximal expropriation. Italy chose not to exercise its rights under Article 297 for German private property of less than 50,000 lire (£1,290), restoring these sums to their original owners. Rome meant this as a gesture of goodwill to attract new German investment. But it also mentioned 'the social character of a measure in favour of small and

32 Ibid., 602.

33 PAAA R 34570, Notes by Gesandter Alphand and Mayer (German Embassy in Paris) to Foreign Office (Berlin), 'Schätzung des sequestrierten deutschen Vermögens', 9 September 1920.

34 Section IV., in *FRUS* 1947, 604.

35 Mitchell, Brian R. *British Historical Statistics* (Cambridge: Cambridge University Press, 1988), 590.

36 Fehr, Joseph C. 'Disposal of Enemy Property'. *North American Review* 216(800) (1922), 10–20; *Message of the President of the United States Transmitting the Alternative Budget for the Service of the Fiscal Year Ending June 30, 1923* (Washington, D.C.: Government Printing Office, 1922), 7.

medium property'.³⁷ For France, the proceeds of *séquestration* sales were the most urgently needed, but also the least consequential because of serious inflation and the high costs of reconstruction and servicing inter-Allied war debts. Total French Article 297 sales amounted to only about 4% of the government budget in 1926.³⁸ This explains why in the years following the Peace Conference, France was increasingly eager to find compensation in the form of assets with a more stable value. In the face of German prevarication and evasion over reparation payments, the expropriation clauses of Section x did not suffice. The French government therefore started to look elsewhere in the text of the treaty for mechanisms to exploit for immediate material compensation. They found their lever in the economic enforcement of Section VIII of the treaty.

3 Paragraph 18: Expropriation and Reparations

The reparations clauses of the treaty (Section VIII) had a different character than the economic clauses of Section x. They were based on Article 231, the infamous 'war guilt' clause. The annexes of Section VIII discussed the different categories of restitution: how to define damages (Annex I), reparation payments (Annex II), the seizure of the German merchant marine and fishing fleet (Annex III), aid in physical reconstruction (Annex IV), deliveries of coal (Annex V), chemical products (Annex VI) and the surrender of all German-owned undersea telegraph cables (Annex VII). These annexes were very specific in what they demanded.³⁹ In his reply to the Allies at the Peace Conference, the head of the German delegation, Ulrich von Brockdorff-Rantzau, accepted some elements while rejecting others. Germany was prepared, he said, to make reparation payments in principle, although not on the basis of acknowledging sole responsibility for the outbreak of the conflict as in Article 231.⁴⁰ The Reich would also provide the Allies with coal, reconstruction materials, livestock,

37 PAAA R 34570, German Embassy in Rome to Berlin, 31 December 1920.

38 André, Christine, Robert Delorme and Guy TERNY. 'Les Dépenses Publiques Françaises depuis un Siècle'. *Économie et Statistique* 43 (1973), 'Tables 2, 8.

39 For example, under Annex IV Germany had to transfer over 360,000 livestock to France and Belgium to compensate for its military requisitioning on the Western Front, in which even the specific types of mares and stallions ('large Belgian type') and their age and health requirements were noted.

40 'Ansprache des Reichsaußenministers Ulrich Graf von Brockdorff-Rantzau bei der Überreichung des Friedensvertrags-Entwurfs durch die Alliierten und Assoziierten Mächte', 7 May 1919, in *Dokumente* (Charlottenburg: Deutsche Verlagsgesellschaft für Politik und Geschichte, 1920), 113.

chemicals and other goods, and the use (but not transfer) of the German fleet for the purposes of reconstruction.⁴¹ Yet Brockdorff-Rantzau protested against the blanket expropriation of German property, ships and colonial territories; these were not just to be surrendered but could 'be submitted to any other step of economic warfare that the Allied and Associated Powers may see fit to maintain or to take during the years of peace'.⁴²

Was this hyperbolic? German commentators were certainly aghast about how the provisions of the treaty raised the spectre of economic warfare.⁴³ What they and the proponents of international reconstruction in Allied countries wanted was an unambiguous commitment to 'economic peace' (*Wirtschaftsfrieden*).⁴⁴ If this did not include the restitution of property seized during the war, the economic pacifists argued, then at least it should categorically rule out commercial hostility against private individuals and civil society in the future. What they objected to was the ambiguity in the treaty about future economic coercion. In this regard, the single most threatening provision was paragraph 18 of Annex II of Section VIII (Reparations). This was an open-ended clause which specified that:

The measures which the Allied and Associated Powers shall have the right to take, in case of voluntary default by Germany, and which Germany agrees not to regard as acts of war may include economic and financial prohibitions and reprisals and in general such other measures as the respective Governments may determine to be necessary in the circumstances.

'Economic and financial prohibitions' were understood to mean asset freezes and embargoes on income flows, credit or export earnings. 'Reprisals' were of course a longstanding principle in international law under which various retaliatory actions for injury could be taken. For example, the legal justification for

41 Indeed, a considerable amount of reparation 'payments' were made through the efforts of German firms in material reconstruction in the 1920s. See Karla, Anna. 'Westeuropas Wiederaufbau – *Made in Germany?* Baumaterial aus Deutschland im Versailler Vertrag'. *Zeithistorische Forschungen/Studies in Contemporary History* (3) (2016), 426–441.

42 Library of Congress, Washington, D.C., Norman Davis Papers, Box 44. 'Communication from Count Brockdorff-Rantzau, relative to the report of the Economic Commission', 15 May 1919, 1.

43 Lenz, Adolf. *Der Wirtschaftskampf der Völker und seine internationale Regelung* (Stuttgart: Verlag von Ferdinand Enke, 1920), 164–206.

44 'Economic Peace'. *The Economist*, 12 January 1918, 39; Fritz Drentwett. *Wirtschaftskämpfe und Wirtschaftsfriede* (Berlin: Carl Heymann, 1918); Walter Huth. *Völkerbund und Weltwirtschaft* (Berlin: F. Siemenroth, 1919).

the Entente blockade of the Central Powers from March 1915 until November 1918 had rested on a wartime reprisals doctrine. The British argued that their comprehensive long-distance blockade, even if it broke existing maritime law and laws of prize, was licensed by the illegal German campaign of unrestricted submarine warfare.⁴⁵ Paragraph 18 adopted a peacetime version of this reprisals doctrine for German default on its reparation obligations by using property confiscations and claims on assets as punishment.

However, since the German property abroad had already been seized under Articles 297 and 298, paragraph 18 was construed by the Allies as allowing reprisals against assets both *outside* and *inside* the Reich. There was quite some discussion inside the American delegation about the sagacity of including such an open-ended provision. John Foster Dulles was one of the drafters of the paragraph.⁴⁶ When another American diplomat read it, he noted that the proposed enforcement clause 'permits the Allies to forbid exports and imports and to do all that they care to do to enforce their will ... This is a dictatorship – it takes away absolutely the right of self-government'.⁴⁷

The first time that the extra-treaty powers of paragraph 18 were used was in the spring of 1921 when the Allies were about to present Germany with the full reparations bill. Since ongoing deliveries of coal and other commodities had been far lower than promised, the French government had been looking for alternative ways to ensure German compliance.⁴⁸ The Versailles Treaty's own specific articles were insufficient in the view of the French military staff, cabinet and foreign ministry. Article 430, for example, which allowed the Allies to extend their ongoing military occupation of the Rhineland beyond the planned fifteen years, was useless since it concerned a territory already under Allied control. This is what led France to formulate a drastic but not unwarranted interpretation of paragraph 18 of the Reparations Section of the treaty: any default would enable the Allies to seize German assets and appropriate their revenues, if necessary with military force. The point of such a military occupation was economic in that it laid claim to physical assets and the income streams that they produced. But it was equally a political move to increase pressure on Berlin to comply with scheduled reparation payments. Under the cover of this paragraph, in March 1921 French troops took over three port cities

45 Hull, Isabel V. *A Scrap of Paper: Breaking and Making International Law During the Great War* (Ithaca: Cornell University Press, 2014), 174.

46 Gomes, *Reparations* 2010 (n. 14), 44–45 n. 56.

47 Edward Halstead to Secretary of State, 8 August 1919, in *FRUS*, Paris Peace Conference, vol. XII, 558–559.

48 Sharp, Alan. 'The Enforcement of the Treaty of Versailles, 1919–1923'. *Diplomacy and Statecraft* 16(3) (2005), 423–438.

on the Ruhr which were conduits for coal exports (Duisburg, Ruhrort, and Düsseldorf) and established customs houses there to levy an export tax on all departing goods. The British, Belgian and Italian delegates on the Reparations Commission endorsed this measure.⁴⁹

German politicians and businessmen immediately began to resist. Several German chambers of commerce petitioned their government to convince the Allies to avoid using the measure. The Mannheim chamber of commerce wrote that paragraph 18 was a 'standing danger for our foreign trade and carries a considerable legal insecurity (*Rechtsunsicherheit*) into international exchange, which indeed at the same time unfavourably influences the economic activity of subjects of opposing states'.⁵⁰ The economic department of the German Foreign Office started a lobbying campaign with all Allied and Associated governments who were signatories to the Versailles Treaty to obtain pledges that they would not use the sweeping enforcement powers of paragraph 18. At the December 1920 Brussels Conference, Whitehall promised that it would not use paragraph 18 anywhere within British jurisdiction. Over the next two years, German diplomats managed to obtain similar pledges from South Africa (April 1921), Japan and Czechoslovakia (July 1921), non-self-governing British colonial administrations (September 1921), Peru (November 1921) and India (December 1921), Canada (August 1922), Portugal (September 1922), and Yugoslavia, New Zealand and Guatemala by March 1923. Paragraph 18 was a Damoclean sword that hung over German foreign trade, a weapon that could only be disarmed diplomatically, one country at a time. But over time, the argument that improved legal security would bring back German firms and merchants usually convinced smaller countries that stood to benefit from such a revival in trade.

This goodwill campaign did little to sway the French government, the most significant opponent of an unbridled German industrial revival. By late 1922, prime minister Raymond Poincaré had lost his patience with German evasion. He wanted serious reparations sooner rather than later, and French military, economic and legal experts had already been planning to use paragraph 18 to seize the Ruhr industrial area and exploit its mines, firms and

49 On the Ruhr crisis, see Depoortere, Rolande. *La Question des Réparations Allemandes dans la Politique Étrangère de la Belgique après la Première Guerre Mondiale, 1919–1925* (Brussels: Académie Royale de Belgique, 1997); O'Riordan, Elspeth Y. *Britain and the Ruhr Crisis* (London: Palgrave Macmillan, 2001); Fischer, Conan. *The Ruhr Crisis, 1923–1924* (Oxford: Oxford University Press, 2003).

50 PAAA R 34530 Sektion 8 Friedensvertrag Nr. 15 (Wirtschaftliche und finanzielle Sperr- und Vergeltungsmaßnahmen der Alliierten und Assoziierten Regierungen bei vorsätzlicher Nichterfüllung der Wiedergutmachungsverpflichtungen Deutschlands, Anlage II §18 zu Teil VIII), Mannheimer Handelskammer to Auswärtiges Amt (Berlin), 4 July 1921.

public assets.⁵¹ The British government opposed this, arguing that the 'other measures' referred to in the clause referred only to other economic and financial sanctions. They were supported in this by Dulles, the original author of paragraph 18.⁵² Here, however, the political use of law undermined London's legal argument, since the British had already consented to the occupation of the three Ruhr ports in 1921. How could they oppose a similar Franco-Belgian occupation of the entire Ruhr in 1923 as a matter of principle? London had already conceded the lawfulness and practicality of such coercive measures. All that now separated it from Paris was a different political judgment about how far the expropriation should be pushed against Berlin.

The Anglo-French legal dispute in the autumn of 1922 focused on the final part of paragraph 18. But it concerned not so much the meaning of the 'other measures', but rather what the term 'respective' in the phrase 'such other measures as the respective Governments may determine to be necessary' meant.⁵³ According to the British the term referred to the Allied and Associated governments *as a group*, which meant that unanimous approval on the Reparations Commission was needed for any coercive enforcement of the reparations clauses to happen.⁵⁴ Since the British government did not want to press Germany too hard, it could use their seat on the Reparations Commission to block such approval. Against this, the French government argued that the term 'respective' had an ordinary language meaning, namely that each of the governments could act individually in case of default. This interpretation was also supported by American lawyers.⁵⁵

France therefore managed to unite most of the Allies' juridical opinion behind it and in early January 1923 obtained a three-to-one vote on the Reparations Commission to use military-economic sanctions to obtain payment. A few days later, a Franco-Belgian force of 60,000 troops marched into the Ruhr region. Political considerations dictated this action. But the text of the Versailles

51 Jeannesson, Stanislas. 'La France Pourquoi la France a-t-elle Occupé la Ruhr?'. *Vingtième Siècle. Revue d'Histoire* 51 (1996), 56–67.

52 Rupieper, Hermann J. *The Cuno Government and Reparations: Politics and Economics 1922–1923* (Leiden: Martinus Nijhoff, 1979), 78–81.

53 Dunn, Jeffrey S. *The Crowe Memorandum: Sir Eyre Crowe and Foreign Office Perceptions of Germany* (Newcastle: Cambridge Scholars, 2013), 107–108.

54 Memo by R. W. Wigram on legal position in event of German default, 18 December 1922, in *Documents on British Foreign Policy, 1919–1939*, vol. xx (London: Her Majesty's Stationery Office, 1976), 344–346; opinion by Solicitor-General Thomas Inskip on interpretation of Paragraph 18, 28 Dec. 1922, *ibid.*, 358.

55 Smith, Charles R. 'France and Her Legal Case'. *The New Republic* 36 (5 September 1923), 48; 'Reparations and Sanctions: A Discussion of the Legality of the Occupation of the Ruhr'. *The North American Review* 219(819) (1924), 160–177.

Treaty, as it had been conceived in 1919 and interpreted by the Allies in practice as late as 1921, *did* allow a measure as far-reaching as the military occupation of the entire Ruhr region, the forcible extraction of coal and the diversion of income from railways, customs, forests and factories into Allied hands. Even if the political cost to France was high – it aggravated British distrust of France as an ally – this escalation would have been unthinkable without the earlier practical interpretation that Britain too had given to the treaty.

Anglo-American drafters had avoided sanctions provisions in the treaty that were too explicit precisely so as not to give grounds for what they saw as abuse. But this caution backfired. Rather than preventing the French from justifying a forceful response to default, France and its allies Belgium and Italy could point both to inter-Allied practice and to earlier British uses of military reprisals that did not create a state of war. Colonial and semi-colonial examples such as the occupation of Egypt after its default in 1881–1882 and the blockade and occupation of Crete by an international force in 1897 were often used to do so.⁵⁶ In these earlier colonial and imperial cases, jurists in Western Europe and the US had endorsed bombardment, pacific blockade, the seizure of customs houses and even the execution of rebels as legitimate ‘reprisals’ for defaulting on debt or other injuries to Western interests. Germany itself had participated in these imperial applications of international law, notably in the Venezuela crisis of 1902–1903, when together with Britain and Italy it used armed force against defaulting borrowers in Latin America.⁵⁷ In the Ruhr crisis twenty years, Berlin was thus in a certain way hoist on its own petard.

The Ruhr crisis confronted the Allies with the unsatisfying nature of the treaty’s text in light of their evolving political priorities. For this reason, when the experts assembled to reach a more durable settlement to the German reparations question at the London Conference of 1924, they explicitly noted that ‘sanctions will not be imposed on Germany in pursuance of paragraph 18’.⁵⁸ Its destabilizing implications had to be defanged by explicit intergovernmental agreement for the reconstruction finance of the Dawes Plan to be able to flow freely.

Paragraph 18 was an open-ended sanctions clause that was exploited in a time of political crisis from 1921 until its redefinition in 1924. But there was another sanctions provision in the Versailles Treaty, which applied not just to

56 Pollock, Frederick. ‘Reprisals and War’. *The Times of London* (10 October 1923), 11.

57 Mitchell, Nancy. ‘The Height of the German Challenge: Venezuelan Blockade, 1902–1903’. *Diplomatic History* 20(2) (1996), 185–209.

58 ‘Inter-Allied Agreement’. *American Journal of International Law* 19(1), 49–51, 50.

Germany but had a global reach. This was Article 16 of the Covenant of the League, which contained the 'economic weapon' of sanctions. Here, too, the imprint of Allied economic warfare was marked. A state which refused to submit a dispute or conflict to arbitration and resorted to force would be labelled an aggressor. Article 16 then enabled the severance of all economic, financial and other infrastructural relations with this pariah state, and suspended all forms of exchange and interaction between its population and nationals of the League. This included private property relations, contracts and all promises to pay. In this realm too, the Anglo-American trading with the enemy laws were the model. For such an automatic embargo against aggression to have any effect, League governments had to be able to quickly engage in the wide-ranging sequestration of enemy property and the suspension or voiding of contracts with enemy counterparties.

International sanctions were coercive measures modelled on wartime expropriation, but intended to prevent war. They were pacific rather than belligerent in nature. The beginning of sanctions as a *peacetime* measure was in fact the continuation of the blockade of Germany after the Armistice, which was a significant pressure instrument with which Berlin was forced to sign the Versailles Treaty.⁵⁹ Yet as sanctions planners began to understand in the 1920s, most countries did not have the necessary legislation on their books to enable them to undertake seizures of property and cancellations or suspensions of contracts outside of a state of war.⁶⁰ The only possible way out of this conundrum was to pass enabling acts of various kinds, justified by the need to prevent international threats to peace and to respond to national emergencies. This had mixed results in the interwar period, but became more widespread in the 1930s and 1940s. The confluence of Allied techniques of economic warfare with the League political agenda of preserving world peace stimulated international and national legal thought and practice.⁶¹ But this innovation also had destabilizing effects on international politics in the following years.

59 Lutz, Ralph Hasswell and Suda Lorena Bane. *The Blockade of Germany after the Armistice, 1918–1919: Selected Documents of the Supreme Economic Council, American Relief Administration, and other Wartime Organizations* (Hoover Library on War, Revolution, and Peace, No. 16. Stanford: Stanford University Press, 1942).

60 The National Archives, Kew, UK, CAB 47/1, Advisory Committee on Trade Questions in Time of War (ATB), Paper ATB 65, William Arnold-Forster. 'Sanctions and Trading with the Enemy'. 21 December 1926.

61 Dehne, Phillip A. *After the Great War: Economic Warfare and the Promise of Peace in Paris 1919* (London: Bloomsbury, 2019).

4 Conclusion

The imprint of wartime trading with the enemy laws on the economic and reparations clauses of the Versailles Treaty and on the economic weapon of the League Covenant reveal the early twentieth-century influence of the Anglo-American conception of war. As one interwar jurist commenting on the domestic legislation required for sanctions noted, ‘the severance of all existing commercial and financial relations, and the prohibition of the contracting of new ones, is thus nothing more than an expression of what according to the common law is the natural consequence of a state of war’, and that in this respect League sanctions in the Covenant were ‘intended to generalize the English law ... to the world’.⁶²

This ‘Anglo-Saxonization’ of the international laws of war reversed the pre-war trend towards greater legal protections for civilian private interests in war. From the 1856 Paris Declaration until the Hague Conferences of 1899 and 1907, the separation of the realm of private commercial law from that of public international law had been strengthened. Small neutral countries as well as larger powers such as Russia, Austria-Hungary and Germany pushed provisions that protected civilian private property from seizure in conflict. Articles 8, 38, and 40 of the 1874 Brussels Declaration protected the property of individuals as well as churches, municipalities and educational and scientific institutions.⁶³ The most recent affirmation of the inviolability of private property was Article 23 of the 1907 Hague Convention IV on the Rules of Land Warfare.⁶⁴ Britain, France and the United States all signed and ratified this convention. They anticipated that in maritime war they would still be able to invoke quite far-reaching belligerent rights of capture. Given the globalization of German economic interests in the decades leading up to the war, the German elite’s reliance on the narrow Hague rules as an insulation from the commercial devastation of economic warfare was ill-conceived.⁶⁵ The consequences of this miscalculation became fully clear in the expropriation of German assets during the world war.

62 Bertram, Anton. ‘The Economic Weapon as a Form of Peaceful Pressure’. *Transactions of the Grotius Society* 17 (1931), 144–145.

63 ‘Project of an International Declaration Concerning the Laws and Customs of War’, in *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and other Documents*, eds. Dietrich Schindler and Jiri Toman (Leiden: Martinus Nijhoff, 1988), 28, 32.

64 205 C.T.S. 216.

65 Bundesarchiv Berlin-Lichterfelde R2/3180, Reichsfinanzministerium, ‘Rückblick auf den Wirtschaftskrieg in Ersten Weltkrieg, “Denkschrift über die im Wege der Vergeltung von der Deutschen Reichsregierung ergriffenen Maßnahmen auf dem Gebiete des Wirtschaftskrieges”’. 28 January 1919, 1–3.

Ironically, the process described here shows that the countries that most strongly identified their political and legal-institutional culture with liberalism and democracy in 1914 – Britain, the United States, and France – were also engaged in the most significant expropriations of private property. Of course, one should not erase the significant differences that remained between Britain, France and the United States, many of which surfaced during the Paris Peace Conference.⁶⁶ Woodrow Wilson ignored a large part of the American and French arbitrationist proposals for the League of Nations. Instead of a world court with generalized and enforceable rules, the League became something much more akin to an international parliament of 'civilized' sovereign states.⁶⁷ France's deeper politico-historical entanglement with Germany, and its proportionally greater losses during the war rendered it more inclined to insist on strict applications of rules and agreements, but also on backing up rules with actual power and new institutions, and not mere words and implied cultural understanding.⁶⁸

Yet the three large Allies still shared some important philosophical common ground which expressed itself in the treatment of enemy property. A certain kind of progressive liberalism dominant in the early twentieth century endorsed the expansion of state power to intervene in economy and society for general popular welfare and in defence of national interests. Lloyd George, Clemenceau and the American Progressives in the Wilson administration all shared this outlook to varying degrees. Indeed, the most famous contemporary critic of the treaty, Keynes, was a reformist left-liberal par excellence. In 1919, freshly impressed by the social mobilization of the war, Keynes saw the German loss of foreign wealth during the war as unavoidable. In his words,

the sharp distinction, approved by custom and convention during the past two centuries, between the property and rights of a state and the property and rights of its nationals is an artificial one, which is being rapidly put out of date by many other influences than the peace treaty, and is

66 The issue of freedom of the seas was a recurring bone of contention between London and Washington. See Fry, Michael G. 'The Imperial War Cabinet, the United States, and the Freedom of the Seas'. *Journal of the Royal United Services Institute* 110 (640) (1965), 353–355; French, David. *The Strategy of the Lloyd George Coalition, 1916–1918* (Oxford: Oxford University Press, 1995), 274.

67 Wertheim, Stephen. 'The League of Nations: A Retreat from International Law?'. *Journal of Global History* 7(2) (2012), 210–232; Coates, Benjamin. *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (Oxford: Oxford University Press, 2016), 154–170.

68 Jackson, Peter. *Beyond the Balance of Power: France and the Politics of National Security in the Era of the First World War* (Cambridge: Cambridge University Press, 2013).

inappropriate to modern socialistic conceptions of the relations between the state and its citizens.⁶⁹

But by the mid-1920s, with some distance from the turmoil of the war, Keynes was insisting to British sanctions planners that they should restore the pre-war separation in the interest of peace and civilization. 'The measures for the confiscation of private enemy property which were put into force during the late war', he thought, 'represented a retrograde tendency and should not be imitated on future occasions. The older principles of international law regarding the non-confiscation of private property should be resumed'.⁷⁰

These cautionary words from the Versailles Treaty's most famous early critic suggest that its property transfer provisions inaugurated a veritable international age of expropriation that marked the mid-century period from 1914 until the 1970s. Throughout the interwar years, expropriation became the hallmark of domestic socio-economic transformation. In the Second World War, the principles of expropriation enshrined in the Versailles Treaty were used once more by the Allies to seize enemy property, as well as the foreign assets of Axis-occupied countries to prevent them from being used by the aggressor.⁷¹ Yet the most significant expropriations to affect *international law* occurred from the late 1930s to the 1950s, as Third World states nationalized the assets of Western firms from Guatemala and Mexico to Iran and Egypt. As in the era of the First World War, these decades saw a wave of expropriations of foreign property within the domestic jurisdiction of Latin American, Middle Eastern, and Asian nation-states. Of course, the Bolshevik nationalizations of foreign property and repudiations of foreign debt in 1918–1921 were a logical precedent. Yet the mid-century Third World nationalizations were not the result of wartime victories, but of emancipation from formal and informal empires. The rise of international economic law in the 1950s was in part an attempt to protect Western private interests from such nationalization at the hands of newly independent states.⁷²

69 Keynes, *Economic Consequences* (n. 16), 71–72.

70 League of Nations Archives, Geneva, Switzerland, Arthur Salter Papers, Box S120, Copy of Letter from Mr. Keynes to Mr. Felkin, 29 October 1924, 2.

71 Gathings, James Anderson. *International Law and American Treatment of Alien Enemy Property* (Washington, D.C.: American Council on Public Affairs, 1940); Lorenz-Meyer, Martin. *Safehaven: The Allied Pursuit of Nazi Assets Abroad* (Columbia: University of Missouri Press, 2007).

72 This body of law had a politics to it, insofar as it advocated a re-segregation of the spheres of state sovereignty and private property. Slobodian, Quinn. *Globalists: The Birth of*

But in using international economic law to fight state confiscation, the governments of the United States, Britain and France were not fending off a purely foreign threat. They were also scrambling to contain the unintended political effects of a legal principle and practice that they themselves had underwritten in the economic sections of the Versailles Treaty. As the Bulgarian jurist Konstantin Katzarov, an authority on nationalization in international law, noted four decades after the end of the Great War, the Parisian peace treaties 'were intended to prepare ... for a return to conditions of normal life', but in fact they strongly undermined 'the distinction between private property and State property'.⁷³ The genie of confiscation had been let out of the bottle. In this endorsement of new forms of expropriation, the peace treaties that ended the Great War had an effect on twentieth-century political and economic history that was unforeseen in scope, depth, and duration.⁷⁴

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