



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

It would be unjust to conclude without evidence that naturalized American citizens of German origin have availed themselves of the Imperial provisions for dual citizenship, or would approve of this principle. Many of these citizens have come to this country, or are descended from those who have come, for the purpose of liberating themselves from German laws. Others, who came for different reasons, have acquired a sincere affection for American institutions. The loyalty of these excellent citizens is not impugned by anything in these comments, although the disloyalty of some naturalized citizens is assumed by the German lawmakers, who propose an equivocal allegiance. Whether the German law of dual citizenship has actually been applied in this country, and if so to what extent, are questions that lie outside the province of these comments. It is, however, evident from the purpose and provisions of the law itself and from the absence of effective limitation to its operation, that the door is open to a secret divided allegiance that may be extremely dangerous to the United States.

This danger, it is contended, is wholly imaginary; for the petition for American naturalization contains a sworn statement, that the petitioner renounces "absolutely and forever all allegiance and fidelity to any foreign prince," etc. "Absolutely and forever" must be taken, however, *cum grano salis*; for the petitioner is conceded the right, if he chooses, to resume his former nationality. But even allowing this pledge all possible force and validity, whoever appeals to this formula to prove that dual citizenship is innocuous to the United States seems to admit that the German law leaves open a door to the danger of double citizenship which is closed only by the American formula of naturalization. It is then not in the German law, nor yet in treaties, but in the honor of individuals and the vigilance of American law and administration that we must place our trust.

DAVID JAYNE HILL.

#### THE TRADING-WITH-THE-ENEMY ACT

The purpose of the Trading-with-the-Enemy Act, approved October 6, 1917, as stated in the report of the Senate Committee on Commerce recommending its adoption, is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations and to

permit, under careful safeguards and restrictions, such business intercourse as may be helpful to our own interests, conserving and utilizing but not confiscating enemy property found within the United States, and leaving to the courts and to future action of Congress the adjustment of rights and claims arising from such transactions.

Before taking up the terms of the Act, attention is called to the legal principles underlying legislation on this subject in its relation to international law, and these principles are so clearly stated by Assistant Attorney General Warren in the hearings before Congress that it is a pleasure to quote the following extract from his statement:

The question of what constitutes trade with the enemy and what constitutes an enemy within the purview of illegal trade are settled by the decisions of the English and of the American courts. These decisions constitute part of the common law of both countries. Strictly speaking, they are not founded on international law. They are purely domestic decisions, founded on such view of public policy as the courts of each country decide to adopt, paying attention, however, to the general consensus of other countries as to what shall constitute a wise public policy in dealings affecting outside countries.

It follows that when the legislature of a country enacts a statute relative to trade with the enemy containing provisions differing from the law laid down by the courts, it is not violating or departing from international law. It is simply expressing its views as to the need of change in the domestic law of the country. Each country must decide for itself what it shall regard as unlawful trade with the enemy, and also what persons it shall regard, for the purposes of such trade, as enemy.

Changes in economic, commercial, financial, military, naval, and political conditions may make it highly necessary that doctrines as to trade with the enemy laid down by our courts a century ago should be modified by the legislature either by making them more stringent or less stringent, according to the needs and conditions of the present day. The complexity of modern business demands far greater stringency in certain directions than the old cases decided by the courts provided for. On the other hand, the more enlightened views of the present day as to treatment of enemies makes possible certain relaxations in the old law.

Turning to the provisions of the Act, it appears that they are conveniently classified under five general divisions; the first defining the meaning of the word "enemy" and "trading" and other words as used in the Act, together with the transactions forbidden as unlawful, unless performed under licenses; the second giving the President discretionary power to suspend the provisions of the Act and providing for the licensing under this power of acts otherwise unlawful, if not incompatible with public interests; the third providing for the care and administration of the property and property rights of enemies and their allies during the war; the fourth, dealing with patents, trade-

marks and copyrights, and the licensing of enemy interests therein; and the fifth dealing with certain administrative requirements relating to the clearance of vessels, the export of gold and silver and other moneys; penalties for violation of the act; the jurisdiction of the United States courts for its enforcement, and the indirectly related question of foreign language publications.

Examining the Act in detail, it will be found that by Section 2, the expression "enemy," as used in the Act and in relation to enemy trading, has the technical meaning of any individual or body of individuals of any nationality resident or incorporated or doing business in the territory of any nation with which the United States is at war, or in territory of an ally of such nation, and may, by proclamation of the President, be extended to include any individual or body of individuals of enemy nationality wherever resident and wherever doing business, if the President shall find that the safety of the United States or the successful prosecution of the war shall so require.

Under this definition, individuals of enemy nationality residing in the United States, and corporations chartered in the United States, notwithstanding the nationality of the stockholders thereof, do not come within the purview of the term "enemy" unless so proclaimed by the President. It is understood, however, that the existence of enemy interests in such corporations is regarded by the Alien Property Custodian as justifying the designation of a representative to act for him on behalf of such interests. The importance of exercising control over these interests is clear.

The meaning of the words "to trade," as used in the Act, is also defined in Section 2, both specifically and generally, the general definition, which seems to include all of the others, being "to have any form of business or commercial communication or intercourse."

The forms of trading declared to be unlawful are set forth in Section 3, but it is further provided in Section 7 (b) that the enumeration of unlawful transactions in the Act shall not be construed as rendering legal any transactions which would be held illegal independently of the Act, unless expressly permitted under the terms of the Act, and Section 5 authorizes the President to issue licenses permitting the performance of such transactions.

It is impossible within the limits of an editorial comment to present adequately the interesting questions suggested by the very elaborate provisions of this Act, which comprises in all nineteen sections and as

many more subsections, but a general view of its scope and operation may conveniently be obtained from a brief examination of the authority vested in executive agencies for its enforcement.

On October 12, 1917, the President issued an executive order<sup>1</sup> vesting power and authority in designated officers and making rules and regulations under the Trading-with-the-Enemy Act and Title VII of the Act known as the Espionage Act, approved June 15, 1917.

By this order, the President established a War Trade Board, composed of representatives respectively of the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Food Administrator, and the United States Shipping Board. This order vested the War Trade Board with the President's power and authority to issue licenses under terms and conditions not inconsistent with law, or to withhold or refuse licenses, for the exportation or importation of all articles (except coin, bullion, or currency), the exportation or importation of which may be restricted by proclamations previously or subsequently issued by the President under the Espionage Act or the Trading-with-the-Enemy Act.

The President also vested in this Board his power and authority, not vested elsewhere under the order, to issue pursuant to law, or to withhold or refuse, licenses "to trade either directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade directly or indirectly for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy." The terms here quoted are in the exact language of the section of the Act prohibiting trading with the enemy, except under license.

By this order, the War Trade Board is further authorized to issue or to refuse to issue licenses to every enemy or ally of enemy doing business in the United States through an agency or branch office other than enemy or ally of enemy insurance or reinsurance companies, provided application was made for such licenses within a fixed time limit, and also licenses to use other names than those used by them at the beginning of the war, which is forbidden unless so licensed. The insurance or reinsurance companies excepted from these provisions are placed under the supervision of the Secretary of the Treasury, who

<sup>1</sup> Printed in the Supplement to this JOURNAL, January, 1918, p. 60.

is empowered to grant licenses to them. By a subsequent Executive Order,<sup>1</sup> dated December 7, 1917, all foreign insurance companies are prohibited from doing business within the United States after February 1, 1918, unless under license by the Secretary of the Treasury.

All administrative authority previously conferred by the President upon governmental agencies which were combined by this order into the War Trade Board was continued and made applicable to the War Trade Board, which is further empowered to take such measures as may be necessary or expedient to administer the powers conferred upon it, and to make such rules and regulations as may be necessary and proper for the exercise of these powers.

A War Trade Council is also established by this executive order, consisting of the officials whose representatives make up the War Trade Board, and this Council is required to act in an advisory capacity in such matters under the Trading-with-the-Enemy Act as may be referred to them by the President or the War Trade Board.

The Secretary of the Treasury is vested with the executive administration of any investigation, regulation or prohibition of, and the power to acquire information about any transaction in foreign exchange, the export or earmarking of gold or silver coin or bullion or currency, and any transfers of credit in any form and evidences of indebtedness or of ownership of property taking place between the United States and any foreign country, or between the residents of foreign countries, when participated in by any person within the United States.

He is also vested with the executive administration of the provisions of the Act making unlawful the transmission, into, or out of the United States, of letters or other tangible forms of communications, except in the regular course of the mail, and also the transmission of letters, messages, and all other forms of communication intended for delivery directly or indirectly to an enemy or ally of an enemy, and he is empowered to issue licenses to transmit out of the United States anything otherwise forbidden, if not inconsistent with law, or to refuse licenses for the same. General authority is conferred upon him to adopt measures and administrative procedure and use such agencies as may be deemed necessary by him for the purpose of such executive administration.

A Censorship Board for the censoring of communications of every description to and from the United States is established by this order,

<sup>1</sup> Printed in the Supplement of this JOURNAL, January, 1918, p. 59.

composed of representatives of the Secretary of War, the Secretary of the Navy, the Postmaster General, the War Trade Board, and the Chairman of the Committee on Public Information.

The Federal Trade Commission is vested by this order with authority to issue licenses under terms and conditions not inconsistent with law, or to refuse the same, to any citizen of the United States or corporation organized in the United States to procure letters patent or trade-marks or copyrights in the country of an enemy or ally of enemy, and also to issue or refuse licenses to American citizens or corporations to use articles covered by enemy-owned patents, trade-marks or copyrights during the present war, upon regulated terms to be prescribed by this Commission. It is further vested with the power to order that an invention be kept secret and the grant of letters patent be withheld until the end of the war, whenever in its opinion the publication or granting thereof would be detrimental to the public interest.

The Postmaster General is vested with the executive administration of the provisions of the Act relating to the "printing, publishing or circulation in any foreign language of any news item, editorial, or other printed matter, respecting the Government of the United States or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war or any matter relating thereto, and the filing with the Postmaster at the place of publication, in the form of an affidavit, of a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper or publication, and the issuance of permits for the printing, publication and distribution thereof free from said restriction." He is also "authorized and empowered to issue such permits upon such terms and conditions as are not inconsistent with law and to refuse, withhold, or revoke the same."

The Secretary of State is vested with the executive administration of the provisions of the Act relative to "any person transporting or attempting to transport any subject or citizen of an enemy or ally of enemy nation, and relative to transporting or attempting to transport by any owner, master, or other person in charge of a vessel of American registry, from any place to any other place, such subject or citizen of an enemy or enemy ally." And he is also authorized and empowered "to issue licenses for such transportation of enemies and enemy allies or to withhold or refuse the same."

The Secretary of Commerce is vested with the power to supervise

the execution of the provisions of the Act relating to the clearance of any vessel, domestic or foreign, for which clearance is required by law.

The powers and duties of the Alien Property Custodian under this Act were the subject of an editorial comment in the last number of this JOURNAL, and a reëxamination of them here would, therefore, be superfluous. It may be convenient to note, however, that he is vested by this order with all the authority conferred upon the President by the Act, including the authority "to require the conveyance, transfer, assignment, delivery or payment to himself, at such time and in such manner as he shall prescribe, of any money or other properties owing to or belonging to or held for, by or on account of, or on behalf of, or for the benefit of any enemy or ally of an enemy, not holding a license granted under the provisions of the Trading-with-the-Enemy Act, which, after investigation, said Alien Property Custodian shall determine is so owing or so belongs, or is so held."

Attention is also called to the novel and important feature of this Act requiring that all money and quick assets belonging to enemy owners be paid over to the Alien Property Custodian and invested by him in United States bonds, to be turned over to the enemy owners or otherwise disposed of at the end of the war as Congress shall direct. This method of financing the war by the temporary conscription of enemy property has deservedly been the subject of much favorable comment.

CHANDLER P. ANDERSON.

#### ALSACE-LORRAINE

In the course of an address before the Sorbonne, delivered on March 1, 1918, M. Pichon, French Minister for Foreign Affairs, referred to the cession of Alsace-Lorraine and contrasted the reasons for such cession as given by the Imperial German Chancellor, Count von Hertling, and His Majesty William I, King of Prussia and first German Emperor.

M. Pichon is thus reported by the London *Times* of March 2, 1918:

None of the acts of violence thought of by a conqueror lacking in scruples to force himself upon a subjected population has succeeded in transforming French souls into German souls, or has made the descendants of those whose memory we honor today repudiate the long past of glory, of devotion, and of sacrifice which