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Trusts on the Continent of Europe

Max Rheinstein

of 1812 had created childhood prejudices which "weakened American sympathy toward the Allies".

Persons high in authority criticized measures employed by both sets of belligerents. Our Government could undertake to justify entry into the war on national policy, or on legal grounds. But one does not like to vision our Government described as committed to a policy of hypocrisy. If the view is taken that a powerful neutral government has a trust to uphold and vindicate law against encroachments; that impartial attempts to do so must not necessarily result in plunging a nation into war; and that the most effective way to maintain the law and to avoid war is to ground a government's position in all serious crises on a rock foundation of right under the law, then one may not have much sympathy with Mr. Lansing's declared policy to submerge issues in "verbosity" to insure "continuance of controversies" and to lay foundations to enable the country to be free to "act illegally" when that is considered to be expedient.

Fred K. Nielsen.†

TRUSTS ON THE CONTINENT OF EUROPE. By F. Weiser. Sweet & Maxwell, London, 1936. Pp. viii, 103. Price: 7s. 6d.

This book by an author with unusual experience in international finance transactions will be welcome when, in some perhaps not very remote future, foreign loans will again attract the interest of investors, bankers, and lawyers. Then it may help preventing the reappearance of such nonsensical contract clauses as those which Doctor Weiser describes in the chapter of his book called "International Practices and Malpractices". It seems that most of the loan agreements between British and American investors and European borrowers, especially European governments, contain a clause appointing one or more persons trustee for the bondholders, without indicating, however, what the trustee's powers and duties are to be. The insurmountable legal difficulties resulting from this clause are well pointed out by Doctor Weiser. They are largely due to the lack in the continental European laws of institutions corresponding to the Anglo-American trust. It seems that in recent years a legend was growing up that, although no exact counterpart of the trust could be found in the laws of the continent, most of its effects could be achieved there by ingenious combinations of other legal institutions. M. Lepaulle's influential "Traité Théorique et Pratique des Trusts" went even as far as asserting that the trust could be transplanted wholesale into French law. These legends are justly destroyed by Doctor Weiser in the principal part of his book, where he surveys all the devices which were or might be applied to reach trust-like effects in the laws of Germany, Austria (and the other Succession States), Switzerland, France, and Italy. None of these manifold devices proves to be satisfactory. In all Civil Law countries, the principle of the so-called *numerus clausus* of rights *in rem,* combined with the impossibility of creating restraints upon alienation, forbids the introduction of the trust as a fully developed institution. Most of the devices described by Doctor Weiser are of a complicated nature. He succeeds, nevertheless, in making them understandable to Common Law trained readers, as well as in compressing the difficult material into some fifty, exceedingly well readable pages.

It results from Doctor Weiser's book that almost desperate attempts of domesticating the foreign institution of the trust were made in post-war Germany, while such attempts were almost totally absent in the other continental countries.

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The lack of institutions corresponding to the Anglo-American trust does not mean that legitimate purposes achieved in Common Law countries by means of the trust could not also be achieved in the Civil Law countries. Their laws provide for a large number of different institutions, each of them designed to achieve one particular purpose. What they do not have is such a catch-all institution as the trust, able to achieve a hundred different legitimate purposes at once, and a good many illegitimate ones in addition. For the protection of bondholders of non-governmental loans, most of the European countries have special statutes, providing for special representatives, and regulating in detail their rights and duties. Doctor Weiser shows, how, through intelligent draftsmanship, an analogous protection can be achieved for bondholders of governmental loans, a protection far more effective than that achievable with naive attempts of using trusts impossible of application in the legal atmosphere of the continent.

Max Rheinstein.†

TRADE AGREEMENTS AND THE ANTI-TRUST LAWS. By H. A. Toulmin, Jr. W. H. Anderson Co., Cincinnati, 1937. Pp. ix, 540. Price: $7.50.

If timeliness makes the book, as the occasion does the man, then the author of "Trade Agreements and the Anti-Trust Laws" should be riding safely on the crest of the waves. At a time when the Federal Trade Commission is reorganizing its machinery under the Robinson-Patman Act and at a time when state legislation, through fair trade acts, is circumventing certain phases of the Sherman Anti-Trust Laws by successfully legalizing resale price maintenance contracts, it may be well to attempt to digest that great body of legislation directed at the control of competition and observe the reaction of business to this legislation through its many codes of fair play. This Mr. Toulmin has undertaken to do by combining a study of the fact material from which industrial codes are made and of the anti-trust laws and court decisions with which these trade practice agreements must comply.

Like all Gaul, the chief study of this volume is divided into three parts. There is a fourth division in which the author has assembled typical trade practice rules and agreements, patent license agreements, cross-license contracts, codes of fair competition, and forms for complaints and answers under the Robinson-Patman Act. In addition to these typical agreements and forms, this part of the work also contains a copy of all the anti-trust legislation from the Sherman Act down to the Robinson-Patman bill, including typical state fair trade acts.

Parts I and II deal chiefly with the nature of the facts and materials that are used in making trade practice agreements and with the preparation of these contracts so that the industrial codes, when completed, will conform with the legal restrictions enforced by the Federal Trade Commission. In these chapters the author attempts to pull back the curtain, exposing industrial conference rooms to the public eye, conferences wherein the competitors in a particular industry with their attorneys, accountants, economists, and business executives meet together with a member of the Federal Trade Commission in an effort to formulate rules of conduct for the industry.

To the lawyer, if not to the business man, Part III contains, it would seem, the real meat of the volume, for here it is that the author presents the operations of the industrial codes under the restrictions of anti-trust legislation. In this part may be found the various topics with a large selection of cases and materials that are usually included in any standard text on trade regulation.

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